

## **GUARANTY OF CINERGY CORP.**

This Guaranty, dated as of December 6, 2004, is made by Cinergy Corp., a Delaware corporation (the "Guarantor"), for the benefit of the City of Toronto (the "Counterparty").

**WHEREAS**, the Counterparty and Cinergy Solutions – Demand, Ltd., an Ontario corporation (the "Company") have entered into an Energy Performance Contract dated as of December 10, 2004, (the "Agreement").

**NOW, THEREFORE**, in consideration of, and as an inducement for, the Counterparty entering into the Agreement, the Guarantor hereby covenants and agrees as follows:

### **1. Guaranty.**

The Guarantor hereby unconditionally and absolutely guarantees to the Counterparty the performance when due, subject to any applicable grace period and upon demand in writing from the Counterparty, of any and all obligations of the Company to the Counterparty under the Agreement to realize the energy savings guaranteed under the Agreement (the "Obligations").

The Guarantor's liability hereunder shall be and is specifically limited to performance expressly required to be made in accordance with the Agreement and, except to the extent specifically provided hereunder or in the Agreement, in no event shall the Guarantor be subject hereunder to any indirect, special or consequential damages.

### **2. Nature of Guaranty.**

The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the absence of any action to enforce the Agreement; any waiver or consent by the Counterparty concerning any provisions of the Agreement; the rendering of any judgment against the Counterparty or any action to enforce the same; any failure by the Counterparty to take any steps necessary to preserve its rights to any security or collateral for the Obligations; the release of all or any portion of any collateral by the Counterparty; or any failure by the Counterparty to perfect or to keep perfected its security interest or lien in any portion of any collateral.

This Guaranty is one of payment and not of collection. This Guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any payment guaranteed hereunder, in whole or in part, is rescinded or must otherwise be returned by the Counterparty upon the insolvency, bankruptcy or reorganization of the Company or otherwise, all as though such payment had not been made.

### **3. Waivers.**

The Guarantor hereby expressly waives notice of acceptance of this Guaranty; notice of any Obligation to which this Guaranty may apply or of any security therefor; diligence; presentment; protest; notice of protest, acceleration, and dishonor; filing of claims with a court in the event of

insolvency or bankruptcy of the Company; all demands whatsoever, except as noted in Section 1 hereof; and any right to require a proceeding first against the Company.

**4. Termination.**

This Guaranty is intended to be and shall be construed to be a continuing, absolute and unconditional guaranty, and shall remain in full force and effect from the date first written above to the end of the Performance Period (Performance Period shall have the meaning as defined in the Agreement). However, if Cinergy Solutions is ever required to provide a standby letter of credit pursuant to Section 7.03 of the Agreement, then this Guaranty will immediately terminate upon the issuance of such letter of credit.

**5. Notices.**

All notices and other communications about this Guaranty must be in writing, must be given by facsimile, hand delivery or overnight courier service and must be addressed or directed to the respective parties as set forth below, or as otherwise directed by written notice from the parties, from time to time:

If to the Counterparty, to:

City of Toronto  
Corporate Services Department  
Facilities & Real Estate Division  
Metro Hall – 2<sup>nd</sup> floor  
55 John Street  
Toronto, Ontario M5V 3C6  
Telephone No.: 416-392-1869  
Facsimile No.: 416-392-4828  
Attn.: Elena Gruia, P.Eng.

With a copy to:

Economic Development Culture  
& Tourism  
Parks & Recreation  
441 Kipling Ave.  
Etobicoke  
Toronto, Ontario M8Z 5E7  
Telephone No.: 416-394-8549  
Facsimile No.: 416-394-5406  
Attn.: Dean Hart, Manager

If to the Guarantor, to:

Cinergy Corp.  
139 East Fourth Street  
Cincinnati, Ohio 45202  
Facsimile No.: (513) 287-2749  
Attn.: Treasurer

Notices are effective when actually received by the party to which they are given, as evidenced by facsimile transmission report, written acknowledgment or affidavit of hand delivery or courier receipt.

**6. Representations and Warranties.**

The Guarantor represents and warrants to the Counterparty as of the date hereof that:

- a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b) The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c) All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- d) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

**7. Setoffs and Counterclaims.**

Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which the Company is or may be entitled arising from or out of the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the Company.

**8. Subrogation.**

The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Obligations, the Guarantor shall be subrogated to the rights of the Counterparty against the Company, and the Counterparty agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

**9. Assignment.**

This Guaranty shall be binding upon the Guarantor and upon its permitted successors and assigns, and shall inure to the benefit of the Counterparty and its permitted successors and assigns and shall apply to all successors and assigns of the Company. Neither the Guarantor nor the Counterparty may assign this Guaranty nor delegate its duties or rights hereunder without the prior express written consent of the other party, which consent may not be unreasonably withheld or delayed.

**10. Amendments.**

No term or provision of this Guaranty shall be amended, modified, altered, waived, or supplemented except in a writing signed by the parties hereto.

**11. Choice of Law and Venue.**

THE GUARANTOR AND THE COUNTERPARTY HEREBY AGREE THAT THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO AND THE GUARANTOR AND THE COUNTERPARTY HEREBY IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE PROVINCE OF ONTARIO PURPOSES OF ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTY.

**12. Miscellaneous.**

This Guaranty is the entire and only agreement between the Guarantor and the Counterparty with respect to the guarantee of amounts payable by the Company to the Counterparty arising out of the Agreement. All representations, warranties, agreements, or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

By its acceptance of the rights and benefits hereunder, the Counterparty agrees to all the terms and conditions contained in this Guaranty.

**IN WITNESS WHEREOF**, the Guarantor has caused this Guaranty to be executed in its corporate name by its duly authorized representative as of the date first above written.

**CINERGY CORP.**

By: *Lynn J. Good*  
Lynn J. Good  
Vice President & Controller