

# **LEASE AGREEMENT**

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NEW YORK CITY  
INDUSTRIAL DEVELOPMENT AGENCY

AND

COOL WIND VENTILATION CORP.

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LEASE AGREEMENT (FACILITY EQUIPMENT)

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Dated as of August 1, 2007

New York City Industrial Development Agency  
\$1,570,000 Industrial Development Revenue Bonds, Series 2007B  
(2007 Cool Wind Ventilation Corp. Project)

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## LEASE AGREEMENT (FACILITY EQUIPMENT)

THIS LEASE AGREEMENT (FACILITY EQUIPMENT), made and entered into as of August 1, 2007 (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 10007, party of the first part, and COOL WIND VENTILATION CORP., a corporation organized and existing under and by virtue of the laws of the State of New York (the "Lessee"), having its principal office at 46-06 37th Avenue, Long Island City, New York 11101, party of the second part (capitalized terms not otherwise defined in the recitals herein shall have the meaning ascribed to them in Section 1.1 herein):

### 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, the Lessee and D & D Realty V, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of New York and affiliated with the Lessee (the "D & D"), entered into negotiations with officials of the Agency with respect to the financing of a portion of the costs of a manufacturing facility (the "Facility") consisting of the acquisition of an approximately 50,000 square foot parcel of land and the renovation and equipping of an approximately 35,500 square foot building thereon, located at 82-40, 73rd Avenue (a/k/a 83-12 72<sup>nd</sup> Drive) Queens, New York, all for use in the manufacture of sheet metal duct work for HVAC systems for commercial applications (the "Project"); and

WHEREAS, Agency financing assistance is necessary to provide employment in, and is beneficial for the economy of, the City and is reasonably necessary to induce the Lessee and D & D to proceed with the Project; and

WHEREAS, as a result of such negotiations, the Lessee and D & D have requested that the Agency issue its bonds in the aggregate principal amount of \$9,000,000 to effect such financing; and

WHEREAS, the Agency adopted a resolution on May 8, 2007 (the "Bond Resolution"), authorizing the issuance of its revenue bonds to effect such financing and, among other things, the leasing of the Facility Equipment by the Agency of its interest in the Facility Equipment to the Lessee; and

WHEREAS, concurrently with the execution hereof, (i) D & D will lease the Facility Realty to the Agency pursuant to a certain Company Lease Agreement, dated as of even date herewith, between D & D and the Agency (as the same may be amended or supplemented, the "Company Lease"), (ii) the Agency will sublease the Facility Realty to D & D pursuant to a Lease Agreement (Facility Realty) dated as of even date hereafter (as the same may be amended or supplemented, the "Lease Agreement (Facility Realty)"; the Lease Agreement (Facility Realty) and this Agreement are hereinafter, collectively, referred to as the "Lease Agreements"), and (iii) D & D will sub-sublease the Facility Realty to the Lessee pursuant to a certain Sublease Agreement, dated as of even date herewith, between D & D and the Lessee (as the same may be amended or supplemented, the "Sublease Agreement"); and

WHEREAS, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Series 2007 Bonds hereinafter mentioned, the Agency has authorized the issuance of its Industrial Development Revenue Bonds (2007 Cool Wind Ventilation Corp. Project) in the aggregate principal amount of \$9,000,000 (the "Series 2007 Bonds"), to consist of its \$1,745,000 Industrial Development Revenue Bonds, Series 2007A-1 (2007 Cool Wind Ventilation Corp. Project) (the "Series 2007A-1 Bonds"), its \$5,685,000 Industrial Development Revenue Bonds, Series 2007A-2 (2007 Cool Wind Ventilation Corp. Project) (the "Series 2007A-2 Bonds"), and its \$1,570,000 Industrial Development Revenue Bonds, Series 2007B (2007 Cool Wind Ventilation Corp. Project) (the "Series 2007B Bonds"), pursuant to the Act, the Bond Resolution and an Indenture of Trust, dated as of even date herewith (as the same may be amended or supplemented, the Indenture"), between the Agency and The Bank of New York, as trustee (the "Trustee"); and

WHEREAS, the Series 2007 Bonds will be secured pursuant to (i) mortgage liens on and security interests in the respective interests of the Agency, D & D and the Lessee in the Facility pursuant to an Agency Mortgage and Security Agreement (Acquisition Loan), an Agency Mortgage and Security Agreement (Building Loan) and an Agency Mortgage and Security Agreement (Indirect Loan), each dated as of even date herewith, and each from the Agency, D & D and the Lessee to the Trustee (as the same may be amended or supplemented, collectively, the "Agency Mortgage"), and (ii) a Guaranty Agreement, dated as of even date herewith, from D & D, the Lessee, Specialty Metal Fabricators, Inc., a New York corporation affiliated with D & D and the Lessee ("SMF"), I O M II, Inc., a New York corporation affiliated with D & D and the Lessee ("IOM"), J I C II, Inc., a New York corporation affiliated with D & D and the Lessee ("JIC"; SMF, IOM and JIC are hereinafter, collectively, referred to as the "Corporate Guarantors") and David Sullivan and Dominic Grasso, each a member and manager of D & D and a shareholder and officer of the Lessee (collectively, the "Individual Guarantors", and, together with D & D, the Lessee and the Corporate Guarantors, the "Guarantors"), to the Trustee (as the same may be amended or supplemented, the "Guaranty Agreement"), pursuant to which the Guarantors will guarantee the payment of the principal of, Sinking Fund Installments

for, redemption premium, if any, and interest on the Series 2007 Bonds; and the respective payments, obligations, covenants and agreements of D & D and the Lessee under the Lease Agreements and of the Lessee under the Sublease Agreement; each such document to be executed concurrently herewith;

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

[Remainder of page left intentionally blank]



## ARTICLE I

### Definitions and Representations

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

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

Agency Guaranty Agreement shall mean the Agency Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Agency Mortgage shall mean, collectively, the Agency Mortgage and Security Agreement (Acquisition Loan), the Agency Mortgage and Security Agreement (Building Loan) and the Agency Mortgage and Security Agreement (Indirect Loan), each dated as of even date herewith, and each from the Lessee, D & D and the Agency to the Trustee, and, in each case, shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Agreement shall mean this Lease Agreement (Facility Equipment), dated as of August 1, 2007, between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith and with the Indenture.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Agency, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of D & D, the managing member, any member or any other employee who is authorized to perform specific duties hereunder and of whom another Authorized Representative of D & D has given written notice to the Agency and the Trustee, (iii) in the case of the Lessee, the Chairperson, Vice Chairperson, President, Treasurer and any Vice President or any other employee of the Lessee who is authorized to perform specific duties hereunder and of whom another Authorized Representative of the Lessee has given written notice to the Agency and the Trustee, (iv) in the case of any Corporate Guarantor, the Chairperson, Vice Chairperson, President, Treasurer and any Vice President or any other employee of such Corporate Guarantor who is authorized to perform specific duties hereunder and of whom another Authorized Representative of the Corporate Guarantor has given written notice to the Agency, and (v) in the case of the Individual Guarantors, the Individual Guarantors; provided, however, that in each case for which a

certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Bonds shall mean the Series 2007 Bonds and any Additional Bonds.

Closing Date shall mean August 31, 2007.

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 D & D and the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Conduct Representation shall mean any of the representations made by the Lessee under Section 1.5(u) hereof or by the Lessee or any other Person in any Required Disclosure Statement delivered to the Agency.

Control or Controls shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its Governing Body, or (z) by contract or otherwise.

Corporate Guarantors shall mean, collectively, SMF, ISO and JIC.

D & D shall mean D & D Realty V, LLC, a limited liability company organized and existing under the laws of the State of New York, and its respective permitted successors and assigns under the Lease Agreement (Facility Realty).

Eligible Materials shall mean all tangible personal property to constitute Facility Equipment acquired by the Lessee as agent for and on behalf of the Agency pursuant to the Sales Tax Letter in connection with the Facility Equipment portion of the Project on or before the completion of the Facility Equipment portion of the Project for location within the Facility Realty.

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

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

Facility Equipment shall mean the machinery, equipment and other tangible personal property acquired and installed as part of the Project pursuant to Section 2.1 hereof and described in the Description of Facility Equipment in the Appendices hereto, to the Indenture and the Agency Mortgage, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or

affixed thereto; but excluding, however, the Lessee's Property. Facility Equipment shall, in accordance with the provisions of Sections 4.2 and 5.1 hereof, include all property substituted for or replacing items of Facility Equipment and exclude all items of Facility Equipment so substituted for or replaced.

Facility Equipment Bonds shall mean, collectively, (i) the Agency's Industrial Development Revenue Bonds, Series 2007B (2007 Cool Wind Ventilation Corp. Project) issued in the aggregate principal amount of \$1,570,000 and (ii) any Additional Bonds issued by the Agency pursuant to the Indenture and payable by the Sublessee pursuant to this Lease Agreement (Facility Equipment)

Facility Realty shall mean the land described in the Description of Facility Realty in the Appendices to the Company Lease, to the Lease Agreement (Facility Realty), to the Indenture, to the Sublease Agreement and the to Agency Mortgage, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures (other than trade fixtures) and other improvements now or at any time made, erected or situated thereon (including the improvements made pursuant to Section 2.1 of the Lease Agreement (Facility Realty), 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 of the Lease Agreement (Facility Realty).

Facility Realty Bonds shall mean collectively, (i) the Agency's Industrial Development Revenue Bonds, Series 2007A-1 (2007 Cool Wind Ventilation Corp. Project) issued in the original aggregate principal amount of \$1,745,000, (ii) the Agency's Industrial Development Revenue Bonds, 2007A-2 Bonds (2007 Cool Wind Ventilation Corp. Project) issued in the original aggregate amount of \$5,685,000 and (iii) any Additional Bonds issued by the Agency pursuant to the Indenture and payable by the Lessee pursuant to this Agreement.

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

GAAP shall mean generally accepted accounting principles in the United States as in effect on the Closing Date.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Guarantors shall mean, collectively, D & D, the Lessee, the Corporate Guarantors and the Individual Guarantors.

Guaranty Agreement shall mean the Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

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.

Individual Guarantors shall mean, collectively, David Sullivan and Dominic Grasso, each a member and manager of D & D and a shareholder and officer of the Lessee, and each of their respective heirs, estate representatives, executors and administrators, in accordance with the terms set forth in the Guaranty Agreement.

IOM shall mean I O M II, Inc., a New York corporation affiliated with the Lessee and D & D, and its permitted successors and assigns under the Guaranty Agreement

JIC shall mean J I C II, Inc., a New York corporation affiliated with the Lessee and D & D, and its permitted successors and assigns under the Guaranty Agreement.

Land shall mean those certain lots, pieces or parcels of land in Section 20, Block 3810 and Lot 420, generally known by the street address 82-40 73rd Avenue (a/k/a 83-12 72<sup>nd</sup> Drive), Queens, New York all as more particularly described in the "Description of the Facility Realty" to the Lease Agreement (Facility Realty), which is made a part thereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 of the Lease Agreement (Facility Realty).

Lease Agreement (Facility Realty) shall mean the Lease Agreement (Facility Realty), dated as of even date herewith, between the Agency and D & D, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Lease Agreements shall mean, collectively, the Lease Agreement (Facility Realty) and this Agreement.

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

Lessee shall mean Cool Wind Ventilation Corp., a corporation organized and existing under and by virtue of the laws of the State of New York, and its permitted successors and assigns pursuant to Sections 6.1 and 9.3 hereof (including any surviving, resulting or transferee entity as provided in Section 6.1 hereof).

Lessee's Property shall have the meaning ascribed to such term in Section 4.1(c) hereof.

Letter of Representation and Indemnity Agreement shall mean the Letter of Representation and Indemnity Agreement from D & D, the Lessee, the Corporate Guarantors and the Individual Guarantors, dated the Closing Date, to the Agency, the Trustee and the initial purchaser of the Series 2007 Bonds.

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

Person shall mean any individual or any entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise

Principal(s) shall mean, with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such Person, or any individual holding equivalent positions.

Project shall have the meaning ascribed thereto in the recitals hereto.

Redemption Price shall mean, with respect to any Bond or portion thereof, the principal amount thereof to be redeemed in whole or in part, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or the Indenture.

Required Disclosure Statement shall mean that certain Required Disclosure Statement in the form of Schedule H attached hereto and made a part hereof. Each certification, representation and warranty set forth in a Required Disclosure Statement delivered to the Agency shall be deemed incorporated by reference into this Agreement as if fully set forth herein.

Sales Tax Benefit shall mean the sales and use tax exemptions conferred upon the Lessee pursuant to the Sales Tax Letter.

Sales Taxes shall mean New York City and New York State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109 and 1110 of the New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections).

Sales Tax Letter shall mean the Letter of Authorization for Sales Tax Exemption (Facility Equipment), which the Agency shall make available to the Lessee in accordance with and substantially in the form set forth in the appendices to this Agreement.

Series 2007 Bonds shall mean the \$9,000,000 Industrial Development Revenue Bonds (2007 Cool Wind Ventilation Corp. Project) of the Agency issued under the Indenture.

Series 2007A-1 Bonds shall mean the Agency's Series 2007A-1 Industrial Development Bonds (2007 Cool Wind Ventilation Corp. Project) issued in the aggregate principal amount of \$1,745,000 under the Indenture.

Series 2007A-2 Bonds shall mean the Agency's Series 2007A-2 Industrial Development Bonds (2007 Cool Wind Ventilation Corp. Project) issued in the aggregate principal amount of \$5,685,000 under the Indenture.

Series 2007B Bonds shall mean the Agency's Series 2007B Industrial Development Bonds (2007 Cool Wind Ventilation Corp. Project) issued in the aggregate principal amount of \$1,570,000 under the Indenture.

SMF shall mean Specialty Metal Fabricators, Inc., a New York corporation affiliated with D & D and the Lessee, and its permitted successors and assigns under the Guaranty Agreement.

Sublease Agreement shall mean that certain Sublease Agreement, dated as of even date herewith, between D & D, as landlord, and the Lessee, as tenant, as the same may be amended and supplemented in accordance with its terms.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Agency, D & D and the Lessee to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Trustee shall mean 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 Closing Date.

(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 a portion of the cost of the Project, the Agency proposes to issue the Series 2007 Bonds in the aggregate principal amount of \$9,000,000. The Series 2007 Bonds will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Indenture.

(c) Prior to the issuance of the Series 2007 Bonds, the Agency will duly make the election provided for under Section 144(a)(4)(A) of the Code.

Section 1.4. Findings by Agency. The Agency, based upon the representations and warranties of the Lessee contained in this Agreement and the Sublease Agreement and of D & D contained in the Lease Agreement (Facility Realty) and in the Sublease Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of D & D and the Lessee to the Agency, hereby finds and determines that the financing of a portion of the costs of the Project by the Agency and the leasing the Facility Equipment hereunder is reasonably necessary to induce the Lessee to proceed with the Project.

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

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

(b) The execution, delivery and performance of this Agreement and each other Project Document to which the Lessee is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite corporate action on the part of the Lessee and will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or bylaws of the Lessee, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result

in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

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

(d) The transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or of D & D or any other occupant or user of the Facility from one area of the State (but outside of the City) to within the City or in the abandonment of one or more facilities or plants of the Lessee or D & D or any other occupant or user of the Facility located within the State (but outside of the City).

(e) The total cost of the Project being funded or financed with the Series 2007 Bonds is at least \$9,000,000, which represents only a portion of the total cost of the entire Project to the Lessee and D & D.

(f) Expenses for supervision by the officers or employees of the Lessee and/or D & D, 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 Lessee and/or D & D as a capital expenditure in conformity with generally accepted accounting principles applied on a consistent basis.

(g) Any costs incurred with respect to that part of the Project paid from the proceeds of the sale of the Series 2007 Bonds shall be capable of being treated on the books of the Lessee and D & D as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis.

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

(i) No part of the proceeds of the Series 2007 Bonds will be used to finance inventory or will be used for working capital.

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

(k) All consents, approvals or authorizations, if any, of any governmental authority required on the part of the Lessee (x) in connection with the execution and delivery of this Agreement and each other Project Document to which the Lessee shall be a party, or (y) in connection with the leasing of the Facility Equipment by the Lessee from the Agency concurrently with the issuance and delivery of the Series 2007 Bonds, have been duly obtained.

(l) This Agreement and the other Project Documents to which the Lessee is a party constitute the legal, valid and binding obligations of the Lessee enforceable against it in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is



subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(m) The Project has been designed, and the operation of the Facility is and will continue to be, in compliance with all applicable Legal Requirements.

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

(o) The Lessee intends to operate the Facility or cause the Facility to be operated (i) in accordance with this Agreement, and (ii) as a qualified "project" in accordance with and as defined under the Act.

(p) No funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(q) No part of the proceeds of the Series 2007 Bonds will be used (and no sales or use tax exemptions will be made available under the Sales Tax Letter) to finance a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one third of the total project cost. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under article twenty-eight of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the New York Tax Law; or (ii) sales of a service to such customers.

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

(s) The majority of the equitable and voting interests of Lessee are owned by the same individuals who own and control the majority of the equitable and voting interest of D & D.

(t) The Fiscal Year of D & D and the Lessee is a calendar year, commencing January 1 and ending December 31.

(u) Except as set forth in Schedule G attached hereto, none of the Lessee, the Principals of the Lessee, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Lessee:

(i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

(ii) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(iii) has been convicted of a felony in the past ten (10) years;

(iv) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

(v) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

(v) The aggregate cost of that portion of the Project related to the Faculty Equipment is at least equal to the aggregate principal amount of the Series 2007B Bonds.

## ARTICLE II

### The Project

Section 2.1. The Project. (a) The Lessee shall cause to be conveyed to the Agency such items of the Facility Equipment as shall be acquired in connection with the Project, free and clear of all liens, claims, charges, encumbrances and security interests other than Permitted Encumbrances, all against payment therefor by the Agency from the proceeds of the Series 2007B Bonds deposited in the Facility Equipment Account of the Project Fund to the extent permitted in Section 2.2 hereof and Section 5.02 of the Indenture.

(b) As promptly as practicable after receipt of the proceeds of sale of the Series 2007B Bonds and out of said proceeds of sale, the Lessee will proceed to completion of the Facility Equipment portion of the Project. The cost of the Facility Equipment portion of the Project shall be paid from the Facility Equipment Account of the Project Fund established under the Indenture or as otherwise provided in Section 2.2 hereof. All contractors, materialmen, vendors, suppliers and other companies, firms or persons furnishing labor, services or materials for or in connection with the Facility Equipment portion of the Project shall be designated by the Lessee.

(c) In order to accomplish the purposes of the Agency, and to assure the effectuation of the Project in conformity with the requirements of the Lessee, the Lessee has undertaken to proceed with the design of the Facility Equipment portion of the Project. The Lessee agrees to complete the Facility Equipment portion of the Project on behalf of the Agency.

(d) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance and transfer of an interest in the Facility Equipment 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 such conveyance and transfer, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Facility Equipment portion of the Project.

(e) The Lessee covenants that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies with respect to the Facility Equipment portion of the Project, all of which have been or will be done in compliance with all applicable Legal Requirements and with the conditions and requirements of all policies of insurance with respect to the Facility Equipment required to be maintained under this Agreement. Upon completion of the Facility Equipment portion of the Project, the Lessee will promptly obtain or cause to be obtained all permits, authorizations and licenses from appropriate authorities, if required, authorizing the operation and use of the Facility Equipment for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency and the Trustee within ten (10) Business Days of receipt thereof.

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

(g) The Lessee shall take such action and institute such proceedings as shall be reasonably necessary enforce warranties or to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, with all expenses incurred by the Lessee or the Agency in connection with the performance of their obligations under this Section to be considered a Project Cost (Facility Equipment). Any amounts in excess of \$200,000 recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, if recovered prior to the date of completion of the Facility Equipment portion of the Project, shall be deposited into the Facility Equipment Account of the Project Fund and made available for payment of Project Costs (Facility Equipment), or if recovered after such date of completion, be deposited in the Redemption Account of the Bond Fund (Facility Equipment).

(h) Title to all machinery, equipment and other property intended to be incorporated or installed as part of the Facility Equipment shall vest in the Agency immediately upon payment therefor. The Lessee shall promptly, upon the acquisition thereof by or on behalf of the Lessee, convey or cause to be conveyed to the Agency pursuant to Section 2.1(a) hereof, free and clear of all liens, claims, charges, security interests and encumbrances other than Permitted Encumbrances, and cause each such item of Facility Equipment to be subjected to the lien and security interest of the Agency Mortgage. The Lessee shall take all action necessary to cause title to the Facility Equipment to be vested in the Agency and to protect such title against claims of any third parties.

Section 2.2. Completion by Lessee. (a) The Lessee unconditionally covenants and agrees that it will complete the Facility Equipment portion of the Project, or cause the Facility Equipment portion of the Project to be completed, by October 31, 2008, subject to Section 9.2 hereof, and that such completion will be effected in a first-class workmanlike manner, using high-grade materials, free of 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 Facility Equipment Account of the Project Fund are not sufficient to pay the costs necessary to complete the Facility Equipment portion of the Project, the Lessee shall pay that portion of such costs of the Facility Equipment portion of the Project as may be in excess of the moneys therefor in said Facility Equipment Account of the Project Fund and shall not be entitled to any reimbursement therefor from the Agency, the Trustee or the Holders of any of the Bonds (except from the proceeds of Additional Bonds which may be issued for that purpose), nor shall the Lessee be entitled to any diminution of the rents payable or other payments to be made under this Agreement or under any other Project Document.

(b) Upon completion of the Facility Equipment portion of the Project, the Lessee shall deliver to the Agency and the Trustee a Certificate of an Authorized Representative of the Lessee substantially in the form set forth in Schedule D attached hereto, together with all the attachments required therein.

Section 2.3. Issuance of Facility Equipment Bonds. On the Closing Date, the Agency will sell and deliver the Series 2007B Bonds under and pursuant to a resolution adopted by the Agency on May 8, 2007 authorizing the issuance of the Series 2007B Bonds, and under and pursuant to the Indenture. The proceeds of sale of the Series 2007B Bonds shall be deposited and applied as provided in Section 4.01 of the Indenture.

Section 2.4. Limitation on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Eligible Materials effected by or for the Lessee as agent for the Agency pursuant to the Sales Tax Letter, it being the intent of the parties that no operating expenses of the Lessee and no purchases of building materials, equipment or other personal property (other than Eligible Materials) shall be subject to an exemption from Sales Taxes because of the Agency involvement with the Facility Equipment portion of the Project.

(b) The Lessee covenants and agrees that it shall include or cause to be included the following language (through an attached rider, or by reference to the Sales Tax Letter or otherwise) in and as part of each contract, agreement, invoice, bill or purchase order entered into by the Lessee (or an agent of the Lessee), as agent for the Agency in connection with the Project:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by Cool Wind Ventilation Corp., a New York corporation (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency for the Agent and for D & D Realty V, LLC, a New York limited liability company affiliated with the Agent (the "Company"), being the equipping of a manufacturing facility comprising a building of approximately 35,500 square feet located on an approximately 50,000 square foot parcel of land at 82-40 73rd Avenue (a/k/a 83-12 72<sup>nd</sup> Drive), Queens, New York, all for use in the manufacture of sheet metal duct work for HVAC systems for commercial applications (the "Project"). The equipment and other personal property to be used for the Project which are the subject of this [contract, agreement, invoice, bill or purchase order], which has been entered into with or presented to [insert name and address of vendor] (the "Vendor"), shall be exempt from the sales and use tax levied by the State of New York and The City of New York if purchased and used in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract,

agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption.

The Company or the Agent has provided the Vendor with a copy of an executed New York State Department of Finance Form ST-60 "IDA Appointment of Project or Agent" to evidence that the Agency has appointed the Agent as its agent. The Vendor must retain in its records a copy of the Letter of Authorization for Sales Tax Exemption, the completed Form ST-60 and the [contract, agreement, invoice, bill or purchase order] as evidence that the Vendor is not required to collect sales or use tax in connection with this [contract, agreement, invoice, bill or purchase order].

This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the Vendor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

If the Lessee shall fail to include, incorporate by reference or otherwise cause the contract, agreement, invoice, bill or purchase order to be subject to the above applicable language in substantially the above form, such contract, agreement, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits able to be conferred by the Agency, and the Lessee shall not claim any sales or use tax benefits or exemptions with respect to any such contract, agreement, invoice, bill or purchase order and the Lessee shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of eighteen percent (18%) per annum, from the date of such taking.

(c) Concurrently with the execution of this Agreement, the Agency shall make available to the Lessee the Sales Tax Letter. The Agency, at the sole cost and expense of the Lessee, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Letter) as may be reasonably necessary to permit the Lessee to obtain the intended benefits hereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by the Lessee pursuant to this Agreement and the Sales Tax Letter shall be limited in both duration and amount as follows:

(i) The Sales Tax Letter shall be dated the Closing Date and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) the completion of the Facility Equipment portion of Project as provided in Section 2.2 hereof, (3) October 31, 2008, or (4) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended after notice to the Lessee (y) that the Lessee shall be in default under this Agreement until the Lessee shall pay any amounts due, and perform all of its obligations, with respect to any such default, or (z) the Agency shall determine within its sole discretion that the Lessee or D & D or any Affiliate of the Lessee or D & D or any Principal of the Lessee, D & D or of any such Affiliate has committed a material violation of a material Legal Requirement, in which event such suspension shall continue until such time as the Agency shall determine, within its sole discretion (a copy of which determination shall be delivered to the Lessee) to waive such suspension or that such material violation of a material Legal Requirement has been cured to the Agency's satisfaction.

(iii) The Sales Tax Benefit to be provided pursuant to the Sales Tax Letter.

(A) shall not be available for payment of any costs other than Project Costs (Facility Equipment) for Eligible Materials for location within the Facility Realty,

(B) shall only be utilized for Eligible Materials which shall be purchased, completed or installed for use only by the Lessee or D & D at the Facility Realty (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Materials to another Person), it being the intention of the Agency and the Lessee that the Sales Tax Benefit shall not be made available with respect to any item of Eligible Materials unless such item is used solely by the Lessee or D & D at the Facility Realty,

(C) shall not be available for any item of (i) rolling stock or watercraft, (ii) tangible personal property having a useful life of less than one year, (iii) computer software, or (iv) building materials,

(D) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 2.4(c)(ii) hereof; provided, however, that in the event the Lessee shall thereafter cure any defaults under this Agreement or the Agency shall thereafter waive such suspension, as applicable, the Sales Tax Benefit shall again continue from the date of such cure or such waiver,

(E) shall be available only if purchased by the Lessee as agent for the Agency for use by the Lessee or D & D at the Facility Realty,

(F) shall not be available for any tangible movable personal property (including computer software) or trade fixture for use by any Person other than the Lessee or D & D at the Facility Realty,

(G) shall not be available for any cost of utilities, cleaning service or supplies,

(H) shall not be available for any item the acquisition or leasing of which would otherwise be exempt from Sales Taxes absent involvement by the Agency,

(I) shall not be available subsequent to the termination of the Lease Agreement (Facility Realty), and

(J) shall only be available for those costs set forth in Exhibit A to the Sales Tax Letter.

(iv) In the event that the Lessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.4(c)(iii) hereof, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to or at the direction of the Agency a return of Sales Tax Benefits in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of eighteen percent (18%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

(v) The sales and use tax exemption authorizations provided to the Lessee under the Sales Tax Letter and this Agreement availed of by the Lessee shall extend both to those Project Costs (Facility Equipment) the payment for which shall first be made from the proceeds of the Facility Equipment Bonds as well as those Project Costs (Facility Equipment) incurred after the delivery of the Sales Tax Letter, the payment of which is to be reimbursed from the proceeds of the Facility Equipment Bonds.

(vi) Upon request by the Agency of, and reasonable notice to, the Lessee, the Lessee shall make available at reasonable times to the Agency all such books and records of the Lessee and require all appropriate officers and employees of the Lessee to respond to reasonable inquiries by the Agency as shall be necessary to indicate in reasonable detail those costs in connection with which the Lessee shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

(d) The Lessee shall observe and comply with the terms and conditions of the Sales Tax Letter, and upon termination, expiration or cancellation of the Sales Tax Letter, the Lessee shall promptly surrender the same to the Agency.

(e) If and for so long as the same shall be required by law, the Lessee shall annually (currently, by each February 28 with respect to the prior calendar year) file a statement (Form ST-340 attached hereto as Schedule E or any successor or additional mandated form) with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New



York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee or agents of the Lessee in connection with the Facility Equipment portion of the Project and the Facility Equipment as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement, the Lessee shall immediately cease to be the agent for the Agency in connection with the Facility Equipment portion of the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase Eligible Materials on the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Lessee by the Agency that is in the Lessee's or D & D's possession or in the possession of any agent of the Lessee or D & D. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Facility Equipment portion of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

(f) The Lessee agrees to submit to the Agency on August 1 of each year, beginning August 1, 2008, a completed Benefits Report in the form of Schedule A attached hereto to the extent that the Lessee shall have received Sales Tax Benefits during the twelve-month period ending on the June 30 immediately preceding such August 1.

[Remainder of page left intentionally blank]

## ARTICLE III

### Lease of Facility Equipment, Rentals and Related Provisions

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

Section 3.2. Duration of Term. The term of this Agreement shall commence on the Closing Date and expire on the earliest of (i) 11:58 p.m. (New York City time) on June 30, 2033, (ii) the date the Facility Equipment Bonds shall cease to be Outstanding under the Indenture, or (iii) such date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Lessee, and the Lessee hereby accepts, sole and exclusive possession of the Facility Equipment.

Section 3.3. Rental Provisions; Pledge of Agreement and Rent. (a) The Lessee covenants to make rental payments which the Agency agrees shall be paid in immediately available funds by the Lessee directly to the Trustee on each Lease Rental Payment Date for deposit in the Bond Fund (Facility Equipment) in an amount equal to the sum of:

(i) with respect to interest due and payable on the Facility Equipment Bonds, an amount equal to the interest next becoming due and payable on the Bonds on the immediately succeeding Interest Payment Date (taking into account any amounts on deposit in the Interest Account of the Bond Fund (Facility Equipment)),

(ii) the Sinking Fund Installments on the Facility Equipment Bonds which will become due and payable on the immediately succeeding Interest Payment Date, taking into account any amounts on deposit in the Sinking Fund Installment Account of the Bond Fund (Facility Equipment),

(iii) the principal amount of the Facility Equipment Bonds then Outstanding which will become due and payable on the immediately succeeding Interest Payment Date (whether at maturity or by redemption, other than by Sinking Fund Installment redemption, or acceleration or otherwise as provided in the Indenture), taking into account any amounts on deposit in the Principal Account of the Bond Fund (Facility Equipment),

(iv) the principal of and redemption premium, if any, on the Facility Equipment Bonds to be redeemed which will become due on the immediately succeeding redemption date together with accrued interest to the date of redemption, taking into account any amounts on deposit in the Redemption Account and Interest Account of the Bond Fund (Facility Equipment), and

(v) any such other amounts as shall be due and payable under the Facility Equipment Bonds.

The Lessee further agrees to pay such additional amounts as set forth in the Indenture with respect to interest on the Series 2007B Bonds in the event of a Determination of Taxability or an Event of Default.

(b) Upon receipt by the Lessee of notice from the Trustee pursuant to Section 5.10(d) of the Indenture that the amount on deposit in the Debt Service Reserve Fund shall be less than the Debt Service Reserve Fund Requirement, the Lessee shall pay to the Trustee in immediately available funds for deposit in the Debt Service Reserve Fund the amount of any such deficiency immediately following receipt by the Lessee of notice of such deficiency.

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

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

(e) The Lessee shall have the option to prepay its rental obligation with respect to the Facility Equipment 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 Facility Equipment Bonds.

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

(g) As security for the Facility Equipment Bonds, (i) the Agency, the Lessee and D & D, pursuant to the Agency Mortgage, shall grant liens on and security interests in their respective interests in the Facility prior to the lien of this Agreement, and (ii) the Agency shall

pledge and assign to the Trustee, pursuant to the Indenture, all of the Agency's right, title and interest in this Agreement (except for the Agency's Reserved Rights), including all rental payments hereunder, and in furtherance of said pledge the Agency will unconditionally assign such rental payments to the Trustee for deposit in the Bond Fund (Facility Equipment) in accordance with the Indenture. The Lessee hereby consents to the above-described lien and security interest, and pledge and assignment of this Agreement.

(h) The Lessee covenants and agrees that it will comply with the provisions of the Indenture with respect to the Lessee and that the Trustee shall have the power, authority, rights and protections provided in the Indenture. The Lessee further covenants to use its best efforts to cause there to be obtained for the Agency any documents or opinions required of the Agency under this Agreement or the Indenture.

Section 3.4. Obligation of Lessee Unconditional. The obligation of the Lessee to pay the rentals and all other payments provided for in this Agreement and to maintain the Facility Equipment in accordance with Section 4.1 of this Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency, the Trustee or the Holder of any Bond. The Lessee will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Lessee under this Agreement or the Facility Equipment or any part thereof except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

Section 3.5. No Encumbrances. The Lessee shall not create, permit or suffer to exist any encumbrance, lien, security interest, claim or charge against the Facility Equipment or any part thereof, or the interest of the Lessee in the Facility Equipment or this Agreement except for Permitted Encumbrances. The Lessee covenants that it shall take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that there are no liens on, or security interests in, the Facility Equipment (other than Permitted Encumbrances) prior to the liens thereon, and security interests therein, granted by the Agency Mortgage.

## ARTICLE IV

### Maintenance, Taxes and Insurance

Section 4.1. Maintenance and Alterations. (a) During the term of this Agreement, the Lessee will keep the Facility Equipment in good and safe operating order and condition, ordinary wear and tear excepted, will use and operate, or cause to be used or operated, the Facility Equipment in the manner for which it was designed and intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure the continued operation by the Lessee of the Facility Equipment. 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 all applicable Legal Requirements. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility Equipment, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility Equipment, or to furnish any utilities or services for the Facility Equipment and the Lessee hereby agrees to assume full responsibility therefor.

(b) The Lessee may make such alterations of or additions to the Facility Equipment or any part thereof from time to time as the Lessee in its discretion may determine to be desirable for its uses and purposes; provided, however, that in any event (i) the fair market value of the Facility Equipment is not reduced below its value immediately before such alteration or addition and the usefulness, structural integrity or operating efficiency of the Facility Equipment 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 Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility Equipment shall at all times be free of any lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, and (iv) such additions or alterations do not change the nature of the Facility so that it would not constitute a manufacturing facility and a qualified "project" as defined in and as contemplated by the Act. All alterations of and additions to the Facility Equipment shall constitute a part of the Facility Equipment, subject to this Agreement, the Indenture and the Agency Mortgage.

(c) The Lessee shall have the right to install or permit to be installed at the Facility Realty machinery, equipment, furniture, furnishings and other personal property (the "Lessee's Property") without subjecting such property to this Agreement, the lien and security interest of the Indenture and the Agency Mortgage. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property.

(d) The Lessee shall not create, permit or suffer to exist any encumbrance, lien, security interest, claim or charge against the Facility Equipment or any part thereof, or the interest of the Lessee in the Facility Equipment or this Agreement except for Permitted

Encumbrances. The Lessee 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 perfected security interest in the Facility Equipment subject only to Permitted Encumbrances.

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

Section 4.2. Removal of Items of the Facility Equipment. (a) The Lessee shall have the privilege from time to time of removing any item of Facility Equipment (the "Existing Facility Property") and thereby causing the release of such item of Existing Facility Property from this Agreement, provided that:

(i) such Existing Facility Property is simultaneously substituted or replaced by property (A) having equal or greater fair market value, operating efficiency and/or utility or function to the Lessee, 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, the Lessee shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund (Facility Equipment) the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition, provided that no such redemption shall be required when such amount received in connection with any removal or series of removals do not exceed, in the aggregate, \$50,000;

provided, however, no such removal as set forth in paragraph (i) or (ii) above shall be effected if (w) such removal would change the nature of the Facility so it would not constitute a manufacturing facility and a qualified "project" as defined in and as contemplated by the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would reduce the fair market value of the Facility below its value immediately before such removal or (z) if there shall exist and be continuing an Event of Default

hereunder. Any amounts received pursuant to paragraph (ii) above which are not in excess of \$50,000 shall be retained by the Lessee.

(b) The Lessee shall deliver or cause to be delivered to the Agency and the Trustee appropriate documents conveying to the Agency a title to any property installed or placed upon the Facility Realty pursuant to Section 4.2(a)(i) hereof and subjecting such substitute or replacement property to this Agreement and the liens and security interests of the Agency Mortgage, and upon written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents releasing the Agency's interest in any item of Facility Equipment pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all costs and expenses (including reasonable counsel fees and disbursements) incurred in subjecting to this Agreement and the liens and security interests of the Indenture and the Agency Mortgage of any property installed as part of the Facility Equipment pursuant to this Section and the conveyance of any Existing Facility Property to the Lessee.

(c) The removal of any item of Existing Facility Property pursuant to the provisions of Section 4.2(a) hereof shall not entitle the Lessee to any abatement or reduction in the rental payments and other amounts payable by the Lessee under this Agreement or under any other Security Document.

Section 4.3. [Reserved].

Section 4.4. Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes, assessments and other governmental charges and impositions whatsoever, and assessments, general and specific, if any, levied and assessed upon or against the Facility Equipment, this Agreement, any estate or interest of the Agency or the Lessee in the Facility Equipment, or the rental payments hereunder during the term of this Agreement, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private or other charges incurred in the use, operation, maintenance or upkeep of the Facility Equipment, all of which are herein called "Impositions". The Agency shall promptly forward to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

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

Section 4.5. Insurance. (a) At all times throughout the term of this Agreement, the Lessee shall maintain insurance against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee, including, without limitation:

(i) To the extent not covered by the general liability insurance referred to below, owners and contractors protective liability insurance for the benefit of the Lessee, the Agency and the Trustee in a minimum amount of \$5,000,000 for the Facility (or such lesser amount agreed upon by the Agency and the Trustee upon written request by the Lessee) aggregate coverage for bodily and personal injury and property damage;

(ii) General liability insurance (including contractual liability coverage, together with any umbrella liability insurance) naming the Lessee as the primary insured, and the Agency and the Trustee as additional insureds, 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 for the Facility (or such lesser amount agreed upon by the Agency and the Trustee (at the specific written direction of the Majority Holders) upon written request by the Lessee) per occurrence per location aggregate, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain any provisions for a deductible amount or self insured retention, except as may otherwise be approved in writing by the Agency in its sole discretion;

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

(iv) Automobile liability insurance (together with any umbrella 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 Trustee upon written request by the Lessee) covering the Lessee for all owned, non-owned and/or hired automobiles, forklifts and other drivable machinery and/or vehicles used in connection with the Facility;

(v) If reasonably requested by the Agency, environmental liability insurance covering unknown environmental hazards and known environmental conditions in an amount not less than \$5,000,000 per discovery or cleanup order; and



(vi) Such other insurance, including revision of the insurance requirements set forth above, in such amounts and against such insurable hazards as the Agency or the Trustee (at the direction of the Majority Holders) from time to time may reasonably require.

(b) All insurance required by Section 4.5(a) above shall be procured from and maintained with financially sound and generally recognized responsible insurance companies authorized and admitted to write such insurance in the State. At least once every two fiscal years, the Lessee agrees to deliver a certificate of an independent insurance consultant to the Trustee which indicates that the insurance then maintained by the Lessee/or meet the requirements of Section 4.5(a) hereof.

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

(i) provide that all insurance proceeds with respect to loss or damage to the property of the Facility (except as otherwise provided in Section 4.5(d) below) be endorsed and made payable to the Lessee and shall name the Lessee as a loss payee under the standard loss payee clause and the Trustee as a mortgagee under the terms of a standard mortgagee clause, which insurance proceeds shall be paid over to the Trustee and deposited in the Renewal Fund, subject to the terms and conditions of the Agency Mortgage;

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

(iii) provide that there shall be no recourse against the Agency 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 or the Trustee in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee (other than nonpayment of premium) or any other Person and shall insure the Agency 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 or the Trustee to the extent that such other insurance provides the Agency or the Trustee, as the case may be, with contingent and/or excess liability insurance with respect to its respective interest as such in the Facility;

(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 or the Trustee until at least thirty (30) days after receipt by the Agency 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 (except if such Net Proceeds so received for any Loss Event shall be less than \$ 250,000 in which event such Net Proceeds shall be paid directly to the Lessee and applied by the Lessee to the rebuilding, replacement, repair and restoration of the Facility with any excess to be retained by the Lessee) shall be deposited in the Renewal Fund and applied in accordance with Section 5.1 hereof and the Indenture.

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

(f) The Lessee shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency or the Trustee (at the specific written direction of the Majority Holders) to collect from insurers for any loss covered by any insurance required to be obtained by this Section. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 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 BUSINESSES OR INTERESTS OF THE LESSEE OR D & D.

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

Section 4.7. Compliance with Legal Requirements. The Lessee 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 Lessee or any user or operator of the Facility Equipment or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits, privileges, franchises and concessions. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure to comply with any Legal Requirement or (b) imposed upon the Lessee, D & D, or any of the Indemnified Parties by any Legal Requirement; in case any action or proceedings is brought against any of the Indemnified Parties in respect to any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

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

## ARTICLE V

### Damage, Destruction and Condemnation

Section 5.1. Damage, Destruction and Condemnation. (a) In the event that at any time during the term of this Agreement all or any item of the Facility Equipment shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement among the Agency or any Person having an interest in the Facility Equipment and those authorized to exercise such right or if the temporary use of the Facility Realty shall be so taken by condemnation or agreement (a "Loss Event"):

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

(ii) there shall be no abatement, postponement or reduction in the rental payments or other amounts payable by the Lessee or D & D under this Agreement or under any other Project Document, and

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

(b) Upon the occurrence of a Loss Event with respect to the Facility Equipment, (y) if the Net Proceeds derived therefrom shall be less than \$50,000, the Net Proceeds shall be paid to the Lessee and applied to replace, repair or restore the Facility Equipment, and (z) if the Net Proceeds derived therefrom shall be equal to or greater than \$50,000, the entirety of same shall be paid to the Trustee and deposited in the Renewal Fund, and, unless the Majority Holders shall direct that the Bonds be redeemed in whole, the Lessee shall either:

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

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

Not later than one hundred twenty (120) days after the occurrence of a Loss Event, the Lessee shall advise the Agency and the Trustee in writing of the action to be taken by the Lessee under this Section 5.1(b), a failure to so timely notify being deemed an election in favor of clause (i) above to be exercised in accordance with the provisions of clause (i) above.

If the Lessee shall elect to or shall otherwise be required to replace, repair or restore the affected Facility Equipment as set forth in clause (i) above, and the Majority Holders shall not have elected to require a redemption of Facility Equipment Bonds, the Lessee shall deliver to the Trustee and the Bondholders a cost estimate to replace, repair or restore the affected Facility Equipment, and the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in Section 5.03 of the Indenture to pay or reimburse the Lessee, at the election of the Lessee, either as such work progresses or upon the completion thereof; provided, however, the amounts so disbursed by the Trustee to the Lessee shall not exceed the actual cost of such work. If, on the other hand, the Majority Holders shall have exercised their right to direct the redemption in whole of the Facility Equipment Bonds, or the Lessee shall exercise its option in clause (ii) above, the Trustee shall transfer the Net Proceeds from the Renewal Fund to the Redemption Account of the Bond Fund (Facility Realty) and then to the Redemption Account of the Bond Fund (Facility Equipment) to be applied to the redemption of the Facility Equipment Bonds in accordance with the Indenture.

(c) All such replacements, repairs or restorations shall

(i) automatically be deemed a part of the Facility Equipment and be subject to this Agreement and the liens and security interests of the Agency Mortgage,

(ii) if at least equal to \$50,000, be in accordance with specifications and cost estimates approved in writing by the Trustee (at the specific written direction of the Majority Holders),

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

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

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

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

(f) If all or substantially all of the Facility Realty shall be taken or condemned, or if the taking or condemnation renders the Facility Realty unsuitable for use by the Lessee and D & D as contemplated hereby, the Lessee shall exercise its option to purchase the Facility Equipment and terminate this Agreement pursuant to Section 8.1 hereof, and the Lessee shall thereupon pay to the Trustee for deposit in the Redemption Accounts of the Bond Funds an amount which, when added to any amounts then in the Bond Funds and available for that purpose, shall be sufficient to retire and redeem the Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or redemption date and redemption premium, if any), and to pay the expenses of redemption, the fees and expenses (including counsel fees and expenses) of the Agency, the Bond Registrar, the Trustee, the Bondholders and the Paying Agents, together with all other amounts due under the Indenture and under this Agreement and under each other Security Document, and such amount shall be applied, together with such other available moneys in the Bond Funds, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date.

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

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

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## ARTICLE VI

### Particular Covenants

Section 6.1. Dissolution or Merger; Restriction on Lessee. The Lessee agrees that at all times during the term of this Agreement it will (i) maintain its legal existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Closing Date, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it. The Lessee may, however, without violating the foregoing, upon the prior written consents of the Agency and the Trustee (acting upon the specific written direction of the Majority Holders), consolidate with or merge into another entity or permit one or more entities 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 entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect); provided, however, that, in the event that the Lessee is not the surviving, resulting or transferee entity, as the case may be, such entity (A) is a solvent entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (B) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Project Documents to which the Lessee shall be a party, and (1) in the Opinion of Counsel addressed to the Agency and the Trustee, (y) such entity shall be bound by all of the terms applicable to the Lessee of this Agreement and all other Project Documents to which the predecessor Lessee shall have been a party, and (z) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents, and (2) in the Opinion of Nationally Recognized Bond Counsel addressed to the Agency and the Trustee, such merger, consolidation, sale or transfer will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes, (C) unless the Agency and the Trustee (acting upon the specific direction of the Majority Holders) shall otherwise consent (such consent not to be unreasonably withheld or delayed), has a positive net worth (as determined in accordance with generally accepted accounting principles and certified by an independent certified public accountant reasonably acceptable to the Agency and the Trustee (at the specific written direction of the Majority Holders)) after the merger, consolidation, sale or transfer of not less than ninety percent (90%) of the net worth of the Lessee immediately prior to such merger, consolidation, sale or transfer, and (D) delivers to the Agency the Required Disclosure Statement, in form and substance satisfactory to the Agency, provided that if any modification to such form of Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Lessee shall be in default under this Agreement. The Lessee further covenants and agrees that it is and throughout the term of this Agreement will continue to be duly qualified to do business in the State and that any entity succeeding to the rights of the Lessee under this Agreement shall be and continue to be duly qualified to do business in the State.

The Lessee further represents, covenants and agrees that it is and throughout the term of this Agreement will (y) continue to be owned to the extent of at least 51% of its voting and equity interests by the same individuals as shall own the equity interest in D & D, and (z) continue to be duly qualified to do business in the State and that any legal entity succeeding to its rights under this Agreement shall be and continue to be duly qualified to do business in the State; provided however, that nothing contained in clause (y) above shall prohibit any such individual from effecting a transfer of a voting or equity interest in the Lessee to members of his immediate family or to trusts for bona fide good faith estate and gift tax planning purposes, or as the direct result of an award of equitable dissolution (or similar award) and/or a settlement agreement concluded in a bona fide transaction as a result of, or arising from, a marital dissolution.

Section 6.2. Indemnity. (a) The Lessee shall at all times indemnify, defend, protect and hold the Agency, the Trustee, the Bond Registrar, the Paying Agents and any director, officer, employee, servant, agent (excluding for this purpose the Lessee, which is not obligated hereby to indemnify its own employees, Affiliates or affiliate individuals) of any of such Persons and persons under the control or supervision of any of such Persons (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses, including attorneys fees 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 March 13, 2007, the date the Agency adopted its original 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 or refinancing of the costs of the Facility and the marketing, issuance, sale or remarketing of the Bonds for such purpose,

(ii) the planning, design, acquisition, site preparation, construction, 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 or in any of the work done on or about the Facility,

(iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof or the payment of any other costs in connection with the Facility,

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



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

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

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

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

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

(c) (i) In addition to and without limitation of any other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that the Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, except as set forth in that certain Phase I Environmental Site Assessment, dated March 12, 2007, prepared by EnviroTrac Ltd., a true and correct copy of which the Lessee has delivered to the Agency (the "Audit"), to the best of the Lessee'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 Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property not in compliance with all applicable Legal Requirements.

(iii) The Lessee 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 Lessee or D & D, the obligations of the Lessee with respect to such Persons shall be absolute and not limited to best efforts.

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

(v) In the event the Agency Mortgage is foreclosed, or a deed in lieu of foreclosure is tendered, or this Agreement is terminated, the Lessee shall deliver the Facility Equipment 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 to the Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Lessee's obligations to carry out and perform all of the covenants stated throughout this Section, including but not limited to, those covenants wherein the Lessee is obligated to indemnify each Indemnified Party and comply with all applicable Legal Requirements pertaining to Hazardous Materials.

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

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

(f) The provisions of this Section shall be in addition to any and all other obligations and liabilities the Lessee may have to any Indemnified Party in any other agreement or at common law.

**Section 6.3. Compensation and Expenses of Trustee, Bond Registrar, Paying Agents and Agency.** The Lessee shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following 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 counsel fees and expenses, (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 their respective counsel, (iii) the fees, charges, and expenses of the Trustee for extraordinary services rendered by it under the Indenture, including counsel fees and expenses, (iv) the fees, costs and expenses (including accounting and other administrative expenses and reasonable legal fees and expenses) of the Agency, and (v) the costs and expenses (including legal, accounting and other administrative expenses) of any Bondholder incurred under any of the Security Documents. The Lessee shall further pay the fees, costs and expenses of the Agency together with any disbursements and reasonable fees incurred by the Agency's Bond Counsel and General Counsel in performing services for the Agency in connection with this Agreement or any other Project Document.

On the Closing Date, the Lessee shall pay to the Agency its fee of \$11,915 (said amount representing the \$12,211 financing fee, plus an annual administrative fee of \$140.00, less an application fee of \$436.00). The Lessee further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$140.00 (subject to an adjustment up or down based on changes as of each November in the Consumer Price Index utilizing a base year of 2006) payable on each anniversary of the Closing Date until the termination of this Agreement. For purposes of this Section, "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), for the region New York-Northern N.J.-Long Island, NY—NJ—CT—PA (1982-84=100, unless otherwise noted), as published by the U.S. Department of Labor Bureau of Labor Statistics.

Section 6.4. Retention of Title to Facility Equipment. The Lessee shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its interest in the Facility Equipment or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 5.1, 7.2 and 8.2 hereof, without the prior written consent of the Trustee (at the specific written direction of the Majority Holders) and any purported disposition without such consent shall be void.

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

(c) If any Bondholder receives from the Internal Revenue Service a notice of assessment and demand for payment with respect to interest on any Bond, an appeal may be taken by the Bondholder at the option of either the Bondholder or the Lessee. If such appeal is taken at the option of the Lessee, all expenses of the appeal including reasonable counsel fees and expenses shall be paid by the Lessee, and the Lessee shall control the procedures and terms relating to such appeal, and the Bondholder and the Lessee shall cooperate and consult with each other in all matters pertaining to any such appeal which the Lessee have elected to take, except that no Bondholder shall be required to disclose or furnish any non-publicly disclosed information, including without limitation, financial information and tax returns. Before the taking of any appeal which the Lessee have elected to take, however, the Bondholder shall have the right to require the Lessee to pay the tax assessed and conduct the appeal as a contest for reimbursement.

(d) Not later than one hundred twenty (120) days following a Determination of Taxability, the Lessee shall pay or cause to be paid to the Trustee an amount sufficient, when added to the amounts then in the Bond Funds and available for such purpose, to retire and redeem all Bonds then Outstanding, in accordance with Section 2.03(f) of the Indenture.

(e) The obligation of the Lessee 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 Lessee of its obligation under this Section.

Section 6.6. Financial Statements; No-Default Certificates. (a) The Lessee agrees to furnish to the Trustee and any Majority Bondholder (and, if so requested, the Agency), as soon as available, but in any event no later than one hundred twenty (120) days after the close of each Fiscal Year of the Lessee and D & D, a copy of the annual financial statements of the Lessee and D & D, including balance sheets as at the end of such year, and the related statements of income, balances, earnings, retained earnings and changes in financial position for such Fiscal Year, prepared in accordance with generally accepted accounting principles and practices and shall include a statement of financial position balance sheet), statement of activities (revenue and expenses), expenses and charges to the fund balance, cash flow statement and supporting schedule of functional expenses with such notes as are deemed necessary to present fairly the financial condition of the Lessee and D & D, reviewed by the accountant of the Lessee and of D & D.

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

(c) The Lessee shall immediately notify the Agency 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 Lessee and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact on the notice.

(d) The Lessee shall deliver to the Agency on July 31 of each year, commencing July 31, 2008, a completed location and contact information report in the form attached hereto as Schedule C.

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 Equipment or any part thereof or the interest therein of the Agency, the Lessee, D & D or the Trustee or against any of the rental payments or other amounts payable under this Agreement or the interest of the Lessee under this Agreement other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.7(b) hereof, the Lessee 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 and the Trustee and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility Equipment.

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency 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 Equipment or any part thereof or interest therein, or in this Agreement, of the Agency, the Lessee, D & D, the Trustee or against any of the rental payments or other amounts payable under this Agreement, (2) neither the Facility Equipment nor any interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee, D & D, the Agency nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be requested by the Agency or the Trustee (at the specific written direction of the Majority Holders) to protect the security intended to be offered by the Security Documents.

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 EQUIPMENT, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY EQUIPMENT, OR THE SUITABILITY OF THE FACILITY EQUIPMENT FOR THE PURPOSES OR NEEDS OF THE LESSEE OR D & D OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE FACILITY EQUIPMENT BONDS WILL BE SUFFICIENT TO PAY THE COST OF THE FACILITY EQUIPMENT PORTION OF THE PROJECT. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE IS SATISFIED THAT THE FACILITY EQUIPMENT IS SUITABLE AND FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE 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 EQUIPMENT OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.10. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in the Earnings Fund, the Debt Service Reserve Fund, the Rebate Fund, the Bond Funds, the Project Fund or the Renewal Fund upon the expiration or sooner or later termination of the term of this Agreement as provided in this Agreement, after payment in full of (i) the Bonds (in accordance with Section 10.01 of the Indenture), (ii) the fees, charges and expenses (including counsel fees and expenses) of the Trustee, the Bond Registrar, the Paying Agents and the Agency in accordance with the Indenture, (iii) all rental payments and all other amounts payable under the Lease Agreements, (iv) all amounts required to be rebated to the Federal government pursuant to the Tax Regulatory Agreement or the Indenture, and (v) all amounts required to be paid under any Project Document, shall have been so paid, shall belong to and be paid to the Lessee or D & D, as the Lessee shall direct, by the Trustee as overpayment of rental payments.

Section 6.11. Issuance of Additional Bonds. The Agency and the Lessee recognize that under the provisions of and subject to the conditions set forth in the Indenture, the Agency is authorized, with the consent of the Holders of at least sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds Outstanding, to enter into a Supplemental Indenture and issue one or more series of Additional Bonds as Facility Equipment Bonds on a parity with the Series 2007 Bonds for the purpose of (i) completing the Facility Equipment portion of the Project, (ii) providing funds in excess of the Net Proceeds of insurance or eminent domain to repair, relocate, replace or restore Facility Equipment in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements

to the Facility Equipment, or (iv) refunding Outstanding Facility Equipment Bonds. If the Lessee is not in default hereunder, the Agency will consider the issuance of Additional Bonds as Facility Equipment Bonds in a principal amount as is specified in a written request in accordance with the applicable provisions set forth in the Indenture. If Additional Bonds as Facility Equipment Bonds are to be issued pursuant to the Indenture, the Agency and the Lessee shall enter into an amendment to this Agreement, providing, among other things, for the payment by the Lessee of such additional rentals as are necessary in order to amortize in full the principal of and interest on such Additional Bonds as Facility Equipment Bonds and any other costs in connection therewith.

Any such completion, repair, relocation, replacement, restoration, additions, extensions or improvements shall become a part of the Facility Equipment 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, 2008, until the termination of this Agreement, the Lessee and D & D shall submit to the Agency an employment report relating to the period commencing August 1 of the previous year and ending July 31 of the year of the obligation of the filing of such report, substantially in the form of Schedule A attached hereto, certified as to accuracy by the chief financial or accounting officer of the Lessee and D & D. Upon termination of this Agreement, the Lessee and D & D shall submit to the Agency an employment report relating to the period commencing the date of the last report submitted to the Agency and ending on the last payroll date of the preceding month in substantially the form of Schedule A attached hereto, certified as to accuracy by the Lessee and D & D. Nothing herein shall be construed as requiring the Lessee or D & D to maintain a minimum number of employees on its respective payroll.

(b) The Lessee shall ensure that all employees and applicants for employment by the Lessee or its Affiliates (including D & D) 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 is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, where practicable, to first consider, and cause each of its Affiliates at the Facility to first consider, persons eligible to participate in the Workforce 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 Lessee hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the Agency and/or the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to the Lessee and D & D and the



employees of the Lessee and D & D to enable the Agency and/or EDC to comply with its reporting requirements, applicable laws, rules or regulations and to determine compliance of the Project with this Section. In addition, upon the Agency's request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and D & D and the employees of the Lessee and D & D to enable the Agency and/or EDC to comply with its reporting requirements under New York City Local Law 48 of 2005 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or the City, 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 48 of 2005, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

(d) Nothing in this Section shall be construed to require the Lessee or D & D 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 (x) that the Lessee or D & D is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, in violation of applicable material law or not as a qualified "project" in accordance with the Act and the failure of the Lessee or D & D within sixty (60) days (or such longer period as may be established pursuant to the proviso to this sentence) of the receipt by the Lessee of written notice of such noncompliance from the Agency to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Trustee), (y) that the Lessee or D & D or any Affiliate of the Lessee or D & D or any Principal of the Lessee or D & D or of any such Affiliate has committed a material violation of a material Legal Requirement and the failure of the Lessee within sixty (60) days (or such longer period as may be established pursuant to the proviso of this sentence) of the receipt by the Lessee of written notice of such determination from the Agency to cure such material violation (which cure, in the case of a Principal who shall have committed a material violation of a material Legal Requirement, may be effected by the permanent removal of such Principal) or (z) that any Conduct Representation is false, misleading or incorrect in any material respect as of the date made, together in each case with a copy of such resolution (a copy of which notice shall be sent to the Trustee), the Lessee covenants and agrees that, in any of the circumstances described in clause (x), (y) or (z) above, it shall, on the immediately succeeding Interest Payment Date following the termination of such sixty (60) day (or longer) period, pay to the Trustee advance rentals in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of 100% of the aggregate principal amount of the Outstanding Bonds together with interest accrued thereon to such Interest Payment Date, provided, however, that if such non-compliance or cure of a material violation of a material Legal Requirement cannot be cured within such period of sixty (60) days with diligence (and is capable of being

cured) and the Lessee promptly commences the curing of such non-compliance or material violation and thereafter prosecutes the curing thereof with diligence and to the Agency's reasonable satisfaction, such period of time within which the Lessee may cure such failure or material violation 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 of any such extension. The Agency shall give prior written notice of the meeting at which the members of the Agency are to consider such resolution to the Lessee and the Trustee, which notice shall be no less than sixty (60) days prior to such meeting.

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

(c) Upon the circumstances set forth in Section 2.03(b), (c), (d), (e) or (f) of the Indenture, the Lessee shall pay or cause the prepayment of its rental obligation with respect to the Bonds upon the circumstances and in the manner set forth in the Indenture.

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

Section 6.15. Filing. (a) The security interest granted by (i) the Agency to the Trustee pursuant to the Indenture, and (ii) the Agency, the Lessee and D & D to the Trustee pursuant to the Agency Mortgage, in the property, rights and other intangible interests described therein, shall in each case be perfected by the filing of financing statements at the direction of the Agency (at the sole cost and expense of the Lessee) 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, which financing statements shall be in accordance with the New York State Uniform Commercial Code-Secured Transactions.

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

(1) 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,

(2) 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

(3) 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.

The parties hereto acknowledge and agree that, because the foregoing financing statements evidence collateral for the Series 2007 Bonds, and because the Series 2007 Bonds are municipal securities with a term that is at least 20 years in duration from the Closing Date, there is no need under the Uniform Commercial Code of the State of New York to re-file such financing statement in order to preserve the liens and security interests that they create, for the period commencing with the Closing Date and terminating on the thirtieth anniversary of the Closing Date.

(c) Any filings with respect to Uniform Commercial Code financing statements may be made electronically, and the Agency shall have the right to designate a company (which shall be reasonably acceptable to the Trustee) to facilitate the filing of Uniform Commercial Code financing statements.

(d) The Lessee acknowledges and agrees that neither the Agency nor the Trustee nor any of their respective directors, members, officers, employees, servants, agents, persons under its control or supervision or attorneys (including Bond Counsel to the Agency), shall have any 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 the failure to effect any such act in all appropriate filing or recording offices, or the failure of sufficiency of any such act so effected.

(e) All costs (including reasonable attorneys' fees and expenses) incurred in connection with the effecting of the requirements specified in this Section shall be paid by the Lessee.

(f) The Lessee agrees to perform all other acts (including the payment of all reasonable fees and expenses) necessary in order to enable the Agency and the Trustee to comply with this Section, with Section 10 of the Agency Mortgage and with Section 7.08 of the Indenture, including but not limited to, providing prompt notice to the Trustee of any change in the Lessee's or D & D's name or address. The Lessee agrees that the Agency and the Trustee, if permitted by applicable law, may provide for the re-recording of the Indenture, the Agency

Mortgage or any other Security Document or the filing or re-filing of continuation statements without the cooperation of the Lessee as necessary at the Lessee's sole cost and expense.

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

Section 6.17. Certain Continuing Representations. If at any time during the term of this Agreement, the representation or warranty made by the Lessee pursuant to Section 1.5(u) hereof would, if made on any date during the term of this Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect, then, the Lessee shall be deemed to be in default under this Agreement unless the Agency shall, upon written request by the Lessee, either waive such default in writing or consent in writing to an exception to such representation or warranty so that such representation or warranty shall no longer be false, misleading or incorrect in a material respect.

## ARTICLE VII

### Events of Default; Remedies

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

(a) Failure of the Lessee or D & D to pay any rental payment that has become due and payable by the terms of Sections 3.3 hereof which results in an Event of Default under the Indenture;

(b) Failure of the Lessee or D & D to pay any amount required of it under Section 3.3(b) hereof and continuance of such default for thirty (30) Business Days;

(c) Failure of the Lessee or D & D to pay any amount (except the obligation to pay rentals under Sections 3.3 hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Section 4.4 or 4.5, and continuance of any such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding;

(d) Failure of the Lessee 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), (c) or (g) hereof) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five 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 Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same;

(e) The Lessee or D & D 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;

(f) A proceeding or case shall be commenced, without the application or consent of the Lessee or D & D, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or D & D or of all or any substantial part of their respective assets, (iii) similar relief under any law relating to

bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing against the Lessee or D & D shall be entered and continue unstayed and in effect, for a period of ninety (90) days, or (iv) the Lessee or D & D shall fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee or D & D as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(g) Any representation or warranty made (i) by or on behalf of the Lessee, the Sublessee or any Guarantor in the application, commitment letter and related materials submitted to the Agency for approval of the Project, or (ii) by or on behalf of the Lessee or the Sublessee or any Guarantor herein or in any of the other Project Documents, or (iii) in the Letter of Representation and Indemnity Agreement delivered by the Guarantors to the Agency, the Trustee and the initial purchaser of the Bonds, or (iv) by or on behalf of the Lessee or the Sublessee in the Tax Regulatory Agreement, or (v) by or on behalf of the Lessee or the Sublessee or any Guarantor or any other Person in any Required Disclosure Statement, or (vi) by or on behalf of the Lessee or the Sublessee or any Guarantor 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; or An "Event of Default" under the Indenture or under any other Security Document shall occur and be continuing.

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

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

(b) The Agency, with the prior written consent of the Trustee (as directed in writing by the Majority Holders), or the Trustee (as directed in writing by the Majority Holders), may take possession of the Facility Equipment without terminating this Agreement, and sublease the Facility Equipment for the account of the Lessee, holding the Lessee liable for the difference in the rent and other amounts payable by D & D in such subletting, and the rents and other amounts payable by the Lessee hereunder;

(c) The Agency, with the prior written consent of the Trustee (as directed in writing by the Majority Holders), or the Trustee (as directed in writing by the Majority Holders), may terminate this Agreement, in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate. No such termination of this Agreement shall relieve the Lessee of its liability and obligations hereunder and such liability and obligations shall survive any such termination;

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

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

(f) The Agency, without the consent of the Trustee, any Bondholder or any Person, may proceed to enforce the Agency's Reserved Rights by (i) requiring the surrender by the Lessee to the Agency of the Sales Tax Letter for suspension or cancellation, and/or (ii) bringing an action for damages, injunction or specific performance, and/or (iii) taking whatever action at law or in equity as may appear necessary or desirable to collect payments of amounts due by the Lessee under the Agency's Reserved Rights or to enforce the performance or observance of any obligations, covenants or agreements of the Lessee under the Agency's Reserved Rights, and/or (iv) terminating this Agreement and conveying all of the Agency's right, title and interest, if any, in the Facility Equipment to the Lessee, which upon such enforcement by the Agency of the Agency's Reserved Rights, the Lessee hereby irrevocably agrees to accept. The Lessee hereby appoints the Agency as its agent and attorney-in-fact to execute, deliver and record on behalf of the Lessee any documents and instruments which may be necessary to effectuate such termination of this Agreement as described in clause (iv) immediately preceding. The Lessee agrees that the agency and power of attorney that it has granted in the preceding sentence shall be deemed irrevocable for the purposes described and that same shall be coupled with an interest.

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

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

Section 7.3. Reletting of Facility Equipment. If the right of the Lessee to the use and possession of the Facility Equipment shall be terminated in any way, the Agency may relet the same or any part thereof for the account and benefit of the Lessee 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, but the Agency shall not unreasonably refuse to

accept or receive any suitable lessee offered by the Lessee; provided that such reletting shall not adversely affect the tax exempt status of the Bonds. 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 Lessee, and if a sufficient sum shall not be received from any reletting to satisfy the rental payments hereby agreed to be made by the Lessee, after paying the expenses of reletting and collection, then the Lessee hereby agrees to pay and satisfy any such deficiency if, as and when the same exists; provided, however, any excess rentals from any such reletting shall be credited to any rental due or to become due by the Lessee.

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

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

Section 7.6. Effect on Discontinuance of Proceedings. In case any proceeding taken by the Trustee under the Indenture or this Agreement or under any other Security Document on account of any Event of Default hereunder or under the Indenture shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then, and in every such case, the Agency, 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 Agency, the Trustee or any Bondholder should employ attorneys or incur other expenses for the collection of rentals or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained or contained in any other Security Document, the Lessee agrees that on and during the occurrence of an Event of Default, it will on demand therefor pay to the Agency, the Trustee or such Bondholder the fees and disbursements of such attorneys and such other expenses so incurred during the occurrence of such Event of Default.

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## ARTICLE VIII

### Options

Section 8.1. Options. (a) The Lessee has the option to effect the retirement of the Facility Equipment Bonds in whole or the redemption in whole or in part of the Facility Equipment Bonds (with respect to the Series 2007B Bonds, all in accordance with the terms of the Indenture); provided, however, that no partial redemption of the Facility Equipment Bonds may be effected through advance rental payments hereunder if there shall exist and be continuing an Event of Default. The Lessee shall exercise such option by delivering a written notice of an Authorized Representative of the Lessee to the Trustee in accordance with the Indenture, with a copy to the Agency, setting forth (i) the principal amount of Facility Equipment Bonds Outstanding requested to be redeemed (which principal amount shall be in such minimum amount or integral multiple of such amount as shall be permitted in the Indenture), and (ii) the date on which such principal amount of Facility Equipment Bonds are to be redeemed. Such advance rental 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 amounts on deposit in the Bond Fund (Facility Equipment) and available therefor will be sufficient to pay the Redemption Price of the Facility Equipment Bonds to be redeemed, together with interest to accrue to the date of redemption, and for the Lessee to pay all expenses of the Agency, the Bond Registrar, the Trustee and the Paying Agents in connection with such redemption. In the event the Facility Equipment Bonds are to be redeemed in whole or otherwise retired, the Lessee shall further pay on or before such redemption date, in legal tender, to the Agency, the Trustee, the Bond Registrar and the Paying Agents, as the case may be, all fees and expenses owed such party or any other party entitled thereto under this Agreement or the Indenture together with (i) all other amounts due and payable under this Agreement and the other Security Documents, and (ii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement.

(b) The Lessee shall have the option to terminate this Agreement commencing on that date upon which the Facility Equipment Bonds may first optionally be redeemed in whole and on any date thereafter permitted therefor as provided in the Indenture.

(c) As a condition precedent to the termination of this Agreement, pursuant to Section 8.1(b) hereof, the Lessee shall pay or cause to be paid to the Trustee, in legal tender, advance rental payments (if payment in full of the principal of or the Redemption Price, if any, as the case may be, of, and interest on, all the Outstanding Facility Equipment Bonds, and the interest thereon at maturity or upon earlier redemption has not yet been made), for deposit in the Bond Fund (Facility Equipment) equal to the sum of the following:

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

(2) expenses of redemption, the fees and expenses of the Agency, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable hereunder and under the other Security Documents (other than the Lease Agreement (Facility Realty));

(3) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement; and

(4) one dollar.

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

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

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, at the sole cost and expense of the Lessee, to the Lessee a termination of this Agreement. Concurrently with the delivery of such termination, there shall be delivered by the Agency, at the sole cost and expense of the Lessee, to the Trustee any instructions or other instruments required by Section 10.01 of the Indenture to defease and pay the Outstanding Facility Equipment Bonds.

Section 8.3. Conveyance on Exercise of Option to Termination. Upon the termination of this Agreement pursuant to Section 8.1, 8.2 or 8.4 hereof, the Agency will deliver or cause to be delivered to the Lessee documents conveying to the Lessee by bill of sale without covenant against grantor's acts, all right, title and interest equipment of the Agency in the Facility as all such property then exists, and all rights to the same belonging or otherwise appertaining, subject to the following: (1) the nature, quality and extent to which title to said property shall have been vested in the Agency; (2) any Permitted Encumbrances to which title to

said property was subject when conveyed to the Agency; (3) any liens, security interests, claims, charges and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (4) any liens, security interests, claims, charges and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreement on its part contained in this Agreement; (5) any liens for taxes or assessments no then delinquent; and (6) the rights, if any, of the Agency's right and interest in and to any rights of action, or any insurance proceeds or condemnations award, with respect to the Facility Equipment.

Section 8.4. Termination of Agreement. After full payment of the Facility Equipment Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, the Lessee shall terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Project Documents (other than the Lease Agreement (Facility Realty)), together with any amounts required to be rebated by the Lessee to the federal government pursuant to the Indenture or the Tax Regulatory Agreement, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Lessee under Sections 6.2, 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 Facility Equipment 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 Lessee shall terminate this Agreement by paying the fees and expenses (including counsel fees and expenses) of the Agency, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Project Documents, together with any amounts required to be rebated by the Lessee 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 Lessee under Sections 6.2, 6.3, 8.5 and 9.17 hereof. In the event the Lessee does not terminate this Agreement within such 45 day period, then, commencing on the 46<sup>th</sup> day after transmittal of the notice requesting termination as above provided, the Lessee shall, in addition to all other payment obligations due to the Agency hereunder, make payments to the Agency in the amount of \$500.00 per day until the Lessee 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 Series 2007 Bonds to finance part of the costs of the Project and is entering into this Agreement in order to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows: if there shall occur a Recapture Event, the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts:

(i) If there shall occur a Recapture Event (as defined below) prior to the completion of the Project and occupancy of the Facility Realty by the Lessee and D & D and D & D and/or the Lessee thereafter sells all or substantially all of the Facility or causes all or substantially all of the Facility to be sold within two years of the exercise of

such option to purchase, the Lessee shall pay to the Agency, as a return of public benefits conferred by the Agency, all Benefits as defined below.

(ii) If there shall occur a Recapture Event after the date on which the Project shall have been substantially completed, which shall be the later of those dates as stated in the certificates of the Lessee or of D & D, as the case may be, delivered to the Agency pursuant to Section 2.2 of the Lease Agreements, but not later than October 31, 2008 (the "Operations Commencement Date"), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the amounts set forth below:

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

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

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

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

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

The term "Benefits" shall mean, collectively,

(1) all real estate tax benefits which have accrued to the benefit of the Lessee during such time and by reason of the Agency having a leasehold interest in the Facility Realty, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under Section 4.3 hereof from those payments which the Lessee would have been required to pay during the lease term had the City determined the amount of such real estate taxes as would be due if the Lessee had been the owner of the Facility Realty during such lease term and the Agency did not have a leasehold interest in the Facility Realty; and

(2) all miscellaneous benefits derived from the Agency's participation in the financing of the costs of the Project including, but not limited to, exemption from mortgage recording tax, transfer tax, sales or use tax, and filing and recording fees.

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

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

(2) The Lessee or D & D shall have leased all or any portion of the Facility in violation of the limitations imposed by Section 9.3 of either of the Lease Agreements, without the prior written consent of the Agency;

(3) The Lessee or D & D shall have effected substantial changes in the scope and nature of the Lessee's operations at the Facility Realty;

(4) The Lessee or D & D shall have transferred all or substantially all of its employees to a location outside of the City; or

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

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

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

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

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

## ARTICLE IX

### Miscellaneous

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

Section 9.2. Force Majeure. In case by reason of force majeure 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 Lessee to make the rental payments or other payments required under the terms hereof, or to comply with Section 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, tornadoes, 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) The Lessee may not at any time assign or transfer this Agreement, or sublet all or substantially all of the Facility Equipment, without the prior written consent of the Agency and the Trustee (at the specific written direction of the Majority Holders) (which consents may be withheld by the Agency or the Trustee in their absolute discretion); provided that if the Agency and the Trustee consent to any such assignment, transfer or subletting, (1) the Lessee shall nevertheless remain liable to the Agency for the payment of all rental payments and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Security Document to which it shall be a party, (2) any assignee or transferee of the Lessee or sublessee in whole or substantially all of the Facility Equipment shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and

severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State, (3) in the Opinion of Counsel addressed to the Agency and the Trustee, such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Lessee for the payment of all rents nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Security Document to which the Lessee shall be a party, nor impair or limit in any respect the obligations of any obligor under any other Security Document, (4) any assignee, transferee or sublessee shall utilize the Facility as a qualified "project" within the meaning of the Act, (5) such assignment, transfer or sublease shall not violate any provision of this Agreement, the Indenture or any other Security Document, (6) such assignment, transfer or sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.5 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency and the Trustee that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease, (7) each such assignment, transfer or sublease contains such other provisions as the Agency or the Trustee may reasonably require, (8) in the opinion of Nationally Recognized Bond Counsel addressed to the Agency and the Trustee, such assignment, transfer or sublease shall not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes, and (9) any such assignee, transferee or sublessee shall deliver to the Agency the Required Disclosure Statement in form and substance satisfactory to the Agency, provided that if any modification to the form of such Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Lessee shall be in default under this Agreement. The Lessee shall furnish or cause to be furnished to the Agency and the Trustee a copy of any such assignment, transfer or sublease in substantially final form at least twenty (20) 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 Lessee, or the successors or assigns of the Lessee, 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 Lessee.

(c) The Lessee shall deliver to the Agency on January 1 of each year, commencing January 1, 2008, a completed subtenant survey in the form attached hereto as Schedule B.

Section 9.4. Priority of Indenture; Agency Mortgage. The Agency, the Lessee and D & D, pursuant to the Agency Mortgage, will mortgage their respective interests in the Facility to the Trustee as security for the Series 2007 Bonds. Pursuant to the Indenture, the Agency will pledge and assign the rental 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, Sinking Fund Installments for and interest on, the Bonds. The liens of this Agreement shall be subject and subordinate to the Agency Mortgage and the Indenture and such mortgage liens, security interests, pledges and assignments thereunder.



Section 9.5. Benefit of and Enforcement by Bondholders. The Agency and the Lessee agree that this Agreement is executed in part to induce the purchase by others of the Bonds and for the further securing of the Bonds, and accordingly all covenants and agreements on the part of the Agency and the Lessee as set forth in this Agreement are hereby declared to be for the benefit of 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 Bondholders by the Trustee.

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 only if the Lessee shall assume in writing the obligations of such amended agreement.

Section 9.7. Notices. All notices, requests, consents, demands and other communications to any party hereunder or any other Person specified herein shall be in writing (including bank wire, telecopy or similar writing) and shall be given to such party or other Person, addressed to it, at its address or telecopy number set forth below or such other address or telecopy number as such party or other Person may hereafter specify for the purpose by notice to the other parties or such other Persons. Each such notice, request, consent or demand or other communication shall be effective (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified below and the appropriate answer back or confirmation of receipt is received, (ii) if given by mail, five (5) Business Days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, when delivered at the address specified below.

Party

Address

Lessee

Cool Wind Ventilation Corp.  
46-06 37th Avenue  
Long Island City, New York 11101  
Attention: David Sullivan  
Telephone: (718) 361-8787  
Telecopier: (718) 706-0082

with a copy to:

Howard M. Katz, Esq.  
225 Broadway, Suite 1203  
New York, New York 10007  
Telephone: (212) 732-3435  
Telecopier: (212) 233-0818

with a copy to:

Agency

New York City Industrial Development Agency  
110 William Street  
New York, New York 10007  
Attention: General Counsel (with a copy to the  
Executive Director of the Agency at the same address)  
Telephone: (212) 312-3563  
Telecopier: (212) 312-3912

Trustee

The Bank of New York  
Corporate Trust Administration  
101 Barclay Street, Floor 21W  
New York, New York 10286  
Attention: Craig S. Wenzler  
Telephone: (212) 815-5086  
Telecopier: (212) 815-3455

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 or other agreements executed concurrently herewith or with respect to the Project), between the Agency and the Lessee relating to the Facility Equipment.

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 Equipment. The Lessee will permit the Trustee, or its duly authorized agent, at all reasonable times upon written notice to enter upon the Facility Realty and to examine and inspect the Facility Equipment and exercise its rights hereunder, under the Indenture and under the other Security Documents with respect to the Facility Equipment. The Lessee will further permit the Agency, or its duly authorized agent, at all reasonable times to examine and inspect the Facility Equipment, but solely for the purpose of assuring that the Lessee is operating the Facility Equipment, or is causing the Facility Equipment 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 Equipment as such latter obligation is and shall remain solely the obligation of the Lessee.

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

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

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

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

Section 9.15. Investment of Funds. Any moneys held as part of the Rebate Fund, the Earnings Fund, the Project Fund, the Debt Service Reserve Fund, the Bond Funds 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 Lessee, be invested and reinvested by the Trustee as provided in the Indenture (but subject to the provisions of the Tax Regulatory Agreement). Neither the Agency nor the Trustee nor any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom.

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

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

Section 9.17. Waiver of Trial by Jury. THE PARTIES DO HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY CAUSE OF ACTION DIRECTLY OR INDIRECTLY INVOLVING THE TERMS, COVENANTS OR CONDITIONS OF THIS AGREEMENT OR THE FACILITY EQUIPMENT 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 AND THE RIGHT OF RE-POSSESSION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

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

compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

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

(c) The Lessee 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.

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


All covenants, stipulations, promises, agreements and obligations of the Lessee contained in this Agreement shall be deemed to be the covenants, stipulation, promises, agreements and obligations of the Lessee, and not of any director, officer, employee or agent of the Lessee in his individual capacity, and no recourse shall be had for the payment of amounts due hereunder against any director, officer, employee or agent of the Lessee or any natural person executing this Agreement.

Section 9.20. Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on the Closing Date.

[Remainder of page left intentionally blank]

**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 Lessee has caused its name to be subscribed hereto by its Authorized Representative, all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

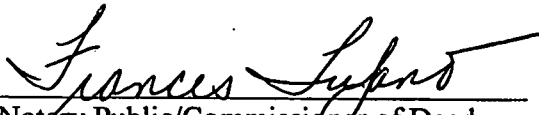
  
By: \_\_\_\_\_  
Maureen P. Babis  
Executive Director

**COOL WIND VENTILATION CORP.**

  
By: \_\_\_\_\_  
David Sullivan  
President

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

On the 13 day of August, in the year two thousand seven, before me, the undersigned, personally appeared Maureen P. Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public/Commissioner of Deeds

FRANCES TUFANO  
Notary Public, State of New York  
No. 01TU5080131  
Qualified in Queens County  
Commission Expires June 16, 2011

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

On the 14<sup>th</sup> day of August, in the year two thousand seven, before me, the undersigned, personally appeared David Sullivan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

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

JOSEPH D. MONACO  
Notary Public, State of New York  
No. 02MO4962971  
Qualified in Nassau County  
Commission Expires 02/26/2010

**APPENDICES**



Description of Facility Equipment

**MACHINERY AND EQUIPMENT LIST**

Engel Coil System	918,770
Fork Lift .5 ton - new	22,730
Fork Lift 6 ton - used	27,370
6ft x 20ft plasma tables (2)	85,990
Engel Pittsburgh Machines (2)	16,200
Engel TDF Machines (2)	32,825
Engel Edgemaster Flangers	13,400
Lion Cleat Benders (2)	19,198
Slip and Drive Full Line Machine	73,375
Harper 2in Vain Rail Machine	7,030
Harper 2in Vain Machine	23,958
Vane Dimple Tool	1,388
Coil Reel	4,116
TDF Cleat Machine	26,000
6ft Plasma Coil Feeds (2)	156,650
IOWA Dual Head Corner Machine	55,600
Engel Pittsburgh Seam Closer	29,500
Nurlock Surelock Clinching Machine	12,300
Built Rite Roller	14,065
Duro Dine Pin Spotters (2)	18,200
52in Roper Whitney Shear	6,965
Hydrolic Clamps ADIRA Brake	11,000
Adjustment Bar Roto Die	1,100
Mfr. Discount Applied to Above	(96,168)
Scanners, Engineering Plotters & Printers	50,000
Trucking & Rigging	45,000
20 HP Air Compressor	7,600
 Subtotal	 \$ 1,584,162

[FORM OF SALES TAX LETTER]

**LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION  
(FACILITY EQUIPMENT)**

**EXPIRATION DATE:** \_\_\_\_\_

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency  
(2007 Cool Wind Ventilation Corp. Project)

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of any New York State or New York City sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the Agency on May 8, 2007, and a certain Lease Agreement (Facility Equipment), dated as of August 1, 2007 (the "Lease Agreement"), between the Agency and Cool Wind Ventilation Corp., a New York corporation (the "Company"), the Agency has authorized the Company to act as its agent for the equipping of a manufacturing facility (the "Facility") being an approximately 35,500 square foot building located on an approximately 50,000 square foot parcel of land at 82-40 73rd Avenue (a/k/a 83-12 72<sup>nd</sup> Drive), Queens, New York, all for use in the manufacture of sheet metal duct work for HVAC systems for commercial applications (the "Project"), for use and occupancy by the Company and D & D Realty V, LLC, a New York limited liability company ("D & D")

3. In connection with such resolution, the Lease Agreement and this Letter of Authorization for Sales Tax Exemption and pursuant to the authority therein granted, the Agency authorizes the Company to act as its agent in connection with the equipping of the Project and authorizes the Company to use this Letter of Authorization for Sales Tax Exemption as its agent only for the payment of the costs of equipment, as described in Exhibit A attached hereto, for the Project.

4. As agent for the Agency, the Company agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company as agent for the Agency for the construction of the Project shall include language in substantially the following form:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by Cool Wind Ventilation Corp., a New York

corporation (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency for the Agent and for D & D Realty V, LLC, a New York limited liability company affiliated with the Agent (the "Company"), being the equipping of a manufacturing facility comprising a building of approximately 35,500 square feet located on an approximately 50,000 square foot parcel of land at 82-40 73rd Avenue (a/k/a 83-12 72<sup>nd</sup> Drive), Queens, New York, all for use in the manufacture of sheet metal duct work for HVAC systems for commercial applications (the "Project"). The equipment and other personal property to be used for the Project which are the subject of this [contract, agreement, invoice, bill or purchase order], which has been entered into with or presented to [insert name and address of vendor] (the "Vendor"), shall be exempt from the sales and use tax levied by the State of New York and The City of New York if purchased and used in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption.

The Company or the Agent has provided the Vendor with a copy of an executed New York State Department of Finance Form ST-60 "IDA Appointment of Project or Agent" to evidence that the Agency has appointed the Agent as its agent. The Vendor must retain in its records a copy of the Letter of Authorization for Sales Tax Exemption, the completed Form ST-60 and the [contract, agreement, invoice, bill or purchase order] as evidence that the Vendor is not required to collect sales or use tax in connection with this [contract, agreement, invoice, bill or purchase order].

This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the Vendor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

5. The acquisition of equipment constituting a part of the Project shall be exempt from the sales and use tax levied by the State of New York and The City of New York on the condition that (i) such equipment is separately identifiable property of the Agency, and (ii) any such property shall have a useful life of one year or more, and shall solely be for the use of

the Company and D & D at the Facility, and for no other entity and at no other location, and be effected by and at the sole cost of the Company.

6. The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Company or any Agent as agent for the Agency hereunder. The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

7. By execution by the Company of its acceptance of the terms of this Letter of Authorization for Sales Tax Exemption, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Letter of Authorization for Sales Tax Exemption by the Company or by any Agent is strictly for the purposes above stated.

8. Accordingly, until the earlier of (i) the Expiration Date referred to above, (ii) the completion of the Facility Equipment portion of the Project as provided in Section 2.2 of the Lease Agreement, (iii) the termination of the Lease Agreement, or (iv) the receipt by the Company of notice from the Agency of the termination or suspension of this Letter of Authorization for Sales Tax Exemption (in each case as so terminated, the "Termination Date"), all Vendors are hereby authorized to rely on this Letter of Authorization for Sales Tax Exemption (or on a photocopy or fax of this Letter of Authorization for Sales Tax Exemption) as evidence that purchases of the Project property, to the extent effected by the Company or by an Agent as agent for the Agency, are exempt from all New York State and New York City sales and use taxes. Upon the Termination Date, the agency appointed by the Agency of the Company and each Agent shall terminate, and (i) the Company shall immediately notify each Agent in writing of such termination; (ii) the Company shall surrender, and cause each Agent to surrender, this Letter of Authorization for Sales Tax Exemption (including any copy or facsimile hereof) to the Agency for cancellation; and (iii) the Company shall cause each Agent to perform all of its obligations as set forth in Exhibit B and in the Agency Agreement referred to therein.

9. Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the expiration of this Letter of Authorization for Sales Tax Exemption, the Company shall surrender, and cause each Agent to surrender, this letter to the Agency for annual renewal. The Company and any Agent may continue to use a facsimile copy of this Letter of Authorization for Sales Tax Exemption until its stated Expiration Date. Within ten (10) days of receipt of this Letter of Authorization for Sales Tax Exemption, the Agency shall provide such annual renewal of the letter to the Company if and to the extent required under the Lease Agreement.

10. The Agency further appoints D & D its agent for purposes of using the Facility Equipment.

11. The signature of a representative of the Company and D & D where indicated below will indicate that the Company and D & D have accepted the terms hereof.

NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Maureen P. Babis  
Deputy Executive Director

ACCEPTED AND AGREED TO BY:

D & D REALTY V, LLC

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

COOL WIND VENTILATION CORP.

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

**Exhibit A**

The Company and each Agent appointed directly or indirectly by the Agency in connection with the Project shall be entitled to claim an exemption from sales or use tax levied by the State of New York and The City of New York in connection with the following transactions:

Personal Property. Described as follows:

Engel Coil System  
Fork Lift .5 ton - new  
Fork Lift 6 ton - used  
6ft x 20ft plasma tables (2)  
Engel Pittsburgh Machines (2)  
Engel TDF Machines (2)  
Engel Edgemaster Flangers  
Lion Cleat Benders (2)  
Slip and Drive Full Line Machine  
Harper 2in Vain Rail Machine  
Harper 2in Vain Machine  
Vane Dimple Tool  
Coil Reel  
TDF Cleat Machine  
6ft Plasma Coil Feeds (2)  
IOWA Dual Head Corner Machine  
Engel Pittsburgh Seam Closer  
Nurlock Surelock Clinching Machine  
Built Rite Roller  
Duro Dine Pin Spotters (2)  
52in Roper Whitney Shear  
Hydrolic Clamps ADIRA Brake  
Adjustment Bar Roto Die  
Mfr. Discount Applied to Above  
Scanners, Engineering Plotters & Printers  
Trucking & Rigging  
20 HP Air Compressor

## Exhibit B

### FORM ST-60--REQUIRED PROCEDURES

**Introduction.** Section 874(9) of Article 18-A of the General Municipal Law and New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") require that within thirty (30) days of the date that the Agency or its agent directly or indirectly appoint a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Certain capitalized terms used in this exhibit shall have the meanings ascribed thereto in the Letter of Authorization for Sales Tax Exemption.

**Required Procedures.** In order to comply with the foregoing law and other Agency requirements, the Company must, and must ensure that its Agents, comply with the following procedures. Failure to follow such procedures may result in the loss of sales and use tax exemptions derived from the use of the Letter of Authorization for Sales Tax Exemption in connection with the Project.

1. **Agency Agreement.** Prior to submitting to the Agency a completed Form-ST-60 with respect to a proposed Agent, the Company, or its Agents, as applicable, must enter into an Agency Agreement with such Agent that describes the work to be performed and/or the materials to be provided by such Agent pursuant to a contract (the "Agent's Contract") entered into in connection with the Project. The Agency Agreement (which may be incorporated in the Agent's Contract) shall include the following provisions substantially in the form below (instructions are in *italics*):

- "a) The Agent is hereby appointed as an agent of the Agency in connection with the materials to be provided by such Agent pursuant to a contract between Agent and *[identify Company or Company Agent]* \_\_\_\_\_ dated \_\_\_\_\_, 200\_ (the "Agent's Contract") for the purposes described in, and subject to the conditions and limitations set forth in, the Letter of Authorization for Sales Tax Exemption attached as Exhibit A *[attach Letter of Authorization for Sales Tax Exemption from the Agency to the Company]*.
- b) Pursuant to the exemptions from sales and use taxes available to the Agent under the Letter of Authorization for Sales Tax Exemption, the Agent shall avail itself, on behalf of the Company, of such exemptions when purchasing eligible materials in connection with the Contract and shall not include such taxes in its Contract price, bid or reimbursable costs, as the case may be.
- c) The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of

which to be completed by Agent and the Company and is attached to the Letter of Authorization for Sales Tax Exemption as Addendum A to Exhibit B).

- d) Agent shall provide a copy of the executed Form ST-60 to each vendor to whom it presents the Letter of Authorization for Sales Tax Exemption in order to effect a sales tax exempt purchase. All such purchases shall be made in compliance with the terms, provisions and conditions of the Letter of Authorization for Sales Tax Exemption.
- e) The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) the Agency Agreement, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency and to make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of the Agency Agreement.
- f) In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file annually with the Company (no later than January 15th following each calendar year in which it has claimed sales and use tax exemptions in connection with the Project a written statement of all sales and use tax exemptions claimed by such Agent for the preceding calendar year in connection with the Project and the Facility). If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity, and shall immediately and without demand return to the Company or the Agency its copy of the Letter of Authorization for Sales Tax Exemption issued to the Company by the Agency that is in the Agent's possession or in the possession of any agent of such Agent.
- g) The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in the Letter of Authorization for Sales Tax Exemption, it shall pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Agency or to the Company directly or indirectly, the intent of the Agency Agreement being that neither the Agency nor the Company shall be liable for any of the sales or use taxes described above. This provision shall survive the expiration or termination of the Agency Agreement.
- h) The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:
  - i. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or The



City of New York (the "City"), unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

- ii. has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
- iii. has been convicted of a felony in the past ten (10) years;
- iv. has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
- v. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

"Control" or "Controls" shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its Governing Body, or (z) by contract or otherwise.

"Governing Body" shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

"Person" shall mean any individual or any entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

- i) The appointment of the Agent as agent of the Agency shall expire at the earlier of (i) the expiration of the Agent's Contract, or (ii) the Expiration Date of the Letter of Authorization for Sales Tax Exemption, unless renewed; provided, however, that the expiration or termination of the Company's status as agent of the Agency shall result in the immediate termination of the Agent's status as an agent of the Agency.
- j) The Agency shall be a third party beneficiary of the Agency Agreement."

2. Complete and Submit Form ST-60 to the Agency. Following the execution and delivery of an Agency Agreement, the Company must submit to the Agency a Form ST-60 completed with the information required in each of the shaded areas shown on the example form attached hereto as Addendum A.

The Agency requires the Company to submit Form ST-60 electronically. Please download Form ST-60 via the internet by typing [www.tax.state.ny.us/pdf/2002/fillin/st/st60\\_702\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2002/fillin/st/st60_702_fill_in.pdf) into the address bar of your internet browser and saving the "fill-in" PDF of the form (using adobe acrobat). The downloaded form may then be completed electronically, saved and transmitted to the Agency.

Upon completion of the form by the Agent, the Company must submit the form to the Agency by emailing it to [Compliance@nycedc.com](mailto:Compliance@nycedc.com).

The appointment of such Agent as an agent for the Agency shall be effective upon execution of the completed Form ST-60 by the Agency. The Agency will insert the date on which the Agent is appointed on the date when the Form ST-60 is executed by the Agency. The determination whether or not to approve the appointment of an Agent by executing the Form ST-60 shall be made by the Agency, in its sole discretion. If executed, a completed copy of Form ST-60 shall be sent to the Company within five (5) business days following such execution. The Company shall provide a copy of such executed Form ST-60 to the Agent within five (5) business days after receipt thereof by the Company.

**Addendum A**  
**FORM ST-60**



# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(7/02)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA		IDA project number (use OSC numbering system for projects after 1998)	
Street address		Telephone number ( )	
City	State	ZIP code	
Name of IDA project operator or agent	Check box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or social security number	
Street address		Telephone number ( )	Primary operator or agent? <input type="checkbox"/> Yes <input type="checkbox"/> No
City	State	ZIP code	
Name of project		Purpose of project (see instructions)	
Street address of project site			
City	State	ZIP code	

Description of goods and services intended to be exempted from sales and use taxes

Date project operator or agent appointed	mm	dd	yyyy	Date project operator or agent status ends	mm	dd	yyyy
--	----	----	------	--	----	----	------

Estimated value of goods and services to be exempted from sales and use taxes as a result of the project's designation as an IDA project:

Print name of officer or employee signing on behalf of the IDA	Print title
Signature	Date
	Telephone number ( )

## Instructions

### Filing requirements

An IDA must file this form within 30 days of the date the IDA designates a project operator or appoints a person as agent of the IDA, for purposes of extending a sales and compensating use tax exemption.

The IDA must file a separate form for each project operator or agent appointed, whether directly or indirectly, and regardless of whether it is the primary operator or agent. If the IDA authorizes an operator or agent to appoint other agents, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the new agent's appointment. The IDA need not file this form for people hired to work on an IDA project who are not appointed as agents of the IDA. The IDA need not file this form if there are no sales or use tax exemption benefits authorized for a project as a result of the project's designation as an IDA project.

### Purpose of project

For Purpose of project, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

### Mailing instructions

Mail completed form to: **NYS Tax Department, IDA Unit, Building 8 Room 738, W A Harriman Campus, Albany NY 12227**

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 267, 308, 429, 475, 505, 697, 1090, 1142, and 1415 of that Law, and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

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

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

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

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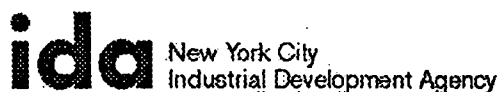
**Internet access:** [www.tax.state.ny.us](http://www.tax.state.ny.us)



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



# EMPLOYMENT & BENEFITS REPORT

For the Fiscal Year July 1, 20\_\_ – June 30, 20\_\_ (FY ‘\_\_)

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCIDA, 110 William Street, Attention: Compliance, New York, NY 10038 no later than **July 15, 20\_\_**. PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

Please provide your NAICS Code (see <http://www.naics.com/search.htm>) \_\_\_\_\_

If you cannot determine your NAICS Code, please indicate your industry type \_\_\_\_\_

1. Number of permanent Full-Time Employees as of June 30, 20\_\_ \_\_\_\_\_
2. Number of non-permanent Full-Time Employees as of June 30, 20\_\_ \_\_\_\_\_
3. Number of permanent Part-Time Employees as of June 30, 20\_\_ \_\_\_\_\_
4. Number of non-permanent Part-Time Employees as of June 30, 20\_\_ \_\_\_\_\_
5. Number of Contract Employees as of June 30, 20\_\_ \_\_\_\_\_
6. Total Number of employees of the Company and its Affiliates included in Items 1, 2, 3 and 4 \_\_\_\_\_

For each employee included in this item 6, attach the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 20\_\_.

7. Number of employees included in item 6 above who reside in the City of New York. \_\_\_\_\_
8. Do the Company and its Affiliates offer health benefits to all Full-Time Employees?     Yes    No  
 Do the Company and its Affiliates offer health benefits to all Part-Time Employees?     Yes    No

**If the answer to item 6 above is fewer than 250 employees, please skip questions 9 through 13 and continue with questions 14 through 17.**

9. Number of employees in Item 6 who are “Exempt” \_\_\_\_\_
10. Number of employees in Item 6 who are “Non-Exempt” \_\_\_\_\_
11. Number of employees in item 10 that earn up to \$25,000 annually \_\_\_\_\_
12. Number of employees in item 10 that earn \$25,001 - \$40,000 annually \_\_\_\_\_

13. Number of employees in item 10 that earn \$40,001 - \$50,000 annually \_\_\_\_\_

For Items 14 through 16, indicate the value of the benefits realized at Project Locations during FY' \_\_\_\_\_

14. Value of sales and use tax exemption benefits \$ \_\_\_\_\_

15. Value of Commercial Expansion Program ("CEP") benefits \$ \_\_\_\_\_

16. Value of Relocation and Employment Assistance Program ("REAP") benefits \$ \_\_\_\_\_

17a. Were physical improvements made to any Project Location during FY ' \_\_\_\_ at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location? Yes No

17b. If the Company and/or its Affiliates have applied for Industrial and Commercial Incentive Program ("ICIP") benefits for new physical improvements at Project Location(s) please provide the ICIP application number(s) # \_\_\_\_\_

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC") and New York City Industrial Development Agency ("NYCIDA") and may be disclosed by NYCEDC and NYCIDA in connection with the administration of the programs of NYCEDC and/or NYCIDA and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCIDA or NYCEDC, and (z) any other reports or disclosure required by law.

Entity Name: \_\_\_\_\_

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

Name (print): \_\_\_\_\_ Title: \_\_\_\_\_



## DEFINITIONS & INSTRUCTIONS

For the Fiscal Year July 1, 20\_\_ – June 30, 20\_\_ (FY ' \_\_)

“**Affiliate**” is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

“**Company**” includes any entity that is a party to a Project Agreement.

“**Contract Employee**” is a person who is an independent contractor (i.e., a person who is not an “employee”), or is employed by an independent contractor (an entity other than the Company, an Affiliate or a Tenant), who provides services at a Project Location.

“**Financial Assistance**” is any of the following forms of financial assistance provided by or at the direction of NYCIDA and/or NYCEDC: a loan, grant, tax benefit and/or energy benefit pursuant to the Business Incentive Rate (BIR) or New York City Public Utility Service (NYCPUS) program.

“**Full-Time Employee**” is an employee who works at least 35 hours per week at a Project Location.

“**Part-Time Employee**” is an employee who works less than 35 hours per week at a Project Location.

“**Project Agreement**” is any agreement or instrument pursuant to which an entity received or receives Financial Assistance.

“**Project Location**” is any location (a) with regard to which Financial Assistance has been provided to the Company and/or its Affiliates during the fiscal year reporting period covered by the Employment and Benefits Report, or (b) that is occupied by the Company and/or its Affiliates at which such entities have employees who are eligible to be reported per the terms of the Project Agreement with the Company and/or its Affiliates.

“**Tenant**” is a tenant or subtenant (excluding the Company and its Affiliates) that leases or subleases facilities from the Company or its Affiliates (or from tenants or subtenants of the Company or its Affiliates) at any Project Location.

### ITEM INSTRUCTIONS

For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants at all Project Locations covered by the Project Agreement.

Each Tenant must complete items 1-5, 15 and 16 on this form with regard to itself and its subtenants and return it to the Company. The Company must include in its report information collected by the Company from its Affiliates and Tenants. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCIDA’s request must permit NYCIDA upon reasonable notice to

inspect such forms and provide NYCIDA with a copy of such forms. The Company must submit to NYCIDA copies of this form completed by each Tenant.

- 1- 4. Items 1, 2, 3 and 4 must be determined as of June 30, 20\_\_ and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including, without limitation, those employed by the Company or its Affiliates and by Tenants and subtenants of Tenants at the Project Locations. **Do not include Contract Employees in Items 1, 2, 3 and 4.**
5. Report all Contract Employees providing services to the Company and its Affiliates and Tenants and subtenants of Tenants at all Project Locations.
- 6-14. Report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the permanent and non-permanent Full-Time Employees and Part-Time Employees of the Company and its Affiliates. Do not report employees of Tenants and subtenants of Tenants. Do not report Contract Employees.
9. Indicate the number of employees included in item 6 who are classified as "Exempt", as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation.
10. Indicate the number of employees included in item 6 who are classified as "Non-Exempt", as defined in the federal Fair Labor Standards Act. Generally, a Non-Exempt employee is eligible for overtime compensation.
14. Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of NYCIDA or the City of New York. Do not include any sales and use tax savings realized under the NYS Empire Zone Program or through a 501(c)3 exemption.
15. Report all CEP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. CEP is a package of tax benefits designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>.
16. Report all REAP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>.

■ ■ ■ ■ ■



# SUBTENANT OCCUPANCY SURVEY

\*Please complete a separate occupancy survey for each project building.

As of December 31, 20\_\_

PROJECT COMPANY: \_\_\_\_\_ PROJECT LOCATION: \_\_\_\_\_

Occupant	Name of Occupant's Principal	Square Footage Occupied	Affiliate Relationship to Company, if any	Date Occupancy Began	Date Occupancy Will End
----------	---------------------------------	----------------------------	--	-------------------------	----------------------------

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

(Please continue on a separate page if necessary)

\_\_\_\_\_ Check here if no Persons other than the Company occupy, sublease and/or license space at the Project Location

TOTAL SQUARE FOOTAGE AT THIS PROJECT LOCATION: \_\_\_\_\_ square feet

I, the undersigned, hereby certify that the information reported above is true, correct and complete as of December 31, 20\_\_ and that the occupants listed above are the only occupants, subtenants and/or licensees at the Project Location. I understand that this information is submitted pursuant to the requirements of the Agreement.

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

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

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_ (Please print CLEARLY)

Please fax the completed request to: NYCIDA Compliance Dept. (212) 618-5738

Or mail to: NYCIDA, Attention: Compliance Dept., 110 William Street, New York, NY 10038

Questions? Please call the NYCIDA Compliance Hotline: (212) 312-3963 or Email: [ComplianceReporting@nycdc.com](mailto:ComplianceReporting@nycdc.com)



LOCATION & CONTACT INFORMATION

For the Fiscal Year July 1, 20\_\_ - June 30, 20\_\_

Eligible Project Location(s):

Please provide the information required below for the location or locations that are receiving benefits.

Project Address Floor	Borough	Zip Code	Type of Benefit (Pilot, Sales Tax, etc.)

\* Please use additional pages if necessary \*

Please provide below current Project Contact Information: (Please print CLEARLY)

Project Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

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

Backup Contact Information:

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

Please mail to:

New York City Industrial Development Agency
Attention: Compliance Department
110 William Street
New York, NY 10038

OR FAX YOUR RESPONSE TO: (212) 618-5738
QUESTIONS? Please contact the Compliance Helpline at (212) 312-3963
or email ComplianceReporting@nycedc.com
New York, NY 10038
QUESTIONS: Please contact the IDA Compliance Helpline at (212) 312-3963

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

THE UNDERSIGNED HEREBY CERTIFIES that she/he is an Authorized Representative (as defined in the Lease Agreement referred to below) of Cool Wind Ventilation Corp., a corporation duly organized under the laws of the State of New York (the "Lessee"), and this certificate is being delivered in accordance with the provisions of Section 2.2(b) of that certain Lease Agreement (Facility Equipment), dated as of August 1, 2007 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

1. The Facility Equipment portion of the Project was completed on \_\_\_\_\_.
2. The Facility Equipment portion of the Project has been completed substantially in accordance with the plans and specifications therefor and all labor, services, materials and supplies used therefor have been paid for (except for any costs not exceeding \$100,000 in the aggregate (i) not now due and payable or (ii) the liability for payment of which is being contested or disputed in good faith by the Lessee).
3. All other facilities necessary in connection with the Facility Equipment portion of the Project have been completed, and all costs and expenses incurred in connection therewith have been paid (except for any costs not exceeding \$100,000 in the aggregate (i) not now due and payable or (ii) the liability for payment of which is being contested or disputed in good faith by the Lessee).
4. All property of the Facility Equipment is subject to the Lease Agreement.
5. In accordance with all applicable Legal Requirements, the Facility Equipment has been made ready for 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 Facility Equipment portion 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 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].

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

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

COOL WIND VENTILATION CORP.

By: \_\_\_\_\_

Name:

Title:

SCHEDULE E

[ST-340 Annual Report of Sales and Use Tax Exemptions]



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

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

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

## Project information

Name of IDA agent/project operator		Federal employer identification number (FEIN)	
Street address		Telephone number ( )	
City	State	ZIP code	

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

Name of IDA			
Street address			
City	State	ZIP code	

Name of project			
Street address of project site			
City	State	ZIP code	

1 Project purpose:

Services       Construction       Agriculture, forestry, fishing

Wholesale trade       Retail trade       Finance, insurance or real estate

Transportation, communication, electric, gas, or sanitary services

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

2 Date project began: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
MM      DD      YYYY

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

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

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

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

7 Total sales and use tax exemptions (actual tax savings; NOT total purchases) .....	7	\$	
--	---	----	--

Print name of officer, employee, or authorized representative signing for the IDA agent/project operator	Title of person signing
--	-------------------------

Signature	Date
-----------	------

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

## Instructions

### General information

#### Who must file?

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

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

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

#### What must be reported?

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

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

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

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

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

See instructions below for additional information required.

#### When is the report due?

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

#### Project information

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

#### Name of IDA agent/project operator

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

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

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

#### Name of IDA

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

#### Name of project

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

### Line instructions

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

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

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

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

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

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


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

#### Signature area

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

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

### Need help?

 Telephone assistance is available from 8 a.m. to 5:55 p.m. (eastern time), Monday through Friday.

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



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Tax Department, Taxpayer Contact Center, W A Harriman  
Campus, Albany NY 12227.

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1098, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(e)(2)(C)(i).

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

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

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

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

SCHEDULE F

[Reserved]



SCHEDULE G

Exceptions, if any, to representation under Section 1.5(u)

**[FORM OF REQUIRED DISCLOSURE STATEMENT]**

The undersigned, an authorized representative of \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the "Agency") pursuant to [Section 6.1] [Section 9.3] of that certain Lease Agreement (Facility Equipment), dated as of August 1, 2007 between the Agency and Cool Wind Ventilation Corp., a corporation organized and existing under the laws of the State of New York (the "Lease Agreement") THAT:

**[if being delivered pursuant to 6.1 of the Lease Agreement]** None of the surviving, resulting or transferee entity, any of the Principals of such entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such entity:

**[if being delivered pursuant to 9.3 of the Lease Agreement]** None of the assignee, transferee or sublessee entity, any of the Principals of such entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such entity:

Except as set forth on Exhibit A attached hereto, all of which exceptions so set forth being subject to approval of the Agency within its sole and unlimited discretion:

(ii) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

(iii) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(iv) has been convicted of a felony in the past ten (10) years;

(v) has received a formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony offense; or

(vi) (v) has received a written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

Control or Controls shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y)

through the right to designate or elect not less than a majority of the members of its Governing Body, or (z) by contract or otherwise.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Person shall mean any individual or entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

Principal(s) shall mean, with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such Person, or any individual holding equivalent positions.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_ day of \_\_\_\_\_, 200\_.

[NAME OF CERTIFYING ENTITY]

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

**Exhibit A**