

Installment

Sale

Agreement

NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY

AND

OTSAR EARLY CHILDHOOD CENTER

INSTALLMENT SALE AGREEMENT

Dated as of February 1, 2004

New York City Industrial Development Agency
Civic Facility Revenue Bonds
(Special Needs Facilities Pooled Program)
\$13,920,000 Series 2004A-1
\$760,000 Series 2004A-2 (Federally Taxable)

<u>Record and Return to:</u>	<u>Address (Kings County, New York)</u>	<u>Section</u>	<u>Block</u>	<u>Lot</u>
Hawkins Delafield & Wood LLP 67 Wall Street New York, New York 10005 Attention: Arthur M. Cohen, Esq.	2324 West 13 th Street, Brooklyn	21	7160	15

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INSTALLMENT SALE AGREEMENT

THIS INSTALLMENT SALE AGREEMENT, made and entered into as of the date set forth on the cover page hereof (this "Agreement"), by and between 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 OTSAR EARLY CHILDHOOD CENTER, a not-for-profit corporation organized and existing under and by virtue of the laws of the State of New York (the "Participant"), having its principal office at 2324 West 13th Street, Brooklyn, New York 11223, party of the second part (capitalized terms used but not defined in the recitals below shall have the same meaning assigned to such terms in Section 1.1 hereof and Appendix A attached hereto and made a part hereof):

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, to accomplish the purposes of the Act, the Agency has entered into negotiations with each of the Participants in connection with the financing or refinancing of the cost of the acquisition, renovation, improvement, equipping and furnishing of civic facilities for each such Participant within The City of New York, all for the purpose of providing services to people with developmental disabilities or other special needs; and

WHEREAS, the Agency, in order to provide funds for a portion of the cost of financing or refinancing such civic facility or facilities and for incidental and related costs, will issue and sell its Initial Bonds pursuant to the Act, the Bond Resolution of the Agency and an Indenture of Trust, dated as of even date herewith, between the Agency and The Bank of New York, as trustee (the "Trustee"); and

WHEREAS, the Participant will finance or refinance the costs of the acquisition, renovation, improvement, equipping and furnishing of the Facility to comprise one or more civic facilities, which Facility is to be leased or subleased, as applicable, to the Agency pursuant to a Company Lease Agreement, dated as of even date herewith, between the Participant and the Agency (as the same may be amended or supplemented, the "Company Lease"), and the Agency will sell its leasehold interest in the Facility under the Company Lease to the Participant pursuant to this Agreement; and

WHEREAS, Agency financing assistance is necessary to provide employment in, and is beneficial for the economy of, The City of New York and is reasonably necessary to induce the Participant to proceed with the Project; and

WHEREAS, simultaneously with the issuance and delivery of the Initial Bonds, two (2) non-cancelable bond insurance policies (collectively, the "Bond Insurance Policy") will be issued by ACA Financial Guaranty Corporation (the "Bond Insurer"), pursuant to, among other agreements, an Insurance Agreement, dated as of even date herewith, from the Participant to the Bond Insurer (as the same may be amended or supplemented, the "Bond Insurance Agreement"), which Bond Insurance Policy will provide for the prompt payment of the principal of, interest and Sinking Fund Installments on the Initial Bonds when due, to the extent that the Trustee has not received sufficient funds for such payment; and

WHEREAS, concurrently with the execution hereof, in order to further secure the payment of the principal of, redemption premium, if any, and interest on the Initial Bonds allocable to the Participant and its obligations under the Bond Insurance Agreement, (i) the Participant and/or an affiliate will guarantee such payments and other obligations pursuant to a guaranty agreement from the Participant and/or an affiliate to the Trustee and the Bond Insurer, and (ii) the Participant and/or an affiliate and the Agency will grant a mortgage lien on and a security interest in the Mortgaged Property to the Trustee and the Bond Insurer;

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 installment purchase payments, revenues and receipts derived from or in connection with the Facility, including moneys received under this Agreement):

ARTICLE I

Definitions and Representations

Section 1.1. Definitions. Terms not otherwise defined herein shall have the same meanings as used in Appendix A attached hereto and made a part hereof, in the Indenture or in the Tax Regulatory Agreement hereinbelow defined. The following terms shall have the following meanings in this Agreement:

Accounts Receivable shall mean all of the Participant's accounts receivable derived from the use or operation of any of its properties, including the Facility.

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.

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 Participant, its President, any Vice President, Executive Director, Assistant or Deputy Executive Director, Treasurer, Assistant Treasurer, Chief Financial Officer, Secretary or Assistant Secretary or any other officer or employee of the Participant duly authorized to act on behalf of the Participant by a written certificate signed on behalf of the Participant by its President, (iii) in the case of the Program Facilitator, its Executive Director or Deputy Executive Director, and (iv) in the case of any obligor under any Project Document, its President, any Vice President, Executive Director, Assistant or Deputy Executive Director, Treasurer, Assistant Treasurer, Chief Financial Officer, Secretary or Assistant Secretary or any other officer or employee of such obligor duly authorized to act on behalf of such obligor by a written certificate signed on behalf of such obligor by its President.

Balloon Indebtedness shall mean (i) long-term Indebtedness, or short-term Indebtedness which is intended to be refinanced upon or prior to its maturity (and which short-term Indebtedness is subject to a commercially reasonable binding commitment for such refinancing) so that such short-term Indebtedness will be outstanding, in the aggregate, for more than one year as certified in a certificate of an Authorized Representative of the Participant delivered to the Trustee and the Bond Insurer, twenty-five percent (25%) or more of the initial principal amount of which matures (or is payable at the option of the holder) in any twelve month period, or (ii) long-term Indebtedness, or short-term Indebtedness which is intended to be refinanced upon or prior to its maturity (and which short-term Indebtedness is subject to a commercially reasonable binding commitment for such refinancing) so that such short-term Indebtedness will be outstanding, in the aggregate, for more than one year as certified in a certificate of an Authorized Representative of the Participant delivered to the Trustee and the

Bond Insurer, twenty-five percent (25%) or more of the initial principal amount of which is payable at the option of the holder in any twelve month period, if such twenty-five percent (25%) or more is not to be amortized to below twenty-five percent (25%) by mandatory redemption prior to such twelve month period, or (iii) any portion of an issue of long-term Indebtedness which, if treated as a separate issue of Indebtedness would meet the test set forth in clause (i) of this definition and which Indebtedness is designated as Balloon Indebtedness in a certificate of an Authorized Representative of the Participant delivered to the Trustee and the Bond Insurer stating that such portion shall be deemed to constitute a separate issue of Balloon Indebtedness.

Bond Insurance Agreement shall mean that certain Insurance Agreement, dated as of even date herewith, from the Participant to the Bond Insurer, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Bond Insurance Policy shall mean, collectively, the bond insurance policies relating to the Initial Bonds issued by the Bond Insurer concurrently with the original issuance of the Initial Bonds insuring the scheduled payment when due of the principal of and interest and Sinking Fund Installments on the Initial Bonds as provided therein.

Bond Insurer shall mean ACA Financial Guaranty Corporation, a Maryland stock insurance company, or any successor thereto as issuer of the Bond Insurance Policy relating to the Initial Bonds.

Bonds shall mean the Initial 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, dated as of even date herewith, between the Participant and the Agency, and shall include any amendments and supplements thereto hereafter made in conformity therewith and with the Indenture.

Directing Party shall mean, in the event the consent, approval or direction of the Trustee or the Holders of Bonds Outstanding shall be required in connection with an action to be taken under this Agreement or under any other Security Document, the Holders of a majority in aggregate principal amount of the Bonds Outstanding voting in favor of taking a particular action unless (y) no Bond Insurer Disqualification Event shall have occurred and be continuing and (z) the principal amount of at least a majority in aggregate principal amount of the Bonds Outstanding shall be insured by the Bond Insurer, in which event the Directing Party shall mean the Bond Insurer; provided, however, for so long as no Bond Insurer Disqualification Event shall have occurred and be continuing, in all cases, the Bond Insurer shall be entitled to deliver such consent, approval and direction on behalf of the Holders of the Initial Bonds and any other Bonds it insures as provided in Sections 7.10(a)(iv), 11.05 and 12.04 of the Indenture.

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

Facility or Facility Component shall mean the Facility Equipment and the Facility Realty.

Indebtedness shall mean, without duplication, (i) all obligations of the Participant recorded or required to be recorded as liabilities on the balance sheets thereof for the payment of moneys incurred or assumed by the Participant as determined in accordance with generally accepted accounting principles consistently applied (exclusive of reserves such as those established for deferred taxes) and (ii) all contingent obligations in respect of, or to purchase or otherwise acquire or service, indebtedness of other persons, including but not limited to guarantees and endorsements (other than for purposes of collection in the ordinary course of business) of indebtedness of other persons, obligations to reimburse issuers of letters of credit or equivalent instruments for the benefit of any person, and contingent obligations to repurchase property theretofore sold by such contingent obligor. For the purposes of calculating Indebtedness for any period with respect to any Balloon Indebtedness, the Participant may, at its option, by a certificate of an Authorized Representative of the Participant delivered to the Trustee and the Bond Insurer at the end of each Fiscal Year, direct that such Indebtedness may be calculated assuming that (i) the principal of such Indebtedness that is not amortized is amortized on a level debt service basis from the date of calculation thereof over a term not to exceed thirty (30) years, and (ii) interest is calculated at (A) the actual rate (if such rate is not variable or undeterminable) or (B) if such rate is variable or undeterminable, an assumed rate derived from *The Bond Buyer* Thirty-year Revenue Bond Index published immediately prior to the date of calculation, as certified in a certificate of an Authorized Representative of the Participant delivered to the Trustee; provided that if such index is at such time not being published a comparable index reasonably acceptable to the Trustee may be used.

Indenture shall mean the Indenture of Trust, dated as of even date herewith, 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 Participant, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

Mortgage Amount shall mean the amount set forth in Schedule A attached hereto and made a part hereof.

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 reasonable expenses (including reasonable attorneys'

fees and expenses and any extraordinary expenses of the Agency, the Bond Insurer or the Trustee) incurred in the collection thereof.

Non-PPA Expenses shall mean all operating and nonoperating expenses of the Participant other than PPA Expenses.

Non-PPA Facility shall mean any facility of the Participant which is, or was, not subject to the Prior Property Approval process incorporated in New York State Codes, Rules and Regulations Parts 681, 686 and 690, as amended from time to time.

Non-PPA Indebtedness shall mean any Indebtedness incurred by the Participant to finance, in whole or in part, a Non-PPA Facility. Indebtedness incurred by the Participant with respect to a facility only a portion of which constitutes a Non-PPA Facility shall constitute Non-PPA Indebtedness to the extent such Indebtedness financed the Non-PPA Facility portion of such facility.

Non-PPA Revenues shall mean all operating and nonoperating revenues of the Participant other than PPA Revenues.

Participant shall mean the entity named on the cover and page 1 of this Agreement, a not-for-profit corporation organized and existing under the laws of the State of New York, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof.

Participant's Allocable Interest shall mean a fraction, the numerator of which is equal to the Participant's Portion of the initial aggregate principal amount of the Initial Bonds and the denominator of which is equal to the initial aggregate principal amount of the Initial Bonds.

Participant's Earnings Account shall mean the Account established in the Earnings Fund for the benefit of the Participant.

Participant's Installment Purchase Payment Account shall mean the Installment Purchase Payment Account established in the Bond Fund for the benefit of the Participant.

Participant's Portion shall mean (i) with respect to the initial aggregate principal of the Initial Bonds, the aggregate principal amount set forth in Schedule A attached hereto and made a part hereof, (ii) with respect to the principal amount of the Initial Bonds coming due on each principal payment date, the principal amounts set forth in Schedule A attached hereto and made a part hereof, and (iii) with respect to any fees, expenses or other amounts required to be paid or calculated hereunder, an amount equal to the product of (a) the total aggregate amount due or available and (b) the Participant's Allocable Interest, provided that if the amount incurred is due, in the sole judgment of the Program Facilitator, solely to the action or inaction of the Participant, the Participant's Portion shall equal the entire amount incurred.

Participant's Project Account shall mean the Account established in the Project Fund for the benefit of the Participant.

Participant's Renewal Fund Account shall mean the Account established in the Renewal Fund for the benefit of the Participant.

Participant's Share of the Agency's Fee shall mean the amount set forth in Schedule A attached hereto and made a part hereof.

Participant's Subaccount of the Tax-Exempt Bond Debt Service Reserve Account shall mean the Subaccount established in the Debt Service Reserve Fund for the benefit of the Participant.

Participant's Tax-Exempt Bond Debt Service Reserve Subaccount Requirement shall mean the amount set forth in Schedule A attached hereto and made a part hereof.

Plans and Specifications shall mean the plans and specifications prepared for the Project or for any additions or modifications to the Project by or on behalf of the Participant, as amended from time to time by or on behalf of the Participant to reflect any remodeling or relocating of the Project or substitutions, additions, modifications and improvements to the Project made by the Participant in compliance with this Agreement, said plans and specifications being duly certified by an Authorized Representative of the Participant and filed in the principal corporate trust office of the Trustee and available to the Agency and the Bond Insurer.

PPA Expenses shall mean all operating and nonoperating expenses properly incurred by the Participant with respect to a PPA Facility in accordance with the Prior Property Approval received by the Participant with respect to such PPA Facility.

PPA Facility shall mean any facility of the Participant which was, or will be, approved by the New York State Office of Mental Retardation and Developmental Disabilities pursuant to the Prior Property Approval process incorporated in New York State Codes, Rules and Regulations Parts 681, 686 and 690, as amended from time to time.

PPA Revenues shall mean revenues received by the Participant with respect to a PPA Facility intended to amortize the PPA Expenses incurred with respect to such PPA Facility.

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 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.

Total Debt Service Coverage Ratio shall mean the ratio for the applicable Fiscal Year of Total Net Revenues Available for Debt Service to Total Maximum Annual Debt Service.

Total Maximum Annual Debt Service shall mean the greatest amount required in the then current or any future Fiscal Year to pay the debt service on any outstanding Non-PPA Indebtedness of the Participant; provided, however, that any Non-PPA Indebtedness secured solely by a security interest in its Accounts Receivable in accordance with Section 3.5 hereof

shall not be included in “Non-PPA Indebtedness” for the purposes of this definition; provided further, that the debt service for the final year of amortization of any Non-PPA Indebtedness shall not be included for purposes of this definition to the extent that such debt service is payable from any funded reserve(s) established with and held by a Person other than the Participant.

Total Net Revenues Available for Debt Service shall mean, for any Fiscal Year, the excess of Non-PPA Revenues, including the proceeds of business interruption insurance, over the Non-PPA Expenses accrued or paid by the Participant for such Fiscal Year as determined and reported by the independent certified public accountants of the Participant in its most recently audited financial statements. For purposes of this definition, as determined in accordance with generally accepted accounting principles, consistently applied, (i) extraordinary items shall be excluded from Non-PPA Revenues and Non-PPA Expenses, (ii) depreciation, amortization and current interest expenses shall be excluded from Non-PPA Expenses, and (iii), if the Indebtedness to be incurred or guaranteed is with respect to the acquisition of a Facility Realty that is leased to the Agency by the Participant under the Company Lease (or that replaces a Facility Realty leased to the Agency by the Participant under the Company Lease) immediately prior to such acquisition, then “current interest expenses” for purposes of clause (ii) above and Section 6.20 hereof shall include the bona fide installment purchase payments made by the Participant with respect to such Facility Realty in the Fiscal Year for which the determination is made.

Trustee shall mean The Bank of New York, New York, New York, 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), limited liability companies, 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 or refinance a portion of the cost of the Project, the Agency proposes to issue the Initial Bonds in the respective aggregate principal amounts as set forth in the Indenture. The Initial 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 Participant contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Participant to the Agency, hereby finds and determines that the financing of a portion of the costs of the Project by the Agency and the sale of the Agency's leasehold interest in the Facility under the Company Lease to the Participant is reasonably necessary to induce the Participant to proceed with the Project.

Section 1.5. Representations and Warranties by Participant. The Participant makes the following representations and warranties, together with the additional representations and warranties set forth in Appendix B attached hereto and made a part hereof:

(a) The Participant is a not-for-profit corporation duly incorporated under the laws of the State of New York and 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 bylaws, has the corporate 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. The Participant 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 the consummation of the transactions herein contemplated have been duly authorized by all requisite corporate action on the part of the Participant and will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or bylaws of the Participant, or any indenture, agreement or other instrument to which the Participant is a party or by which it or any of its property is subject to or bound (including, without limitation, any of the Underlying Facility Realty Documents), 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 Participant, 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 were specifically employed for such particular purpose, the expenses do not exceed the actual cost thereof and are to be treated on the books of the Participant 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 Participant to proceed with the Project.

(e) The completion of the Project will not result, or has not resulted, in the removal of a plant or facility of the Participant from one area of the State to another area of the State or in the abandonment of one or more of such plants or facilities of the Participant within the State.

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

(g) 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.

(h) No part of the proceeds of the Initial Bonds will be used to finance inventory or will be used for working capital.

(i) The Project is included within the definition of "project" under the Act.

(j) This Agreement and the other Security Documents to which the Participant is a party constitute the legal, valid and binding obligations of the Participant enforceable against the Participant in accordance with their respective terms.

(k) The Project has been designed, and the operation of the Project is and, if not completed, 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.

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

(m) The Participant will operate the Facility or cause the Facility to be operated in accordance with this Agreement and as a qualified “project” in accordance with and as defined under the Act.

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

ARTICLE II

The Project

Section 2.1. The Project. (a) Pursuant to the Company Lease, the Participant shall cause to be conveyed to the Agency at the time of the delivery and payment of the Initial Bonds a good and valid leasehold interest to the Facility Realty and to such items of the Facility Equipment as shall have been acquired at the time of such delivery and payment, in each case 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 Initial Bonds deposited in the Participant's Project Account 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 Initial Bonds and out of said proceeds of sale, the Agency will, subject to the provisions of Section 2.2 hereof, cause the Participant, 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 Participant's Project Account or as otherwise provided in Section 2.2 hereof. All contractors, materialmen, vendors, suppliers and other companies, firms or persons furnishing labor, machinery, equipment, services or materials for or in connection with the Project shall be designated by the Participant.

(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 Participant, the Participant has undertaken to proceed with the design of the Project, the preparation of the Facility site and the completion of the Project work. The Participant agrees to complete the Project on behalf of the Agency under the supervision of a Person experienced in the construction of facilities similar in nature to the Project.

(d) The Participant shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance and transfer of a leasehold interest in the Facility to the Agency, the delivery of any instruments and documents and their filing and recording, if required, (ii) all taxes and charges payable, if any, in connection with such conveyance and transfer, or attributable to periods prior to the conveyance and transfer, to the Agency as set forth in Section 2.1(a) hereof, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(e) The Participant covenants that it will obtain or cause to be obtained all necessary approvals (to the extent that any unrelated Person having an interest in all or part of the Project does not have exclusive standing to obtain the same or cause the same to be obtained) 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, and with the conditions and requirements of all policies of insurance with respect to the Facility required to be maintained under the Underlying Facility Realty Documents and this Agreement. Upon completion of the Project, the Participant will promptly obtain or cause to be obtained all required occupancy and operation permits, authorizations and licenses (to the extent that any

unrelated Person having an interest in all or part of the Project does not have exclusive standing to obtain the same or cause the same to be obtained) 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, the Bond Insurer and the Trustee immediately upon receipt thereof.

(f) To the extent permissible under such warranties, the Participant will extend to the Trustee all vendors' warranties received by the Participant 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 Participant shall take such action and institute such proceedings as shall be 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 Participant or the Agency in connection with the performance of their obligations under this Section to be considered a Project Cost. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, (y) if recovered prior to the date of completion of the Project, shall be deposited into the Participant's Project Account and made available for payment of Project Costs, or (z) if recovered after such date of completion, shall be deposited in the Redemption Account of the Bond Fund to be applied to the redemption of the Participant's Portion of the Bonds.

(h) Pursuant to the Company Lease, a good and valid leasehold interest to all materials, equipment, machinery and other property intended to be incorporated or installed as part of the Facility shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first, and immediately thereupon be deemed sold by the Agency to the Participant as provided in Section 3.1 hereof.

Section 2.2. Completion by Participant. (a) The Participant covenants and agrees that it will complete the Project, or cause the Project to be completed, by the Completion Date, and that such completion will be effected in a first-class workmanlike manner, using high-grade materials, free of 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 Participant's Project Account are not sufficient to pay the costs necessary to complete the Project in full, the Participant shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in the Participant's Project Account and shall not be entitled to any reimbursement therefor from the Agency, the Bond Insurer, 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 Participant be entitled to any diminution of the installment purchase payments payable or other payments to be made under this Agreement.

(b) Promptly following the completion of a Project relating to each Facility, the Participant shall deliver to the Agency, the Bond Insurer and the Trustee a certificate of an

Authorized Representative of the Participant substantially in the form set forth in Schedule B attached hereto and made a part hereof, together with all attachments required thereunder.

(c) If the Participant elects not to proceed with a Project for a Facility and has not requisitioned the proceeds of any of the Initial Bonds allocated to such Project, the Participant shall give written notice to the Agency, the Bond Insurer and the Trustee that it has abandoned such Project and shall direct, in such written notice, the Agency and the Trustee to redeem such Initial Bonds allocated to such Project pursuant to Section 2.03(d) of the Indenture. In addition, the Participant shall effect the release of such abandoned Facility from the Company Lease, this Agreement and the Agency Mortgage, if applicable, pursuant to Section 6.4 hereof.

Section 2.3. Issuance of Initial Bonds. On the Closing Date, the Agency will sell and deliver the Initial Bonds under and pursuant to the Bond Resolution adopted by the Agency, authorizing the issuance of the Initial Bonds and under and pursuant to the Indenture. The proceeds of sale of the Initial Bonds shall be applied in accordance with Section 4.01 of the Indenture.

Section 2.4. Title Insurance. With respect to the Mortgaged Property, prior to the Closing Date, the Participant will obtain (a) leasehold title insurance in an amount not less than \$500,000 for each of the Mortgaged Property insuring the Agency's leasehold interest therein against loss as a result of defects in the title of the Agency, and (b) mortgagee title insurance in the Mortgage Amount insuring the Bond Insurer's and the Trustee's interests under the Agency Mortgage as holders of a mortgage lien on the Mortgaged Property, in each case subject only to Permitted Encumbrances, and (c) a current or updated survey of the site of the Mortgaged Property certified to the Agency, the Bond Insurer and the Trustee. Any proceeds of such leasehold title insurance shall be paid to the Trustee for deposit in the Participant's Renewal Fund Account and applied to remedy the defect in title. If such proceeds are not so capable of being applied or if any amounts remain, the amounts in the Participant's Renewal Fund Account shall be deposited by the Trustee in the Redemption Account of the Bond Fund to be applied to the redemption of the Participant's Portion of the Bonds. Any proceeds of such mortgagee title insurance insuring against loss as a result of defects affecting the Bond Insurer's and the Trustee's interests as holders of a mortgage lien on the Mortgaged Property shall be paid to the Trustee and deposited by the Trustee in the Redemption Account of the Bond Fund to be applied to the redemption of the Participant's Portion of the Bonds. The mortgagee title insurance policy shall be redated as of the completion date of the Project for any Mortgaged Property not completed on the Closing Date.

ARTICLE III

Sale of Interest in Facility, Installment Purchase Payments and Related Provisions

Section 3.1. Lease and Sale of the Facility. Pursuant to the Company Lease, the Participant has leased or subleased, as applicable, the Facility to the Agency. The Agency hereby assigns, conveys, sells and transfers to the Participant the Agency's leasehold interest in the Facility (other than the Agency's Reserved Rights) under the Company Lease, all for and during the term herein provided and upon and subject to the terms and conditions herein set forth. The Participant shall at all times during the term of this Agreement occupy, use and operate the Facility as a civic facility within the meaning of the Act and for the general purposes specified in the recitals to this Agreement. The Participant 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.

It is the intention of the Agency and the Participant under this Agreement that the sale by the Agency hereunder of its leasehold interest in the Facility under the Company Lease shall not result in a merger of the leasehold estates and interests of the Participant and the Agency under the Company Lease so as to effect a termination or any other impairment of the Company Lease; and until the termination of the Company Lease in accordance with its terms or the expiration hereof, the Company Lease shall continue in full force and effect to the same extent as if the Agency had not sold its leasehold interest in the Facility to the Participant pursuant to this Agreement.

Section 3.2. Duration of Term. The term of this Agreement shall commence on the Closing Date and shall expire on the Termination Date. The Agency hereby conveys to the Participant and the Participant hereby accepts sole and exclusive possession of the Facility as and to the extent the Agency has received same under the Company Lease.

Section 3.3. Payment Provisions; Pledge of Agreement and Installment Purchase Payments. (a) The Participant covenants to make installment purchase payments for and in respect of the sale by the Agency to the Participant of the Agency's leasehold interest in the Facility pursuant to this Agreement which the Agency agrees shall be paid by the Participant directly to the Trustee on each Installment Purchase Payment Date for deposit in the Participant's Installment Purchase Payment Account in the amounts described in Appendix C attached hereto and made a part hereof.

(b) Upon receipt by the Participant of notice from the Trustee pursuant to Section 5.10(d) of the Indenture that the amount on deposit in the Participant's Subaccount of the Tax-Exempt Bond Debt Service Reserve Account shall be less than the Participant's Tax-Exempt Bond Debt Service Reserve Subaccount Requirement by reason of the occurrence of either of the circumstances set forth in clause (i) or (ii) below, the Participant shall pay to the Trustee, for deposit in the Participant's Subaccount of the Tax-Exempt Bond Debt Service Reserve Account on the first day of each month, commencing on the first day of the month

immediately following receipt by the Participant of notice of such deficiency, until the amount of such deficiency has been satisfied, either (i) one-twelfth (1/12) of the amount of such deficiency if such deficiency is due to a withdrawal from the Participant's Subaccount of the Tax-Exempt Bond Debt Service Reserve Account on account of the Participant's failure to make timely payments pursuant to Section 3.3(a) above or (ii) one-quarter (1/4) of the deficiency if such deficiency is due to a decrease in the value of the Qualified Investments held in the Participant's Subaccount of the Tax-Exempt Bond Debt Service Reserve Account.

(c) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Participant's Installment Purchase Payment Account on the twenty-eighth day prior to a payment date with respect to the Bonds is not sufficient to pay the principal of, Sinking Fund Installments for, redemption premium, if any, and interest on the Participant's Portion of the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Participant shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Participant's Installment Purchase Payment Account in the Bond Fund and such payment shall constitute installment purchase payments under this Section 3.3. The Participant shall have no obligation to satisfy any deficiency in any Installment Purchase Payment Account held by the Trustee other than the Participant's Installment Purchase Payment Account.

(d) In the event the Participant 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 Participant until the amount not so paid shall have been fully paid.

(e) The Participant shall have the option to prepay its installment purchase payment 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 Participant 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 Participant's Portion 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 the Participant's Portion of such Sinking Fund Installment shall be credited against the Participant's Portion of 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 installment purchase 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 Participant's Installment Purchase Payment Account and the Participant's Subaccount of the Tax-Exempt Bond Debt Service Reserve Account are sufficient

to satisfy and discharge the obligations of the Agency under the Indenture to pay the Participant's Portion of the Bonds as provided in Section 10.01 of the Indenture.

(h) Pursuant to the Agency Mortgage, the Agency and the Participant shall grant a lien on and security interest in the Mortgaged Property prior to the lien of this Agreement, and pursuant to the Indenture the Agency will pledge and assign to the Trustee as security for the Bonds all of the Agency's right, title and interest in this Agreement (except for the Agency's Reserved Rights), including all installment purchase payments hereunder and thereunder, and in furtherance of said pledge the Agency will unconditionally assign such installment purchase payments to the Trustee for deposit in the Participant's Installment Purchase Payment Account in the Bond Fund in accordance with the Indenture; provided that the Participant shall never be liable for, and no Fund, Account or Subaccount (or portion thereof) created for the benefit of the Participant under the Indenture shall be used to cure an Event of Default thereunder (other than an Event of Default caused by the Participant) and no amounts realized pursuant to the grant of the security interest hereunder or to any other Security Document to which the Participant is a party shall be used to cure an Event of Default hereunder or thereunder (other than an Event of Default of the Participant). The Participant hereby consents to the above-described lien and security interest, and pledge and assignment of this Agreement.

(i) The Participant covenants and agrees that it will comply with the provisions of the Indenture with respect to the Participant and that the Trustee shall have the power, authority, rights and protections provided in the Indenture. The Participant 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 which relate to the Participant or its Project.

(j) The Participant covenants and agrees that it shall transfer, in the following order of priority, as soon as sufficient moneys are available to the Participant in each month to satisfy such payments, but in no event later than each Installment Purchase Payment Date, to the Trustee, (A) amounts sufficient to satisfy the Participant's installment purchase payment obligation pursuant to Section 3.3(a) hereof, and (B) amounts sufficient to satisfy the Participant's installment purchase payment obligation pursuant to Section 3.3(b) hereof. Such amounts transferred to the Trustee pursuant to this Section 3.3(j) shall be applied by the Trustee as provided in Sections 5.04 and 5.05 of the Indenture.

Section 3.4. Obligation of Participant Unconditional. The obligation of the Participant to pay the installment purchase payments and all other payments provided for in this Agreement and to maintain the Facility in accordance with Section 4.1 of this Agreement shall be an absolute and unconditional general obligation of the Participant, 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 it might otherwise have against the Agency, the Trustee, the Bond Insurer or the Holder of any Bond and the obligation of the Participant shall arise whether or not the Project has been completed as provided in this Agreement. The Participant 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 Participant waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or

surrender this Agreement or any obligation of the Participant 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 installment purchase payments or other payments hereunder.

Section 3.5. Grant of Security Interest. The Participant may grant security interests in its Accounts Receivable in favor of banks or other financial institutions in order to secure a line of credit for working capital purposes, whether by entering into a new credit facility or amending, modifying or extending an existing credit facility; provided, however, that the amount of Indebtedness which may be secured by a security interest granted pursuant to this Section 3.5 shall not exceed, in the aggregate, an amount equal to ninety percent (90%) of the Participant's Accounts Receivable. The Participant shall deliver a certificate of an Authorized Representative to the Trustee and the Program Facilitator on each January 1, April 1, July 1 and October 1, commencing with the first such date to occur after the Closing Date, demonstrating compliance with said limitation. To the extent that such a certificate shall demonstrate that the Participant is not in compliance with said limitation, the Participant shall use its best efforts to repay such outstanding Indebtedness in an amount which will allow it to be in compliance with this Section 3.5.

Section 3.6. Agency Mortgage. The Participant shall not 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 Participant in the Facility or this Agreement except for Permitted Encumbrances. The Participant covenants 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 first mortgage lien on, and first security interest in, the Mortgaged Property.

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 Participant 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) necessary to ensure that the security for the Bonds shall not be impaired. All replacements, renewals and repairs shall be 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 Participant hereby agrees to assume full responsibility therefor.

(b) In addition to the work to be performed in connection with the completion of the Project, the Participant 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 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 Participant 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 \$300,000, only after the Participant shall have furnished the Trustee a labor and materials payment bond, or other security, satisfactory to the Agency, the Bond Insurer and the Trustee, 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 alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement, the Company Lease, the Indenture and, in the case of alterations of and additions to the Mortgaged Property, the Agency Mortgage, and the Participant shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary 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 Participant 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 "Participant's Property") without subjecting such property to this Agreement and the Company Lease and the lien and security interest of the Indenture and, in the case of the Mortgaged Property, the Agency Mortgage. The Agency shall not be responsible for any loss of or damage to the Participant's Property. The Participant 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 Participant's Property.

(d) 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 Participant 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 Participant fail to comply with the foregoing requirement, the Participant shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked).

Section 4.2. Removal of Property of the Facility. (a) The Participant 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, furnishings or other property constituting part of the Facility Equipment (the "Existing Facility Property") and thereby acquiring such Existing Facility Property, provided that, contemporaneously with such removal:

(i) such Existing Facility Property is substituted or replaced by property (A) having equal or greater fair market value, operating efficiency and 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 \$25,000, the Participant shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund to be applied to the redemption of the Participant's Portion of the Bonds 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 cause the Facility to cease to be 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 Redemption Account of the Bond 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 \$25,000 shall be retained by the Participant.

(b) The Participant shall deliver or cause to be delivered to the Agency, the Bond Insurer and the Trustee appropriate documents subjecting any property installed or placed upon the Facility Realty pursuant to Section 4.2(a)(i) hereof to this Agreement and the Company Lease and, if it is installed or placed upon the Mortgaged Property, the lien and security interest of the Agency Mortgage, and upon written request of the Participant, the Agency shall deliver to the Participant appropriate documents conveying to the Participant all of the Agency's right, title and interest, if any, to any property removed from the Facility pursuant to Section 4.2(a) hereof. The Participant agrees to pay all costs and expenses (including reasonable counsel fees and disbursements) incurred in subjecting to this Agreement and the Company Lease and, if applicable, the lien and security interest of the Agency Mortgage, of any property installed or placed upon the Mortgaged Property, on the Facility Realty as part of the Facility pursuant to this Section 4.2 and the conveyance of any Existing Facility Property of the Participant.

(c) The Participant shall not, without the prior written consent of the Agency and the Trustee (at the direction of the Directing Party) and except as permitted above, (y) 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 (z) change the location of the Facility Equipment or any part thereof from the Facility Realty; provided, however, it is acknowledged that Affiliates of the Participant 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 Participant to any abatement or reduction in the installment purchase payments and other amounts payable by the Participant 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 leasehold interest in any Facility under the Company Lease shall exempt any portion of such Facility from the imposition of real estate taxes, then, so long as the Participant (and each other user of the Facility) 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 of the Participant's Portion of the Bonds Outstanding in accordance with Section 10.01 of the Indenture, and (ii) the date on which the Agency no longer has a leasehold interest in the Facility under the Company Lease, the Participant shall make no payments in lieu of real estate taxes on the land, buildings and improvements constituting part of the Facility. However, to the extent the Participant is not 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 or the Participant subleases the whole or any portion of the Facility to an entity that is not exempt from New York City real estate taxes and the Participant would be obligated to pay any New York City real estate taxes, the Participant shall

not claim an exemption from such real estate taxes by virtue of the Agency's leasehold interest in the Facility under the Company Lease.

Section 4.4. Taxes, Assessments and Charges. The Participant shall pay when the same shall become due all taxes 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 or the Participant in the Facility, or the installment purchase payments 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 Participant any notice, bill or other statement received by the Agency concerning any Imposition. The Participant 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 leasehold interest in the Facility under the Company Lease, the Participant 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 leasehold interest in the Facility (unless the Participant, as an eligible not-for-profit corporation, is exempt for reasons other than the Agency's leasehold interest in the Facility under the Company Lease).

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 Participant shall maintain insurance, or cause there to be maintained insurance, if applicable, 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 and contractors protective liability insurance for the benefit of the Participant, the Agency, the Bond Insurer and the Trustee in a minimum amount of \$5,000,000 (or such lesser amount agreed upon by the Agency, the Bond Insurer and the Trustee upon written request by the Participant) 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 Participant 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 \$5,000,000 (or such lesser amount agreed upon by the Agency, the Bond Insurer and the Trustee upon written request by the Participant) per occurrence per location aggregate,

which insurance (A) will also provide coverage of the Participant's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Participant (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 Participant at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Participant 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 amount in excess of \$5,000;

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

(iv) Automobile liability insurance, to the extent not covered by the general liability insurance, in the amount of \$5,000,000 (or such lesser amount agreed upon by the Agency and the Bond Insurer upon written request by the Participant) covering the Participant 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 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 that is commercially reasonable and customarily provided by other enterprises of like size and type as that of the Participant and acceptable to the Bond Insurer. The Agency or the Bond Insurer may change such rating requirements on a nondiscriminatory basis if required by substantial changes in insurance industry premiums, risks or coverage. At least once every two fiscal years, the Participant agrees to deliver a certificate of an independent insurance consultant to the Trustee and the Bond Insurer which indicates that the insurance then maintained by the Participant meets the requirements of Section 4.5(a) hereof and Section 1.2 of the Guaranty Agreement.

(c) Each of the policies evidencing the insurance required above to be obtained shall (subject to the provisions of the Underlying Facility Realty Documents, if applicable):

(i) designate (except in the case of workers' compensation insurance) the Participant, the Trustee, the Bond Insurer 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 shall name the Trustee and the Bond Insurer as a loss payee under the standard loss payee clause and 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 Participant's Account in the Renewal Fund;

(iii) provide that there shall be no recourse against the Agency, the Bond Insurer 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 Bond Insurer and the Trustee in such policies, the insurance shall not be invalidated by any action or inaction of the Participant or any other Person and shall insure the Agency, the Bond Insurer and the Trustee 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 Bond Insurer or the Trustee to the extent that such other insurance provides the Agency, the Bond Insurer 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 Bond Insurer or the Trustee until at least thirty (30) days, or ten (10) days due to nonpayment of premium, after receipt by the Agency, the Bond Insurer 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 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 Participant's Account in the Renewal Fund and applied in accordance with Section 5.1 hereof and the Indenture.

(e) The Participant shall deliver or cause to be delivered to the Agency, the Bond Insurer and the Trustee, in a form acceptable to the Agency and the Bond Insurer, 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, upon which the Agency, the Trustee and the Bond Insurer may conclusively rely in order to confirm compliance with the requirements of this Section 4.5(e), confirming that the Participant, 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 Participant shall furnish the Agency, the Bond Insurer and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Participant 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 Bond Insurer or the Trustee to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5. The Participant 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 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 PARTICIPANT.

Section 4.6. Advances by Agency, Bond Insurer or Bondholders. In the event the Participant fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, the Bond Insurer or any Bondholder, after first notifying the Participant of any such failure on its part and after any applicable grace period, may (but shall not be obligated to), and without waiver of any of the rights of the Agency, the Bond Insurer or such Bondholder under this Agreement, the Indenture or any other Security Documents, make such payment or otherwise cure any failure by the Participant to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency, the Bond Insurer or such Bondholder shall become an additional obligation of the Participant to the Agency, the Bond Insurer or such Bondholder, which amounts, together with interest thereon at a rate being the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate permitted under applicable usury law from the date advanced, the Participant will pay upon demand therefor by the Agency, the Bond Insurer or such Bondholder. Any remedy herein vested in the Agency, the Trustee, the Bond Insurer or Bondholders for the collection of the installment purchase payments or other amounts due hereunder shall also be available to the Agency, the Bond Insurer or such Bondholder for the collection of all such amounts so advanced.

Section 4.7. Compliance with Legal Requirements. The Participant agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Legal Requirements, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Participant, any occupant, user or operator of the Facility or any portion thereof 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 Participant will not, without the prior written consent of the Agency and the Trustee (at the direction of the Directing Party), 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 Participant 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 by the Participant to comply with any Legal Requirement or (b) imposed upon the Participant 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 Participant shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

The Participant 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 Participant, the Agency, the Bond Insurer 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 Participant shall have furnished such security, if any, as may be reasonably requested by the Agency, the Bond Insurer or the Trustee to protect the security intended to be offered by the Project 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 any Facility Component shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement between the Participant and/or the Agency or any Person having an interest in the affected Facility Component, and those authorized to exercise such right, or if the temporary use of any Facility Component shall be so taken by condemnation or agreement (a "Loss Event"):

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

(ii) there shall be no abatement, postponement or reduction in the installment purchase payments or other amounts payable by the Participant under this Agreement, and

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

(b) Upon the occurrence of a Loss Event, the Net Proceeds derived therefrom shall (subject to the terms of the Underlying Facility Realty Documents, if applicable) be paid to the Trustee and deposited in the Participant's Account in the Renewal Fund and the Participant shall either:

(i) at its own cost and expense (except to the extent paid from the Net Proceeds deposited in the Participant's Account in the Renewal Fund as provided below and in Section 5.03 of the Indenture) upon a determination by the Participant that (a) the Facility Component can be restored within a one year period to its condition preceding such damage or destruction, (b) the normal operation of the Participant at the Facility Component will not be restricted for a period of one year or more, and (c) it would be economically feasible for the Participant to restore or repair the Facility Component, the Participant shall promptly and diligently rebuild, replace, repair or restore the Facility Component 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 Participant shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, the Trustee, the Bond Insurer or any Bondholder, nor shall the installment purchase payments or other amounts payable by the Participant 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, direct the Trustee to deposit the Net Proceeds

to the Redemption Account of the Bond Fund (or, if there shall be no Net Proceeds or a reduced amount thereof by reason of the Participant not having maintained the insurance with respect to the affected Facility as required under Section 4.5(a)(i) and (ii) hereof, the Participant shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund such amount as would have been received had such required insurance coverage been so maintained); provided, however, that if the Participant shall so direct the Trustee with respect to the last Facility remaining under this Agreement, the Participant shall exercise its option to terminate this Agreement and make advance installment purchase payments to redeem the Participant's Portion of the Bonds in accordance with Section 2.03(b) of the Indenture.

Not later than one hundred twenty (120) days after the occurrence of a Loss Event, the Participant shall advise the Agency, the Bond Insurer and the Trustee in writing of the action to be taken by the Participant 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.

If the Participant 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 Participant's Renewal Fund Account in the manner set forth in Section 5.03 of the Indenture to pay or reimburse the Participant, at the election of the Participant, either as such work progresses or upon the completion thereof, provided, however, the amounts so disbursed by the Trustee to the Participant shall not exceed the actual cost of such work. If, on the other hand, the Participant shall, if permitted under this Agreement and the Indenture, exercise its option in subdivision (ii) above, the Trustee shall transfer the Net Proceeds from the Participant's Renewal Fund Account to the Redemption Account of the Bond Fund to be applied to the partial redemption of the Participant's Portion of the Bonds in accordance with the Indenture.

It is acknowledged and agreed by the Agency and the Participant that the determination to rebuild, replace, repair or restore a certain Facility may reside solely within the control of a Person unrelated to the Participant having a superior interest in such Facility, and such Person may elect, in lieu of the Participant, to require that the Net Proceeds be deposited in an account not subject to the lien of the Indenture. In the event that the Net Proceeds shall not be so applied to rebuild, replace, repair or restore such Facility as set forth in subdivision (i) above, and the Participant shall not otherwise rebuild, replace, repair or restore such Facility, the Participant shall exercise its option under subdivision (ii) above.

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

(i) automatically be deemed a part of the Facility Component and be subject to this Agreement and the Company Lease and, in the case of the Mortgaged Property, the lien and security interest of the Agency Mortgage,

(ii) be in accordance with Plans and Specifications and cost estimates delivered to the Trustee and approved by the Bond Insurer,

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

(iv) if requested by the Bond Insurer, or by the Trustee upon direction of the Bondholders, be preceded by the furnishing by the Participant to the Agency, the Bond Insurer and the Trustee of a labor and materials payment bond, or other security, reasonably satisfactory to the Bond Insurer, and

(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 Participant in accordance with the terms of the applicable contract(s) therefor.

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

(e) The Agency, the Trustee, the Bond Insurer and the Participant 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 Trustee (at the direction of the Directing Party) and the Participant (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 Participant as contemplated hereby, the Participant shall exercise its option to make advance installment purchase payments pursuant to Section 8.1 hereof, and the amount of the Net Proceeds so recovered shall be transferred from the Participant's Renewal Fund Account and deposited in the Participant's Installment Purchase Payment Account of the Bond Fund, and the Participant shall thereupon pay to the Trustee for deposit in the Participant's Installment Purchase Payment Account of the Bond Fund an amount which, when added to any amounts then in the Bond Fund attributable to the Participant and available for that purpose, and on deposit in the Participant's Subaccount of the Tax-Exempt Bond Debt Service Reserve Account, shall be sufficient to retire and redeem the Participant's Portion of 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 Insurer, the Bond Registrar, the Trustee and the Paying Agents, together with all other amounts due under the Indenture (with respect to the Participant), under this Agreement, under each of the Project Documents to which the Participant is a party, and such aggregate sum shall be applied to such redemption or retirement of the Participant's Portion of the Bonds on said redemption or maturity date.

(g) The Participant shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to moving expenses, Participant's Property or other 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.

(h) The Participant hereby waives 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. Dissolution or Merger of Participant; Restrictions on Participant.

(a) The Participant 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 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 which, so long as any Tax-Exempt Bonds are Outstanding, shall constitute a Tax-Exempt Organization, (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 Participant may, however, without violating the foregoing, consolidate with or merge into another not-for-profit corporation which, for so long as any Tax-Exempt Bonds remain Outstanding, shall constitute a Tax-Exempt Organization, or permit one or more not-for-profit corporations which, for so long as Tax-Exempt Bonds remain Outstanding, 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 Participant may elect) if (a) such merger or consolidation does not result in a default under any Project Document, (b) such merger or consolidation does not, in the Opinion of Nationally Recognized Bond Counsel (which opinion shall be addressed to the Agency, the Bond Insurer and the Trustee), affect the exclusion of the interest on any Tax-Exempt Bonds then Outstanding from gross income for federal income tax purposes, and (c) (i) the Participant is the surviving, resulting or transferee not-for-profit corporation which, for so long as any Tax-Exempt Bonds remain Outstanding, shall constitute a Tax-Exempt Organization, as the case may be, or (ii) in the event that the Participant is not the surviving, resulting or transferee not-for-profit corporation which, for so long as any Tax-Exempt Bonds remain Outstanding, shall constitute a Tax-Exempt Organization, 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 corporation in the State, (B) for so long as any Tax-Exempt Bonds remain Outstanding, is a Tax-Exempt Organization, and, if such not-for-profit corporation is not a Tax-Exempt Organization, in the Opinion of Counsel (which opinion shall be addressed to the Agency, the Bond Insurer and the Trustee), no registration of any securities in connection with the sale of any Bonds shall be required under the Securities Act of 1933, as amended, and the Indenture shall not be required to be qualified under the Trust Indenture Act of 1939, as amended, (C) assumes in writing all of the obligations of the Participant contained in this Agreement and all other Project Documents to which the Participant shall be a party (consistent with the New York Mental Hygiene Law, Title C, Article 16, Sections 16.17 and 16.27), and, in the Opinion of Counsel (which opinion shall be addressed to the Agency, the Bond Insurer and the Trustee), (w) if any Tax-Exempt Bonds are Outstanding, such not-for-profit corporation is a Tax-Exempt Organization, (x) shall be bound by all of the terms applicable to the Participant of this Agreement and all other Project Documents to which the predecessor Participant corporation

shall have been a party, (y) such action does not legally impair the security for the Holders of the Bonds or the Bond Insurer afforded by the Project Documents, and (z) all licenses and certifications of the Participant necessary or desirable to the operation of the Facility in the manner in which it was operated by the Participant immediately prior to such consolidation, merger, sale or transfer have been transferred to or reissued in the name of such not-for-profit corporation and remain in full force and effect, and (D) has a net worth and fund balance (as shown in its audited financial statements for its most recently completed fiscal year) equal to or greater than the fund balance of the Participant as shown on its most recently completed Fiscal Year. The Participant further covenants and agrees that, throughout the term of this Agreement, (i) it is, and will continue to be, duly qualified to do business in the State and (ii) any not-for-profit corporation succeeding to the rights of the Participant under this Agreement shall be, and continue to be, (y) duly qualified to do business in the State and (z) a Tax-Exempt Organization whose purpose and function is directly related to the Facility.

(b) The Participant shall effect no plan of reorganization or similar arrangement under this Section without the prior written consent of the Bond Insurer. All organizational documents of the Participant and any successor Participant pursuant to this Section shall be in form and substance acceptable to the Bond Insurer in its sole and absolute discretion.

Section 6.2. Indemnity. (a) The Participant shall at all times indemnify, defend, protect and hold the Agency, the Trustee, the Bond Registrar, the Paying Agents, the Underwriter and the Program Facilitator, and any director, member, officer, employee, servant, agent (excluding for this purpose the Participant, 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 the date the Agency adopted the Inducement 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 Participant or any other Person of, or performance by the Indemnified Party, the Participant or any other Person, as the case may be, of, any of their respective obligations under, this Agreement, any of the Underlying Facility Realty Documents, 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 Participant, 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 Participant 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 Participant for any and all Claims set forth herein and shall survive the termination of this Agreement.

(b) The Participant releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Participant 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, including any Claims or Liability arising from or incurred as a result of the gross negligence or willful misconduct of such Indemnified Party, or at the direction of the Participant or any other obligor under any of the Security Documents with respect to any of such matters above referred to. An Indemnified Party shall promptly notify the Participant in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Participant pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Participant 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 Participant under this Section 6.2.

(c) (i) In addition to and without limitation of any other representations, warranties and covenants made by the Participant under this Agreement, the Participant further represents, warrants and covenants that the Participant 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 the Audit, to the best of the Participant's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

(ii) Without limiting the foregoing, the Participant 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 Participant cause or permit, as a result of any intentional or unintentional act or omission on the part of the Participant or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

(iii) The Participant shall comply with and ensure 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 ensure that all occupants and users of the Facility 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 Participant, the obligations of the Participant with respect to such Persons shall be absolute and not limited to best efforts.

(iv) The Participant shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove 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 Participant 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.

(vi) The parties hereto agree that the reference in this Section 6.2(c) to the Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Participant'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 Participant is obligated to indemnify each Indemnified Party and comply with all applicable Legal Requirements pertaining to Hazardous Materials.

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.

(d) The indemnifications and protections set forth in this Section 6.2 shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under its control or supervision.

(e) To effectuate the purposes of this Section 6.2, the Participant 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 Participant (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 Participant at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the covenants of the Participant contained in this Section 6.2 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.

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

(g) The provisions of this Section 6.2 shall be in addition to any and all other obligations and liabilities the Participant may have to any Indemnified Party in any other agreement or at common law, and shall survive the termination of this Agreement.

Section 6.3. Compensation and Expenses of Trustee, Bond Registrar, Paying Agents, Agency, Bond Insurer and Program Facilitator. The Participant shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the Participant's Portion of 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, including the fees and expenses of its counsel, (ii) the 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 fees and expenses of its counsel, (iii) the fees and charges of the Trustee for extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture, including counsel fees, (iv) the fees, costs and expenses of the Bond Registrar, (v) the fees of the Program Facilitator, (vi) the fees, costs and expenses (including legal, accounting and other administrative expenses) of the Agency, and (vii) the fees, costs and expenses of the Bond Insurer as provided in the Bond Insurance Agreement. The Participant shall further pay the fees, costs and expenses of the Agency together with any 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 Project Document. Such fees and expenses shall be reasonable and shall be due and payable upon receipt of an invoice therefor.

The Participant further agrees to pay on the Closing Date the Participant's Share of the Agency's Fee and to pay, as an annual administrative servicing fee to the Agency, the amount of \$500 payable initially on the Closing Date and on each anniversary of the Closing Date until the termination of this Agreement.

The provisions of this Section shall survive the termination of this Agreement.

Section 6.4. Retention of Title to Facility; Grant of Easements; Release of Certain Land; Release of a Facility. (a) The Participant shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of 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 Agency and the Trustee (at the direction of the Directing Party) and any purported disposition without such consent shall be void.

(b) The Participant may, with the prior written consent of the Trustee and the Bond Insurer, 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 this Agreement, the leasehold estate of the Company Lease and, in the case of the Mortgaged Property, the lien of the Agency Mortgage, as shall be necessary or convenient for the operation or use of such Facility, provided that such leases, rights-of-way, easements, permits or licenses shall not adversely affect the use or operation of such Facility, and provided, further, that any consideration received by the Participant from the granting of said leases, rights of way, easements, permits or licenses shall be paid to the Trustee and deposited in the Redemption Account of the Bond Fund and applied to the redemption of the Participant's Portion of the Bonds. The Agency agrees, at the sole cost and expense of the Participant, 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 this Agreement and the leasehold estate of the Company Lease, and, in the case of the Mortgaged Property, the lien of the Agency Mortgage.

(c) Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, the Participant may from time to time request in writing to the Agency and the Bond Insurer the release of and removal from this Agreement and the Company Lease and the leasehold estate created thereby and the release from the lien of the Agency Mortgage, if applicable, of any unimproved part of the Facility Realty (on which none of the improvements, including the buildings, structures, improvements, related facilities, machinery, equipment, 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 Participant, the Agency, the Bond Insurer and the Trustee shall, at the sole cost and expense of the Participant, execute and deliver any and all instruments necessary or appropriate to so release and remove such portion of the Facility Realty, subject to the following: (i) any liens, easements, encumbrances and reservations to which the Agency's leasehold interest in said property was subject at the time of recording of this Agreement; (ii) any liens, easements and encumbrances created at the request of the Participant or to the creation or suffering of which the Participant consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Participant to perform or observe any of the agreements on its part contained in this Agreement; (iv) Permitted Encumbrances (other than the liens of the Company Lease and this Agreement and of the Agency Mortgage); and (v) 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 Independent 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 materially adversely affect the use or operation of the Facility and will not destroy the means of ingress thereto and egress therefrom; and

(2) An amount of cash for deposit in the Redemption Account of the Bond Fund (to be applied to the redemption of the Participant's Portion of the Bonds) 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 within six months of such release, (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 Participant upon such sale.

(d) Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, nor any event which upon the giving of notice or the passage of time or both, would constitute an Event of Default, the Participant may, upon written notice to the Agency, the Bond Insurer and the Trustee and compliance with the following, effect the release of a Facility from this Agreement and the leasehold estate of the Company Lease and, if a Mortgaged Property, the lien of the Agency Mortgage. Upon receipt of such notice, the Agency, the Bond Insurer and the Trustee shall, at the sole cost and expense of the Participant, execute and deliver any and all instruments necessary or appropriate to so release and remove

such Facility from this Agreement and the leasehold estate of the Company Lease and, if a Mortgaged Property, the lien of the Agency Mortgage; provided, that, no such release shall be effected unless there shall be deposited with the Trustee the following: an amount of cash for deposit in the Redemption Account of the Bond Fund equal to the greater of (A) the fair market value of the Facility to be released, such value to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, and (B) if such Facility is to be released in connection with its sale, the amount received or to be received by the Participant (after reasonable and customary closing costs) upon such sale; which amount so deposited shall be applied to effect the optional redemption of the Bonds as provided in Section 2.03(a) or Section 2.03(d) of the Indenture (or, if not available to be so applied by reason of the provisions of said Section 2.03(a) or Section 2.03(d), held by the Trustee in the Redemption Account of the Bond Fund until it can be so applied and not therein invested at a Yield in excess of the Yield on the Bonds); provided, however, that in the event the release is of the last remaining Facility, the Participant must further exercise its option to terminate this Agreement under Section 8.1 hereof and make all payments necessary to effect the optional redemption in whole of the Participant's Portion of the Bonds.

(e) No conveyance or release effected under the provisions of this Section 6.4 shall entitle the Participant to any abatement or diminution of the installment purchase payments payable under Section 3.3 hereof or the other payments required to be made by the Participant under this Agreement.

Section 6.5. Participant's Covenant as to Tax Exemption. (a) The Participant covenants with the Agency, with the Bond Insurer, with the Trustee and with each of the Holders of the Tax-Exempt Bonds, that it 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 Participant set forth in the Tax Regulatory Agreement are by this reference incorporated in this Agreement as though fully set forth herein.

(c) The obligation of the Participant to make the payments provided for in this Section shall be absolute and unconditional, and the failure of the Agency, the Trustee or any other Person to execute or deliver or cause to be delivered any documents or to take any action required under this Agreement or otherwise shall not relieve the Participant of its obligation under this Section.

Section 6.6. Financial Statements; No-Default Certificates. (a) The Participant agrees to furnish to the Agency (upon the Agency's written request therefor), the Trustee, the Program Facilitator, the Underwriter, the Bond Insurer and the Bondholders, as soon as available and in any event within one hundred eighty (180) days after the close of each Fiscal Year of the Participant, a copy of the annual audited consolidated financial statements of the Participant and its subsidiaries, including consolidating 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, accompanied by an opinion of an independent certified public accountant.

(b) The Participant shall deliver to the Agency (upon the Agency's written request therefor), the Underwriter, the Bond Insurer and the Trustee with each delivery of annual financial statements required by Section 6.6(a) hereof, (i) a certificate of an Authorized Representative of the Participant as to whether or not, as of the close of such preceding Fiscal Year of the Participant, and at all times during such Fiscal Year, the Participant was in compliance with all the provisions which relate to the Participant in this Agreement (including any material budget variations) and in any other Project 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 (or event that with the giving of notice or passage of time would constitute such an Event of Default), whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Participant with respect thereto, and (ii) a certificate of an Authorized Representative of the Participant that the insurance it maintains complies with the provisions of Section 4.5 of this Agreement and Section 1.2 of the Guaranty Agreement, that such insurance has been in full force and effect at all times during the preceding Fiscal Year of the Participant, and that duplicate copies of all policies or certificates thereof have been filed with the Agency, the Bond Insurer and the Trustee and are in full force and effect. In addition, upon twenty (20) days prior written request by the Agency, the Bond Insurer or the Trustee, the Participant will execute, acknowledge and deliver to the Agency, the Bond Insurer and the Trustee a certificate of an Authorized Representative of the Participant either stating that to his knowledge no default or breach exists hereunder or specifying each such default or breach of which he has knowledge. In addition, the certificate shall be accompanied by a letter from the Participant's counsel or the Participant's insurance carrier's counsel that summarizes any pending litigation against the Participant that may have a material adverse effect on its financial condition or its ability to operate one or more programs related to the Facility.

(c) No later than forty-five (45) days following the end of each March 31, June 30, September 30 and December 31, the Participant shall deliver to the Bond Insurer each of the following: (i) a copy of each monthly report prepared by the Participant during such fiscal quarter or a quarterly report covering the three-month period; and (ii) a certificate signed by an Authorized Representative of the Participant stating whether any "event of default" under any of the Project Documents (or event that with the giving of notice or passage of time would constitute such an Event of Default) has occurred and is continuing as of the date of such certificate.

(d) The Participant shall also promptly provide the Bond Insurer with the following: (i) a copy of any notice required to be given to Bondholders, nationally recognized municipal securities information repositories or state information depositories pursuant to Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission or to the Trustee, promptly after the same is so given, (ii) such additional information as may be reasonably requested by the Bond Insurer, and (iii) within five (5) Business Days after the Participant has knowledge thereof, notice of (a) any threatened (or subsequent actual) decertification, suspension or termination of any funding, accreditation or similar approval or consent material to the Participant (from any

body regulating the Participant) or the Facility, (b) the commencement of any litigation or other governmental or judicial proceeding in which an outcome adverse to the Participant could result in a judgment in excess of available insurance coverage or otherwise have a material adverse effect on the operations or financial condition of the Participant, and (c) any other event which reasonably could be expected to have a material adverse effect on the financial condition or ability of the Participant to operate one or more programs related to the Facility.

(e) The Participant will permit the Bond Insurer to discuss the affairs, finances and accounts of the Participant or any information that the Bond Insurer may reasonably request regarding the security for the Bonds insured by it with appropriate officers of the Participant. The Participant will grant the Bond Insurer access to the Facility, all books and records relating to the Bonds insured by it and the Participant on any Business Day upon reasonable prior notice.

(f) The Bond Insurer shall have the right to direct an accounting of the Participant's financial affairs at the Participant's expense.

(g) The Participant shall immediately notify the Agency, the Underwriter, the Bond Insurer 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 knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Participant 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 Participant 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 Participant, the Bond Insurer or the Trustee, against any property pledged by the Participant under any Security Document or against any of the installment purchase payments or other amounts payable under this Agreement or the interest of the Participant under the Company Lease or this Agreement other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, or payable without the addition of any fine, penalty, interest or cost for non-payment, Permitted Encumbrances, or Liens being contested as permitted by Section 6.7(b) hereof, the Participant forthwith upon 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 Bond Insurer 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 (unless such liens resulted solely from the act or omission of the Agency or the Trustee) 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 leasehold interest in the Facility.

(b) The Participant may at its sole expense contest (after prior written notice to the Agency, the Bond Insurer 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 Company Lease or this Agreement, of the Agency, the Participant, the Bond Insurer or the Trustee or against any of the installment purchase payments or other amounts payable under this Agreement, (2) neither the Facility thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Participant, the Agency, the Bond Insurer 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 Participant shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Trustee or the Bond Insurer to protect the security intended to be offered by the Indenture and the Agency Mortgage.

Section 6.8. Agency's Authority. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof.

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 PARTICIPANT 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 PARTICIPANT ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE PARTICIPANT IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE PARTICIPANT 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 Rebate Fund or the Bond Fund upon the expiration or termination of the term of all Installment Sale Agreements as provided therein, after payment in full of the Bonds (in accordance with Section 10.01 of the Indenture), the fees, charges and expenses of the Trustee, the Bond Registrar, the Paying Agents, the Bond Insurer and the Agency (including the reasonable fees and expenses of their respective counsel) in accordance with the Indenture and after all installment purchase payments and all other amounts payable

under all Installment Sale Agreements, shall have been paid in full, and after all amounts required to be rebated to the federal government pursuant to the Tax Regulatory Agreement or the Indenture shall have been so paid, shall be paid to the Agency by the Trustee and the Agency shall distribute such amounts to the Participants in such manner as it shall deem equitable. It is further agreed by the parties hereto that any amounts remaining in the Participant's Project Account, in the Participant's Renewal Fund Account, in the Participant's Earnings Fund Account or in the Participant's Subaccount in the Tax-Exempt Bond Debt Service Reserve Account in the Debt Service Reserve Fund, by reason of the payment in full of the Participant's Portion of the Bonds (in accordance with Section 10.01 of the Indenture) shall belong to and be paid to the Participant by the Trustee as overpayment of installment purchase payments, provided that the Trustee shall only pay such amounts to the Participant (i) upon the expiration or termination of the term of this Agreement as provided herein, and (ii) after payment in full of the Participant's Portion of the Bonds (in accordance with Section 10.01 of the Indenture), the fees, charges and expenses (including the reasonable fees and expenses of counsel) of the Trustee, the Bond Registrar, the Paying Agents, the Bond Insurer (as provided in the Bond Insurance Agreement) and the Agency in accordance herewith and the Indenture.

Section 6.11. Issuance of Additional Bonds. The Agency and the Participant recognize that under the provisions of, subject to the conditions set forth in and for one or more of the purposes set forth in the Indenture, the Agency is authorized to enter into a Supplemental Indenture and issue one or more series of Additional Bonds on a parity with the Initial Bonds. If the Participant is not in default hereunder, the Agency will consider the issuance of Additional Bonds in a principal amount as is specified in a written request of the Participant in accordance with the applicable provisions set forth in the Indenture. If Additional Bonds are to be issued pursuant to the Indenture in part 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, the purpose of which shall constitute a "project" within the meaning of the Act, or (iv) refunding the Participant's Portion of the Outstanding Bonds, the Agency and the Participant shall enter into an amendment to this Agreement providing, among other things, for the payment by the Participant of such additional installment purchase payments as are necessary in order to amortize in full the principal of and interest on the Participant's Portion of such Additional Bonds and any other costs in connection therewith. Schedule A attached hereto and made a part hereof shall also be appropriately amended to reflect the Participant's Portion of such Additional Bonds. In addition, the Agency and the Participant shall enter into an amendment of each Security Document to which they are a party to provide that the amounts guaranteed or otherwise secured thereunder be increased so as to secure the Participant's Portion of such Additional Bonds on a parity with the Participant's Portion of the Outstanding Bonds.

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, commencing August 1 immediately following the Closing

Date, until the termination of this Agreement, the Participant 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 C attached hereto and made a part hereof, certified as to accuracy by an Authorized Representative of the Participant. Upon the termination of this Agreement, the Participant shall submit to the Agency an employment report relating to the period commencing from the last such filed employment report through the end of the last payroll date of the preceding month, substantially in the form of Schedule C attached hereto and made a part hereof, certified as to accuracy by an Authorized Representative of the Participant.

(b) The Participant shall ensure that all employees and applicants for employment by the Participant 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) (the "Workforce Act") in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Participant agrees, where practicable, to first consider for employment at the Facility persons eligible to participate in the Workforce Act 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 Participant 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 Participant and the employees of the Participant 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 Participant shall provide to the Agency any employment information in the possession of the Participant which is pertinent to the Participant and the employees of the Participant 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 Participant, 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 Participant 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 Participant 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 Participant within sixty (60) days (or such longer period as may be established pursuant to the proviso to this sentence) of the receipt by the Participant 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 Bond Insurer), the Participant 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 installment purchase payments in immediately available funds in an amount sufficient to redeem the Participant's Portion of the Bonds Outstanding in whole at the Redemption Price of 100% of the aggregate principal amount of such 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 Participant 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 Participant 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 Bond Insurer 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 Participant, the Bond Insurer and the Trustee, which notice shall be no less than sixty (60) days prior to such meeting.

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

(c) Upon the circumstances set forth in Sections 2.03(c), (d) and (e) of the Indenture, the Participant shall pay or cause the prepayment of its installment purchase payment 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 Participant 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 Participant 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 if proceeds of the Participant's Portion of Tax-Exempt Bonds have been expended on such component of the Project, the Participant shall deliver to the Trustee, for deposit in a special subaccount of the Redemption Account, an amount equal to such excess only to the extent to which proceeds of such Tax-Exempt Bonds were expended for such component. The Trustee shall apply such moneys, at the written direction of an Authorized Representative of the Participant, to the purchase (at prices not exceeding par) and cancellation or redemption of an equal principal amount of the Participant's Portion of such Tax-Exempt Bonds.

(ii) If, after completion of the construction of a component of the Project, the Participant 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, and if proceeds of the Participant's Portion of Tax-Exempt Bonds have been expended on such component of the Project, the Participant shall, to the extent not inconsistent with the terms of such gift or grant, deliver to the Trustee, for deposit in a special subaccount of the Redemption Account, an amount of money equal to such gift or grant, but only to the extent to which proceeds of such Tax-Exempt Bonds were expended for such component. The Trustee shall apply such moneys, at the written direction of an Authorized Representative of the Participant, to the purchase (at prices not exceeding par) and cancellation or redemption of an equal principal amount of the Participant's Portion of such Tax-Exempt Bonds.

The Participant shall, prior to directing the redemption of any Bonds in accordance with this Section 6.13(d), consult with Nationally Recognized Bond Counsel for advice as to a manner of selection of Bonds for redemption that will not adversely affect the exclusion of interest on any Tax-Exempt Bonds from gross income for federal income tax purposes.

Section 6.14. Further Assurances. The Participant 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 Participant, as are necessary for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency, the Bond Insurer 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 Participant) 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 and the Participant to the Trustee and the Bond Insurer 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 Participant), 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 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 or the Participant. The Participant agrees to furnish the Agency, the Bond Insurer and the Trustee with the Opinion of Counsel addressed to the Agency, the Bond Insurer 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 Participant 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 Participant 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 Participant full authority for account of the Agency to perform any covenant or obligation of the Agency the non-performance of which is alleged to constitute a default in any notice received by the Participant, in the name and stead of the Agency, with full power of substitution.

Section 6.17. Preservation of Exempt Status. (a) The Participant represents and warrants that as of the Closing Date: (i) it is an organization described in Section 501(c)(3) of the Code; (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) it is in compliance with all 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 of determination continue substantially to exist as represented to the Internal Revenue Service; (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 it is in compliance with the provisions of said Code and any applicable regulations thereunder necessary to maintain such status.

(b) The Participant 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 its exemption under Section 501 of such Code; (ii) it shall not use more than three percent (3%) of the proceeds of the Participant's Portion 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 Section 501(c)(3) organizations; (iii) the Project conforms to the description contained in Section 4.3(a) hereof and it shall not directly or indirectly use the proceeds of any Tax-Exempt Bonds to make or finance loans to persons other than Section 501(c)(3) 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 any Tax-Exempt Bonds, would cause such Tax-Exempt Bonds to be "arbitrage bonds" under the Code or cause the interest paid by the Agency on such Tax-Exempt Bonds not to be excluded from gross income for federal income tax purposes in the hands of the Holders thereof; and (v) it shall use its best efforts to maintain the tax-exempt status of any Tax-Exempt Bonds.

Section 6.18. Securities Law Status. The Participant affirmatively represents, warrants and covenants that, as of the Closing Date, the Facility shall be operated (i) exclusively for civic or charitable purposes and (ii) not for pecuniary profit, all within the meaning, respectively, of the Securities Act of 1933, as amended, and of the Securities Exchange Act of 1934, as amended. The Participant further affirmatively represents, warrants and covenants that, as of the Closing Date, no part of the net earnings of the Participant shall 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 Participant 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 6.19. Current Facility Equipment Description. The Participant 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 Participant covenants and agrees (i) that no requisition shall be submitted to the Trustee for moneys from the Participant's Project Fund Account 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 Participant shall from time to time prepare and deliver to the Agency and the Trustee supplements to such Appendix in compliance with the foregoing. Such supplement shall be executed and delivered by the appropriate parties and, at the Agency's or the Participant's request, duly recorded by the Participant, and, at the Agency's request, additional financing statements with respect thereto shall be duly filed by the Participant.

Section 6.20. Additional Indebtedness. The Participant may not incur any additional Indebtedness (including, but not limited to, guarantees or derivatives in the form of credit default swaps or total-rate-of-return swaps or similar instruments), whether or not issued under the Indenture, without the prior written consent of the Bond Insurer, except for the following:

(a) Indebtedness evidenced by Additional Bonds issued in accordance with Section 6.11 hereof,

(b) Indebtedness (other than for working capital, other than installment purchase payments payable under installment sale agreements and other than rents payable under lease agreements) incurred in the ordinary course of the Participant's business for its current operations including the maintenance and repair of its property, advances from third party payors and obligations under reasonably necessary employment contracts,

(c) Indebtedness in the form of rentals under leases which are not required to be capitalized in accordance with generally accepted accounting principles in effect on the Closing Date,

(d) Indebtedness in which recourse to the Participant for repayment is expressly limited to proceeds from the sale, lease or foreclosure of any tangible property of the Participant other than the Facility,

(e) Indebtedness secured solely by the Accounts Receivable of the Participant, subject to the limitations of Section 3.5 hereof, and

(f) Indebtedness the proceeds of which will be applied to a purpose consistent with the Participant's corporate purposes; provided, however, that prior to incurring any Non-PPA Indebtedness pursuant to this clause (f), the Participant shall deliver to the Bond Insurer and the Trustee either (I) a certificate signed by the Participant's chief executive officer or chief financial officer demonstrating a Total Debt Service Coverage Ratio of 1.25x for the most recent Fiscal Year for which audited financial statements exist or (II) a certificate of an

independent certified public accountant not unacceptable to the Bond Insurer and the Trustee demonstrating that the estimated Total Net Revenues Available for Debt Service for the first full Fiscal Year following the estimated completion of the capital additions or repairs financed with the proceeds of such additional Non-PPA Indebtedness, or following the incurrence of Non-PPA Indebtedness for other purposes, will support a Total Debt Service Coverage Ratio of not less than 1.25x. In preparing its calculations of the required ratios, the Participant's representative or the independent certified public accountant, as applicable, shall include the proposed debt service requirements with respect to the Non-PPA Indebtedness to be issued.

Section 6.21. Additional Covenants. The Participant and the Agency further agree to abide by the covenants in Appendix D attached hereto and made a part hereof.

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 Participant to pay any installment purchase payment that has become due and payable by the terms of Section 3.3 (a) or (j) hereof, or Section 6.3 hereof, and continuance of such default for twenty (20) days;

(b) Failure of the Participant to pay any amount (except the obligation to pay installment purchase payments under Section 3.3 (a), (b) or (j) hereof, or Section 6.3 hereof) 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 Participant of written notice specifying the nature of such default from the Agency, the Trustee, the Bond Insurer or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding;

(c) Failure of the Participant 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), (b) or (f) hereof) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Participant of written notice specifying the nature of such default from the Agency, the Trustee, the Bond Insurer or the Holders of more than twenty-five percent (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 Participant 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 Participant 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 Participant, 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 Participant or of all or any substantial part of its 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 shall be entered and continue unstayed and in effect, for a period of sixty (60) days or (iv) the Participant 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 Participant as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(f) Failure of the Participant to make any payment when due pursuant to Section 3.3(b) hereof and continuance of such default for five (5) Business Days;

(g) Any representation or warranty made (i) by or on behalf of the Participant in the application, commitment letter and related materials submitted to the Agency or the Underwriter for approval of the Project or its financing, or (i) by the Participant herein or in any of the other Project Documents or (ii) in the Letter of Representation and Indemnity Agreement delivered to the Agency, the Trustee, the Bond Insurer and the Underwriter, or (iii) in the Tax Regulatory Agreement, or (iv) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

(h) An “Event of Default” under Section 8.01(a)(i), (ii) or (iii) of the Indenture due to an “Event of Default” hereunder, or under any other Project Document to which the Participant is a party shall occur and be continuing; or

(i) The occurrence and continuance of an “Event of Default” (without cure within any applicable grace period) with respect to any Indebtedness of the Participant aggregating at least \$500,000.

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 (at the direction of the Bond Insurer to the extent that (y) a Bond Insurer Disqualification Event shall not have occurred and be continuing, and (z) the Bonds Outstanding insured by the Bond Insurer shall constitute at least a majority in aggregate principal amount of the Bonds Outstanding, or, if either (y) or (z) shall not exist, then at the direction of the Holders of over twenty-five percent (25%) of the Bonds Outstanding), as and to the extent provided in Article VIII of the Indenture (provided, however, for so long as no Bond Insurer Disqualification Event shall have occurred and be continuing, in all cases, the Bond Insurer shall be entitled to deliver such direction on behalf of the Holders of the Initial Bonds and any other Bonds it insures as provided in Sections 7.10(a)(iv), 11.05 and 12.04 of the Indenture), may cause all principal installments of installment purchase payments payable under Section 3.3 hereof for the remainder of the term of this Agreement to be immediately due and payable (which acceleration need not require the concurrent acceleration of the Initial Bonds), 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 installment purchase payments 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 Bond Insurer, 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 (at the direction of the Directing Party), or the Trustee (at the direction of the Directing Party), may re-enter and take possession of the Facility without terminating this Agreement, and sub-sublease or sub-sub-sublease, as applicable, the Facility for the account of the Participant, holding the Participant liable for the difference in the rental payments and other amounts payable by the sublessee in such subletting, and the installment purchase payments and other amounts payable by the Participant hereunder;

(c) The Agency, with the prior written consent of the Trustee (at the direction of the Directing Party), or the Trustee (at the direction of the Directing Party), may terminate this Agreement, and exclude the Participant 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 Participant shall cease and terminate. No such termination of this Agreement shall relieve the Participant of its liability and obligations hereunder and such liability and obligations shall survive any such termination;

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

(e) The Trustee (at the direction of the Directing Party) may take any action permitted under the Indenture with respect to an Event of Default thereunder that was caused by the Participant; and

(f) The Agency, without the consent of the Trustee, the Bond Insurer, any Bondholder or any other Person but with prompt notice to the Trustee and the Bond Insurer, may proceed to enforce the Agency's Reserved Rights by (i) bringing an action for damages, injunction or specific performance, and/or (ii) taking whatever action at law or in equity as may appear necessary or desirable to collect payments of amounts due by the Participant under the Agency's Reserved Rights or to enforce the performance or observance of any obligations, covenants or agreements of the Participant under the Agency's Reserved Rights, and/or (iii) terminating the Company Lease and this Agreement and conveying all of the Agency's right, title and interest, if any, in the Facility to the Participant, which upon such enforcement by the Agency of the Agency's Reserved Rights, the Participant hereby irrevocably agrees to accept. The Participant hereby appoints the Agency as its agent and attorney-in-fact to execute, deliver and record on behalf of Participant any documents and instruments which may be necessary to effectuate such termination of the Company Lease and this Agreement as described in clause (iii) immediately preceding; and such documents and instruments shall include, but not be limited to, real property transfer tax forms and affidavits. The Participant agrees that the

agency and power of attorney which it has granted in the sentence preceding shall be deemed irrevocable for the purposes described and that same shall be coupled with an interest.

In the event that the Participant fails to make any installment purchase payment required in Section 3.3 hereof, the installment payment so in default shall continue as an obligation of the Participant 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 Participant from the Participant's obligations hereunder, all of which shall survive any such action.

Section 7.3. Reletting of Facility. If the right of the Participant 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 Participant 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 Bond Insurer, but the Agency shall not unreasonably refuse to accept or receive (or delay acceptance or receipt) any suitable occupant or tenant offered by the Participant. Notwithstanding the foregoing, any reletting of the Facility or any part thereof shall be permitted under this Section 7.3 only if the Trustee, the Agency and the Bond Insurer shall receive an Opinion of Nationally Recognized Bond Counsel to the effect that such reletting will not adversely affect the exclusion of the interest on any Tax-Exempt Bonds from gross income for federal income tax purposes. The Agency and the Trustee shall not otherwise be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Participant, and if a sufficient sum shall not be received from any reletting to satisfy the rental payments hereby agreed to be made by the Participant, after paying the expenses of reletting and collection, then the Participant 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 Participant.

Section 7.4. Remedies Cumulative. The rights and remedies of the Agency, the Bond Insurer or the Trustee under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency, the Bond Insurer or the Trustee allowed by law with respect to any default under this Agreement. Failure by the Agency, the Bond Insurer 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 Participant 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 Participant with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Participant 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. (a) 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 Bond Insurer and/or the Participant or any delay or omission on the part of the Agency and/or the Trustee and/or the Bond Insurer in exercising any rights hereunder or under the Indenture or under any other Project Document shall operate as a waiver. To the extent permitted by applicable law, the Participant hereby waives the benefit and advantage of, and covenants not to assert against the Agency, the Bond Insurer 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.

(b) So long as no Bond Insurer Disqualification Event shall have occurred and be continuing, the Bond Insurer shall have the right (in lieu of the Trustee and the Holders of the Initial Bonds) to (i) annul a declaration of acceleration of the Initial Bonds under Section 7.2(a) hereof and (ii) approve any waiver of an Event of Default under this Agreement.

Section 7.6. Effect on Discontinuance of Proceedings. In case any proceeding taken by the Trustee, the Bond Insurer or the Agency under the Indenture or this Agreement or under any other Project 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, the Bond Insurer or the Agency, then, and in every such case, the Participant, the Agency, the Bond Insurer, the Trustee 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 Participant should default under any of the provisions of this Agreement, and the Agency, the Bond Insurer or the Trustee should employ attorneys or incur other expenses for the collection of installment purchase payments or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Participant herein contained, the Participant agrees that it will on demand therefor pay to the Agency, the Bond Insurer or the Trustee the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

Section 7.8. Consents of the Trustee. Except as expressly provided to the contrary in this Agreement or in any other Security Document, all provisions in this Agreement regarding consents, directions, approvals or requests by the Trustee shall, for so long as any Bonds shall be Outstanding, be upon the written direction of the Directing Party.

ARTICLE VIII

Options

Section 8.1. Options. (a) The Participant has the option to make advance installment purchase payments for deposit in the Participant's Installment Purchase Payment Account of the Bond Fund to effect the retirement of the Participant's Portion of the Bonds in whole or the redemption in whole or in part of the Participant's Portion of the Bonds, all in accordance with the terms of the Indenture; provided, however, that no partial redemption of the Participant's Portion of the Bonds may be effected through advance installment purchase payments hereunder if there shall exist and be continuing an Event of Default unless such partial redemption shall cure such Event of Default. The Participant shall exercise its option to make such advance installment purchase payments by delivering a written notice of an Authorized Representative of the Participant to the Trustee in accordance with the Indenture (with a copy to the Bond Insurer and to the Agency) setting forth (i) the amount of the advance installment purchase payment, (ii) the principal amount of the Participant's Portion of the Bonds Outstanding requested to be redeemed with such advance installment purchase 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 the Participant's Portion of the Bonds are to be redeemed. Such advance installment purchase payment shall be paid to the Trustee in legal tender on or before the redemption date and shall be an amount which, when added to the amount on deposit in the Participant's Installment Purchase Payment Account of the Bond Fund and available therefor, and in the Participant's Subaccount of the Tax-Exempt Bond Debt Service Reserve Account of the Debt Service Reserve Fund and available therefor, will be sufficient to pay the Redemption Price of the Participant's Portion of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Agency, the Bond Insurer, the Bond Registrar, the Trustee and the Paying Agents in connection with such redemption. In the event the Participant's Portion of the Bonds are to be redeemed in whole or otherwise retired, the Participant shall further pay on or before such redemption date, in legal tender, to the Agency, the Trustee, the Bond Insurer, the Program Facilitator, 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 (with respect to the Participant) together with (i) all other amounts due and payable under this Agreement and the other Security Documents to which the Participant is a party, and (ii) any amounts required to be rebated to the federal government pursuant to the Indenture or the Tax Regulatory Agreement (in each case, with respect to the Participant).

(b) The Participant 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 of the Participant's Portion of the 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 Participant shall pay to the Trustee, in consideration thereof, in legal tender, advance installment purchase payments, for deposit in the Participant's Installment Purchase Payment Account of the Bond Fund (if payment in full of the principal or the

Redemption Price of, and interest on, all of the Participant's Portion of 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:

(1) an amount which, when added to the amount on deposit in the Participant's Installment Purchase Payment Account of the Bond Fund and available therefor and the amount on deposit in the Participant's Subaccount of the Tax-Exempt Bond Debt Service Reserve Account of the Debt Service Reserve Fund and available therefor, will be sufficient to redeem, purchase or defease the Participant's Portion of 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 Participant's Portion of the Outstanding Bonds;

(2) expenses of redemption, the fees and expenses of the Agency, the Bond Insurer and the Trustee and all other amounts due and payable under this Agreement, the Indenture (with respect to the Participant) and each other of the Project Documents to which the Participant is a party on or before such date; and

(3) one dollar.

(d) Upon such payment in full of the principal of and interest on the Participant's Portion of the Outstanding Bonds (whether at maturity or earlier redemption) in accordance with Section 8.1(c) hereof, the Participant may terminate this Agreement by (1) delivering to the Agency prior written notice of an Authorized Representative of the Participant no more than thirty (30) days after the payment in full of the Participant's Portion of the Bonds of the exercise of such option to terminate this Agreement which notice shall set forth a requested closing date for the termination of this Agreement which shall be not later than sixty (60) days after the payment in full of the Participant's Portion of the Bonds, and (2) paying on such closing date the fees and expenses of the Agency, the Bond Insurer and the Trustee and all other amounts due and payable under this Agreement, under the Indenture (with respect to the Participant) and under the other Project Documents to which the Participant is a party. Upon the written request of the Participant, the Agency may approve the extension or waiver of any of the time periods set forth in this paragraph.

(e) The Participant shall not, at any time, assign or transfer its option to terminate this Agreement as contained in this Section 8.1 separate and apart from a permitted assignment of this Agreement pursuant to Section 9.3 hereof without the prior written consent of the Agency, the Bond Insurer and the Trustee.

Section 8.2. Termination on Exercise of Option to Terminate. 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 Participant a termination of this Agreement in recordable form. Concurrently with the delivery of such termination, 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 Participant's Portion of the Bonds.

Section 8.3. Option to Purchase or Invite Tenders of Bonds. The Participant 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 Participant or by any Affiliate thereof shall be delivered to the Trustee for cancellation within fifteen (15) days of the date of purchase and shall be credited to the Participant's Portion of the Bonds. The Agency shall at all reasonable times make available or cause to be made available to the Participant 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 Participant's Portion of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, the Participant shall terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Program Facilitator, the Bond Insurer, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Project Documents to which the Participant is a party, together with any amounts required to be rebated by the Participant 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 Participant under Sections 3.1, 6.2, 6.3, 8.5 and 9.17 hereof. Notwithstanding any other provision of this Agreement to the contrary, upon the later of the full payment of the Participant's Portion of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, and upon receipt of forty-five (45) days prior written notice of the Agency requesting termination, the Participant shall terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Program Facilitator, the Bond Insurer, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and any other Project Documents to which the Participant shall be a party, together with any amounts required to be rebated by the Participant to the federal government pursuant to the Indenture or the Tax Regulatory Agreement, and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Participant under Sections 3.1, 6.2, 6.3, 8.5 and 9.17 hereof. In the event the Participant does not terminate this Agreement within such 45 day period, then, commencing on the 46th day after transmittal of the notice requesting termination as above provided, the Participant shall, in addition to all other payment obligations due to the Agency hereunder, make installment purchase payments to the Agency in the amount of \$500.00 per day until the Participant shall terminate this Agreement in accordance with the provisions 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 Initial 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 Participant hereby agrees as follows:

(i) If there shall occur a Recapture Event (as defined below) prior to the completion of a Project and occupancy of a Facility Realty by the Participant for its intended purposes, the Participant shall pay to the Agency, as a return of public benefits conferred by the Agency, all Benefits (as defined below).

(ii) (x) With respect to a Facility where the Project has not been completed prior to the Closing Date, if there shall occur a Recapture Event after the date on which a Project shall have been substantially completed, which shall be that date as stated in the certificate of the Authorized Representative of the Participant delivered to the Agency pursuant to Section 2.2 hereof, but not later than the Completion Date for such Facility (the "Operations Commencement Date"), or (y) with respect to a Facility where the Project has been completed on or prior to the Closing Date, if there shall occur a Recapture Event after the Closing Date (the "Operations Commencement Date"), the Participant shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts:

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

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

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

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

6. 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 any exemption from mortgage recording tax and filing and recording fees derived from the Agency's participation in the financing or refinancing of the costs of the Project allocated to such Facility.

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

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

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

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

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

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

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if (a) 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 such Facility, or (ii) the inability at law of the Participant to rebuild, repair, restore or replace such 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 Participant or (b) the Participant shall have applied, or shall have irrevocably committed to apply, the proceeds of any disposition of such Facility (net of the reasonable costs incurred by the Participant in connection with such disposition, including any commissions, taxes, filing and recording fees and legal and the professional fees and expenses in connection therewith) to finance a "civic facility" (as defined in the Act) in The City of New York within eighteen months of such disposition of such Facility.

(b) The Participant 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 Participant under this Section 8.5 shall not be paid on demand by the Participant, 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 Participant 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 Participant under this Section 8.5.

ARTICLE IX

Miscellaneous

Section 9.1. Indenture; Amendment. The Participant shall have and may exercise all the rights, powers and authority stated to be in the Participant 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 Participant or otherwise adversely affects the Participant without the written consent of the Participant.

Section 9.2. Force Majeure. In case by reason of force majeure either 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 Participant to make the installment purchase 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. (a) Except as provided in Section 9.3(d) hereof, the Participant may not at any time assign or transfer this Agreement, or sublet the whole of any Facility or any part of any Facility without the prior written consent of the Trustee (at the direction of the Directing Party) and the Agency (which consent of the Agency shall take into consideration the Agency's subletting policies as in effect from time to time); provided further, that, (1) the Participant shall nevertheless remain liable to the Agency for the payment of all installment purchase payments and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party, (2) any assignee or transferee of the Participant 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

Participant to be kept and performed from and after such assignment, transfer or sublease, shall be jointly and severally liable with the Participant for the performance thereof from and after such assignment, transfer or sublease, 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 (which opinion shall be addressed to the Agency, the Bond Insurer and the Trustee), such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Participant for the payment of all installment purchase payments nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Project Document to which the Participant shall be a party, nor impair or limit in any respect the obligations of any obligor under any other Project Document, nor cause the interest on the Tax-Exempt Bonds to become includable in gross income for purposes of federal income taxes, (4) any assignee, transferee or sublessee shall utilize the Facility as a qualified "project" within the meaning of the Act, and, with respect to that portion of the Facility allocable to the Tax-Exempt Bonds, shall be a not-for-profit corporation constituting a Tax-Exempt Organization, (5) such assignment, transfer or sublease shall not violate any provision of this Agreement, the Indenture or any other Project Document, (6) with respect to any subletting in part, the term of each such sublease does not exceed five (5) years and at any given date, no more than an aggregate of twenty percent (20%) of such space would be subleased by the Participant, (7) such assignment, transfer or sublease shall in no way diminish or impair the Participant's obligation to carry the insurance required under Section 4.5 of this Agreement and Section 1.2 of the Guaranty Agreement, and the Participant shall furnish written evidence satisfactory to the Agency, the Bond Insurer and the Trustee that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease, and (8) each such assignment, transfer or sublease contains such other provisions as the Agency, the Bond Insurer or the Trustee may reasonably require. The Participant shall furnish or cause to be furnished to the Agency, the Bond Insurer 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.

(b) Any consent by the Agency 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 Participant, or the successors or assigns of the Participant, to obtain from the Agency and the Trustee consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Agency or the Trustee under the foregoing covenant by the Participant.

(c) If the Facility or any part thereof be sublet or occupied by any Person other than the Participant, the Agency, in the event of the Participant's default in the payment of installment purchase payments may, and is hereby empowered to, collect installment purchase payments 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 installment purchase payments 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 Participant from the further performance of the covenants herein contained on the part of the Participant.

(d) Notwithstanding any other provision of this Agreement, the Participant may sublease or sub-sublease, as applicable, any Facility to the Agency under the Company Lease, and the Agency may sell its leasehold interest in such Facility under the Company Lease to the Participant pursuant to this Agreement, in each case without the prior written consent of the Trustee or the Bond Insurer, in connection with the financing of the renovation, construction, equipping or completion of a Project of such Facility by the issuance of bonds by the Agency after the Closing Date.

(e) The Participant shall deliver to the Agency on January 1 of each year, commencing January 1 immediately after the Closing Date, a completed Subtenant Survey in the form attached hereto and made a part hereof as Schedule D.

Section 9.4. Priority of Indenture and Agency Mortgage. Pursuant to the Agency Mortgage, the Agency will mortgage its leasehold interest in the Mortgaged Property under the Company Lease and, pursuant to the Indenture, the Agency will pledge and assign the installment purchase payments and certain other moneys receivable under this Agreement to the Trustee as security for payment of the principal or Redemption Price, if applicable, of and interest on the Participant's Portion of the Bonds, and this Agreement shall be subject and subordinate to the Agency Mortgage and the Indenture and such mortgage lien, security interest, pledge and assignment thereunder.

Section 9.5. Benefit of and Enforcement by Bondholders. (a) The Agency and the Participant agree that this Agreement is executed in part to (i) induce the purchase by others of the Bonds, (ii) induce the issuance of the Bond Insurance Policy by the Bond Insurer, and (iii) further secure the Participant's Portion of the Bonds, and accordingly all covenants and agreements on the part of the Agency and the Participant as set forth in this Agreement are hereby declared to be for the benefit of the Bond Insurer and the Holders from time to time of the Bonds and may be enforced as provided in Article VIII of the Indenture on behalf of the Bond Insurer and the Bondholders by the Trustee.

(b) The Bond Insurer is explicitly recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder (excluding, however, the Agency's Reserved Rights); provided, however, that the Bond Insurer shall only exercise rights on behalf of the Initial Bonds and any other Bonds insured by the Bond Insurer (subject to the provisions of Section 7.10 of the Indenture).

Section 9.6. Amendments. This Agreement may be amended only with the concurring written consent of the Trustee given in accordance with the provisions of the Indenture (and, if required under Article XII of the Indenture, the consent of the Bond Insurer) and only if the Participant shall assume in writing the obligations of such amended Agreement.

Section 9.7. Notices. All notices, certificates or other communications required or permitted to be given hereunder shall be in writing and shall be given by hand delivery, Federal Express, or other reputable courier service, or by postage prepaid registered or certified mail, return receipt requested, and shall (except to the extent otherwise expressly provided herein) be deemed to have been given and received (whether actually received or not) (i) when

received at the following addresses if hand delivered or sent by Federal Express, or other reputable courier service, and (ii) three (3) Business Days after being post-marked if sent by registered or certified mail, return receipt requested, addressed to the parties listed below as follows: if to the Agency, to New York City Industrial Development Agency, 110 William Street, New York, New York 10038, Attention: General Counsel, with a copy to the Executive Director of the Agency at the same address, if to the Participant, to the Participant's Notice Address, if to the Trustee, to The Bank of New York, 101 Barclay Street-21W, New York, New York 10286, Attention: Corporate Trust Administration, and if to the Bond Insurer, to ACA Financial Guaranty Corporation, 140 Broadway, 47th Floor, New York, New York 10005, Attention: Surveillance Manager (except that notices of Events of Default shall be directed to the General Counsel); or to such other substitute address and/or addressee as any party hereto shall designate by written notice to the other party in accordance with the terms of this Section 9.7; provided, however, that no such notice of change of address and/or addressee shall be effective unless and until actually received by the party to whom such notice is sent.

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 Participant 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 Participant will permit the Bond Insurer, the Trustee, or their respective duly authorized agents, at all reasonable times upon written notice to enter upon the Facility Realty and to examine and inspect the Facility and exercise their rights hereunder, under the Indenture and under the other Project Documents with respect to the Facility. The Participant will further permit the Agency, or its duly authorized agent, at all reasonable times upon written notice to enter upon the Facility but solely for the purpose of assuring that the Participant 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 Participant.

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, the Participant and their respective successors and assigns.

Section 9.13. Net Agreement. It is the intention of the parties hereto that this Agreement be "net" to the Participant and that all of the installment purchase payments payable under Sections 3.3, 6.13, 7.2, 8.1 and 8.2 hereof be available for debt service on the Participant's Portion of 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 without regard to conflicts of laws principles thereof.

Section 9.15. Investment of Funds. Any moneys held as part of the Rebate Fund, the Debt Service Reserve 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 specific written request of an Authorized Representative of the Program Facilitator, 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, the Bond Insurer, the Program Facilitator 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, fee, tax or other charge 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 Participant and the Participant 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 Participant 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 (as set forth in this Section) and the right of re-entry or re-possession (as set forth in Section 7.2 hereof) 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 Participant shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Participant shall use its best efforts to ensure that employees and applicants for employment with the Participant 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 Participant shall, in all solicitations or advertisements for employees placed by or on behalf of the Participant, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Participant 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 Participant 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.

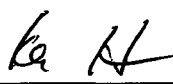
Section 9.19. No Recourse under This Agreement or on Bonds. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, 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, Sinking Fund Installments for, 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.

Section 9.20. References to Bond Insurer Ineffective. All references in this Agreement to the "Bond Insurer" shall be deemed of no force and effect when the Bond Insurance Policy shall no longer be in effect and all amounts owed to the Bond Insurer under the Bond Insurance Agreement shall have been paid in full.

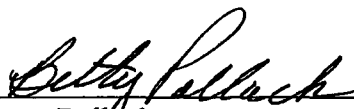
Section 9.21. Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed as of, and was delivered on, the Closing Date.

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, and the Participant has caused its corporate name to be subscribed hereto by its Authorized Representative pursuant to a resolution duly adopted by its Board of Directors, all being done as of the year and day first above written.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

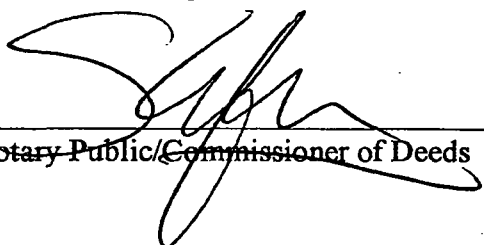
By 
Kei Hayashi
Deputy Executive Director

OTSAR EARLY CHILDHOOD CENTER

By 
Betty Pollack
Executive Director

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

On the 23rd day of February, 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, or the person or entity upon behalf of which the individual acted, executed the instrument.

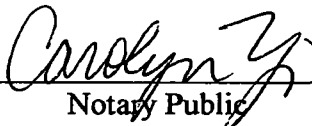


Notary Public/Commissioner of Deeds

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 25th day of February, in the year two thousand four, before me, the undersigned, personally appeared Betty Pollack, 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 or entity upon behalf of which 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 FACILITY REALTY

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of West 13th Street, distant 160 feet southerly from the corner formed by the intersection of the southerly side of Avenue W and the westerly side of West 13th Street;

RUNNING THENCE westerly parallel with Avenue W, 100 feet;

THENCE southerly parallel with West 13th Street, 80 feet;

THENCE easterly parallel with Avenue W, 100 feet to the westerly side of West 13th Street;

THENCE northerly along the westerly side of West 13th Street, 80 feet to the point or place of BEGINNING.

**OTSAR Early Childhood Center
2324 West 13th Street
Brooklyn, NY 11223
Section: 21; Block: 7160; Lot: 15
Title No. 326K13250-18**

DESCRIPTION OF FACILITY EQUIPMENT

Furniture & Equipment List (Please add and delete items as necessary)

Classroom/Therapy Room's	Number of each item
Teacher's Desk	18
Teacher's Chairs	24
2 Drawer File Cabinets	8
36" Tables (Children desk)	21
24" Tables (Children's desk)	3
Small Children's Chairs	125
Cube Chairs	8 Sets
Storage Closets	35
Cubby Units - 4	6
Cubby Units - 5	10
Cubby Unit - 2	3
Toy Storage Units	16
Sand Tables	8
Library Shelves	8
Computer Desks	10
Computer's w/Touch Monitors	16
Printers	16
Office	
Office Desk's	5
Office Chair's	5
Principal's Desk	1
Principal's Chair	1
5 Drawer File Cabinet	2
Form Cabinet	1
Visitor's Chair's	7
Server	1
Laser Printer	1
Office Computer's	5
Fax Machine	1
Laminating machine	1
Other	

APPENDIX A

ADDITIONAL DEFINITIONS

Agreement shall mean this Installment Sale Agreement, dated as of February 1, 2004, between the Agency and the Participant, and shall include any and all amendments and supplements thereto hereafter made in conformity herewith and with the Indenture.

Audit shall mean a certain Phase I Environmental Site Assessment, dated June 24, 2003, prepared by Ambient Group, Inc.

Bond Resolution shall mean the resolution of the Agency adopted on July 29, 2003, as amended on December 9, 2003, authorizing the issuance of the Initial Bonds.

Closing Date shall mean February 27, 2004.

Completion Date shall mean June 1, 2005.

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

Facility Equipment shall mean those items of equipment or furnishings acquired in whole or in part with the proceeds of the Bonds for installation or use at the Facility Realty as part of the Project pursuant to Section 2.1 of this Agreement and described in the Description of Facility Equipment in the Appendices attached hereto and made a part hereof and to the Indenture, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. The Facility Equipment shall, in accordance with the provisions of Sections 4.2 and 5.1 of this Agreement, include all property substituted for or replacing items of the Facility Equipment and exclude all items of the Facility Equipment so substituted for or replaced, and further exclude all items of the Facility Equipment removed as provided in Section 4.2 hereof.

Facility Realty shall mean all of the Participant's interest, as tenant, in the land described in the Description of Facility Realty in the Appendices attached hereto and made a part hereof and to the Indenture, 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.

Fiscal Year of the Participant shall mean a year of 365 or 366 days, as the case may be, commencing on July 1 and ending on June 30, or such other year of similar length as to which the Participant shall have given prior written notice thereof to the Agency, the Bond Insurer and the Trustee at least ninety (90) days prior to the commencement thereof.

Inducement Resolution shall mean the resolution of the Agency adopted on July 29, 2003, as amended on December 9, 2003, authorizing the Projects, and undertaking to permit the issuance of its civic facility revenue bonds to finance the Project.

Initial Bonds shall mean, collectively, the Series 2004A-1 Bonds and the Series 2004A-2 Bonds.

Participant's Notice Address shall mean 2324 West 13th Street, Brooklyn, New York 11223, Attention: Executive Director, with a copy to Nolan & Heller, LLP, 39 North Pearl Street, 3rd Floor, Albany, New York 12207, Attention: Robert G. Wakeman, Esq.

Prime Landlord shall mean Marlboro Jewish Center and OTSAR Family Services, Inc. and their respective successors and assigns as landlord under the Prime Lease.

Prime Lease shall mean that certain Lease Agreement, dated as of July 23, 2003, between the Prime Landlord and the Participant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Project shall mean the acquisition, renovation, improvement, equipping and furnishing of a civic facility consisting of a facility providing special education to pre-school children with developmental disabilities located at 2324 West 13th Street, Brooklyn, New York.

Series 2004A-1 Bonds shall mean the \$13,920,000 Civic Facility Revenue Bonds (Special Needs Facilities Pooled Program), Series 2004A-1, of the Agency issued under the Indenture.

Series 2004A-2 Bonds shall mean the \$760,000 Civic Facility Revenue Bonds (Special Needs Facilities Pooled Program), Series 2004A-2 (Federally Taxable), of the Agency issued under the Indenture.

Termination Date shall mean 11:59 p.m., New York City time, the earliest of (i) July 1, 2024, (ii) the termination or rescission of the Prime Lease, (iii) one Business Day prior to the expiration of the term of the Prime Lease, (iv) the assignment by the Participant of its interest in the Prime Lease (other than pursuant to Section 6.1 hereof), (v) the day on which the Participant ceases to possess the Facility Realty, or (vi) such date as this Agreement may be terminated as herein provided.

Underlying Facility Realty Documents shall mean the Prime Lease.

APPENDIX B

ADDITIONAL REPRESENTATIONS AND WARRANTIES OF THE PARTICIPANT

(a) The total cost of the Project being funded with the Initial Bonds is at least the Participant's Portion of the Initial Bonds.

(b) With respect to the Facility:

1. The Prime Lease is in full force and effect, and the Participant has no knowledge of any breach or default on its part thereunder which, if uncured, might cause an "event of default" under the Prime Lease.

2. The Facility Realty consists of the entire property demised to the Participant under the Prime Lease.

3. The execution, delivery and performance of this Agreement and of the Company Lease by the Participant do not constitute a breach, default or violation of the terms of the Prime Lease, nor do they require any consent of the Prime Landlord which consent has not been obtained prior to the date hereof.

4. The Prime Lease expires on June 30, 2018, and the Participant has an existing option to extend the terms of the Prime Lease to June 30, 2023 and to June 30, 2028.

5. Under the Company Lease, the Agency was vested with a good and valid leasehold interest to all property constituting part of the Facility, and all property of the Facility is subject to the Company Lease and this Agreement.

APPENDIX C

INSTALLMENT PURCHASE PAYMENT PROVISIONS

Pursuant to Section 3.3 (a) hereof, the Participant covenants to make installment purchase payments which the Agency agrees shall be paid by the Participant directly to the Trustee on each Installment Purchase Account for deposit in the Participant's Rental Payment Account in an amount equal to the sum of:

(i) with respect to interest due and payable on the Initial Bonds, commencing on April 1, 2004, through and including June 1, 2004, an amount equal to one-third (1/3) of the interest on the Participant's Portion of the Initial Bonds payable on the first Interest Payment Date (after taking into account the Participant's Portion of any amounts on deposit in the Interest Account of the Bond Fund), and thereafter, commencing on July 1, 2004 (the first Interest Payment Date), in an amount equal to one-sixth (1/6) of the amount of interest which will become due and payable on the Participant's Portion of the Initial Bonds on each next succeeding Interest Payment Date (after taking into account the Participant's Portion of any amounts on deposit in the Interest Account of the Bond Fund), provided that in any event the aggregate amount so paid with respect to interest on the Participant's Portion of the Initial Bonds on or before the Installment Purchase Payment Date immediately preceding an Interest Payment Date shall be an amount sufficient to pay the interest next becoming due on the Participant's Portion of the Initial Bonds on such immediately succeeding Interest Payment Date; plus

(ii) with respect to Sinking Fund Installment payments due on the Participant's Portion of the Initial Taxable Bonds (including the final maturity Sinking Fund Installment for the Initial Taxable Bonds constituting term bonds), commencing on April 1, 2004, an amount equal to one-third (1/3) of the amount of the Participant's Portion of the Sinking Fund Installment due on the Initial Taxable Bonds payable on the first Sinking Fund Installment payment date of July 1, 2004, and thereafter, commencing on July 1, 2004 (the Installment Purchase Payment Date corresponding to such first Sinking Fund Installment payment date), in an amount equal to one-twelfth (1/12) of the amount of the Participant's Portion of the Sinking Fund Installment on such Initial Taxable Bonds becoming due on the next Sinking Fund Installment payment date; provided that in any event the aggregate amount so paid with respect to the Participant's Portion of the Sinking Fund Installments on the Initial Taxable Bonds on or before the Installment Purchase Payment Date immediately preceding a Sinking Fund Installment payment date of the Initial Taxable Bonds shall be an amount sufficient to pay the Sinking Fund Installment of the Participant's Portion of the Initial Taxable Bonds Outstanding becoming due on such next succeeding Sinking Fund Installment payment date; plus

(iii) with respect to Sinking Fund Installment payments due on the Participant's Portion of the Initial Tax-Exempt Bonds (including the final maturity Sinking Fund Installments for the Initial Tax-Exempt Bonds constituting term bonds), commencing on July 1, 2005, an amount equal to one-twelfth (1/12) of the amount of the Participant's Portion of the Sinking Fund Installment due on the Initial Tax-Exempt Bonds becoming due on the next

Sinking Fund Installment payment date; provided that in any event the aggregate amount so paid with respect to the Participant's Portion of the Sinking Fund Installments on the Initial Tax-Exempt Bonds on or before the Installment Purchase Payment Date immediately preceding a Sinking Fund Installment payment date of the Initial Tax-Exempt Bonds shall be an amount sufficient to pay the Sinking Fund Installment of the Participant's Portion of the Initial Tax-Exempt Bonds Outstanding becoming due on such next succeeding Sinking Fund Installment payment date; plus

(iv) with respect to principal due on the Participant's Portion of the Initial Bonds (other than such principal amounts as shall become due as a mandatory Sinking Fund Installment payment), commencing on the Installment Purchase Payment Date as shall precede the first principal payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-twelfth (1/12) of the Participant's Portion of the principal of the Initial Bonds Outstanding becoming due on the next principal payment date (other than by reason of mandatory Sinking Fund Installments), provided that in any event the aggregate amount so paid with respect to principal on such Participant's Portion of the Initial Bonds on or before the Installment Purchase Payment Date immediately preceding a principal payment date of the Initial Bonds shall be an amount sufficient to pay the principal of the Participant's Portion of the Initial Bonds Outstanding becoming due on such next succeeding principal payment date.

APPENDIX D

SPECIAL COVENANTS AND AGREEMENTS

1. Ineffective References. The Participant and the Agency agree that any and all references in this Agreement to a condominium structure or the existence of an Agency Mortgage or Mortgaged Property are not applicable in this Agreement and shall be ineffective.

2. Modifications of Participant's Obligation Under Section 4.7 to Comply with Legal Requirements. The obligations of the Participant to observe and comply with all Legal Requirements as set forth in Section 4.7 hereof is qualified as follows: The Participant shall not be responsible for the noncompliance by a Prime Landlord with any Legal Requirements: (i) if the Participant has no right under the Prime Lease to compel such Prime Landlord to comply or cause compliance with such Legal Requirement; (ii) if such Prime Landlord is required, or the Participant reasonably believes such Prime Landlord is required, under the terms of the Prime Lease to comply with such Legal Requirement, so long as the Participant is promptly and vigorously exercising good faith diligent efforts to enforce such compliance; or (iii) if such non-compliance is the result of any action or failure to act on the part of the Prime Landlord (which action or failure to act is not a breach of any obligation of the Prime Landlord to the Participant under the Prime Lease or of any agent, contractor, officer, director, employee or servant of the Prime Landlord or of any other tenant of the Prime Landlord unrelated to the Participant).

3. Enforcement of Rights Under the Prime Lease Against the Prime Landlord. The Participant covenants and agrees that to the extent that the Prime Landlord is obligated to the Participant under the Prime Lease to comply with all Legal Requirements (the foregoing covenants of the Prime Landlord being, collectively, the "Prime Landlord Covenants"), the Participant shall not amend, waive or modify, or permit the amendment, waiver or modification of, any of the Prime Landlord Covenants, and upon the direction of the Agency, the Participant shall promptly exercise good faith diligent efforts to enforce the applicable Prime Landlord Covenants against the Prime Landlord.

4. Covenants with Respect to the Prime Lease. (a) The Participant covenants and agrees that it shall not enter into an amendment, supplement or modification to the Prime Lease which would adversely affect the interests of the Agency. Promptly following the execution of any amendment, supplement or modification to the Prime Lease, the Participant shall furnish copies thereof to the Agency.

(b) The Participant agrees to observe and comply with all of its payments and all of its material obligations, covenants and agreements set forth in the Prime Lease and further agrees to promptly transmit to the Agency copies of any termination or default notice it shall receive from, or deliver to, the Prime Landlord under the Prime Lease.

(c) The Participant covenants and agrees to exercise its option to extend the Prime Lease to June 30, 2028.

5. Requirements of the Prime Lease. This Agreement is and shall be subject and subordinate in all respects to the Prime Lease, including all approved modifications and amendments thereto, and to all matters to which the Prime Lease is subject to and subordinate.

6. Covenant with Respect to Tanks. The Participant shall remove the two (2) underground storage tanks referenced in the Audit no later than the Completion Date. Notwithstanding anything herein to the contrary, failure of the Participant to remove such tanks within such time shall constitute an Event of Default hereunder.

7. Delivery of Certificates. The Participant shall deliver to the Agency, the Trustee and the Bond Insurer the Certificate of Architect and the Certificate of Construction Manager/General Contractor (with all required attachments) in substantially the forms attached hereto as Appendix E by October 1, 2004. In the event the Participant shall have failed to deliver the certificates by such date, it shall not constitute a default hereunder if the Participant shall exercise, and continue to exercise, good faith diligent efforts to cause the delivery of the certificates.

APPENDIX E

[CERTIFICATE OF ARCHITECT]

[Date]

New York City Industrial Development Agency
110 William Street
New York, NY 10038

The Bank of New York, as trustee
101 Barclay Street, Floor 21W
New York, New York 10286

ACA Financial Guaranty Corporation
140 Broadway, 47th Floor
New York, New York 10005

Re: New York City Industrial Development Agency Project to assist with the construction of an approximately _____ square foot building on an approximately _____ parcel of land on certain premises located at _____, New York (the "Premises")

To Whom It May Concern:

The undersigned ("Architect") understands that New York City Industrial Development Agency ("IDA") is providing financial assistance to _____ (the "Project Company"), which financial assistance will be used to assist the Project Company with the construction of the improvements described in Exhibit A attached hereto (the "Improvements") on the Premises (the "Project"). Architect has been engaged to act as the architect for the Improvements pursuant to the provisions of a certain architectural contract also described in Exhibit A attached hereto (the "Contract"). Architect has prepared certain plans and specifications (the "Plans and Specifications") for use in connection with the construction of the Improvements, as more particularly described in Exhibit B attached hereto.

The undersigned Architect does hereby certify and represent to you as follows:

1. The Architect prepared and supervised the preparation of the Plans and Specifications.

2. All of the Improvements are located within the boundaries of the Premises and in accordance with all “set-back” requirements. To my knowledge after due inquiry, limited to a review of the Title Report, issued on [date] by [Title Company] (the “Title Report”) and the survey of the Premises, dated [] prepared by [] (the “Survey”), the location of the Improvements, if constructed substantially in accordance with the Plans and Specifications, will not be affected by any existing easements affecting the Premises, nor will the Improvements be located within or encroach into any easement area, nor shall the location of the Improvements violate any restriction, condition or covenant affecting the Premises.

3. The Plans and Specifications comply with all applicable federal, state and municipal laws, ordinances, rules and regulations regarding zoning, building and fire codes and ordinances. To my knowledge after due inquiry, limited to a review of the Title Report and the Survey, the Improvements, if constructed substantially in accordance with the Plans and Specifications, will likewise comply with all covenants, conditions, easements and restrictions to which the Improvements are subject.

4. The Premises is zoned in accordance to the NYC Zoning Ordinance and such zoning classification permits the construction of the Improvements and the as contemplated in the Plans and Specifications and the intended use of the Premises by the Project Company.

5. The Premises [will include, as contemplated by the Plans and Specifications] on-site parking sufficient][does not require any additional on-site parking] to satisfy all zoning and other governmental requirements. Sanitary public water supply, storm sewer facilities, sanitary sewer facilities, natural gas, electricity, telephone, and all other required utilities are available, sufficient to meet all applicable requirements of public authorities, at or within the lot lines of the Premises, without the necessity of any off-site improvements, or any on-site improvements other than as shown in the Plans and Specifications. No easements over land of others is called for or indicated by the Plans and Specifications for access or egress to the Premises or parking on the Premises, or for any such facilities or utilities, and design conditions are such that no drainage of surface or other water across land of others is called for or indicated by the Plans and Specifications.

6. Water, sewer, drainage, gas, electric, telephone and other utilities required for the development and operation of the Improvements are available or have been included in the Plans and Specifications of sufficient design and capacity to meet the requirements of the Improvements.

7. The Premises constitutes a legally subdivided zoning lot (Block __, Lot __) separate from any other parcel of real property.

8. The Budget (with projected draw schedule) attached hereto as Exhibit B is complete and accurately reflects the correct, anticipated cost and projected timing of construction of the Improvements as designed. The amounts set forth in the Budget are adequate and sufficient for satisfying all fees and expenses of Architect in designing the Improvements.

9. The Plans and Specifications for the construction of the Improvements on the Premises have been approved by all necessary agencies of the City of New York.

10. To my knowledge, there is no petition, action or proceeding known to the undersigned pending before the court, agency or official, threatened with respect to the validity of any statutes, ordinances, regulations, restrictions, codes, rules, permits, certificates or any permits or approvals thereunder relating to the Improvements, or to revoke, rescind, alter or declare any of the same.

11. Architect is an architect duly licensed to practice architecture in the State of New York.

The statements contained in this letter are an expression of the undersigned's professional opinion, are made to the best of the undersigned's knowledge, information and belief, and are based on the undersigned's performance of services under its agreement with the Project Company in accordance with generally accepted standards of professional practice.

Very truly yours,

By _____
Name:
Title:

EXHIBIT A

1. The Improvements The term "Improvements" as used herein shall mean an approximately [] rentable square foot, [] square foot building.

2. The Architects Contract Contract dated _____, 2004, between Project Company, as owner, and [], as architect.

EXHIBIT B

List of Plans and Specifications

[Certificate of Construction Manager / General Contractor]

[Date]

New York City Industrial Development Agency
110 William Street
New York, NY 10038

The Bank of New York, as trustee
101 Barclay Street, Floor 21W
New York, New York 10286

ACA Financial Guaranty Corporation
140 Broadway, 47th Floor
New York, New York 10005

Re: New York City Industrial Development Agency Project to assist with the construction of an approximately _____ square foot building on an approximately _____ parcel of land on certain premises located at _____, New York (the "Premises")

To Whom It May Concern:

The undersigned (["Construction Manager"] ["General Contractor"]) understands that New York City Industrial Development Agency is providing financial assistance to _____ (the "Project Company"), which financial assistance will be used to assist the Project Company with the construction of the improvements described as: (the "Improvements") on the Premises (the "Project"). [Construction Manager/General Contractor] has been engaged to act as the [construction manager/general contractor] in connection with the construction the Improvements pursuant to the provisions of a certain contract between the Project Company and the [Construction Manager/General Contractor] dated [] (the "Contract"). The Construction Manager/General Contractor has reviewed certain plans and specifications (the "Plans and Specifications") for use in connection with the construction of the Improvements, as more particularly described in the Architect's Certification, dated [], by [], the architect for the Project.

The undersigned [Construction Manager][General Contractor] does hereby certify and represent to you as follows:

1. All permits, licenses, certificates, consents and approvals required in connection with the commencement of construction of the Improvements, including but not limited to, curb-cut permits, building permits and permits relating to utilities, have been duly, validly and unconditionally issued by the appropriate governmental agencies (federal, state and local) and private authorities and agencies.

2. The following are the approvals, authorizations, permits or licenses currently issued that are necessary to construct and operate the Improvements, pursuant to any law, rule, ordinance or regulation affecting the Premises, including environmental laws, rules, ordinances or regulations:

- Zoning Department of Buildings
- New Building Department of Buildings
- Sewer Permit Department of Environmental Protection
- Sprinklers Department of Buildings
- Standpipe Department of Buildings
- Generator Department of Buildings
- Paving Plan Department of Buildings
- Street Opening Department of Transportation
- Asbestos Control Program Department of Environmental Protection

3. The following are the only other approvals, authorizations, permits or licenses necessary to construct and operate the Improvements, pursuant to any law, rule, ordinance or regulation affecting the Premises, including environmental laws, rules, ordinances or regulations, which have not been obtained as of this date and which are necessary for the construction of the Improvements:

- Fire Alarm Department of Buildings
- Tenant Work Department of Buildings
- Electrical Department of Buildings

[List all other applicable items]

The undersigned is familiar with the process for obtaining the approvals, authorizations, permits and licenses necessary to construct and occupy the Improvements, and as to those approvals, authorizations, permits and licenses not yet obtained, the undersigned knows of no reason why the same should not be issued when required by the Project Company upon the payment of the approved fee so as to not delay the construction and occupancy of the Improvements. Such approvals can be obtained in the ordinary course of business so as to not delay the construction of the Improvements, and the issuance of such permits by the applicable government authority is ministerial and not discretionary.

4. The Plans and Specifications for the construction of the Improvements on the Premises have been approved by all necessary agencies of the City of New York.

5. To my knowledge, there is no petition, action or proceeding known to the undersigned pending before the court, agency or official, threatened with respect to the validity of any statutes, ordinances, regulations, restrictions, codes, rules, permits, certificates or any permits or approvals thereunder relating to the Improvements, or to revoke, rescind, alter or declare any of the same.

6. Construction Manager/General Contractor duly licensed and in good standing in the State of New York to perform all work described in the Contract.

The statements contained in this letter are an expression of the undersigned's opinion, are made to the best of the undersigned's knowledge, information and belief, and are based on the undersigned's performance of services under its Contract with the Project Company in accordance with generally accepted standards of construction industry practice.

Very truly yours,

By _____
Name:
Title:

SCHEDULE A

1. Aggregate principal amount of Initial Bonds constituting the Participant's Portion: \$2,415,000.00.
2. Participant's Share of the Agency's Fee: \$19,735.06.
3. Participant's Tax-Exempt Bond Debt Service Reserve Subaccount Requirement: \$231,000.00.
4. Mortgage Amount: \$ -0- .
5. Amortization schedule of the Participant's Portion of the Initial Bonds: See Attached.

2 Issuer Series - InterAgency Council of MR DD Agencies
 OTGAR Early Childhood Center
 Combined Tax Exempt & Taxable Bonds
 =====
 Debt Service Schedule
 =====

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
7/ 1/ 4			50,694.56	50,694.56	50,694.56
1/ 1/ 5			54,970.00	54,970.00	
7/ 1/ 5	30,000.00		54,970.00	84,970.00	139,940.00
1/ 1/ 6			54,355.00	54,355.00	
7/ 1/ 6	75,000.00		54,355.00	129,355.00	183,710.00
1/ 1/ 7			52,817.50	52,817.50	
7/ 1/ 7	80,000.00		52,817.50	132,817.50	185,635.00
1/ 1/ 8			51,597.50	51,597.50	
7/ 1/ 8	80,000.00		51,597.50	131,597.50	183,195.00
1/ 1/ 9			50,377.50	50,377.50	
7/ 1/ 9	85,000.00		50,377.50	135,377.50	185,755.00
1/ 1/10			49,081.25	49,081.25	
7/ 1/10	90,000.00		49,081.25	139,081.25	188,162.50
1/ 1/11			47,213.75	47,213.75	
7/ 1/11	90,000.00		47,213.75	137,213.75	184,427.50
1/ 1/12			45,346.25	45,346.25	
7/ 1/12	95,000.00		45,346.25	140,346.25	185,692.50
1/ 1/13			43,375.00	43,375.00	
7/ 1/13	100,000.00		43,375.00	143,375.00	186,750.00
1/ 1/14			41,300.00	41,300.00	
7/ 1/14	105,000.00		41,300.00	146,300.00	187,600.00
1/ 1/15			39,121.25	39,121.25	
7/ 1/15	110,000.00		39,121.25	149,121.25	188,242.50
1/ 1/16			36,508.75	36,508.75	
7/ 1/16	115,000.00		36,508.75	151,508.75	188,017.50
1/ 1/17			33,777.50	33,777.50	
7/ 1/17	120,000.00		33,777.50	153,777.50	187,555.00
1/ 1/18			30,927.50	30,927.50	
7/ 1/18	125,000.00		30,927.50	155,927.50	186,855.00
1/ 1/19			27,958.75	27,958.75	
7/ 1/19	130,000.00		27,958.75	157,958.75	185,917.50
1/ 1/20			24,871.25	24,871.25	
7/ 1/20	135,000.00		24,871.25	159,871.25	184,742.50
1/ 1/21			21,462.50	21,462.50	
7/ 1/21	145,000.00		21,462.50	166,462.50	187,925.00
1/ 1/22			17,801.25	17,801.25	
7/ 1/22	150,000.00		17,801.25	167,801.25	185,602.50
1/ 1/23			14,013.75	14,013.75	
7/ 1/23	160,000.00		14,013.75	174,013.75	188,027.50
1/ 1/24			9,973.75	9,973.75	
7/ 1/24	395,000.00		9,973.75	404,973.75	414,947.50
	2,415,000.00		1,544,394.56	3,959,394.56	
ACCRUED			12,826.33	12,826.33	
	2,415,000.00		1,531,568.23	3,946,568.23	

Dated 1/15/ 4 with Delivery of 2/27/ 4
 Bond Years 32.273583
 Average Coupon 4.785321
 Average Life 13.363803
 N I C % 5.257647 % Using 93.6879217

Weighted Bond Years 31.991833
 Weighted Average Life 13.247136
 Weighted N I C % 5.263859 % Using 93.6879217
 T I C % 5.450465 % From Delivery Date

Bond Insurance:
 3.850000 % of (Total Debt Service Only) = 152,436.69

Consolidation List Name: CON

SCHEDULE B

**PROJECT COMPLETION CERTIFICATE OF THE PARTICIPANT
AS REQUIRED BY SECTION 2.2(b) OF THE INSTALLMENT SALE AGREEMENT**

THE UNDERSIGNED HEREBY CERTIFIES that he is an Authorized Representative (as defined in the Installment Sale Agreement referred to below) of [_____], a New York not-for-profit corporation (the "Participant"), and this certificate is being delivered in accordance with the provisions of Section 2.2(b) of that certain Installment Sale Agreement, dated as of [_____] (the "Installment Sale Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Participant, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Installment Sale Agreement or the Indenture referred to therein):

1. The Project was completed on _____.
2. The Project has been completed substantially in accordance with the Plans and Specifications and all labor, services, machinery, equipment, materials and supplies used therefor have been paid for.
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 now due and payable or the liability for payment of which is being contested or disputed in good faith by the Participant).
4. The Agency was vested with a good and valid leasehold interest to all property constituting part of the Facility under the Company Lease, and all property of the Facility is subject to the Company Lease and the Installment Sale Agreement and, in the case of the Mortgaged Property, the lien and security interest of the Agency Mortgage.
5. In accordance with all Legal Requirements, the Facility has 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. The Rebate Amount as calculated in accordance with the Tax Regulatory Agreement is \$_____, and [the Trustee is hereby directed to withdraw such amount from the Participant's Account in the Earnings Fund and deposit it in the Rebate Fund] [accompanying this certificate is the amount of \$_____ which the Trustee is directed to deposit in the Rebate Fund].
8. All costs of the Project have been paid in full.
9. Attached hereto as Exhibit A is a temporary or permanent certificate of occupancy [or an operating certificate from an applicable governmental agency with jurisdiction

or, if not applicable, an architect's certificate in form acceptable to the Agency, with the execution and delivery of an agreement appended to the Escrow Agreement relating to the Participant's deposit of \$10,000 in the Escrow Account, if applicable], and any and all permissions, approvals, permits, licenses, certificates or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Installment Sale Agreement.

10. 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 Participant in an amount at least equal to the amount of such costs).

11. Attached hereto as Exhibit C 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 Participant and any uses necessary or incidental thereto.

12. The following is the amount of Bond proceeds, including investment earnings, expended on the Facility named below:


Address of Facility	Amount of Bond Proceeds Expended
	\$ _____

This certificate (y) is given without prejudice to any rights of the Participant against third parties which may exist on the date hereof or which may subsequently come into being, and (z) is given only for the purposes of Section 2.2(b) of the Installment Sale 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 _____, _____.

[_____]

By _____
[Name]
[Title]

	New York City Industrial Development Agency	<h2 style="text-align: center;">Annual Employment Report</h2> <p style="text-align: center;">For the year ending June 30, _____</p>
---	--	---

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 this Report to the Agency no later than July __, ____.

«COMPANY»
 «ADDRESS»
 «CITY »
 «NAME»

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 at the Project Location(s).

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 throughout the term of this transaction.

Name of Company: _____

Principal/Owner/Chief Financial Officer: _____

Signature: _____ Date: _____ *(please print)*

If you have any questions, please call the Compliance Helpline at (212) 312-3968.

Please fax or mail this form to:

(212) 312-3918
New York City Industrial Development Agency
110 William Street, New York, NY 10038
Attention: Compliance Unit, 4th Floor

ida	New York City Industrial Development Agency	IDA SUBTENANT SURVEY DUE DATE: January 4, ____
	«COMPANY» «ADDRESS» «CITY » «NAME»	

In order to verify compliance with your IDA Transaction Documents, please complete the information requested below for each and every subtenant occupying space in your facility as of **DECEMBER 31, ____**.

Total Square Footage of Building(s): _____ Sq. Ft.

Subtenant	Square Footage	Beginning Date	End Lease Date	Related Yes/No
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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 IDA Transaction Documents.

Name: _____ Title: _____

Signature: _____ Date: _____

Phone Number: _____

Please fax the completed form to:
 New York City Industrial Development Agency
 Compliance Unit
 212-312-3918

HelpLine: 212-312-3963

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

SCHEDULE E

**Existing Mortgages, Liens or Security Interests
in the Facility**

None