
HEAD LEASE AGREEMENT (SDMFA-2003-~~K~~F1)

dated as of September [], 2003

between

~~SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY,~~
CITY OF ABERDEEN,

Head Lessor,

and

~~SDMFA~~ABERDEEN STATUTORY TRUST SDMFA-2003-~~K~~F1,

Head Lessee

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EXHIBIT A - Head Lease Supplement

Exhibit A to Head Lease Supplement - Facility Description

Exhibit B to Head Lease Supplement - Head Lease Payment

This HEAD LEASE AGREEMENT (SDMFA-2003-~~K~~F1), dated as of September [], 2003 (this “Head Lease”), is between ~~SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY~~ CITY OF ABERDEEN, as Head Lessor (the “Head Lessor”), and ~~SDMFA~~ ABERDEEN STATUTORY TRUST SDMFA-2003-~~K~~F1, as Head Lessee (the “Head Lessee”).

WITNESSETH:

WHEREAS, the Owner Participant and the Trust Company have entered into the Trust Agreement pursuant to which the Owner Participant has created the Trust for the benefit of the Owner Participant and the Trust is authorized and directed to execute and deliver this Head Lease and the other Operative Documents;

~~WHEREAS, the User-Head Lessor has agreed to lease to the Head Lessor and the Head Lessor has agreed to lease from the User Head Lessee the Facility upon the terms and conditions of the User Head Lease;~~ **WHEREAS**, ~~the Head Lessee desires to sublease from the Head Lessor and the Head Lessor is willing to sublease to the Head Lessee the Facility~~ desires to deliver the Facility and to grant the Access Rights to the Head Lessee and the Head Lessee desires to lease the Facility (including the Access Rights) from the Head Lessor upon the terms and conditions of this Head Lease;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Head Lessor and the Head Lessee agree as follows:

SECTION 1. Definitions and Rules of Usage.

Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in Appendix A to the Participation Agreement (SDMFA-2003-~~K~~F1) dated as of September [], 2003 among South Dakota Municipal Facilities Authority, ~~as User-Head Lessee, Head Lessor, Lessee and Sublessor, [Rapid City], as User Head Lessor and User Lessee~~ City of Aberdeen, SDMFA Statutory Trust SDMFA-2003-~~K~~F1, ~~as Head Lessee and Lessor, [State], as Sublessee and User Lessor, KBC Bank N.V., as Owner Participant, AIG-FP Funding (Cayman) Limited, as Lender, AIG-FP Special Finance (Cayman) Limited, as Payment Undertaker and [U.S. Bank National Association], a national banking association~~ F1, [State of South Dakota Department of Environment and Natural Resources], The Fifth Third Leasing Company, SDMFA Lender Trust SDMFA-2003-F1, The Royal Bank of Scotland plc, New York Branch, AIG Financial Products Corp. and Wilmington Trust Company, not in its individual capacity except as expressly set forth therein, but solely as Trustee, and the rules of usage set forth therein shall apply hereto.

SECTION 2. Acceptance and Leasing of Facility.

Subject to the terms and conditions of the Participation Agreement and this Head Lease, on the Closing Date, the Head Lessor hereby leases the Facility and grants the Access Rights specified on Exhibit A to the Head Lease Supplement and ~~assigns all of its rights, but none of its~~

~~obligations, under the User Head Lease to the Head Lessee and~~ the Head Lessee hereby leases the Facility and accepts the grant of the Access Rights specified on such Exhibit A from the Head Lessor ~~and accepts such assignment of rights, but not of any obligations, under the Head Lease,~~ such leasing of the Facility, and granting and acceptance of the Access Rights ~~and assignment of rights~~ to be evidenced by the execution by the Head Lessor and the Head Lessee of the Head Lease Supplement. The Head Lessee hereby agrees that execution and delivery of such Head Lease Supplement by the Head Lessor and the Head Lessee shall, without further act, irrevocably constitute acceptance by the Head Lessee of the Facility for all purposes of this Head Lease. The Head Lessee shall be under no obligation to pay the Head Lease Payment as to the Facility until the Facility has been delivered by the Head Lessor and accepted by the Head Lessee.

SECTION 3. Head Lease Term and Rent.

(a) (i) Head Lease Term.

The term of this Head Lease shall commence on the Closing Date and shall terminate on the Head Lease Basic Term Expiration Date (the “**Head Lease Basic Term**”), unless earlier terminated in accordance with the express provisions hereof or renewed pursuant to clause (ii) below.

(ii) Head Lease Renewal Term.

Subject to Applicable Law, the Head Lessee shall have the right to renew this Head Lease for an unlimited number of additional periods of one (1) year (each additional one year period, a “**Head Lease Renewal Term**” and, all such Head Lease Renewal Terms, together with the Head Lease Basic Term, the “**Head Lease Term**”), commencing upon the Head Lease Basic Term Expiration Date or the last day of the then-current Head Lease Renewal Term, as the case may be, and ending on the first anniversary of the Head Lease Basic Term Expiration Date or the last day of the then-current Head Lease Renewal Term, as the case may be. The Head Lessee shall exercise its right to renew this Head Lease by delivering written notice to the Head Lessor ~~and the User Head Lessor at their respective addresses~~ at its address set forth on Schedule I to the Participation Agreement not less than thirty (30) days prior to the Head Lease Basic Term Expiration Date or the end of the then-current Head Lease Renewal Term, as the case may be. ~~The Head Lessor agrees that, upon the Head Lessee’s election to renew this Head Lease for a Head Lease Renewal Term, the Head Lessor, as User Head Lessee under the User Head Lease, shall contemporaneously elect to renew the User Head Lease for a User~~ All the terms of this Head Lease shall apply during the Head Lease Renewal Term ~~pursuant to Section 3(a)(ii) of the User Head Lease.~~ Terms.

(b) Head Lease Rent.

Subject to the satisfaction or waiver of the applicable conditions precedent in Section 3 of the Participation Agreement, the Head Lessee shall pay to the Head Lessor on the Closing Date the amount in Dollars specified as the “**Head Lease Payment**” on Exhibit B to the Head Lease Supplement (the “**Head Lease Payment**”). The Head Lessor hereby acknowledges that payment of the Head Lease Payment on the Closing Date shall satisfy in full all of the Head Lessee’s

obligations to pay rent for the lease of the Facility for the Head Lease Term and shall be the only amount payable by the Head Lessee as rent under this Head Lease during the Head Lease Term (including all Head Lease Renewal Terms). ~~The Head Lessor agrees that, upon payment by the Head Lessee of the Head Lease Payment, the Head Lessor, as User Head Lessee under the User Head Lease, shall contemporaneously transfer such amounts to the User Head Lessor in satisfaction of the User Head Lease Payment then due under the User Head Lease on the Closing Date.~~

(c) *Manner of Payment.*

The Head Lease Payment shall be paid by the Head Lessee to the Head Lessor (or its designee) at its principal office as set forth ~~below its signature at the end of~~ on Schedule I to the Participation Agreement, or to such other address as the Head Lessor may specify, in immediately available funds, so that the Head Lessor (or its designee) receives the full amount of such payment no later than 5:00 p.m. (New York City time) on the Closing Date.

(d) *Limited Recourse.*

The Head Lessor acknowledges and agrees that its rights and remedies with respect to the Head Lessee are without recourse and shall be limited to the Trust Estate (other than Excepted Property), subject to the Lien of the Loan Agreement, and ~~neither~~ none of the Trust, the Trustee, the Trust Company ~~nor~~ or the Owner Participant nor any other Person shall have any liability for claims of the Head Lessor against the Head Lessee except as specifically provided in Section 18 of the Participation Agreement.

(e) *Payments Irrevocable.*

Notwithstanding anything to the contrary herein or in any Operative Document, the payment of the Head Lease Payment paid pursuant to Sections 3(b) and 3(c) hereof shall be retained by the Head Lessor in any and all events which are contemplated, prospective or possible under the provisions and conditions hereof, and shall be absolute, irrevocable, final and non-refundable under any circumstances whatsoever, including any rescission or termination of the Lease or this Head Lease.

(f) *Nonterminability.*

Subject to Sections 3(a) and 9 hereof, notwithstanding anything herein or otherwise to the contrary, neither the rights of the Head Lessee nor the obligations of the Head Lessor under this Head Lease shall be extinguished, diminished, lost or otherwise impaired by any circumstances of any character or for any reason whatsoever, whether or not the same involves the loss of all or any part of the rights, title and interest granted by this Head Lease, including, without limitation, any of the following circumstances or reasons: (i) any damage to or loss or destruction of the Facility for any reason whatsoever and whatever duration, (ii) the condemnation, requisition (by eminent domain or otherwise), seizure or other taking of title or use of the Facility by any Governmental Authority, (iii) any prohibition, limitation or restriction on the use by any Person of the Facility or the interference with such use by any Person, or any termination of this Head Lease ~~or the User Head Lease~~ as a result thereof by operation of law or contract, or any eviction by paramount title or otherwise, (iv) any inadequacy, incorrectness or failure of the description

of the Facility or any rights or property in which an interest is intended to be granted or conveyed by ~~the User Head Lease or~~ this Head Lease, (v) the insolvency, bankruptcy, reorganization or similar proceedings by or against the ~~Head Lessor, the User~~ Head Lessor, the Head Lessee or any other Person, (vi) the failure by the Head Lessee to comply with Section 3, 6 or 12 or any other provision hereof or of any other Operative Documents or (vii) any other reason whatsoever, whether similar or dissimilar to any of the foregoing. The provisions of this Section 3 shall survive the termination of this Head Lease for any reason whatsoever. The obligations of the Head Lessor hereunder are covenants that are independent of the existence of such leasehold and shall survive the termination thereof for any reason whatsoever.

SECTION 4. ~~Intentionally Omitted.~~ Access Rights.

The Head Lessor (and its successors and assigns) hereby covenants, grants and conveys, and further, agrees that it will provide and make available, or cause to be provided or made available, to and for the benefit and enjoyment of the Head Lessee or its designee, to the extent necessary, advisable or useful in connection with operating, constructing, maintaining, repairing, testing, servicing, overhauling, replacing parts of or inspecting the Facility to enable the Facility to be operated at its Maximum Dependable Capacity, a non-exclusive right of access and entry to the Facility, the Facility Site and any other real property owned or leased by the Head Lessor or to which the Head Lessor otherwise has actual or potential access or actual or potential rights of access and entry rights, and each portion thereof together with the benefits associated with any easements relating thereto, including (i) a right of access and entry to process control centers at the Related Facilities, any of the Treatment Facility Sites or any other locations, to monitor the operations of the Facility and to control the pump stations and rainwater retention basins included in the Facility, and to the maintenance shops, storage areas, garages and staging areas at or adjacent to the Facility and the Facility Site or to the headquarters facilities owned or operated by the Head Lessor and, in either case necessary for the operation and maintenance of the Facility, together with any other buildings, structures, maintenance shops, storage areas, garages or staging areas which are functionally related to operating, constructing, maintaining, repairing, testing, servicing, overhauling, replacing parts of the Facility or inspecting and the Facility Site, (ii) a right of way to and from the public road nearest to the Facility and the Facility Site or any other public or private way, (iii) the right to underground, vehicular, pedestrian, air, rail and harbor access where appropriate, and (iv) a right of access to any central control center operated by the Head Lessor for the purposes of operating and monitoring the Facility (the "Access Rights").

SECTION 5. Representations, Warranties and Agreements.

(a) EXCEPT AS OTHERWISE PROVIDED IN THE OPERATIVE DOCUMENTS AND WITHOUT WAIVING ANY RIGHTS THE HEAD LESSEE HAS THEREUNDER WITH RESPECT TO THE HEAD LESSOR OR ANY OTHER PERSON, (1) THE HEAD LESSOR LEASES THE FACILITY TO THE HEAD LESSEE AND THE HEAD LESSEE AGREES THAT IT LEASES THE FACILITY FROM THE HEAD LESSOR "AS-IS" AND "WHERE-IS" AND THE HEAD LESSOR DOES NOT MAKE AND SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE QUALITY, CONDITION, VALUE, WORKMANSHIP, DESIGN,

OPERATION, COMPLIANCE WITH SPECIFICATIONS, CONSTRUCTION, PERFORMANCE OR MERCHANTABILITY, FITNESS OR SUITABILITY FOR USE OR PURPOSE OF THE FACILITY OR ANY PART THEREOF, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, AS TO THE ABSENCE OF INFRINGEMENT OF A PATENT, TRADEMARK OR COPYRIGHT OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE FACILITY OR ANY PART THEREOF AND (2) THE HEAD LESSEE ACKNOWLEDGES AND AGREES THAT (A) THE HEAD LESSOR IS NOT A MANUFACTURER OR A DEALER IN FACILITIES OF SUCH KIND OR ANY PART THEREOF AND (B) THE FACILITY IS SUBLEASED HEREUNDER SUBJECT TO ALL APPLICABLE LAWS, INCLUDING, WITHOUT LIMITATION, PLANNING AND ZONING REGULATIONS, BUILDING RESTRICTIONS AND OTHER LAWS NOW IN EFFECT OR HEREAFTER ADOPTED, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY THE HEAD LESSOR.

(b) The Head Lessor warrants that, on the Closing Date, ~~the User Head Lessor will have it~~ has good and valid title to the Facility and the Facility Site free and clear of all Liens other than Permitted Liens ~~and~~. The Head Lessor hereby covenants to the Head Lessee, its successors and assigns that during the Head Lease Term the Head Lessor ~~has a transferable leasehold interest in~~ will warrant and defend such title to the Facility ~~free~~ against the claims and ~~clear~~ demands of all ~~Liens other than Permitted Liens~~ Persons.

(c) Notwithstanding any of the provisions in this Head Lease or any of the other Operative Documents to the contrary, the Head Lessor covenants that during the Head Lease Term the Head Lessee's rights under this Head Lease, including the possession, use and quiet enjoyment of the Facility, shall not be interrupted, interfered with, or disturbed by the Head Lessor, ~~the User Head Lessor~~ or any Person claiming any interest in any portion of the Facility by, through or under the Head Lessor for any reason whatsoever.

(d) (i) The Head Lessor agrees that during the Head Lease Term (1) the Head Lessee, and any sublessee so authorized by the Head Lessee, to the exclusion of the ~~User Head Lessor or the~~ Head Lessor, may exercise in the ~~User~~ Head Lessor's, the Head Lessee's or such sublessee's own name (A) all rights with respect to the Facility under any warranty and may retain any warranty and (B) all other rights and powers with respect to each purchase agreement between the ~~User~~ Head Lessor and each Manufacturer ~~and (C) all rights of the Head Lessor with respect to the User Head Lease~~, and (2) the Head Lessor shall, at the Head Lessor's expense, cooperate with the Head Lessee (or any sublessee) and take such actions as the Head Lessee (or any sublessee) reasonably deems necessary to enable the Head Lessee (or any sublessee) to enforce such rights and claims.

(ii) Notwithstanding anything herein to the contrary, the Head Lessor shall cause all amounts that each Manufacturer is obligated to pay to the ~~User Head Lessor and the~~ Head Lessor with respect to the Facility under the relevant equipment purchase agreement, including, without limitation, resulting from the enforcement of any warranty or the enforcement or exercise of any of ~~the User Head Lessor's or~~ the Head Lessor's rights or powers under such purchase agreement, to be paid to the Head Lessee.

(iii) The Head Lessor agrees that during the Head Lease Term, as and when any right of action shall arise against each Manufacturer in relation to the terms of purchase, value, durability, merchantability, fitness for use, suitability, capacity, age, quality, description, state, condition, design, construction, use, operation, performance of, or any patent infringement or alleged patent infringement in relation to, the Facility or any Part thereof, the Head Lessee shall be entitled, at the Head Lessee's own expense, to exercise all rights of the ~~User-Head Lessor and the~~ Head Lessor against each Manufacturer.

SECTION 6. Possession, Operation, Use and Maintenance.

(a) **Possession and Use.** Following the termination of the Lease Term ~~with respect to the Facility~~, the Head Lessee may sublease the Facility to any other Person.

(b) **Use by Head Lessee.** Without limiting clause (a) above, during the Lease Term, the Facility shall be used in accordance with the provisions of Section 6(b) of the Lease which are incorporated herein for such purpose, *mutatis mutandis*; ~~provided, however~~, that by entering into the Lease with the ~~Lessee~~ Lessees, the Head Lessee shall be deemed to have complied with this Section 6(b) during the Lease Term whether or not the ~~Lessee~~ Lessees actually ~~complies~~ comply with the provisions of Section 6(b) of the Lease. After the Lease Expiration Date or other termination of the Lease with respect to the Facility, the Facility shall be used in accordance with Applicable Law, in a manner consistent with Section 6(b) of the Lease but subject to any applicable provisions of any ~~Service Contract~~ Capacity Purchase Agreement and Support and Operating Agreement and otherwise in such manner as the Head Lessee determines in its sole discretion.

(c) **Maintenance.** Without limiting clause (a) above, during the Lease Term, the Facility shall be maintained, repaired and serviced in accordance with the provisions of Section 6(c) of the Lease which are incorporated herein for such purpose, *mutatis mutandis*; ~~provided, however~~, that by entering into the Lease with the ~~Lessee~~ Lessees, the Head Lessee shall be deemed to have complied with this Section 6(c) during the Lease Term whether or not the ~~Lessee~~ Lessees actually ~~complies~~ comply with the provisions of Section 6(c) of the Lease. After the Lease Expiration Date or other termination of the Lease with respect to the Facility, the Facility shall be maintained, repaired and serviced in accordance with Applicable Law, in a manner consistent with Section 6(c) of the Lease but subject to any applicable provisions of any Service Contract and Operating Agreement and otherwise in such manner as the Head Lessee determines in its sole discretion.

SECTION 7. Intentionally Omitted.

SECTION 8. Replacement and Ownership of Parts; Alterations, Modifications, Additions and Substitutions.

During the Lease Term, the replacement of Parts, ownership of Parts and alterations, and modifications and additions to the Facility shall be subject to the provisions of Section 8 of the Lease, which are incorporated herein for such purpose, *mutatis mutandis*; ~~provided, however~~, that by entering into the Lease with the ~~Lessee~~ Lessees, the Head Lessee shall be deemed to have complied with this Section 8 during the Lease Term whether or not the ~~Lessee~~ Lessees actually

~~complies~~comply with the corresponding provision of the Lease. After the Lease Expiration Date or other termination of the Lease with respect to the Facility, the replacement of Parts, ownership of Parts and alterations, and modifications and additions to the Facility shall be made in accordance with Applicable Law, in a manner consistent with Section 8 of the Lease but subject to any applicable provisions of any Service Contract and Operating Agreement and otherwise in such manner as the Head Lessee determines in its sole discretion, and all Parts that have been incorporated or installed in or attached to the Facility shall vest in the Head Lessee free and clear of any rights of ~~the User Head Lessor or~~ the Head Lessor hereunder.

SECTION 9. Event of Loss.

(a) ***Event of Loss.*** Upon the occurrence of an Event of Loss during the Lease Term ~~with respect to the Facility~~ under the Lease and upon full satisfaction of the Lessee's obligations under Section 9(a) of the Lease (including the payment in full of all amounts payable pursuant Section 9(a)), (1) the Head Lease Term shall end, (2) legal title to the Facility shall continue to be held by the ~~User~~ Head Lessor, (3) the Head Lessee shall be deemed to have transferred to the Head Lessor or its designee, "as-is, where-is" without recourse or warranty (except as to the absence of Lessor's Liens) all of its right and interest (including the Head Lease Interest) in the Facility, and (4) the Head Lessee shall cease to have any other liability with respect to the Facility. The Head Lessee shall request the Lender to execute and deliver to ~~the User Head Lessor and~~ the Head Lessor, at each of their own cost and expense, an appropriate instrument (if required) releasing the Head Lease Interest with respect to the Facility from the Lien of the Loan Agreement.

Upon the occurrence of an Event of Loss with respect to the Facility occurring after the Lease Expiration Date, the Head Lessee may dispose of the Facility as it determines in its sole discretion, subject to the applicable provisions of any Service Contract or Operating Agreement.

(b) ***Non-Insurance Payments Received on Account of an Event of Loss.*** Any payments on account of an Event of Loss (other than proceeds of insurance maintained or paid for by the Head Lessee) with respect to the Facility received at any time by ~~the User Head Lessor,~~ the Head Lessor, the Head Lessee, the Lessee, or any permitted sublessee or any other Person from any Governmental Authority or other Person during the Lease Term shall be paid in accordance with the provisions of Section 9(b) of the Lease. After the Lease Term, the Head Lessee shall be entitled to all such payments on account of an Event of Loss. Any payments with respect to the Facility received by the ~~User Head Lessor, the~~ Head Lessor, the Head Lessee, the Lessee, or any permitted sublessee or any other Person from any Governmental Authority or other Person during the Lease Term with respect to damage to or interference with the use or operation of the Facility, not constituting an Event of Loss with respect to the Facility, shall be paid over to, or retained by, the Head Lessee, subject to the rights (if any) therein of the Lessee or any permitted sublessee.

SECTION 10. Insurance.

During the Lease Term the Facility shall be insured to the extent required by, and in accordance with, the provisions of Section 10 of the Lease and proceeds of any insurance policies shall be distributed in accordance with Section 10 of the Lease; *provided, however,* that

by entering into the Lease with the ~~Lessee~~Lessees, the Head Lessee shall be deemed to have complied with this Section 10 during the Lease Term whether or not the ~~Lessee~~Lessees actually ~~complies~~comply with Section 10 of the Lease. After the Lease Term, subject to the applicable provisions of any Service Contract or Operating Agreement, each of the Head Lessor and the Head Lessee may insure or not insure the Facility as it determines in its sole discretion and shall be entitled to any proceeds of any insurance it maintains.

SECTION 11. Liens.

The ~~Head Lessor and the User~~ Head Lessor shall not directly or indirectly create, incur, assume or suffer to exist any Liens on the Facility other than (a) during the Lease Term, Permitted Liens, and (b) Lessor's Liens and Liens arising by, through or under the Head Lessee. The Head Lessor agrees that it will, ~~or that it will cause the User Head Lessor to~~, at its own cost and expense, promptly take such action as may be necessary duly to discharge promptly any Lien on the Facility (other than those described in clauses (a) and (b) of the preceding sentence) and will hold harmless and indemnify, on an After-Tax Basis, the Trust, the Trustee, the Trust Company, the Owner Participant, the Lender and the Trust Estate and their respective Affiliates against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, proceedings or judgments, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind and nature and any reduction in the amount payable out of the Trust Estate or the Collateral imposed on, incurred by or asserted against any of the foregoing in respect of the imposition, enforcement or removal of any such Liens.

SECTION 12. Intentionally Omitted.

SECTION 13. Purchase Option.

If the Lessee has not exercised the Purchase Option under the Lease, the Head Lessee shall have the option to purchase the Head Lessor's interest ~~and the User Head Lessor's interest~~ in the Facility from the Head Lessor (the "***Head Lease Purchase Option***") for an amount equal to \$1.00 (one Dollar) (the "***Head Lease Purchase Option Price***"), upon the occurrence of any of the following dates or events:

- (a) the Lease Expiration Date;
- (b) a Lease Event of Default shall have occurred and shall be continuing and the Lessor shall exercise a remedy under clause (a) or (b) of Section 17 of the Lease with respect to the Facility; or
- (c) at any time after the Head Lessor has breached its covenants in Section 5(c) hereof and the Head Lessee has instituted an action for specific performance by the Head Lessor of such Section 5(c) hereof.

To exercise the Head Lease Purchase Option, the Head Lessee shall give to the Head Lessor ~~and the User Head Lessor~~ irrevocable written notice of its election to exercise the Head Lease Purchase Option pursuant to this Section 13 at any time (i) not later than the Lease Expiration Date in the case of the event described in clause (a) above; (ii) within one year of the declaration of a Lease Event of Default or the Head Lessor's breach of Section 5(c) or

(iii) during the exercise of remedies under ~~clauses~~clause (a) or (b) of Section 17 of the Lease or the institution of an action for specific performance by the Head Lessor under Section 5(c) hereof. ~~If~~Upon the Head Lessee ~~elects the Head Lease Purchase Option pursuant to this Section 13, the Head Lessor, as Used Head Lessee under the User Head Lease, shall immediately exercise the User Head Lease Purchase Option under Section 13 of the User Head Lease and, upon the Head Lessee's exercise of the Head Lease Purchase Option and the Head Lessor's exercise of the User's exercise of the~~ Head Lease Purchase Option, all of the Head Lessor's ~~and the User Head Lessor's~~ right, title and interest in the Facility shall be deemed automatically to have been transferred by the Head Lessor to the Head Lessee or its designee, "as-is, where-is" without recourse or warranty of any kind, except with respect to the absence of Liens (other than Lessor's Liens). The Head Lessee shall prepare, at the expense of the Head Lessor, and the Head Lessor shall execute; a termination of this ~~Head Lease and the Head Lessor shall cause the User Head Lessor to execute a termination of the User~~ Head Lease and a bill of sale or other instrument providing for the transfer of the Facility to the Head Lessee as the Head Lessee may reasonably request, all at the expense of the Head Lessor. Upon compliance by the Head Lessee with the provisions of this Section 13, this Head Lease shall terminate with respect to the Facility.

SECTION 14. Intentionally Omitted.

SECTION 15. Intentionally Omitted.

SECTION 16. Further Assurances.

The Head Lessor will, at the Head Lessor's expense, (i) promptly and duly execute and deliver to the Head Lessee such further documents and assurances, and take all actions necessary to perfect or protect and to maintain the perfection and protection of the interests of ~~(a) the Head Lessee in the Facility and this Head Lease (except in respect of the Lessor's Liens) and (b) the Head Lessor in the Facility and the User Head Lease~~ and (ii) take such further actions as are necessary or desirable in order effectively to carry out the intent and purpose of this Head Lease and the other Operative Documents.

SECTION 17. Assignment.

Except as expressly permitted by the Operative Documents, during the Lease Term the Head Lessee will not, without the prior written consent of the Head Lessor and, so long as the Lien of the Loan Agreement shall not have been discharged pursuant to Section 7.01 thereof, the Lender, assign any of its rights or obligations hereunder except (i) to a successor trustee appointed in accordance with the Trust Agreement and the Participation Agreement or (ii) to the Lender as security under the Loan Agreement. The Head Lessor agrees that it will not assign or convey all or any part or interest in its right, title and interest in and to this Head Lease, ~~the User Head Lease~~ or the Facility except as permitted pursuant to Section 11(c) of the Participation Agreement. The terms and provisions of this Head Lease shall be binding upon and inure to the benefit of the Head Lessor and the Head Lessee and their respective successors and permitted assigns.

SECTION 18. Acknowledgment of Assignment for Security.

In order to secure the indebtedness evidenced by the Loan Certificates and all other amounts owing to the Lender under the Operative Documents, the Head Lessee has agreed in the Loan Agreement, among other things, to assign to the Lender its rights under this Head Lease as collateral security for the Loan, subject to the reservations and conditions set forth in the Loan Agreement. The Head Lessor hereby consents to such assignment and acknowledges receipt of copies of the Loan Agreement, it being understood that such consent shall not affect any requirement or the absence of any requirement for any consent under any other circumstances. Unless and until the Head Lessor shall have received written notice from the Lender that the Lien of the Loan Agreement has been discharged pursuant to Section 7.01 thereof, the Lender, to the extent provided in, and subject to the exceptions contained in, the Loan Agreement, shall have the right to exercise the rights of the Head Lessee under this Head Lease, to give consents, approvals, waivers, notices or the like, to make elections, demands or the like and to take any other discretionary action under this Head Lease as though named as the Head Lessee herein and no amendment or modification of, or waiver by or consent of the Head Lessee in respect of, any of the provisions of this Head Lease shall be effective unless the Lender shall have joined in such amendment, modification, waiver or consent or shall have given its prior written consent thereto to the extent set forth in and subject in each case to the exceptions set forth in the Loan Agreement.

SECTION 19. Miscellaneous.

(a) **Notices.** All notices and other communications required under the terms and provisions hereof shall be given and shall be effective in accordance with the provisions of Section 22(a) of the Participation Agreement.

(b) **Counterparts.** This Head Lease may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(c) **Amendments.** Neither this Head Lease nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by both parties.

(d) **GOVERNING LAW.** THIS HEAD LEASE SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ~~NEW YORK~~ ~~[, EXCEPT THAT THE LAWS OF THE STATE OF SOUTH DAKOTA SHALL GOVERN ALL MATTERS RELATING TO THE POWER AND AUTHORITY OF THE AUTHORITY]~~ SOUTH DAKOTA.

(e) **Benefit and Binding Effect.** The terms and provisions of this Head Lease shall inure to the benefit of and be binding on the Head Lessor and the Head Lessee and their respective successors and permitted assigns.

(f) **Service of Process and Jurisdiction; Waiver of Immunity.** The provisions of Section 17 of the Participation Agreement are incorporated herein by reference as though fully set out herein.

(g) *Entire Agreement.* This Head Lease, together with the agreements, instruments and other documents required to be executed and delivered in connection herewith, supersedes all prior agreements and understandings of the parties with respect to the subject matter covered hereby.

(h) *Intent of the Parties.* It is hereby agreed by the parties hereto that for all United States federal, state and local income and franchise tax purposes it is intended that this Head Lease will be treated as a sale of the Facility by the Head Lessor to the Head Lessee and that the Head Lessee will be treated as the owner of the Facility ~~;~~ for said tax purposes.

(i) *Severability.* Any provision of this Head Lease that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Head Lessor and the Head Lessee have each caused this Head Lease to be duly executed by its authorized officer as of the day and year first above written.

HEAD LESSOR:

CITY OF ABERDEEN

By: _____

Name: _____

Mayor

**SOUTH DAKOTA MUNICIPAL FACILITIES
AUTHORITY**

Attest:

By: _____

Name:

Title:

HEAD LESSEE:

**~~SDMFA~~ ABERDEEN STATUTORY TRUST
SDMFA-2003-K1**

By ~~U.S. Bank National Association~~ **Wilmington
Trust Company**, not in its individual capacity
except as expressly set forth herein, but solely
as Trustee

By: _____

Name:

Title:

HEAD LEASE SUPPLEMENT

This HEAD LEASE SUPPLEMENT dated as of [____], 2003 (this “*Head Lease Supplement*”), is between ~~SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY~~CITY OF ABERDEEN, having its principal office at [] (the “*Head Lessor*”), and ~~SDMFA~~ABERDEEN STATUTORY TRUST SDMFA-2003-~~KF~~1, having its principal place of business at [] (the “*Head Lessee*”).

WHEREAS, the Head Lessor and the Head Lessee have heretofore entered into the Head Lease Agreement (SDMFA-2003-~~KF~~1), dated as of September [___], 2003 (the “*Head Lease*”), which Head Lease provides for the execution and delivery of Head Lease Supplements in substantially the form hereof for the purpose of ~~subleasing~~leasing the Facility when delivered by the Head Lessor to the Head Lessee in accordance with the terms thereof. All of the terms and provisions of the Head Lease are hereby incorporated by reference in this Head Lease Supplement to the same extent as if fully set forth herein (including those terms providing that capitalized terms used therein and not otherwise defined therein shall have the meanings given such terms in Appendix A to the Participation Agreement, and the rules of usage set forth therein shall apply thereto).

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, and pursuant to Section 2 of the Head Lease:

Section 1. Delivery and Acceptance of Facility.

Head Lessor hereby delivers and ~~subleases~~leases to the Head Lessee, and the Head Lessee hereby accepts and ~~subleases~~leases from the Head Lessor, under the Head Lease as herein supplemented, the Facility described in Exhibit A hereto.

Section 2. Rent.

The Head Lease Rent payable by the Head Lessee pursuant to Section 3(b) of the Head Lease is the amount specified as “Head Lease Payment” on Exhibit B hereto.

THIS HEAD LEASE SUPPLEMENT SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ~~NEW YORK~~, EXCEPT THAT THE LAWS OF THE STATE OF SOUTH DAKOTA SHALL GOVERN ALL MATTERS RELATING TO THE POWER AND AUTHORITY OF THE ~~AUTHORITY~~SOUTH DAKOTA.

IN WITNESS WHEREOF, the Head Lessor and the Head Lessee have each caused this Head Lease Supplement to be duly executed by its authorized officer on the day and year first above written.

HEAD LESSOR:

CITY OF ABERDEEN

By: _____

Name:

Mayor

~~SOUTH DAKOTA MUNICIPAL FACILITIES
AUTHORITY~~

Attest:

By: _____

Name:

Title:

HEAD LESSEE:

~~SDMFA~~ ABERDEEN STATUTORY TRUST

SDMFA-2003-~~K~~F1

By ~~U.S. Bank National Association~~ Wilmington
Trust Company, not in its individual capacity
except as expressly set forth herein, but solely
as Trustee

By: _____

Name:

Title:

FACILITY DESCRIPTION

Exhibit B
to Head Lease Supplement (SDMFA-2003-~~K~~F1)

Head Lease Payment: \$[].