

PEDFA TAX-EXEMPT AND TAXABLE PROGRAM
SINGLE TIER STRUCTURE

For Use in 2007 PEDFA Pool Program

REIMBURSEMENT, CREDIT AND SECURITY AGREEMENT

Between

BORROWER NAME CAPS

and

PNC BANK, NATIONAL ASSOCIATION

Dated as of

_____, 2007

Pennsylvania Economic Development Financing Authority
BOND TYPE Development Revenue Bonds,
2007 Series X (PROJECT NAME Project)

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REIMBURSEMENT, CREDIT AND SECURITY AGREEMENT

THIS REIMBURSEMENT, CREDIT AND SECURITY AGREEMENT (this “**Agreement**”), made as of the 1st day of _____, 200__, between **BORROWER NAME CAPS** (the “**Borrower**”), a [corporation] [general partnership] [limited partnership] [limited liability company] organized and existing under the laws of the [State of _____], and **PNC BANK, NATIONAL ASSOCIATION** (the “**Bank**”), a national banking association.

RECITALS:

A. The Pennsylvania Economic Development Financing Authority (the “**Issuer**”) has issued its BOND TYPE Development Revenue Bonds, 200_ Series X (PROJECT NAME Project) in the aggregate principal amount of \$AMOUNT (the “**Bonds**”) under a Trust Indenture dated as of _____ 1, 200_ (the “**Indenture**”) between the Issuer and The Bank of New York Corporate Trust Services, as Trustee (including any successor trustee, the “**Trustee**”), which Indenture incorporates therein an agreement by and between the Issuer and the Trustee entitled “Standard Provisions for Trust Indentures” dated as of _____, 200_ (the “**Standard Provisions**”).

B. Pursuant to a Loan Agreement dated as of _____ 1, 200_ between the Issuer and the Borrower (the “**Loan Agreement**”), the proceeds of the Bonds are being applied [to refund the Issuer’s previously issued _____ in the outstanding principal amount of \$ _____] [to finance the costs of acquisition, construction and equipping of a _____ (the “**Project**”) consisting of a _____-story, _____ square foot building and related equipment on approximately _____ acres of land located in _____, _____ County, Pennsylvania] (the “**Premises**”), to be owned by the Borrower [for lease to _____] for use as _____. Under the Loan Agreement, the Borrower is obligated to make loan payments to the Trustee in amounts and at the times corresponding to the debt service and other payments required in respect of the Bonds.

C. In order to facilitate the issuance and sale of the Bonds and to enhance the marketability of the Bonds and thereby achieve interest cost savings and other savings to the Borrower, the Borrower has asked the Bank to issue its Irrevocable Letter of Credit (together with any substitute letter of credit issued pursuant to the terms hereof, the “**Letter of Credit**”) to the Trustee for the account of the Borrower authorizing the Trustee to make one or more draws on the Bank up to an aggregate of \$ _____ (as reduced and reinstated from time to time in accordance with the provisions of the Letter of Credit, the “**Letter of Credit Amount**”), of which originally (i) \$AMOUNT shall be in respect of principal of the Bonds (as more fully defined in Section 1.01, the “**Principal Component**”), and (ii) \$ _____ (as more fully defined in Section 1.01, the “**Interest Component**”) shall be in respect of accrued interest on the Bonds. The purpose of the Letter of Credit is to provide funds for the payment of principal of and interest on the Bonds and the purchase price of Bonds which have been tendered pursuant to the tender option provisions thereof and of the Indenture to the extent remarketing proceeds or other funds are not available therefor in accordance with the provisions of the Indenture.

D. The Bank is willing to issue the Letter of Credit upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the foregoing and the undertakings herein set forth and intending to be legally bound, the Borrower and the Bank hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01. Definitions.

(a) **Terms Defined in Recitals.** In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), the following terms have the meanings specified in the foregoing recitals:

Agreement
Bank
Bonds
Borrower
Indenture
Interest Component
Issuer
Letter of Credit
Letter of Credit Amount
Loan Agreement
Premises
Principal Component
Project
Standard Provisions
Trustee

(b) **Other Defined Terms.** The following terms shall have the meanings specified in this Article, unless the context otherwise requires:

“**Affiliate**” means (i) any Person included with the Borrower in a controlled group of corporations within the meaning of Section 414(b) of the Code and (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower within the meaning of Section 414(c) of the Code.

“**Alternate Letter of Credit**” shall have the meaning assigned to such term in the Indenture.

“**Assignment of Leases**” shall have the meaning assigned to such term in Section 3.05.

“**Authorized Person**” means the _____, _____ or _____ of the Borrower.

[“**Available Cash Balance**” shall have the meaning assigned to such term in Section 6.23.]

“**Bank Documents**” means this Agreement, the Security Documents, each Guaranty Agreement, [the Environmental Indemnity Agreement,] and any other agreements or instruments relating thereto or to this Agreement.

“**Benefit Arrangement**” shall mean at any time an “employee benefit plan,” within the meaning of Section 3(3) of ERISA, which is neither a Plan nor a Multiemployer Plan and which is maintained, sponsored or otherwise contributed to by any member of the ERISA Group.

“**Bond Documents**” means the Bonds, the Indenture, the Standard Provisions, the Loan Agreement, the Remarketing Agreement and any other agreements or instruments relating thereto.

“**Borrower’s Facilities**” means the Borrower’s [leasehold interest in certain] real property and improvements located thereon in _____ County, Pennsylvania [, as more fully described in and which shall be encumbered by the Mortgage].

“**Business Day**” means any day other than (i) a Saturday or Sunday, (ii) a day on which commercial banking institutions in Pittsburgh, Pennsylvania or in any other city where either the principal corporate trust office of the Trustee or the office of the Bank at which drafts are to be presented under the Letter of Credit is located are required or authorized by law (including executive order) to close or on which any such office is closed for reasons not related to financial condition, or (iii) a day on which the New York Stock Exchange is closed.

[“**Cash Collateral Account**” shall have the meaning assigned to such term in Section 3.07.]

“**Cash Flow**” shall have the meaning given it in Section 6.13.

“**Code**” means the Internal Revenue Code of 1986 and the rules and regulations thereunder, including any amendments and successor provisions thereto.

“**Collateral**” means all of the tangible and intangible real and personal property granted, conveyed, assigned, pledged or hypothecated to the Bank pursuant to the Security Documents.

“**Contamination**” means the uncontained presence of Hazardous Substances at the Borrower’s Facilities, or arising from the Borrower’s Facilities, which may require remediation under any applicable Law.

“**Current Assets**” shall have the meaning given it in Section 6.13.

“**Current Liabilities**” shall have the meaning given it in Section 6.13.

“**Current Maturities**” shall have the meaning given in Section 6.13.

“**Date of Issuance**” means the date on which the Letter of Credit is issued upon request of the Borrower pursuant to Section 2.01.

“**Default**” means any event or occurrence that, with the giving of notice, the passage of time or both, would become an Event of Default.

“**Drawing**” has the meaning assigned to that term in the Letter of Credit.

“**Drawing Date**” means the date on which the Bank honors a Drawing.

“**Environmental Complaint**” shall mean any written complaint setting forth a cause of action for personal or property damage, natural resource damage or equitable relief, order, notice of violation, citation, request for information issued pursuant to any Environmental Laws by an Official Body, subpoena or other written notice of any type relating to, arising out of, or issued pursuant to, any of the Environmental Laws or any Environmental Conditions, as the case may be.

“**Environmental Conditions**” shall mean any conditions of the environment, including the workplace, the ocean, natural resources (including flora or fauna), soil, surface water, groundwater, any actual or potential drinking water supply sources, substrata or the ambient air, relating to or arising out of, or caused by, the use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, emptying, discharging, injecting, escaping, leaching, disposal, dumping, threatened release or other management or mismanagement of Regulated Substances resulting from the use of, or operations on, any Property.

[“**Environmental Indemnity Agreement**” shall mean the Environmental Indemnity Agreement dated as of even date herewith executed by the Borrower [and the Guarantor] for the benefit of the Bank.]

“**Environmental Laws**” means all provisions of Laws, permits, licenses, awards and standards promulgated by any Official Body relating to pollution or protection of human health or the environment or employee safety in the work place.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as it may from time to time be amended, supplemented or otherwise modified, or any successor legislation, and the rules and regulations thereunder.

“**ERISA Group**” shall mean, at any time, the Borrower and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with the Borrower, are treated as a single employer under Section 414 of the Internal Revenue Code.

“**Event of Default**” shall have the meaning assigned to such term in Section 8.01.

“**Expiration Date**” has the meaning assigned to such term in the Letter of Credit.

“**Final Payment Drawing**” has the meaning assigned to such term in the Letter of Credit.

“**Financial Statements**” means the Borrower’s [and the Guarantor’s] consolidated and consolidating balance sheets and statements of income and cash flows for the year or quarter prepared in accordance with GAAP on a basis consistent with prior years, unless specifically noted thereon.

“**Fiscal Year**” means the annual accounting year of the Borrower, which currently begins on _____ 1 in each calendar year.

“**GAAP**” means generally accepted accounting principles consistently applied on a consistent basis both as to classification of items and amounts.

“**Gross Revenues**” shall mean all unrestricted receipts, revenues, income, accounts, accounts receivable, chattel paper, documents, instruments and general intangibles and other moneys received by the Borrower from any sources, fees, and the proceeds of all of the foregoing, whether now existing or hereafter arising.

[“**Guarantor**” means all, each or any of _____.]

“**Guaranty or Guarantee**” means any obligation, direct or indirect, by which a Person undertakes to guaranty, assume or remain liable for the payment of another Person’s obligations, including but not limited to (i) endorsements of negotiable instruments, (ii) discounts with recourse, (iii) agreements to pay or perform upon a second Person’s failure to pay or perform, (iv) agreements to remain liable on obligations assumed by a second Person, (v) agreements to maintain the capital, working capital, solvency or general financial condition of a second Person and (vi) agreements for the purchase or other acquisition of products, materials, supplies or services, if in any case payment therefor is to be made regardless of the nondelivery of such products, materials or supplies or the nonfurnishing of such services.

[“**Guaranty Agreement**” shall have the meaning assigned to such term in Section 3.06.]

“**Improvements**” means the new building and renovation improvements included in the Project.

“**Indebtedness**” means individually and collectively (i) all obligations and indebtedness of the Borrower for borrowed money including but not limited to the Obligations; (ii) all obligations of the Borrower evidenced by bonds, debentures, notes, or similar instruments; (iii) all obligations of the Borrower under conditional sale or other title retention agreements relating to property purchased by the Borrower; (iv) all obligations of the Borrower issued or assumed as the deferred purchase price of property or services; (v) all obligations of the Borrower under capitalized leases; (vi) all obligations of the Borrower with respect to letters of credit (including the Letter of Credit), whether matured or contingent; (vii) all obligations of the Borrower under any agreement or arrangement designed to provide protection against fluctuations in interest rates; (viii) all obligations of others secured by any Lien on property or assets owned or acquired by the Borrower, whether or not the obligations secured thereby have been assumed; and (ix) all Guaranties of the Borrower; provided, however, that “Indebtedness”

shall not include the Borrower's accounts payable incurred in the ordinary course of business if those accounts payable do not constitute obligations to repay borrowed money.

"Indemnified Party" shall have the meaning assigned to such term in Section 2.05.

"Ineligible Securities" shall mean any security which may not be underwritten or dealt in by member banks of the Federal Reserve System under Section 16 of the Banking Act of 1933 (12 U.S.C. Section 24, Seventh), as amended.

"Interest Component" shall have the meaning assigned to such term in the Letter of Credit.

"Interest Drawing" shall have the meaning assigned to such term in the Letter of Credit.

"Law" means any law, statute, rule, regulation, treaty, ordinance, order, writ, injunction, decree, judgment, guideline, directive or decision of any Official Body, including any Environmental Law, whether in existence on the date hereof or whether issued, enacted or adopted after the date hereof, and any change therein or in the interpretation or application thereof following the date hereof.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any capitalized lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

"Liquidity Drawing" has the meaning assigned to such term in the Letter of Credit.

"Liquidity Period" means the period beginning on the date hereof and terminating on the first to occur of (i) the Expiration Date, or (ii) the first date on which there are no longer any Bonds Outstanding other than Bonds secured by an Alternate Letter of Credit.

"Material Adverse Change" means any set of circumstances or events which (i) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of any of the Transaction Documents, (ii) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations or prospects of the Borrower [or any Guarantor], (iii) impairs materially or could reasonably be expected to impair materially the ability of the Borrower [or any Guarantor] to duly and punctually pay or perform the Obligations, (iv) impairs materially or could reasonably be expected to impair materially the ability of the Bank to enforce the Bank's legal remedies pursuant to any of the Bank Documents [, or (v) is or could reasonably be expected to materially and adversely affect the acquisition, construction, installation or operation of the Project].

[**"Minimum Balance"** shall have the meaning assigned to such term in Section 6.15.]

"Mortgage" shall have the meaning assigned to such term in Section 3.05.

"Multiemployer Plan" shall mean any employee benefit plan which is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA and to which the Borrower or any member of the ERISA Group is then making or accruing an obligation to make contributions or, within the preceding five Plan years, has made or had an obligation to make such contributions.

"Multiple Employer Plan" shall mean a Plan which has two or more contributing sponsors (including the Borrower or any member of the ERISA Group) at least two of whom are not under common control, as such a plan is described in Sections 4063 and 4064 of ERISA.

"Net Income" shall have the meaning given it in Section 6.13.

“**Obligations**” means all loans, advances, debts, liabilities, obligations, covenants and duties owing from the Borrower to the Bank or to any other direct or indirect subsidiary of The PNC Financial Services Group, Inc., of every kind or nature, present or future (including any interest accruing thereon after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), including those evidenced by or described in the Bank Documents, whether or not evidenced by any note, guaranty or other instrument, whether arising under any agreement, instrument or document, whether or not for the payment of money, whether arising by reason of an extension of credit, opening of a letter of credit, loan, equipment lease or guarantee, under any interest or currency swap, future, option or other interest rate protection or similar agreement, or in any other manner, whether arising out of overdrafts on deposit or other accounts or electronic funds transfers (whether through automated clearing houses or otherwise) or out of the Bank’s non-receipt of or inability to collect funds or otherwise not being made whole in connection with depository transfer check or other similar arrangements, whether direct or indirect (including those acquired by assignment or participation), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, and any amendments, extensions, renewals or increases and all costs and expenses of the Bank incurred in the documentation, negotiation, modification, enforcement, collection or otherwise in connection with any of the foregoing, including reasonable attorney’s fees and expenses.

“**Official Body**” means any national, federal, state, local or other government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic.

“**Outstanding**” when applied to the Bonds shall have the meaning assigned to such term in the Indenture.

“**Participating Banks**” shall have the meaning assigned to such term in Section 9.09.

“**PBGC**” means the Pension Benefit Guaranty Corporation established pursuant to ERISA.

“**Permitted Liens**” means:

- (i) Liens in favor of the Bank;
- (ii) Liens for taxes or assessments which are not yet due, Liens for taxes or assessments or Liens of judgments which are being contested, appealed or reviewed in good faith by appropriate proceedings which prevent foreclosure of any such Lien or levy of execution thereunder and against which Liens, if any, adequate insurance or reserves have been provided or made;
- (iii) pledges or deposits to secure payment of workers’ compensation obligations, unemployment insurance, old-age pensions or other social security programs, deposits or indemnities to secure public or statutory obligations or for similar purposes;
- (iv) minor defects which in the opinion of the Bank’s counsel do not materially affect title to the Collateral;
- (v) the lessor’s retained title to personal property which is the subject matter of a true operating lease to the Borrower; and
- (vi) those Liens, if any, existing on the date of the Agreement and shown on **Exhibit C** attached hereto and which the Bank has approved; provided that the principal amount secured thereby is not hereafter increased and no additional assets become subject to such Lien.

“**Person**” shall mean any individual, sole proprietorship, corporation, partnership, limited liability company, association, joint-stock company, trust, unincorporated organization, association, joint venture, Official Body or agency thereof, or any other entity.

“**Plan**” shall mean at any time an employee pension benefit plan (including a Multiple Employer Plan, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Internal Revenue Code and either (i) is maintained by any member of the ERISA Group for employees of any member of the ERISA Group or (ii) has at any time within the preceding five years been maintained by any entity which was at such time a member of the ERISA Group for employees of any entity which was at such time a member of the ERISA Group.

[“**Pledge Agreement**” shall have the meaning assigned to such term in Section 3.05.]

“**Pledged Bonds**” means any Bonds delivered to or for the account of the Bank in connection with a Liquidity Drawing under the Letter of Credit.

“**Prime Rate**” means the rate of interest publicly announced by the Bank from time to time as the Prime Rate of the Bank effective in Pittsburgh, Pennsylvania, adjusted as of the date of an announcement in Pittsburgh, Pennsylvania of any change in such Prime Rate. The Prime Rate is determined from time to time by the Bank as a means of pricing some loans to its borrowers and neither is tied to any external rate of interest or index, nor necessarily reflects the lowest rate of interest actually charged by the Bank to any particular class or category of customer.

“**Principal Component**” shall have the meaning assigned to such term in the Letter of Credit.

“**Principal Drawing**” shall have the meaning assigned to such term in the Letter of Credit.

“**Prohibited Transaction**” shall mean any prohibited transaction as defined in Section 4975 of the Internal Revenue Code or Section 406 of ERISA for which neither an individual nor a class exemption has been issued by the United States Department of Labor.

“**Project Fund**” shall have the meaning assigned to such term in the Indenture.

“**Regulated Substances**” means any substance, including any solid, liquid, semisolid, gaseous, thermal, thoriated or radioactive material, refuse, garbage, wastes, chemicals, petroleum products, by-products, coproducts, impurities, dust, scrap, heavy metals, defined as a “hazardous substance,” “pollutant,” “pollution,” “contaminant,” “hazardous or toxic substance,” “extremely hazardous substance,” “toxic chemical,” “toxic waste,” “hazardous waste,” “industrial waste,” “residual waste,” “solid waste,” “municipal waste,” “mixed waste,” “infectious waste,” “chemotherapeutic waste,” “medical waste,” or regulated substance or any related materials, substances or wastes as now or hereafter defined pursuant to any Environmental Laws or other directives of any Official Body, the generation, manufacture, extraction, processing, distribution, treatment, storage, disposal, transport, recycling, reclamation, use, reuse, spilling, leaking, dumping, injection, pumping, leaching, emptying, discharge, escape, release or other management or mismanagement of which is regulated by the Environmental Laws.

“**Remarketing Advisor**” means PNC Capital Markets, Inc., and any successor in such capacity pursuant to the Indenture.

“**Remarketing Agreement**” means the Remarketing Advisor’s agreement with the Borrower to perform its duties as Remarketing Advisor under the Indenture.

“**Required Redemption**” and “**Required Redemptions**” shall have the meanings given them in Section 2.03(d).

“**Required Redemption Deposit**” and “**Required Redemption Deposits**” shall have the meanings given them in Section 2.03(d).

“**Scheduled Expiration Date**” has the meaning assigned to such term in the Letter of Credit.

“**Section 20 Subsidiary**” means the Subsidiary of the bank holding company controlling the Bank, which Subsidiary has been granted authority by the Federal Reserve Board to underwrite and deal in certain Ineligible Securities.

[“**Security Agreement**” has the meaning assigned to such term in Section 3.05.]

“**Security Document**” means any document or instrument executed by the Borrower or any other Person for the purpose of securing the Obligations, or any other obligations of the Borrower or such other Person to the Bank in connection herewith, whether executed prior to or contemporaneously with this Agreement, all additional documents and instruments entered into from time to time for the purpose of securing the Obligations or such other obligations, any and all ancillary documents and instruments relating to any of the foregoing, such as Uniform Commercial Code financing statements and stock powers, and all extensions, renewals, amendments, substitutions and replacements to and of any of the foregoing

“**State**” means the Commonwealth of Pennsylvania.

“**Tangible Net Worth**” shall have the meaning given it in Section 6.13.

“**Transaction Documents**” means the Bank Documents and the Bond Documents, and all extensions, renewals, amendments, substitutions and replacements to and of any of the foregoing.

“**Unfunded Capital Expenditures**” shall have the meaning given it in Section 6.13.

“**Uniform Commercial Code**” means the Uniform Commercial Code as adopted and in effect from time to time in the State, except when the provisions of the Uniform Commercial Code as adopted in another jurisdiction are applicable due to the location of any Collateral in such other jurisdiction.

“**Year 2000 Problem**” means the risk that certain computer applications used by the Borrower (or any of its material suppliers, customers or vendors) may be unable to recognize and perform properly date-sensitive functions involving dates prior to and after December 31, 1999.

(c) **Other Defined Terms Relating to Construction of Project.** The following terms relating to the construction of the Project shall have the meanings specified in this Article, unless the context otherwise requires:

“**Architect**” means the architect engaged for the design and construction supervision of the Project and the Improvements.

“**Architect’s Agreement**” means that certain _____ dated _____, 200_ between the Borrower and the Architect relating to the Project, and all exhibits and attachments thereto, as the same may be amended with the consent of the Bank.

“**Assignment of Construction and Development Documents**” shall have the meaning assigned to such term in Section 7.01(a).

“**Change Order**” shall have the meaning assigned to such term in Section 7.08.

“**Completion Date**” means [the earlier of (i)] _____, 200_ [or (ii) the date the Bank receives written certification from the Inspecting Architect that the construction of the Improvements has been

substantially completed in accordance with the Plans and Specifications (unless otherwise extended by the Bank [, which extension shall not be unreasonably withheld if necessitated by factors beyond the Borrower's control]).

“**Construction and Development Documents**” means the Construction Contract, the Architect's Agreement, the Plans and Specifications, all consents, licenses, permits, authorizations and approvals relating to the construction, completion, use and occupancy of the Project and the Improvements and all other instruments, documents and rights relating to the design, construction and development of the Project and the Improvements.

“**Construction Contract**” means [that certain fixed-price bonded] [the] construction contract [dated _____, 200_], and all exhibits and attachments thereto, between the Borrower and the Contractor for the construction of the Improvements, as the same may be amended with the consent of the Bank.

“**Contractor**” means the general contractor hired by the Borrower for the construction of the Improvements.

“**Inspecting Architect**” means such Person as the Bank may designate from time to time to inspect the construction of the Improvements and to perform other services with respect thereto on behalf of the Bank.

“**Plans and Specifications**” means the final plans and specifications for the construction and equipping of the Improvements, including all schematic and working drawings, and designations of all manufacturers and model numbers of all equipment, if any, as the same may be amended from time to time in accordance with the terms hereof.

“**Project Cost Schedule**” shall have the meaning assigned to such term in Section 7.01.

“**Retainage**” shall have the meaning assigned to such term in Section 7.07.

“**Subcontract**” means any contract for labor or material entered into between the Contractor and any Subcontractor, and all exhibits and attachments thereto.

“**Subcontractor**” means any Person entering into a Subcontract with the Contractor.

Section 1.02. Accounting Principles. Except as otherwise provided in this Agreement, all computations and determinations as to accounting or financial matters and all financial statements to be delivered pursuant to this Agreement shall be made and prepared in accordance with GAAP (including principles of consolidation where appropriate), and all accounting or financial terms shall have the meanings ascribed to such terms by GAAP; provided, however, that all accounting terms used in Article VI shall have the meaning given to such terms under GAAP as in effect on the date hereof applied on a basis consistent with those used in preparing the Financial Statements referred to in Section 6.08. In the event of any change after the date hereof in GAAP, and if such change would result in the inability to determine compliance with the financial covenants (if any) set forth in Article VI based upon the Borrower's regularly prepared financial statements by reason of the preceding sentence, then the parties hereto agree to endeavor, in good faith, to agree upon an amendment to this Agreement that would adjust such financial covenants in a manner that would not affect the substance thereof, but would allow compliance therewith to be determined in accordance with the Borrower's financial statements at that time.

Section 1.03. Rules of Construction.

(i) Except as otherwise specified, all references in any Bank Document (A) to any Person shall be deemed to include such Person's heirs, executors, administrators, successors and assigns, (B) to any Law shall be deemed references to such Law as the same may have been or may be amended, supplemented or replaced from time to time, and (C) to any Transaction Document defined or referred to herein shall be deemed references to such Transaction Document as the terms thereof may have been or may be amended, supplemented, waived or otherwise modified from time to time.

(ii) When used in any Bank Document, the words “herein”, “hereof” and “hereunder” and words of similar import shall refer to such Bank Document as a whole and not to any particular provision of such Bank Document, and the words “Article”, “Section”, “Subsection”, “Schedule”, “Exhibit” and “Annex” shall refer to Articles, Sections and Subsections of, and Schedules, Exhibits and Annexes to, such Bank Document, unless otherwise specified.

(iii) When used in any Bank Document, the word “including” means “including without limitation”.

(iv) Whenever the context so requires, in all Bank Documents the use of or reference to any gender includes the masculine, feminine and neuter genders, and all terms used in the singular shall have comparable meanings when used in the plural, and vice versa.

(v) All references in any Bank Document to any time of the day shall be references to Eastern standard time or Eastern daylight savings time, as in effect in the State on such day.

Section 1.04. Incorporation of Recitals. The recitals at the beginning of this Agreement or any other Bank Documents are incorporated into and made a material part of this Agreement or such other Bank Document, as the case may be.

ARTICLE II LETTER OF CREDIT AND REIMBURSEMENT

Section 2.01. Issuance of Letter of Credit. The Borrower hereby requests the Bank to issue the Letter of Credit to the Trustee. Subject to the conditions precedent hereinafter set forth, the Bank will issue to the Trustee pursuant to the request of the Borrower, on the date of execution and delivery of this Agreement, the Letter of Credit in the Letter of Credit Amount and substantially in the form attached hereto as **Exhibit A**. The Interest Component of the Letter of Credit has been established on the basis of ___ days’ interest on the Bonds and a ___-day year, at an assumed maximum interest rate of ___% per annum. The Letter of Credit shall be effective on the Date of Issuance and shall expire at 5:00 p.m. on the Expiration Date. On or prior to the Scheduled Expiration Date and on each anniversary date thereafter, the Bank may, upon the written request of the Borrower given to the Bank not more than _____ nor less than sixty (60) days prior to such anniversary date, elect, at its sole option, to extend the Scheduled Expiration Date with respect to the Letter of Credit for one (1) additional year, it being understood that the Bank shall have no obligation to grant any such extension. Any such extension shall be subject to the mutual agreement of the Borrower and the Bank as to any fees to be applicable to the period of extension. All Drawings will be paid with the Bank’s own funds.

Section 2.02. Reimbursement and Other Payments.

(a) **Reimbursement.** The Borrower hereby agrees to pay or cause to be paid to the Bank:

(i) a sum equal to each amount drawn under the Letter of Credit by an Interest Drawing or a Principal Drawing, on the same Business Day after such Drawing is honored;

(ii) a sum equal to each amount drawn against the Interest Component of the Letter of Credit Amount by a Liquidity Drawing (A) in the case of any such amount drawn on an Interest Payment Date (as defined in the Indenture) of the Bonds being purchased with the proceeds of such Liquidity Drawing on the same Business Day after such Drawing is honored, and (B) in all other cases, on the first to occur of (1) the first Business Day of the first calendar month following the calendar month in which said Drawing is honored, (2) the date on which the Bonds purchased with the proceeds of such Liquidity Drawing, after the Bank has honored such Drawing, are remarketed by the Remarketing Advisor and the proceeds thereof delivered to the Trustee, (3) the date on which the Bonds purchased with the proceeds of such Liquidity Drawing are redeemed or otherwise paid in full, or (4) the date the Liquidity Period terminates;

(iii) a sum equal to each amount drawn against the Principal Component of the Letter of Credit Amount by a Liquidity Drawing, on the first to occur of (A) the date on which the Bonds purchased

with the proceeds of such Liquidity Drawing, after the Bank has honored such Drawing, are remarketed by the Remarketing Advisor and the proceeds thereof are delivered to the Trustee, (B) the date on which the Bonds purchased with the proceeds of Liquidity Drawing, after the Bank has honored such Drawing, are redeemed or otherwise paid in full, or (C) the date the Liquidity Period terminates; and

(iv) a sum equal to each amount drawn under the Letter of Credit by Final Payment drawing, on the same Business Day after such Drawing is honored.

The Bank agrees to give telephonic notice to the Borrower on the day that the Bank receives notice from the Trustee for each Drawing.

(b) **Interest.** All sums payable to the Bank under Section 2.02(a) shall bear interest, from the Drawing Date until such sums are paid in full (it being understood and agreed that any sum paid to the Bank after 3:00 p.m. on a Business Day shall bear interest as if it was paid at 9:00 a.m. on the next following Business Day), at a fluctuating rate per annum (computed for the actual number of days elapsed, based on a [365 or 366-day year, as the case may be]) [360 day year] equal to the sum of the Prime Rate plus ___ percent (___%); provided that any sum payable to the Bank under subparagraph (iii) of Section 2.02(a) which is outstanding in excess of five (5) days shall thereafter bear interest at a fluctuating rate per annum (computed for the actual number of days elapsed, based on a [365 or 366-day year, as the case may be]) [360 day year] equal to the sum of the Prime Rate plus ___ percent (___%) until such sum or interest and all other amounts due and payable under this Agreement have been paid in full. Interest accruing pursuant to this Section 2.02(b) shall be due and payable on the first Business Day of each calendar month after the Drawing Date and on the date the respective sum is paid. All payments under Sections 2.02(a) and 2.02(b) shall be applied first to the payment of interest due and payable under this Section 2.02(b) and then to the reduction of the principal balance of sums due and payable under Section 2.02(a).

(c) **Issuance Fee.** On the [date of execution and delivery hereof] [the Date of Issuance], the Borrower shall pay to the Bank a Letter of Credit issuance fee of \$_____.

(d) **Commitment Fees.** (i) [On _____, 200_ and quarterly in arrears on the last day of each _____, _____, _____, and _____ thereafter so long as any credit remains available to the Trustee under the Letter of Credit and on the Expiration Date or in the event the Borrower obtains an Alternate Letter of Credit, the Borrower shall pay to the Bank a Letter of Credit commitment fee computed at the rate of _____ percent (____%) per annum on the average daily Letter of Credit Amount during the preceding quarterly period (or portion thereof in the case of the first such payment and in the case of a termination of the Letter of Credit on a day other than the last day of _____, _____, _____, or _____); provided that for purposes of computing such average daily Letter of Credit Amount the Letter of Credit Amount shall be treated as having been reinstated with respect to Interest Drawings on the day the Bank received reimbursement therefor, unless the Bank has given written notice to the Trustee pursuant to paragraph 5 of the Letter of Credit that such reinstatement shall not occur. Computations of Letter of Credit commitment fees under this Section shall be for the actual number of days in the applicable period, based on a 365 or 366-day year, as the case may be.]

(ii) [On the date of execution and delivery hereof, the Borrower shall pay to the Bank a Letter of Credit commitment fee for the period from such date to _____, 200_, computed at the rate of _____ percent (____%) per annum on the Letter of Credit Amount. On _____, 200_ and quarterly on each _____, _____, _____ and _____ thereafter through _____, 200_ or so long as any credit remains available to the Trustee under the Letter of Credit, the Borrower shall pay to the Bank a Letter of Credit commitment fee computed in advance for the next three months at the rate of _____ percent (____%) per annum on the sum of (i) the Letter of Credit Amount as of the date such commitment fee is due and payable, plus (ii) the aggregate amount of any Interest Drawings or Liquidity Drawings theretofore honored by the Bank in respect of which the Bank may thereafter be required to reinstate the Letter of Credit pursuant to the terms thereof. Computations of Letter of Credit commitment fees under this Section shall be for the actual number of days in the applicable period, based on a 360-day year. There shall be no reduction or refund of any portion or any such Letter of Credit commitment fee in the event the Letter of Credit expires or is drawn upon, reduced (automatically or otherwise), terminated or otherwise modified after the date such commitment fee is due and payable.]

(e) **Transaction and Transfer Charges and Expenses.** The Borrower shall pay to the Bank all reasonable transaction charges that the Bank may make for Drawings under the Letter of Credit. Such transaction charges shall be payable quarterly at the same times as the fees described in Section 2.02(d) hereof are payable, upon submission to the Borrower by the Bank of the Bank's bill therefor. In addition, the Borrower shall pay to the Bank on demand any and all reasonable charges and expenses which the Bank may pay or incur relative to the Letter of Credit. The Borrower shall pay to the Bank upon each transfer of the Letter of Credit in accordance with its terms a transfer fee equal to \$250.00, together with any and all costs and expenses of the Bank incurred in connection with such transfer.

(f) **Increased Costs.**

(i) If after the date of this Agreement any enactment, promulgation or adoption of or change in any applicable foreign or domestic law, treaty regulation or rule or in the interpretation or administration thereof by any Official Body charged with the interpretation or administration thereof, or compliance by the Bank with any guideline, request or directive issued after the date hereof (whether or not having the force of law) of any such Official Body, shall either (A) impose, modify or deem applicable any reserve, special deposit, capital, compulsory loan, FDIC insurance assessment or similar requirement (including without limitation a guideline, request or directive which affects the manner in which the Bank allocates capital resources to its commitments, including its obligations under this Agreement and the Letter of Credit), (B) subject the Bank to any tax, deduction or withholding or change the basis of taxation of the Bank (other than a change in a rate of tax based on overall net income of the Bank), (C) cause or deem letters of credit to be assets held by the Bank and/or deposits on its books, or (D) impose on the Bank any other condition regarding this Agreement or the Letter of Credit, and the result of any event referred to in clause (A), (B), (C) or (D) of this sentence shall be to increase the direct or indirect cost to the Bank of issuing or maintaining the Letter of Credit or the Bank's obligations under this Agreement or to reduce the amounts receivable by the Bank hereunder or to reduce the rate of return on the capital of the Bank in connection with this Agreement (which increase in costs, reduction in amounts receivable or reduction in rate of return shall be determined by the Bank's reasonable allocation of such cost increase, reduction in amounts receivable or reduction in rate of return resulting from such event), then within ten (10) Business Days after written demand by the Bank, the Borrower shall pay to the Bank, from time to time as specified by the Bank, additional amounts that in the aggregate shall be sufficient to compensate the Bank for such increased cost, reduction in amounts receivable or reduction in rate of return. A certificate as to such increased cost, reduction in amounts receivable or reduction in rate of return submitted by the Bank to the Borrower setting forth the Bank's calculation thereof, shall in absence of manifest error, be conclusive and binding for all purposes.

(ii) If after the date of this Agreement the Bank shall have determined that any enactment, promulgation or adoption of or change in any applicable foreign or domestic law, regulation, rule or guideline regarding capital adequacy, or in the interpretation or administration thereof, by any Official Body charged with the interpretation or administration thereof, or compliance by the Bank (or any controlling affiliate) with any guideline, request or directive regarding capital adequacy (whether or not having the force of law and whether or not failure to comply thereunder would be unlawful) of any such Official Body, affects or would affect the amount of capital required or expected to be maintained by the Bank (or any controlling affiliate) and the Bank determines, on the basis of reasonable allocations, that the amount of such capital is increased by or is based on its issuance or maintenance of the Letter of Credit or the Bank's obligations under this Agreement, then, within ten (10) Business Days after demand by the Bank, the Borrower shall pay to the Bank, from time to time as specified by the Bank, additional amounts sufficient to compensate the Bank therefor. A certificate as to such additional amounts submitted to the Borrower by the Bank setting forth the Bank's calculation thereof, shall, in the absence of manifest error, be conclusive and binding for all purposes.

(g) **General Interest Accrual; Place of Payment.** Except as otherwise provided in Section 2.02(a), all payments to the Bank under this Agreement shall be accompanied by interest thereon, from the date such payments become due until they are paid in full, at a fluctuating rate per annum (computed for the actual number of days elapsed, based on a [365 or 366-day year, as the case may be]) [360-day year] equal to the sum of the Prime Rate plus ___ percent (___%); provided that any amount that is not paid within ten (10) days of the date such amount is due and payable to the Bank under this Agreement shall thereafter bear interest at a fluctuating rate per annum (computed for the actual number of days elapsed, based on a [365 or 366-day year], as the case may be)] [360-day year] equal to the sum of the Prime Rate plus _____ percent (____%). All payments by the Borrower to

the Bank under this Agreement shall be made in lawful currency of the United States at the Bank at One PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222-2707, Attention: Commercial Loan Operations, or at such other address and to the attention of such other person as the Bank may stipulate by written notice to the Borrower, or by a wire transfer in immediately available funds from the Borrower to the Bank in accordance with written wire instructions given to the Borrower by the Bank; provided, however, that reimbursement and transaction charge payments under Section 2.02(a) and 2.02(e) shall be made at the Bank at 3rd Floor Annex, 237 Fifth Avenue, Pittsburgh, Pennsylvania 15222, Attention: Letter of Credit Department or such other address as the Bank may stipulate by written notice to the Borrower. All reimbursement payments under Section 2.02(a) shall be made in immediately available funds.

Section 2.03. Transfer; Reduction; Reinstatement; Redemption.

(a) **Transfer.** The Letter of Credit may be transferred in accordance with paragraph 8 of the Letter of Credit.

(b) **Reduction.** The Letter of Credit Amount and the respective Principal Component and Interest Component thereof shall be automatically reduced as specified in paragraph 5 of the Letter of Credit. With respect to any reductions of the Letter of Credit Amount pursuant to the terms of the Letter of Credit as a result of Bonds ceasing to be Outstanding, the Bank shall have the right, at its option, to require the Trustee to promptly surrender the outstanding Letter of Credit to the Bank and to accept in substitution therefor a letter of credit in the form of **Exhibit A** attached hereto, dated the date of such substitution, for an amount equal to the Letter of Credit Amount as so reduced, but otherwise having terms identical to the then outstanding Letter of Credit.

(c) **Reinstatement.** In the event of an Interest Drawing under the Letter of Credit, the Interest Component of the Letter of Credit Amount shall, as provided in paragraph 5(a) of the Letter of Credit and subject to the conditions therein set forth, be automatically reinstated by an amount equal to the amount of such drawing. In the event of a Liquidity Drawing under the Letter of Credit, the Principal Component and Interest Component of the Letter of Credit Amount shall, as provided in paragraph 5(b) of the Letter of Credit, be reinstated with respect to such drawing (A) automatically when and to the extent that (i) the Bank has received reimbursement for such drawing in immediately available funds (or the Trustee has received immediately available funds which, pursuant to Section 4.05 of the Standard Provisions, the Trustee will immediately remit to the Bank as reimbursement for such drawing), and (ii) the Trustee has delivered a certificate to the Bank in respect of such reinstatement in the form required by paragraph 5(b) of the Letter of Credit, or (B) when and to the extent the Bank, at its option, upon the Borrower's request, advises the Trustee in writing that such reinstatement shall occur, it being understood that the Bank shall have no obligation to grant any such reinstatement except as set forth in clause (A) of this sentence.

(d) **Mandatory Redemption of Bonds.**

(i) Notwithstanding the fact that the Indenture does not require the following redemptions of the Bonds, the Borrower shall exercise its optional redemption rights under the Indenture to redeem the Bonds in accordance with the schedule set forth on **Exhibit E** attached hereto (each a "**Required Redemption**" and collectively the "**Required Redemptions**");

(ii) On or before the closing date, the Borrower and the Bank shall execute and deliver to the Trustee and the Issuer an Authorization and Direction Letter (the "Authorization Letter" which shall authorize and direct the Trustee to give notice of each such Required Redemption, in accordance with the terms of the Indenture.

(iii) The Borrower shall cause notice of each such Required Redemption to be given to the Trustee at least ___ days before the date of the applicable Required Redemption, in accordance with the terms of the Indenture.

(iv) In order to insure that funds are available to effect the Required Redemptions, the Borrower shall make [monthly] [quarterly] payments to the Trustee in accordance with the schedule set forth on

Exhibit E (each a “**Required Redemption Deposit**” and collectively the “**Required Redemption Deposits**”), such payments to be held by the Trustee and to be used by the Trustee to reimburse the Participating Bank for draws made on the Letter of Credit for the principal portion of the redemption price for the Required Redemptions:

(v) Drawings made by the Trustee under the Letter of Credit to [pay the principal portion of the redemption price for] the Required Redemptions shall permanently reduce the Letter of Credit Amount.

Section 2.04. Nature of Obligations.

(a) The Borrower’s obligations to the Bank under this Agreement are absolute, unconditional, and irrevocable, and shall be payable in accordance with the terms hereof irrespective of any one or more of the following circumstances:

(i) the form, validity, sufficiency, accuracy, enforceability, genuineness, or effect, or any lack thereof, of the Letter of Credit or any draft, this Agreement, any other Bank Document, or any other document, instrument, or agreement presented in connection with or relating to any of the foregoing, including any signatures or endorsements thereon, even if any such documents, instruments, or agreements should in fact prove to be invalid, insufficient, inaccurate, fraudulent, or forged and even if the Bank or any of its correspondents shall have been notified thereof;

(ii) any failure of any draft to bear reference or adequate reference to the Letter of Credit or of any document to accompany a draft or any failure to forward any document separately from a related draft;

(iii) errors, omissions, interruptions, or delays in transmission or delivery of the Letter of Credit, draft, message, document, or advice, whether transmitted by courier, mail, or hand, or by facsimile, cable, telex, telegraph, or other telecommunication, or otherwise, whether or not encrypted;

(iv) errors in interpretation of technical terms or in translation, and the Bank and its correspondents may transmit terms of the Letter of Credit and related documents and drafts without translation;

(v) any claim or basis for a claim for breach of warranty by the Borrower or the Bank against any beneficiary of the Letter of Credit or the existence of any claim, setoff, defense, or other right that the Borrower may have at any time against any beneficiary or any successor thereof, any transferee of the Letter of Credit, the Bank or any correspondent or agent thereof, or any other Person, whether in connection with the underlying transaction or any unrelated transaction or other matter;

(vi) any payment or other honor by the Bank against a draft or other document presented under the Letter of Credit containing one or more material or consequential discrepancies which causes such presentation to not comply substantially with the terms or conditions of the Letter of Credit and the Bank has notified the Borrower (orally or in writing by facsimile transmission or otherwise) of such discrepancy unless (A) the Bank receives from the Borrower notice in writing, within one (1) Business Day after the Borrower received notice of the discrepancy from the Bank, of the Borrower’s objection to such discrepancy, and (B) the Borrower takes all reasonable steps to mitigate any loss;

(vii) any failure of the Bank to issue the Letter of Credit in the form requested by the Borrower, unless the Bank receives written notice from the Borrower of such failure within one (1) Business Day after the Borrower shall have received (by facsimile transmission or otherwise) a copy of the Letter of Credit and such error is material and consequential;

(viii) any payment or other honor under the Letter of Credit that is made up to [thirty (30)/sixty (60)] days after the expiration thereof if such date of expiration occurs during a force majeure affecting

the office of the Bank or the office of any other bank through which payment is to be made under such Letter of Credit; or

(ix) any action or inaction, including failure or compulsion to pay or accept a draft, taken or suffered by the Bank or any of its correspondents in connection with the Letter of Credit, draft, document, or property and resulting from any censorship, law, regulation, order, control, restriction, or the like rightfully or wrongly exercised by any *de facto* or *de jure* domestic or foreign Official Body or other purported authority or from any other cause beyond the Bank's control or the control of the Bank's correspondents or their respective agents, or for any loss or damage to the Borrower or anyone else or to any property of the Borrower or anyone else resulting from any such failure to pay or accept.

(b) The Bank is authorized to honor any draft without regard to, and without any duty on the Bank's part to inquire into, any underlying transaction or any disputes or controversies between Borrower and any beneficiary of the Letter of Credit or any other Person or the respective rights, duties, or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under the Letter of Credit are true or correct or whether any draft or document related to the Letter of Credit is forged or fraudulent or whether honor of a presentation under the Letter of Credit would facilitate a fraud or misrepresentation, notwithstanding that the Bank may have assisted the Borrower in the preparation of the wording of the Letter of Credit or any drafts or other documents required to be presented thereunder or that the Bank may be aware of any underlying transaction or familiar with any of the parties thereto.

(c) The Borrower is responsible to the Bank for all obligations imposed upon the Bank with respect to the Letter of Credit and all related drafts and documents. The Borrower agrees that any action, inaction, or omission by the Bank, any correspondent of the Bank, or their respective agents under or in connection with the Letter of Credit or any related drafts or documents shall be binding on the Borrower, shall not diminish or impair any obligations of the Borrower hereunder, and shall not put the Bank or the Bank's correspondent or their respective agents under any resulting liability to the Borrower in the absence of gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Bank and each of the Bank's correspondents and their respective agents:

(i) may rely on any oral, telephonic, telegraphic, facsimile, electronic, written, or other communication believed in good faith by the Bank, any correspondent of the Bank, or any agent of either to have been authorized or given by or on behalf of the Borrower;

(ii) shall not be responsible for the identity or authority of any signer or the form, accuracy, genuineness, falsification, or legal effect of any draft or other document presented under the Letter of Credit if such draft or document appears on its face to be in order;

(iii) shall not be responsible for any acts or omissions by or the solvency of any beneficiary of the Letter of Credit or any other Person having any role in any underlying transaction relating to the Letter of Credit;

(iv) may accept or pay, as complying with the terms and conditions of the Letter of Credit, any draft or other document appearing on its face substantially to comply with the terms and conditions of the Letter of Credit;

[(v) may disregard (A) any requirement stated in the Letter of Credit that any draft or other document be presented to it at a particular hour or place, and (B) any discrepancies in any presentation under the Letter of Credit that do not [reflect a reduction in/reduce] the value of any beneficiary's performance to the Borrower in the related underlying transaction;]

[(v)] may accept as a draft any written or electronic demand or request for payment or honor under the Letter of Credit regardless of the legal sufficiency of such demand or request as a negotiable instrument;

[(vi)] shall not be responsible for the effectiveness or suitability of the Letter of Credit for any purpose of the Borrower or for any acts or omissions of the users of the Letter of Credit;

[(vii)] shall not be liable to the Borrower for any consequential, punitive, or special damages, or for any damages resulting from any change in the value of any goods or other property to which an underlying transaction relates;

[(viii)] may honor a previously dishonored presentation under the Letter of Credit, whether pursuant to court order, to settle or compromise any claim that it wrongfully dishonored, or otherwise, and shall be entitled to reimbursement to the same extent as if it had initially honored, plus reimbursement of any interest paid by it;

[(ix)] may honor, upon receipt, any drawing that is payable upon presentation of a statement advising negotiation or payment (even if such statement indicates that a draft or other document is being separately delivered) and shall not be liable for any failure of any draft or other document to arrive or to conform in any way with the draft or other document referred to in the statement or any underlying contract; and

[(x)] may pay any paying or negotiating bank (designated or permitted by the Letter of Credit) claiming that it rightfully honored under the laws or practices of the place where it is located.

(d) In the event the Borrower or any other Person seeks to forestall or enjoin the honoring by the Bank of a presentation under the Letter of Credit, the Bank shall have no obligation to delay or refuse to honor the presentation until validly so ordered by a court of competent jurisdiction, and all costs and expenses of the Bank relating thereto (including reasonable attorneys' fees and other related expenses) shall be borne by the Borrower notwithstanding what party prevails in any such action.

(e) Neither the Bank nor any correspondent of the Bank nor any of their respective agents shall be responsible or liable to the Borrower for or as a result of any of the circumstances described in this Section 2.04, and the Borrower assumes all risks and responsibility for each of the circumstances addressed in this Section 2.04.

Section 2.05. Indemnification.

(a) The Borrower shall indemnify and hold the Bank, any parent entity of the Bank, the Bank's and such parent's affiliates and subsidiaries, and each of their respective agent, officers, directors, shareholders, and employees (each, an "**Indemnified Party**") harmless from and against any and all claims, liabilities, losses, damages, taxes (excluding taxes imposed on the net income of any Indemnified Party), fees, duties, levies, imposts deductions, charges, withholdings, penalties, interest, judgments, costs, and expenses, including reasonable attorneys' fees and related costs (including those fees and costs of counsel employed by the Indemnified Parties), that may be incurred by or asserted or awarded against any Indemnified Party, in any case arising out of or in connection or by reason of, or in connection with the preparation for a defense of, any investigation, litigation, or proceeding arising out of or in connection with or by reason of:

(i) The Letter of Credit, any draft, any underlying transaction, or this Agreement or any other Bank Documents;

(ii) any payment or action taken in connection with the Letter of Credit (including any action or proceeding seeking to restrain any drawing under the Letter of Credit or to compel or restrain the payment of any amount or the taking of any other action under the Letter of Credit or any Bank Document or to obtain similar relief (including by way of interpleader, declaratory judgment, attachment, or otherwise) and regardless who is the prevailing party in any such action or proceeding;

(iii) the enforcement of the Bank Documents or the collection or sale of any property or other collateral, or any act or omission in connection therewith;

(iv) any occurrence or circumstance described in Section 2.04 hereof or any breach by the Borrower of any representation, warranty, covenant, term or condition in or the occurrence of an Event of Default under any Bank Document, the Loan Agreement or the Bond Documents; and

(v) any act or omission of any *de jure* or *de facto* Official Body or other cause beyond the control of the Bank, except to the extent such claim, liability, loss, damage, tax (excluding taxes imposed on the net income of the Bank), fees, duties, levies, imposts, deductions, charges, withholdings, penalty, interest, judgment, cost, or expense is found by a final judgment of a court of competent jurisdiction to have resulted from to the gross negligence or willful misconduct of the Bank.

(b) The Bank shall have no liability to the Borrower or any other Person as a result of any tender of Bonds resulting from any reduction of the credit rating of the Bank or any deterioration in the Bank's financial condition, and the Borrower hereby indemnifies and holds harmless each Indemnified Party from any and all claims, damages, losses, liabilities, costs or expenses relating to the Borrower or the Bonds which any Indemnified Party may incur in connection therewith. No reduction on the credit rating of the Bank or deterioration in the Bank's financial condition shall reduce or in any way diminish the obligations of the Borrower to the Bank under this Agreement and the other Bank Documents, including without limitation the Borrower's obligation to pay Letter of Credit commitment fees to the Bank and to reimburse the Bank for any drawing under the Letter of Credit.

(c) Nothing in this Section 2.05 is intended to limit the Borrower's reimbursement obligations contained in Section 2.02(a). The obligations of the Borrower under this Section 2.05 shall survive the termination of this Agreement.

ARTICLE III

SECURITY

Section 3.01. Security and Subrogation under Indenture. The Borrower and the Bank intend that (a) the Bank will have the security and benefit of the Bond Documents as provided in the Indenture and (b) in the event of one or more draws under the Letter of Credit and the application thereof to the payment of Bonds, the Bank will be subrogated *pro tanto* to the rights of the Trustee and the holders of such Bonds under the Bond Documents and in and to all funds (except redemption funds) and security held by the Trustee under the Indenture for the payment of the principal of and interest on such Bonds, including without limitation all loan funds, construction funds, project funds, escrow funds, revenue funds, operation funds, debt service funds, reserve funds and other funds (except redemption funds) and securities and other instruments comprising investments thereof. In addition, the Bank shall have any and all other subrogation rights available to the Bank at law and in equity.

Section 3.02. Pledge of Rights to Certain Funds and Investments. To secure the Borrower's obligations to the Bank under this Agreement, the Borrower hereby pledges to the Bank, and grants to the Bank a security interest in, all of the Borrower's right, title and interest in and to all funds (except redemption funds) and investments thereof now or hereafter held by the Trustee under the Indenture as security for the payment of the Bonds, including without limitation any and all loan funds, construction funds, project funds, escrow funds, revenue funds, operations funds, debt service funds, reserve funds and other funds and securities and other instruments comprising investments thereof and interest and other income derived therefrom held as security for the payment of the Bonds, such pledge, assignment and grant being under and subject only to the rights of the Trustee under the Indenture. The Borrower covenants and agrees that it will defend the Bank's rights and security interests created by this Section against the claims and demands of all Persons. In addition to its other rights and remedies under the Transaction Documents, the Bank shall have all the rights and remedies of a secured party under the Uniform Commercial Code or other applicable law with respect to the security interests created by this Section. The Bank's rights under this Section are in addition to, and not in lieu of, its rights described in Section 3.01.

Section 3.03. Pledged Bonds.

(a) **Pledge.** To secure the Borrower's obligations to the Bank under this Agreement and the Bank Documents, the Borrower hereby pledges and assigns to the Bank, and grants to the Bank a security interest in,

all of the Borrower's right, title and interest, now owned or hereafter acquired, in and to any and all unremarketed Pledged Bonds (together with all income therefrom and proceeds thereof) purchased pursuant to the Indenture with the proceeds of a Liquidity Drawing presented under the Letter of Credit for which neither (i) full reimbursement has been made to the Bank nor (ii) the Trustee holds sufficient funds which, pursuant to the Indenture, the Trustee is required to apply on behalf of the Borrower to reimburse the Bank in full for such Liquidity Drawing on the date such Liquidity Drawing is paid by the Bank. Such unremarketed Pledged Bonds shall be pledged to the Bank, registered in its name as pledgee of the Borrower and delivered to and held by the Trustee as agent for the Bank under this Section 3.03 or, at the option of the Bank by written notice to the Borrower and the Trustee, the Pledged Bonds specified in such notice shall be delivered to and held by the Bank; provided that, if the Pledged Bonds are held in uncertificated form pursuant to an agreement with the Depository Trust Company, or a successor securities depository, then such pledge to the Bank shall be recorded in the registration books maintained by the Trustee and in the records of ownership maintained by the securities depository and any participant through which such Pledged Bonds are held.

(b) **Pledged Bond Payments.** Any principal of and interest on Pledged Bonds which becomes due and payable (including any due-bills received upon purchase thereof pursuant to the record date provisions of the Indenture or the Bonds) shall be paid to the Bank. All sums of money so paid to the Bank in respect of Pledged Bonds shall be credited against the obligation of the Borrower to reimburse the Bank, with interest, under Section 2.02(a) for the amount drawn under a Liquidity Drawing to fund the purchase of such Pledged Bonds pursuant to the Indenture.

(c) **Release of Pledged Bonds.** If the Borrower pays or causes to be paid in full its obligation under Section 2.02(a) for the reimbursement of the amount (or allocable portion thereof) drawn with a Liquidity Drawing to fund the purchase of Pledged Bonds pursuant to Article IV of the Standard Provisions (or if the Trustee has received immediately available funds which, pursuant to Section 4.04 of the Standard Provisions, the Trustee is required to pay over promptly to the Bank in an amount sufficient to pay the Borrower's reimbursement obligation under Section 2.02(a) with respect to the amount drawn with such Liquidity Drawing to fund the purchase of such Pledged Bonds), and provided no Default or Event of Default has occurred and is continuing, the Bank will release from the pledge of this Agreement and will deliver, or cause its agent to deliver, such Pledged Bonds (if held in certificated form) to such Person or Persons as the Trustee or the Borrower may direct. An amount equal to the principal of, plus accrued interest on, such Pledged Bonds shall be presumed (absent notice to the contrary) to be an "**amount sufficient**" for purposes of this Section 3.03(c) and, upon receipt of such amount by the Trustee for payment to the Bank as aforesaid, the Trustee shall be automatically authorized to deliver such Pledged Bonds as aforesaid free from the pledge of this Agreement, unless the Trustee has received from the Bank written notice or telephonic notice (which shall thereafter be confirmed in writing) that such release shall not occur.

(d) **No Liability of Bank.** The Bank shall not be liable for failure to collect or realize upon the obligations secured by the Pledged Bonds or any collateral security or guarantee therefor, or any part thereof, or for any delay in so doing, and the Bank shall not be under any obligation to take any action whatsoever with regard thereto.

(e) **Representations; Rights and Remedies.** The Borrower represents and warrants to the Bank that the pledge, assignment and delivery of Pledged Bonds pursuant to this Section 3.03 will create a valid first lien on and a first perfected security interest in, all right, title and interest of the Borrower in and to the Pledged Bonds, and the proceeds thereof. The Borrower covenants and agrees that it will defend the Bank's right, title and security interest in and to the Pledged Bonds and the proceeds thereof against the claims and demands of all persons. In addition to its other rights and remedies under the Transaction Documents, the Bank shall have the rights and remedies of a secured party under the Uniform Commercial Code or other applicable law with respect to the security interests created by this Section.

Section 3.04. Pledge of Gross Revenues.

(a) The Borrower hereby pledges to the Bank its Gross Revenues and covenants and agrees that it will apply and pay to the Bank at the times set forth in Section 2.02 hereof its Gross Revenues and that it will continue such payment to the Bank, until the provisions of Section 2.02 hereof have been complied with for the period for which such payments required thereunder are to be made. To secure the payment of the obligations under

Section 2.02 hereof as aforesaid, the Borrower hereby grants to the Bank a first priority Lien on and security interest in, and agrees and acknowledges that the Bank has and shall continue to have a security interest in and a first priority Lien on, the Borrower's Gross Revenues, whether in the form of accounts, accounts receivable, contract rights, chattel paper, instruments, general intangibles, investment property, securities entitlements or other rights, and the proceeds of all of the foregoing including any insurance proceeds and any condemnation awards derived therefrom, whether now existing or hereafter coming into existence and whether now owned or held or hereafter acquired by the Borrower.

(b) Any provision of this Section 3.04 to the contrary notwithstanding, if no Event of Default shall have occurred and then be continuing under this Agreement, the Borrower shall be permitted to commingle, transfer or make expenditures from or deposits of its Gross Revenues and the proceeds thereof, free and clear of any Lien.

Section 3.05. Security Documents. To further secure the Borrower's Obligations to the Bank under the Bank Documents, the Borrower shall execute and deliver to the Bank [, and cause the Issuer to execute and deliver to the Bank,] each of the following Security Documents, all in form and substance satisfactory to the Bank:

(a) a first priority Open-End Mortgage and Security Agreement covering the [Project] [Borrower's Facilities] (the "**Mortgage**");

(b) a first priority Assignment of Rents, Leases and Profits covering the [Project] [Borrower's Facilities] (the "**Assignment of Leases**");

(c) a first priority Security Agreement covering all now owned or hereafter created or acquired tangible and intangible personal property of the Borrower [relating to the {Project} {Borrower's Facilities}] in form and substance satisfactory to the Bank (the "**Security Agreement**");

(d) a first priority Pledge Agreement pursuant to which the Borrower pledges to the Bank _____ (the "**Pledge Agreement**"); and

(e) all Uniform Commercial Code financing statements required under the Uniform Commercial Code of the State or other applicable Law as the Bank may specify in order to perfect and maintain perfection of the security interests granted to the Bank under the Bank Documents.

[**Section 3.06. Guaranty Agreements.** As an additional condition to the Bank's willingness to enter into the Bank Documents and issue the Letter of Credit, the Borrower shall cause each Guarantor to execute and deliver to the Bank a Guaranty Agreement on or prior to the date hereof.]

[**Section 3.07. Cash Collateral Account.** The Borrower shall pay to the Bank cash in the amounts and on the dates set forth in Exhibit attached hereto to be held in a special account (the "**Cash Collateral Account**") as security for the Borrower's Obligations under this Agreement. Moneys held in the Cash Collateral Account shall be invested at all times at the direction of the Borrower in obligations evidencing indebtedness on which the interest is excluded from gross income for federal income tax purposes pursuant to Code Section 103(a) and rated within one of the three highest rating categories by any nationally recognized rating service; provided that (a) the maturities and tender option provisions of such obligations shall be acceptable to the Bank in its absolute discretion and (b) the Borrower shall promptly pay to the Bank such additional amounts as the Bank may stipulate to make up any loss in market value of such obligations.]

ARTICLE IV CONDITIONS PRECEDENT

The obligation of the Bank to issue the Letter of Credit and enter into the Bank Documents is subject to the receipt of or satisfaction of each of the following documents, matters and conditions, all of which must be satisfactory to the Bank in form and substance:

Section 4.01. Issuance Fee. On the date of execution and delivery hereof, the Borrower shall pay to the Bank the Letter of Credit issuance fee due pursuant to Section 2.02(c) (unless the Bank has agreed that the issuance fee shall be paid on the Date of Issuance).

Section 4.02. Documentation. The Bank shall have received each of the following, in form and substance satisfactory to the Bank:

(a) **Bank Documents.** Fully-executed copies of each of the Bank Documents, and all schedules thereto prepared by the Borrower;

(b) **Bond Documents.** True and correct copies of the executed Bond Documents and all documentation delivered in connection therewith;

(c) **Formation and Authorization Documents.** [For the Borrower {and each Guarantor that is a corporation} the following formation and authorization documents:

(i) **Corporate Resolutions.** A copy, duly certified as true, correct, complete and in effect by its secretary or assistant secretary as of the date hereof, of resolutions of its board of directors authorizing the transactions described in the Transaction Documents and the execution and delivery of and performance under the Transaction Documents and all other documents required to accomplish and implement the foregoing;

(ii) **Articles of Incorporation.** A copy of its articles and/or certificate of Incorporation and all amendments, duly certified as of a recent date by the Secretary of State of the state of its incorporation;

(iii) **Good Standing Certificates.** A good standing certificate issued as of a recent date by the Secretary of State of the state of its incorporation [and of the State];

(iv) **Bylaws.** A copy of its bylaws and all amendments, certified as true, complete, correct and in effect by its secretary or assistant secretary; and

(v) **Incumbency Certificate.** An incumbency certificate executed by its secretary or assistant secretary dated as of the date hereof certifying the names and offices held by the officers of such corporation who are authorized on behalf of such corporation to execute the Bank Documents to be executed by it, together with true signatures of such officers.]

[For the Borrower {and each Guarantor that is a general partnership} the following formation and authorization documents:

(i) **General Partnership Agreement.** A copy of its general partnership agreement and all amendments thereto, certified as being true, correct, complete and in effect by one of its general partners;

(ii) **Resolutions.** Resolutions of its general partners authorizing the execution of the Transaction Documents and the performance pursuant thereto, certified by one of its general partners as being true, correct, complete and in effect; and

(iii) **Incumbency Certificate.** An incumbency certificate, showing the names of its general partners who are individuals and their true signatures.]

[For the Borrower {and each Guarantor that is a limited partnership} the following formation and authorization documents:

(i) **Limited Partnership Agreement.** A copy of its limited partnership agreement and all amendments thereto, certified as being true, correct, complete and in effect by its general partner;

(ii) Limited Partnership Certificate. A copy of its limited partnership certificate, certified as of a recent date by the Secretary of State of the state of its formation;

(iii) Good Standing Certificate. A recently dated good standing certificate issued by the Secretaries of State of the state where it was formed [and the State];

(iv) Resolutions. Resolutions of its general partner authorizing the execution of the Transaction Documents and the performance pursuant thereto, certified by its general partner as being true, correct, complete and in effect; and

(v) Incumbency Certificate. An incumbency certificate, showing the names of its general partners who are individuals, or the names of the officers of its general partner, as the case may be, and their true signatures.]

[For the Borrower {and each Guarantor that is a limited liability company} the following formation and authorization documents:

(i) Operating Agreement. A copy of its operating agreement and all amendments thereto, certified as being true, correct, complete and in effect by [its manager] [its secretary or assistant secretary];

(ii) Certificate of Organization. A copy of its certificate of organization, certified as of a recent date by the Secretary of State of the state of its formation;

(iii) Good Standing Certificate. A recently dated good standing certificate issued by the Secretaries of State of the state where it was formed [and the State];

(iv) Resolutions. Resolutions of its members authorizing the execution of the Transaction Documents and the performance pursuant thereto, certified by its [manager] [secretary or assistant secretary] as being true, correct, complete and in effect; and

(v) Incumbency Certificate. An incumbency certificate, showing the names of its members who are individuals, or the names of the officers of its manager, as the case may be, and their true signatures.]

(d) Closing Certificate. A certificate of an Authorized Person dated as of the date of execution and delivery hereof stating that (i) the representations and warranties contained in Article V and in the other Bank Documents are true and correct, (ii) no Default or Event of Default has occurred and is continuing, and (iii) no Material Adverse Change has occurred and is continuing;

(e) Lien Searches. Results of Uniform Commercial Code, judgment and lien searches for the Borrower [and the Guarantor(s)], with results satisfactory to the Bank;

(f) Payoff Letters. Payoff letters from each existing lender to the Borrower whose loans are being paid off with the proceeds of the Bonds;

(g) Establishment of Deposit Accounts. The establishment by the Borrower of its primary deposit accounts with the Bank;

(h) Opinion of Borrower's and Guarantor's Counsel. An opinion of _____, counsel to the Borrower [and to the Guarantor(s)], which opinion may be issued, where indicated, in reasonable reliance upon certifications, opinions and other documentation derived from Official Bodies and others having particular access to materials and information necessary to reach the conclusions expressed in such opinion, covering the matters described in Exhibit D hereto;

(i) **Other Opinions.** Opinions of Pepper Hamilton LLP, bond counsel, and of the Office of Chief Counsel of the Pennsylvania Department of Commerce, each addressed to the Bank, covering such matters as to the Issuer and the Bond Documents as the Bank may reasonably request;

(j) **Issuer's Certificate.** A certificate or certificates of the officers of the Issuer covering such matters as to the Issuer and the Bond Documents as the Bank may reasonably request;

(k) **Financial Statements.** Audited Financial Statements of the Borrower for the Fiscal Year ended _____ and unaudited Financial Statements of the Borrower for the _____ months ended _____ [and audited Financial Statements of each Guarantor for its fiscal year ended _____ and unaudited Financial Statements of each Guarantor for the _____ months ended _____];

(l) **Insurance Certificates.** Original certificates for the insurance required under Section 6.03, and any other evidence requested by the Bank to evidence that the insurance requirements contained in the Bank Documents have been met;

(m) **Flood Insurance Certification.** Evidence satisfactory to the Bank that the [Project is] [Borrower's Facilities are] not located in a Special Flood Hazard area as defined by the United States Department of Housing and Urban Development, and, if [the Project is] [the Borrower's Facilities are] located in a Special Flood Hazard area, original certificates for flood insurance as required under this Agreement and the other Bank Documents;

(n) **Leases.** A copy of each executed lease relating to the Project, each of which shall contain subordination provisions satisfactory to the Bank;

(o) **Environmental Assessment.** A current Phase I environmental assessment of the Premises prepared by an environmental consultant satisfactory to the Bank and under an engagement letter between the Borrower and such consultant which has been approved by the Bank;

(p) **Appraisal.** A current appraisal of the Premises, which shall (i) be prepared by an MAI appraiser selected by the Bank, (ii) be satisfactory in form, substance and all other respects to the Bank, and (iii) establish to the Bank's satisfaction that the value of the Project is not less than \$_____;

(q) **Title Insurance Commitment.** A commitment to issue an ALTA lender's policy of title insurance issued by a title insurance company acceptable to the Bank in the Letter of Credit Amount, insuring that the Mortgage, as of the time of its filing for record, is a first priority Lien upon the Project, and that the title to the Premises is free, clear and unencumbered, subject only to the Permitted Liens. The commitment shall also obligate the title insurance company to affirmatively insure all advances pursuant to this Agreement, without exception for mechanics' or materialmen's Liens, and that access to the Premises is by a dedicated and accepted public right-of-way. The commitment shall also include such other endorsements and affirmative insurance as may be required by the Bank, including but not limited to, the so-called [contiguity endorsement, survey endorsement, zoning endorsement, revolving credit endorsement, future advance endorsement and endorsement as to nonviolation of any restrictions or easements], and the Borrower shall supply the title insurance company with such affidavits as may be necessary in connection therewith;

(r) **Other Conditions.** Such other documents, certificates, approvals, assurances and opinions as are listed in the closing memorandum filed with the Trustee in connection with the issuance of the Bonds, or as listed on a closing checklist prepared by the Bank's counsel, or as the Bank or its counsel may reasonably request; and

(s) **Payment of Fees.** Payment of all fees due to the Bank on the date hereof, if any, and payment of all fees and out-of-pocket costs incurred by the Bank's counsel in connection herewith.

Section 4.03. Issuance of Bonds. On the date of execution and delivery hereof, all conditions precedent to the issuance and original sale of the Bonds shall have been satisfied and the Bonds shall have been duly issued and delivered. The Bonds shall provide for amortization as set forth in the Indenture.

ARTICLE V REPRESENTATIONS AND WARRANTIES

To induce the Bank to enter into this Agreement and issue the Letter of Credit, the Borrower hereby makes the following representations and warranties to the Bank, all of which shall be continuing in nature and shall survive the execution and delivery of this Agreement and the issuance of the Letter of Credit:

Section 5.01. Existence. The Borrower is a [corporation] [general partnership] [limited partnership] [limited liability company], duly organized, validly existing and in good standing under the laws of the [State] [State of _____] and is qualified to do business in the State. The Borrower has all necessary permits, licenses, certifications and qualifications to conduct its business as it is presently being conducted, and has complied in all material respects with all applicable requirements of all Official Bodies, to operate its facilities as they are presently being operated.

Section 5.02. Power, Authorization and No Conflicts. The execution, delivery and performance by the Borrower of the Transaction Documents are within the Borrower's powers, have been duly authorized by all necessary [corporate] [partnership] [limited liability company] action of the Borrower and do not contravene the [Articles of Incorporation or bylaws] [partnership agreement] [limited partnership agreement or certificate of limited partnership] [operating agreement or certificate of organization] of the Borrower or any Law or judgment applicable to the Borrower or any agreement, contractual or other restriction binding on or affecting the Borrower or any of its properties.

Section 5.03. Governmental and Other Approvals. No authorization, approval or other action by, and no notice to or filing with, any Official Body is required for the due execution, delivery and performance by the Borrower of the Transaction Documents, except such as have been obtained.

Section 5.04. Validity, Binding Effect and Enforceability. The Transaction Documents are the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally or limiting the right of specific performance.

Section 5.05. No Litigation. Except as disclosed on **Schedule 5.05** there is no pending action or proceeding before any Official Body against or involving the Borrower and, to the best knowledge of the Borrower, there is no threatened action or proceeding affecting the Borrower before any Official Body which has resulted in, or may reasonably be expected to result in, a Material Adverse Change.

Section 5.06. No Violations. The Borrower is not in any material way in breach of or in default under (a) any applicable Law of any Official Body or any applicable judgment or decree or (b) any loan agreement, indenture, lease, sublease, bond, note, resolution, agreement or other agreement or instrument to which it is a party or otherwise bound or subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument except for violations, if any, which the Borrower has disclosed to the Bank in writing, is proceeding in good faith to remove or correct and which have not and are not reasonably expected to result in a Material Adverse Change. The Borrower has no knowledge of any violation, nor is there any notice or other record of any violation, of any zoning, subdivision, environmental, building or other statute, ordinance, regulation, restrictive covenant or other restriction applicable to the Project or the [Premises] [Borrower's Facilities] except for violations, if any, which the Borrower has disclosed to the Bank in writing, is proceeding in good faith to remove or correct and which have not and are not reasonably expected to result in a Material Adverse Change.

Section 5.07. Compliance. The construction of the Project as contemplated by this Agreement, the use of the Project for the purpose contemplated hereby and the operation of the Project, do and shall, in all respects, comply with, and are lawful, permitted and conforming uses under, all applicable building, fire,

safety, subdivision, zoning, sewer, environmental, securities, health, insurance and other Laws and plan approval conditions of any Official Body, and the Borrower has obtained, or will obtain prior to commencement of construction of the Project, all permits, licenses or approvals from any Official Body which are a necessary precondition to the construction of the Project.

Section 5.08. No Liens. There exist no Liens against the Project or any of the other Collateral (including statutory and other Liens of mechanics, workmen, contractors, subcontractors, suppliers, taxing authorities and others), except for Permitted Liens; and the Borrower has not made a contract or arrangement of any kind, the performance of which by the other party thereto could give rise to a Lien on the Project or any of the other Collateral by operation of law or otherwise, except for Permitted Liens.

Section 5.09. Utilities and Access. All utility services necessary for construction and operation of the Project, including water supply, storm and sanitary sewer facilities, gas, electricity and telephone facilities are, or prior to the Completion Date will be, available within the boundaries of the Premises, and all roads necessary for the full utilization of the Project for their intended purposes either have been completed or the necessary rights-of-way therefor have been acquired by the appropriate Official Body or others or have been or will, prior to the Completion Date, be dedicated to public use and accepted by such Official Body, and all necessary steps have been taken by the Borrower and all such Official Body or others to assure complete construction and installation thereof by the Completion Date.

Section 5.10. Financial Condition; No Material Adverse Change.

(a) **Annual Financial Statements.** The balance sheet of the Borrower as of _____ and the related statements of income and changes in financial position of the Borrower for the Fiscal Year then ended (i) have been prepared in accordance with GAAP, (ii) have been examined by _____, Certified Public Accountants, (iii) are complete and correct and present fairly the financial condition and results of operations of the Borrower as of and for the period covered thereby, and (iv) accurately reflect all liabilities, including contingent liabilities, of the Borrower as of the date thereof.

(b) **Interim Financial Statements.** The balance sheet of the Borrower as of _____ and the related statement of income for the __ months ended ____ (i) have been prepared in accordance with GAAP, (ii) are complete and correct and present fairly the financial condition and results of operations of the Borrower as of _____ and for the period covered thereby, and (iii) accurately reflect all liabilities, including contingent liabilities, of the Borrower as of the date thereof.

(c) **Material Adverse Changes.** Since _____, the Borrower has conducted its operations in the ordinary course of business, and no Material Adverse Change has occurred.

Section 5.11. Plans and Benefit Arrangements. Except as set forth on Schedule 5.11:

(a) The Borrower and each other member of the ERISA Group are in compliance in all material respects with any applicable provisions of ERISA with respect to all Benefit Arrangements, Plans and Multiemployer Plans. There has been no Prohibited Transaction with respect to any Benefit Arrangement or any Plan or, to the best knowledge of the Borrower, with respect to any Multiemployer Plan or Multiple Employer Plan, which could result in any material liability of the Borrower or any other member of the ERISA Group. The Borrower and all other members of the ERISA Group have made when due any and all payments required to be made under any agreement relating to a Multiemployer Plan or a Multiple Employer Plan or any Law pertaining thereto. With respect to each Plan and Multiemployer Plan, the Borrower and each other member of the ERISA Group (i) have fulfilled in all material respects their obligations under the minimum funding standards of ERISA, (ii) have not incurred any liability to the PBGC, and (iii) have not had asserted against them any penalty for failure to fulfill the minimum funding requirements of ERISA.

(b) To the best of the Borrower's knowledge, each Multiemployer Plan and Multiple Employer Plan is able to pay benefits thereunder when due.

(c) Neither the Borrower nor any other member of the ERISA Group has instituted or intends to institute proceedings to terminate any Plan.

(d) No event requiring notice to the PBGC under Section 302(f)(4)(A) of ERISA has occurred or is reasonably expected to occur with respect to any Plan, and no amendment with respect to which security is required under Section 307 of ERISA has been made or is reasonably expected to be made to any Plan.

(e) The aggregate actuarial present value of all benefit liabilities (whether or not vested) under each Plan, determined on a plan termination basis, as disclosed in, and as of the date of, the most recent actuarial report for such Plan, does not exceed the aggregate fair market value of the assets of such Plan.

(f) Neither the Borrower nor any other member of the ERISA Group has incurred or reasonably expects to incur any material withdrawal liability under ERISA to any Multiemployer Plan or Multiple Employer Plan. Neither the Borrower nor any other member of the ERISA Group has been notified by any Multiemployer Plan or Multiple Employer Plan that such Multiemployer Plan or Multiple Employer Plan has been terminated within the meaning of Title IV of ERISA and, to the best knowledge of the Borrower, no Multiemployer Plan or Multiple Employer Plan is reasonably expected to be reorganized or terminated, within the meaning of Title IV of ERISA.

(g) To the extent that any Benefit Arrangement is insured, the Borrower and all other members of the ERISA Group have paid when due all premiums required to be paid for all periods through the Closing Date. To the extent that any Benefit Arrangement is funded other than with insurance, the Borrower and all other members of the ERISA Group have made when due all contributions required to be paid for all periods through the Closing Date.

(h) All Plans, Benefit Arrangements and Multiemployer Plans have been administered in accordance with their terms and applicable Law.

Section 5.12. Environmental Compliance. Except as disclosed on Schedule 5.12:

(a) The Borrower has not received any Environmental Complaint from any Official Body or private Person alleging that the Borrower or any prior or subsequent owner of any of the Borrower's Facilities is a potentially responsible party under the Comprehensive Environmental Response, Cleanup and Liability Act, 42 U.S.C. § 9601 et seq., and the Borrower has no reason to believe that such an Environmental Complaint might be received. There are no pending or, to the Borrower's knowledge, threatened Environmental Complaints relating to any prior or subsequent owner of any of the Borrower's Facilities pertaining to, or arising out of, any Environmental Conditions.

(b) There are no circumstances at, on or under the Borrower's Facilities that constitute a breach of or non-compliance with any of the Environmental Laws, and there are no past or present Environmental Conditions at, on or under any of the Property or, to the Borrower's knowledge, at, on or under adjacent property, that prevent compliance with the Environmental Laws at the Borrower's Facilities.

(c) Neither the Borrower's Facilities nor any structures, improvements, equipment, fixtures, activities or facilities thereon or thereunder contain or use Regulated Substances except in compliance with Environmental Laws. There are no processes, facilities, operations, equipment or other activities at, on or under the Borrower's Facilities, or, to the Borrower's knowledge, at, on or under adjacent property, that currently result in the release or threatened release of Regulated Substances onto any of the Borrower's Facilities, except to the extent that such releases or threatened releases are not a breach of or otherwise not a violation of the Environmental Laws.

(d) There are no aboveground storage tanks, underground storage tanks or underground piping associated with such tanks, used for the management of Regulated Substances at, on or under the Borrower's Facilities that (i) do not have, to the extent required by Environmental Laws, a full operational secondary containment system in place, and (ii) are not otherwise in compliance with all Environmental Laws. There are no abandoned underground storage tanks or underground piping associated with such tanks, previously used for the

management of Regulated Substances at, on or under any of the Borrower's Facilities that have not either been closed in place in accordance with Environmental Laws or removed in compliance with all applicable Environmental Laws and no contamination associated with the use of such tanks exists on any of the Borrower's Facilities that is not in compliance with Environmental Laws.

(e) The Borrower has all material permits, licenses, authorizations, plans and approvals necessary under the Environmental Laws for the conduct of its business as presently conducted. The Borrower has submitted all material notices, reports and other filings required by the Environmental Laws to be submitted to an Official Body which pertain to past and current operations on any of the Property.

(f) All past and present on-site generation, storage, processing, treatment, recycling, reclamation, disposal or other use or management of Regulated Substances at, on, or under any of the Borrower's Facilities and all off-site transportation, storage, processing, treatment, recycling, reclamation, disposal or other use or management of Regulated Substances have been done in accordance with the Environmental Laws.

Section 5.13. Disclosure. None of the Transaction Documents contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, in the light of the circumstances in which they were made, not misleading. There is no fact known to the Borrower which has resulted in or which may reasonably be expected to result in a Material Adverse Change which has not been set forth in the Bank Documents or in the other documents, certificates and statements furnished to the Bank by or on behalf of the Borrower prior to the date of execution and delivery of this Agreement in connection with the transactions contemplated hereby.

Section 5.14. Representations in Other Documents. The Borrower hereby makes to and for the benefit of the Bank each of the representations and warranties of the Borrower contained in the Bond Documents and other documents delivered by the Borrower in connection therewith.

Section 5.15. Use of Proceeds; Margin Stock; Section 20 Subsidiaries.

(a) **General.** The Borrower intends to use the proceeds from the sale of the Bonds in accordance with the terms of the Bond Documents.

(b) **Margin Stock.** The Borrower does not engage or intend to engage principally, or as one of its important activities, in the business of extending credit for the purpose, immediately, incidentally or ultimately, of purchasing or carrying margin stock (within the meaning of Regulation U). No part of the proceeds of any Loan has been or will be used, immediately, incidentally or ultimately, to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or to refund indebtedness originally incurred for such purpose, or for any purpose which entails a violation of or which is inconsistent with the provisions of the regulations of the Board of Governors of the Federal Reserve System. The Borrower does not hold or intend to hold margin stock in such amounts that more than twenty-five percent (25%) of the reasonable value of the assets of the Borrower are or will be represented by margin stock.

(c) **Section 20 Subsidiaries.** The Borrower does not intend to use and shall not use any portion of the proceeds of the Bonds, directly or indirectly (i) knowingly to purchase any Ineligible Securities from a Section 20 Subsidiary during any period in which such Section 20 Subsidiary makes a market in such Ineligible Securities, (ii) knowingly to purchase during the underwriting or placement period Ineligible Securities being underwritten or privately placed by a Section 20 Subsidiary, or (iii) to make payments of principal or interest on Ineligible Securities underwritten or privately placed by a Section 20 Subsidiary and issued by or for the benefit of the Borrower or any Affiliate of the Borrower.

Section 5.16. Year 2000 Problem. The Borrower has reviewed the areas within its business and operations which could be adversely affected by, and has developed or is developing a program to address on a timely basis, the Year 2000 Problem. The Year 2000 Problem has not resulted in, and is not reasonably expected to result in, any Material Adverse Change.

Section 5.17. Material Adverse Change. Since the date of the most recent Financial Statements delivered to the Bank, there has been no Material Adverse Change.

Section 5.18. Condition of and Title to Assets; Status of Leases. The Borrower has good title to its properties, assets and leases. As of the date hereof none of the assets of the Borrower are subject to any Lien except for existing Permitted Liens. All of the assets and properties of the Borrower that are necessary for the operation of its businesses are in good working condition, ordinary wear and tear excepted, and are able to serve the functions for which they are currently being used. The Borrower is not in default under, and to the best of its knowledge no other party thereto is in default under, any material lease to which the Borrower is a party. The Borrower has delivered to the Bank copies of all real estate leases relating to the Project, if any.

Section 5.19. Insurance. The Borrower currently maintains insurance which meets or exceeds the requirements of Section 6.03 and the applicable insurance requirements set forth in the other Bank Documents, and such insurance is provided by reputable and financially sound insurers and is of such types and at least in such amounts as are customarily carried, and insures against such risks as are customarily insured against, by similar businesses similarly situated and owning, leasing and operating similar properties to those owned, leased and operated by the Borrower. All of such insurance policies are valid and in full force and effect. No notice has been given or claim made, and, to the Borrower's knowledge, no grounds exist to cancel or avoid any of such policies or to reduce the coverage provided thereby.

Section 5.20. Taxes. All federal, state, local and other tax returns required to have been filed by the Borrower have been filed, and payment or adequate provision has been made for the payment of all taxes, fees, assessments and other governmental charges which have or may become due pursuant to said returns or to assessments received, except to the extent that such taxes, fees, assessments and other charges are being contested in good faith by appropriate proceedings diligently conducted and for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made. There are no agreements or waivers extending the statutory period of limitations applicable to any federal income tax return of the Borrower for any period.

Section 5.21. No Event of Default; Compliance with Instruments. No Default or Event of Default has occurred and is continuing, or will occur or exist after giving effect to the extensions of credit to be made pursuant to any of the Transaction Documents. The Borrower is not in violation of (i) any term of its certificate of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other organizational documents or (ii) any agreement or instrument to which it is a party or by which it or any of its properties may be subject or bound where such violation has resulted in or may be reasonably likely to result in a Material Adverse Change.

Section 5.22. Patents, Trademarks, Copyrights, Licenses, Etc. The Borrower owns or possesses all the material patents, trademarks, service marks, trade names, copyrights, licenses, registrations, franchises, permits and rights necessary to own and operate its properties and to carry on its business as presently conducted and planned to be conducted, without known possible, alleged or actual conflict with the rights of others.

Section 5.23. Security Interests. The security interests granted herein and under the other Bank Documents constitute and will continue to constitute prior security interests under the Uniform Commercial Code as in effect in each applicable jurisdiction or other applicable Law entitled to all the rights, benefits and priorities provided by the Uniform Commercial Code or such Law. Upon the filing of financing statements relating to said security interests in each office and in each jurisdiction where required in order to perfect the security interests described above, all such action as is necessary or advisable to establish such rights of the Bank will have been taken, and there will be upon execution and delivery of the such filings, no necessity for any further action in order to preserve, protect and continue such rights, except the filing of continuation statements with respect to such financing statements within six (6) months prior to each five (5)-year anniversary of the filing of such financing statements. All filing fees and other expenses in connection with each such action have been or will be paid by the Borrower.

ARTICLE VI GENERAL COVENANTS

So long as any amount is available under the Letter of Credit, the Liquidity Period has not terminated or any amount is due and owing to the Bank hereunder, the Borrower covenants that, except to the extent the Bank shall otherwise consent in writing, each of the following covenants shall be performed and complied with by the Borrower:

Section 6.01. Maintenance of Existence. The Borrower will maintain its existence, rights and privileges and its qualification to do business in the State.

Section 6.02. Compliance with Laws, Etc. The Borrower will comply in all material respects with all applicable Laws of any Official Body, except for any such Laws which the Borrower is contesting in good faith by appropriate proceedings and the noncompliance with which during such contest would not result in a Material Adverse Change if the result of such contest were adverse to the Borrower.

Section 6.03. Maintenance of Insurance. [The Borrower will maintain or cause to be maintained for the benefit of the Bank, the Trustee and the Issuer as additional insureds as their interest may appear (a) hazard insurance (including builder's risk insurance with respect to the original construction of the Project and any other construction), with fire and extended coverage, vandalism and malicious mischief coverage and boiler, pressure vessel, auxiliary piping, pumps and compressors, refrigeration system, transformer and electrical apparatus coverage, on all properties of the Borrower, (b) [business interruption] [rental curtailment] insurance, (c) comprehensive general liability insurance and motor vehicle insurance for bodily injury and property damage, (d) worker's compensation insurance, and (e) such other insurance with responsible and reputable insurance companies in such amounts and covering such risks as are customarily maintained by entities similar to the Borrower or as the Bank may reasonably require by written notice to the Borrower. Each of the policies in the preceding sentence shall be in form, in amounts sufficient to prevent the Issuer, the Trustee and the Borrower from becoming co-insurers thereunder, and substance and with insurance companies satisfactory to the Bank, containing 30-day notification of cancellation or change in coverage clauses in favor of the Trustee, the Bank and the Issuer. The Borrower shall furnish to the Bank, upon written request, full information as to all insurance carried by it.]

[The Borrower will maintain at all times adequate insurance to the satisfaction of the Bank with insurers acceptable to the Bank against such risks of loss as are customarily insured against and in amounts customarily carried by persons owning, leasing or operating similar properties, including, but not limited to, fire and theft and extended coverage insurance in an amount at least equal to the total full insurable value of the Borrower's insurable property, provided that the amount of such insurance shall at all times be sufficient to prevent the Borrower from becoming a co-insurer under the terms of any insurance policy. Each such insurance policy covering properties, if any, pledged as collateral for the Borrower's obligations hereunder shall have a long form lender's loss payable endorsement in favor of the Bank, providing for at least thirty (30) days written notice to the Bank prior to cancellation and, in this regard, the Borrower shall cause a certificate of insurance be delivered to the Bank prior to the issuance of the Letter of Credit and no later than thirty (30) days prior to the expiration of any such insurance coverage. The Borrower will also keep itself adequately insured at all times against liability on account of injury to persons or property and comply with the insurance provisions of all applicable workers' compensation laws and will effect all such insurance under valid and enforceable policies issued by insurers of recognized responsibility. Prior to the issuance of the Letter of Credit and thereafter within ninety (90) days of the close of each Fiscal Year, the Borrower will deliver to Bank a schedule indicating all insurance then in force.]

Section 6.04. Compliance with Bond Documents and Other Contracts. The Borrower will comply with all of its covenants and agreements under the Bond Documents, as the same may hereafter be amended or supplemented from time to time, and comply with, or cause to be complied with, all material requirements and conditions of all contracts and insurance policies which relate to the Borrower and/or the Project.

Section 6.05. Visitation Rights. The Borrower will, at any reasonable time and from time to time, permit the Bank or its agents or representatives to examine and make copies of an abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the [officers] [partners] and accountants of the Borrower.

Section 6.06. Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the

Borrower in accordance with GAAP, and have a complete audit of such books of record and account made by certified public accountants acceptable to the Bank for each Fiscal Year.

Section 6.07. Maintenance of Properties. The Borrower will maintain and preserve all of its properties in good working order and condition, ordinary wear and tear excepted; not permit, commit or suffer any waste of any of its properties; not use or permit the use of any of its properties for any unlawful purpose or permit any nuisance to exist thereon; and not sell, transfer or otherwise dispose of the Project except in accordance with the terms of the Loan Agreement.

Section 6.08. Reporting Requirements. The Borrower will furnish or cause to be furnished to the Bank the following in form satisfactory to the Bank:

(a) **Quarterly Financial Statements.** As soon as available and in any event within _____ days after the end of the first three quarters of each Fiscal Year of the Borrower [and the Guarantor(s)]:

(i) the Borrower's [and the Guarantors'] Financial Statements for the quarter, together with comparative figures for the corresponding period of the prior year, certified, subject to ordinary and usual year-end adjustment, by the chief financial officer of the Borrower [and the Guarantor, as appropriate];

(ii) a computation by a financial [officer] [partner] of the Borrower as of the end of such fiscal quarter and for the twelve (12) month period then ended of the Borrower's compliance with the financial covenants in Section 6.13, certified and by such [officer] [partner] to be accurate and complete and made in accordance with this Agreement; and

(iii) a certificate signed by an [officer] [partner] of the Borrower stating that (A) during such fiscal quarter the Borrower has delivered and performed all of its covenants and agreements set forth in the Transaction Documents, except as disclosed in such certificate, and (B) no Default or Event of Default has occurred and is continuing, except as disclosed in such certificate.

(b) **Annual Financial Statements.** As soon as available and in any event within _____ days after the close of each Fiscal Year of the Borrower [and the Guarantor(s)]:

(i) the Borrower's [and the Guarantors'] Financial Statements and tax returns for the year, together with statements of changes in consolidated financial position, [certified without qualification as to scope.] [prepared on a compiled/reviewed basis] by a certified public accountant acceptable to the Bank;

(ii) computations by a financial [officer] [partner] of the Borrower as of the end of such Fiscal Year and for such Fiscal Year of the Borrower's compliance with the terms of Section 6.13, certified by such [officer] [partner] to be accurate and complete and made in accordance with this Agreement; [and]

(iii) a certificate signed by an [officer] [partner] of the Borrower stating that (A) during such Fiscal Year the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the Bond Documents, except as disclosed in such certificate, and (B) neither any Event of Default nor any event which, with the giving of notice or lapse of time or both, would constitute an Event of Default has occurred or is continuing, except as disclosed in such certificate; [and]

(iv) [an occupancy report stating as of the date of delivery thereof, with respect to each lease of all or any part of the Project, the tenant's name, the date thereof, the premises demised, the term, the rent, the security deposits, any advance rent payments in excess of one month and any defaults by the tenant or the Borrower in respect thereof.]

(c) **Management Letters.** Upon receipt thereof by the Borrower, copies of any letter or report with respect to the management, operations or properties of the Borrower submitted to the Borrower by its accountants in connection with any annual or interim audit of the Borrower's accounts, and a copy of any written response of the Borrower to any such letter or report;

(d) **Securities Filings.** Copies of all material, if any, which the Borrower files with the Securities and Exchange Commission or any national securities exchange, including, but not limited to, all registration statements, annual reports on Form 10K, quarterly reports on Form 10Q, reports on Form 8K, proxy material and annual reports to shareholders, and any and all amendments thereof or supplements thereto;

(e) **Notice of Litigation and Proceedings.** As soon as possible and in any event within thirty (30) days after receipt of notice thereof, notice of any pending or threatened litigation, investigation or other proceeding involving the Borrower (i) which could result in a Material Adverse Change or (ii) wherein the potential damages, in the reasonable judgment of the Borrower based upon the advice of counsel experienced in such matters, are not fully covered by the insurance policies maintained by the Borrower (except for the deductible amounts applicable to such policies);

(f) **Notice of Material Adverse Change.** As soon as possible, notice of any Material Adverse Change;

(g) **Notice of Default.** As soon as possible and in any event within fifteen (15) days after the occurrence of any Default or Event of Default, a statement of [an officer] [a partner] of the Borrower setting forth the details of such Default or Event of Default and the action which the Borrower has or is taking or proposes to take with respect thereto; [and]

(h) **[Appraisals, Environmental Reports, Title Reports.** At any time at the Bank's request (i) an appraisal of the Premises prepared by an appraiser satisfactory to the Bank, and in form and substance satisfactory to bank, but no more frequently than once every calendar year, (ii) updated environmental reports on the Premises and Improvements prepared by a consultant satisfactory to the Bank, and (iii) an updated title report; {and}]

(i) **[Other Project Reports.** Within the time periods specified below, the following Project reports and other information in form satisfactory to the Bank: (i) operating statements, rent rolls, leasing status reports and sales reports [within _____ days after the end of each month/quarter]; (ii) real estate tax receipts within _____ days of the date due to be paid; and (iii) other information as Bank may reasonably request from time to time; {and}]

(j) **Other Information.** Such other information respecting the operations and properties, financial or otherwise, of the Borrower as the Bank may from time to time reasonably request.

Section 6.09. Consent Under Bond Documents. The Borrower will obtain the consent of the Bank whenever the consent of the Trustee is required to be obtained under the Bond Documents.

Section 6.10. Litigation and Proceedings. The Borrower will promptly notify the Bank of any material litigation or proceedings commenced against the Borrower.

Section 6.11. Payment of Indebtedness. The Borrower will make full and timely payment of the principal of and interest on all Indebtedness of the Borrower, whether now existing or hereafter arising, and comply in all material respects with all covenants and agreements set forth in agreements evidencing Indebtedness of the Borrower.

Section 6.12. Environmental Covenants. (a) The Borrower will cause all activities at the Project during the term of this Agreement to be conducted in compliance with all Environmental Laws. The Borrower will cause permits, licenses or approvals to be obtained and will cause all notifications to be made, as required by Environmental Laws, and will, at all times, cause compliance with the terms and conditions of any such approvals or notifications. During the term of this Agreement, if requested by the Bank, the Borrower will provide to the Bank copies of (i) applications or other materials submitted to any Official Body in compliance with Environmental Laws, (ii) any notifications submitted to any Person pursuant to Environmental Laws, (iii) any permit, license, approval, amendment or modification thereto granted pursuant to Environmental Laws, (iv) any record or manifest required to be maintained pursuant to Environmental Laws, and (v) any correspondence, notice of

violation, summons, order, complaint or other document received by the Borrower, its lessees, sublessees or assigns, pertaining to compliance with any Environmental Laws.

(b) The Borrower hereby agrees to indemnify and to hold harmless the Bank and each other Indemnified Party of, from and against any and all expense, loss or liability suffered by any Indemnified Party by reason of the Borrower's breach of any of the provisions of Section 5.12 or this Section including (i) any and all expenses that the Bank may incur in complying with any Environmental Laws; (ii) any and all fines, penalties or other sanctions (including a voiding of any transfer of the Project) assessed upon the Bank by reason of a failure of the Borrower to have complied with Environmental Laws; (iii) any and all loss of value of the Project by reason of failure to comply with Environmental Laws; and (iv) any and all legal and professional fees and costs incurred by the Bank in connection with the foregoing.

Section 6.13. Financial Covenants. At all times during the term hereof, the Borrower shall comply with the following financial covenants:

(a) **Minimum Tangible Net Worth.** [The Borrower will maintain at all times a minimum Tangible Net Worth of \$_____.] [The Borrower will maintain at all times a minimum Tangible Net Worth of \$_____, which number shall be increased on each *{insert last day of fiscal year}* commencing on _____, 200__, by an amount equal to _____ percent (____%) of the Borrower's net income (if a positive number) for the Fiscal Year then ending.]

(b) **Current Ratio.** The Borrower will maintain at all times a ratio of Current Assets to Current Liabilities of at least _____ to 1.00.

(c) **Total Liabilities to Tangible Net Worth Ratio.** The Borrower will maintain at all times a ratio of total liabilities to Tangible Net Worth of less than _____ to 1.00.

(d) **Cash Flow Ratio.** The Borrower will maintain [as of the end of each fiscal quarter] [on a rolling four quarters' basis] a ratio of Cash Flow to the Current Maturities plus Unfunded Capital Expenditures of at least _____ to 1.00.

(e) **Debt Service Coverage Ratio.** The Borrower will maintain a ratio of Funds Available for Debt Service to the Maximum Annual Debt Service Requirement of at least _____ to 1.00.

For purposes of this Section 6.13, the following terms shall have the following meanings:

(i) **"Cash Flow"** means Net Income plus depreciation plus amortization plus other non-cash items.

(ii) **"Current Assets"** means all assets that would, in accordance with GAAP, be classified as current assets.

(iii) **"Current Liabilities"** means all liabilities that would, in accordance with GAAP, be classified as current liabilities.

(iv) **"Current Maturities"** means the current principal maturities of all indebtedness for borrowed money (including amortization of capitalized lease obligations) having an original term of one (1) year or more, as shown on the Borrower's balance sheet as of the end of the prior Fiscal Year, together with any prepayments of such indebtedness made [during the prior Fiscal Year] [during the prior twelve (12)-month period].

(v) **"Debt Service Requirement"** means, with respect to a specified twelve (12)-month period, the aggregate of all amounts payable to any and all holders of Obligations (or to any trustee or paying agent for such holders) in respect of the principal of Obligations (excluding unscheduled optional redemptions and unscheduled optional prepayments of principal) and the interest on Obligations, plus the aggregate of any and all letter of credit, loan commitment, credit enhancement, liquidity facility, trustee, paying agent, remarketing advisor

and other similar fees payable by the Borrower to the Bank or any other provider of a letter of credit, loan commitment, credit enhancement or liquidity facility or to the Trustee or the Remarketing Advisor; provided, however, that (a) interest on Obligations which is capitalized and payable from the proceeds of such Obligations shall be excluded from the Debt Service Requirement and (b) the Debt Service Requirement in respect of Obligations in the form of capitalized leases, installment sales agreements or construction contracts shall be equal to the lease rentals, purchase price payments or construction contract payments due and payable in accordance with the terms thereof, except that construction contract payments shall be excluded from the Debt Service Requirement to the extent that a construction financing arrangement therefor is in place and the principal and interest payable on such construction financing arrangement during the applicable 12-month period is included in the Debt Service Requirement other than to the extent any such interest is capitalized and payable from the proceeds of such construction financing arrangement as described in clause (a) of this sentence. With respect to an Obligation the interest rate on which is not established at the time of incurrence at a single numerical rate for the term of such Obligation, there shall be assumed in determining the Debt Service Requirement that the interest rate on such Obligation is the higher of (i) the interest rate currently in effect on such Obligation, and (ii) the average interest rate on such Obligation for the preceding twelve (12) months.

(vi) “**Funds Available for Debt Service**” means, with respect to a specified twelve (12)-month period, the sum of: (i) Net Income for such twelve (12)-month period; (ii) all interest expense for such twelve (12)-month period with respect to the interest requirements on Obligations; (iii) all letter of credit, loan commitment, credit enhancement, liquidity facility, trustee, paying agent and remarketing advisor fees and expenses for such twelve (12)-month period; and (iv) all depreciation expense, amortization of financing charges and all other non-cash expense.

(vii) “**Maximum Annual Debt Service Requirement**” means the greatest annual Debt Service Requirement in the then current or any future Fiscal Year.

(viii) “**Net Income**” means, with respect to a specified twelve (12) month period, all operating and nonoperating income, less all operating and non-operating expenses, including depreciation, amortization and interest expenses, as determined in accordance with GAAP. In calculating Net Income, there shall be excluded extraordinary gains and losses, any revenues and expenses from disposition of capital assets and insurance policies (other than business interruption insurance proceeds) and condemnation awards.)

(ix) “**Tangible Net Worth**” means owners’ equity in the Borrower, less any advances to third parties and all items properly classified as intangibles, in accordance with GAAP.

(x) “**Unfunded Capital Expenditures**” means capital expenditures made from the Borrower’s funds other than borrowed funds.

Section 6.14. Payments of Taxes and Other Charges. The Borrower will pay or cause to be paid all taxes, assessments and other governmental charges to which the Borrower or its properties are or shall be subject before such charges become delinquent, except that no such charge need be paid for so long as its validity or amount shall be contested in good faith by appropriate proceedings duly prosecuted and the Borrower shall have set up on its books such reserve with respect thereto as shall be dictated by sound accounting practices.

Section 6.15. Available Cash Balance. The Borrower will maintain at all times an aggregate balance (the “**Available Cash Balance**”), in an amount not less than [\$_____] (the “**Minimum Balance**”), of cash, cash equivalents and marketable securities, which shall not be restricted as to as use or subject to any Lien and which shall be available for payment of the Obligations under this Agreement; provided that the Borrower shall be permitted to count as part of the Available Cash Balance moneys in any construction funds maintained under the Transaction Documents.

Section 6.16. Depository. The Borrower shall use the Bank as [one of] its [sole depository,] [principal depositories].

Section 6.17. ERISA. The Borrower shall not:

- (a) fail to satisfy the minimum funding requirements of ERISA and the Internal Revenue Code with respect to any Plan;
- (b) request a minimum funding waiver from the Internal Revenue Service with respect to any Plan;
- (c) engage in a Prohibited Transaction with any Plan, Benefit Arrangement or Multiemployer Plan which, alone or in conjunction with any other circumstances or set of circumstances resulting in liability under ERISA, would constitute a Material Adverse Change;
- (d) permit the aggregate actuarial present value of all benefit liabilities (whether or not vested) under each Plan, determined on a plan termination basis, as disclosed in the most recent actuarial report completed with respect to such Plan, to exceed, as of any actuarial valuation date, the fair market value of the assets of such Plan;
- (e) fail to make when due any contribution to any Multiemployer Plan that the Borrower or any member of the ERISA Group may be required to make under any agreement relating to such Multiemployer Plan, or any Law pertaining thereto;
- (f) withdraw (completely or partially) from any Multiemployer Plan or withdraw (or be deemed under Section 4062(e) of ERISA to withdraw) from any Multiple Employer Plan, where any such withdrawal is likely to result in a material liability of the Borrower or any member of the ERISA Group;
- (g) terminate, or institute proceedings to terminate, any Plan, where such termination is likely to result in a material liability to the Borrower or any member of the ERISA Group;
- (h) make any amendment to any Plan with respect to which security is required under Section 307 of ERISA; or
- (i) fail to give any and all notices and make all disclosures and governmental filings required under ERISA or the Internal Revenue Code, where such failure is likely to result in a material adverse change.

Section 6.18. Amendments to Bond Documents. The Borrower will not consent to or enter into any amendment of, supplement to or replacement of the Bond Documents without the consent of the Bank.

Section 6.19. Indebtedness. The Borrower [and the Guarantor(s)] will not, and will not permit any of its [respective] subsidiaries or Affiliates to, at any time, directly or indirectly, assume or suffer to exist any Indebtedness, except (a) Indebtedness to the Bank, or (b) other Indebtedness disclosed on the Borrower's Financial Statements as of _____, 19____.

Section 6.20. Guaranties. The Borrower [and the Guarantor(s)] will not, and will not permit any of its [respective] subsidiaries or Affiliates to, at any time, directly or indirectly, become or become liable in respect of any Guaranty [, except for the Guaranty Agreement(s) contemplated hereunder].

Section 6.21. Liens and Encumbrances. The Borrower will not create, assume, incur or suffer to exist any Liens, except Permitted Liens.

Section 6.22. Acquisitions; Mergers. The Borrower will not make acquisitions of (a) all or substantially all of the property or assets of any Person or (b) the capital stock, partnership or membership interests or other equity interests of any Person. The Borrower shall not be a party to any merger or acquisition.

Section 6.23. Dividends and Distributions. The Borrower will not declare or pay any dividends on, or make any distribution with respect to any class of its equity [in excess of the amount of federal and

state income tax of the principals of the Borrower attributable to the earnings of the Borrower if the Borrower is an S corporation or a partnership].

Section 6.24. Loans. The Borrower will not make or have outstanding any loans or advances to or otherwise extend credit to any Person, except in the normal course of business.

Section 6.25. Change in Business, Management or Ownership. The Borrower will not make or permit any material change in the nature of its business as carried on as of the date hereof, in its ownership, or in the composition of its current executive management.

Section 6.26. Limitation on Optional Calls. The Borrower will not exercise its rights under the Bond Documents to direct the Issuer to call the Bonds for any optional redemption thereof, unless the Borrower first demonstrates to the reasonable satisfaction of the Bank that at the time of such redemption the Bank will be fully reimbursed for all drawings on the Letter of Credit in connection with such redemption.

Section 6.27. Disposition of Assets. The Borrower shall not dispose of any of its assets, except for dispositions of furniture, fixtures and equipment no longer needed in the Borrower's business.

Section 6.28. Further Assurances. At any time and from time to time, upon the Bank's reasonable request, the Borrower shall make, execute and deliver, or cause to be made, executed and delivered, to the Bank, and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be rerecorded and refiled at such time and in such offices and places as shall be deemed reasonably desirable by the Bank, any and all such further Security Documents, certificates and other documents as the Bank may consider necessary or desirable in order to effectuate, complete, or perfect or to continue and preserve the obligations of the Borrower under the Bank Documents and the Liens created thereby. The Borrower irrevocably designates, makes, constitutes and appoints the Bank as the Borrower's true and lawful attorney in fact such that upon any failure by the Borrower to do so, the Bank may make, execute, record, file, rerecord or refile any and each such Security Document, instrument, certificate and document for and in the name of the Borrower as its attorney in fact.

ARTICLE VII

CONSTRUCTION COVENANTS

Section 7.01. Application of Project Fund; Conditions to Making Disbursements. The Borrower shall not submit any requisition to the Trustee for disbursement of funds from the Project Fund for Project costs which are inconsistent with the description of the Project or the schedule of Project costs (the "**Project Cost Schedule**") set forth in **Exhibit B** attached hereto, and the Borrower shall not apply any Bond proceeds in a manner inconsistent with the requisition therefor submitted to the Trustee. Any costs of the Project incurred in excess of the budgeted amounts set forth in the Project Cost Schedule will be paid for by the Borrower upon demand of the Bank. Should it appear at any time that the balance of the Project Fund is insufficient, in the Bank's reasonable judgment, to complete the Improvements, the Bank may require that the Borrower pay, and the Borrower will pay to the Trustee within thirty (30) days of receipt of notice from the Bank, for deposit in the Project Fund and disbursement pursuant to the Indenture, an amount equal to the deficiency, as determined by the Bank, and the Bank shall not be obligated to approve any further requisitions for disbursement from the Project Fund until such amount is paid to the Trustee. Notwithstanding the foregoing provisions, if the whole amount allocated to any component of Project costs as set forth in the Project Cost Schedule is not, or in the Bank's judgment, will not be expended to complete the work covered by such component, then, with the Bank's approval, the Borrower may cause such excess to be reallocated and used for any other component of Project costs as set forth on the Project Cost Schedule prior to making any deposit required by the previous sentence. The Borrower shall not submit to the Trustee under the Indenture the first requisition for hard construction costs with respect to the Improvements unless the Bank shall have first received each of the following in form and substance satisfactory to the Bank, and each of the following conditions has been satisfied in a manner satisfactory to the Bank:

(a) **Satisfaction of Conditions in Article IV.** All conditions precedent set forth in Article IV hereof shall have been satisfied in a manner satisfactory to the Bank;

(b) **Construction and Development Documents.** Fully-executed and completed copies of all Construction and Development Documents;

(c) **Assignment of Construction and Development Documents.** A duly executed first priority Assignment of Construction and Development Documents pursuant to which the Borrower assigns to the Bank its interest in the Architect's Agreement, the Construction Contract, the Plans and Specifications, and certain other documents and instruments relating to the construction of the Improvements (the "**Assignment of Construction and Development Documents**");

(d) **Survey.** A survey of the Premises [dated not more than ninety (90) days prior to the Date of Issuance and] prepared by a registered surveyor satisfactory to the Bank, satisfactory in form, substance and all other respects to the Bank and the Bank's title company [and containing such surveyor's certifications as the Bank and the title company shall require];

(e) **Flood Insurance Certification.** Evidence satisfactory to the Bank that the [Project is] [Borrower's Facilities are] not located in a special flood hazard area as defined by the United States Department of Housing and Urban Development or any other Official Body, and, if [the Project is] [the Borrowers' Premises are] located in a special flood hazard area, original certificates for flood insurance, satisfactory to the Bank; *{NOTE: Not needed if already in Article IV}*

(f) **Environmental Audit.** A current Phase I environmental audit of the Premises prepared by an environmental consultant satisfactory to the Bank and under an engagement letter between the Borrower and such consultant which has been approved by the Bank. The audit must be satisfactory in form, substance and all other respects to the Bank. The Bank reserves the right, in its sole discretion, to require the Borrower to deliver to the Bank a Phase II environmental audit on similar conditions on the Premises prepared by an environmental consultant satisfactory to the Bank, which audit must be satisfactory in form, substance and all other respects to the Bank; *{NOTE: Not needed if already in Article IV}*

(g) **Appraisal.** A current appraisal of the Premises, which shall (i) be prepared by an MAI appraiser selected by the Bank, (ii) be satisfactory in form, substance and all other respects to the Bank, and (iii) establish to the Bank's satisfaction that the value of the Project is not less than \$ _____; *{NOTE: Not needed if already in Article IV}*

(h) **Title Insurance Commitment.** A commitment to issue an ALTA lender's policy of title insurance issued by a title insurance company acceptable to the Bank in the Letter of Credit Amount, insuring that the Mortgage, as of the time of its filing for record, is a first priority Lien upon the Project, and that the title to the Premises is free, clear and unencumbered, subject only to the Permitted Liens. The commitment shall also obligate the title insurance company to affirmatively insure all advances pursuant to this Agreement, without exception for mechanics' or materialmen's Liens, and that access to the Premises is by a dedicated and accepted public right-of-way. The commitment shall also include such other endorsements and affirmative insurance as may be required by the Bank, including but not limited to, the so-called [contiguity endorsement, survey endorsement, zoning endorsement, revolving credit endorsement, future advance endorsement and endorsement as to nonviolation of any restrictions or easements], and the Borrower shall supply the title insurance company with such affidavits as may be necessary in connection therewith. *{NOTE: Not needed if already in Article IV}*

(i) **No Lien Agreements; Lien Waivers.** Duly filed and effective no-lien agreements from the Contractor and all general contractors performing any work on the Premises or Improvements effectively waiving all present and future Lien rights with respect to the Construction Contract and other contracts thereunder, and to the extent and at the time or times permitted by applicable law, general waivers or stipulations against mechanic's and materialman's Liens by the Contractor and its Subcontractors and materialmen for the Project;

(j) **Soil Report.** A soil and subsoil test report showing (and a letter from a registered engineer acceptable to the Bank stating) that the physical condition and characteristics of the Premises, including without limitation the weight-bearing qualities and characteristics of substrata soil and the underlying water table, are satisfactory for the construction, use and operation of the Project;

(k) **Inspection Report.** A favorable report from the Inspecting Architect as to the detail set forth in the Plans and Specifications, the quality of construction called for by the Plans and the adequacy of the Construction Contract to provide for completion of the Improvements in accordance with the Plans and

Specifications and as to such other matters as the Bank may request. The Bank's obligation to authorize any advances after the Date of Issuance for direct costs of construction may be conditioned upon its continued receipt of similar reports from the Inspecting Architect;

(l) **Payment of Charges.** Evidence satisfactory to the Bank that all installments of general or special taxes or assessments, service charges, water and sewer charges, private maintenance charges, and other charges by whatever name, to the extent due on or before the Date of Issuance and relating to the Premises have been paid on or before said date;

(m) **Compliance with Laws.** Evidence satisfactory to the Bank that the Improvements, when constructed, and the Premises, and the proposed and actual use thereof, comply with all applicable Laws, including but not limited to zoning and Environmental Laws, of all Official Bodies having jurisdiction over the same, and that there is no action or proceeding pending (or any time for an appeal of any decision rendered) before any court, quasi-judicial body or administrative agency at the time of any authorized disbursement by the Trustee with the approval of the Bank of all or any part from the Project Fund relating to the validity of the transactions contemplated hereby or the proposed or actual use or operation of the Premises or which would adversely affect the status of the zoning with respect thereto;

(n) **Permits and Approvals.** Building, zoning and other required permits covering construction of Improvements, together with evidence satisfactory to the Bank that all approvals required with respect to the Premises from third parties or any Official Bodies or quasi-governmental authorities have been obtained or, in the case of approvals relating to the operation of the Improvements which cannot be obtained until completion of construction, evidence satisfactory to the Bank that such approvals are obtainable. Such evidence shall include copies of all letters of grant or approval of all zoning changes and other site plan approvals and subdivision approvals, all variances of zoning regulations affecting the height, bulk, location or configuration of the Project (or a satisfactory opinion or counsel that the same are not required), and all approvals or variances relating to parking or loading areas (both on-street and off-street) and all appurtenant easements required by governmental authorities with respect to the Premises. Upon completion of the construction of the Improvements, the Borrower shall furnish to the Bank evidence satisfactory to the Bank that the Premises complies with the foregoing requirements;

(o) **Utilities.** Evidence satisfactory to the Bank that (i) the Premises has available to it adequate water, gas and electric supply, storm and sanitary sewerage facilities, telephone facilities and other required public utilities, and means of access between the Premises and public highways; and (ii) all such facilities comply with all applicable laws, rules and regulations, and all necessary easements to provide such utility service to the Premises have been obtained;

(p) **Project Cost Schedule.** The Project Cost Schedule in form and substance satisfactory to the Bank approved by the Bank and the Inspecting Architect, and certified by the Borrower as of the Date of Issuance to be true, correct and complete;

(q) **Architect's Certificate.** A certificate dated as of the Date of Issuance in form and substance satisfactory to the Bank as to such matters as the Bank may require to be favorably addressed;

(r) **No Damage or Taking.** No portion of the Improvements shall have been damaged by fire or other casualty and no condemnation or taking of the Premises or the Improvements or any portion thereof shall be pending or threatened;

(s) **Payment and Performance Bonds.** Payment and performance bonds with respect to the Construction Contract in an amount equal to one hundred percent (100%) of the amount of the Construction Contract and payment and performance bonds with respect to any Subcontracts designated by the Bank in the amounts required by the Bank. The bonds for the Construction Contract shall be insured or reinsured by a surety approved by the Bank and shall include a dual obligee rider naming the Bank;

(t) **Tenant Subordinations.** Agreements among each tenant leasing space in the Project, the Borrower and the Bank pursuant to which each tenant subordinates its leasehold interest to the Lien of the Mortgage, agrees to attorn to the Bank and acknowledges such other matters as may be required by the Bank, in form and substance satisfactory to the Bank;

(u) **Subcontractor List.** A list of all Subcontractors employed in connection with the construction of the Improvements and true and correct copies of all executed Subcontracts;

(v) **Consents to Assignment.** Consents by the Architect and the Contractor to the assignment by the Borrower to the Bank of the Architect's Agreement and the Construction Contract pursuant to the Assignment of Construction and Development Documents;

(w) **Insurance.** Evidence of the insurance required by Section 6.03 and evidence of the following, in form, in amounts and with companies approved by the Bank, together with evidence of payment in full of the premiums therefor: (i) builder's risk fire insurance, with extended coverage, upon the Improvements in the amount of 100% of the replacement cost thereof, endorsed to insure the interests of both the Borrower and Contractor, as their respective interests may appear; (ii) comprehensive public liability and property damage insurance, including bodily injury and property damage, which, unless otherwise specified by the Bank, shall provide minimum coverage of Five Hundred Thousand Dollars (\$500,000) per person and One Million Dollars (\$1,000,000) per occurrence; and (iii) workers' compensation insurance in the form and amount prescribed by the applicable jurisdiction. All such policies shall contain a standard mortgagee clause in favor of the Bank, and shall contain the agreement of the insurer to give not less than thirty (30) days prior written notice to the Bank in the event of cancellation or other material change in the coverage. In the event the Improvements are partially occupied during the term of this Agreement, the builder's risk fire insurance policy shall be endorsed to permit such partial occupancy; and

(x) **Miscellaneous Documents, Etc.** Such other documents, certificates, approvals and assurances that the Bank or its counsel may reasonably request.

Section 7.02. Requisitions Approval.

(a) **Requirements for Requisitions.** The Borrower shall submit to the Bank, no more than once per month and no later than ten (10) Business Days prior to the date of the requested disbursement, for its approval prior to disbursement thereon, each requisition and related supporting materials required by the Indenture, together with:

- (i) an itemization of the funds requisitioned against the Project Cost Schedule;
- (ii) in the case of hard construction costs, an Application and Certificate for Payment (AIA Document G702) from the appropriate entity and approved by the Inspecting Architect, together with all necessary Continuation Sheets (AIA Document G703);
- (iii) a certification of Borrower and the Contractor (or construction manager, as appropriate) identifying all contractors, subcontractors and suppliers who have performed work or furnished materials;
- (iv) satisfactory Lien waivers from such contractors, subcontractors, and suppliers current through the period covered by such request for funds (or through the period covered by the previous request if permitted by the Bank);
- (v) a certification of the Borrower that the Borrower has paid or actually incurred the soft costs included in the AIA Document G702;
- (vi) supporting invoices;
- (vii) if requested by the Bank, a title bring down search showing no additional Liens;

(viii) if for the second requisition, a foundation survey in form satisfactory to the Bank and the title company; and

(ix) a request to the Bank for approval of such requisition certifying, among other things, that (A) the amounts requisitioned are due and unpaid and have not been included in any previous requisition, (B) the funds to be advanced against the requisition will be fully applied in accordance with the Project Cost Schedule, (C) the construction of the Improvements to date has been performed in a good and workmanlike manner, (D) no Default or Event of Default has occurred and is continuing, (E) the undisbursed balance of the Bond proceeds is sufficient to complete the Project, and (F) reaffirming the representations and warranties of the Borrower in Article V.

(b) Other Provisions Regarding Disbursements. The Borrower will withdraw any requisition which the Bank declines to approve. The Bank's review and approval of the requisitions and the construction and equipping of the Project is solely for the protection of the Bank's interests under this Agreement, and the Bank shall not be deemed, by virtue of its inspection of the Project or approval of any requisition, to have made any representation to any person with respect to the construction and equipping of the Project, the validity of any costs thereof, or the satisfaction of any conditions under the Indenture with respect to the funding of requisitions (other than the Bank's consent thereto). All conditions to the obligation of the Bank to approve requisitions hereunder are imposed solely and exclusively for the benefit of the Bank and its successors and assigns, and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the Bank will approve or not approve advances in the absence of strict compliance with any or all thereof, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by the Bank at any time if, in its sole discretion, it deems it advisable to do so. The Bank shall not in any way or for any purpose be deemed to be or to become a partner of or a joint venturer or a member of a joint enterprise with the Borrower in connection with the construction, acquisition, installation, ownership, development or operation of the Project.

Section 7.03. Construction; Completion Date. The Borrower will proceed diligently to construct and equip the Project, in accordance with the Project Cost Schedule and the Plans and Specifications, without delay. The Project shall be completed on or before the Completion Date and at completion the Project shall be free of any and all Liens and private or governmental charges or claims (filed or not) of any nature, except for the Permitted Liens. The Borrower will deliver to the Bank certified copies of all use, occupancy or completion certificates in connection with the Project, immediately upon issuance. As used in this Agreement, the terms "**complete**", "**completed**" and "**completion**" mean, with respect to the Project, that (a) the Improvements are substantially physically completed and equipped in accordance with the Plans and Specifications; (b) the Borrower has received all permits, approvals and certificates required by law prior to the use and occupancy thereof and has furnished true copies of such permits, approvals and certificates to the Bank; (c) the Project is free of any and all private or governmental charges, claims or Liens (filed or not) of any nature except the Permitted Liens; and (d) the Borrower has obtained all general releases of mechanic's and materialman's Liens required by Section 7.06 and delivered true copies thereof to the Bank.

Section 7.04. Certain Contracts Prohibited. The Borrower will not, without first obtaining written approval of the Bank: (a) execute any contract or purchase order or permit any Subcontract or purchase order to be executed by any Person with whom it has contracted in connection with the Improvements (except for such contracts, Subcontracts or purchase orders that have been executed prior to the date hereof and that have been approved by the Bank), unless the amounts thereof are within the amounts budgeted therefor in the Project Cost Schedule [and are Project Costs (as defined in the Standard Provisions)]; (b) execute any amendment or modification to any of the Construction and Development Documents or any other contract the effect of which would be either to increase or decrease the amount to be paid by or on behalf of the Borrower under any contract, except as permitted by Section 7.08; or (c) contract for any services, work or materials for the Project if such are not required by the Plans and Specifications or if payment therefor is required to be made regardless of the nondelivery or nonfurnishing of such materials, services or work.

Section 7.05. Certain Notices. The Borrower will forward to the Bank promptly after receipt, copies of all notices, permits or other documents (excepting only notices for nondelinquent taxes due) received by

the Borrower from any Official Body relating to the Improvements or from any Person claiming a mechanic's or materialman's lien against the Improvements or any other property of the Borrower.

Section 7.06. Releases. Prior to making final payment under any contract relating to construction of the Improvements, the Borrower will require the contractor thereon to deliver to the Borrower, from such contractor and all of such contractor's subcontractors or materialmen, a general release of mechanic's and materialman's Liens, and the Borrower will promptly deliver or cause to be delivered to the Bank true and correct copies of all such releases so obtained.

Section 7.07. Retainage; Release of Retainage. The amount of each disbursement shall be subject to a retainage (the "**Retainage**") equal to _____ percent (____%) [for the first fifty percent (50%)] of costs incurred under the Construction Contract [and _____ percent (____%) thereafter]. The Bank shall authorize the release of the Retainage only upon the fulfillment of the following conditions:

(a) **Preceding Conditions.** All conditions of Sections 7.01, 7.02, 7.03 and 7.06 shall continue to be met.

(b) **Completion Certificate.** The Bank shall have received a certificate of the Architect and the Contractor to the effect, *inter alia*, that to their best knowledge, the Improvements have been fully completed in accordance with the Plans and Specifications, all Laws and governmental approvals, and the Bank may request that the matters in such certificate be verified by the Inspecting Architect.

(c) **Certificate of Occupancy.** A permanent unconditional certificate of occupancy for the Improvements and all other governmental approvals required for the use and occupancy of all portions of the Improvements shall have been duly issued and the Bank shall have received copies thereof.

(d) **Title Policy Endorsement.** The Bank shall have received an endorsement to the title insurance policy in a form approved by the Bank, insuring that no encroachments exist over any building, zoning, right-of-way or property boundary lines.

(e) **As-built Survey.** The Bank shall have received a certified as-built survey, showing the location of all Improvements, easements, rights-of-way and other matters affecting the Premises.

(f) **Final Lien Releases.** The Bank shall have received final lien releases from the Contractor and all Subcontractors with respect to the work performed in connection with the construction and equipping of the Improvements.

(g) **Tax Receipts.** The Bank shall have received tax receipts evidencing the payment of the current year's real estate taxes and assessments to the extent such taxes and assessments are due and payable.

(h) **Evidence of Insurance.** The Bank shall have received evidence satisfactory to the Bank that the insurance with respect to the Improvements meets the Bank's requirements and is in full force and effect.

(i) **Borrower's Acceptance.** The Bank shall have received a letter from the Borrower whereby the Borrower represents and warrants that the Borrower has inspected the Improvements and is satisfied that the Improvements have been completed in accordance with the Plans and Specifications.

(j) **Consent of Surety.** The Bank shall have received the written consent of the surety which issued the payment and performance bonds on the Construction Contract.

(k) **Tenant's Acceptance.** The Bank shall have received written acknowledgment from all tenants that the Improvements have been completed in accordance with the leases and that the tenants have accepted possession of their demised premises without qualification.

Section 7.08. Change Orders. The Borrower will not permit, without the prior written consent of the Bank, the performance of any work pursuant to any amendment or modification of any of the Plans and Specifications, the Contract or any Subcontract or purchase order (any such amendment or modification being herein called a “**Change Order**”) which would result in an increase or decrease in excess of \$ _____ of the contract prices for the construction of the Improvements as shown in the Project Cost Schedule.

Section 7.09. Subcontracts. (a) The Subcontracts shall be in form and substance satisfactory to the Bank in all respects, and shall contain, among other conditions, the following provisions: (i) all labor, supervision, materials, supplies and equipment necessary to complete the Improvements in accordance with the Plans and Specifications shall be furnished by the Completion Date; (ii) no change in the Improvements or in the Plans and Specifications shall be effective unless approved in writing by the Bank; (iii) a release and waiver to the extent permitted by law, by all Subcontractors of the right to file mechanic’s Liens; and (iv) ten percent (10%) Retainage shall be withheld in conjunction with payments under the Contract, in an amount and in a manner approved by the Bank.

(b) The Borrower will furnish to the Bank from time to time on request by the Bank, in a form acceptable to the Bank, correct lists of all Subcontractors employed in connection with construction of the Improvements and true and correct copies of all executed Subcontracts. The Bank may contact any Subcontractor to verify any facts disclosed in the lists, and all Subcontracts relating to construction of the Improvements must require the disclosure of their contents to the Bank.]

ARTICLE VIII DEFAULTS AND REMEDIES

Section 8.01. Defaults. Each of the following shall constitute an event of default hereunder (“**Event of Default**”):

(a) **Certain Payments Under Agreement.** Failure by the Borrower to make or cause to be made when due any payment under this Agreement as (i) reimbursement for a Drawing, (ii) a Letter of Credit commitment fee, or (iii) interest on any such Drawing or commitment fee;

(b) **Other Payments Under Bank Documents.** Failure by the Borrower to make any other payment within ten (10) days of the date when it is due under this Agreement or any other Bank document;

(c) **Certain Covenants.** Failure by the Borrower to perform or comply with its covenants contained in Section 6.05 (Visitation Rights) or Section 6.13 (Financial Covenants);

(d) **Other Covenants.** Failure by the Borrower [or any Guarantor] to perform or comply with any of the other terms or conditions contained in any Bank Document and continuance of such failure for thirty (30) days after the earlier of written notice from the Bank to the Borrower [or any Guarantor(s)], or such longer period to which Bank may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, or the Borrower [or any Guarantor] has knowledge that such failure has occurred, provided that the Borrower [or any Guarantor] shall have commenced to cure such default within such thirty (30) day period and shall complete such cure as quickly as reasonably possible with the exercise of due diligence;

(e) **Representations and Warranties.** Any of the representations or warranties of the Borrower [or any Guarantor] set forth in any Bank Document or any other document furnished to the Bank pursuant to the terms hereof is false or misleading in any material respect;

(f) **Invalidity, Etc.** Any material provision of any Bank Document shall at any time for any reason cease to be valid and binding on the Borrower [or any material provision of any Guaranty shall at any time cease to be valid or binding on any Guarantor,] or shall be declared to be null and void, or shall be violative of any applicable Law relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof shall be contested by the Borrower [, any Guarantor] or any Official Body, or the Borrower shall deny that it has any or further liability or obligation under any Bank Document [or any Guarantor shall deny that it has any or further liability under its Guaranty];

(g) **Events of Default Under Other Transaction Documents.** The occurrence of an Event of Default as defined in the Indenture or the Loan Agreement;

(h) **Bankruptcy, Insolvency, Etc.** The Borrower [or any Guarantor] shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or the like of the Borrower [or any Guarantor] or of property of the Borrower [or any Guarantor], or (ii) admit in writing the inability of the Borrower [or any Guarantor], to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) be adjudicated a bankrupt or insolvent, or (v) commence a voluntary case under the United States Bankruptcy Code or file a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against the Borrower [or any Guarantor] in any bankruptcy, reorganization or insolvency proceeding, or action of the Borrower [or any Guarantor] shall be taken for the purpose of effecting any of the foregoing, or (vi) have instituted against it, if without the application, approval or consent of the Borrower [or any Guarantor], a proceeding in any court of competent jurisdiction, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of the Borrower [or any Guarantor] an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up or liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Borrower [or any Guarantor] or of all or any substantial part of the assets of the Borrower [or any Guarantor] or other like relief in respect thereof under any bankruptcy or insolvency law, and, if such proceeding is being contested by the Borrower [or in the case of any Guarantor, by any Guarantor] in good faith, the same shall (A) result in the entry of an order for relief or any such adjudication or appointment or (B) remain undismissed and undischarged for a period of sixty (60) days;

(i) **Dissolution; Cessation of Business.** The Borrower [or any Guarantor] terminates its existence, ceases to exist, dissolves, permanently ceases operations or abandons the operation of any of its material businesses or facilities [, or any Guarantor dies, becomes legally incapacitated or is incarcerated].

(j) **Litigation and Proceedings.** Any litigation or administrative or other proceeding ensues, and is not dismissed within thirty (30) days, involving the Borrower [or any Guarantor] or any instrument, contract or document delivered to the Bank in compliance with this Agreement, and the adverse result of such litigation or proceeding would, in the Bank's reasonable opinion, result in a Material Adverse Change;

(k) **Condemnation.** The Project or any material portion thereof [or any material portion of the Borrower's Facilities] is subjected to a material condemnation proceeding;

(l) **Casualty Loss.** The Project suffers a loss by fire or other casualty and such loss is not fully insured and any deficiency in the amount of insurance proceeds paid with respect to such loss is not posted with the Trustee or the Bank within ten (10) days of the determination of such deficiency;

(m) **Insurance.** The Borrower fails to maintain in full force and effect any of the hazard or other insurance required pursuant to this Agreement and the other Bank Documents and continuance of such failure for ten (10) days;

(n) **ERISA Matters.** There occurs a "reportable event" or a "prohibited transaction" on the part of the Borrower under ERISA which remains uncured for a period of thirty (30) days;

(o) **Tax Liens.** A tax Lien shall be levied against the Borrower [or any Guarantor] or its [their] property, and the Borrower [or such Guarantor] shall not satisfy such tax Lien within five (5) days of such levy, or the Borrower [or such Guarantor] shall fail to promptly and diligently contest the validity or amount of such tax Lien in good faith by appropriate proceedings;

(p) **Judgments.** The entry of a final judgment [in an amount in excess of \$ _____] against the Borrower [or any Guarantor] and the failure of the Borrower [or such Guarantor] to discharge such judgment within ten (10) days of the entry thereof;

(q) **Other Indebtedness.** A default with respect to any other Indebtedness of the Borrower [or any Guarantor], if the effect of such default is to cause or permit the acceleration of such Indebtedness;

(r) **Other Agreements with Bank.** The occurrence of a default under any other agreement between the Borrower and the Bank [or between any Guarantor and the Bank]; or

(s) **Material Adverse Change.** The occurrence of any Material Adverse Change.

Section 8.02. Remedies. If an Event of Default has occurred and is continuing uncured, the Bank may at its option take all or any of the following actions:

(a) Notify the Trustee of such Event of Default, direct the Trustee to declare an Event of Default, as defined in the Standard Provisions, and direct the Trustee in writing to call the Bonds for mandatory purchase pursuant to the Standard Provisions or to direct the Trustee to draw on the Letter of Credit, declare the principal of the outstanding Bonds, together with interest accrued thereon, to be due and payable immediately, and direct the Trustee to exercise remedies under the Bond Documents;

(b) Declare the Borrower's Obligations hereunder to be, whereupon the same shall become, immediately due and payable;

(c) Commission an investigation at the Borrower's expense of compliance of the Project with Environmental Laws. In connection with any investigation pursuant to this paragraph, the Borrower shall, and shall cause its lessees, sublessees and assigns to, comply with any reasonable request for information made by the Bank or its agents in connection with any such investigation. Any response to any such request for information will be full and complete. The Borrower will assist the Bank and its agents to obtain any records pertaining to the Project, the Borrower and the lessees, sublessees or assigns of the Borrower in connection with an investigation pursuant to this paragraph. The Borrower will accord the Bank and its agents access to all areas of the Project at reasonable times and in reasonable manners in connection with any investigation pursuant to this paragraph. No investigation commissioned pursuant to this paragraph shall relieve the Borrower from any responsibility for its representations and warranties under Section 5.12;

(d) [Order construction of the Improvements stopped;]

(e) [If the Bonds have been paid in full or provision for such payment has been made in accordance with the Indenture:

(i) enter upon or take possession of the Project and call upon or employ contractors, subcontractors, materialmen, suppliers, agents, managers, maintenance personnel, security guards, architects, engineers and inspectors to complete, manage or operate the Project or to protect the Project from injury;

(ii) make such additions, changes or corrections in the Plans and Specifications as the Bank shall deem necessary or desirable;

(iii) pay out additional sums of the Bank (which sums shall be immediately due and payable by the Borrower to the Bank and shall bear interest from the date of payment by the Bank until the date of repayment at the rate specified in Section 2.02(g) for sums more than ten (10) days overdue), and use any property of the Borrower associated with the Project, or any property of the Borrower in which the Bank has or obtains an interest, including any funds which may be transferred by the Trustee to the Bank (which funds the Borrower hereby assigns and quitclaims to the Bank), for application to or a reserve for payment of any or all of the following with respect to the completion, protection, management, operation or maintenance of the Project or the protection of the Bank's interest therein, and in such connection deliver or disburse the same to such Persons in such amounts and with such preferences and priorities as the Bank in its sole discretion shall determine, either with or without vouchers or orders executed by the Borrower: (A) all sums due from the Borrower to the Bank; (B) premiums and costs of title and any other insurance; (C) leasing fees and brokerage or sales commissions; (D) fees, costs and expenses of the Bank and its counsel in connection with the preparation, enforcement, performance and filing of the Bank Documents; (E) any taxes (including federal, state and local taxes) or other governmental charges; (F) any

sums required to indemnify and hold each Indemnified Party harmless from any act or omission of the Bank (except such as are grossly negligent or due to its willful misconduct) under this Agreement or any other document; (G) architectural and engineering costs; (H) any sums due to contractors, Subcontractors, mechanics or materialmen for work or services actually furnished on or for the Project; (I) federal or state claims for any required withholding of taxes on wages; and (J) other costs and expenses which are required to complete, manage or operate the Project or to protect the Project from injury or maintain the Bank's security position prior to the rights of all others;

(iv) place additional Liens upon the Project;

(v) with the Borrower's consent, convey the Project, subject to the Bank's rights, to any nominee of the Bank; and

(vi) employ leasing and sales agents and negotiate and execute leases, sales contracts and financing undertaking in connection with all or any part of the Project; and]

(f) Exercise, or cause to be exercised, any and all such remedies as it may have under any of the Bank Documents, or at law or in equity.

Section 8.03. Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement or any other Bank Document shall in any event be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 8.04. No Waiver; Remedies Cumulative. No failure on the part of the Bank to exercise, and no delay in exercising, any right under this Agreement or any other Bank Document shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 8.05. Set-Off. Upon the occurrence and during the continuance of any Event of Default, the Bank is hereby authorized at any time and from time to time without notice to the Borrower (any such notice being expressly waived by the Borrower) and, to the fullest extent permitted by law, to set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies at any time held and other indebtedness at any time owing by the Bank to or for the account of the Borrower against any and all of the Obligations of the Borrower now or hereafter existing under this Agreement or any other Bank Document, whether or not the Bank shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Bank under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Bank may have.

ARTICLE IX GENERAL PROVISIONS

Section 9.01. Notices. All notices and other communications provided for hereunder shall be in writing and deemed to have been given or made when: (i) actually delivered by hand, or (ii) when received, if sent by telex, telecopier, nationally recognized overnight courier or other authenticated delivery service, charges prepaid, and addressed as follows:

If to the Bank:

PNC Bank, National Association

Attention:
Telecopier:

with a copy to:

PNC Bank, National Association
3rd Floor Annex
237 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Attention: Letter of Credit Department
Telecopier:

If to the Borrower:

BORROWER NAME

Attention:
Telecopier:

[If to the Guarantor:

Attention:
Telecopier: 1

If to the Trustee:

The Bank of New York Corporate Trust Services
1600 Market Street, Suite 1500
Philadelphia, Pennsylvania 19103
Attention: Institutional Trust Services
Telecopier:

If to the Remarketing Advisor:

PNC Capital Markets, Inc.
1600 Market Street, 21st Floor
Philadelphia, Pennsylvania 19103
Attention: Manager-Remarketing Desk
Telecopier:

Any such notice to the Bank shall refer to this Agreement and to the Letter of Credit by its number. Either party hereto and the Trustee and the Remarketing Advisor may change the address to which notices to it are to be sent by written notice given to the other Persons listed in this Section.

Section 9.02. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. The Borrower may not assign its rights under this Agreement without the prior written consent of the Bank. The Bank will not assign its obligations under the Letter of Credit without the prior written confirmation of the rating of the Bonds by the agency rating the Bonds. The Borrower and the Bank intend that no other Person shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 9.03. Survival of Covenants. All covenants made by the Borrower herein and in the other Bank Documents shall survive the delivery of this Agreement and the Letter of Credit and any advances under the Letter of Credit.

Section 9.04. Counterparts. Each Bank Document may be signed in any number of counterpart copies and by the parties to such Bank Document on separate counterparts, but all such copies shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to any Bank Document by facsimile transmission shall be as effective as delivery of a manually executed counterpart. Any party executing any Bank Document by facsimile transmission shall promptly deliver a manually executed counterpart; provided that the failure to do so shall not affect the validity of the counterpart executed and delivered by facsimile transmission.

Section 9.05. Costs, Expenses and Taxes. The Borrower agrees to pay on demand all costs and expenses of the Bank in connection with the preparation, execution, delivery and administration of the Transaction Documents or any amendments, supplements or waivers thereto, including, without limitation, the reasonable fees and expenses of counsel for the Bank with respect thereto and with respect to advising the Bank as to its rights and responsibilities under the Transaction Documents, and all costs and expenses, if any, including without limitation reasonable counsel fees and expenses of the Bank, in connection with the enforcement of such documents. In addition, the Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution and delivery of the Transaction Documents and any other documents which may be required by the Bank hereunder and agrees to indemnify and to hold the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees.

Section 9.06. Amendments and Waivers. This Agreement and the other Bank Documents may be amended only by an instrument in writing executed by all parties to such Bank Document. The provisions of any Bank Document may be waived only by a writing executed by the Bank. No amendment of this Section 9.06 may be made without the prior written consent of the Trustee. Moody's Investors Service, Inc., if it has rated and continues to rate the Bonds, shall receive prior written notice of all amendments.

Section 9.07. Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Bank in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable Law to be contracted for, charged or received, and if any payments by the Borrower to the Bank include interest in excess of such a maximum amount, the Bank shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable Law, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by law, any nonprincipal payment (except payments specifically stated in this Agreement to be "**interest**") shall be deemed, to the extent permitted by applicable law, to be an expense, fee, premium or penalty rather than interest.

Section 9.08. Complete Agreement. Taken together with the other Bank Documents and any other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the Borrower and the Bank.

Section 9.09. Participation. Notwithstanding any other provision of this Agreement, each Borrower understands that the Bank may at any time enter into participation agreements with one or more participating banks ("**Participating Banks**") whereby the Bank will allocate to the Participating Banks certain percentages of the funding obligations of the Bank under the Letter of Credit. The Borrower agrees to assist the Bank in obtaining Participating Banks, including, without limitation, the submission of any additional information requested by any potential Participating Bank and agreement to such reasonable modifications to the Bank

Documents as any Participating Bank may request, but excluding any increases in any of the fees, interest rates or other changes to the repayment terms contained herein. Nothing contained in this Section 9.09 shall affect the Bank's obligations and liabilities under the Letter of Credit.

Section 9.10. Governing Law and Jurisdiction. This Agreement has been delivered to and accepted by the Bank and will be deemed to be made in the State. This Agreement will be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State, excluding its conflict of laws rules. The Borrower hereby agrees to the jurisdiction of any state or federal court located within the county where the Bank's office indicated in Section 9.01 is situated, or such other venue as the Bank chooses, and consents that all service of process be sent by nationally recognized overnight courier service directed to the Borrower at the Borrower's address set forth herein for notices and service so made will be deemed to be completed on the Business Day after deposit with such courier; provided that nothing contained in this Agreement will prevent the Bank from bringing any action or exercising any rights against any security or against the Borrower individually, or against any property of the Borrower within any other state or nation to enforce any award or judgment obtained in the venue provided above, or such other venue as the Bank chooses. The Borrower waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

Section 9.11. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement of any other purpose.

Section 9.12. WAIVER OF JURY TRIAL. THE BORROWER AND THE BANK WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT OR ANY OF THE OTHER BANK DOCUMENTS OR ANY OF THE TRANSACTIONS RELATED TO ANY OF THE BANK DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY THE BORROWER AND THE BANK AND THE BORROWER AND THE BANK ACKNOWLEDGE THAT NEITHER THE BORROWER NOR THE BANK NOR ANY PERSON ACTING ON BEHALF OF THE BORROWER OR THE BANK HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THE BORROWER AND THE BANK FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. THE BORROWER AND THE BANK FURTHER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE MEANING OF THIS WAIVER PROVISION.

Section 9.13 Power to Confess Judgment. The Borrower hereby empowers any attorney of any court of record, after the occurrence of any Event of Default, to appear for the Borrower and, with or without complaint filed, confess judgment, or a series of judgments, against the Borrower in favor of the Bank or any holder hereof for the entire principal balance of this Agreement, all accrued interest and all other amounts due hereunder, together with costs of suit and an attorney's commission of the greater of ten percent (10%) of such principal and interest or \$1,000 added as a reasonable attorney's fee, and for doing so, this Agreement or a copy verified by affidavit shall be a sufficient warrant. The Borrower hereby forever waives and releases all errors in said proceedings and all rights of appeal and all relief from any and all appraisal, stay or exemption laws of any state now in force or hereafter enacted. Interest on any such judgment shall accrue at the rate of interest specified in Section 2.02(b). No single exercise of the foregoing power to confess judgment, or a series of judgments, shall be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable, or void, but the power shall continue undiminished and it may be exercised from time to time as often as the Bank shall elect until such time as the Bank shall have received payment in full of the debt, interest and costs. Notwithstanding the attorney's commission provided for in this Section 9.13 (which is included in this warrant for purposes of establishing a sum certain) the amount of attorneys' fees that the Bank may recover from the Borrower shall not exceed the actual attorney's fees incurred by the Bank.

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IN WITNESS WHEREOF, the Borrower and the Bank have caused this Reimbursement, Credit and Security Agreement to be duly executed and delivered as of the date first above written.

ATTEST/WITNESS:

BORROWER NAME CAPS

Name:
Title:

By: _____
Name:
Title

PNC BANK, NATIONAL ASSOCIATION

Name:
Title:

By: _____
Name:
Title:

BF 120759.4

EXHIBIT A

FORM OF PNC BANK, NATIONAL ASSOCIATION

IRREVOCABLE LETTER OF CREDIT

Irrevocable Letter of Credit No. _____, 2007

The Bank of New York Corporate Trust Services, as Trustee

1600 Market Street, Suite 1500
Philadelphia, Pennsylvania 19103
Attn: Institutional Trust Services

Re: \$AMOUNT Pennsylvania Economic Development
Financing Authority BOND TYPE Development
Revenue Bonds, 200_ Series X (PROJECT NAME
Project) (the "**Bonds**")

Gentlemen:

1. At the request and for the account of BORROWER NAME (the "**Borrower**"), we (the "**Bank**") establish in your favor as Trustee under the Trust Indenture dated as of _____, 2007 (as the same has been and may from time to time be supplemented or amended, the "**Indenture**") between the Pennsylvania Economic Development Financing Authority (the "**Issuer**") and you, which Indenture incorporated therein an agreement by and between the Issuer and you entitled Standard Provisions for Trust Indentures dated as of _____ (the "**Standard Provisions**") pursuant to which the Bonds are being issued for the benefit of the Borrower, this irrevocable letter of credit (this "**Letter of Credit**") in the aggregate amount of \$_____ (as from time to time reduced and reinstated as provided in this Letter of Credit, the "**Letter of Credit Amount**"). Such Letter of Credit Amount shall be available for drawing by you as set forth below in amounts not to exceed (a) \$AMOUNT (as from time to time reduced and reinstated as provided in this Letter of Credit, the "**Principal Component**") with respect to unpaid principal of the Bonds and (b) \$_____ (as from time to time reduced and reinstated as provided in this Letter of Credit, the "**Interest Component**") with respect to accrued interest on the Bonds (but no more than the actual interest accrued on the Bonds up to 60 days through the date payment is due under this Letter of Credit).

2. This Letter of Credit shall expire at 5:00 p.m. local time in Pittsburgh, Pennsylvania, on the date (the "**Expiration Date**") which is the earliest of: (a) _____, unless extended by us (the "**Scheduled Expiration Date**") (it being understood that we shall be under no obligation herein to grant any such extension), (b) the date of payment of a Final Payment Drawing (as defined below), (c) the date on which we receive a certificate from you on the form of **Annex 7** attached hereto, appropriately completed and executed, to the effect that there are no Outstanding Bonds (as defined in the Indenture) other than Bonds secured by an Alternate Letter of Credit (as defined in the Indenture) or (d) the date when you surrender this Letter of Credit to the Bank for cancellation. You agree to surrender this Letter of Credit to us, and not to make any Drawing, after the Expiration Date.

3. Subject to the provisions of this Letter of Credit, demands for payment under this Letter of Credit may be made by you from time to time prior to the Expiration Date by presentation of your certificate in the form of (a) **Annex 1** hereto, appropriately completed and executed, in the case of a drawing for interest on the Bonds under Section 5.05 of the Standard Provisions (an "**Interest Drawing**"), (b) **Annex 2** hereto, appropriately completed and executed, in the case of a drawing for principal of the Bonds under Section 5.05 (if less than all of the Outstanding Bonds are being redeemed) of the Standard Provisions (a "**Principal Drawing**"), (c) **Annex 3** hereto,

appropriately completed and executed, in the case of a drawing for the purchase price of any Bonds under Section 4.04 of the Standard Provisions (a “**Liquidity Drawing**”), and (d) **Annex 4** hereto, appropriately completed and executed, in the case of a final drawing for principal of and/or interest on all Outstanding Bonds (as defined in the Standard Provisions) due upon purchase, redemption or payment at maturity under Section 4.04 or 5.05 (if all of the Outstanding Bonds are being purchased upon a mandatory tender or redeemed) of the Standard Provisions or upon acceleration of the Outstanding Bonds under Section 7.03 of the Standard Provisions (the “**Final Payment Drawing**”) (each such demand and presentation, a “**Drawing**”). Payment against conforming documents presented under this Letter of Credit prior to 12:00 noon on any Business Day shall be made by us at or before 10:00 a.m. on the next succeeding Business Day or, in the case of presentation after 12:00 noon, at or before 3:00 p.m. on the next succeeding Business Day; provided, however, that with respect to a Liquidity Drawing, payment against conforming documents presented under this Letter of Credit prior to 11:00 a.m. on any Business Day shall be made by us at or before 3:00 p.m. on the same Business Day. If requested by you, payment under this Letter of Credit may be made by deposit of immediately available funds into a designated account that you maintain with us, a wire transfer of immediately available funds or by our check, all in accordance with your instructions. Partial drawings are permitted under this Letter of Credit. All payments by us under this Letter of Credit will be made with our own funds.

4. As used in this Letter of Credit “**Business Day**” means any day other than (i) a Saturday or Sunday, (ii) a day on which commercial banking institutions in Pittsburgh, Pennsylvania or in any other city where either the principal corporate trust office of the Trustee or the office of the Bank at which drafts are to be presented under the Letter of Credit is located are required or authorized by law (including executive order) to close or on which any such office is closed for reasons not related to financial condition, or (iii) a day on which the New York Stock Exchange is closed. References to any time of day shall refer to Eastern standard time or Eastern daylight savings time, as in effect in Pittsburgh, Pennsylvania on such day.

5. Each Drawing honored by us under this Letter of Credit shall immediately reduce the Principal Component or the Interest Component (as the case may be) by the amount of such payment, and the Letter of Credit Amount available hereunder shall also be correspondingly reduced. Upon such honor, our obligations in respect of such Drawing shall be discharged, and we shall have no further obligation in respect of such Drawing. The Principal Component and the Interest Component (and correspondingly the Letter of Credit Amount) so reduced shall be reinstated only as follows:

(a) In the case of a reduction resulting from payment against an Interest Drawing, the Interest Component shall be reinstated automatically as of our opening of business in Pittsburgh, Pennsylvania on the tenth (10th) Business Day following the date of such payment by an amount equal to the amount of such Interest Drawing, unless you shall have received notice from us by tested telex or in writing not later than the close of business on the ninth (9th) Business Day following the date of such payment that such reinstatement shall not occur because an Event of Default has occurred under the Reimbursement Agreement dated as of April 1, 1997 between the Borrower and us.

(b) In the case of a reduction resulting from payment against a Liquidity Drawing with regard to any Bonds, the Principal Component and, if applicable, the Interest Component with respect to such Bonds shall be reinstated (i) automatically when and to the extent that both (A) we have received reimbursement for such drawing in immediately available funds from the Borrower (or you have received immediately available funds which, pursuant to Section 4.05 of the Standard Provisions, you will immediately remit to us as reimbursement for such drawing, such funds to be remitted to the attention of our Letter of Credit Department stating that they are repayments for Liquidity Drawings drawn under PNC Bank, National Association Irrevocable Letter of Credit No. _____) and (B) you have delivered to us a certificate in respect of such reinstatement in the form of **Annex 5** attached hereto, appropriately completed and executed, or (ii) when and to the extent that we, at our option, upon the Borrower’s request, otherwise advise you in writing that such reinstatement shall occur, it being understood that we shall have no obligation to grant any such reinstatement except as provided in clause (i) of this sentence. We will give telephonic confirmation (to be further confirmed in writing) to you of each reinstatement pursuant to clause (i) of the preceding sentence.

(c) The Principal Component and the Interest Component shall otherwise be reinstated as we may from time to time notify you in writing.

6. The Letter of Credit Amount and the respective Principal and Interest Components thereof shall be reduced automatically, without notice to you, upon our receipt from you of a certificate in the form of **Annex 6** attached hereto appropriately completed and executed, each such reduction to be (a) in the amounts necessary to reduce the Letter of Credit Amount and the Principal and Interest Components thereof to the respective amounts specified by you in such certificate and (b) effective on the Business Day on which we receive such certificate from you.

7. All documents presented to us in connection with any Drawing, and all other communications and notices to us with respect to this Letter of Credit, shall be in writing, dated the date of presentation, and delivered to us at the address set forth on the letterhead of this Letter of Credit and shall specifically refer to "PNC Bank, National Association Irrevocable Letter of Credit No. _____." Any such documents, communications and notices may be made by tested telex at the number indicated above or by facsimile at (412) 762-5960 (with transmission confirmed by call to telephone number (412) 762-2798) stating that the originals of such documents, communications and notices have been mailed or delivered to us.

8. No person other than you as Trustee or a successor Trustee under the Indenture may make any demand for payment under this Letter of Credit. This Letter of Credit is transferable in its entirety only to any transferee who has succeeded you as Trustee under the Indenture and may be successively transferred to any subsequent successor Trustee under the Indenture, in each case upon presentation to us of the original of this Letter of Credit accompanied by a certificate in the form of **Annex 8** hereto.

9. This Letter of Credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relates, except only the certificates referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, except such certificates. All certificates referred to herein that are presented to us from time to time shall become an integral part of this Letter of Credit and shall be binding on any transferee permitted by the terms of this Letter of Credit.

10. This Letter of Credit is subject to the provisions of the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (the "UCP") other than Article 48(g) thereof. This Letter of Credit shall be deemed a contract made under the laws of the Commonwealth of Pennsylvania and shall, as to matters not governed by the UCP, be governed and construed in accordance with the laws thereof, without regard to principles of conflicts of law.

Very truly yours,

PNC BANK, NATIONAL ASSOCIATION

By
Name:
Title:

ANNEX 1 to PNC Bank, National Association

Irrevocable Letter of Credit No. _____

PNC Bank, National Association
3rd Floor Annex
237 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Attention: Letter of Credit Department

**Certificate for Interest Drawing of Accrued Interest on BOND TYPE
Development Revenue Bonds, 200_ Series X (PROJECT NAME Project)
Issued by the Pennsylvania Economic Development Financing Authority**

The undersigned, a duly authorized officer of The Bank of New York Corporate Trust Services, as Trustee (the “**Trustee**”) under the Indenture under which the Bonds have been issued, hereby certifies, with reference to Irrevocable Letter of Credit No. _____ (the “**Letter of Credit**”) issued by PNC Bank, National Association (the “**Bank**”) in favor of the Trustee (the capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Letter of Credit), that:

1. The Trustee is the Trustee under the Indenture securing the Bonds and is entitled to present this certificate.

2. Pursuant to Section 5.05 of the Standard Provisions, the Trustee is drawing on you in the amount of \$ _____. Such amount represents _____ days accrued interest on the Bonds. Such amount does not include any amount accrued on Pledged Bonds (as defined in the Standard Provisions) or Bonds registered in the name of the Borrower, was computed in accordance with the terms and conditions of the Indenture and does not exceed the amount available to be drawn under the Letter of Credit in respect of interest on the Bonds.

3. The Trustee demands payment of the amount specified in Paragraph 2 above.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the _____ day of _____, 200_.

THE BANK OF NEW YORK CORPORATE TRUST
SERVICES, as Trustee

By
Name
Title

ANNEX 2 to PNC Bank, National Association

Irrevocable Letter of Credit No. _____

PNC Bank, National Association
3rd Floor Annex
237 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Attention: Letter of Credit Department

**Certificate for Principal Drawing in Respect of Principal of BOND TYPE
Development Revenue Bonds, 200_ Series X (PROJECT NAME Project)
Issued by the Pennsylvania Economic Development Financing Authority**

The undersigned, a duly authorized officer of The Bank of New York Corporate Trust Services, as Trustee (the "**Trustee**") under the Indenture under which the Bonds have been issued, hereby certifies, with reference to Irrevocable Letter of Credit No. _____ (the "**Letter of Credit**") issued by PNC Bank, National Association (the "**Bank**") in favor of the Trustee (the capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Letter of Credit), that:

1. The Trustee is the Trustee under the Indenture securing the Bonds and is entitled to present this certificate.

2. Pursuant to Section 5.05 of the Standard Provisions, the Trustee is drawing on you in the amount of \$_____. Such amount represents payments of principal due with respect to the Bonds on _____, under Section _____ of the Standard Provisions. Such amount does not include any amount in respect of Pledged Bonds (as defined in the Standard Provisions) or any Bonds registered in the name of the Borrower, is equal to the amount of principal due on the Bonds on such date in accordance with the terms and conditions of the Indenture and does not exceed the amount available to be drawn under the Letter of Credit in respect of principal of the Bonds.

3. The Trustee demands payment of the amount specified in Paragraph 2 above.

IN WITNESS WHEREOF, the Trustee has executed and delivered this certificate this ____ day of _____, 200_.

THE BANK OF NEW YORK CORPORATE TRUST
SERVICES, as Trustee

By
Name
Title

ANNEX 3 to PNC Bank, National Association

Irrevocable Letter of Credit No. _____

PNC Bank, National Association
3rd Floor Annex
237 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Attention: Letter of Credit Department

**Certificate for Liquidity Drawing in Respect of the Purchase Price of
BOND TYPE Development Revenue Bonds, 200_ Series X (PROJECT
NAME Project) Issued by the Pennsylvania Economic Development
Financing Authority**

The undersigned, a duly authorized officer of The Bank of New York Corporate Trust Services, as Trustee (the “**Trustee**”) under the Indenture under which the Bonds have been issued, hereby certifies, with reference to Irrevocable Letter of Credit No. _____ (the “**Letter of Credit**”) issued by PNC Bank, National Association (the “**Bank**”) in favor of the Trustee (the capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Letter of Credit), that:

1. The Trustee is the Trustee under the Indenture securing the Bonds and is entitled to present this certificate.
2. Pursuant to Section 4.04 of the Standard Provisions, the Trustee is drawing on you in the amount of \$ _____. Such amount represents the principal portion in the amount of \$ _____ and the accrued interest portion in the amount of \$ _____ of the purchase price of Bonds, tendered to the Trustee and not successfully remarketed by the Remarketing Advisor (as defined in the Standard Provisions) or remarketed but for which the purchase price has not been received by the Trustee on the date hereof. Such amount does not include any amount in respect of Pledged Bonds (as defined in the Standard Provisions) or any Bonds registered in the name of the Borrower, was computed in accordance with the terms and conditions of the Indenture and does not exceed the amount available to be drawn under the Letter of Credit in respect of principal of, and interest on, such Bonds.
3. The Trustee is holding as agent for the Bank, Bonds in the principal amount of \$ _____, which amount represents the amount of the principal portion of the Bonds in respect of which a draw is being made on the Letter of Credit pursuant to this certificate.
4. The Trustee demands payment of the amount specified in Paragraph 2 above.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate this _____ day of _____, 200_.

THE BANK OF NEW YORK CORPORATE TRUST
SERVICES, as Trustee

By
Name
Title

ANNEX 4 to PNC Bank, National Association

Irrevocable Letter of Credit No. _____

PNC Bank, National Association
3rd Floor Annex
237 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Attention: Letter of Credit Department

Certificate for Final Payment Drawing in Respect of Principal and Accrued Interest on BOND TYPE Development Revenue Bonds, 200_ Series X (PROJECT NAME Project) Issued by the Pennsylvania Economic Development Financing Authority

The undersigned, a duly authorized officer of The Bank of New York Corporate Trust Services, as Trustee (the “**Trustee**”) under the Indenture under which the Bonds have been issued, hereby certifies, with reference to Irrevocable Letter of Credit No. _____ (the “**Letter of Credit**”) issued by PNC Bank, National Association (the “**Bank**”) in favor of the Trustee (the capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Letter of Credit), that:

1. The Trustee is the Trustee under the Indenture securing the Bonds and is entitled to present this certificate.
2. Pursuant to Section 4.04 or 5.05 of the Standard Provisions, the Trustee is drawing on you in the amount of \$ _____. Such amount represents an unpaid principal amount of \$ _____ and/or _____ days’ accrued interest in the amount of \$ _____ due upon purchase (pursuant to a mandatory tender) or redemption or payment at maturity under Section _____ of the Standard Provisions or upon acceleration of the Bonds under Section 7.03 of the Standard Provisions. Such amount does not include any amount in respect of Pledged Bonds (as defined in the Standard Provisions) or any Bonds registered in the name of the Borrower, was computed in accordance with the terms and conditions of the Indenture and does not exceed the amount available to be drawn under the Letter of Credit in respect of principal of, and interest on, the Bonds.
3. The Trustee demands payment of the amount specified in Paragraph 2 above.
4. The Letter of Credit is concurrently being surrendered.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate this _____ day of _____, 200_.

THE BANK OF NEW YORK CORPORATE TRUST
SERVICES, as Trustee

By
Name:
Title:

ANNEX 5 to PNC Bank, National Association

Irrevocable Letter of Credit No. _____

PNC Bank, National Association
3rd Floor Annex
237 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Attention: Letter of Credit Department

Liquidity Drawing Reinstatement Certificate for PNC Bank, National Association (the "Bank") Irrevocable Letter of Credit No. _____ (the "Letter of Credit") Supporting BOND TYPE Development Revenue Bonds, 200_ Series X (PROJECT NAME Project) Issued by the Pennsylvania Economic Development Financing Authority

The undersigned, a duly authorized officer of The Bank of New York Corporate Trust Services, as Trustee (the "**Trustee**") under the Indenture under which the Bonds have been issued, hereby certifies, with reference to the Letter of Credit issued by the Bank in favor of the Trustee (the capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Letter of Credit), that:

1. The Trustee is the Trustee under the Indenture securing the Bonds and is entitled to present this Certificate.
2. On the date of this Certificate \$_____ aggregate principal amount of Bonds are being purchased upon a remarketing thereof by the Remarketing Advisor (as defined in the Standard Provisions). All of such Bonds were heretofore purchased (or anticipated to be purchased) with the proceeds of one or more Liquidity Drawings in the total drawing amount, with respect to such Bonds, of \$_____, of which proceeds \$_____ was drawn in respect of principal of such Bonds and \$_____ was drawn in respect of accrued interest on such Bonds. Prior to the date of this Certificate there has been no reinstatement of the Letter of Credit Amount with respect to amounts drawn by such Liquidity Drawings to purchase such Bonds.
3. The Trustee has received for immediate payment (or repayment) to the Bank in respect of the Bonds described in Paragraph 2 of this Certificate the total amount of \$_____, consisting of \$_____ from the Remarketing Advisor, \$_____ from the Borrower and \$_____ from the Bank. Such total amount is being paid to the Bank with reference to this Letter of Credit pursuant to Section 4.04 or 4.05 of the Standard Provisions, as reimbursement for amounts drawn under the Letter of Credit by the Liquidity Drawings described in Paragraph 2 of this Certificate; provided that, unless such reimbursement is being made on the same day that payment of such Liquidity Drawings was received by the Trustee from the Bank, the Bonds described in Paragraph 2 of this Certificate will be released for remarketing and such payment to the Bank will be made only upon receipt of telephonic confirmation by the Bank of the reinstatement described in Paragraph 6 below to the Trustee at (215) 640-3414, Attention: Marvin Kierstead (which confirmation shall thereafter be sent in writing to the Trustee at its address on file with you).
4. Of the total amount referred to in Paragraph 3 of this Certificate, \$_____ represents the aggregate principal amount of Bonds described in Paragraph 2 of this Certificate and \$_____ represents accrued interest on such Bonds.
5. Payment of the total amount referred to in Paragraph 3 of this Certificate, together with other amounts heretofore paid to the Bank by or on behalf of the Borrower, represents reimbursement for the entire outstanding balance of all amounts drawn in respect of the Bonds described in Paragraph 2 of this Certificate. The foregoing certification is made in reliance upon representations by the Borrower or the Bank to the Trustee that, upon payment of such amounts, the Bank will be fully reimbursed for all Liquidity Drawings (or allocable portions thereof) made to purchase such Bonds. No certification is made by the Trustee as to the payment of interest accrued

pursuant to the Reimbursement Agreement described in the Letter of Credit on the amounts drawn by such Liquidity Drawings.

6. Pursuant to Paragraph 5(b) of the Letter of Credit, the Letter of Credit Amount shall be automatically reinstated by an amount equal to \$_____ (which does not exceed the aggregate amount of the Liquidity Drawings, or allocable portions thereof, paid by the Bank to purchase such Bonds), of which \$_____ (which does not exceed the aggregate amount of such Liquidity Drawings, or allocable portions thereof, drawn against the Principal Component) shall be applied to the Principal Component and \$_____ (which does not exceed the aggregate amount of such Liquidity Drawings, or allocable portions thereof, drawn against the Interest Component) shall be applied to the Interest Component.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate this _____ day of _____, 200_.

THE BANK OF NEW YORK CORPORATE TRUST
SERVICES, as Trustee

By
Name:
Title:

ANNEX 6 to PNC Bank, National Association

Irrevocable Letter of Credit No. _____

PNC Bank, National Association
3rd Floor Annex
237 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Attention: Letter of Credit Department

Certificate for Reducing PNC Bank, National Association (the "Bank")
Irrevocable Letter of Credit No. _____ (the "Letter of Credit") Supporting
BOND TYPE Development Revenue Bonds, 200_ Series X (PROJECT NAME
Project) Issued by the Pennsylvania Economic Development Financing
Authority

The undersigned, a duly authorized officer of The Bank of New York Corporate Trust Services, as Trustee (the "**Trustee**") under the Indenture under which the Bonds have been issued, hereby certifies (the capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Letter of Credit), that:

1. The Trustee is the Trustee under the Indenture securing the Bonds and is entitled to present this certificate.
2. The Trustee hereby notifies you that on or prior to the date of this certificate, \$_____ in principal amount of the Bonds have been redeemed, defeased or otherwise are no longer outstanding pursuant to the Indenture.
3. Pursuant to the terms of the Letter of Credit, the Bank is hereby directed to reduce the Letter of Credit Amount and the Principal and Interest Components thereof, effective on the Business Day on which you receive this certificate, so that after such reduction, the Letter of Credit Amount shall be \$_____, of which \$_____ shall be the Principal Component and \$_____ shall be the Interest Component, (calculated on the basis of 60 days' accrued interest at a rate of [15%][18%] per annum), less the amount, if any, drawn with Liquidity Drawings to purchase Outstanding Bonds in respect of which the Letter of Credit has not been reinstated.
4. The foregoing amounts were computed in accordance with the terms and conditions of the Indenture.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate this _____ day of _____, 200_.

THE BANK OF NEW YORK CORPORATE TRUST
SERVICES, as Trustee

By
Name:
Title:

ANNEX 7 to PNC Bank, National Association

Irrevocable Letter of Credit No. _____

PNC Bank, National Association
3rd Floor Annex
237 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Attention: Letter of Credit Department

Certificate for Terminating PNC Bank, National Association (the "Bank")
Irrevocable Letter of Credit No. _____ (the "Letter of Credit") Supporting
BOND TYPE Development Revenue Bonds, 200_ Series X (PROJECT NAME
Project) Issued by the Pennsylvania Economic Development Financing Authority

The undersigned, a duly authorized officer of The Bank of New York Corporate Trust Services, as Trustee (the "**Trustee**") under the Indenture under which the Bonds have been issued, hereby certifies (the capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Letter of Credit) that:

1. The Trustee is the Trustee under the Indenture for the holders of the Bonds.
2. Pursuant to the Indenture and the Letter of Credit, the Letter of Credit shall be terminated on the date the Bank receives this Certificate, and the Trustee is herewith surrendering the Letter of Credit for cancellation, because no Bonds remain outstanding other than Bonds secured by an Alternate Letter of Credit.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate this ____ day of _____, 200_.

THE BANK OF NEW YORK CORPORATE TRUST
SERVICES, as Trustee

By
Name:
Title:

ANNEX 8 to PNC Bank, National Association

Irrevocable Letter of Credit No. _____

PNC Bank, National Association
3rd Floor Annex
237 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Attention: Letter of Credit Department

**Re: PNC Bank, National Association
Irrevocable Letter of Credit No. _____**

Ladies and Gentlemen:

For value received, the undersigned beneficiary hereby irrevocably transfers to:

(Name of Transferee)
(Address)

all rights of the undersigned beneficiary to draw under the above Letter of Credit in its entirety. Said transferee has succeeded to the undersigned as Trustee under the Indenture which incorporated the Standard Provisions. The capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Letter of Credit.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such Letter of Credit is returned herewith, and in accordance therewith we ask you to transfer the Letter of Credit to the transferee and forward it directly to the transferee with your customary notice of transfer, or that, at your option, you issue a new irrevocable letter of credit in favor of the transferee with provisions consistent with the Letter of Credit.

Very truly yours,

SIGNATURE AUTHENTICATED

THE BANK OF NEW YORK CORPORATE TRUST SERVICES, as
Trustee

By: _____
Name:
Title:

EXHIBIT B
PROJECT DESCRIPTION AND COST SCHEDULE

[TO BE SUPPLIED BY THE BORROWER]

EXHIBIT C
ADDITIONAL PERMITTED LIENS
[TO BE PROVIDED BY BORROWER]

EXHIBIT D
REQUIREMENTS FOR OPINION[S] OF BORROWER'S [AND GUARANTOR'S] COUNSEL

(1) the Borrower is a duly organized and validly existing corporation [general partnership] [limited partnership] [limited liability company] in good standing under the laws of the state of its formation and duly qualified to do business under the laws of the State with all requisite power and authority to execute, deliver and perform its obligations under the Bank Documents and the Loan Agreement, to own and operate its facilities (including the Project) and to construct, acquire and install the Project as contemplated by the Bond Documents and the Bank Documents,

(2) the Borrower has obtained from all Official Bodies having jurisdiction over the Borrower all approvals, consents, authorizations, certifications, reviews and other orders (i) that are necessary for the execution, delivery and performance of the Borrower's obligations under the Bank Documents and the Loan Agreement, and (ii) that are necessary for the construction, acquisition and installation of the Project,

(3) to the best knowledge of such counsel, the Borrower has all necessary permits, licenses, certifications and qualifications to conduct its business as it is presently being conducted subject to such exceptions which, in the aggregate, would not be likely to result in a Material Adverse Change,

(4) the resolutions authorizing the execution and delivery of the Bank Documents and the Loan Agreement have been duly adopted at meetings of the [Board of Directors (or the Executive Committee of such Board)] [the general partners] [the partners] [the members] of the Borrower duly called and held in accordance with all applicable procedures and Laws and at which quorums were present and acting throughout, and remain in full force and effect,

(5) the forms, terms, execution and delivery of the Bank Documents, the Loan Agreement, and the Bond Documents have been duly authorized by all requisite action of the Borrower, and all conditions precedent to the execution and delivery of the Bank Documents, the Loan Agreement and the Bond Documents have been fulfilled,

(6) the Bank Documents, the Loan Agreement and the Bond Documents constitute legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency or other laws affecting the rights of creditors generally and by the application of general principles of equity,

(7) the execution, delivery and performance by the Borrower of its obligations under the Bank Documents, the Loan Agreement and the Bond Documents will not violate, conflict with or constitute a default under any provision of the Borrower's formation or governance documents or any Law applicable to the Borrower or, to the best knowledge of such counsel, any agreement, indenture or other instrument to which the Borrower is a party or by which it or any of its properties may be bound or subject,

(8) to the best knowledge of such counsel, the Borrower is not in any material way in breach of or in default under (i) any applicable Law of any Official Body or (ii) any agreement, indenture or other instrument to which it is a party or by which it is bound or subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument,

(9) there is no pending or, to the best knowledge of such counsel, threatened action, suit, proceeding, inquiry or investigation before or by any Official Body against the Borrower which, in any case, might result in a Material Adverse Change, adversely affect the validity or enforceability of the Bank Documents, the Loan Agreement or the Bond Documents or the construction, acquisition or installation of the Project as contemplated by the Bond Documents and the Bank Documents,

(10) this Agreement and the payment of interest hereunder at the respective rates set forth herein will not violate any applicable interest rate limitation under the laws of the State;

[(11) as to each Guarantor:

(A) such Guarantor is a duly organized and validly existing [corporation] [general partnership] [limited partnership] [limited liability company] in good standing under the laws of the state of its formation and duly qualified to do business under the laws of the state of its formation [and the State] with all requisite power and authority to execute, deliver and perform its obligations under the Bank Documents, executed by it,

(B) such Guarantor has obtained from all Official Bodies having jurisdiction over such Guarantor all approvals, consents, authorizations, certifications, reviews and other orders that are necessary for the execution, delivery and performance of such Guarantor's obligations under the Bank Documents executed by it,

(C) the resolutions authorizing the execution and delivery of the Bank Documents executed by such Guarantor have been duly adopted at meetings of the [board of directors] [partners] [members] of such Guarantor duly called and held in accordance with the applicable procedure and laws and at which quorums were present and acting throughout, and remain in full force and effect,

(D) the form, terms, execution and delivery of the Bank Documents executed by it have been duly authorized by all requisite action of such Guarantor, and all conditions precedent to the execution and delivery of such Bank Documents have been fulfilled,

(E) the Bank Documents executed by such Guarantor constitute legal, valid and binding obligations of such Guarantor enforceable against such Guarantor in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency or other laws affecting the rights of creditors generally and by the application of general principles of equity,

(F) the execution, delivery and performance by such Guarantor of its obligations under the Bank Documents to which it is a party will not violate, conflict with or constitute a default under any provision of such Guarantor's formation or governance documents, or any Law applicable to such Guarantor or, to the best knowledge of such counsel, any agreement, indenture or other instrument to which such Guarantor is a party or by which it or any of its properties may be bound or subject,

(G) to the best knowledge of such counsel, such Guarantor is not in any material way in breach of or in default under (i) any applicable Law of any Official Body or any applicable judgment or decree or (ii) any agreement, indenture or other instrument to which it is a party or is otherwise bound or subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument, and

(H) there is no pending or, to the best knowledge of such counsel, threatened action, suit, proceeding, inquiry or investigation before or by any Official Body against such Guarantor which, in any case, might result in a Material Adverse Change with respect to the Guarantor.

EXHIBIT E

REQUIRED REDEMPTIONS

Redemption Date

Principal Amount of Bonds
to be Redeemed

In order to insure that funds are available to affect the Required Redemptions set forth above, the Borrower shall make the following [monthly] [quarterly] Required Redemption Deposits to the Trustee:

Required Redemption Deposits

Payment Date

Amount to be Paid
to Trustee

BF 120759.4