

# **Lease** **Agreement**

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NEW YORK CITY  
INDUSTRIAL DEVELOPMENT AGENCY

AND

GREATER JAMAICA DEVELOPMENT CORPORATION

AND

JAMAICA FIRST PARKING, LLC

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LEASE AGREEMENT

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Dated as of March 1, 2004

\$9,525,000  
New York City Industrial Development Agency  
Variable Rate Demand Civic Facility Revenue Bonds  
(2004 Jamaica First Parking, LLC Project)

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Table of Contents

Page

**TABLE OF CONTENTS**

**ARTICLE I**

**Definitions and Representations**

Section 1.1.	Definitions .....	4
Section 1.2.	Construction .....	7
Section 1.3.	Representations and Warranties by Agency .....	7
Section 1.4.	Findings by Agency .....	8
Section 1.5.	Representations and Warranties by Lessee .....	8
Section 1.6.	Representations and Warranties by Member .....	10

**ARTICLE II**

**The Project**

Section 2.1.	The Project .....	13
Section 2.2.	Completion by Lessee .....	14
Section 2.3.	Issuance of Series 2004 Bonds .....	14
Section 2.4.	Title Insurance .....	15

**ARTICLE III**

**Lease of Facility and Rental Provisions**

Section 3.1.	Lease of the Facility .....	16
Section 3.2.	Duration of Term .....	16
Section 3.3.	Rental Provisions; Pledge of Agreement, Company Lease Agreement and Rent .....	16
Section 3.4.	Obligation of Lessee Unconditional .....	19
Section 3.5.	Payment for Tendered Series 2004 Bonds .....	19

**ARTICLE IV**

**Maintenance, Taxes, Payments in Lieu of Taxes and Insurance**

Section 4.1.	Maintenance, Alterations and Improvements .....	21
Section 4.2.	Removal of Property of the Facility .....	22
Section 4.3.	Payment in Lieu of Real Estate Taxes .....	23
Section 4.4.	Taxes, Assessments and Charges .....	24
Section 4.5.	Insurance. ....	24
Section 4.6.	Advances by Agency or Trustee or Bank .....	27
Section 4.7.	Compliance with Law .....	27

Table of Contents  
(continued)

Page

ARTICLE V

Damage, Destruction and Condemnation

Section 5.1.	Damage, Destruction and Condemnation .....	29
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ARTICLE VI

Particular Covenants

Section 6.1.	Restrictions on Lessee and Member; Dissolution or Merger of Lessee and Member .....	32
Section 6.2.	Indemnity .....	33
Section 6.3.	Compensation and Expenses of Trustee, Bond Registrar, Tender Agent, Remarketing Agent, Paying Agents and Agency .....	36
Section 6.4.	Retention of Interest in the Facility; Grant of Easements; Release of Certain Land .....	37
Section 6.5.	Covenant as to Tax Exemption .....	38
Section 6.6.	Financial Statements; No-Default Certificates .....	39
Section 6.7.	Discharge of Liens .....	40
Section 6.8.	Agency's Authority; Covenant of Quiet Enjoyment .....	40
Section 6.9.	No Warranty of Condition or Suitability .....	41
Section 6.10.	Amounts Remaining in Funds .....	41
Section 6.11.	Issuance of Additional Bonds .....	41
Section 6.12.	Employment Information, Opportunities and Guidelines .....	42
Section 6.13.	Redemption Under Certain Circumstances; Special Covenants .....	43
Section 6.14.	Further Assurances .....	44
Section 6.15.	Recording and Filing .....	44
Section 6.16.	Right to Cure Agency Defaults .....	45
Section 6.17.	Current Facility Equipment Description .....	45
Section 6.18.	Preservation of Exempt Status .....	46
Section 6.19.	Securities Law Status .....	47
Section 6.20.	Compliance with City and EDC Requirements .....	48

ARTICLE VII

Events of Default; Remedies

Section 7.1.	Events of Default .....	49
Section 7.2.	Remedies on Default .....	50
Section 7.3.	Reletting of Facility .....	51
Section 7.4.	Remedies Cumulative .....	52
Section 7.5.	No Additional Waiver Implied by One Waiver .....	52
Section 7.6.	Effect on Discontinuance of Proceedings .....	52

Table of Contents  
(continued)

	<u>Page</u>
Section 7.7. Agreement to Pay Attorneys' Fees and Expenses .....	52

ARTICLE VIII

Options

Section 8.1. Options .....	53
Section 8.2. Termination on Exercise of Option .....	54
Section 8.3. Option to Purchase or Invite Tenders of Bonds .....	55
Section 8.4. Termination of Agreement .....	55
Section 8.5. Recapture of Agency Benefits .....	55

ARTICLE IX

Miscellaneous

Section 9.1. Indenture; Amendment .....	58
Section 9.2. Force Majeure .....	58
Section 9.3. Assignment or Sublease .....	58
Section 9.4. Priority of Indenture and Agency Mortgage .....	59
Section 9.5. Benefit of and Enforcement by the Bank and Bondholders .....	60
Section 9.6. Amendments .....	60
Section 9.7. Notices .....	60
Section 9.8. Prior Agreements Superseded .....	60
Section 9.9. Severability .....	60
Section 9.10. Inspection of Facility .....	60
Section 9.11. Effective Date; Counterparts .....	61
Section 9.12. Binding Effect .....	61
Section 9.13. Net Lease .....	61
Section 9.14. Law Governing .....	61
Section 9.15. Investment of Funds .....	61
Section 9.16. Investment Tax Credit .....	61
Section 9.17. Waiver of Trial by Jury .....	61
Section 9.18. Non-Discrimination .....	62
Section 9.19. No Recourse under This Agreement or on Bonds .....	62
Section 9.20. Conflict with Reimbursement Agreement .....	63
Section 9.21. Date of Agreement for Reference Purposes Only .....	63

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into as of March 1, 2004, by and among NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), having its principal office at 110 William Street, New York, New York 10038, party of the first part, and GREATER JAMAICA DEVELOPMENT CORPORATION, a New York not-for-profit corporation (the "Member"), and JAMAICA FIRST PARKING, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of Delaware (the "Lessee"), each having its principal office at 90-04 161<sup>st</sup> Street, Jamaica, New York 11432, parties of the second part:

### 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 acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes and which may include or mean an industrial pollution control facility to the end that such agencies may be able to promote, develop, encourage, assist and 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; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act the Agency was established by Chapter 1082 of the 1974 Laws of New York, as amended (together with the Enabling Act, the "Act"), for the benefit of The City of New York and the inhabitants thereof; and

WHEREAS, the Member formed the Lessee to develop the Project (hereinafter defined) on its behalf; and

WHEREAS, the Member is the sole member of the Lessee; and

WHEREAS, to accomplish its corporate purposes, the Agency has entered into negotiations with the Member and the Lessee to induce the Lessee, on behalf of the Member, to commence with the acquisition, improvement and equipping of civic facilities (collectively, the "Facility") consisting of (i) the acquisition, renovation and equipping of the approximately 183,503 square foot Parsons Garage building, located on an approximately 48,509 square foot parcel of land at 90-15 Parsons Boulevard, Jamaica, New York (the "Parsons Garage"), and (ii) the acquisition of an approximately 47,609 square foot parcel of land located at 89-47 162<sup>nd</sup> Street, Jamaica, New York, and the construction and equipping of an approximately 146,430

square foot parking garage thereon (the "Mid-Block Garage"), all for use as parking facilities by the Lessee and the Member (the "Project"); and

WHEREAS, the Member is the owner of a fee simple interest in the land upon which the Parsons Garage is located (the "Parsons Land") and, contemporaneously with the execution of this Lease Agreement, will lease the same to the Lessee pursuant to a certain Parsons Lease, dated March 23, 2004 (the "Parsons Lease"), between the Member and the Lessee;

WHEREAS, contemporaneously with the execution of this Lease Agreement, the Lessee will acquire fee simple title to the Mid-Block Garage; and

WHEREAS, the Lessee desires to (i) lease the Mid-Block Garage portion of the Facility and (ii) sublease the Parsons Garage portion of Facility to the Agency on the terms and conditions set forth in the Company Lease Agreement of even date herewith between the Lessee and the Agency; and

WHEREAS, pursuant to this Lease Agreement, the Agency will sublease the Mid-Block Garage portion of the Facility and sub-sublease the Parsons Garage portion of the Facility to the Lessee and the Member; and

WHEREAS, the Agency, in order to provide funds for a portion of the cost of the Project, will issue its Variable Rate Demand Civic Facility Revenue Bonds (2004 Jamaica First Parking, LLC Project) in the aggregate principal amount of \$9,525,000 pursuant to the Act, a resolution of the Agency adopted on October 14, 2003 and an Indenture of Trust of even date herewith (the "Indenture") between the Agency and Wachovia Bank, National Association, as trustee (the "Trustee"); and

WHEREAS, the Lessee and the Member entered into a certain Letter of Credit and Reimbursement Agreement dated as of even date herewith with the Bank as referred to below (as the same may be amended or supplemented, the "Reimbursement Agreement") pursuant to which an irrevocable direct pay letter of credit (the "Letter of Credit") has been issued by JPMorgan Chase Bank (the "Bank"), in favor of the Trustee for the benefit of the Holders of the Bonds to secure the payment of the principal or Purchase Price of, and up to forty-five (45) days interest (at the maximum rate of interest of twelve percent (12%) per annum) on, the Bonds; and

WHEREAS, the Bonds will further be secured pursuant to a guaranty agreement dated as of even date herewith from the Lessee and the Member to the Trustee (as the same may be amended or supplemented, the "Guaranty Agreement") pursuant to which the Lessee and the Member will guarantee the payment of the principal, redemption premium, if any, Purchase Price of and interest on the Bonds;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability nor create a debt of the State of New York or of The City of New York, and

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



## ARTICLE I

### Definitions and Representations

Section 1.1. Definitions. Terms not otherwise defined herein shall have the same meanings as used in the Indenture or the Tax Regulatory Agreement hereinbelow defined. The following terms shall have the following meanings in this Lease Agreement:

Agency shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

Agency Mortgage shall mean, collectively, the Agency Mortgage and Security Agreement (Acquisition Loan), the Agency Mortgage and Security Agreement (Building Loan) and the Agency Mortgage and Security Agreement (Indirect Loan), each of even date herewith, from the Agency, the Lessee and the Member to the Bank, and shall include any and all amendments thereof and supplements thereto and assignment of interests therein hereafter made in conformity therewith.

Agreement shall mean this Lease Agreement, dated as of March 1, 2004, among the Agency, the Member and the Lessee, and shall include any and all amendments and supplements thereto hereafter made in conformity herewith and with the Indenture.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Agency, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Lessee, any Manager thereof, the Member thereof, including the Chairperson, any Vice Chairperson, any Counsel, any President, any Vice President or any Secretary of the Member, and (iii) in the case of the Member, the Chairperson, any Vice Chairman, any Counsel, the President, any Vice President or the Secretary.

Bonds shall mean the Series 2004 Bonds and any Additional Bonds.

City shall mean The City of New York, New York.

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

Company Lease shall mean the Company Lease Agreement of even date herewith with respect to the Facility between the Lessee and the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Event of Default shall have the meaning specified in Section 7.1 hereof.

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

Facility Equipment shall mean those items of equipment the title to which shall be acquired by or on behalf of the Agency for installation or use at the Facility Realty as part of the Project pursuant to Section 2.1 of this Lease Agreement and described in the Description of Facility Equipment in the Appendices attached hereto and made a part hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Equipment shall, in accordance with the provisions of Sections 4.2 and 5.1 of this Lease Agreement, include all property substituted for or replacing items of Facility Equipment and exclude all items of Facility Equipment so substituted for or replaced, and further exclude (i) all items of Facility Equipment removed as provided in Section 4.2 of this Lease Agreement, and (ii) any items of equipment dedicated to retail use.

Facility Realty shall mean the land described in the Description of Facility Realty in the Appendices hereto, to the Indenture and to the Agency Mortgage, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures (other than trade fixtures) and other improvements now or at any time made, erected or situated thereon (including the improvements made pursuant to Section 2.1 hereof), and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof, and further excluding any real property dedicated to retail use.

Fiscal Year of the Lessee shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on the following December 31, or such other year of similar length as to which the Lessee shall have given prior written notice thereof to the Agency and the Trustee at least ninety (90) days prior to the commencement thereof.

Guaranty Agreement shall mean the Guaranty Agreement of even date herewith from the Lessee and the Member to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

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

Legal Requirements shall mean the respective Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including but not limited to zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Lessee, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

Lessee shall mean Jamaica First Parking, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of Delaware, and its permitted successors and assigns pursuant to Section 6.1 or 9.3 hereof (including any surviving, resulting or transferee entity as provided in Section 6.1 hereof).

Member shall mean Greater Jamaica Development Corporation, a not-for-profit corporation organized and existing under and by virtue of the laws of the State of New York, and its permitted successors and assigns pursuant to Section 6.1 or 9.3 hereof (including any surviving, resulting or transferee entity as provided in Section 6.1 hereof).

Mid-Block Garage shall mean the portion of the Facility consisting of the 146,430 square foot parking garage and related facilities and structures to be constructed on the parcel of real property located at 89-47 162<sup>nd</sup> Street, Jamaica, New York.

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

Parsons Garage shall mean the portion of the Facility consisting of the approximately 183,503 square foot Parsons Garage building and related facilities and structures, located on the parcel of real property at 90-15 Parsons Boulevard, Jamaica, New York.

Parsons Land shall mean that certain lot, piece or parcel of land in Block 9756, Lot 18, generally known by the street address 90-15 Parsons Boulevard, Jamaica, New York, all as more particularly described in Exhibit A - "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

Parsons Lease shall mean the Parson Lease, dated as of March 23, 2004, between the Member and the Lessee.

Project shall mean (i) the acquisition, renovation and equipping of the approximately 183,503 square foot Parsons Garage building, located on an approximately 48,509 square foot parcel of land at 90-15 Parsons Boulevard, Jamaica, New York, and (ii) the acquisition of an approximately 47,609 square foot parcel of land located at 89-47 162<sup>nd</sup> Street, Jamaica, New York, and the construction and equipping of an approximately 146,430 square foot parking garage thereon, all for use as parking facilities by the Lessee and the Member.

Security Documents shall mean this Lease Agreement, the Company Lease Agreement, the Indenture, the Guaranty Agreement, the Tax Regulatory Agreement and the Letter of Credit.

Series 2004 Bonds shall mean the \$9,525,000 Variable Rate Demand Civic Facility Revenue Bonds (2004 Jamaica First Parking, LLC Project) of the Agency issued, executed, authenticated and delivered under the Indenture.

State shall mean the State of New York.

Tax-Exempt Organization shall mean a Person organized under the laws of the United States of America or any state thereof which is, or for federal income tax purposes is treated as a division of, an organization described in Section 501(c)(3) of the Code and exempt from federal income taxes under Section 501(a) of the Code, or corresponding provisions of federal income tax laws from time to time in effect.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement dated March 23, 2004, from the Agency, the Lessee (as joined in by the Member) to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Trustee shall mean Wachovia Bank, National Association, in its capacity as Trustee, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Section 1.2. Construction. In this Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of the execution and delivery of this Agreement.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

Section 1.3. Representations and Warranties by Agency. The Agency makes the following representations and warranties:

(a) The Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, and is authorized and empowered to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action of its members, the Agency has duly authorized the execution and delivery of this Agreement.

(b) In order to finance a portion of the cost of the Project, the Agency proposes to issue the Series 2004 Bonds in the aggregate principal amount of \$9,525,000. The Series 2004 Bonds will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Indenture.

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

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

(a) The Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is in good standing and qualified to do business in the State of New York, is not in violation of any provision of its certificate of formation or operating agreement, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Security Document to which it is a party. The Lessee is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Agreement and each other Security Document to which it is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite action on the part of the Lessee and will not violate any provision of law, any order of any court or agency of government, or the certificate of formation or operating agreement of the Lessee, or any indenture, agreement or other instrument to which the Lessee is a party (including the Parsons Lease) or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) Expenses for supervision by the officers or employees of the Lessee or the Member, and expenses for work done by such officers or employees, in connection with the Project will be included as a Project Cost only to the extent that such Persons devote all of their working hours to the Project for the periods of time (which periods of time may include indicated portions of a work day) such expenses are included as a Project Cost, the expenses do not exceed the actual cost thereof and are to be treated on the books of the Lessee as a capital expenditure in conformity with generally accepted accounting principles applied on a consistent basis.

(d) The assistance of the Agency in the financing of a portion of the costs of the Project is reasonably necessary to induce the Lessee to proceed with the Project.

(e) The completion of the Project will not result in the removal of an industrial, manufacturing, warehousing or commercial plant or facility of the Lessee or any

Affiliate thereof from outside the City (but within the State of New York) to within the City or in the abandonment of one or more of such plants or facilities of the Lessee or any Affiliate thereof within the State but outside of the City.

(f) The total cost of the Project being funded with the Series 2004 Bonds is at least \$9,525,000, which represents only a portion of the total cost to the Lessee.

(g) Any costs incurred with respect to that part of the Project paid from the proceeds of the sale of the Series 2004 Bonds shall be capable of being treated on the books of the Lessee as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis.

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

(i) No part of the proceeds of the Series 2004 Bonds will be used to finance inventory or will be used for working capital, or will be used for any other property not constituting part of the Facility.

(j) The Project constitutes a facility to be used and occupied by a not-for-profit corporation and does not constitute a convention center or a housing facility.

(k) This Agreement and the other Security Documents to which the Lessee is a party constitute the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms subject to equitable remedies, creditors rights and bankruptcy.

(l) The Project has been designed, and the operation of the Project will be, in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

(m) The Lessee is organized and operated exclusively for not-for-profit purposes and no part of the earnings of the Lessee inures to the benefit of any person, private shareholder or individual.

(n) There is no action or proceeding pending or to the best knowledge of the Lessee threatened by or against the Lessee by or before any court or administrative agency that might adversely affect the ability of the Lessee to perform its obligations under this Agreement and each other Security Document to which the Lessee shall be a party and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee as of the date hereof in connection with the execution and delivery of this Agreement and each other Security Document to which the Lessee shall be a party or in connection with the performance of the obligations of the Lessee hereunder and under each of the Security Documents have been obtained.

(o) The Lessee intends to operate the Facility or cause the Facility to be operated, on its own behalf and as agent for the Member, in accordance with this Agreement and as a qualified "project" in accordance with and as defined under the Act.

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

(q) The Lessee has good and marketable (i) leasehold title, with respect to the Parsons Garage portion of the Facility, and (ii) fee title, with respect to the Mid-Block Garage portion of the Facility, in each case, title to the Facility, free of all liens, claims, charges and encumbrances other than Permitted Encumbrances.

(r) The Lessee shall not terminate the Parsons Lease for as long as any Series 2004 Bonds are Outstanding.

(s) The Parsons Lease continues in full force and effect as the legal, valid and binding obligations the Lessee without default by either of the Lessee or the Member thereunder. The Lessee has neither received nor delivered any notice of default or termination under the Parsons Lease, and the term of the Parsons Lease expires on December 31, 2033.

(t) Pursuant to the Parsons Lease, the Lessee has been vested with a good and valid leasehold estate in the land under the Parsons Garage and pursuant to the Company Lease the Agency has been vested with a good and valid (i) subleasehold estate in the Parsons Garage and (ii) leasehold estate in the Mid-Block Garage.

Section 1.6. Representations and Warranties by Member. The Member makes the following representations and warranties:

(a) The Member is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York, is not in violation of any provision of its certificate of incorporation or by-laws, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Security Document to which it is a party. The Member is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Agreement and each other Security Document to which it is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite action on the part of the Member and will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or by-laws of the Member, or any indenture, agreement or other instrument to which the Member is a party (including the Parsons Lease) or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) Expenses for supervision by the officers or employees of the Lessee or the Member, and expenses for work done by such officers or employees, in connection with the Project will be included as a Project Cost only to the extent that such Persons devote all of their

working hours to the Project for the periods of time (which periods of time may include indicated portions of a work day) such expenses are included as a Project Cost, the expenses do not exceed the actual cost thereof and are to be treated on the books of the Lessee as a capital expenditure in conformity with generally accepted accounting principles applied on a consistent basis.

(d) The assistance of the Agency in the financing of a portion of the costs of the Project is reasonably necessary to induce the Member to proceed with the Project.

(e) The Project constitutes a facility to be used and occupied by a not-for-profit corporation and does not constitute a convention center or a housing facility.

(f) This Agreement and the other Security Documents to which the Member is a party constitute the legal, valid and binding obligations of the Member enforceable against the Member in accordance with their respective terms subject to equitable remedies, creditors rights and bankruptcy.

(g) The Member is organized and operated exclusively for not-for-profit purposes and no part of the earnings of the Member inures to the benefit of any person, private shareholder or individual.

(h) There is no action or proceeding pending or to the best knowledge of the Member threatened by or against the Member by or before any court or administrative agency that might adversely affect the ability of the Member to perform its obligations under this Agreement and each other Security Document to which the Member shall be a party and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Member as of the date hereof in connection with the execution and delivery of this Agreement and each other Security Document to which the Member shall be a party or in connection with the performance of the obligations of the Member hereunder and under each of the Security Documents have been obtained.

(i) The Member intends to cause the Facility to be operated by the Lessee, on its own behalf and as agent for the Member, in accordance with this Agreement and as a qualified "project" in accordance with and as defined under the Act.

(j) There is no existing violation against the Facility filed by any court or administrative agency that may prohibit the ability of the Member to use or cause the operation of the Facility by the Lessee on behalf of the Member for its intended purposes or for which the Member has not agreed or made arrangements to have removed and satisfied of record.

(k) The Member has good and marketable fee title to the Parsons Land, free of all liens, claims, charges and encumbrances other than Permitted Encumbrances.

(l) The Member shall not terminate the Parsons Lease for as long as any Series 2004 Bonds are Outstanding.

(m) The Parsons Lease continues in full force and effect as the legal, valid and binding obligation of the Member without default by either of the Lessee or the Member



thereunder. The Member has neither received nor delivered any notice of default or termination under the Parsons Lease, and the term of the Parsons Lease expires on December 31, 2034.

## ARTICLE II

### The Project

Section 2.1. The Project. (a) The Lessee shall cause to be conveyed to the Agency at the time of the delivery and payment of the Series 2004 Bonds a leasehold interest in the Facility free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances, all against payment therefor by the Agency from the proceeds of the Series 2004 Bonds deposited in the Project Fund to the extent permitted in Section 2.2 hereof and Section 5.02 of the Indenture.

(b) As promptly as practicable after receipt of the proceeds of sale of the Series 2004 Bonds and out of said proceeds of sale, the Agency will, subject to the provisions of Section 2.2 hereof, cause the Lessee, on behalf of the Agency, to complete the Project substantially in accordance with the Plans and Specifications. The cost of the Project shall be paid from the Project Fund established under the Indenture or as otherwise provided in Section 2.2 hereof. All contractors, materialmen, vendors, suppliers and other companies, firms or persons furnishing labor, services or materials for or in connection with the Project shall be designated by the Lessee. The Project work shall be supervised by DBI Construction Consulting, which is hereby appointed the Project Supervisor, and, in the event said person resigns or becomes incapable of undertaking or carrying out his duties hereunder, the Agency upon recommendation of the Lessee shall appoint a successor.

(c) In order to accomplish the purposes of the Agency, and to assure the effectuation of the Project in conformity with the requirements of the Lessee and the Member, the Lessee, on its own behalf and as agent for the Member, has undertaken to proceed with the preparation of the Facility site and the completion of the Project work in accordance with the Plans and Specifications. The Lessee agrees to complete the Project on behalf of the Agency under the supervision of the Project Supervisor.

(d) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any leases or memoranda thereof required in connection with the Project conveyance, the delivery of any instruments and documents and their filing and recording, if required, and (ii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

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

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

(g) The Lessee shall take such action and institute such proceedings as shall be reasonably necessary to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, with all expenses incurred by the Lessee or the Agency in connection with the performance of their obligations under this Section to be considered a Project Cost. Any amounts in excess of \$100,000 recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, if recovered prior to the date of completion of the Project, shall be deposited into the Project Fund and made available for payment of Project Costs, or if recovered after such date of completion, be deposited in the Redemption Account of the Bond Fund.

(h) A leasehold interest in all materials, equipment, machinery and other property intended to be incorporated or installed as part of the Facility and to constitute Facility Equipment shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first. The Lessee shall take all action necessary to protect the leasehold interest of the Agency in the Facility Equipment against claims of any third parties.

Section 2.2. Completion by Lessee. The Member and the Lessee unconditionally covenant and agree that the Lessee will complete the Project, or cause the Project to be completed, on its own behalf and as agent of the Member, by October 1, 2006, subject to Section 9.2 hereof, and that such completion will be effected in a first-class workmanlike manner, using high-grade materials, free of material defects in materials or workmanship (including latent defects), as applicable, and in accordance with this Agreement and the Indenture. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in said Project Fund and shall not be entitled to any reimbursement therefor from the Agency, the Trustee or the Holders of any of the Bonds (except from the proceeds of Additional Bonds which may be issued for that purpose), nor shall the Lessee or the Member be entitled to any diminution of the rents payable or other payments to be made under this Agreement.

Upon completion of the Project, the Lessee shall deliver to the Agency, the Bank and the Trustee a certificate of an Authorized Representative of the Lessee substantially in the form set forth in Schedule A attached hereto, together with all attachments required therein and any additional items as the Bank shall request be included therein.

Section 2.3. Issuance of Series 2004 Bonds. Contemporaneously with the execution and delivery of this Agreement, the Agency will sell and deliver the Series 2004 Bonds in the aggregate principal amount of \$9,525,000 under and pursuant to a resolution adopted by the Agency on October 14, 2003 authorizing the issuance of the Series 2004 Bonds and under and pursuant to the Indenture. The proceeds of sale of the Series 2004 Bonds shall be

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applied as set forth in Article IV of the Indenture. Pending application of the amounts on deposit in the Project Fund, amounts in the Project Fund may be invested as provided in the Indenture.

Section 2.4. Title Insurance. Prior to the delivery of the Series 2004 Bonds to the original purchaser(s) thereof, the Lessee will obtain (a) a title insurance policy in an amount not less than \$1,000,000 insuring the Agency's interest under the Company Lease in the Facility against loss as a result of defects in the leasehold or subleasehold, as applicable, interest of the Agency, as applicable, (b) a mortgagee title insurance policy in an amount not less than \$9,525,000 insuring the Bank's interest under the Agency Mortgage as holder of a mortgage lien on the Facility Realty, and (c) a current survey of the site of the Facility Realty certified to the Agency, the Bank and the Trustee. The title insurance policies shall be subject only to Permitted Encumbrances. Any proceeds of such leasehold title insurance shall be assigned by the Agency to the Lessee and applied to remedy the defect in title. Any proceeds of such mortgagee title insurance insuring against loss as a result of defects affecting the Bank's interest as holder of a mortgage lien on the Facility Realty shall be paid to the Bank.

## ARTICLE III

### Lease of Facility and Rental Provisions

Section 3.1. Lease of the Facility. The Agency hereby subleases to the Member and the Lessee, and the Member and the Lessee hereby sublease from the Agency the Facility, all for and during the term herein provided and upon and subject to the terms and conditions herein set forth. The Lessee, on its own behalf and as agent for the Member, shall at all times during the term of this Agreement occupy, use and operate the Facility, or cause the Facility to be occupied, used and operated, as a civic facility in accordance with the provisions of the Act and for the general purposes specified in the recitals to this Agreement. The Lessee, on its own behalf and as agent for the Member, shall not occupy, use or operate the Facility or allow the Facility or any part thereof to be occupied, used or operated for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

Section 3.2. Duration of Term. The term of this Agreement shall commence on the date of execution and delivery of this Agreement and shall expire on March 1, 2034 or such earlier date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Member and the Lessee, and the Member and the Lessee hereby accept, sole and exclusive possession of the Facility.

Section 3.3. Rental Provisions; Pledge of Agreement, Company Lease Agreement and Rent. (a) The Lessee covenants, on its own behalf and as agent of the Member, to make rental payments which the Agency agrees shall be paid, subject to Section 3.3(b) hereof, in immediately available funds by the Lessee directly to the Trustee on each Lease Rental Payment Date for deposit in the Reimbursement Account of the Lease Payments Fund in an amount equal to the sum of:

- (i) with respect to interest due and payable on the Series 2004 Bonds,
- (x) prior to the Conversion Date, an amount equal to the interest next becoming due and payable on the Series 2004 Bonds on the immediately succeeding Interest Payment Date,
- (y) on and after the Conversion Date, an amount equal to the quotient obtained by dividing the amount of interest on all Series 2004 Bonds payable on the next succeeding Interest Payment Date (after taking into account any amounts constituting Priority Amounts on deposit in the Interest Account of the Bond Fund, as shall not have been derived from a draw on the Letter of Credit, and as shall be available to pay interest on the Series 2004 Bonds on such next succeeding Interest Payment Date) by the number of Lease Rental Payment Dates between the Conversion Date and the next succeeding Interest Payment Date, and thereafter in an amount equal to one-sixth (1/6) of the amount of interest which will become due and payable on the Series 2004 Bonds on the next succeeding Interest Payment Date (after taking into account any amounts

constituting Priority Amounts on deposit in the Interest Account of the Bond Fund, as shall not have been derived from a draw on the Letter of Credit, and as shall be available to pay interest on the Series 2004 Bonds on such next succeeding Interest Payment Date), provided that in any event the amount so paid with respect to interest on the Series 2004 Bonds on or before the Lease Rental Payment Date immediately preceding an Interest Payment Date shall be an amount sufficient to pay the interest next becoming due on the Series 2004 Bonds on such immediately succeeding Interest Payment Date; and

(ii) with respect to principal due on the Series 2004 Bonds, an amount equal to the quotient obtained by dividing the amount of the principal of the Series 2004 Bonds Outstanding becoming due (other than by reason of mandatory Sinking Fund Installments) on the first principal payment date on the Series 2004 Bonds by the number of Lease Rental Payment Dates between the date of issuance of the Series 2004 Bonds and such first principal payment date, and thereafter in an amount equal to the quotient obtained by dividing (y) the amount of the principal of the Series 2004 Bonds Outstanding becoming due (other than by reason of mandatory Sinking Fund Installments) on the next following principal payment date upon which principal of the Series 2004 Bonds shall become due by (z) the number of Lease Rental Payment Dates between (A) the immediately preceding principal payment date of the Series 2004 Bonds and (B) such next following principal payment date of the Series 2004 Bonds, and provided that in any event the amount so paid with respect to principal on the Series 2004 Bonds on or before the Lease Rental Payment Date immediately preceding a principal payment date of the Series 2004 Bonds shall be an amount sufficient to pay the principal of the Series 2004 Bonds Outstanding becoming due on such next succeeding principal payment date.

(b) As security for the performance of their rental payment obligations with respect to the Series 2004 Bonds, the Member and the Lessee shall, simultaneously with the issuance and delivery of the Series 2004 Bonds, arrange for the delivery of the Letter of Credit to the Trustee. The Member and the Lessee hereby authorize and direct the Trustee to draw moneys under the Letter of Credit in accordance with the provisions of the Indenture to the extent and at the times necessary to pay the principal of, Redemption Price of, and interest on the Series 2004 Bonds when due.

(c) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal of, Sinking Fund Installments for, redemption premium, if any, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Lessee, on its own behalf and as agent for the Member, shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund and such payment shall constitute rental payments under this Section 3.3.

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

(e) The Member and the Lessee shall have the option to prepay their rental obligation with respect to the Bonds, in whole or in part at the times and in the manner provided in Article VIII hereof as and to the extent provided in the Indenture for redemption of the Bonds.

(f) At its option, to be exercised on or before the forty-fifth (45th) day next preceding the date any Bonds of a Series are to be redeemed from mandatory Sinking Fund Installments, the Member or the Lessee may deliver to the Trustee Bonds of such Series which are subject to mandatory Sinking Fund Installment redemption in an aggregate principal amount not in excess of the principal amount of Bonds of such Series to be so redeemed on such date. Each such Bond so delivered shall be credited by the Trustee at one hundred percent (100%) of the principal amount thereof against the obligation of the Agency on such Sinking Fund Installment payment date and any excess over such Sinking Fund Installment shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by operation of the mandatory Sinking Fund Installments shall be accordingly reduced.

(g) No further rental payments need be made to the Agency during the term of this Agreement when and so long as the amount of cash and/or Government Obligations on deposit in the Bond Fund is sufficient to satisfy and discharge the obligations of the Agency under the Indenture and pay the Bonds as provided in Section 10.01 of the Indenture.

(h) The Member, the Lessee and the Agency acknowledge their intention to minimize the risk that any payment made to a Bondholder from amounts provided by or on behalf of the Member or the Lessee may be determined by a bankruptcy court to constitute a preference. To this end the parties agree that, as provided in Section 5.06(a) of the Indenture, payments to Bondholders shall be made only from Priority Amounts, except when and to the extent no Priority Amounts are available for the purpose. The payment obligations of the Lessee under this Section 3.3 are subject in all respects to the use of Priority Amounts for the payment of the Bonds. Optional prepayments permitted by the Lessee as provided in Article VIII hereof may not be made except from Priority Amounts. The Agency shall have no liability with respect to any payments made in violation of this paragraph.

(i) As security for the obligations of the Member and the Lessee under the Reimbursement Agreement, the Agency, the Member and the Lessee shall, pursuant to the Agency Mortgage, grant to the Bank a lien on and security interest in the Facility prior to the lien of this Agreement. As security for the Bonds and the obligations of the Member and the Lessee under the Reimbursement Agreement, the Agency shall pledge and assign to the Trustee and the Bank pursuant to the Indenture all of the Agency's right, title and interest in this Agreement (except for the Agency's Reserved Rights), including all rental payments hereunder, and in furtherance of said pledge the Agency will unconditionally assign such rental payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture. The Member and the Lessee hereby consent to the above-described lien and security interest, and pledge and assignment of this Agreement.

(j) The Member and the Lessee covenant and agree that they will comply with the provisions of the Indenture with respect to the Member and the Lessee and that the Trustee shall have the power, authority, rights and protections provided in the Indenture. The

Lessee further covenants to use its best efforts to cause there to be obtained for the Agency any documents or opinions required of the Agency under the Indenture.

**Section 3.4. Obligation of Lessee Unconditional.** The obligation of the Member and the Lessee to pay the rent and all other payments provided for in this Agreement and the obligation of the Lessee to maintain the Facility in accordance with Section 4.1 of this Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction either of them might otherwise have against the Agency, the Trustee, the Bank or the Holder of any Bond and the obligations of the Member and the Lessee shall arise whether or not the Project has been completed as provided in this Agreement, and whether or not the Bank shall honor or be honoring its obligations under the Letter of Credit. The Member and the Lessee will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Member and the Lessee waive all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Member or the Lessee under this Agreement or the Facility or any part thereof except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

**Section 3.5. Payment for Tendered Series 2004 Bonds.** (a) The Member and the Lessee agree, as provided in Sections 2.04, 2.06 and 5.16 of the Indenture, to pay rent to the Tender Agent, for the account of the Agency, as lessor, equal to all amounts necessary for the purchase of Series 2004 Bonds pursuant to Sections 2.04 and 2.06 of the Indenture and not deposited with the Tender Agent by the Remarketing Agent from the proceeds of the sale of such Bonds under Section 5.16 of the Indenture or from drawings on or other realizations under the Letter of Credit pursuant to Section 5.06(b) of the Indenture. Each such payment by the Member and the Lessee to the Tender Agent in accordance with this Section shall be in immediately available funds and paid to the Tender Agent at its principal office by 4:00 P.M. (New York City time) on each Purchase Date. The Member and the Lessee further agree to pay such immediately available funds to the Tender Agent at the times and in the manner specified in the Indenture.

(b) The Member and the Lessee shall provide for the payment of the amount to be paid pursuant to this Section 3.5 by delivery of the Letter of Credit to the Trustee, simultaneously with the issuance and delivery of the Series 2004 Bonds. The Member and the Lessee hereby authorize and direct the Trustee to draw moneys under the Letter of Credit in accordance with the provisions of the Indenture to the extent necessary to make such payments when due. The obligations of the Member and the Lessee pursuant to this Section 3.5 shall be deemed to be satisfied and discharged to the extent of any corresponding drawing made by the Trustee on the Letter of Credit and applied to such payment.

(c) If the Trustee shall draw amounts under the Letter of Credit for the Purchase Price of Series 2004 Bonds pursuant to the last paragraph of Section 5.06(b) of the Indenture, and the aggregate of the amounts transferred to the Bank by the Tender Agent pursuant to Section 5.16 of the Indenture after such drawing from the Reimbursement Account of the Purchase Fund shall be less than the amount required to reimburse the Bank in whole



pursuant to the Reimbursement Agreement, the Member and the Lessee will pay an amount equal to such insufficiency to the Bank in accordance with the Reimbursement Agreement.

(d) The Member and the Lessee hereby approve and agree to be bound by the provisions of the Indenture regarding the purchase, offer, sale and delivery of Series 2004 Bonds tendered for purchase thereunder, including particularly those set forth in Sections 2.04 and 2.06 of the Indenture and in Articles V, XIII and XIV thereof. The Lessee shall have all of the rights and obligations provided in the Indenture with respect to the Lessee in connection with such transactions and the appointment of the Tender Agent and the Remarketing Agent thereunder. The Agency shall have no obligation or responsibility with respect to the purchase of Series 2004 Bonds or any related arrangements, except that the Agency at the expense of the Lessee shall cooperate in the making of any such arrangements.

(e) If the Lessee elects to cause the interest rate on the Series 2004 Bonds to be converted to the Fixed Interest Rate pursuant to the Indenture, the Lessee shall deliver or cause to be delivered the notice, the opinion of Nationally Recognized Bond Counsel and such other documents required under the Indenture in connection with such Conversion, all as provided in Section 2.04 of the Indenture.

## ARTICLE IV

### Maintenance, Taxes, Payments in Lieu of Taxes and Insurance

Section 4.1. Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Lessee, on its own behalf and as agent for the Member, will keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Facility in the manner for which it was designed and intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure the continued operation of the Facility. All replacements, renewals and repairs shall be substantially equal in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility and the Lessee hereby agrees to assume full responsibility therefor.

(b) The Lessee, on its own behalf and as agent for the Member, shall have the privilege of making such alterations of or additions to the Facility or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that (i) the fair market value of the Facility is not reduced below its value immediately before such alteration or addition and the usefulness, structural integrity or operating efficiency of the Facility is not materially impaired, (ii) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, (iii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, (iv) such additions or alterations are made, in case the estimated cost of such alteration or addition exceeds \$250,000, with the consent of the Bank, under the supervision of an Engineer and in accordance with plans, specifications and cost estimates approved by the Bank and, to the extent required under paragraph (e) below, only after the Lessee shall have furnished to the Agency and the Bank a labor and materials payment bond, or other security, reasonably satisfactory to the Agency and the Bank, and (v) such additions or alterations do not change the nature of the Facility so that it would not constitute a civic facility and a qualified "project" as defined in and as contemplated by the Act. All such alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement, the Company Lease, the Indenture and the Agency Mortgage, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey title to such property to the Agency and to subject such property to this Agreement and the Company Lease and the lien and security interest of the Indenture and the Agency Mortgage, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee, on its own behalf and as agent for the Member, shall have the right to install or permit to be installed at the Facility Realty machinery, equipment and other

personal property not constituting part of the Facility Equipment (the "Lessee's Property") without subjecting such property to this Agreement or the Company Lease and the lien and security interest of the Agency Mortgage. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property.

(d) Neither the Member nor the Lessee shall create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Member or the Lessee in the Facility, the Company Lease or this Agreement except for Permitted Encumbrances. The Lessee covenants, on its own behalf and as agent for the Member, that it shall take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that the Agency Mortgage shall constitute a mortgage lien on the Facility subject only to Permitted Encumbrances.

(e) To the extent required by the New York State Finance Law §137, prior to executing any contract with any party for any improvement (as such term is defined in the New York Lien Law) in connection with the Project or the Facility or the provision of any goods or services in connection therewith, and prior to authorizing any party to undertake such improvement (or the provision of such goods and services) without a contract, the Lessee shall deliver to the Agency a copy of the proposed contract therefor along with a bond, in compliance with State Finance Law §137 and otherwise satisfactory to the Agency, guaranteeing prompt payment of monies due all persons furnishing labor or materials for the contractor or his subcontractor in the prosecution of his work provided for in such contract. The Agency shall have no liability or responsibility for the cost of such bond(s). Should the Lessee fail to comply with the foregoing requirement, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked, subject to reinstatement upon compliance with such requirements).

Section 4.2. Removal of Property of the Facility. (a) The Lessee, on its own behalf and as agent for the Member, shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other property constituting part of the Facility Equipment (the "Existing Facility Property") and thereby acquiring such Existing Facility Property, provided that:

(i) such Existing Facility Property is substituted or replaced by property (A) having equal or greater fair market value, operating efficiency and/or utility and (B) being free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances; or

(ii) if such Existing Facility Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms'-length bona fide transaction for consideration in excess of \$50,000, the Lessee shall pay to the Trustee for deposit in the Reimbursement account of the Lease Payments Fund and thereby cause a redemption of Bonds to be effected (through a draw on the Letter of Credit to the extent that the Bonds to be redeemed are secured by the Letter of Credit) in an amount (to the nearest Authorized Denomination)

equal to the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition;

provided, however, no such removal as set forth in paragraph (i) or (ii) above shall be effected if (w) such removal would change the nature of the Facility so it would not constitute a civic facility and a qualified "project" as defined in and as contemplated by the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would reduce the fair market value of the Facility below its value immediately before such removal (except by the amount deposited in the Reimbursement Account of the Lease Payments Fund pursuant to paragraph (ii) above), or (z) if there shall exist and be continuing an Event of Default hereunder. Any amounts received pursuant to paragraph (ii) above which are not in excess of \$50,000 shall be retained by the Lessee.

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

(c) The Lessee shall not, without the prior written consent of the Agency, the Bank and the Trustee and except as permitted above, part with possession or control of or suffer to allow to pass out of its possession or control any item of the Facility Equipment or change the location of the Facility Equipment or any part thereof from the Facility Realty, other than for temporary removal for purposes of maintenance or repair; provided, however, it is acknowledged that Affiliates of the Lessee may operate or utilize, at the Facility Realty, the Facility Equipment or any part thereof.

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

Section 4.3. Payment in Lieu of Real Estate Taxes. It is recognized that under the provisions of the Act the Agency is required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. In the event the Agency's interest in the Facility Realty shall exempt any portion of the Facility Realty from the payment of real estate taxes, then, so long as the Lessee remains an eligible not-for-profit corporation pursuant to the regulations of the New York City Department of Finance for purposes of determining exemption from New York City real estate taxes, and until the earlier of (i) the payment in full of all the Bonds Outstanding in accordance with Section 10.01 of the Indenture, and (ii) the date on which the Agency no longer has an interest in the Facility

Realty, the Lessee shall make no payments in lieu of real estate taxes on the land, buildings and improvements constituting part of the Facility Realty.

Section 4.4. Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes (except to the extent that the Lessee shall have made payments in lieu in respect thereof as provided in Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, the Company Lease, any estate or interest of the Agency, the Member or the Lessee in the Facility, or the rentals hereunder during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "Impositions". The Agency shall promptly forward to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility is exempt from Impositions solely due to the Agency's interest in the Facility, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Facility if the Agency had no interest in the Facility.

None of the foregoing shall prevent the Lessee from contesting in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee, the Agency, the Trustee or the Bank being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be requested by the Agency, the Trustee and/or the Bank to protect the security intended to be offered by the Security Documents.

Section 4.5. Insurance.

(a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee, on its own behalf and as agent for the Member, shall maintain insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) for the insurance coverage described in paragraphs (i) through (v) below:

(i) During any period of construction, renovation, improvement or reconstruction of the Facility, to the extent not covered by the general liability insurance referred to below, owners & contractors protective liability insurance for the benefit of the Lessee, the Agency, the Bank and the Trustee in a minimum amount of \$10,000,000 (or such lesser amount agreed upon by the Agency, the Bank and the Trustee upon written request by the Lessee) aggregate coverage for bodily and personal injury and property damage;

(ii) General liability insurance (including contractual liability coverage, together with any umbrella liability insurance) naming the Lessee as the primary insured, in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$10,000,000 (or such lesser amount agreed upon by the Agency, the Bank and the Trustee upon written request by the Lessee) per occurrence per location aggregate, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes and (2) set forth in Section 6.2(a)(i) or (iii) hereof to the extent not available to the Lessee at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain any provisions for a deductible or self-insured retention amount;

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

(iv) Automobile liability insurance, to the extent not covered by the general liability insurance, in the amount of \$10,000,000 (or such lesser amount agreed upon by the Agency and the Bank upon written request by the Lessee) covering the Lessee for all owned, non-owned and/or hired automobiles, forklifts and other drivable machinery and/or vehicles used in connection with the Facility; and

(v) Such other insurance, including revision of the insurance requirements set forth above, in such amounts and against such insurable hazards as the Agency or the Bank from time to time, may reasonably require.

(b) All insurance required by Section 4.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and having an A.M. Best rating of "A-/X" or better.

(c) Each of the policies evidencing the insurance required above to be obtained shall

(i) designate the Lessee, the Trustee, the Bank and the Agency as additional insureds as their respective interests may appear;

(ii) provide that there shall be no recourse against the Agency, the Bank or the Trustee for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iii) provide that in respect of the respective interests of the Agency, the Bank and the Trustee in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person and shall insure the Agency, the Bank and the Trustee regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iv) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency, the Bank or the Trustee to the extent that such other insurance provides the Agency or the Trustee, as the case may be, with contingent and/or excess liability insurance with respect to its respective interest as such in the Facility;

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency, the Bank or the Trustee until at least thirty (30) days, or ten (10) days due to nonpayment of premium, after receipt by the Agency, the Bank and the Trustee, respectively, of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

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

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility would, in the prudent management of its properties, require to be contained in policies or interim insurance contracts with respect to facilities similar to the Facility owned or operated by it.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility shall be deposited in the Renewal Fund and applied in accordance with Section 5.1 hereof and the Indenture.

(e) The Lessee shall deliver or cause to be delivered to the Agency, the Bank and the Trustee, in a form acceptable to the Agency, the following documents evidencing compliance with the insurance requirements of this Section 4.5: (i) on or prior to the Closing Date: (A) a broker's certificate of coverage, confirming that the Lessee, as of the Closing Date, has obtained insurance in accordance with the requirements of this Section 4.5, and (B) a certificate of liability insurance and certificates or other evidence of other required insurance, and, (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency, the Bank and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) On June 1 of every other year commencing June 1, 2005, the Lessee shall deliver to the Trustee, the Bank and the Trustee (and, if requested by the Agency, to the Agency), a report of the Lessee's insurance carrier confirming that the insurance in place fulfills the insurance requirements set forth in this Section 4.5 and Section 1.3 of the Guaranty Agreement.

(g) The Lessee shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency, the Bank or the Trustee to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.5 would or might be suspended or impaired.

(h) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTEREST OF THE LESSEE.

Section 4.6. Advances by Agency or Trustee or Bank. In the event the Member or the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, the Trustee or the Bank, after first notifying the Lessee of any such failure, may (but shall not be obligated to), and without waiver of any of the rights of the Agency, the Trustee or the Bank, under this Agreement, the Reimbursement Agreement, the Indenture or any other Security Documents, make such payment or otherwise cure any failure by the Member or the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency, the Trustee or the Bank shall become an additional obligation of the Member and the Lessee to the Agency, the Trustee or the Bank, which amounts, together with interest thereon at the rate of the Trustee's "prime rate" plus two percent (2%) per annum from the date advanced, the Lessee will pay upon demand therefor by the Agency the Trustee or the Bank, as the case may be. Any remedy herein vested in the Agency, the Trustee or Bondholders for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency, the Trustee or the Bank for the collection of all such amounts so advanced.

Section 4.7. Compliance with Law. The Lessee, on its own behalf and as agent for the Member, agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, the Member, any occupant, user or operator of the Facility or any portion thereof (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "Legal Requirements"), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency, the Bank and the Trustee, initiate, join in or consent to any private restrictive covenant, zoning ordinance,



or other public or private restrictions, limiting or defining the uses which may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure to comply with any Legal Requirement or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceedings is brought against any of the Indemnified Parties in respect to any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

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

## ARTICLE V

### Damage, Destruction and Condemnation

#### Section 5.1. Damage, Destruction and Condemnation.

(a) In the event that at any time during the term of this Agreement the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement between the Agency and those authorized to exercise such right, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "Loss Event"):

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

(ii) there shall be no abatement, postponement or reduction in the rent or other amounts payable by the Member and Lessee under this Agreement, and

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

(b) Upon the occurrence of a Loss Event, the Net Proceeds equal to or in excess of \$100,000 derived therefrom shall be paid to the Trustee and deposited in the Renewal Fund and the Lessee shall either:

(i) at its own cost and expense (except to the extent paid from the Net Proceeds deposited in the Renewal Fund as provided below and in Section 5.03 of the Indenture), promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, the Trustee, the Bank or any Bondholder, nor shall the rent or other amounts payable by the Member and Lessee under this Agreement be abated, postponed or reduced, or

(ii) if, to the extent and upon the conditions permitted to do so under Section 8.1 hereof and under the Indenture, make advance rental payments to redeem the Bonds in whole and terminate this Agreement.

Not later than ninety (90) days after the occurrence of a Loss Event, the Lessee shall advise the Agency, the Bank and the Trustee in writing of the action to be taken by the Lessee, on its own behalf and as agent for the Member, under this Section 5.1(b), a failure to so timely notify being deemed an election in favor of subdivision (i) above to be exercised in accordance with the provisions of clause (i) above. Net Proceeds in amounts less than \$100,000, derived from the occurrence of a loss event shall be paid directly to the Lessee whereupon the Lessee shall use such Net Proceeds to restore the Facility in accordance with Section 5.1(b)(i) hereof.

If the Lessee shall elect to or shall otherwise be required to rebuild, replace, repair or restore the Facility as set forth in subdivision (i) above, the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in Section 5.03 of the Indenture to pay or reimburse the Lessee, at the election of the Lessee, either as such work progresses or upon the completion thereof, provided, however, the amounts so disbursed by the Trustee to the Lessee shall not exceed the actual cost of such work. If, on the other hand, the Lessee shall, if permitted under this Agreement and the Indenture, exercise its option in subdivision (ii) above, the Trustee shall draw on the Letter of Credit to effect the redemption in whole of the Bonds under the Indenture and thereafter pay the Net Proceeds from the Renewal Fund to the Bank toward reimbursement of amounts thereby due to the Bank under the Reimbursement Agreement.

(c) All such rebuilding, replacements, repairs or restorations shall

(i) automatically be deemed a part of the Facility and owned by the Lessee and leased to the Agency and be subject to this Agreement and the Company Lease and the lien and security interest of the Agency Mortgage,

(ii) be in accordance with plans and specifications and cost estimates approved in writing by the Bank (which approval shall not be unreasonably withheld),

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

(iv) to the extent required by Section 4.1(e) hereof, be preceded by the furnishing by the Lessee to the Agency, the Bank and the Trustee of a labor and materials payment bond, or other security, reasonably satisfactory to the Agency and the Bank,

(v) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable legal requirements and be promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and

(vi) if the estimated cost of such rebuilding, replacement, repair or restoration be in excess of \$250,000, be effected under the supervision of an Engineer.

(d) Pending the disbursement or transfer thereof, the Net Proceeds in the Renewal Fund shall be applied and may be invested as provided in the Indenture.

(e) The Agency, the Trustee, the Bank and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromising, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromising, arbitration or adjustment of any such claim or demand shall be subject to the approval of the Lessee, the Bank and the Trustee (such approvals not to be unreasonably withheld).

(f) If all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders the Facility unsuitable for use by the Lessee, on its own behalf and as agent for the Member, as contemplated hereby, the Lessee shall exercise its option pursuant to Section 8.1 hereof, the Trustee shall draw on the Letter of Credit to effect the

redemption in whole of the Bonds under the Indenture, and to the extent necessary, the Lessee shall pay to the Trustee, an amount which, when added to any amounts then in the Bond Fund and available for that purpose, shall be sufficient to retire and redeem the Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or redemption date and redemption premium, if any), and to pay the expenses of redemption, the fees and expenses of the Agency, the Bond Registrar, the Tender Agent, the Remarketing Agent, the Trustee, the Bank and the Paying Agents, together with all other amounts due under the Indenture and under this Agreement, and such amount shall be applied, together with such other available moneys in such Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date. Upon such redemption or retirement of the Bonds, the amount of the Net Proceeds recovered shall be promptly paid over by the Trustee to the Bank.

(g) The Lessee shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to improvements, machinery, equipment or other property installed on or about the Facility Realty but which, at the time of such damage or taking, is not part of the Facility nor subject to the Agency Mortgage and is owned by the Lessee.

(h) The Member and the Lessee hereby waive the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect.

## ARTICLE VI

### Particular Covenants

Section 6.1. Restrictions on Lessee and Member; Dissolution or Merger of Lessee and Member. (a) The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence, (ii) continue to be a Tax-Exempt Organization and subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Agreement, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it. The Lessee may, however, without violating the foregoing, consolidate with or merge into another entity as shall constitute a Tax-Exempt Organization, or permit one or more not-for-profit entities as shall constitute a Tax-Exempt Organization to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another entity as shall constitute a Tax-Exempt Organization (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if (i) the Lessee is the surviving, resulting or transferee entity, as the case may be, or (ii) in the event that the Lessee is not the surviving, resulting or transferee entity, as the case may be, such entity (A) is a solvent entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (B) is a Tax-Exempt Organization, (C) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Security Documents to which the Lessee shall be a party, and (x) in the Opinion of Counsel, such entity shall be bound by all of the terms applicable to the Lessee of this Agreement and all other Security Documents to which the predecessor Lessee shall have been a party, and such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents, and (y) in the opinion of Nationally Recognized Bond Counsel, such action will not cause the interest on the Bonds to become includable in gross income for Federal income tax purposes, and (D) has total net assets (as determined in accordance with generally accepted accounting principles and certified by an independent certified public accountant) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer. The Lessee further covenants and agrees that it is and throughout the term of this Agreement will continue to be duly qualified to do business in the State and that any entity as shall be a Tax-Exempt Organization and succeeding to the rights of the Lessee under this Agreement shall be and continue to be duly qualified to do business in the State.

(b) The Member covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its corporate existence, (ii) continue to be a not-for-profit corporation constituting a Tax-Exempt Organization and subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign corporation in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Agreement, and (iv) not consolidate with or merge into another corporation or permit one or more corporations to

consolidate with or merge into it. The Member may, however, without violating the foregoing, consolidate with or merge into another not-for-profit corporation as shall constitute a Tax-Exempt Organization, or permit one or more not-for-profit corporations as shall constitute a Tax-Exempt Organization to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such not-for-profit corporation as shall constitute a Tax-Exempt Organization (and thereafter liquidate, wind-up or dissolve or not, as the Member may elect) if (i) the Member is the surviving, resulting or transferee not-for-profit corporation, as the case may be, or (ii) in the event that the Member is not the surviving, resulting or transferee not-for-profit corporation, as the case may be, such not-for-profit corporation (A) is a solvent not-for-profit corporation subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign not-for-profit corporation in the State, (B) is a Tax-Exempt Organization, (C) assumes in writing all of the obligations of the Member contained in this Agreement, and (x) in the Opinion of Counsel, such not-for-profit corporation shall be bound by all of the terms applicable to the Member of this Agreement and all other Security Documents to which the predecessor Member shall have been a party, and such action does not legally impair the security for the Holders of the Bonds afforded hereby, and (y) in the opinion of Nationally Recognized Bond Counsel, such action will not cause the interest on the Bonds to become includable in gross income for Federal income tax purposes, and (D) has total net assets (as determined in accordance with generally accepted accounting principles and certified by an independent certified public accountant) after the merger, consolidation, sale or transfer at least equal to that of the Member immediately prior to such merger, consolidation, sale or transfer. The Member further covenants and agrees that it is and throughout the term of this Agreement will continue to be duly qualified to do business in the State and that any not-for-profit corporation as shall be a Tax-Exempt Organization and succeeding to the rights of the Member under this Agreement shall be and continue to be duly qualified to do business in the State.

Section 6.2. Indemnity. (a) The Lessee shall at all times protect and hold the Agency, the Bank, the Tender Agent, the Remarketing Agent, the Trustee, the Bond Registrar and the Paying Agents, and any director, member, officer, employee, servant, agent (excluding for this purpose the Lessee, which is not obligated hereby to indemnify its own employees, Affiliates or affiliate individuals) of any of such Persons and persons under the control or supervision of any of such Persons (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "Liability") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing from October 14, 2003, the date the Agency adopted its resolution for the Project, and continuing throughout the term of this Agreement (subject to Section 6.2(e) hereof), arising upon or about the Facility or resulting from, arising out of, or in any way connected with

(i) the financing of the costs of the Facility and the marketing, issuance, sale and remarketing of the Bonds for such purpose,

(ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility,

(iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,

(iv) the execution and delivery by the Indemnified Party, the Lessee or any other Person of, or performance by the Indemnified Party, the Lessee or any other Person, as the case may be, of, any of their respective obligations under, this Agreement, the Indenture or any other Security Document, or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,

(v) any injury to any Person or the personal property of any Person in or on the premises of, the Facility,

(vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including, but not limited to, failure to comply with the requirements of the City's zoning resolution and the State Environmental Quality Review Act and their respective related regulations,

(vii) any damage or injury to the person or property of (A) the Lessee, or (B) any other Person or their respective officers, directors, officials, partners, members, employees, attorneys, agents or representatives, or persons under the control or supervision of the Lessee or (C) any other Person who may be in or about the premises of the Facility,

(viii) the presence, disposal, release, or threatened release of any Hazardous Materials (as hereinafter defined) that are on, from, or affecting the Facility; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Agency or the Trustee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, or

(ix) any Claim commenced against an Indemnified Party, or other action or proceeding taken by an Indemnified Party, in any case with respect to any of the matters set forth in subparagraphs (i) through (viii) of this Section 6.2(a).

Such indemnification set forth above shall be binding upon the Lessee for any and all Claims set forth herein and shall survive the termination of this Agreement.

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Lessee or its Affiliates for, any Claims or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in Section 6.2(a) hereof. An Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2.

(c) (i) In addition to and without limitation of any other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that the Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, except as set forth in a certain Phase I Environmental Site Assessment, dated September 17, 2003, prepared by IVI International, Inc., a Phase I Environmental Site Assessment, dated August 2, 2002, prepared by Converse Engineering Consultants, PC, and a Phase II Environmental Investigation, dated February 21, 2003, prepared by Converse Engineering Consultants, PC, true and correct copies of which the Lessee has delivered to the Agency (collectively, the "Audits"), to the best of the Lessee's knowledge, no prior owner of the Facility or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from, or affecting the Facility in any manner which violates any applicable Legal Requirements.

(ii) Without limiting the foregoing, the Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility, except in compliance with all applicable Legal Requirements, or onto any other property.

(iii) The Lessee shall comply with and cause and direct compliance by all occupants and users of the Facility with all applicable Legal Requirements, whenever and by whomever triggered, and shall obtain and comply with, and cause and direct all occupants and users of the Facility to obtain and comply with, any and all approvals, registrations or permits required thereunder; provided, however, that if any such occupant or user shall be an Affiliate of the Lessee, the obligations of the Lessee with respect to such Persons shall be absolute and not limited to best efforts.

(iv) The Lessee shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove or abate, as applicable, all Hazardous Materials, on, from, or affecting the Facility in accordance with all applicable Legal Requirements.



(v) In the event the Agency Mortgage is foreclosed, or a deed in lieu of foreclosure is tendered, or this Agreement is terminated, the Lessee and the Member shall deliver the Facility so that the conditions of the Facility with respect to any and all Hazardous Materials shall conform with all applicable Legal Requirements affecting the Facility.

For purposes of this Section 6.2, the term "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined 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 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

The parties hereto agree that the reference in this Section 6.2(c) to the Audits is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Lessee's obligations to carry out and perform all of the covenants stated throughout this Section 6.2, including but not limited to, those covenants wherein the Lessee is obligated to indemnify each Indemnified Party and comply with all applicable Legal Requirements pertaining to Hazardous Materials.

(d) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the public liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 in addition to any and all other obligations and liabilities the Lessee may have to any Indemnified Party in any other agreement or at common law, and shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

(e) For the purposes of this Section 6.2, the Lessee shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

Section 6.3. Compensation and Expenses of Trustee, Bond Registrar, Tender Agent, Remarketing Agent, Paying Agents and Agency. The Lessee shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following annual fees, charges and expenses and other amounts (i) the initial and annual fees of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, including fees and expenses as Bond Registrar and in connection with preparation of new Bonds upon exchanges or transfers or making any investments in accordance with the Indenture, (ii) the

reasonable fees and charges of the Trustee and any Paying Agents on the Bonds for acting as paying agents as provided in the Indenture, including the reasonable fees of its counsel, (iii) the reasonable fees and charges of the Trustee for extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture, including reasonable counsel fees, (iv) the reasonable fees, costs and expenses of the Bond Registrar, the Tender Agent and the Remarketing Agent, and the fees, costs and expenses (including reasonable legal, accounting and other administrative expenses) of the Agency and (v) the reasonable fees of the Bank as provided in the Reimbursement Agreement and the costs and expenses of the Bank in connection therewith. The Lessee shall further pay the reasonable fees, costs and expenses of the Agency together with any reasonable fees and disbursements incurred by the Agency's Bond Counsel and General Counsel in performing services for the Agency in connection with this Agreement or the Indenture or any other Security Document.

The Lessee further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$500 payable initially on the sale and delivery by the Agency of the Series 2004 Bonds and on every anniversary of such date thereafter until the termination of this Agreement. The Lessee also agrees to pay to the Agency the amount of \$70,125, representing the Agency financing fee of \$72,625 less the \$2,500 application fee, and the amount of \$9,525, representing the Agency's counsel fee, which amount shall be paid on the date the Series 2004 Bonds are issued.

Section 6.4. Retention of Interest in the Facility; Grant of Easements; Release of Certain Land. The Agency shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its interest in the Facility or any part thereof or interest therein during the term of this Agreement, except as set forth below and in Sections 4.2 and 7.2 hereof, without the prior written consent of the Lessee, the Member, the Bank and the Trustee and any purported disposition without such consent shall be void.

The Agency will, however, at the written request of the Lessee, so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the leasehold estate or subleasehold estate, as applicable, of this Agreement and the lien of the Agency Mortgage, as shall be necessary or convenient for the operation or use of the Facility, provided that such leases, rights-of-way, easements, permits or licenses shall not adversely affect the use or operation of the Facility, and provided, further, that the Lessee shall be required to cause the Bonds to be redeemed (through a draw on the Letter of Credit with respect to the Series 2004 Bonds) in an amount (to the nearest Authorized Denomination) of any consideration received by the Agency or the Lessee from the granting of said leases, rights of way, easements, permits or licenses shall be paid to the Trustee and deposited in the Reimbursement Account of the Lease Payments Fund. The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver and to cause and direct the Trustee to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the leasehold or subleasehold estate, as applicable, of this Agreement and the lien of the Agency Mortgage.

Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Agency

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

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

(2) The Lessee shall cause the Bonds to be redeemed through a draw on the Letter of Credit in an amount (to the nearest Authorized Denomination) equal to the greatest of (A) the original cost of such portion of the Facility Realty so released, such cost to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, (B) the fair market value of such portion, such value to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, and (C) if such portion is released in connection with the sale of such portion, the amount received by the Lessee upon such sale; and

(3) The Lessee shall have deposited in the Reimbursement Account of the Lease Payments Fund or with the Bank an amount sufficient to reimburse the Bank for the draw on the Letter of Credit resulting in the redemption of the Bonds caused by the Lessee pursuant to paragraph (2) above.

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

Section 6.5. Covenant as to Tax Exemption. (a) The Lessee and the Member covenant with the Agency, with the Trustee and with each of the Holders of the Bonds, that they will comply with all of the terms, provisions and conditions set forth in the Tax Regulatory

Agreement, including, without limitation, the making of any payments and filings required thereunder.

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

Section 6.6. Financial Statements; No-Default Certificates. (a) The Lessee agrees to furnish to the Trustee and the Bank, and to the Agency, but only upon request by the Agency therefor, (i) as soon as available and in any event within one hundred twenty (120) days after the close of each fiscal year of the Lessee, a copy of the annual financial statements of the Lessee, including balance sheets as at the end of such year, and the related statements of income, balances, earnings, retained earnings and changes in financial position for such fiscal year, prepared in accordance with generally accepted accounting principles and practices, and reviewed by an independent certified public accountant, and (ii) as soon as available and in any event within one hundred twenty (120) days after the close of each of the first three quarters of each fiscal year of the Lessee, a copy of the unaudited financial statements of the Lessee, including balance sheets as at the end of such quarter, and the related statements of income, balances, earnings, retained and changes in financial position for such quarter, prepared in accordance with generally accepted accounting principles and practices, certified by the Member of the Lessee.

(b) The Lessee shall deliver to the Trustee and the Bank with each delivery of annual financial statements required by Section 6.6(a)(i) hereof, and to the Agency but only upon request therefor by the Agency, (i) a certificate of an Authorized Representative of the Lessee as to whether or not, as of the close of such preceding Fiscal Year of the Lessee, and at all times during such Fiscal Year, the Lessee was in compliance with all the provisions which relate to the Lessee in this Agreement and in any other Security Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto, and (ii) a certificate of an Authorized Representative of the Lessee that the insurance it maintains complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding Fiscal Year of the Lessee, and that duplicate copies of all policies or certificates thereof have been filed with the Agency, the Bank and the Trustee and are in full force and effect. In addition, upon twenty (20) days prior request by the Agency, the Bank or the Trustee, the Lessee will execute, acknowledge and deliver to the Agency, the Bank and the Trustee a certificate of an Authorized Representative of the Lessee either stating that to his knowledge no default or breach exists hereunder or specifying each such default or breach of which he has knowledge.

(c) The Lessee shall immediately notify the Agency, the Bank and the Trustee of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Security Document of which it has actual or constructive knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Lessee and set forth a description of the default

and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact on the notice.

Section 6.7. Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency, the Lessee, the Member, the Bank or the Trustee or against any of the rentals or other amounts payable under this Agreement or the interest of the Lessee or the Member under this Agreement or the Company Lease other than Liens for Impositions (as defined in Section 4.4) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.7(b), the Lessee within 30 days of receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency, the Bank and the Trustee and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency, the Bank and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in the Lease Agreement or the Company Lease, of the Agency, the Lessee, the Member, the Bank or the Trustee or against any of the rentals or other amounts payable under this Agreement, (2) neither the Facility nor any interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee, the Member, the Agency, the Bank nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Trustee and/or the Bank to protect the security intended to be offered by the Indenture and the Agency Mortgage.

Section 6.8. Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, including the right to grant the options to purchase herein contained, and that, subject to the terms and provisions of the Agency Mortgage, the Indenture and Permitted Encumbrances, so long as the Lessee shall pay the rent and all other sums payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Lessee and the Member shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Facility, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.9. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE MEMBER OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE AND THE MEMBER ACKNOWLEDGE THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE AND THE MEMBER ARE SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR THEIR PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE, THE MEMBER OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.10. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in the Earnings Fund, the Rebate Fund, the Lease Payments Fund, the Bond Fund, the Project Fund or the Renewal Fund upon the expiration or sooner termination of the term of this Agreement as provided in this Agreement, after payment in full of (i) the Bonds (in accordance with Section 10.01 of the Indenture), (ii) the fees, charges and expenses of the Trustee, the Bond Registrar, the Bank, the Tender Agent, the Remarketing Agent, the Paying Agents and the Agency in accordance with the Indenture (iii) all rents and all other amounts payable hereunder, shall have been paid in full, (iv) all amounts required to be rebated to the Federal government pursuant to the Tax Regulatory Agreement or the Indenture (v) all amounts required to be paid to the Bank under the Reimbursement Agreement and the Agency Mortgage and (vi) all amounts required to be paid under any Security Document all shall have been so paid, shall belong to and be paid to the Lessee by the Trustee as overpayment of rents.

Section 6.11. Issuance of Additional Bonds. The Agency, the Member and the Lessee recognize that under the provisions of and subject to the conditions set forth in the Indenture, the Agency is authorized, with the consent of the Bank, to enter into a Supplemental Indenture and issue one or more series of Additional Bonds on a parity with the Series 2004 Bonds for the purpose of (i) completing the Project, (ii) providing funds in excess of the Net Proceeds of insurance or eminent domain to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to the Facility, or (iv) refunding Outstanding Bonds. If the Lessee and the Member are not in default hereunder, the Agency will consider the issuance of Additional Bonds in a principal amount as is specified in a written request in accordance with the applicable provisions set forth in the Indenture. If Additional Bonds are to be issued pursuant to the Indenture, the Agency, the Member and the Lessee shall enter into an amendment

to this Agreement providing, among other things, for the payment by the Member and the Lessee of such additional rentals as are necessary in order to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith.

Any such completion, repair, relocation, replacement, rebuilding, restoration, additions, extensions or improvements shall become a part of the Facility and shall be included under this Agreement to the same extent as if originally included hereunder.

Section 6.12. Employment Information, Opportunities and Guidelines.

(a) Annually, by August 1 of each year, during the term of this Agreement and upon the termination of this Agreement, the Lessee shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule B hereto, certified as to accuracy by the Lessee.

(b) The Lessee shall ensure that all employees and applicants for employment by the Lessee or its Affiliates with regard to the Facility are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Workforce Investment Act of 1998 (P.L. No. 105-220) in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, where practicable, to first consider, and cause each of its Affiliates at the Facility to first consider, persons eligible to participate in the Workforce Investment Act of 1998 (P.L. No. 105-220) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(c) The Lessee hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the Agency and/or the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements, applicable laws, rules or regulations and to determine compliance of the Project with this Section. In addition, upon the Agency's request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 69 of 1993 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports

prepared by the Information Recipients pursuant to New York City Local Law 69 of 1993, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

(d) Nothing in this Section shall be construed to require the Lessee to violate any existing collective bargaining agreement with respect to hiring new employees.

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

(a) Upon the determination by resolution of the members of the Agency that the Lessee, on its own behalf and as agent for the Member, is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, in violation of applicable material law or not as a qualified "project" in accordance with the Act and the failure of the Lessee within sixty (60) days (or such longer period as may be established pursuant to the proviso to this sentence) of the receipt by the Lessee of written notice of such noncompliance from the Agency to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Trustee and the Bank), the Lessee covenants and agrees that it shall, on the immediately succeeding Interest Payment Date following the termination of such sixty (60) day (or longer) period, pay to the Trustee advance rentals in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of 100% of the aggregate principal amount of the Outstanding Bonds together with interest accrued thereon to such Interest Payment Date, provided, however, that if such noncompliance cannot be cured within such period of sixty (60) days with diligence (and is capable of being cured) and the Lessee promptly commences the curing of such non-compliance and thereafter prosecutes the curing thereof with diligence and to the Agency's reasonable satisfaction, such period of time within which the Lessee may cure such failure shall be extended for such additional period of time as may be necessary to cure the same with diligence and the Agency shall notify the Trustee and the Bank of any such extension. The Agency shall give prior written notice of the meeting at which the members of the Agency are to consider such resolution to the Lessee, the Bank and the Trustee, which notice shall be no less than sixty (60) days prior to such meeting.

(b) In the event the Lessee fails to obtain or maintain the public liability insurance with respect to the Facility required under Section 4.5 hereof, and the Lessee shall fail to cure such noncompliance within ten (10) days of the receipt by the Lessee of written notice of such noncompliance from the Agency and a demand by the Agency on the Lessee to cure such noncompliance, upon notice or waiver of notice as provided in the Indenture, the Lessee shall pay to the Trustee advance rentals in immediately available funds in an amount sufficient to redeem all Bonds then Outstanding at the Redemption Price of one hundred per centum (100%) of the unpaid principal amount of the Bonds, together with interest accrued thereon to the date of redemption.

(c) Upon the circumstances set forth in Sections 2.05(c), (d), (e) and (f) of the Indenture, the Lessee shall pay or cause the prepayment of its lease rental obligation upon the circumstances and in the manner set forth in the Indenture.

(d)(i) If, prior to completion of the construction of a component of the Project, the Lessee receives any gift or grant required by the terms thereof to be used to pay any item which is a cost of such component of the Project, the Lessee shall apply such gift or grant to



completion of the construction of such component of the Project. In the event that the amount of such gift or grant is in excess of the amount necessary to complete such component of the Project, and to the extent proceeds of the Bonds have been expended on such component of the Project, the Lessee shall deliver to the Trustee for deposit in the Redemption Account of the Bond Fund an amount equal to such excess but only to the extent to which proceeds of the Bonds were expended for such component.

(ii) If, after completion of the construction of a component of the Project, the Lessee receives any gift or grant which prior to such completion it reasonably expected to receive and which is required by the terms thereof to be used to pay any item which is a cost of such component of the Project, the Lessee shall deliver to the Trustee for deposit in the Redemption Account of the Bond Fund an amount of money equal to such gift or grant but only to the extent to which proceeds of the Bonds were expended for such component.

(e) The payment obligations of the Lessee under this Section 6.13 are subject in all respects to the provisions of Section 5.06 of the Indenture regarding the use of Priority Amounts for the payment of the Bonds and the effect of drawings under or other realizations upon the Letter of Credit.

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

Section 6.15. Recording and Filing. The Agency shall cause this Agreement, as originally executed or a memorandum thereof, to be recorded (at the sole cost and expense of the Lessee) subsequent to the recordation of the Agency Mortgage, the Indenture and the Company Lease, in the appropriate office of the Register of The City of New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof. In addition, the security interest granted by (i) the Agency to the Trustee pursuant to the Indenture, and (ii) the Agency, the Lessee and the Member to the Bank pursuant to the Agency Mortgage, shall in each case be perfected by the filing of financing statements at the direction of the Agency (at the sole cost and expense of the Lessee), which financing statements shall be in accordance with the New York State Uniform Commercial Code - Secured Transactions, in the office of the Secretary of State of the State, in the City of Albany, New York and in the appropriate office of the Register of The City of New York. The Trustee shall file, or cause to be filed, all necessary continuation statements (and additional financing statements) within the time prescribed by the New York State Uniform Commercial Code - Secured Transactions in order to continue (or attach and perfect) the security interests created by the Indenture and the Agency Mortgage, so that the rights of the Agency, the Bank, the Holders of the Bonds and the Trustee in the Trust Estate may be fully preserved as against creditors or purchasers for value from the Agency, the Lessee or the Member. The Lessee agrees to furnish the Agency, the Bank and the Trustee with the Opinion of Counsel addressed to the Agency, the Bank and the Trustee referred to in Section 7.08 of the Indenture and shall perform all other acts (including the payment of all

costs) necessary in order to enable the Agency and the Trustee to comply with this Section, Section 10 of the Agency Mortgage and Section 7.08 of the Indenture.

The Agency and the Lessee acknowledge that, as of the Closing Date,

(i) Section 9-515 of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a “public-financed transaction” is effective for a period of 30 years after the date of filing if such initial financing statement indicates that it is filed in connection with a public financed transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least 20 years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

Any filings with respect to the Uniform Commercial Code financing statements may be made electronically, and the Agency shall have the right to designate a company to facilitate the filing of the Uniform Commercial Code financing statements. The Lessee acknowledges and agrees that the Agency shall have no responsibility or liability whatsoever related in any way to the filing or re-filing of any Uniform Commercial Code financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or rerecording of any document, or the failure to effect any act referred to in this Section or a failure of sufficiency of any such act so effected.

Section 6.16. Right to Cure Agency Defaults. The Agency hereby grants the Lessee full authority for account of the Agency to perform any covenant or obligation the non-performance of which is alleged to constitute a default in any notice received by the Lessee, in the name and stead of the Agency, with full power of substitution.

Section 6.17. Current Facility Equipment Description. The Lessee covenants and agrees that throughout the term of this Agreement, including upon the completion of the Project or of any replacement, repair, restoration or reconstruction of the Facility pursuant to Section 5.1 hereof, it will cause the Description of Facility Equipment attached as part of the Appendices to this Agreement to be an accurate and complete description of all current items of Facility Equipment. To this end, the Lessee covenants and agrees (i) that no requisition shall be submitted to the Trustee for moneys from the Project Fund for the acquisition or installation of any item of Facility Equipment, (ii) that no item of Facility Equipment shall be substituted or replaced by a new item of machinery or equipment pursuant to Section 4.2(a) or 5.1 hereof, and (iii) that no item of Facility Equipment shall be delivered and installed at the Facility Realty as

part of the Facility, unless in each case such item of machinery or equipment shall be accurately and sufficiently described in the Description of Facility Equipment in the Appendices attached as part of this Agreement, and the Lessee shall from time to time prepare and deliver to the Agency and the Trustee supplements to such Appendix in compliance with the foregoing. Such supplements shall be executed and delivered by the appropriate parties and, at the Agency's or the Lessee's request, duly recorded by the Lessee, and, at the Agency's request, additional financing statements with respect thereto shall be duly filed by the Lessee.

Section 6.18. Preservation of Exempt Status. (a) The Lessee represents and warrants that as of the date of execution of this Agreement: (i) it is a Tax Exempt Organization; (ii) the Member has received a ruling letter or determination from the Internal Revenue Service to that effect; (iii) such letter or determination has not been modified, limited or revoked; (iv) the Member is in compliance with all material terms, conditions and limitations, if any, contained in or forming the basis of such letter or determination; (v) the facts and circumstances which form the basis of such letter or determination continue substantially to exist as represented to the Internal Revenue Service, as modified and supplemented by the Private Letter Ruling and Request; (vi) the Member is not a "private foundation", as defined in Section 509 of the Code; and (vii) the Member is exempt from Federal income taxes under Section 501(a) of the Code and the Member is in compliance with the provisions of said Code and any applicable regulations thereunder necessary to maintain such status.

(b) The Lessee agrees that (i) it shall not perform any acts, enter into any agreements, carry on or permit to be carried on at the Facility, or permit the Facility to be used in or for any trade or business, which shall adversely affect the basis for the Member's exemption under Section 501 of such Code; (ii) it shall not use more than three percent (3%) of the proceeds of the Bonds or permit the same to be used, directly or indirectly, in any trade or business that constitutes an unrelated trade or business as defined in Section 513(a) of the Code or in any trade or business carried on by any person or persons who are not governmental units or Tax-Exempt Organizations; (iii) the Project conforms to the description thereof contained in the Appendices hereto and it shall not directly or indirectly use the proceeds of the Bonds to make or finance loans to persons other than governmental units or Tax-Exempt Organizations; (iv) it shall not take any action or permit any circumstances within its control to arise or continue, if such action or circumstances, or its expectation on the date of issue of the Bonds, would cause the Bonds to be "arbitrage bonds" under the Code or cause the interest paid by the Agency on the Bonds to be subject to Federal income tax in the hands of the Holders thereof; and (v) it shall use its best efforts to maintain the tax-exempt status of the Bonds.

(c) The Member represents and warrants that as of the date of execution of this Agreement: (i) it is a Tax Exempt Organization; (ii) it has received a ruling letter or determination from the Internal Revenue Service to that effect; (iii) such letter or determination has not been modified, limited or revoked; (iv) the Member is in compliance with all material terms, conditions and limitations, if any, contained in or forming the basis of such letter or determination; (v) the facts and circumstances which form the basis of such letter or determination continue substantially to exist as represented to the Internal Revenue Service, as modified and supplemented by the Private Letter Ruling and Request, dated March 13, 2001, from the Internal Revenue Service to the Member; (vi) it is not a "private foundation", as defined in Section 509 of the Code; and (vii) it is exempt from Federal income taxes under Section

501(a) of the Code and the Member is in compliance with the provisions of said Code and any applicable regulations thereunder necessary to maintain such status.

(d) The Member agrees that (i) it shall not perform any acts, enter into any agreements, carry on or permit to be carried on at the Facility, or permit the Facility to be used in or for any trade or business, which shall adversely affect the basis for the Member's exemption under Section 501 of such Code; (ii) it shall not permit more than three percent (3%) of the proceeds of the Bonds to be used, directly or indirectly, in any trade or business that constitutes an unrelated trade or business as defined in Section 513(a) of the Code or in any trade or business carried on by any person or persons who are not governmental units or Tax-Exempt Organizations; (iii) the Project conforms to the description thereof contained in the Appendices hereto and it shall not directly or indirectly use the proceeds of the Bonds to make or finance loans to persons other than governmental units or Tax-Exempt Organizations; (iv) it shall not take any action or permit any circumstances within its control to arise or continue, if such action or circumstances, or its expectation on the date of issue of the Bonds, would cause the Bonds to be "arbitrage bonds" under the Code or cause the interest paid by the Agency on the Bonds to be subject to Federal income tax in the hands of the Holders thereof; and (v) it shall use its best efforts to maintain the tax-exempt status of the Bonds.

(e) The Lessee or the Member (or any related person, as defined in Section 144(a)(3) of the Code) shall not, pursuant to an arrangement, formal or informal, purchase the Bonds in an amount related to the amount of the payments due from the Lessee under this Agreement.

(f) The covenants and agreements of the Lessee and the Member set forth in this Section 6.18 shall apply to the Facility notwithstanding the release of the Facility from this Agreement until the Series 2004 Bonds shall cease to be Outstanding, except to the extent any such covenant or agreement need not, in the opinion of Nationally Recognized Bond Counsel, continue to so apply in order to maintain the non-includability in gross income for Federal income tax purposes of the interest on the Series 2004 Bonds.

Section 6.19. Securities Law Status. The Lessee affirmatively represents, warrants and covenants that, as of the date of this Agreement, it is an organization organized and operated: (i) exclusively for civic or charitable purposes; (ii) not for pecuniary profit; and (iii) no part of the net earnings of which inure to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended, and of the Securities Exchange Act of 1934, as amended. The Lessee agrees that it shall not perform any act nor enter into any agreement which shall change such status as set forth in this Section.

The Member affirmatively represents, warrants and covenants that, as of the date of this Agreement, it is an organization organized and operated: (i) exclusively for civic or charitable purposes; (ii) not for pecuniary profit; and (iii) no part of the net earnings of which inure to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended, and of the Securities Exchange Act of 1934, as amended. The Member agrees that it shall not perform any act nor enter into any agreement which shall change such status as set forth in this Section.

Section 6.20. Compliance with City and EDC Requirements. The Lessee covenants and agrees to comply with (i) the requirements and covenants of set forth in that certain Deed, dated March 23, 2004, between the City and the Lessee; and (ii) the Public Purpose Restrictive Covenant, dated as of March 23, 2004, from the Lessee, for the benefit of EDC and the City.

## ARTICLE VII

### Events of Default; Remedies

Section 7.1. Events of Default. Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Lessee or the Member to pay any rental that has become due and payable by the terms of Section 3.3 or 3.5 hereof which results in a default in the due and punctual payment of the principal of, Purchase Price for, Sinking Fund Installments for, redemption premium, if any, or interest on any Bond;

(b) Failure of the Lessee or the Member to pay any amount (except as set forth Section 7.1(a)) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.4 or 4.5 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five per centum (25%) in aggregate principal amount of the Bonds Outstanding;

(c) Failure of the Lessee or the Member to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a) or (b) hereof) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five per centum (25%) in aggregate principal amount of the Bonds Outstanding, or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same;

(d) The Lessee or the Member shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally 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 seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) take any action for the purpose of effecting any of the foregoing, or (vii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee or the Member, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or the Member or of all or any substantial part of their respective assets, (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 against the Lessee or the Member shall be

entered and continue unstayed and in effect, for a period of ninety (90) days or (iv) the Lessee or the Member shall fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee or the Member as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(f) Any representation or warranty made (i) by or on behalf of the Lessee in the application, commitment letter and related materials submitted to the Agency or the initial purchaser(s) of the Series 2004 Bonds for approval of the Project or its financing, or (ii) by the Lessee or the Member herein or in any of the other Security Documents or (iii) in the Letter of Representation and Indemnity Agreement delivered to the Agency, the Trustee, the Bank and the original purchaser(s) of the Series 2004 Bonds, or (iv) in the Tax Regulatory Agreement, or (v) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing shall prove to be false, misleading or incorrect in any material respect as of the date made; provided, however, that for so long as none of the circumstances set forth in Section 7.10 of the Indenture shall exist, no default under this subsection shall constitute an Event of Default unless the Bank shall have given written notice to the Trustee consenting thereto; or

(g) An "Event of Default" under the Indenture or under any other Security Document shall occur and be continuing.

Section 7.2. Remedies on Default. Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, the Agency, or the Trustee where so provided, may, take any one or more of the following remedial steps:

(a) The Trustee, as and to the extent provided in Article VIII of the Indenture, may cause all principal installments of rent payable under Section 3.3 hereof for the remainder of the term of this Agreement to be immediately due and payable, whereupon the same, together with the accrued interest thereon, shall become immediately due and payable; provided, however, that upon the occurrence of an Event of Default under Section 7.1(d) or (e) hereof, all principal installments of rent payable under Section 3.3 hereof for the remainder of the term of this Agreement, together with the accrued interest thereon, shall immediately become due and payable without any declaration, notice or other action of the Agency, the Trustee, the Holders of the Bonds or any other Person being a condition to such acceleration;

(b) The Agency, with the prior written consent of the Trustee and the Bank, or the Trustee, (with prior written consent of the Bank) may re-enter and take possession of the Facility without terminating this Agreement, and sublease the Facility for the account of the Lessee and the Member, holding the Lessee and the Member liable for the difference in the rent and other amounts payable by the sublessee in such subletting, and the rents and other amounts payable by the Lessee and the Member hereunder;

(c) The Agency, with the prior written consent of the Trustee and the Bank, or the Trustee, with prior written consent of the Bank may terminate this Agreement, and exclude the Lessee and the Member from possession of the Facility, in which case this

Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee or the Member shall cease and terminate. No such termination of this Agreement shall relieve the Lessee or the Member of its liability and obligations hereunder and such liability and obligations shall survive any such termination;

(d) The Agency or the Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the rent then due and thereafter to become due, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee and the Member under this Agreement;

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

(f) The Agency, without the consent of the Trustee, the Bank or any Bondholder, but with notice to the Trustee and the Bank, may proceed to enforce the Agency's Reserved Rights by (i) an action for damages, injunction or specific performance, and/or (ii) conveying all of the Agency's and interest in the Facility to the Lessee.

In the event that the Lessee or the Member fails to make any rental payment required in Section 3.3 or 3.5 hereof, the installment so in default shall continue as an obligation of the Lessee and the Member until the amount in default shall have been fully paid.

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

The Lessee, the Member and the Agency hereby acknowledge that, pursuant to Article VIII of the Indenture, the Bank has the right to direct the remedial action undertaken by the Trustee and that the Trustee, in enforcing its rights pursuant to this Section, may be acting at the direction of the Bank.

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



Section 7.4. Remedies Cumulative. The rights and remedies of the Agency, the Bank or the Trustee under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency, the Bank or the Trustee allowed by law with respect to any default under this Agreement. Failure by the Agency, the Bank or the Trustee to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee or the Member hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Lessee and the Member with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Lessee or the Member be continued or repeated, or of the right to recover possession of the Facility by reason thereof.

Section 7.5. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and/or the Trustee and/or the Bank and the Lessee and the Member or any delay or omission on the part of the Agency and/or the Trustee and/or the Bank in exercising any rights hereunder or under the Indenture, the Reimbursement Agreement or under any other Security Document shall operate as a waiver. To the extent permitted by applicable law, the Lessee hereby waives the benefit and advantage of, and covenants not to assert against the Agency or the Trustee, any valuation, inquisition, stay, appraisal, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or reletting made under the judgment, order or decree of any court or under the powers of sale and reletting conferred by this Agreement or otherwise.

Section 7.6. Effect on Discontinuance of Proceedings. In case any proceeding taken by the Trustee or the Bank, under the Indenture or this Agreement or under any other Security Document on account of any Event of Default hereunder or under the Indenture shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Bank, then, and in every such case, the Agency, the Trustee, the Bank and the Holders of the Bonds shall be restored, respectively, to their former positions and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Trustee shall continue as in effect prior to the commencement of such proceedings.

Section 7.7. Agreement to Pay Attorneys' Fees and Expenses. In the event the Lessee or the Member should default under any of the provisions of this Agreement, and the Agency, the Trustee, the Bank or any Bondholder should employ attorneys or incur other expenses for the collection of rentals or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained or contained in any other Security Document, the Lessee agrees that it will on demand therefor pay to the Agency, the Trustee, the Bank or such Bondholder the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

## ARTICLE VIII

### Options

Section 8.1. Options. (a) The Lessee, on its own behalf and as agent for the Member, has the option to make advance rental payments for deposit in the Redemption Account of the Bond Fund to effect the retirement of the Bonds in whole or the redemption in whole or in part of the Bonds (with respect to the Series 2004 Bonds, through the reimbursement of the Bank for a draw under the Letter of Credit) all in accordance with the terms of the Indenture; provided, however, that no partial redemption of the Bonds may be effected through advance rental payments hereunder if there shall exist and be continuing an Event of Default. The Lessee shall exercise its option to make such advance rental payments by delivering a written notice of an Authorized Representative of the Lessee to the Trustee in accordance with the Indenture, with a copy to the Agency and the Bank, setting forth (i) the amount of the advance rental payment, (ii) the principal amount of Bonds Outstanding requested to be redeemed with such advance rental payment (which principal amount shall be in such minimum amount or integral multiple of such amount as shall be permitted in the Indenture), and (iii) the date on which such principal amount of Bonds are to be redeemed. Such advance rental payment shall be paid to the Trustee in legal tender (and, with respect to the Series 2004 Bonds, shall be effected through a draw on the Letter of Credit as set forth below) on or before the redemption date and shall be an amount which, when added to the amount on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Agency, the Bond Registrar, the Trustee and the Paying Agents in connection with such redemption. The Lessee hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit in an amount sufficient to redeem the principal under the Letter of Credit in an amount sufficient to redeem the principal amount of the Series 2004 Bonds requested to be redeemed, together with interest accrued and to accrue thereon to the date of redemption. In the event the Bonds are to be redeemed in whole or otherwise retired, the Lessee shall further pay on or before such redemption date, in legal tender, to the Agency, the Trustee, the Bank, the Tender Agent, the Remarketing Agent, the Bond Registrar and the Paying Agents, as the case may be, all fees and expenses owed such party or any other party entitled thereto under this Agreement or the Indenture together with (i) all other amounts due and payable under this Agreement and the other Security Documents, and (ii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement and any amounts required to be paid under the Reimbursement Agreement.

(b) The Lessee, on its own behalf and as agent for the Member, shall have the option to terminate this Agreement on any date during the term of this Agreement by causing the redemption, purchase or defeasance in whole of all Outstanding Bonds in accordance with the terms set forth in the Indenture.

(c) As a condition precedent to the termination of this Agreement pursuant to Section 8.1(b) hereof, the Lessee shall pay or cause to be paid (through causing a draw by the Trustee, with respect to the Series 2004 Bonds, under the Letter of Credit as provided below and paying the amounts referenced in clauses (i), (ii) and (iii) below) to the Trustee, in consideration thereof, in legal tender, advance rental payments (if payment in full of the principal or the

Redemption Price of, and interest on, all the Outstanding Bonds, and the interest thereon at maturity or upon earlier redemption has not yet been made) equal to the sum of the following:

(i) an amount which, when added to the Priority Amounts on deposit in the Bond Fund and available therefor, will be sufficient to pay, retire and redeem the Outstanding Bonds in accordance with the provisions of the Indenture, including, without limitation, the principal of or the Redemption Price (as the case may be) of, together with interest to maturity or redemption date (as the case may be) on, the Outstanding Bonds;

(ii) expenses of redemption, the fees and expenses of the Agency, the Trustee, the Bank, the Tender Agent, the Remarketing Agreement, the Bond Registrar and the Paying Agents and all other amounts due and payable under the Reimbursement Agreement, this Agreement and the Indenture; and

(iii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement.

The Lessee hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit in an amount sufficient to pay the principal of and interest on the Series 2004 Bonds to maturity or the redemption date, as the case may be.

Notwithstanding any provision of this Agreement to the contrary, any conveyance by the Agency to the Lessee of the Agency's right, title and interest in the Facility shall be subject to the liens of the Agency Mortgage until all amounts owed under this Agreement and the Reimbursement Agreement have been paid in full and the Letter of Credit then in effect shall have been returned to the Bank for cancellation.

(d) Upon the payment in full of the principal of and interest on the Outstanding Bonds (whether at maturity or earlier redemption) or termination of this Agreement, the Lessee, on its own behalf and as agent for the Member, may terminate this Agreement by (1) delivering to the Agency prior written notice of an Authorized Representative of the Lessee no more than thirty (30) days after the payment in full of the Bonds of the exercise of such option to purchase, which notice shall set forth a requested closing date for the termination of the Agreement which shall be not later than sixty (60) days after the payment in full of the Bonds, and (2) paying on such closing date an amount equal to the sum of one dollar, the fees and expenses of the Agency, the Trustee, the Bank, the Tender Agent, the Remarketing Agent, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement, the Reimbursement Agreement and the Indenture, together with any other amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement. Upon the written request of the Lessee, the Agency may approve the extension or waiver of any of the time periods set forth in this subsection (d).

Section 8.2. Termination on Exercise of Option. Upon termination of this Agreement in accordance with Section 8.1 hereof, the Agency will, upon payment of the consideration payable in accordance with Section 8.1(c) hereof, deliver or cause to be delivered to the Lessee a termination of this Agreement in recordable form. Concurrently with the delivery of such termination documents, there shall be delivered by the Agency to the Trustee any

instructions or other instruments required by Section 10.01 of the Indenture to defease and pay the Bonds.

Section 8.3. Option to Purchase or Invite Tenders of Bonds. The Lessee shall have the option, at any time during the term of this Agreement, to purchase Bonds for its own account, whether by direct negotiation, through a broker or dealer, or by making a tender offer to the Holders thereof. The Bonds so purchased by the Lessee or by any Affiliate thereof shall be delivered to the Trustee for cancellation within fifteen (15) days of the date of purchase. The Agency shall at all times make available or cause to be made available to the Lessee its registration books (maintained at the principal corporate trust office of the Trustee) containing the names and addresses of the Bondholders if known.

Section 8.4. Termination of Agreement. After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, the Lessee, on its own behalf and as agent for the Member, may terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Bank, the Tender Agent, the Remarketing Agent, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Security Documents, and the Reimbursement Agreement together with any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Lessee under Sections 6.2, 8.5 and 9.17 hereof.

Section 8.5. Recapture of Agency Benefits. (a) It is understood and agreed by the parties to this Agreement that the Agency is issuing the Series 2004 Bonds to finance part of the costs of the Project and is entering into this Agreement in order to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(i) If there shall occur a Recapture Event (as defined below) prior to the completion of the Project and occupancy of the Facility Realty by the Lessee and the Member and the Lessee thereafter sells all or substantially all of the Facility or causes all or substantially all of the Facility to be sold within two years of the exercise of such option to purchase, the Lessee shall pay to the Agency, as a return of public benefits conferred by the Agency, all Benefits as defined below.

(ii) If there shall occur a Recapture Event after the date on which the Project shall have been substantially completed, which shall be that date as stated in the certificate of the Project Supervisor delivered to the Agency pursuant to Section 2.2 hereof, but not later than October 1, 2006 (the "Operations Commencement Date"), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the amounts set forth in paragraph (iii) of this Section 8.5; provided, however, that for so long as none of the circumstances set forth in Section 7.10 of the Indenture shall exist, the occurrence of a Recapture Event shall not constitute an Event of Default unless the Bank shall have given written notice to the Trustee consenting thereto.

(iii) 1. one hundred percent (100%) of the Benefits if the Recapture Event occurs within the first six (6) years after the Operations Commencement Date;

2. eighty percent (80%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the Operations Commencement Date;

3. sixty percent (60%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the Operations Commencement Date;

4. forty percent (40%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the Operations Commencement Date;

5. twenty percent (20%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the Operations Commencement Date.

The term "Benefits" shall mean, collectively, all miscellaneous benefits derived from the Agency's participation in the financing of the costs of the Project including, but not limited to, exemption from mortgage recording tax, transfer tax, sales or use tax, and filing and recording fees.

The term "Recapture Event" shall mean any of the following events:

1. The Lessee shall have liquidated its operations and/or assets or shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the City);

2. The Lessee shall have leased all or any portion of the Facility in violation of the limitations imposed by Section 9.3 hereof, without the prior written consent of the Agency;

3. The Lessee shall have effected substantial changes in the scope and nature of the Lessee's operations at the Facility;

4. The Lessee shall have transferred all or substantially all of its employees to a location outside of the City; or

5. The Lessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Facility, or (ii) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee.

(b) The Lessee covenants and agrees to furnish the Agency with written notification upon any Recapture Event occurring within ten (10) years of the Operations Commencement Date, which notification shall set forth the terms thereof. The provisions of this Section 8.5 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

(c) In the event any payment owing by the Lessee under this Section 8.5 shall not be paid on demand by the Lessee, such payment shall bear interest from the date of such demand at the then current interest rate imposed by the City's Department of Finance on delinquent payments until the Lessee shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(d) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Lessee under this Section 8.5.

(e) The Lessee covenants and agrees to furnish the Agency with written notification upon any such disposition of the Facility or any portion thereof made within ten (10) years of its completion, which notification shall set forth the terms of such sale. The provisions of this Section 8.5 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

## ARTICLE IX

### Miscellaneous

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

Section 9.2. Force Majeure. In case by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Lessee to make the rental payments or other payments required under the terms hereof, or to comply with Sections 4.5 or 6.2 hereof), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts and other industrial disturbances may not be settled but could have been settled by acceding to the demands of the opposing person or persons.

Section 9.3. Assignment or Sublease. The Lessee and the Member may not at any time assign or transfer this Agreement, or sublet the whole of the Facility without the prior written consent of the Agency, the Bank and the Trustee (which consents may be unreasonably withheld), or sublet any part of the Facility without the prior written consent of the Agency, the Bank and the Trustee (which consents may not be unreasonably withheld); provided further, that, (1) the Lessee and the Member shall nevertheless remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Security Document to which it shall be a party, (2) any assignee or transferee of the Lessee and the Member in whole of the Facility shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee and the Member to be kept and performed, shall be jointly and severally liable with the Lessee and the Member for the performance thereof, shall be subject to service of process in the State,

and, if a corporation, shall be qualified to do business in the State, (3) in the Opinion of Counsel, such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Lessee or the Member for the payment of all rents nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Security Document to which the Lessee or the Member shall be a party, nor impair or limit in any respect the obligations of any obligor under any other Security Document, (4) any assignee, transferee or sublessee shall be a Tax-Exempt Organization and shall utilize the Facility as a civic facility and as a qualified "project" within the meaning of the Act, (5) such assignment, transfer or sublease shall not violate any provision of this Agreement, the Indenture, the Reimbursement Agreement or any other Security Document, (6) with respect to any subletting in part, the term of each such sublease does not exceed five years and at any given date, no more than an aggregate of twenty percent (20%) of such space would be subleased by the Lessee and the Member, (7) such assignment, transfer or sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.5 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency and the Trustee that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease, (8) each such assignment, transfer or sublease contains such other provisions as the Agency, the Bank or the Trustee may reasonably require, and (9) in the opinion of nationally recognized bond counsel, such assignment, transfer or sublease shall not cause the interest on the Bonds to be includable on gross income for Federal income taxes. The Lessee shall furnish or cause to be furnished to the Agency, the Bank and the Trustee a copy of any such assignment, transfer or sublease in substantially final form at least thirty (30) days prior to the date of execution thereof.

Any consent by the Agency, the Bank or the Trustee to any act of assignment, transfer or sublease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Lessee and the Member, or the successors or assigns of the Lessee or the Member, to obtain from the Agency, the Bank and the Trustee consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Agency, the Bank or the Trustee under the foregoing covenant by the Lessee and the Member.

If the Facility or any part thereof be sublet or occupied by any Person other than the Lessee or the Member, the Agency, in the event of the Lessee's default in the payment of rent may, and is hereby empowered to, collect rent from the undertenant or occupant during the continuance of any such default. In either of such events, the Agency may apply the net amount received by it to the rent herein provided, and no such collection shall be deemed a waiver of the covenant herein against assignment, transfer or sublease of this Agreement, or constitute the acceptance of the under-tenant or occupant as tenant, or a release of the Lessee or the Member from the further performance of the covenants herein contained on the part of the Lessee and the Member.

The Lessee shall deliver to the Agency on January 1 of each year a completed subtenant survey in the form attached hereto as Schedule C.

Section 9.4. Priority of Indenture and Agency Mortgage. Pursuant to the Agency Mortgage, the Agency will grant mortgage liens on and security interests in the Facility, and pursuant to the Indenture, the Agency will pledge and assign the rentals and certain other



moneys receivable under this Agreement to the Trustee and the Bank as security for payment of the principal or Redemption Price, if applicable, of and interest on the Bonds, and this Agreement and for amounts owed by the Lessee and/or the Member under the Reimbursement Agreement shall be subject and subordinate to the Agency Mortgage and the Indenture, and such mortgage liens, security interests, pledges and assignments thereunder.

Section 9.5. Benefit of and Enforcement by the Bank and Bondholders. The Agency, the Member and the Lessee agree that this Agreement is executed in part to induce the Bank to issue the Letter of Credit and the purchase by others of the Bonds and for the further securing of the Bonds, and accordingly all covenants and agreements on the part of the Agency, the Member and the Lessee as set forth in this Agreement are hereby declared to be for the benefit of the Bank and the Holders from time to time of the Bonds and may be enforced by the Bank or as provided in Article VIII of the Indenture on behalf of the Bondholders by the Trustee. Solely with respect to Section 6.20 hereof, EDC will be deemed a third party beneficiary of the covenant contained in said Section.

Section 9.6. Amendments. This Agreement may be amended only with the concurring written consent of the Trustee and the Bank given in accordance with the provisions of the Indenture and only if the Lessee shall assume in writing the obligations of such amended Agreement; provided, however, that any amendment of Section 4.3 hereof shall not require the consent of the Trustee.

Section 9.7. Notices. All notices, certificates or other communications hereunder shall be sufficient if sent by registered or certified United States mail, postage prepaid, addressed, if to the Agency, to the Chairman, New York City Industrial Development Agency, 110 William Street, New York, New York with a copy to the Executive Director and General Counsel of the Agency at the same address, if to the Member or Lessee, to Jamaica First Parking, LLC, c/o Greater Jamaica Development Corporation, 90-04 161<sup>st</sup> Street, Jamaica, New York 11432, Attention: Executive Vice President, and if to the Trustee, to Wachovia Bank, National Association, Corporate Trust-NY4040, One Penn Plaza, Suite 1414, New York, New York 10119. The Agency, the Lessee, the Member and the Trustee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given as of the date it shall have been mailed.

Section 9.8. Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral (other than any Security Documents), between the Agency and the Lessee relating to the Facility.

Section 9.9. Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 9.10. Inspection of Facility. The Lessee and the Member will permit the Trustee and the Bank, or their respective authorized agents, at all reasonable times, during normal business hours, upon written notice to enter upon the Facility Realty and to examine and

inspect the Facility and exercise their rights hereunder, under the Indenture, under the Reimbursement Agreement and under the other Security Documents with respect to the Facility. The Lessee and the Member will further permit the Agency, or its duly authorized agent, at all reasonable times upon reasonable notice and during normal business hours to enter upon the Facility but solely for the purpose of assuring that the Lessee is operating the Facility, or is causing the Facility to be operated, as a qualified "project" under the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and not for any purpose of assuring the proper maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Lessee.

Section 9.11. Effective Date; Counterparts. This Agreement shall become effective upon its delivery. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.12. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency and the Lessee, the Member, the Bank, the Trustee, the Bondholder and their respective successors and assigns.

Section 9.13. Net Lease. It is the intention of the parties hereto that this Agreement be a "net lease" and that all of the rent be available for debt service on the Bonds, and this Agreement shall be construed to effect such intent.

Section 9.14. Law Governing. This Agreement shall be governed by, and construed in accordance with, the laws of the State.

Section 9.15. Investment of Funds. Any moneys held as part of the Rebate Fund, the Lease Payments Fund, the Earnings Fund, the Project Fund, the Bond Fund or the Renewal Fund or in any special fund provided for in this Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the written request of an Authorized Representative of the Lessee, be invested and reinvested by the Trustee as provided in the Indenture (but subject to the provisions of the Tax Regulatory Agreement). Neither the Agency nor the Trustee nor any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom.

Interest and profit derived from such investments shall be credited and applied as provided in the Indenture, and any loss resulting from such investments shall be similarly charged.

Section 9.16. Investment Tax Credit. It is the intention of the parties that any investment tax credit or comparable credit which may ever be available accrue to the benefit of the Lessee and the Lessee shall, and the Agency upon advice of counsel may, make any election and take other action in accordance with the Code as may be necessary to entitle the Lessee to have such benefit.

Section 9.17. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants

or conditions of this Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Agreement.

The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 9.18. Non-Discrimination. (a) At all times during the construction, maintenance and operation of the Facility, the Lessee and the Member shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee and the Member shall use their best efforts to ensure that employees and applicants for employment with the Lessee, the Member or any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Lessee, on its own behalf and as agent for the Member, shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee or the Member, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Lessee, on its own behalf and as agent for the Member, shall furnish to the Agency all information required by the Agency pursuant to this Section and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

(d) The Agency and the Lessee shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Facility.

Section 9.19. No Recourse under This Agreement or on Bonds. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity, and no recourse shall be had for the payment of the principal of, redemption premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing the Bonds. All covenants, stipulations, promises, agreements, representations, warranties and obligations of the Lessee or the Member, as applicable, contained in this Agreement, shall be deemed to be the covenants, stipulations, promises, agreements, representations warranties and obligations of the Lessee or the Member, as applicable, and not of any member, manager, director, officer, employee or agent of the Lessee or the Member, as applicable, in his/her individual capacity and no recourse shall be had for the payment of any amounts hereunder against any member, manager, director, officer, employee or agent of the Lessee or the Member, as applicable.

Section 9.20. Conflict with Reimbursement Agreement. In the event of any conflict between any provision of this Agreement and any provision of the Reimbursement Agreement, as between the Bank and the Lessee and the Member, the Reimbursement Agreement shall control, and no inference shall be drawn to the contrary on the basis of any provision of this Agreement.

Section 9.21. Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on the date of original issuance and delivery of the Series 2004 Bonds.

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, the Lessee has caused its name to be subscribed hereto by its duly authorized representative, and the Member has caused its name to be subscribed hereto by its duly authorized representative, all being done as of the year and day first above written.

NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY

By Kei Hayashi  
Kei Hayashi  
Deputy Executive Director

JAMAICA FIRST PARKING, LLC

By Helen Levine  
Name: Helen Levine  
Title: Executive Vice President

GREATER JAMAICA DEVELOPMENT  
CORPORATION

By Helen Levine  
Name: Helen Levine  
Title: Executive Vice President

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

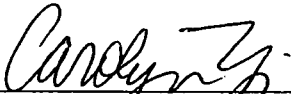
On the 22<sup>nd</sup> day of March in the year two thousand four, before me, the undersigned, personally appeared Kei Hayashi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual executed the instrument.

  
\_\_\_\_\_  
Notary Public ~~Commissioner~~ of Deeds

SHERYL A. JOHNSON  
Notary Public State of New York  
No. 01JO6039167  
Qualified in New York County  
Commission Expires March 27, 2006

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

On the 22<sup>nd</sup> day of March, in the year two thousand four, before me, the undersigned, personally appeared Helen Levine, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.

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

CAROLYN YI  
Notary Public, State Of New York  
No. 01YI6013752  
Qualified In Queens County  
Commission Expires Sept. 28, 2006

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

On the 22<sup>nd</sup> day of March, in the year two thousand four, before me, the undersigned, personally appeared Helen Levine, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.

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

CAROLYN YI  
Notary Public, State Of New York  
No. 01YI6013752  
Qualified In Queens County  
Commission Expires Sept. 28, 2006



**APPENDICES**

## DESCRIPTION OF PROJECT

The acquisition, improvement and equipping of a civic facility consisting of (i) the acquisition, renovation and equipping of the approximately 183,503 square foot building, located on an approximately 48,509 square foot parcel of land at 90-15 Parsons Boulevard, Jamaica, New York and (ii) the acquisition of an approximately 47,609 square foot parcel of land located at 89-47 162<sup>nd</sup> Street, Jamaica, New York, and the construction and equipping of an approximately 146,430 square foot parking garage thereon, all for use as parking facilities by the Jamaica First Parking, LLC and Greater Jamaica Development Corporation.

## DESCRIPTION OF FACILITY REALTY

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Queens, City and State of New York, more particularly bounded and described as follows:

BEGINNING at a point on the Easterly side of 162<sup>nd</sup> Street, formerly Union Avenue, Union Hall Street, distant 320.78 feet Southerly from the corner formed by the intersection of the Southerly side of 89<sup>th</sup> Avenue, formerly Shelton Avenue, with the Easterly side of 162<sup>nd</sup> Street;

RUNNING THENCE Easterly along a line at right angles to the Easterly side of 162<sup>nd</sup> Street, 128.32 feet to a point;

THENCE Southerly along a line forming an interior angle of 90 degrees 14 minutes 02 seconds with the last mentioned course, 9.56 feet to a point;

THENCE Easterly along a line forming an exterior angle of 89 degrees 39 minutes 42 seconds with the last mentioned course, 90.33 feet to the Westerly side of 163<sup>rd</sup> Street;

THENCE Southerly along the Westerly side of 163<sup>rd</sup> Street, 210.21 feet to a point;

THENCE Westerly along a line at right angles to the Westerly side of 163<sup>rd</sup> Street, 91.61 feet to a point;

THENCE Northerly along a line forming an interior angle of 89 degrees 39 minutes 42 seconds with the last mentioned course, 0.52 feet to a point;

THENCE Westerly along a line forming an exterior angle of 88 degrees 31 minutes 59 seconds with the last mentioned course, 129.27 feet to the Easterly side of 162<sup>nd</sup> Street; and

THENCE Northerly along the Easterly side of 162<sup>nd</sup> Street, 223.09 feet to the point or place of BEGINNING.

89-47 162<sup>nd</sup> Street  
Jamaica, New York 11432  
Section: 42;  
Block: 9861;  
Lots: 18, 26, 66, 67, 68, 69 & 70

## DESCRIPTION OF FACILITY REALTY

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Queens, City and State of New York, being known and designated as Block 9756 Lot 18, as shown on the Tax Map of the City of New York, County of Queens, formerly known as Lots 34, 35, 36, 38, 39, p/o 18, p/o 22, p/o 26, p/o 27, p/o 28 and p/o 41, on the Tax Map of March 13, 1961 of said Borough, the date upon which the City of New York acquired title to said Lots by condemnation, which said lots when taken together as one parcel are more particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of 90<sup>th</sup> Avenue and the easterly side of Parsons Boulevard;

RUNNING THENCE easterly along the southerly side of 90<sup>th</sup> Avenue, 249.39 feet to the westerly side of 160<sup>th</sup> Street;

THENCE southerly along the westerly side of 160<sup>th</sup> Street, 187.70 feet;

THENCE westerly along a line forming an interior angle of 91 degrees 06 minutes 39 seconds with the westerly side of 160<sup>th</sup> Street, 140.09 feet to a point;

THENCE still westerly along a line forming an interior angle of 180 degrees 01 minutes 53 seconds with the preceding course, 29.84 feet to a point;

THENCE still westerly along a line forming an interior angle of 180 degrees 19 minutes 28 seconds with the preceding course, 75.58 feet to the easterly side of Parsons Boulevard; and

THENCE northerly along the easterly side of Parsons Boulevard, 205.16 feet to the point or place of BEGINNING.

**90-15 Parsons Boulevard  
Jamaica, New York 11432  
Section: 42;  
Block: 9756;  
Lot: 18**

DESCRIPTION OF FACILITY EQUIPMENT

None

**SCHEDULE A**

**PROJECT COMPLETION CERTIFICATE OF THE LESSEE  
AS REQUIRED BY SECTION 2.2(b) OF THE LEASE AGREEMENT**

THE UNDERSIGNED HEREBY CERTIFIES that she/he is an Authorized Representative (as defined in the Lease Agreement referred to below) of Jamaica First Parking, LLC, a Delaware limited liability company (the "Lessee"), and this certificate is being delivered in accordance with the provisions of Section 2.2(b) of that certain Lease Agreement, dated as of March 1, 2004 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

1. The Project was completed on \_\_\_\_\_.
2. The Project has been completed substantially in accordance with the plans and specifications therefor and all labor, services, materials and supplies used therefor have been paid for (except for any costs not exceeding \$100,000 in the aggregate (i) not now due and payable or (ii) the liability for payment of which is being contested or disputed in good faith by the Lessee).
3. All other facilities necessary in connection with the Project have been completed, and all costs and expenses incurred in connection therewith have been paid (except for any costs not exceeding \$100,000 in the aggregate (i) not now due and payable or (ii) the liability for payment of which is being contested or disputed in good faith by the Lessee).
4. The Agency has a good and valid leasehold interest in all property constituting part of the Facility and all property of the Facility is subject to the Company Lease and the Lease Agreement and the liens and security interests of the Agency Mortgage.
5. In accordance with all applicable laws, regulations, ordinances and guidelines, the Facility have been made ready for occupancy, use and operation for its intended purposes.
6. The amount required in my opinion for the payment of any remaining part of the costs of the Project is \$\_\_\_\_\_.
7. Attached hereto as Exhibit A is a temporary or permanent certificate of occupancy, if required by applicable law, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Lease Agreement.
8. Attached hereto as Exhibit B are releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the Project (or, to the extent that any such costs shall be the subject of a bona

fide dispute, attached hereto is evidence that such costs have been appropriately bonded or a copy of a surety or security posted by the Lessee in an amount at least equal to the amount of such costs).

9. Attached hereto as Exhibit C is a final endorsement to the title insurance policies theretofore delivered under Section 2.4 of the Lease Agreement, indicating that since the last preceding advance of amounts on deposit in the Project Fund, there has been no change in the state of title and showing that the Facility is free and clear of all liens, encroachments and exceptions other than those exceptions constituting Permitted Encumbrances, which endorsements contain no exception for inchoate mechanic's liens. The final endorsement to such title insurance policies shall have the effect of redating such policies to the date of such advance and increasing the coverage of the policies by an amount equal to the advance then being made.

10. Attached hereto as Exhibit D is a certificate of the Board of Fire Placement Agents with respect to the Facility.

11. Attached hereto as Exhibit E is evidence that the Facility is not subject to notices of violations filed in the office of any governmental agency.


12. Attached hereto as Exhibit F is evidence of the issuance of all necessary, unconditional and final permits with respect to the Project from all appropriate governmental agencies, and evidence that the Project is in compliance with all applicable building, zoning and other governmental codes and regulations, and that all requisite licenses, permits and approvals that may be required so as to permit the use and operation of the Facility by the Lessee and any uses necessary or incidental thereto.

This certificate (x) is given without prejudice to any rights of the Lessee against third parties which may exist on the date hereof or which may subsequently come into being, and (y) is given only for the purposes of Section 2.2(b) of the Lease Agreement and Section 5.02 of the Indenture. No Person other than the Agency and the Trustee may benefit from this certificate.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

JAMAICA FIRST PARKING, LLC

By: \_\_\_\_\_  
Name:  
Title:

	New York City Industrial Development Agency	<h2 style="margin: 0;">Annual Employment Report</h2> For the year ending June 30, ____
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In order to comply with Local and State employment reporting requirements, the New York City Industrial Development Agency must require all of its project companies to complete and return the Report to the Agency no later than August 1, \_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Telephone #** \_\_\_\_\_

**Tax ID #** \_\_\_\_\_

Please provide information as of June 30th of jobs at the Project Location(s). Do not include any subcontractors and consultants. Include only employees and owners/principals on your payroll or that of any affiliate at the Project Location.

**Number of existing FULL TIME JOBS** \_\_\_\_\_

**Number of existing PART TIME JOBS** \_\_\_\_\_

Certification: I, the undersigned, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete, and that I understand it is submitted pursuant to agreement. The Company hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the New York City Industrial Development Agency (the "Agency") and/or to the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under DOL's control which is pertinent to the Company and the Company's employees. In addition, upon the Agency's request, the Company shall provide to the Agency any employment information in the Company's possession which is pertinent to the Company and the Company's employees. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Company itself, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 69 of 1993, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect through the term of this transaction.

**Name of Company** \_\_\_\_\_

**Principal/Owner/Chief Financial Officer** \_\_\_\_\_

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

*If you have any questions, please call the Compliance Helpline at (212) 312-3963*

*Please submit the completed form to:* **New York City Industrial Development Agency**  
**110 William Street, New York, NY 10038**  
**Attention: Compliance Unit**

• 110 William Street, New York, NY 10038 • 212.619.5000

**Attach additional pages if necessary**



<b>ida</b>	New York City Industrial Development Agency	<b>20__ SUBTENANT SURVEY</b>
«COMPANY» «ADDRESS» «CITY » «NAME»		

In order to verify compliance with Section 9.3 of your Lease Agreement, please list all subtenants occupying space in your facility and the corresponding information in complete form by **JANUARY 1, 20\_\_**.

**\*IMPORTANT FOR PILOT RECIPIENTS\***

FAILURE TO SUPPLY THIS INFORMATION BY THE ABOVE STATED DUE DATE WILL CONSTITUTE AN EVENT OF DEFAULT PURSUANT TO SECTION 7.1 OF THE LEASE AGREEMENT AND YOUR COMPANY MAY BE SUBJECT TO A TERMINATION OF THE PILOT BENEFITS.

**TOTAL BUILDING SQUARE FOOTAGE \_\_\_\_\_ SQ. FT.**

Subtenant	Square Footage	Lease Leased	Lease Begins	Ends
-----------	-------------------	-----------------	-----------------	------

I, the undersigned hereby certify to the best of my knowledge and belief, that the information reported above is true and complete. I understand that this information is submitted pursuant to the requirements of the Lease Agreement.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Please mail this form to the address below, ATTENTION: COMPLIANCE UNIT.**

• 110 William Street, New York, NY 10038 • 212.619.5000

**FORM ST-340**



New York State Department of Taxation and Finance

# Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

**ST-340**  
(7/02)

For Period Ending December 31, \_\_\_\_\_ (enter year)

### Project information

Name of IDA agent/project operator		Federal employer identification number (FEIN)
Street address		Telephone number (     )
City	State	ZIP code
Name of IDA agent/project operator's authorized representative, if any		Title
Street address		Telephone number (     )
City	State	ZIP code
Name of IDA		
Street address		
City	State	ZIP code
Name of project		
Street address of project site		
City	State	ZIP code

1 Project purpose:

Services       Construction       Agriculture, forestry, fishing

Wholesale trade       Retail trade       Finance, insurance or real estate

Transportation, communication, electric, gas, or sanitary services

Manufacturing       Other (specify) \_\_\_\_\_

2 Date project began:    MM / DD / YYYY

3 Beginning date of construction or installation (actual or expected):    MM / DD / YYYY

4 Completion date of construction phase of project (actual or expected):    MM / DD / YYYY

5 Completion date of project (actual or expected):    MM / DD / YYYY

6 Duration of project (years/months; actual or expected):    Years / Months

7 Total sales and use tax exemptions (actual tax savings; NOT total purchases) .....		7	\$
Print name of officer, employee, or authorized representative signing for the IDA agent/project operator		Title of person signing	
Signature		Date	

**Failure to annually file a complete report may result in the removal of authority to act as an IDA agent/project operator.**  
 Mail completed report to: NYS Tax Department, IDA Unit, Bldg 8 Rm 738, W A Harriman Campus, Albany NY 12227.

## Instructions

### General information

#### Who must file?

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person directly appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operator(s) directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operator(s) should not themselves file Form ST-340. However, the agent/project operator(s) must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

#### What must be reported?

The report must show the **total value of all state and local sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions obtained by the agent/project operator; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

The report requires only the **total combined** exemptions obtained by the above people. A break down of the total is not required. However, since the report must include the value of the exemptions they obtained, the agent/project operator must keep records of the amounts others report to the agent/project operator.

It is important that the agent/project operator make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available so that the agent/project operator can comply with the annual reporting requirements.

Do not include in this report the amount of any sales and use tax exemptions arising out of other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

See instructions below for additional information required.

#### When is the report due?

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

### Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

#### Name of IDA agent/project operator

Enter the name, address, federal employer identification number (FEIN), and telephone number of the IDA agent/project operator.

#### Name of IDA agent/project operator's authorized representative

Enter the name, address, title (for example, attorney or accountant), and telephone number of the individual authorized by the IDA agent/project operator to submit this report.

#### Name of IDA

Enter the name and address of the IDA. If more than one IDA is involved in a particular project, the IDA agent/project operator must file a separate report for the tax exemptions attributable to each IDA.

#### Name of project

Enter the name of the project and the address of the project site. If the IDA agent is involved in more than one project, a separate report must be filed by the IDA agent/project operator for each project, even if authorized by the same IDA.

### Line instructions

**Line 1 — Project purpose** — Check the box that identifies the purpose of the project. If you check *Other*, please be specific in identifying its purpose.

**Line 2** — Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

**Line 3** — Enter the date on which you, or your general contractor or subcontractor, actually began, or expect to begin, construction or installation on the project. If the project does not involve any construction, enter *Does not apply*.

**Line 4** — Enter the date the construction phase of the project was completed. If it has not been completed by the end of the reporting period, enter the date you expect to complete this phase of the project.

**Line 5** — Enter the date on which installation, lease, or rental of property (for example, machinery or computers) on the project ended. If the project was not completed by the end of the reporting period, enter the date the project is expected to be completed.

**Line 6** — Enter the total number of years and months from the project's inception to its completion or expected completion.


**Line 7** — Enter the total amount of New York State and local sales and compensating use taxes exempted during the reporting period (if none, enter "0") as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases on line 7.

### Signature area

Enter the name and title of the person signing on behalf of the IDA agent/project operator (for example, the IDA agent/project operator's officer, employee, or other authorized representative). The IDA agent/project operator's officer, employee, or authorized representative must sign the report. Enter the date signed.

Mail completed report to: **NYS Tax Department, IDA Unit, Bldg 8 Rm 738, W A Harriman Campus, Albany NY 12227.**

### Need help?

 **Telephone assistance** is available from 8 a.m. to 5:55 p.m. (eastern time), Monday through Friday.  
Business tax information: 1 800 972-1233  
Forms and publications: 1 800 462-8100  
From areas outside the U.S. and outside Canada: (518) 485-6800  
Fax-on-demand forms: 1 800 748-3676

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8 a.m. to 5:55 p.m., eastern time).



**Internet access:** [www.tax.state.ny.us](http://www.tax.state.ny.us)



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.



**If you need to write,** address your letter to: NYS Tax Department, Taxpayer Contact Center, W A Harriman Campus, Albany NY 12227.

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law, and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

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NEW YORK CITY  
INDUSTRIAL DEVELOPMENT AGENCY

AND

GREATER JAMAICA DEVELOPMENT CORPORATION

AND

JAMAICA FIRST PARKING, LLC

\_\_\_\_\_  
LEASE AGREEMENT  
\_\_\_\_\_

Dated as of March 1, 2001

\$4,730,000  
New York City Industrial Development Agency  
Variable Rate Demand Civic Facility Revenue Bonds  
(2001 Jamaica First Parking, LLC Project)

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Section 4.5. Insurance.

(a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee, on its own behalf and as agent for the Member, shall maintain insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee, including, without limitation:

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

(ii) Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" during any period of construction or reconstruction of the Facility, and coverage for property damage insurance, all of which insurance shall include coverage for removal of debris, insuring the buildings, structures, facilities, fixtures and other property constituting a part of the Facility against loss or damage to the Facility by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Lessee, the Agency, the Bank or the Trustee from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than the greater of (A) 80% of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer (selected by the Lessee and approved by the Agency and the Bank) not less often than once every year, at the expense of the Lessee, and (B) the principal amount of the Outstanding Bonds; any such insurance may provide that the insurer is not liable to the extent of the first \$50,000 with the result that the Lessee is its own insurer to the extent of \$50,000 of such risks;

(iii) Public liability insurance in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$10,000,000, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof, except those obligations described in Section 6.2 hereof which are not insurable and those obligations contained in Section 6.2(c) hereof, (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a comprehensive liability insurance policy, and (C) may contain provisions for a deductible amount not to exceed \$2,500 per occurrence, \$10,000 in aggregate per year;

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

(v) Boiler and machine property damage insurance in respect to any steam and pressure boilers and similar apparatus located at the Facility from risks normally insured against under boiler and machinery policies and in amounts and with deductions customarily obtained for similar business enterprises and in each case approved by the Agency; and

(vi) Such other insurance in such amounts and against such insurable hazards as the Agency, the Bank or the Trustee from time to time may reasonably require, provided such insurance is generally available at rates which are commercially reasonable.

(b) All insurance required by Section 4.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State with an A.M. Best & Co. rating of "A-X" or better, or otherwise acceptable to the Agency.

(c) Each of the policies or binders evidencing the insurance required above to be obtained shall

(i) designate (except in the case of workers' compensation insurance) the Lessee, the Trustee, the Bank and the Agency as additional insureds as their respective interests may appear;

(ii) provide that all insurance proceeds with respect to loss or damage to the property of the Facility be endorsed and made payable to the Trustee and the Bank and shall name the Trustee and the Bank as a loss payee under the standard loss payee clause and the Bank as a mortgagee under the terms of a standard mortgagee clause, which insurance proceeds shall be paid over to the Trustee and deposited in the Renewal Fund;

(iii) provide that there shall be no recourse against the Agency, the Bank or the Trustee for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iv) provide that in respect of the respective interests of the Agency, the Trustee or the Bank in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person and shall insure the Agency, the Trustee or the

Bank regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(v) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency, the Bank or the Trustee to the extent that such other insurance provides the Agency, the Bank or the Trustee, as the case may be, with contingent and/or excess liability insurance with respect to its respective interest as such in the Facility;

(vi) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency, the Bank or the Trustee until at least thirty (30) days after receipt by the Agency, the Bank and the Trustee, respectively, of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

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

(viii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Facility owned or operated by it.

(d) The Net Proceeds of any insurance in excess of \$100,000 received with respect to any loss or damage to the property of the Facility shall be deposited in the Renewal Fund and applied in accordance with Section 5.1 hereof and the Indenture.

(e) Concurrently with the original issuance of the Series 2001 Bonds, the Lessee shall deliver or cause to be delivered to the Agency, the Bank and the Trustee duplicate copies of insurance policies and/or certificates of insurance evidencing compliance with the insurance requirements of this Section 4.5. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency, the Bank and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Lessee shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency, the Bank or the Trustee to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.5 would or might be suspended or impaired.



(g) THE AGENCY, THE TRUSTEE AND THE BANK DO NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTEREST OF THE LESSEE OR THE MEMBER.

Section 4.6. Advances by Agency or Trustee or Bank. In the event the Member or the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, the Trustee or the Bank, after first notifying the Lessee of any such failure, may (but shall not be obligated to), and without waiver of any of the rights of the Agency, the Trustee or the Bank, under this Agreement, the Reimbursement Agreement, the Indenture or any other Security Documents, make such payment or otherwise cure any failure by the Member or the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency, the Trustee or the Bank shall become an additional obligation of the Member and the Lessee to the Agency, the Trustee or the Bank, which amounts, together with interest thereon at the rate of the Trustee's "prime rate" plus two percent (2%) per annum from the date advanced, the Lessee will pay upon demand therefor by the Agency the Trustee or the Bank, as the case may be. Any remedy herein vested in the Agency, the Trustee or Bondholders for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency, the Trustee or the Bank for the collection of all such amounts so advanced.

Section 4.7. Compliance with Law. The Lessee, on its own behalf and as agent for the Member, agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, the Member, any occupant, user or operator of the Facility or any portion thereof (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "Legal Requirements"), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency, the Bank and the Trustee, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure to comply with any Legal Requirement or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceedings is brought against any of the Indemnified Parties in respect to any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.