

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

dated as of ~~_____~~ September [], 2003

between

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

Lessor

and

SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY,

Lessee

and

CITY OF ABERDEEN,

Lessees

This Lease Agreement (~~SDMA~~ SDMFA-2003-~~K1~~F1) has been assigned to and is subject to a first priority security interest in favor of ~~AIG-FP Funding (Cayman) Limited~~ Aberdeen Lender Trust SDMFA-2003-F1 (the “*Lender*”) under and to the extent set forth in the Loan and Security Agreement (SDMFA-2003-~~K~~F1) dated as of September [~~_____~~], 2003 between the Lender and the Lessor. This Lease Agreement (SDMFA-2003-~~K~~F1) has been executed in several counterparts. To the extent, if any, that this Lease Agreement (SDMFA-2003-~~K~~F1) constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease Agreement (SDMFA-2003-~~K~~F1) may be created through the transfer or possession of any counterpart other than the original executed counterpart containing the receipt therefor executed by the Lender on the page following the signature page thereof.

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. Interpretation, Definitions and Rules of Usage.....	1
SECTION 2. Leasing of Facility.....	1
SECTION 3. Lease Term, Rent and Other Payments.....	1
SECTION 4. Net Lease, etc.....	5
SECTION 5. Representations, Warranties and Agreements.	6
SECTION 6. Possession, Operation and Use, Maintenance and Identification- 7 ; Reports and Records.	6
SECTION 7. Inspection.....	9
SECTION 8. Replacement and Ownership of Parts; Alterations, Modifications, Additions and Substitutions.	10
SECTION 9. Event of Loss.	12
SECTION 10. Insurance.	14
SECTION 11. Liens.....	17
SECTION 12. Further Assurances.....	18
SECTION 13. Return of the Facility.	18
SECTION 14. Alternatives at the End of the Lease Term; Burdensome Events.	20
SECTION 15. Voluntary Termination.....	33 34
SECTION 16. Lease Events of Default.	35 36
SECTION 17. Remedies.....	38
SECTION 18. The Lessor’s Right to Perform for the Lessee Lessees	41
SECTION 19. Assignment.....	41
SECTION 20. Investment of Security Funds.	41 42
SECTION 21. Acknowledgment of Assignment for Security.....	42
SECTION 22. Miscellaneous.....	42 43
SECTION 23. Liability of the Trust Company Lessor Limited.....	44
 SECTION 24. Lessee Options.	 45
SECTION 25. Joint and Several Liability.	45
 Exhibit A - Lease Supplement	
Exhibit A to Lease Supplement	- Description of Facility; Facility Value
Exhibit B-1 to Lease Supplement	- Lease Rent Payment Schedule
Exhibit B-2 to Lease Supplement	- Allocation of Lease Rent
Exhibit B-3 to Lease Supplement	- Prepaid Rent Loan Balances
Exhibit C to Lease Supplement	- Stipulated Loss Values
Exhibit D to Lease Supplement	- Termination Values
Exhibit E to Lease Supplement	- Purchase Option Price
 Exhibit B - Form of Reminder Notice	
Exhibit C - Form of Lessor’s Election Notice	
Exhibit D – Service Contract Amounts	
Exhibit E – Service Contract Liquidated Damages	

This LEASE AGREEMENT (SDMFA-2003-~~KF~~1), dated as of September []~~—~~, 2003 (this “*Lease*”), is ~~between SDMFA~~ among ABERDEEN STATUTORY TRUST SDMFA-2003-~~KF~~1, a [~~Connecticut~~]Delaware statutory trust, as Lessor (the “*Lessor*”), ~~and~~ SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY (the “*Authority*”), a body corporate and politic of the State of South Dakota, as ~~Lessee~~ (~~the “*Lessee*”~~ co-lessee, and the CITY OF ABERDEEN (the “*User*”), a []), as co-lessee (the User, together with the Authority, the “*Lessees*”).

RECITALS

~~The~~Each Lessee desires to lease from the Lessor and the Lessor is willing to lease to ~~the~~each Lessee the Facility (including the Access Rights) upon, and subject to, the terms and conditions of this 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 Lessor and ~~the~~each Lessee agree as follows:

SECTION 1. Interpretation, 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-~~KF~~1) (the “*Participation Agreement*”), dated as of September [], 2003, among the Lessor, the ~~Lessee~~Authority, [~~the State~~], [~~Rapid City~~], ~~KBC Bank N.V., AIG FP Funding (Cayman) Limited, AIG FP Special Finance (Cayman) Limited, and [U.S. Bank National Association]~~the [State of South Dakota Department of Environment and Natural Resources], the User, The Fifth Third Leasing Company, Aberdeen 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. Leasing of Facility.

Subject to the terms and conditions of the Participation Agreement and this Lease, on the Closing Date the Lessor shall lease the Facility and grant the Access Rights to the ~~Lessee~~Lessees and the ~~Lessee~~Lessees shall lease the Facility and accept the grant of the Access Rights from the Lessor, such leasing of the Facility and such granting and acceptance of the Access Rights to be evidenced by the execution by the Lessor and ~~the~~each Lessee of the Lease Supplement. It is the intent of the parties to this Lease that for all United States federal, state and local income tax purposes, this Lease will be a “*true lease*” and that the Lessor shall at all times be considered to be the owner and lessor of the Facility and that ~~the~~each Lessee shall at all times be considered to be ~~the~~a lessee of the Facility.

SECTION 3. Lease Term, Rent and Other Payments.

(a) Lease Term.

Unless earlier terminated in accordance with the express provisions hereof, the Facility shall be leased for the Lease Term.

(b) Lease Rent.

The ~~Lessee~~Lessees shall pay or cause to be paid Lease Rent to the Lessor with respect to the Facility throughout the Lease Term on each Rent Payment Date during the Lease Term. The amount payable as Lease Rent is the amount set forth under the column "Lease Rent Payable" corresponding to such Rent Payment Date on Exhibit B-1 of the Lease Supplement, subject to adjustment as provided in Section 3(d). The Lessor and ~~the~~each Lessee hereby agree that the Lease Rent represents total rent for the Lease Term and is to be allocated over such Lease Term in accordance with Exhibit B-2 to the Lease Supplement, and ~~the~~each Lessee and the Lessor agree that such allocation is intended to constitute an allocation of fixed rent to the periods indicated on such Exhibit B-2 within the meaning of Treasury Regulation Sec. 1.467-1(c)(2)(ii)(A). The Lessor and ~~the~~each Lessee agree that the foregoing Lease Rent payments will result in a Prepaid Rent Balance and a Prepaid Rent Loan Balance from time to time in the amounts set forth on Exhibit B-3 to the Lease Supplement and interest shall accrue on the Prepaid Rent Loan Balance at the Prepaid Rent Interest Rate, compounded annually. The Lessor and ~~the~~each Lessee intend and agree that the Prepaid Rent Balance reflects the prepaid rent for this Lease within the meaning of Treasury Regulation Sec. 1.467-1(c)(3)(ii) and that the provision for interest thereon at the Prepaid Rent Interest Rate constitutes adequate interest on fixed rent within the meaning of Treasury Regulation Sec. 1.467-2(b)(1)(ii). The Prepaid Rent Loan Balance shall be reduced by the amounts shown in the column "Reduction of Prepaid Rent Loan Balance Resulting from Changes in the Prepaid Rent Balance" on Exhibit B-3 to the Lease Supplement. Notwithstanding anything to the contrary herein, (i) upon any termination of this Lease with respect to the Facility prior to the Lease Expiration Date, the parties hereto acknowledge and agree that any remaining Prepaid Rent Loan Balance and any interest accrued thereon shall be repaid (A) by offset in any case where Termination Value or Stipulated Loss Value is payable by the ~~Lessee~~Lessees, and the parties hereto hereby agree that the Termination Values and Stipulated Loss Values have been calculated net of the Prepaid Rent Loan Balance, (B) by the Lessor to ~~the~~either Lessee upon such termination in any case where Termination Value or Stipulated Loss Value is not payable by the ~~Lessee~~Lessees, or (C) by the Lessor to ~~the~~either Lessee upon such termination in connection with any sale of the Head Lease Interest pursuant to Section 14(e), Section 15(b) or Section 17(c) hereof where the proceeds of the sale are in excess of Termination Value or Stipulated Loss Value; *provided*, that the Lessor shall be obligated to pay only such portion of the Prepaid Rent Loan Balance so as to ensure that it retains an amount no less than the sum of (x) Termination Value or Stipulated Loss Value, (y) any Lease Rent due and owing by the ~~Lessee~~Lessees prior to such termination remaining unpaid, together with interest at the Overdue Rate for the period from the due date thereof to the date of payment and (z) any Supplemental Rent due and owing by the ~~Lessee~~Lessees, (ii) if the ~~Lessee~~elects~~Lessees~~ elect the Purchase Option, the parties hereto acknowledge and agree that any remaining Prepaid Rent Loan Balance shall be repaid by offset, and that the Purchase Option Price has been calculated net of the Prepaid Rent Loan Balance, and (iii) if the Purchase Option

has not been exercised, the parties hereto acknowledge that the Lessor shall pay to ~~the~~either Lessee any remaining Prepaid Rent Loan Balance on the Lease Expiration Date.

(c) *Supplemental Rent.*

The ~~Lessee~~Lessees shall also pay to the Lessor, or to the Person entitled thereto, all Supplemental Rent promptly as the same shall become due, and, in the event of any failure on the part of the ~~Lessee~~Lessees to pay any Supplemental Rent when due and owing in accordance with the provisions of the Operative Documents, the Person entitled thereto shall have all rights, powers and remedies provided for herein or in any other Operative Document or by law or equity in the case of nonpayment of Lease Rent. The ~~Lessee assumes~~Lessees assume liability for, and ~~agrees~~agree to pay as Supplemental Rent all indemnities payable by the User under Section 15 of the Participation Agreement and any other amounts which the ~~User agrees~~Lessees agree to pay to or for the benefit of the Lessor, the Owner Participant or the Lender under the Operative Documents which are not paid when due. The Lessee shall also pay as Supplemental Rent interest at the Overdue Rate on any Lease Rent or Supplemental Rent not paid when due for any period for which the same shall be overdue.

(d) *Adjustments.*

The Lease Rent, the Stipulated Loss Values set forth on Exhibit C to the Lease Supplement, the Termination Values set forth on Exhibit D to the Lease Supplement and the Purchase Option Price amounts set forth on Exhibit E to the Lease Supplement and all other relevant and affected exhibits and schedules to the Operative Documents shall be appropriately adjusted (in the case of Lease Rent, Stipulated Loss Value or Termination Value, upward or downward and, in the case of the Purchase Option Price, upward only) in the manner set forth herein to reflect (i) any changes to the Pricing Assumptions on or prior to the Closing Date, (ii) any change or proposed change in tax law prior to the Closing Date which in the reasonable opinion of the Owner Participant's tax counsel affects the Net Economic Return, or (iii) any refinancing pursuant to Section 19 of the Participation Agreement ~~or any reset of the Applicable Rate.~~ If a Credit Event shall have occurred and the Lessee have delivered Acceptable Lease Collateral pursuant to Section ~~2.13 of the Loan~~ 21 of the Participation Agreement. ~~In, then in~~ the event any such adjustments are made, the ~~Lessee~~Lessees shall cause corresponding adjustments to be made to the ~~Equity Payment Agreement, the Strip Surety Policy, the Standby Letter of Credit~~Acceptable Lease Collateral and to the level of such Acceptable Lease Collateral ~~held by the Custodian.~~

All adjustments shall be made by the Owner Participant prior to the Closing Date (except in the case of clause (iii) above) (A) in a manner that (1) maintains the Net Economic Return and (2) to the extent possible consistent with clause (1), minimizes the Net Present Value of Rents and Purchase Option Price, and (B) on the basis of the same methodology and assumptions (including the Pricing Assumptions and tax constraints as supported by the Appraisal) used by the Owner Participant in the original calculation of the Lease Rent, the Stipulated Loss Values, the Termination Values and the Purchase Option Price amounts (including compliance with Revenue Procedures 2001-28 and 2001-29 and Section 467 of the Code, as amended (including any Regulations thereunder), in each case, as modified and as in effect on the date of such adjustment, and so as not to cause this Lease to be a "disqualified leaseback or long term

agreement” within the meaning of Section 467 of the Code (including any Regulations thereunder)) (except as such assumptions previously have been modified or should be modified to reflect the factors giving rise to such adjustment); *provided*, that if the ~~Lessee believes~~ Lessees believe that the calculations of the adjustments made by the Owner Participant are in error and, within thirty (30) days following ~~its~~ their receipt thereof from the Owner Participant ~~requests~~, the Lessees request a verification of such calculations, then an independent accounting firm mutually acceptable to the Owner Participant and the ~~Lessee~~ Lessees shall verify such calculations and the Owner Participant will make available to such accounting firm (subject to the execution of a confidentiality agreement acceptable to the Lessor and the Owner Participant, which agreement shall prohibit disclosure of the Owner Participant’s assumptions to any third party, including the ~~Lessee~~ Lessees) such methodology and assumptions and any changes made hereunder (but in no event shall the Owner Participant be required to disclose its tax returns or its books to any Person). In the event of a verification, the determination by such accounting firm shall be final. The Owner Participant will pay the reasonable costs of the verification if such verification procedure results in an adjustment to Lease Rent which decreases the remaining Net Present Value of Rents and Purchase Option Price by more than ten (10) basis points from that calculated by the Owner Participant. In all other events, such costs shall be paid by the ~~Lessee~~ Lessees. Such recalculated Lease Rent, Stipulated Loss Values, Termination Values and Purchase Option Price amounts shall be set forth in a supplement to this Lease, a copy of which shall be delivered to the Lender. The sole responsibility of the verifying accounting firm shall be to verify the calculations made by the Owner Participant and not to interpret the Operative Documents or make any determinations as to tax assumptions or tax law. Notwithstanding the foregoing, the Owner Participant shall not be required to disclose to any third party, nor shall the ~~Lessee~~ Lessees or any other Person have the right to examine, any of the Owner Participant’s tax returns or books.

(e) Manner of Payment.

All Lease Rent and Supplemental Rent (other than Excepted Property) shall be paid by the ~~Lessee~~ Lessees to the Lessor at its principal office as set forth in Schedule I to the Participation Agreement, or to such other address as the Lessor shall specify, in immediately available funds consisting of Dollars, so that the Lessor receives the full amount of such payment no later than 1:00 p.m. (New York time) on the due dates thereof; *provided, however*, that, so long as the Lien of the Loan Agreement shall not have been discharged pursuant to Section ~~7.017.1~~ thereof, the Lessor hereby directs, and the ~~Lessee agrees~~ Lessees hereby agree, that all Lease Rent and Supplemental Rent (other than Excepted Property) shall be paid by wire transfer directly to the Lender to its account as set forth in Schedule I to the Participation Agreement, or as the Lender may otherwise direct in a written notice received by the ~~Lessee~~ Lessees at least ten (10) days prior to the applicable ~~payment date~~ Payment Date. If any Lease Rent or Supplemental Rent is due on a day which is not a Business Day, such Lease Rent or Supplemental Rent shall be paid on the next succeeding Business Day with the same effect as if paid on the date when due and without additional interest. Payments constituting Excepted Property shall be made to the Person entitled thereto at the address for such Person given in Schedule I to the Participation Agreement. All amounts payable to the Trust constituting the Equity Portion of Lease Rent, Termination Value, Stipulated Loss Value, Fair Market Sales Value and Purchase Option Price shall be paid directly to the account of the Owner Participant set forth on such Schedule I. All obligations of the ~~Lessee~~ Lessees in this Lease shall be done,

performed or complied with at the ~~Lessee's~~Lessees' sole cost and expense unless otherwise expressly provided herein.

(f) *Minimum Rent.*

Anything contained herein or in any other Operative Document to the contrary notwithstanding, (a) each installment of Lease Rent (whether or not adjusted pursuant to Section 3(d)) shall be in an amount which is at least equal to the aggregate amount of all principal and interest payable on the Loan Certificates on the date of such installment without acceleration and (b) the Stipulated Loss Value, the Termination Value and the initial installment of the Purchase Option Price (in each case whether or not adjusted pursuant to Section 3(d)), together with any Lease Rent payable on or prior to such date and attributable to the period prior to such date, shall be in an amount at least equal to, as of the date of payment thereof, the aggregate outstanding unpaid principal of the Loan Certificates payable or prepayable on such date, together with accrued and unpaid interest thereon to such date. It is agreed that no installment of Lease Rent, Stipulated Loss Value, Termination Value or the Purchase Option Price shall be accelerated, increased or adjusted by reason of (i) any attachment or diversion of Lease Rent on account of Lessor's Liens, (ii) any modification of the payment terms of the Loan Certificates made without the prior written consent of the ~~Lessee~~Lessees (other than as expressly permitted by the Operative Documents), or (iii) the acceleration of any Loan Certificate due to the occurrence of a Loan Event of Default not caused by or attributable to a Lease Event of Default.

SECTION 4. Net Lease, etc.

This Lease is a net lease. The Lessor shall have no obligation, liability or responsibility to the ~~Lessee~~Lessees or any other Person with respect to operation, maintenance, repairs, alterations, modifications, improvements, correction of faults or defects (whether or not required by Applicable Law) or insurance with respect to the Facility or any part or component thereof during the Lease Term, all of which matters shall be, as between the Lessor and the ~~Lessee~~Lessees, the sole responsibility of the ~~Lessee~~Lessees regardless of upon whom such responsibilities may nominally fall under Applicable Law or otherwise, and the Lease Rent has been set in reliance upon ~~the~~each Lessee's sole responsibility for all such matters and things. ~~The~~Each Lessee acknowledges and agrees that its obligations to pay all Lease Rent and Supplemental Rent due and owing in accordance with the terms hereof shall be absolute and unconditional and shall not be released, discharged or otherwise affected by any circumstance whatsoever, including, without limitation, (a) any setoff, counterclaim, recoupment, defense or other right which the Lessee may have against the Lessor, the Owner Participant, the Holders, ~~the Payment Undertaker (or the~~any provider of Acceptable ~~Substitute Credit Protection), the Equity Payment Undertaker, the Custodian, the Strip Surety Provider, the LC Issuer, the Sublessee, the User-Lessee~~Lease Collateral or any other Person for any reason whatsoever, (b) any defect in the title, condition, design, operation, merchantability or fitness for use of, or any damage to or loss or theft or destruction of, the Facility, or any interference, interruption or cessation in or prohibition of the use or possession thereof by the ~~Lessee~~Lessees or any other Person for any reason whatsoever, including any such interference, interruption, cessation ~~or~~prohibition or condemnation resulting from the act of any Governmental Authority, (c) any Liens or rights of any Person with respect to the Facility, (d) the termination, invalidity or

unenforceability or lack of due authorization or other infirmity of or defect in the ~~User Head Lease, the~~ Head Lease, this Lease or any other Operative Document or any lack of right, power or authority of the Lessor or the Lessee to enter into this Lease or any document, instrument or agreement related hereto or thereto or any other Operative Document or of the Head Lessor and the Lessor to enter into the ~~Head Lease or of the User Head Lessor or the User Head Lessee to enter into the User~~ Head Lease, (e) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Lessee, the Head Lessor, ~~the User Head Lessor~~ or any other Person, (f) to the extent permitted by Applicable Law, the ~~Lessee~~Lessees at any time having immunity from suit, prejudgment attachment, attachment in aid of execution or execution on the grounds of sovereignty or otherwise, the occurrence or existence of any force majeure event or exercise of police power, (g) the existence, invalidity or unenforceability of or defect in, or the exercise of rights with respect to, any security for the Lessee's Obligations, including but not limited to ~~the Equity Payment Agreement, the Account Collateral, the Account Pledge and Security Agreement, the Custody Agreement, the Strip Surety Policy, the Standby Letter of Credit, the Payment Agreement, the Payment Undertaker Guaranty, the Equity Payment Undertaking Guaranty, Acceptable Substitute Credit Protection,~~ any Acceptable Lease Collateral or any other agreement or instrument relating thereto or any security or collateral provided in substitution therefor, (h) any certificate, draft or other document presented under ~~the Payment Agreement, the Equity Payment Agreement, any Account Pledge and Security Agreement, the Custody Agreement, any Standby Letter of Credit or any Strip Surety Policy~~any Acceptable Lease Collateral proving (or being alleged) to be forged, fraudulent, invalid, unauthorized or uncollectible in any respect, or any statement therein (including any statement with respect to amount) proving (or being alleged) to be untrue or inaccurate in any respect whatsoever ~~or (i,~~ (i) any ineligibility of the Facility for any particular use, whether or not due to any failure of the Lessees to comply with any Applicable Law, (j) Force Majeure or any frustration or impossibility, (k) any legal requirement similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, (l) any prohibition, limitation or restriction of the Lessees' use of all or any part of the Facility or the Facility Site or any portion thereof or any interest therein or the interference with such use by any Person or any eviction by paramount title or otherwise, (m) the termination or loss of the Leasehold Interest or any portion thereof, any other lease, sublease, right-of-way, easement, or other interest in personal or real property upon or to which any portion of the Facility is located, attached or appurtenant or in connection with which any portion of the Facility is used or which otherwise affects or may affect the Leasehold Interest or right to the Facility or the Facility Site, (n) any defect in the title to, or the existence of any Liens or rights of others whatsoever with respect to the Facility or the Facility Site or any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration or commercial frustration of purpose, or (o) any other occurrence, event or other cause whether similar or dissimilar to the foregoing, any present or future law notwithstanding, it being the intention of the parties hereto that all Lease Rent and Supplemental Rent payable by the ~~Lessee~~Lessees hereunder shall continue to be ~~payable~~absolute, unconditional and payable by the Lessees, on a joint and several basis, in all events in the manner and at the times provided herein. Such Lease Rent and Supplemental Rent shall not be subject to any abatement and the payments thereof shall not be subject to any setoff, suspension, deterrent, diminution or reduction for any reason whatsoever, including any present or future claims of ~~the~~either Lessee against the Lessor or any other Person under this Lease or otherwise. If for any reason whatsoever this Lease shall

be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, the ~~Lessee~~Lessees nonetheless ~~agrees~~agree, on a joint and several basis, to pay to the Lessor or to the Lender, as the case may be, an amount equal to each Lease Rent payment and Supplemental Rent payment under Section 3 at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part.

~~The~~Each Lessee hereby waives, to the extent permitted by Applicable Law, any and all rights which may have been conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof (including Sections 9, 14 and 15). Notwithstanding any other provision of this Section 4 to the contrary, the ~~Lessee~~Lessees shall not be impaired in the exercise of any right ~~it~~they may have to assert and sue upon any claim ~~it~~they may have against the Lessor, the Owner Participant or any other Person in a separate action.

Nothing in this Section 4 shall be deemed to require any payment on account of Taxes other than Taxes that are otherwise expressly payable by the ~~Lessee~~Lessees under the Operative Documents including, without limitation, Section 15 of the Participation Agreement and under the Tax Indemnification Agreement.

SECTION 5. Representations, Warranties and Agreements.

(a) THE LESSOR LEASES AND ~~THE~~EACH LESSEE TAKES THE FACILITY AND EACH PART THEREOF “AS-IS” AND “WHERE-IS” AND NONE OF THE LESSOR, THE TRUST COMPANY, THE HOLDERS OR THE OWNER PARTICIPANT MAKES OR SHALL 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 ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE FACILITY OR ANY PART THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE FACILITY OR ANY PART THEREOF AND NO HOLDER SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE TO THE FACILITY OR ANY PART THEREOF AND ~~THE~~EACH LESSEE ACKNOWLEDGES AND

AGREES THAT (A) THE LESSOR IS NOT A MANUFACTURER OR A DEALER IN FACILITIES OF SUCH KIND OR ANY PART THEREOF AND (B) THE FACILITY IS LEASED 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 LESSOR.

(b) The Lessor covenants that during the Lease Term, so long as no Lease Event of Default shall have occurred and be continuing, the **LesseeLessees**'s rights under this Lease, including the possession, use, operation and quiet enjoyment of the Facility, shall not be interrupted by the Lessor or any Person claiming any interest in the Facility by, through or under the Lessor (it being agreed that the Lessor's covenant hereunder does not extend to actions taken by the Holders or any Person claiming by, through or under the Holders).

SECTION 6. Possession, Operation and Use, Maintenance and Identification; Reports and Records. [Subject to Review by Framatome]

(a) Possession and Subleasing.

The **LesseeLessees** may sublease the Facility to the State pursuant to the Sublease. The Lessor acknowledges that the State may sublease the Facility to the User pursuant to the User Lease and that the User may sublease or otherwise in any manner deliver, relinquish or transfer possession of, or permit a permitted sublessee to deliver, relinquish or transfer possession of, the Facility to any other Person during the Lease Term as provided in the User Lease. Any reference in this Lease to a "permitted sublessee" shall mean a sublessee under a sublease permitted by this Section 6(a).

(b) Operation and Use.

The Facility will be used in providing the collection and treatment of wastewater. The **LesseeLessees** shall not use or operate or suffer or permit the Facility to be used or operated in material violation of any Applicable Law, of the requirements of any applicable insurance policies required to be maintained pursuant to Section 10 or in material violation of any license or registration relating to the Facility issued by any competent Governmental Authority (it being agreed that any such violation of any Applicable Law, insurance requirement, license or registration shall be deemed material if it adversely affects the Lessor's or any Participant's interest in the Facility or the Head Lease Interest or the existence or priority of the Lien of the Loan Agreement or involves any risk of the imposition of criminal liability or unindemnified civil liability on the Lessor or any Participant or any risk of the sale, forfeiture or loss of any material portion of the Facility).

(c) *Maintenance.*

The ~~Lessee~~Lessees, at ~~its~~their sole cost and expense, shall cause the Facility to be serviced, repaired, maintained, overhauled and tested during the Lease Term (i) with at least the same standard of care that the Authority or the User exercises in servicing, repairing, maintaining, overhauling and testing similar property owned, operated, leased or subleased by ~~it,~~ ~~the Authority~~either of them or their Affiliates, (ii) in substantial compliance with all manufacturer's recommendations applicable to the Facility, (iii) in compliance with all Applicable Laws, (iv) in compliance with all insurance policies required hereunder to be maintained with respect to the Facility, and (v) so as to keep the Facility in good operating order, repair and condition and in the same condition as when delivered to the ~~Lessee~~Lessees, ordinary wear and tear excepted and at least in accordance with Prudent Engineering Practice and Prudent Industry Practice with respect to similar facilities; *provided*, that solely with respect to clause (iii) the ~~Lessee~~Lessees may, at ~~its~~their own expense and in good faith, contest the validity or application of any such Applicable Law in any reasonable manner that does not adversely affect the Lessor's or any Participant's interest in the Facility or the Head Lease Interest or the existence or priority of the Lien of the Loan Agreement and does not involve any risk of the imposition of criminal liability or unindemnified civil liability on the Lessor or any Participant or any risk of the sale, forfeiture or loss of any material portion of the Facility. The ~~Lessee~~Lessees shall maintain or cause to be maintained all records, logs and other materials required to be maintained by any applicable Governmental Authority or by any manufacturer of the Facility or any Part in connection with the preservation of material warranties.

(d) *Maintenance and Repair Reports; Plans and Specifications; Records.*

The ~~Lessee~~Lessees shall, in accordance with the current practices of the User, (i) maintain, or cause to be maintained, operating logs, based on readings of input and output of the Facility, which logs shall be compiled into an annual operating report, (ii) keep, or cause to be kept, maintenance and repair information in sufficient detail to indicate the nature and date of major work done, (iii) maintain, or cause to be maintained, such procedures as are necessary to operate and maintain the Facility and the complete set of specifications (which specifications shall reflect each alteration, modification or addition to the Facility pursuant to Section 8(c) having a cost in excess of one percent of the Facility Value), (iv) maintain, or cause to be maintained, inspection, diagnostic and preventive maintenance reports to the extent required by Applicable Law and (v) maintain, or cause to be maintained, records which are adequate to enable an engineer not otherwise familiar with the Facility to identify and locate the various components of the Facility. The ~~Lessee~~Lessees shall cause such reports, information, procedures, specifications and records to be kept on file by the User at the User's offices or such other location as the User may designate from time to time by notice to the Lessor and the Lender and such reports, information, procedures, specifications and records shall, as between the Lessor and the ~~Lessee~~Lessees, be deemed the property of the Lessor upon the expiration or earlier termination of this Lease and return of the Facility to the Lessor in accordance with the terms of this Lease, and copies shall be made available to the Lessor at such offices or locations in connection with any inspection pursuant to, and subject to the provisions of, Section 7; *provided, however*, that so long as no Lease Event of Default or Lease Default shall have occurred and be continuing, such reports (but not such information, procedures, specifications or

records) may be destroyed in accordance with the User's normal document retention program applicable to the Facility but in no event prior to three years after the date of such reports and records.

(e) **Reports.**

(i) The ~~Lessee~~Lessees shall prepare (or cause to be prepared) and, to the extent permissible under Applicable Law, file in a timely fashion, or if the Lessor shall be required to file, the ~~Lessee~~Lessees shall furnish to the Lessor within a reasonable time prior to the date for filing, all reports with respect to the Facility, or the condition or operation thereof, that shall be required to be filed with any Governmental Authority.

(ii) At the time of delivery of the audited financial statements referred to in Section 11(b)(ii) of the Participation Agreement and (unless the Purchase Option shall have been exercised) on the Lease Expiration Date or the Termination Date, the ~~Lessee~~Lessees shall furnish or cause to be furnished to the Lessor and the Lender a report in respect of the preceding calendar year, which reports shall contain a brief description of the following matters in respect of the Facility: (A) health and safety matters, to the extent the same shall have given rise to claims against ~~the~~any Lessee or its insurers in excess of \$100,000; (B) significant activities, such as major system overhauls, alterations, modifications and other capital expenditures having a value in excess of five percent (5%) of the total Facility Value; (C) the total cost of all replacement Parts and describing separately and in reasonable detail each replacement Part having a value in excess of five percent (5%) of the total Facility Value; and (D) environmental matters and any environmental or safety report related to the Facility or any portion thereof filed with any Governmental Authority. In addition, upon a written request which sets forth a detailed explanation of the need for the information requested, the ~~Lessee~~Lessees shall furnish the Lessor with any reports reasonably requested by the Lessor to the extent such report relates to the Facility and can be compiled from information which is readily available to the ~~Lessee~~Lessees.

SECTION 7. Inspection.

Each of the Lessor, the Holders and the Head Lessor, or their authorized representatives (which includes the Owner Participant), may on reasonable notice inspect the Facility and the books and records of the ~~Lessee~~Lessees relating thereto (including maintenance logs) and may make copies of those parts of such books as the Lessor or any Holder or their authorized representatives may reasonably request; *provided*, that unless a Lease Event of Default shall have occurred and be continuing, inspections shall occur only once in any six-month period. All such inspections of the Facility shall be visual, walk-around inspections and shall be conducted, so long as there is no Lease Event of Default or Lease Major Default which is continuing, so as not to unreasonably interfere with the normal conduct of ~~Lessee's~~the Lessees' or any permitted sublessee's business or the operation and maintenance of the Facility. Unless a Lease Event of Default or Lease Major Default shall have occurred and be continuing (in which case any such inspection under this Section 7 shall be at the sole risk and expense of the ~~Lessee~~Lessees), any inspection or observation made pursuant to this Section 7 shall be at the sole expense and risk of the Lessor, the Holders or the Head Lessor, as applicable. Neither the Lessor, the relevant

Holders nor the Head Lessor shall have any duty to make any such inspection or incur any liability or obligation by reason of not making any such inspection. The ~~Lessee~~Lessees shall make any permitted sublease of the Facility expressly subject to the inspection rights hereunder.

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

(a) Replacement of Parts.

The Lessee, at ~~its~~their sole cost and expense, will, during the Lease Term, promptly replace, or cause any permitted sublessee to replace, all Parts to comply with Section 6 that may, from time to time, become worn out, obsolete, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever. In addition, in the course of maintenance, service, repair, overhaul or testing, the ~~Lessee~~Lessees or a permitted sublessee, at ~~its~~their sole cost and expense, may remove any Part, whether or not worn out, obsolete, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use; *provided*, that the ~~Lessee~~Lessees or such permitted sublessee, at ~~its~~their sole cost and expense, shall replace such Parts as promptly as practicable with replacement Parts or temporary replacement parts as provided in Section 8(c). All replacement Parts shall be free and clear of all Liens except Permitted Liens and shall be in as good operating condition as, and shall have a value, utility and remaining useful life at least equal to, the Parts replaced assuming such replaced Parts were in the condition and repair required by the terms hereof; *provided, however*, that no replacement Part shall change the Facility such that it would not be commercially feasible for the Facility to be used by the Lessor or a third party other than the ~~Lessee~~Lessees, the Sublessee, the User Lessee or any Lessee Person upon return of the Facility pursuant to the Operative Documents. In addition, no replacement of any Part pursuant to this Section 8(a), whether permanent or temporary, shall diminish the value, utility, estimated residual value or remaining useful life of the Facility ~~for~~ change the nature of the Facility from that which it was designed as of the Closing Date as the same may have been modified in accordance with this Lease through the date of such replacement.}

(b) Ownership of Parts.

Any Part (except for a temporary replacement part) at any time removed from the Facility shall remain the property of the ~~User~~ Head Lessor (subject to Permitted Liens) and subject to ~~the User Head Lease~~, the Head Lease and this Lease, no matter where located, until such time as such Part shall be replaced by a part or parts that have been incorporated or installed in or attached to the Facility and that meets the requirements for replacement Parts specified in Section 8(a). Immediately upon any replacement Part (except for a temporary replacement part) becoming incorporated or installed in or attached to the Facility as provided in Section 8(a), without further act, (i) title to the replaced part shall thereupon vest in the ~~Lessee~~User or its designee, free and clear of all rights of the ~~User Head Lessor~~, ~~the~~ Head Lessor, the Lessor and the Holders and the replaced part shall no longer be deemed a Part hereunder; (ii) title to such replacement Part shall thereupon vest in the ~~User~~ Head Lessor (subject to Permitted Liens); (iii) such replacement Part shall become subject to ~~the User Head Lease~~, the Head Lease and this Lease and be deemed part of the Facility for all purposes hereof to the same extent as the Parts

originally incorporated or installed in or attached to the Facility and (iv) so long as the Lien of the Loan Agreement has not been discharged, such replacement Part shall be subject to the Lien of the Loan Agreement.

(c) *Alterations, Modifications and Additions.*

The ~~Lessee~~Lessees or any permitted sublessee, as the case may be, at ~~its~~their sole cost and expense, shall make or cause to be made such alterations and modifications in and additions to the Facility as may be required from time to time by Applicable Law; *provided*, that the ~~Lessee~~Lessees or such permitted sublessee may in good faith contest the validity or application of any such requirement in any reasonable manner which does not adversely affect the Lessor's Head Lease Interest in the Facility or the existence or priority of the Lien of the Loan Agreement and does not involve any risk of the imposition of criminal liability or unindemnified civil liability on the Lessor or any Participant or any risk of the sale, forfeiture or loss of any material portion of the Facility. In addition, the ~~Lessee~~Lessees or any permitted sublessee, as the case may be, at ~~its~~their sole cost and expense, may from time to time make such alterations and modifications in, and additions to, the Facility as the ~~Lessee~~Lessees or such permitted sublessee reasonably may deem desirable, including the removal (without replacement) of Parts which the ~~Lessee~~Lessees or such permitted sublessee ~~deems~~deem obsolete or no longer appropriate or suitable for use in the Facility; *provided*, that any alterations, modifications, additions or removals pursuant to this Section 8(c) do not (i) diminish the value, utility, remaining useful life or estimated residual value of the Facility (assuming the Facility to be in the condition required by this Lease); (ii) cause the Facility to constitute "*limited use property*" within the meaning of Revenue Procedure 2001-28, as amended; (iii) cause the Facility to be commercially usable only by the ~~Lessee~~Authority, the User, the State or an Affiliate of any thereof or (iii) alter the primary function of the Facility as a wastewater collection and treatment works facility. Title to any severable Part not required by Applicable Law to be incorporated or installed in, or attached or added to, the Facility as the result of such alteration, modification, ~~removal or addition~~ or removal shall remain in the ~~Lessee~~User or such permitted sublessee, as the case may be, and may be removed at any time during the Lease Term; *provided*, that (i) such Part is in addition to, and not in replacement of or substitution for, any Part originally incorporated or installed in or attached or added to the Facility at the time of the delivery thereof hereunder or any Part in replacement of, or substitution for, any such Part, (ii) such Part is not otherwise required to be incorporated or installed in or attached to the Facility pursuant to the terms hereof, (iii) such Part can be removed from the Facility without damage and without diminishing the value, utility or remaining useful life of the Facility which the Facility would have had at such time had such alteration, modification, ~~removal or addition~~ or removal not occurred, assuming the Facility was maintained, serviced, repaired, overhauled and tested in the condition and manner required by the terms of this Lease (including as the Facility may have been upgraded from time to time in accordance with the requirements of this Lease), (iv) no Lease Event of Default shall have occurred and be continuing, and (v) the cost of such Part was not paid for or financed by the Trust or the Owner Participant (a "*Severable Part*"). Title to all other such Parts shall, without further act or payment, vest in the ~~User~~ Head Lessor and shall be subject to the ~~User Head Lease,~~ the Head Lease and this Lease and the ~~Lessee~~Lessees shall take any and all action necessary to ensure that the Lessor has the same legal access and other rights to such other Parts as the Lessor has to the Facility. Upon termination of this Lease in circumstances where the Facility is returned to the Lessor, the Lessor and the User shall have the right to purchase for its then fair

market value any such Severable Part not removed prior to the return to the Lessor (including return pursuant to the exercise of remedies under Section 17) of the Facility. If the Lessor or the User do not elect to purchase a Severable Part, the ~~Lessee~~Lessees may at ~~its~~their option either remove such Part or return the Facility with such Part intact (and in the case of such a return, title to such Part shall, without further act or payment, vest in the ~~User-Head Lessor~~ and be subject to ~~the User Head Lease and~~ the Head Lease).

SECTION 9. Event of Loss.

(a) Event of Loss.

Upon the occurrence of an Event of Loss with respect to the Facility, the ~~Lessee~~Lessees shall notify the ~~User-Head Lessor, the~~ Head Lessor, the Lessor and the Lender of such occurrence within ten (10) days thereof, and by written notice to the Lessor and the Lender given within fifteen (15) days after the occurrence of such Event of Loss ~~specifying, which~~ written notice shall specify the date of such Event of Loss and ~~describing~~describe the nature thereof (the “*Event of Loss Notice*”). The ~~Lessee~~Lessees shall purchase the Head Lease Interest by paying to the Lessor on the first Stipulated Loss Value Determination Date occurring after the ~~Lessee delivers~~Lessees deliver (or ~~is~~are required to deliver) the Event of Loss Notice (the “*Loss Payment Date*”): an amount equal to: (A) either (I) the Stipulated Loss Value for such Loss Payment Date or (II) if such Event of Loss is attributable to an act of the State of South Dakota (or any political subdivision thereof or any agency or instrumentality of either in the case of the events described in clauses (iii) and (iv) of the definition of Event of Loss), the higher of ~~such~~the Stipulated Loss Value (~~set forth on Exhibit C of the Lease Supplement~~ for such Loss Payment Date) and the Fair Market Sales Value of the Head Lease Interest, *plus* (B) any Lease Rent due and owing by the ~~Lessee~~Lessees prior to such Loss Payment Date that remains unpaid, together with interest at the Overdue Rate for the period from the due date thereof to the date of payment (for such Loss Payment Date) *plus* (C) Supplemental Rent, due and owing, to the extent susceptible to quantification, on or before such Loss Payment Date by the ~~Lessee~~Lessees to the Lessor or any other Person under the Operative Documents.

Upon payment in full of all amounts payable pursuant to this Section 9(a), (1) the obligation of the ~~Lessee~~Lessees to pay any Lease Rent shall be terminated as of the Loss Payment Date, (2) the Lease Term shall end and (3) the Lessor will be deemed to have transferred to the ~~Lessee~~Lessees, “as-is, where-is” without recourse or warranty (except as to the absence of Lessor’s Liens), all of the Head Lease Interest in and to the Facility and the ~~Lessee~~Lessees shall assume all obligations of the Head Lessee under the Head Lease. Upon such transfer, the Lessor shall request the Lender and (to the extent necessary or advisable) the Holders to execute and deliver to the ~~Lessee~~Lessees an appropriate instrument releasing the Facility from the Lien of the Loan 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 which shall be applied as required by Sections 10(e) and (h)) with respect to the Facility received at any time by the ~~User-Head Lessor, the~~ Head-Lessor, the ~~Lessor, the Lessee~~Authority, the Sublessee,

the User or any other permitted sublessee or any other Person from any Governmental Authority or other Person that do not exceed the amounts required to be paid by the ~~Lessee~~Lessees pursuant to Section 9(a) above shall be paid to the Lessor (or, if the Lien of the Loan Agreement has not been discharged pursuant to Section ~~7.01~~7.1 of the Loan Agreement, the Lender) and applied in reduction of the ~~Lessee's~~Lessees' obligations to pay such amounts if not previously paid (net of any and all costs, losses and expenses incurred by the Lessor in connection therewith) and the balance, or if all amounts required to be paid ~~by~~under Section 9(a)~~above~~ have been paid by the Lessee all such payments, shall be divided among the ~~User~~Head Lessor, the ~~Head~~Lessor, the ~~Lessor, the Lessee~~Authority, the Sublessee, the User or any permitted sublessee as their interests may appear.

(c) Requisition for Use with Respect to the Facility.

(i) If the Facility is requisitioned for use by any Governmental Authority (for so long as such requisition does not constitute an Event of Loss, at which time Section 9(a) will govern), all of the ~~Lessee~~Lessees' obligations under this Lease with respect to the Facility shall continue to the same extent as if such requisition had not occurred.

(ii) All payments received by the ~~User~~Head Lessor, the ~~Head~~Lessor, the ~~Lessor, the Lessee~~Authority, the Sublessee, the User or any other permitted sublessee or any other Person in connection with any such requisition for use during the Lease Term (other than any such requisition which constitutes an Event of Loss, as to which the provisions of Section 9(a) shall govern) or under a sublease or transfer then in effect from any government or any agency or instrumentality thereof for the use of the Facility during the Lease Term shall be paid over to, or retained by, the ~~Lessee~~Lessees or such permitted sublessee, as the case may be. All payments received by the ~~User Head~~Head Lessor, the Lessor, the ~~Head Lessor~~Authority, the ~~Lessor, Sublessee or~~ the Lessee, the User ~~Lessee~~User or any other such permitted sublessee or any other Person from any government or any agency or instrumentality thereof for the use of the Facility after the Lease Term and during the Head Lease Term shall be paid over to, or retained by, the Lessor (unless the ~~Lessee~~Lessees shall have exercised the Purchase Option, in which case all such payments shall be paid over to, or retained by, the ~~Lessee~~Lessees) and any such payments received for use of the Facility for any period after the Head Lease Term shall be paid over to, or retained by, the ~~User~~Head Lessor.

(iii) If an Event of Loss shall exist, or be deemed to exist, on the last day of the Lease Term (and the ~~Lessee~~Lessees shall not have exercised the Purchase Option), the ~~Lessee~~Lessees shall make the payments required to be made by ~~it~~them under Section 9(a) with respect to such Event of Loss on the last day of the Lease Term.

(d) Application of Payments During Existence of Defaults.

Any amount referred to in this Section 9 or in Section 10 which is payable to the ~~User~~Head Lessor, the ~~Head~~Lessor, the Lessee or any permitted sublessee shall not be paid to any such parties, or, if it has been previously paid directly to any such parties, shall not be retained by such parties, if at the time of such payment a Lease Event of Default shall have occurred and

be continuing, but shall be paid to and held by the Lessor (or, if the Lien of the Loan Agreement has not been discharged pursuant to Section ~~7.01~~7.1 of the Loan Agreement, the Lender) as security for the ~~Lessee's~~Lessees' Obligations, and shall be applied towards payment of the ~~Lessee's~~Lessees' Obligations, and at such time as there shall not be continuing any such Lease Event of Default such amount (to the extent not so applied) shall be paid over to the ~~Lessee~~Lessees or ~~its~~their designee.

SECTION 10. Insurance.

(a) Property and Liability Insurance.

Subject to the Lessee rights set forth in Section 10(c), the ~~Lessee~~Lessees will at all times carry and maintain, or cause to be carried and maintained, at the ~~Lessee's~~Lessees' sole cost and expense (or, if a sublease is then in effect, the permitted sublessee's expense) with nationally recognized insurance companies licensed in the State of South Dakota (i) all risk physical damage insurance insuring against all risks of physical loss or damage to the Facility on such terms and conditions not less favorable to the Additional Insureds or the Facility as is then carried by the Lessee or the User with respect to ~~its~~ other similar property owned, leased, subleased or operated by the ~~Lessee or the User~~Lessees; *provided* that, such insurance for the Facility shall always be in an amount equal to the replacement cost (without deducting for depreciation) for the Facility; and (ii) comprehensive general liability insurance for bodily injury, death, environmental damage and property damage resulting from the use, operation, ownership and possession of the Facility in any such amounts and on such terms and conditions not less favorable to the Additional Insureds or the Facility as is then carried by the ~~User or the Lessee~~Lessees with respect to other property owned, leased, subleased or operated by the ~~User or the Lessee~~Lessees which is similar to the Facility; *provided* that such liability insurance shall in any event be in an amount not less than (a) \$[_____] per occurrence if the Dollar-denominated [unenhanced long term senior debt obligations of the ~~Lessee~~]User are rated at least [AA-] by S&P and [Aa3] by Moody's, and (b) otherwise, \$[_____] per occurrence. All losses in respect of all risk physical damage insurance will be adjusted with the insurers by the ~~Lessee~~Lessees. All losses in respect of the insurance required by this Section 10 shall be paid to the Lessor or, in the case of liability insurance, to the Person entitled thereto (except payments in respect of losses covered by all risk physical damage insurance shall be payable to the Lender, until the Lien of the Loan Agreement has been discharged pursuant to Section ~~7.01~~7.1 thereof, and thereafter to the Lessor); *provided* that, in the event that a Lease Event of Default or Lease Major Default shall have occurred and is continuing, such loss shall not be adjusted without the consent of the Lessor and, so long as the Lien of the Loan Agreement has not been discharged pursuant to Section ~~7.01~~7.1 of the Loan Agreement, the Lender. The ~~Lessee~~Lessees shall, at ~~its~~their own expense, make, or cause to be made, all proofs of loss and take all other steps necessary to collect the proceeds of such insurance. All insurance obtained by the ~~Lessee~~Lessees pursuant to this Section 10 shall be at ~~its~~their own expense or the expense of a permitted sublessee (but without affecting the ~~Lessee's~~Lessees' obligation to pay such expense if such permitted sublessee does not pay).

(b) *Insurance Policies.*

Any insurance policies carried in accordance with this Section 10, and any policies taken out in substitution or replacement for any such policies, (i) shall name the Lessor, the Trustee, the Trust, the Trust Company, the Owner Participant, ~~the Strip Surety Provider~~ and the Holders as additional insureds (collectively, the “*Additional Insureds*”) as their respective interests may appear (but without imposing on any such party liability to pay premiums with respect to such insurance), and (ii) as to physical damage insurance, shall name the Lender, for so long as the Lien of the Loan Agreement shall not have been discharged pursuant to Section ~~7.01~~7.1 thereof, and thereafter the Lessor as loss payee, and shall include waivers by the insurer of all claims for premiums against each Additional Insured. Each such insurance policy shall provide that all of the provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the LesseeLessees), (A) shall operate in the same manner as if there were a separate policy covering each insured, (B) shall be primary without right of contribution from any insurance carried by any Additional Insured, (C) shall provide that the insurers waive any rights of setoff, counterclaim, deduction or subrogation against the Additional Insureds and that none of the respective interests of the Additional Insureds in such policies shall be invalidated by any act or omission of, or breach of warranty or condition contained in such policies by, the LesseeLessees or, in the case of any Additional Insured, any other insured (except that the property insurance may provide that it can be cancelled upon not less than ten (10) days notice in the case of nonpayment of premium, fraud or material misrepresentation by the LesseeLessees), (D) shall provide that, in respect of the respective interests of each Additional Insured in such policies, the insurance shall not be invalidated by any action or inaction of the LesseeAuthority, the Sublessee, the User ~~Lessee~~ or any permitted sublessee or any Affiliate of any thereof and (E) shall provide that no cancellation, expiration or lapse of coverage for nonpayment of premium or otherwise, no reduction in coverage and no other change of coverage which adversely affects the interests of any Additional Insured, and shall be effective as to any such Additional Insured until thirty (30-days-10) days in the case of cancellation of the property insurance due to nonpayment of premium, fraud or material misrepresentation by the Lessee) after receipt by such Additional Insured of written notice from the insurers of such cancellation, expiration, lapse, reduction or change. The LesseeLessees shall, at ~~its~~their own expense, make, or cause to be made, all proofs of loss and take all other commercially reasonable steps necessary to collect the proceeds of such insurance.

(c) *Self Insurance.*

So long as it is the User’s policy to self insure in respect of liability risks relating to the Facility, the LesseeUser may, in satisfaction of the Lessees’ insurance obligations contained in Section 10(a), ~~cause or permit the User to~~ self insure with respect to such risks up to (i) \$[_____] per occurrence if the Dollar-denominated unenhanced long term senior debt obligations of the {User} are rated at least AA- by S&P and Aa3 by Moody’s, and (ii) otherwise, \$[_____] per occurrence. ~~{If the Lessee causes or permits the User to self insure pursuant to this Section 10(c), the Lessee shall not be required to maintain the insurance set forth in Section 10(a)(ii).}~~ In neither case may the User ~~or the Lessee, as the case may be,~~ discriminate against the Facility as compared to other similar property facilities owned, leased, subleased or operated by the User or the LesseeAuthority.

(d) *Notification of Claim.*

The ~~Lessee~~Lessees shall notify the Lessor, ~~the Strip Surety Provider~~ and the Owner Participant (and so long as the Lien of the Loan Agreement shall not have been discharged pursuant to Section ~~7.01~~7.1 of the Loan Agreement, the Lender), as soon as possible under the circumstances, of any claim under any insurance policy required to be maintained hereunder with respect to the Facility in excess of \$[500,000] or of the occurrence of any event which may be reasonably expected to give rise to any such claim.

(e) *Application of Insurance Proceeds.*

Any insurance payments received under policies that the ~~Lessee is~~Lessees are required to maintain, or cause to be maintained, pursuant to Section 10(a) shall be applied as follows:

(i) if such payments are received with respect to loss or damage not constituting an Event of Loss, such payments shall be applied in payment for repairs or for replacement property in accordance with the terms of Sections 6 and 8, if not already paid for by the ~~Lessee~~Lessees (or to reimburse the ~~Lessee~~Lessees for such repairs or replacements already paid for by the ~~Lessee~~Lessees), and any balance remaining after compliance with such Sections 6 and 8 with respect to such loss shall be paid to the ~~Lessee~~Lessees; or

(ii) if such payments are received with respect to an Event of Loss, so much of such payments remaining as shall not exceed the amounts required to be paid by the ~~Lessee~~Lessees pursuant to Section 9(a) shall be applied in reduction of the ~~Lessee's~~Lessees' obligation to pay such amounts if not already paid by the ~~Lessee~~Lessees, and to reimburse the ~~Lessee~~Lessees if such amounts shall have been paid, and the balance, if any, of such payments shall be promptly paid over to, or retained by, the ~~Lessee~~Lessees.

(f) *Insurance Certificates.*

The ~~Lessee~~Lessees shall furnish, or cause to be furnished, to each Additional Insured, on the Closing Date and each anniversary thereafter, a report from an independent firm of insurance brokers reasonably acceptable to the Lessor and the Lender (the "*Insurance Broker*"); describing in reasonable detail the insurance then carried and maintained with respect to the Facility and stating the opinion of such firm that (i) such insurance complies with the terms of this Section 10, (ii) that such insurance together with any self-insurance permitted hereby complies with the requirements of this Section 10 and (iii) the coverages, terms and conditions of the insurance carried pursuant to Section 10(a) is not less favorable to the Additional Insureds or the Facility than the insurance then carried by the User or the Authority with respect to other property owned, leased, subleased or operated by the User or the ~~Lessee~~Authority which is similar to the Facility. In addition, the ~~Lessee~~Lessees will also cause such Insurance Broker to deliver to each Additional Insured on or prior to the Closing Date and on or prior to the date of expiration of any insurance policy referenced in a previously delivered certificate of insurance, a new certificate of insurance, substantially in the same form as delivered by the ~~Lessee~~Lessees to such parties on the date hereof except for the changes in the report or the coverage consistent

with the terms hereof. To the extent that the insurance (other than self insurance) required under this Section 10 shall not be maintained, any Additional Insured may at its sole option, but shall be under no duty to, provide such insurance and, in such event, the ~~Lessee~~Lessees shall, upon demand, reimburse such Additional Insured for the reasonable cost thereof to such Additional Insured, together with interest thereon at the Overdue Rate from the date of payment by such ~~Person~~Additional Insured to the date of reimbursement; *provided*, that no exercise by the Lessor of such option shall in any way affect the provisions of this Lease, including the provisions that failure by the ~~Lessee~~Lessees to maintain, or cause to be maintained, the prescribed insurance shall constitute a Lease Event of Default under Section 16(i).

(g) *Copies and Descriptions of Policies.*

If requested by the Lessor, ~~the Strip Surety Provider~~ or any Holder, the ~~Lessee~~Lessees will arrange to be delivered to the Lessor, ~~the Strip Surety Provider~~ or such Holder, as the case may be, copies of any insurance policies carried on the Facility. If requested by the Lessor or any Holder, the ~~Lessee~~Lessees shall promptly furnish to the Lessor or such Holder, as the case may be, an Officer's Certificate setting forth all insurance maintained by or on behalf of the ~~Lessee~~Lessees pursuant to this Section 10 and describing such policies, if any, including the amounts of coverage, any deductible amounts, the names of the insurance providers and a general description of each such policy's terms and the status of any self-insurance.

(h) *Insurance For Own Account.*

Each of the Lessor, the ~~Trustee~~Trust, the Owner Participant, ~~the Strip Surety Provider~~ and the Holders shall have the right to carry insurance on the Facility for its own benefit and, unless required to be maintained by the ~~Lessee~~Lessees hereunder, at its expense; *provided, however*, that no such ~~property~~ insurance shall be maintained if its maintenance would adversely affect ~~the any~~ Lessee's ~~or the User's~~ rights to maintain insurance as to the Facility or the cost to ~~the any~~ Lessee ~~or the User~~ of obtaining or maintaining such insurance or the amount payable under any policy required to be maintained by the ~~Lessee~~Lessees hereunder. Notwithstanding any other terms herein to the contrary, the proceeds of such insurance maintained by the Lessor, the ~~Trustee~~Trust, the Owner Participant, ~~the Strip Surety Provider~~ or any Holder, shall be payable to such Person.

SECTION 11. Liens.

The ~~Lessee~~Lessees shall not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to the Facility or title thereto or any interest therein, the Head Lease Interest or ~~the User Head Lease Interest or~~ in this Lease except (a) the respective rights of the ~~User Head Lessor, the~~ Head Lessor, the Lessor, the Owner Participant, ~~the each~~ Lessee, the Sublessee, any other permitted sublessee and the Holders under the Operative Documents; (b) the rights of others under agreements or arrangements to the extent expressly permitted in Section 6(a); (c) Liens for Taxes payable by the ~~Lessee~~Lessees either not yet due or being diligently contested in good faith by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of the Facility or any material portion thereof or any interest therein and do not involve the risk of a criminal or unindemnified civil liability being imposed on the Lessor or any Participant (and for the payment of which adequate reserves

have been provided pursuant to generally accepted accounting principles); (d) suppliers', mechanics', workers', repairers', employees' or other like Liens arising in the ordinary course of business and for amounts the payment of which is either not yet delinquent or is being diligently contested in good faith by appropriate proceedings, so long as such proceedings do not involve any imminent danger of the sale, forfeiture or loss of the Facility or any material portion thereof or any interest therein and do not involve the risk of a criminal or unindemnified civil liability being imposed on the Lessor or any Participant (and for the payment of which adequate reserves have been provided pursuant to generally accepted accounting principles); (e) Liens arising out of judgments or awards against ~~the~~either Lessee with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith by appropriate proceedings and with respect to which there shall have been secured a stay of execution pending such proceeding (and for the payment of which adequate reserves have been provided pursuant to generally accepted accounting principles); (f) Lessor's Liens; (g) customary salvage and similar rights of insurers under policies of insurance maintained with respect to the Facility; (h) Liens related to any temporary replacement parts so long as the ~~Lessee is~~Lessees are diligently pursuing substitution of permanent replacement Parts therefor; (i) purchase money security interests incurred in connection with the acquisition of Severable Parts, which security interests cover only the Severable Parts acquired; (j) easements, rights of way, exceptions, encroachments, reservations, restrictions, conditions or limitations existing as of the Closing Date, or created or incurred thereafter provided the same do not interfere with or impair the operation or use of the Facility as contemplated by the Operative Documents or have a material adverse effect on the current or residual value, the remaining useful life or the utility of the Facility or any use therein, [(k) ~~Liens~~Liens shown on the land registry excerpt of the Facility Site as of the Closing Date; and (l) ~~Liens resulting from encumbrances permitted by [Section 11(d)(ii)(A)] of the Participation Agreement~~statutory Liens securing the Bonds]. Liens described in clauses (a) through [(l)] above are referred to herein as "*Permitted Liens*". The ~~Lessee~~Lessees shall promptly, at ~~its~~their own expense, take or cause to be taken such action as may be necessary to duly discharge any Lien other than a Permitted Lien arising at any time.

SECTION 12. Further Assurances.

~~The~~Each Lessee shall, at its own expense, promptly and duly execute, or otherwise authenticate, and deliver to the Lessor such further documents and assurances and take such further action as the Lessor may from time to time reasonably request in order more effectively to carry out the intent and purpose of this Lease and the other Operative Documents and to establish and protect the rights and remedies created or intended to be created in favor of the Lessor hereunder, including, if requested by the Lessor, the execution, or authentication, and delivery of supplements or amendments hereto, in recordable form, subjecting any replacement Part to this Lease and the recording or filing of counterparts hereof or of financing statements or continuation statements with respect hereto. Notwithstanding the foregoing, ~~the~~each Lessee hereby authorizes the Lessor to file any and all financing statements or continuation statements with respect to this Lease without ~~the~~such Lessee's authentication, to the extent permitted by Applicable Law.

SECTION 13. Return of the Facility.

(a) ~~(a)~~—Return of the Facility [Subject to review by Fromatome]

(i) Unless the Head Lease Interest with respect to the Facility shall have been transferred to the ~~Lessee~~Lessees pursuant to this Lease, the ~~Lessee~~Lessees shall, at ~~its~~their own expense, promptly return the Facility to the Lessor or its designee upon the expiration of this Lease. Upon such return, the Facility shall be free and clear of all Liens (other than Permitted Liens described in clauses [(j) - (l)] of the definition thereof) and shall be in as good condition as it was in on the Closing Date (ordinary wear and tear excepted) and shall have been maintained and operated in compliance with Section 6 hereof. At the time of such return, ~~the~~each Lessee shall make available all such rights which are necessary, desirable or useful to operate the Facility pursuant to the ~~Support and Operating Agreement~~ and in accordance with Applicable Law; *provided, however*, that nothing in the preceding proviso shall derogate from the terms of any Service Contract. Simultaneously with such return of the Facility, the ~~Lessee~~Lessees shall (A) deliver to the Lessor or its designee the following items: (i) originals or clear copies of all leases, subleases, licenses, certificates, permits, authorizations and approvals relating to the use and occupancy of the Facility; (ii) (x) plans and specifications for all mechanical, electrical and HVAC systems pertaining to the Facility, and (y) as-built drawings, blueprints, operating and repair manuals (including original manufacturers' operating manuals), engineering logs and preventive maintenance records relating to the Facility or any alteration, modification or additions to the Facility, any replacement Parts or any Severable Part not removed from the Facility at the time of, or in connection with, the return of the Facility; (iii) keys (including, without limitation, electronic security cards) to all locks contained in the Facility; and (iv) to the extent not otherwise described above, originals or copies of all documents, plans, maps, specifications, manuals, drawings and other documentary materials relating to the installation, operation, maintenance, construction, design, modification and repair of ~~such~~—the Facility as shall be in the ~~Lessee's~~Lessees' or any Affiliate of ~~the~~either Lessee's possession and as shall be necessary or useful for the continued operation of the Facility. The ~~Lessee~~Lessees shall effect return of the Facility by executing and delivering to the Lessor an instrument or instruments reasonably satisfactory to the Lessor or its designee evidencing surrender by the ~~Lessee~~Lessees of all of the ~~Lessee's~~Lessees' rights to the Facility under this Lease and to the possession thereof.

(ii) At least 90 days but not more than 120 days prior to the return of the Facility pursuant to this Section 13(a), the ~~Lessee~~Lessees shall at ~~its~~their expense (or at the expense of a permitted sublessee) cause an independent engineer to inspect the Facility and the Facility Site to determine its compliance with the Return Acceptance Criteria and shall promptly provide the results thereof to the Lessor and the Owner Participant. If the Facility shall not meet such Return Acceptance Criteria, the ~~Lessee~~Lessees shall, at ~~its~~their own expense, take such actions as may be necessary to enable the Facility to meet such Return Acceptance Criteria prior to such return.

(iii) Upon the request of the Lessor, and at the ~~Lessee's~~Lessees' sole expense, ~~the each~~ Lessee shall cooperate with the Lessor and use ~~their~~its best efforts in obtaining the valid and effective issuance, or, as the case may be, transfer or amendment of all governmental permits necessary or, in the reasonable opinion of the Lessor, desirable for the ownership of the Head Lease Interest or the operation of the Facility by the Lessor or any employee, contractor, transferee, sublessee or assignee thereof; *provided*, that the Lessee shall not bear the cost of ongoing permitting fees.

(b) Environmental and Safety Report.

~~(b) — Environmental and Safety Report. [Subject to review by Owner Participant's environmental consultant]~~—At least 60 days but not more than 180 days prior to the return of the Facility pursuant to this Section 13 or a transfer to a third party in connection with the exercise of remedies under Section 17 or pursuant to Section 14 hereof, the ~~Lessee~~Lessees will at ~~its~~their own cost and expense provide to the Lessor or its designee an environmental and safety report as described by the succeeding sentence. The environmental and safety report shall (i) be in conformity with common industry practice of environmental and safety consultants in the United States of America, (ii) be satisfactory in form and substance to the Owner Participant, the Lessor or its designee with respect to the environmental condition and safety of the Facility, (iii) be prepared by an environmental and safety consultant reasonably acceptable to the Lessor (or its designee) and the Owner Participant, (iv) estimate, to the extent feasible and reasonable, the current liabilities under Applicable Law, including, without limitation, Environmental Laws in connection with the Facility, (v) assess the potential sources of reasonably foreseeable future liabilities under Applicable Law in connection with the Facility, (vi) contain a description of the environmental and safety conditions of the Facility and (vii) provide the information as of a date no more than 180 days prior to the date of return (an “*Environmental and Safety Report*”); *provided* that the ~~Lessee~~Lessees shall represent to the Lessor or its designee in writing on the date of return that no material adverse change in the environmental and safety conditions of the Facility has occurred in the period between the date of such report and the date of return. The investigation connected with the ~~environmental and safety report~~Environmental and Safety Report shall include, without limitation of the foregoing, information concerning (i) any areas of the Facility or the Facility Site which contain or are reasonably likely to contain or emit Hazardous Substances or show or are reasonably likely to develop conditions representing a risk to human health and life or the environment cognizable under or governed by Applicable Law or permit requirements (including, without limitation, permitted wastewater discharge limits, exhaust levels and all other requirements arising under Environmental Laws) by any Governmental Authority (“*Environmental and Safety Standards*”) ~~and;~~ (ii) any violations of or non-compliance with Environmental Laws; and (iii) any other potential liabilities arising under Environmental Laws, including, without limitation, those relating to releases of Hazardous Substances and environmental contamination. Upon completion of the investigation, the ~~Lessee~~Lessees shall, at ~~its~~their sole cost and expense, diligently and in good faith (~~i~~1) conduct any reasonable additional investigations and provide to the Lessor (or its designee) reports thereof that may be recommended by the environmental and safety consultant or requested by the Lessor as necessary to identify and determine the extent and likelihood of any presence or emission of or contamination by any Hazardous Substances and conditions representing a risk to human health and life or the environment ~~that may be present in excess of Environmental and Safety Standards~~ and any violation of, or non-compliance with, Applicable

Law and (~~#~~2) develop and execute a plan to correct and remedy such contamination, emission, conditions presenting risks, violation or non-compliance ~~in compliance~~ with Applicable Law. The Lessor (or its designee) and the ~~Lessee~~Lessees shall consult with one another concerning the appropriate scope of all reports and investigations and remedial efforts subsequent to the ~~environmental and safety report~~Environmental and Safety Report, and the ~~Lessee~~Lessees shall keep the Lessor (or its designee) informed with respect to any discussions and negotiations with any applicable Governmental Authority concerning potential plans to correct any violation or non-compliance or to conduct remedial activities. Any remediation plan shall include, but shall not be limited to, plans for full response, remediation, removal, or other corrective action, and the protection, or mitigative action associated with the protection, of natural resources including wildlife, aquatic species, vegetation and Persons associated with, or employed at, the Facility or any modification thereto, required by any Applicable Law.

SECTION 14. Alternatives at the End of the Lease Term; Burdensome Events.

(a) Purchase Option.

~~Lessee~~The Lessees may give the Lessor, the Owner Participant, the Lender and the Holders irrevocable written notice in accordance with Section 14(b) (a “**Purchase Notice**”), to purchase from the Lessor on the Lease Expiration Date, the Head Lease Interest with respect to the Facility by paying an amount equal to (1) the Purchase Option Price for the Facility (such Purchase Option Price to be payable in installments on the dates and in the amounts set forth on Exhibit E to the Lease Supplement, as the same may be adjusted pursuant to Section 3(d) hereof) and (2) all accrued and unpaid Rent (including, without limitation, as Supplemental Rent, all reasonable out-of-pocket costs and expenses incurred by the Lessor, the Owner Participant, ~~the Strip Surety Provider~~, each Holder and the Lender in connection with the ~~Lessee’s~~Lessees’ exercise of such Purchase Option) through and including the last day of the Lease Term (such Rent to be payable on the Lease Expiration Date) (the “**Purchase Option**”); *provided, however*, that (I) if a Lease Major Default or Lease Event of Default, a Sublease Major Default or a Sublease Event of Default, or a User Lease Major Default or User Lease Event of Default shall have occurred and be continuing on the date of the Purchase Notice, it shall be a condition to the consummation of the Purchase Option that no such Lease Major Default, Lease Event of Default, Sublease Major Default, Sublease Event of Default, User Lease Major Default or User Lease Event of Default shall be continuing on the Lease Expiration Date and (II) no Lease Major Default, Lease Event of Default, Sublease Major Default, Sublease Event of Default, User Lease Major Default or User Lease Event of Default shall have occurred and be continuing on the Lease Expiration Date (it being understood that the ~~Lessee~~Lessees shall have the right to cure any such Lease Major Default, Lease Event of Default, Sublease Major Default, Sublease Event of Default, User Lease Major Default or User Lease Event of Default concurrently with ~~its~~the exercise of the Purchase Option). Upon payment in full of the ~~initial installment of the Purchase Option Price (or the entire Purchase Option Price in the event that the Lessee has not provided evidence reasonably satisfactory to the Owner Participant that the Equity Payment Agreement and the Acceptable Lease Collateral are in full force and effect and pledged to the Trust and provides for payment of the future installments of the Purchase Option Price due following the Lease Expiration Date)~~Purchase Option Price and all amounts constituting Rent payable pursuant to the preceding sentence, the Head Lease Interest in and to the Facility shall be automatically conveyed to the Lessee or its designee, and without recourse or warranty (except

as to the absence of Lessor's Liens), and the Lessor shall, at the Lessee's expense, provided that the Lessor's expenses shall be reasonable and documented, execute and deliver to the Lessee/Lessees appropriate instruments conveying the Head Lease Interest in and to the Facility to the Lessee/Lessees or its/their designee. If the Lessee/Lessees shall fail to exercise the Purchase Option or if the Lessee/Lessees shall not be entitled to exercise the Purchase Option due to the existence of any circumstance referred to in the proviso of the first sentence of this Section 14(a) (after giving effect to the cure rights described therein), the Lessee/Lessees shall have no further rights pursuant to this Section 14(a).

(b) *Notices.*

The Lessor agrees to deliver to the Lessee (with a copy to the Sublessee and the User Lessee) a reminder notice in the form of Exhibit B hereto as to the Lessee/Lessees's Purchase Option at least 30 months but not more than 36 months prior to the Lease Expiration Date (the "**Reminder Notice**"). Failure to give such notice shall not alter the rights or obligations of the Lessee/Lessees, the Lessor or the Owner Participant in respect of the Purchase Option or give rise to any liability on the part of the Lessor or the Owner Participant. Notwithstanding the foregoing, if the Lessor shall not previously have delivered a Reminder Notice, then the Lessor's delivery of the Lessor's Election Notice pursuant to the last sentence of this Section 14(b) shall constitute the Reminder Notice. The Lessee/Lessees may elect the Purchase Option by delivering an irrevocable notice to the Lessor, the Owner Participant and the Holders not more than 36 months prior to the Lease Expiration Date and not later than the later of (i) 24 months prior to such Lease Expiration Date, and (ii) 30 days after ~~the~~either Lessee shall have received a Reminder Notice. If the ~~Lessee has~~Lessees have not elected the Purchase Option, the Lessor shall either (A) elect either the Service Contract Option or the Return Option with respect to the Facility as provided in Section 14(c) by delivering a written notice (the "**Lessor's Election Notice**") to the Lessee in the form of Exhibit C hereto with copies to the Holders not more than 24 months prior to, but not less than 18 months prior to, the Lease Expiration Date or (B) be deemed to have elected the Service Contract Option as set forth in Section 14(c) below.

(c) *Lessor's Options.*

In the event the ~~Lessee does~~Lessees do not elect or ~~is~~are not permitted to elect the Purchase Option in accordance with the preceding paragraphs, the Lessor shall elect the Service Contract Option or the Return Option with respect to the Facility by giving notice of such election to the Lessee/Lessees in accordance with Section 14(b), with copies to the Holders. Such notice shall (x) direct the Lessee/Lessees to provide one or more ~~Service Contracts~~Capacity Purchase Bids, and one or more Operation Bids (if specified in such notice to the Lessee/Lessees) with respect to the Facility, all in accordance with Section 14(d)(i) (the "**Service Contract Option**") or (y) direct the Lessee to deliver to the Lessor the Facility on the Lease Expiration Date in accordance with Section 14(d)(~~ix~~ii) (the "**Return Option**"). If the Lessor has not elected between the Service Contract Option or the Return Option on or prior to the date which is 18 months prior to the Lease Expiration Date, the Lessor shall be deemed to have elected the Service Contract Option.

(d) *Exercise of Lessor's Options.*

(i) *Exercise of Service Contract Option.* Upon the election or deemed election of the Service Contract Option by the Lessor with respect to the Facility, the Lessees shall procure Qualified Operators to act as the Operator under the Support and Operating Agreement and the Lessor and the ~~Lessee~~Lessees shall use commercially reasonable efforts to procure one or more Capacity Purchase Agreements for the sale of the entire Capacity (or such lesser amount as shall be specified by the Owner Participant) for the Service Contract Period from the Facility, in each case on or before the Lease Expiration Date pursuant to this Section 14(d).

(A) ~~(ii)~~ Support and Operating Agreement.

(1) ~~(A)~~—If the Lessor shall have elected or ~~be~~been deemed to have elected the Service Contract Option with respect to the Facility, the ~~Lessee~~Lessees shall procure one or more Operation Bids obtained from one or more Qualified Operators to enter into an ~~amendment and restatement of~~Operator Accession Agreement, substantially in the form of Exhibit E to the Support and Operating Agreement (the "Operator Accession Agreement") as necessary to cause such Qualified Operator to become the ~~Qualified~~ Operator ~~thereunder~~under the Support and Operating Agreement with respect to the Facility;

(2) ~~(B)~~ Each Operation Bid shall be accompanied by:

~~(1) any proposed amendments to or an amendment and restatement of the Support and Operating Agreement;~~

a. ~~(2)~~—a certificate executed by each proposed Qualified Operator stating that such Qualified Operator has agreed ~~in principle~~ to enter into the Operator Accession Agreement and has agreed to comply with the terms of the Support and Operating Agreement in accordance with its Operation Bid; and is willing to cooperate with the Lessor's and the Owner Participant's reasonable due diligence efforts with respect to such Operation Bid; ~~and is willing to negotiate in good faith with the Lessor and the Owner Participant with respect to the final terms of the Support and Operating Agreement;~~

b. ~~(3)~~—sufficient information to permit the Lessor and the Owner Participant to establish such proposed Qualified Operator's compliance with the criteria for a Qualified Operator set forth in the definition thereof and all other applicable requirements of the Operative Documents; and

c. ~~(4)~~—any other documents reasonably requested by the Lessor or the Owner Participant to allow the Lessor and the Owner Participant to assess, in their reasonable discretion, the

compliance of the Operation Bid with the terms of the Operative Documents.

(3) ~~(C)~~ Upon receipt of the Operation Bids and the information referred to in the preceding clause (B2), the Lessor and the Owner Participant shall conduct such due diligence that they in their good faith discretion consider necessary to evaluate the compliance of the Operation Bids with this Section 14 and the Operative Documents ~~and negotiate in good faith the final terms of the Support and Operating Agreement to be entered into with the Qualified Operator selected by the Lessor and the Owner Participant from the Operation Bids. The Lessee.~~ The Lessees shall co-operate and assist in such due diligence as reasonably requested by the Lessor and the Owner Participant; and no later than the Bid Acceptance Date, the Lessor shall notify the ~~Lessee~~ Lessees which Operation Bid it will accept. ~~Such notification shall be accompanied by a certification executed by the Lessor~~ Upon the acceptance by the Lessor of an Operation Bid by a Qualified Operator, the User agrees that it will enter into the Operator Accession Agreement with such Qualified Operator and the Lessor agrees that, subject to the satisfaction of all conditions set forth in Section 14(d)~~(vi)~~ (E) hereof, it will execute the ~~Support and Operating~~ Operator Accession Agreement with the Qualified Operator ~~(to the extent finalized, in the form attached to such certification or, if not finalized, as subsequently negotiated with the Qualified Operator).~~ The parties hereto agree that, if as a result of this Section 14(d)~~(ii)~~, there would be more than one Qualified Operator for the Facility, the Lessee and the Lessor will negotiate in good faith with such operators to enter into multiple supplements to such Support and Operating Agreement to evidence the respective obligations of each Qualified Operator for the Facility; and the User.

(B) ~~(iii)~~ Submission of Capacity Purchase Bids.

(1) ~~(A)~~ If the Lessor shall have elected or ~~be~~ shall have been deemed to have elected the Service Contract Option with respect to the Facility, then the Lessor and the ~~Lessee~~ Lessees shall use commercially reasonable efforts to procure and cause to be submitted to the Lessor and the Owner Participant one or more Capacity Purchase Bids from one or more Qualified Bidders.

(2) ~~(B)~~ Each Capacity Purchase Bid shall be accompanied by:

a. ~~(1)~~ the proposed form of Capacity Purchase Agreement with respect to the ~~applicable~~ Facility into which the proposed Qualified Bidder is willing to enter;

b. ~~(2)~~ a certificate executed by ~~each~~ such proposed Qualified Bidder stating that such Qualified Bidder has agreed in

principle to enter into a Capacity Purchase Agreement in accordance with its Capacity Purchase Bid, is willing to cooperate with the Lessor's and the Owner Participant's reasonable due diligence efforts with respect to such Capacity Purchase Bid, and is willing to negotiate in good faith with the Lessor and the Owner Participant with respect to the final terms of the Capacity Purchase Agreement;

c. ~~(3)~~ sufficient information to permit the Lessor and the Owner Participant to establish such proposed Qualified Bidder's compliance with the criteria for a Qualified Bidder set forth in the definition thereof and all other applicable requirements of the Operative Documents;

d. ~~(4)~~ any other documents reasonably requested by the Lessor or the Owner Participant to allow the Lessor and the Owner Participant to assess, in their reasonable discretion, the compliance of the Capacity Purchase Bid with the terms of the Operative Documents; and

e. ~~(5)~~ a certificate executed by ~~the~~each Lessee (with such supporting information as may be reasonably required by the Lessor or the Owner Participant) that the Capacity Purchase Bids in the aggregate satisfy the CPA Criteria.

(3) ~~(C)~~ The Capacity Purchase Bids in the aggregate shall provide for the Service Contract Period (i) the purchase of the entire Capacity (or such lesser amount as shall be acceptable to the Owner Participant) for the Facility for the Service Contract Period; (ii) the expected realization of Net Capacity Revenue for the Facility on or prior to each date set forth in Exhibit D to the Lease in an amount at least equal to the Service Contract Amount set forth opposite each such date; and (iii) liquidated damages payable upon a default by the Qualified Bidder in amounts at least equal to the Service Contract Liquidated Damages for the ~~applicable~~ Facility set forth on Exhibit E to the Lease for the dates reflected on such Exhibit E to the Lease (the "*CPA Criteria*");

(4) ~~(D)~~ Upon receipt of the Capacity Purchase Bids and the information referred to in the preceding clause ~~(b2)~~, the Lessor and the Owner Participant shall conduct such due diligence that they in their good faith discretion consider necessary to evaluate the compliance of the Capacity Purchase Bids with this Section 14(d) and the Operative Documents and negotiate in good faith the final terms of the Capacity Purchase Agreement to be entered into with each proposed Qualified Bidder. The ~~Lessee~~Lessees shall co-operate and assist in such due diligence as reasonably requested by the Lessor and the Owner Participant. No later than the Bid Acceptance Date ~~with respect to the~~

Facility, the Lessor shall notify the Lessee/Lesseees which Capacity Purchase Bids it will accept. Such notification shall be accompanied by a certification executed by the Lessor for each accepted Capacity Purchase Bid that, subject to the satisfaction of all conditions set forth in Section 14(d)(vE) hereof, it will execute a Capacity Purchase Agreement with the relevant Qualified Bidder (to the extent finalized, in the form attached to such certification or, if not finalized, as subsequently negotiated with the relevant Qualified Bidder).

(5) Rejection of Qualified Bidder. Notwithstanding any provision of any Operative Document, the Owner Participant shall have the right in its sole discretion to cause the Lessor to reject a Qualified Bidder proposed by the Lessee; provided, however, that each of the Owner Participant and the Lessor shall be deemed to have accepted a proposed Qualified Bidder complying with all the criteria set forth in the definition thereof, unless it shall have notified the Lessees that it rejects such proposed Qualified Bidder on or prior to the Bid Acceptance Date. If the Lessor rejects a proposed Qualified Bidder complying with all of the criteria set forth in the definition thereof, the Lessees' obligations under this Section 14(d) shall be deemed satisfied with respect to the Capacity and Capacity Revenue for which such Qualified Bidder had agreed to enter into a Capacity Purchase Agreement, and the Lessor shall be deemed to have elected the Return Option with respect to such Capacity, and the Owner Participant, the Lessor and the Lessees shall comply with all of the requirements of Section 14(d)(ii) with respect thereto.

(C) ~~(E)~~ Lessees as Qualified Operator or Qualified Bidder; No Qualified Bidder as Operator. In the Owner Participant's discretion, if ~~the~~either Lessee shall meet the definition of Qualified Operator or Qualified Bidder (in either case, notwithstanding clause (ix) of the definition thereof) then, ~~the~~such Lessee shall be entitled to submit an Operation Bid or a Capacity Purchase Bid; *provided, however,* that neither the Lessee nor any Tax Affiliate thereof shall be entitled to be accepted as both a Qualified Operator and ~~accepted~~ as a Qualified Bidder; *provided further,* that the Lessor and the Owner Participant shall, in any event, be entitled to reject ~~the~~such Lessee and any Tax Affiliate from acting as ~~an~~Qualified Operator or being accepted as a Qualified Bidder if acceptance in either such capacity could adversely affect the qualification of the Service Contract Option as a "service contract" under Section 7701(e)(i) of the Code. No Qualified Bidder whose Capacity Purchase Bid has been accepted or any Tax Affiliate thereof shall be permitted to be a Qualified Operator.

(D) ~~(iv)~~ Refinancing of the Prepaid Rent Loan Balance; Residual Value Insurance.

(1) ~~(A)~~ If the Lessor accepts Capacity Purchase Bids that in the aggregate satisfy the CPA Criteria with respect to the Facility, the

~~Lessee~~Lessees shall retain an Interest Rate Bid Banker to use its reasonable best efforts to locate, at the ~~Lessee's~~Lessees' cost and expense, one or more Refinancing Lenders ready, willing and able to make one or more Refinancing Loans to enable the Lessor to repay on the Lease Expiration Date the Prepaid Rent Loan Balance. The Lessor, the Owner Participant and ~~the~~each Lessee agree that they will take any action reasonably requested by any other of such Persons reasonably necessary in connection with the matters contemplated by this Section 14(d)(~~iv~~D) and enter into such additional agreements and such supplements or amendments to or consents or waivers under each of the Operative Documents as may reasonably be required by such other Person, any Loan Participant or any Refinancing Lender to effect the transactions contemplated in connection with such matters.

(2) ~~(B)~~ If the Lessor accepts Capacity Purchase Bids that in the aggregate satisfy the CPA Criteria with respect to the Facility, then promptly following the Bid Acceptance Date the ~~Lessee~~Lessees shall procure firm offers from insurers that satisfy the Residual Value Insurance Standard (“*Acceptable Residual Insurers*”) who are ready, willing, able and qualified to provide such firm offers for residual value insurance payable on the Service Contract Expiration Date for the benefit of the Trust and the Refinancing Lenders in an amount equal to the Residual Value Insurance Amount (“*Residual Value Insurance*”). The terms and conditions of any Residual Value Insurance shall be reasonably acceptable to the Trust and the Refinancing Lenders. Further, ~~(A)~~x the Lessor shall (and the ~~Lessee~~Lessees shall arrange for the Refinancing Lenders to) enter into such documents and agreements as may be required by the Acceptable Residual Insurers in order to obtain the issuance of such Residual Value Insurance in accordance with the bid procured on behalf of the Lessor by the ~~Lessee~~Lessees and as accepted by the Lessor and the Refinancing Lenders, ~~(B)~~y the ~~Lessee~~Lessees will bear the cost of such Residual Value Insurance and ~~(C)~~z the ~~Lessee~~Lessees will bear the reasonable expenses incurred by the Lessor and the Refinancing Lenders with respect to such bids and offers for Residual Value Insurance [and the reasonable cost of an appraisal of the Expected Residual Value of the Lessor’s Interest for purposes of determining the levels of such Residual Value Insurance (which appraisal shall be initiated by the ~~Lessee~~Lessees and completed not less than three (3) months prior to the Lease Expiration Date).]

(E) ~~(v)~~ *Conditions Precedent*. The obligations of the Lessor to enter into the ~~Support and Operating~~Operator Accession Agreement and a Capacity Purchase Agreement and the respective obligations of each of the parties described above to consummate the transactions contemplated by this Section 14(d), shall be subject to the fulfillment to the satisfaction of the Lessor, the Owner Participant and each Refinancing Lender of the following conditions

precedent (unless waived in writing by the Lessor, the Owner Participant and each Refinancing Lender) ~~in each case with respect to the Facility;~~

(1) ~~(A)~~—On or before the Lease Expiration Date the conditions set forth in Section 13 of the Lease shall have been fully and completely complied with by the ~~Lessee~~Lessees and no Lease Event of Default shall exist and be continuing ~~under the Lease~~.

(2) ~~(B)~~—The Lessor, the Owner Participant and each Refinancing Lender shall have each received such documents or other evidence as it shall have reasonably requested with respect to the Qualified Operator, any Qualified Bidder and each Refinancing Lender, as the case may be, to establish (x) compliance with each of the criteria set forth in the definition of “Qualified Operator”, “Qualified Bidder” and “Refinancing Lender” and (y) compliance with each of the applicable requirements of this Section 14(d).

(3) ~~(C)~~—The Prepaid Rent Loan Balance shall have been paid in full and each Refinancing Lender shall qualify as a Refinancing Lender.

(4) ~~(D)~~—The Owner Participant shall have received a letter from any financial advisor or investment banker involved in obtaining any Refinancing Lender (a “*Debt Advisor*”), in form and substance satisfactory to it, to the effect that such Debt Advisor has not directly or indirectly offered any interest in or under any Operative Document for sale to (or solicited any offer to buy from) any Person other than such Refinancing Lender and not more (taking into account any offer or solicitation by any other Debt Advisor) than such a number of other financial institutions, each of which would qualify as an “accredited investor” as defined in Rule 501(a) promulgated by the ~~United States Securities and Exchange Commission under the 1933~~ the Securities Act, or any successor rule, as would permit the placement of such interest in a transaction exempt from the registration requirements of ~~such 1933~~ the Securities Act pursuant to Section 4(2) of ~~such 1933~~ the Securities Act, or pursuant to any comparable successor section of ~~such 1933~~ the Securities Act or a successor law.

(5) ~~(E)~~—The Lessor and the Owner Participant shall have received on the Lease Expiration Date a legal opinion from independent counsel reasonably satisfactory to the Lessor and the Owner Participant, dated the Lease Expiration Date, to the effect that the terms of the Operator Accession Agreement, the Support and Operating Agreement and each Capacity Purchase Agreement, the performance by the parties thereto of their respective obligations thereunder and the arrangements contemplated by the Service Contract Option do not violate any Applicable Law and that the Lessee and all Tax Affiliates thereof have effectively waived any and all rights under Applicable Law that would cause the Operator Accession Agreement, the Support and Operating

Agreement or any Capacity Purchase Agreement to be void, voidable or otherwise unenforceable in whole or in part, such opinion to be in form and substance reasonably satisfactory to the Lessor and the Owner Participant.

(6) ~~(F)~~—The Lessor and the Owner Participant shall have received on the Lease Expiration Date legal opinions; from independent counsel to each Qualified Bidder (whose Capacity Purchase Bid has been accepted by the Lessor) and ~~the each~~ Qualified Operator (whose Operation Bid has been accepted by the Lessor), dated the Lease Expiration Date, having the same scope as the opinions delivered by ~~the each~~ Lessee's counsel on the Closing Date (to the extent relevant) and covering such other matters as the Lessor or the Owner Participant shall reasonably request, such opinions to be in form and substance reasonably satisfactory to the Lessor and the Owner Participant and such counsel to be reasonably satisfactory to the Lessor and the Owner Participant.

(7) ~~(G)~~—On the Lease Expiration Date, the ~~Support and Operating Agreement (and any amendment and restatement thereof or supplement thereto required under Section 14(d)(ii))~~ Operator Accession Agreement and the Capacity Purchase Agreement(s) shall have been duly authorized, executed and delivered by the Qualified Operator (whose Operation Bid has been accepted by the Lessor) or the relevant Qualified Bidder (whose Capacity Purchase Bid has been accepted by the Lessor), as the case may be, and shall be in full force and effect (assuming due authorization, execution and delivery by the Lessor).

(8) ~~(H)~~—The Owner Participant shall have received the following, in each case in form and substance reasonably satisfactory to it:

a. ~~(1)~~—an incumbency certificate of (i) each Qualified Bidder whose Capacity Purchase Bid has been accepted by the Lessor and ~~of the~~ (ii) each Qualified Operator (whose Operation Bid has been accepted by the Lessor), in each case regarding the officers of such Person authorized to execute and deliver the documents referred to in this Section 14(d)(i) to which it is a party and any other documents or agreements delivered in connection therewith;

b. ~~(2)~~—certified copies of all documents evidencing the corporate or other authorizing actions of (i) each Qualified Bidder whose Capacity Purchase Bid has been accepted ~~and of by~~ the Lessor and (ii) each Qualified Operator (whose Operation Bid has been accepted by the Lessor), in each case, including without limitation, resolutions of the board of directors of such Person duly authorizing the execution, delivery and performance of the Capacity Purchase Agreement or the ~~Support and~~

~~Operating~~Operator Accession Agreement, as the case may be, and each other document or agreement delivered in connection therewith; and

c. ~~(3)~~—certified copies of the certificate of incorporation, by-laws (or other comparable organizational or governing documents) of (i) each Qualified Bidder (whose Capacity Purchase Bid has been accepted by the Lessor) and ~~of the~~(ii) each Qualified Operator (whose Operation Bid has been accepted by the Lessor).

(9) ~~(4)~~—As of the Lease Expiration Date, all required notices, filings, registrations, orders, permits, waivers, exemptions, authorizations and approvals required to be made or obtained under Applicable Law shall have been made or obtained with or from all Governmental Authorities which are necessary for the consummation of the transactions contemplated by the Operator Accession Agreement, the Support and Operating Agreement and the Capacity Purchase Agreement(s) (assuming the use of good faith best efforts by the Lessor to obtain the same to the extent action by it shall be required), and each Capacity Purchase Agreement executed and delivered by each Qualified Bidder (whose Capacity Purchase Bid has been accepted by the Lessor), the Operator Accession Agreement and the Support and Operating Agreement ~~and any amendment, restatement or supplement thereto~~ shall have been permitted to become effective or approved by a relevant Governmental Authority.

(10) ~~(5)~~—No change shall have occurred in any Applicable Law on or before the Lease Expiration Date which, in the reasonable opinion of the Owner Participant or its counsel, would make the performance of any obligation of the Lessor under the Support and Operating Agreement, the Capacity Purchase Agreement or any other Operative Document illegal.

(11) ~~(6)~~—As of the Lease Expiration Date, there shall not have occurred an Event of Loss or any event or condition which, with notice or the passage of time or both, would constitute an Event of Loss.

(12) ~~(7)~~—As of the Lease Expiration Date, all Taxes including transfer taxes, filing fees, value added taxes and stamp taxes, if any, payable in connection with the execution, delivery, performance, recording, registration and filing of the Capacity Purchase Agreement or in connection with the transactions contemplated thereby or by this Section 14(d), or in connection with the making of any Refinancing Loan, shall have been duly paid in full or otherwise provided for to the satisfaction of the Lessor and the Owner Participant.

(13) ~~(8)~~—As of ~~each applicable~~the Bid Acceptance Date and through the ~~applicable~~—Lease Expiration Date, no action or proceeding

shall have been instituted nor shall any action be threatened before any court, arbitrator or other Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any court, arbitrator or other Governmental Authority to set aside, restrain, enjoin or prevent the consummation of the transactions contemplated by the Operator Accession Agreement, the Support and Operating Agreement, the Capacity Purchase Agreement(s) or the Service Contract Option or which draws into question the legality or enforceability of the Operator Accession Agreement, the Support and Operating Agreement, the Capacity Purchase Agreement(s) or the Service Contract Option.

(14) ~~(N)~~ As of ~~each~~the Lease Expiration Date, (i) each Capacity Purchaser shall have become a party to the appropriate Capacity Purchase Agreement and ~~the operator~~each Qualified Operator shall have entered into ~~an amendment, restatement and/or supplement to the Support and Operating~~the Operator Accession Agreement, (ii) the Trust Agreement shall have been amended to add ~~the Support and Operating Agreement and~~ each Capacity Purchase Agreement to the Trust Estate and (iii) the Loan Agreement shall have been amended to add ~~the Support and Operating Agreement and~~ each Capacity Purchase Agreement to the Collateral to the extent required by any Refinancing Lender.

(15) ~~(O)~~ All action shall have been taken as is reasonably required by any Refinancing Lender to effect on behalf of the Refinancing Lenders a first priority security interest in the Service Contract Option Collateral.

(16) ~~(P)~~ Each of the Owner Participant, the Lessor and each Refinancing Lender shall have received such other certificates and opinions as reasonably requested by such party and all other matters and proceedings taken in connection with the Service Contract Option shall be reasonably satisfactory to the Owner Participant, the Lessor and each Refinancing Lender.

(17) ~~(Q)~~ ~~The~~Each Qualified Operator (whose Operation Bid has been accepted by the Lessor), the Lessor, the Owner Participant and each Qualified Bidder (whose Capacity Purchase Bid has been accepted by the Lessor) shall have obtained all necessary material licenses, permits, consents and approvals from applicable Governmental Authorities as is required to execute, deliver and perform each agreement to which it is or is to become a party, including without limitation, the Operator Accession Agreement, the Support and Operating Agreement and any Capacity Purchase Agreement, as the case may be.

(18) ~~(R)~~ All easements and rights and access required or advisable for purposes of operating or maintaining the Facility and performing the obligations of the ~~Qualified~~ Operator under the Support

and Operating Agreement shall have been issued or otherwise available to the Lessor, the Owner Participant and ~~the~~each Qualified Operator, in each case without imposition of conditions, rights of appeal and other limitations (other than such conditions or other limitations which are customary or which would not otherwise materially adversely affect operation of the Facility).

(19) ~~(S)~~—The matters set forth in Sections 14(d)(~~iii~~(A)) and 14(d)(~~iii~~(D)) shall have been fully consummated and the Operator Accession Agreement and the Support and Operating Agreement ~~(or amendments, restatements and/or supplements thereto, as applicable)~~ and each Capacity Purchase Agreement with each Qualified Bidder shall have been executed and delivered.

(20) ~~(T)~~—On or before the Lease Expiration Date, the Lessee shall have obtained and delivered to the Lessor and the Refinancing Lenders, firm offers from Acceptable Residual Value Insurers who are ready, willing, able and qualified to provide Residual Value Insurance. As of the Lease Expiration Date such Residual Value Insurance shall be in full force and effect.

(21) ~~(U)~~—The Owner Participant shall have received the Service Contract Option Opinion.

(F) ~~(vi)~~—Payment of Basic Rent and Supplemental Rent. The ~~Lessee agrees~~Lessees agree to pay on the Lease Expiration Date any unpaid Lease Rent due and payable on or before the Lease Expiration Date and any unpaid and accrued Supplemental Rent as of the Lease Expiration Date.

~~(vii) — Rejection of Qualified Bidder. — Notwithstanding any provision of any Operative Document, the Owner Participant shall have the right in its sole discretion to cause the Lessor to reject a Qualified Bidder proposed by the Lessee; provided, however, that each of the Owner Participant and the Lessor shall be deemed to have accepted a proposed Qualified Bidder complying with all the criteria set forth in the definition thereof, unless it shall have notified the Lessee that it rejects such proposed Qualified Bidder on or prior to the Bid Acceptance Date. If the Lessor rejects a proposed Qualified Bidder complying with all of the criteria set forth in the definition thereof, the Lessee's obligations under this Section 14(d) shall be deemed satisfied with respect to the Capacity and Capacity Revenue for which such Qualified Bidder had agreed to enter into a Capacity Purchase Agreement, and the Lessor shall be deemed to have elected the Return Option with respect to such portion, and the Owner Participant, the Lessor and the Lessee shall comply with all of the requirements of Section 14(d)(ix) with respect thereto.~~

(G) ~~(viii)~~—Elections upon Failure to Consummate Service Contract Option . In the event that the Service Contract Option shall have been elected or deemed to have been elected by the Lessor, but the refinancing of the Prepaid Rent Loan Balance contemplated in Section 14(d)(~~iv~~(D)) and the conditions

precedent as set forth in Section 14(d)(~~v~~**i**)(**E**) above shall have not occurred or been fulfilled other than as a result of a breach by the ~~Lessee~~**Lessees** of any of ~~its~~**their** obligations under this Section 14(d), then the ~~Lessee~~**Lessees** shall have the right, exercisable no later than two **(2)** Business Days after the Lease Expiration Date, to elect the ~~purchase option~~**Purchase Option** pursuant to Section 14(a)(i) ~~of the Lease~~ (provided that any [Acceptable Lease Collateral] shall remain in full force and effect through [such two-Business Day period]); *provided, however*, that the ~~Lessee~~**Lessees** shall pay (i) all costs, expenses, claims arising directly or indirectly in connection with the failure to consummate the Service Contract Option (including reasonable attorney's fees), (ii) all amounts payable by the ~~Lessee~~**Lessees** under the Operative Documents and interest for each day that elapses from the Lease Expiration Date to such second following Business Day at the Overdue Rate on the amounts otherwise payable by the ~~Lessee~~**Lessees** on the Lease Expiration Date (determined on the assumption that it had theretofore exercised the ~~purchase option~~**Purchase Option** pursuant to Section 14(a)(i) ~~of the Lease~~) and (iii) shall fully indemnify the Lessor and the Owner Participant from the foregoing.

(H) Adjustment of Service Contract Amounts and Liquidated Damages. The Service Contract Amounts and Service Contract Liquidated Damages shall be adjusted to preserve Net Economic Return (i) at any time there is an adjustment pursuant to Section 3(d) hereof and (ii) to reflect the interest rate and amortization schedule of the Refinancing Loan determined pursuant to Section 14(d)(i)(D) hereof. Any such adjustment shall be made in accordance with the constraints and procedures set forth in Section 3(d) hereof. The documentation for effectuating the Service Contract Option shall contain a mechanism for adjusting the Service Contract Amounts and the Service Contract Liquidated Damages to reflect the difference in any period between the actual interest rate for such period and the [Assumed Floating Rate].

(ii) ~~(ix)~~ *Return Option.* In the event that the ~~Lessee~~**Lessees** shall not have elected the ~~purchase option~~**Purchase Option** pursuant to Section 14(a)(i) ~~of the Lease~~, the Lessor may, at its sole option, elect to require the ~~Lessee~~**Lessees** to comply with Section 13 of the Lease and to surrender possession of the Facility to the Lessor on the Lease Expiration Date, such election to be made by delivering **a notice of such election**, on or before the date that the Service Contract Option shall be deemed to have been elected (or at any time thereafter through the date that is ninety (90) days prior to the Lease Expiration Date, so long as the Lessor pays (without right of reimbursement or indemnity from the ~~Lessee~~**Lessees**) all costs and expenses that may have been incurred through such date in connection with any election or deemed election of the Service Contract Option), to each of the ~~Lessee~~**Lessees** and the Lender, ~~a notice of such election~~. Upon the delivery of the notice and satisfaction of the conditions referred to in the preceding sentence, the ~~Lessee~~**Lessees** shall have no further obligation with respect to the Facility to procure Qualified Operators to enter into the ~~Support and Operating~~**Operator Accession** Agreement or Qualified Bidder(s) to enter into Capacity Purchase Agreements, to arrange for a Refinancing Loan or take any of the other actions

contemplated by this Section 14(d); *provided* that the ~~Lessee~~Lessees must on the Lease Expiration Date pay any unpaid Lease Rent due and payable on or before such Lease Expiration Date and any unpaid Supplemental Rent due and accrued as of such date. Upon compliance by the ~~Lessee~~Lessees with Section ~~13 of the Lease, the~~13, this Lease shall terminate with respect to the Facility. In the case that the Return Option shall have been elected and shall become effective with respect to the Facility, the Lessor shall be entitled to take such action with respect to the Facility as it shall deem appropriate, including without limitation, the possession thereof, the operation thereof (either directly or through a third party operator), the subleasing thereof and the sale of capacity therefrom. In the case that the Return Option shall have been elected and shall become effective with respect to the Facility, and provided no Lease Event of Default or Lease Major Default shall have occurred and be continuing, the Lessor shall pay to the Lessee on the Lease Expiration Date the Prepaid Rent Loan Balance.

~~(x) — Adjustment of Service Contract Amounts and Liquidated Damages. The Service Contract Amounts and Service Contract Liquidated Damages shall be adjusted to preserve Net Economic Return (i) at any time there is an adjustment pursuant to Section 3(d) hereof and (ii) to reflect the interest rate and amortization schedule of the Refinancing Loan determined pursuant to Section 14(d)(iv) hereof. Any such adjustment shall be made in accordance with the constraints and procedures set forth in Section 3(d) hereof. The documentation for effectuating the Service Contract Option shall contain a mechanism for adjusting the Service Contract Amounts and the Service Contract Liquidated Damages to reflect the difference in any period between the actual interest rate for such period and the [Assumed Floating Rate].~~

(e) ***Burdensome Events.***

If , but only if, the User Lessor has exercised its purchase option under Section 14(e) of the User Lease and if a Burdensome Event shall have occurred and be continuing, the ~~Lessee~~Lessees shall have the right, at ~~its~~their sole cost and expense, by written notice delivered to the Lessor and, if the Lien of the Loan Agreement has not been discharged pursuant to Section ~~7.01~~7.1 of the Loan Agreement, the Lender within 180 days of such Burdensome Event specifying the scheduled date of purchase (which shall be the next Termination Value Determination Date occurring after such notice), to irrevocably elect to purchase the Head Lease Interest in the Facility for a purchase price (the “***Burdensome Buyout Price***”) equal to: (A) in the case of a Burdensome Event described in clause (b) of the definition thereof that is attributable to an act of the State of South Dakota or any political subdivision thereof that is discriminatory in nature (it being understood that a law of general application shall not be deemed to be discriminatory), the higher of the sum of the Fair Market Sales Value of the Head Lease Interest and any Lease Rent due and owing by the ~~Lessee~~Lessees prior to such Termination Value Determination Date that remains unpaid, together with interest at the Overdue Rate for the period from the due date thereof to the date of payment on such Termination Value Determination Date and the Termination Value (set forth on Exhibit D of the Lease Supplement for such Termination Value Determination Date); or (B) in the case of any other Burdensome Event, the Termination Value for the Facility for such Termination Value Determination Date, *plus* in ~~either the~~ case of either (A) or (B) all costs and expenses (including legal fees and expenses) incurred by all parties to the Operative Documents with respect thereto.

Notice by the User Lessee under the User Lease of its election to exercise its purchase option under Section 14(e) of the User Lease or notice by the Sublessee under the Sublease of its election to exercise its purchase option under Section 14(e) of the Sublease shall be deemed to be notice by the Lessee of the exercise by the Lessee of its purchase option under this Section 14(e).

(f) *Exercise of Burdensome Buyout.*

If the ~~Lessee elects~~Lessees elect to purchase the Head Lease Interest pursuant to Section 14(e), upon payment to the Lessor of (A) the Burdensome Buyout Price, *plus* (B) Lease Rent that was due and payable prior to the applicable Termination Value Determination Date, together with interest at the Overdue Rate for the period from the due date thereof to the date of payment, *plus* (C) all other amounts, whether Supplemental Rent or otherwise, due and owing on or before (or after, to the extent susceptible to quantification on or before) the Termination Value Determination Date by the ~~Lessee~~Lessees to the Lessor, the Holders or any other Person under the Operative Documents, all of the Lessor's right, title and interest in and to the Head Lease Interest shall be deemed automatically to have been transferred by the Lessor to the ~~Lessee or its designee~~Lessees or their designees, "as-is, where-is" without recourse or warranty of any kind, except with respect to the absence of Lessor's Liens. In connection with such transfer of the Head Lease Interest, the ~~Lessee~~Lessees shall prepare and the Lessor shall execute, as the case may be, a termination of this Lease and an assignment of the Head Lease Interest and such other documents and opinions as the ~~Lessee~~Lessees may reasonably request, all at the expense of the ~~Lessee~~Lessees as documented by the Lessor.

(g) *Termination of Lease.*

Upon compliance by the Lessee with the provisions of Section 14(a) in connection with the Purchase Option or Section 14(e) in connection with a Burdensome Event (other than, in connection with the Purchase Option, its obligation to pay the installments set forth on Exhibit E of the Lease Supplement following the Lease Expiration Date ~~and provided the Equity Payment Agreement and the pledge of the Account Collateral to the Trust is in full force and effect and provides security for the payment of all such installments~~), this Lease shall terminate except in the case of the Purchase Option for the obligation of the Lessee to pay the installments set forth on Exhibit E of the Lease Supplement due following the Lease Expiration Date and except for any Supplemental Rent (x) surviving pursuant to Section 14 of the Tax Indemnification Agreement or Section 15 of the Participation Agreement or (y) in respect of liabilities and obligations of the ~~Lessee~~Lessees which have accrued but not been paid or which are in dispute as of the date of such transfer.

(h) *Cooperation.*

If the Lessor shall have elected or shall be deemed to have elected the Service Contract Option, then, at the request of the ~~Lessee~~Lessees, the Trust and the Owner Participant shall undertake reasonably to cooperate with the ~~Lessee~~Lessees in complying with its obligations under Section 14(d)(i), including in connection with any request for tender, request for proposal, concession application or similar application or procedure involving any Governmental Authority, environmental agency or similar body or entity that the ~~Lessee deems~~Lessees deem necessary or appropriate to satisfy ~~its~~their obligations under Section 14(d)(i); *provided, however,*

that no party shall as a result of such undertaking be required to take any action which (i) increases the unindemnified costs or risks to such party associated with the transaction contemplated by the Operative Documents or (ii) in any way alters such party's rights or obligations under the Operative Documents; *provided further*, that, with respect to any such action requested by the ~~Lessee~~Lessees, the ~~Lessee~~Lessees shall reimburse the Owner Participant and the Trust for ~~its~~their costs and expenses relating to or arising from ~~its~~their consideration of and compliance with such request.

SECTION 15. Voluntary Termination.

(a) Termination by Sale.

On or after the fifth anniversary of the Closing Date, the ~~Lessee~~Lessees shall have the right at ~~its~~their option on at least 90 days' (but not more than 360 days') prior notice to the Lessor, the Owner Participant and, so long as the Lien of the Loan Agreement shall not have been discharged pursuant to Section ~~7.04~~7.1 of the Loan Agreement, the Lender, specifying a proposed date of termination (which shall be a Rent Payment Date) (the "**Termination Date**"), to terminate this Lease; *provided* such notice includes a certificate of ~~the~~each Lessee's board of directors that the Facility has become economically or technologically obsolete or surplus to the User's requirements. Notice by the User Lessee under the User Lease of election of its option under Section 15 of the User Lease to terminate the User Lease or notice by the Sublessee under the Sublease of election of its option under Section 15 of the Sublease to terminate the Sublease shall be deemed to be notice by the Lessee of the exercise of its option to terminate the Lease in respect of the Facility; *provided, however*, that the ~~Lessee~~Lessees may not exercise ~~its~~their option to terminate this Lease under this Section 15 if the Sublessee and the User Lessee have not exercised the corresponding option under Section 15 of the Sublease and the User Lease, as the case may be.

During the period following the giving of such notice of termination until the Termination Date, the ~~Lessee~~Lessees as non-exclusive ~~agent~~agents for the Lessor shall use ~~its~~their best efforts to obtain bids for the cash purchase of, and the Lessor or its agents may endeavor to sell, the Head Lease Interest. In the event that the ~~Lessee receives~~Lessees receive an offer to purchase the Head Lease Interest, the Lessee shall immediately certify in writing to the Lessor and the Owner Participant the amount and terms of such offer, the proposed date of such purchase and the name and address of the party submitting such offer (which shall not be the ~~Lessee~~Lessees or any permitted sublessee then subleasing the Facility or an Affiliate of either thereof or any Person with an arrangement with the ~~Lessee~~Lessees or any permitted sublessee then subleasing the Facility or an Affiliate of either thereof for the continued use of the Facility for the benefit of the ~~Lessee~~Lessees or any permitted sublessee then subleasing the Facility or any of their Affiliates). Unless the Lessor shall have previously elected to take possession of the Facility in accordance with Section 15(c), on the Termination Date, or such other date of sale as shall be consented to in writing by the Lessor, which date shall thereafter be deemed the Termination Date, the ~~Lessee~~Lessees (as ~~agent~~agents for the Lessor) shall (i) arrange the sale of the Head Lease Interest for cash to whomever shall have submitted the highest bid for the cash purchase of the Head Lease Interest and (ii) upon delivery to the Lessor of the cash purchase price, together with all amounts required under Section 15(b) below, deliver the Facility in accordance with the return conditions of Section 13 together with an assignment of the Head

Lease Interest, or cause the Facility and the Head Lease Interest to be delivered, conveyed and assigned, to the party which shall have agreed to purchase the Head Lease Interest in the manner which may be agreed upon ~~between~~among the ~~Lessee~~Lessees and such party and to assume all obligations of the Head Lessee under the Head Lease. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the ~~Lessee~~Lessees to obtain bids or otherwise take any action in connection with any such sale other than to transfer to the purchaser selected in accordance with this Section 15(a) certified by the ~~Lessee~~Lessees to the Lessor, without recourse or warranty except with respect to the absence of Lessor's Liens, all of the Lessor's right, title and interest in and to the Head Lease Interest against receipt of the payments provided for herein.

(b) *Payments Due Upon Sale of Head Lease Interest.*

The total selling price realized at such sale pursuant to this Section 15 shall be paid over to the Lessor and, in addition, on the Termination Date, the ~~Lessee~~Lessees shall pay in immediately available funds (i) to the Lessor an amount equal to the excess, if any, of (A) the Termination Value with respect to the Facility as of the Termination Date over (B) the net proceeds of the sale of the Head Lease Interest, plus (ii) to the Lessor and any other Person entitled thereto, all Supplemental Rent on or before (or after, to the extent susceptible to quantification on or before) the Termination Date, plus (iii) to the Lessor, all overdue Lease Rent payable before the Termination Date together with interest at the Overdue Rate for the period from the due date thereof to the date of payment.

(c) *Revocation of Notice by the Lessee; Preemptive Election by the Lessor.*

Provided that the Lessor has not elected to retain its Head Lease Interest as provided below, the Lessee may, not less than ten (10) days prior to any proposed Termination Date under this Section 15 and on not more than two (2) occasions during the Lease Term, irrevocably notify the Lessor, the Owner Participant and the Holders (if applicable) in writing of its election to revoke a termination notice given by ~~the Lessee~~them pursuant to ~~paragraph (a) of this Section 15(a); provided, however,~~ that notice by the User Lessee under the User Lease of its election to revoke a termination notice given by ~~the User Lessee~~it under Section 15(a) of the User Lease or notice by the Sublessee under the Sublease of its election to revoke a termination notice given by ~~the Sublessee~~it under Section 15(a) of the Sublease shall be deemed ~~a~~ notice by the ~~Lessee~~Lessees of ~~its~~their election to revoke the corresponding termination notice given ~~by them~~ under Section 15(a). Notwithstanding the foregoing provisions of this Section 15, the Lessor may, not less than thirty (30) days prior to the Termination Date, notify the ~~Lessee~~Lessees in writing of its preemptive election to take possession of the Facility; *provided* that the ~~Lessee~~Lessees shall not theretofore have revoked ~~its~~their notice to terminate pursuant to this paragraph (c). Upon receipt of such notice from the Lessor of such preemptive election, the ~~Lessee~~Lessees shall cease ~~its~~their efforts to arrange the sale of the Head Lease Interest as provided above and shall reject all bids theretofore or thereafter received, if any. If the Lessor exercises its preemptive election, on the Termination Date the Lessor shall pay to the Lender the amount required to pay in full (after giving effect to any installment of Lease Rent paid on such date) the aggregate outstanding unpaid principal amount of the Loan Certificates together with accrued and unpaid interest thereon, if any, and the ~~Lessee~~Lessees shall pay to the Lender all Supplemental Rent due and payable to the Holders. The ~~Lessee~~Lessees shall deliver, or cause to

be delivered, the Facility to the Lessor in accordance with the terms of Section 13 and shall pay (i) all Lease Rent payable on or before the Termination Date, *plus* (ii) all unpaid Supplemental Rent due on or before (or after, to the extent susceptible to quantification on or before) the Termination Date.

(d) *Termination of Lease.*

Upon conveyance of the Head Lease Interest to a purchaser thereof as contemplated by Section 15(a) or a return of the Facility to the Lessor as contemplated by Section 15(c), as the case may be, and upon payment by the ~~Lessee~~Lessees of all amounts payable by the ~~Lessee~~Lessees under either Section 15(b) or 15(c), as the case may be, the obligations of the ~~Lessee~~Lessees to pay Lease Rent shall cease and the Lease Term shall end as of the Termination Date. Upon termination of this Lease as provided herein, ~~neither~~none of the ~~Lessee~~Lessees, any permitted sublessee, ~~the User, nor~~or any Affiliate of ~~the~~either Lessee shall operate or otherwise use the Facility for any purpose.

(e) *Effect of No Sale or Preemptive Delivery to the Lessor.*

If, on the Termination Date, no sale of the Head Lease Interest shall have occurred or the ~~Lessee~~Lessees shall not have paid to the Lessor all amounts described in Section 15(b) or, if applicable, the ~~Lessee or its designee has~~Lessees or their designees have not delivered the Facility to the Lessor pursuant to Section 15(c), the ~~Lessee's~~Lessees' notice given pursuant to Section 15(a) shall be deemed to be revoked as of such date and this Lease shall continue in full force and effect. Whether or not such sale occurs, the ~~Lessee~~Lessees shall reimburse the Lessor, the Holders and the Owner Participant for all costs and expenses reasonably incurred by them (including reasonable legal fees and expenses) relating to the ~~Lessee's~~Lessees having given any notice of termination pursuant to this Section 15.

SECTION 16. Lease Events of Default.

The following events shall constitute Lease Events of Default (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the ~~Lessee~~Lessees shall fail to make any payment of Lease Rent, Stipulated Loss Value, Termination Value or Fair Market Sales Value (without regard to whether such payments are subject to appropriation or are limited by constraints on capacity or issuance limitations under South Dakota law) when due and such failure shall continue for a period of five (5) Business Days after the ~~earlier of (x) the date~~day on which ~~the Lessee has knowledge of such nonpayment and (y) receipt by the Lessee of a written notice of nonpayment from the Owner Participant, the Lessor or any of the Holders; or the Lessee~~such payment shall have become due; or the Lessees shall fail to make any other payment of Supplemental Rent and such failure shall continue unremedied for a period of

thirty (30) days after receipt by ~~the~~either Lessee of a written notice of nonpayment from the Owner Participant, the Lessor or any of the Holders; or

(b) the ~~Lessee~~Lessees shall fail, in any material respect, to perform or observe any other covenant or condition to be performed or observed by ~~it~~either of them hereunder (other than a covenant or condition referred to in ~~clauses~~clause (a), (d), (e), (f), (g), (i), (j), (k) or (l) of this Section 16) or under any other Operative Document (other than the Tax Indemnification Agreement) and such failure shall not have been cured within a period of thirty (30) days after receipt by ~~the~~either Lessee of a written notice thereof from the Owner Participant, the Lessor or any of the Holders; provided that if such failure is capable of cure but cannot be cured during such 30-day period, no Lease Event of Default shall occur so long as the ~~Lessee is~~Lessees are diligently attempting to cure and ~~does~~do so within 120 days of such receipt; or

(c) any representation or warranty made by the ~~Lessee~~Lessees herein or in any other Operative Document (other than the Tax Indemnification Agreement) shall prove to be untrue, inaccurate or misleading in any material respect and, if capable of cure, shall not have been cured within 45 days of receipt by ~~the~~either Lessee of written notice thereof from the Owner Participant, the Lessor or any of the Holders; or

(d) ~~the~~either Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy, insolvency or other similar laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against ~~the~~either Lessee in any such proceeding, or ~~the~~either Lessee shall, by voluntary petition, answer or consent, seek relief under the provisions of any other now existing or future bankruptcy, insolvency or other similar law providing for the reorganization or winding-up of corporations or other entities or for an agreement, composition, extension or adjustment with its creditors~~s~~, or shall adopt a resolution of liquidation; or

(e) with respect to either Lessee, an order, judgment or decree shall be entered in any proceeding by any court of competent jurisdiction appointing, without the consent of the relevant Lessee, a receiver, trustee, assignee or liquidator or similar official of ~~the~~such Lessee, or of any substantial part of its property, or sequestering any substantial part of the property of ~~the~~such Lessee, and any such order, judgment or decree or appointment or

sequestration shall remain in force undismissed, unstayed or unvacated, for a period of 90 days after the date of entry thereof; or

(f) a petition against ~~the~~either Lessee in a proceeding under applicable bankruptcy, insolvency or similar laws as now or hereafter in effect shall be filed and shall not be withdrawn or dismissed within 90 days thereafter, or if, under the provisions of any law providing for reorganization or winding-up of corporations or other entities which may apply to ~~the~~such Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of ~~the~~such Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unvacated for a period of 90 days; or

(g) any additional proceeding similar to those referred to in Section 16(d), (e) or (f) above for the relief of financially distressed debtors under the laws of any jurisdiction is entered into by ~~the~~either Lessee voluntarily; or any additional proceeding similar to those referred to in Section 16(d), (e) or (f) above for the relief of financially distressed debtors under the laws of any jurisdiction is entered into by or with respect to ~~the~~either Lessee involuntarily and shall remain in force undismissed, unstayed or unvacated for a period of 90 days; *or*

(h) (A) the ~~Lessee~~Lessees shall have exercised ~~its~~the Purchase Option under Section 14(a) and shall have failed to pay all of the amounts required to be paid thereunder on the date specified for payment thereunder; or

- (B) the Lessor shall have elected, or shall be deemed to have elected, the Service Contract Option with respect to the Facility pursuant to Section 14(d)(i), and the ~~Lessee~~Lessees shall have failed to satisfy ~~its~~their obligations under Section 14(d)~~—hereof(i)~~, including in relation to a Refinancing Loan, a ~~Service Contract~~Capacity Purchase Agreement, the Residual Value Insurance and, ~~if applicable~~, the Support and Operating Agreement, or any Person (other than the Owner Participant or Trustee) shall disaffirm any obligation under or commitment to enter into any ~~Service Contract or Operating~~Capacity Purchase Agreement or Operator Accession Agreement or Residual Value Insurance on or before the Lease Expiration Date; or
- (C) the Lessor shall have elected the Return Option with respect to the Facility pursuant to Section 14(d)(ii) ~~hereof~~ and the ~~Lessee~~Lessees shall have failed to comply with ~~its~~their obligations under Section 14(d)(ii)~~—hereof~~; or

(i) the ~~Lessee~~Lessees shall fail to comply with the provisions of Section 11(a) (as related to any Lease Collateral), 11(c), 11(e), 21(a), 21(b), 21(d) or 21(e) of the Participation Agreement or shall fail to maintain the insurance required by Section 10 ~~hereof~~ or to return the Facility as required by Section 13 ~~hereof~~ and any of such failures shall not have been cured (it being understood that no mandatory cure period exists for purposes of this Section 16(i)); or

(j) if the Head Lessor is then ~~the~~a Lessee or an Affiliate of ~~the~~a Lessee (x) the ~~Lessee~~Head Lessor shall renounce or repudiate its obligations under the Head Lease or ~~the User Head Lease, (y) the User Head Lessor shall renounce or repudiate its obligations under the User Head Lease or (z)~~(y) any court of competent jurisdiction shall determine, any Governmental Authority with appropriate jurisdiction shall rule or declare, or any legislation shall be enacted the effect of any of which would be to render the Head Lease invalid, unenforceable or not binding on the Head Lessor ~~or the User Head Lease invalid, unenforceable or not binding on the User Head Lessor~~ unless a court of competent jurisdiction shall have issued a stay concurrently with such determination, ruling, declaration or enactment which fully prevents the effectiveness or enforceability of such determination, ruling, declaration or enactment; provided that it shall be a Lease Event of Default if such stay is temporary and is lifted without complete reversal of such initial determination, ruling, declaration or enactment; or

(k) if ~~the~~either Lessee shall dissolve or initiate, or have initiated with respect to it, dissolution proceedings except in connection with a merger, consolidation, sale of assets permitted under Section 11(c) of the Participation Agreement; or

(l) a Sublease Event of Default or a User Lease Event of Default shall have occurred and be continuing.

SECTION 17. Remedies.

Upon the occurrence of any Lease Event of Default and at any time thereafter so long as the same shall be continuing, the Lessor may, at its option and sole discretion, declare this Lease to be in default by a notice to the ~~Lessee~~Lessees (except that upon ~~the~~the occurrence of a Lease Event of Default described in Section 16(d), (e), (f), (g), (h) or (k), a Sublease Event of Default described in Section 16(d), (e), (f), (g), (h) or (k) of the Sublease or a User Lease Event of Default described in Section 16(d), (e), (f), (g), (h) or (k) of the User Lease, this Lease shall automatically be deemed to be in default); and at any time after this Lease shall be declared in default or be deemed to be in default pursuant to this sentence, unless such declaration shall have been rescinded, the Lessor may in its sole discretion do, and the Lessee shall comply with, one or

more of the following with respect to the Facility, as the Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, Applicable Law then in effect:

(a) cause the ~~Lessee~~Lessees, upon the written demand of the Lessor and at the ~~Lessee's~~Lessees' expense, to, and the ~~Lessee~~Lessees shall, promptly return the Facility as the Lessor may demand to the Lessor or its order in the manner and condition required by, and otherwise in accordance with all of the provisions of, Section 13 as if the Facility were being returned at the end of the Lease Term, and the ~~Lessee~~Lessees shall promptly execute and deliver to the Lessor such instruments or other documents as the Lessor may deem necessary or advisable to enable the Lessor to obtain possession of the Facility; provided, that if the ~~Lessee~~Lessees shall for any reason fail to execute and deliver such instruments and documents after such request, the Lessor shall be entitled, in a proceeding to which the ~~Lessee~~Lessees shall be a necessary party, to a judgment for specific performance, conferring the right to immediate possession upon the Lessor and requiring the ~~Lessee~~Lessees to execute and deliver such instruments and documents to the Lessor;

(b) with or without taking possession of the Facility, sell, assign and convey in a commercially reasonable manner the Head Lease Interest at public or private sale and with notice to the ~~Lessee~~Lessees but with or without advertisement, and hold the ~~Lessee~~Lessees liable for any installment of Lease Rent due on or before the date of such sale with respect to such Head Lease Interest or the Facility, as the Lessor may determine, or otherwise dispose of, hold, use, operate, sublease to others or keep idle the Facility as the Lessor, in its sole discretion, may determine, in any such case free and clear of any rights of the ~~Lessee~~Lessees, except as hereinafter set forth in this Section 17, and without any duty to account to the ~~Lessee~~Lessees with respect to such action or inaction or for any proceeds with respect thereto except to the extent required by paragraph (d) below in the event the Lessor elects to exercise its rights under said paragraph in lieu of its rights under paragraph (c) below;

(c) whether or not the Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a) or paragraph (b) above with respect to the Facility, the Lessor, by written notice to the ~~Lessee~~Lessees specifying the next Termination Value Determination Date not earlier than ten (10) days from the date of such notice as the payment date, may cause the ~~Lessee~~Lessees to pay to the Lessor, and the ~~Lessee~~Lessees shall pay to the Lessor, on the payment date specified in such notice, any

installment of Lease Rent due and owing with respect to the Facility prior to such payment date and all Supplemental Rent due on or before (or after, to the extent susceptible to quantification on or before) such payment date, plus as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Lease Rent payable with respect to the Facility after such payment date) whichever one of the following amounts the Lessor in its sole discretion shall specify in such notice: (i) an amount equal to the excess, if any, of the Termination Value (set forth on Exhibit D to the Lease Supplement computed as of such Termination Value Determination Date), computed as of such payment date, over the Fair Market Rental Value of the Head Lease Interest ~~with respect to the Facility~~ after discounting such Fair Market Rental Value annually (effective on the payment date) to present worth as of such payment date at the Applicable Rate; or (ii) an amount equal to the excess, if any, of the Termination Value (set forth on Exhibit D to the Lease Supplement computed as of such Termination Value Determination Date), over the Fair Market Sales Value of the Head Lease Interest ~~with respect to the Facility~~ as of such payment date; plus, in the case of each of the preceding clauses (i) and (ii), interest, to the extent permitted by Applicable Law, at the Overdue Rate on the amount of such excess, if any, from such payment date to the date of actual payment of such amount; provided, that if the Facility cannot be repossessed, Fair Market Rental Value and Fair Market Sales Value for purposes of this Section 17(c) shall be deemed to be equal to zero;

(d) in the event the Lessor, pursuant to paragraph (b) above, shall have sold, assigned or conveyed the Head Lease Interest or the Facility, as the case may be, the Lessor in lieu of exercising its rights under paragraph (c) above with respect to the Facility, by written notice to the ~~Lessee~~Lessees specifying a date not earlier than ten (10) days from the date of such notice as the payment date, may, if it shall so elect, cause the ~~Lessee~~Lessees to pay the Lessor, and the ~~Lessee~~Lessees shall pay to the Lessor, on such payment date, any installment of Lease Rent due and owing with respect to the Facility, any unpaid Supplemental Rent due with respect to the Facility on or before (or after to the extent susceptible to quantification on or before) the date on which such sale occurs; plus as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Lease Rent payable after such payment date with respect to the Facility) the amount of any deficiency between the net proceeds of such sale and the Termination Value set forth on Exhibit D to the Lease Supplement, determined as of the Termination Value Determination Date occurring on or next preceding the date on which such sale occurs; plus interest, to the extent permitted by Applicable Law, at the Applicable Rate from the Termination Value Determination Date to the date of sale and at

the Overdue Rate on the amount of such deficiency from the date of sale to the date of actual payment;

(e) by written notice to the ~~Lessee~~Lessees specifying a Termination Value Determination Date which shall not be earlier than ten (10) days from the date of such notice, cause the ~~Lessee~~Lessees to pay the Lessor and the ~~Lessee~~Lessees shall pay to the Lessor, on the payment date specified in such notice, any Lease Rent due and owing on or prior to such date plus, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Lease Rent payable with respect to the Facility after such payment date) an amount equal to the Termination Value for the Facility; and upon such payment of such liquidated damages and the payment of all Lease Rent and all other Supplemental Rent then due and owing by the ~~Lessee~~Lessees hereunder and the discharge of the Lien of the Loan Agreement pursuant to Section ~~7.01~~7.1 of the Loan Agreement, the Lessor shall transfer, “as-is, where-is” without recourse or warranty of any kind (except as to the absence of Lessor’s Liens), all right, title and interest of the Lessor in and to the Head Lease Interest to the ~~Lessee~~Lessees or as ~~it~~they may direct, and the Lessor shall execute and deliver such documents evidencing such transfer and take such further action as may be required to effect such transfer and the ~~Lessee~~Lessees shall assume all obligations of the Head Lessee under the Head Lease;

(f) terminate this Lease as to the Facility, avoid any sub-lease or other transfer of possession of the Facility, or exercise any other right or remedy which may be available under any Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof;

(g) exercise the Head Lease Purchase Option;

(h) intentionally omitted; or

(i) unless the Head Lease Interest has been sold pursuant to clause (b) above, but whether or not the Lessor or its assignee has previously exercised any of the foregoing remedies to demand payment of Termination Value with respect to the Head Lease Interest or any amount determined by reference thereto or unpaid Supplemental Rent, the Lessor may, by notice to the ~~Lessee~~Lessees specifying a Termination Value Determination Date with respect to the Facility not earlier than ten (10) days from the date of such notice as the payment date, require that the ~~Lessee~~Lessees pay to the Lessor, and the ~~Lessee~~Lessees shall pay to the Lessor on the payment date specified in such notice the Equity Portion of any Lease Rent due and owing on or prior to such date and all

Supplemental Rent due to the Lessor, the Owner Participant, the Trust or the Trust Company on or before (or after to the extent susceptible to quantification on or before) such payment date plus, as liquidated damages for loss of bargain and not as a penalty (in lieu of the Equity Portion of Lease Rent payable with respect to the ~~Equipment~~ Facility after such payment date) an amount equal to the Equity Portion of Termination Value with respect to the Facility on such payment date and exercise its rights under ~~the Equity Payment Agreement, the Custody Agreement and Account Pledge and Security Agreement~~ and/or make a claim under ~~the Strip Surety Policy and/or the Standby Letter of Credit; or~~

~~(j) exercise such rights as may then be available under the Payment Agreement~~ any Acceptable Lease Collateral.

In addition, the ~~Lessee~~ Lessees shall be liable for any Supplemental Rent due hereunder before or after any termination hereof and all costs and expenses (including reasonable attorney's fees and disbursements) incurred by reason of the occurrence of any Lease Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the retaking or return of the Facility (or any damages suffered as a result thereof) in accordance with the terms of Section 13 or placing the Facility in the condition required by Section 13 or any appraisal of the Facility. The Lessor agrees to give the ~~Lessee~~ Lessees timely notice of any sale of, or offer to otherwise dispose of or sublease, the Facility pursuant to this Section 17. At any sale pursuant to this Section 17, the Lessor, any Participant or any Affiliates thereof may bid for and purchase or sublease, as the case may be, such property or leasehold interests at such sale or offer to sublease. Except as otherwise expressly provided above, no remedy referred to in this Section 17 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity; and the exercise or beginning of exercise by the Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Lessor of any or all such other remedies. No express or implied waiver by the Lessor of any Lease Event of Default hereunder shall in any way be, or construed to be, a waiver of any future or subsequent Lease Event of Default.

In the event the Lessor has deemed liquidated damages due pursuant to Section 17(i), any sums calculated on account of such liquidated damages by the Lessor as a result of the exercise of remedies pursuant to Section 17(i) will be deducted from amounts due on account of liquidated damages under Section 17(c) or 17(e).

SECTION 18. ~~The Lessor's Right to Perform for the Lessee~~ Lessees.

If ~~the~~ either Lessee fails to make any payment of Lease Rent or Supplemental Rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, the Lessor may, but shall be under no obligation to, make such payment or perform or comply with such agreement. The amount of such payment by the Lessor and the amount of the reasonable expenses of the Lessor incurred in connection with such payment or the performance of or compliance by the Lessor with such agreement, as the case may be,

together with interest thereon at the Overdue Rate, shall be deemed Supplemental Rent, payable by the ~~Lessee~~Lessees upon demand of the Lessor. No such payment or performance by the Lessor shall be deemed to waive any Default or Lease Event of Default or relieve the ~~Lessee~~Lessees of ~~its~~their obligations hereunder or under the other Operative Documents.

SECTION 19. Assignment.

(a) Loan Agreement.

Subject to Section 6(a) hereof and Section 11(c) of the Participation Agreement, ~~the~~no Lessee will ~~not~~, without the prior written consent of the Lessor (to be given or withheld in its sole discretion), assign any of its rights or obligations hereunder or permit its rights or obligations hereunder to be assigned. The Lessor will not, without the prior written consent of the ~~Lessee~~Lessees and, so long as the Lien of the Loan Agreement shall not have been discharged pursuant to Section ~~7.01~~7.1 thereof, the Holders, assign any of its rights or obligations hereunder except in accordance with the Operative Documents.

(b) Lessee's Obligations.

In order to secure the ~~Lessee~~Lessees's obligations hereunder, ~~the Lessee has~~pursuant to the Lease, the Lessees have collaterally assigned to the Lessor and granted to the Lessor a security interest in the ~~Lessee's~~Lessees' right, title and interest in the Sublease and the User Lease and all proceeds thereof (but not any of its obligations, duties, liabilities thereunder) ~~pursuant to the General Mortgage.~~

SECTION 20. Investment of Security Funds.

Any amounts otherwise payable to the ~~Lessee~~Lessees under this Lease or any other Operative Document but which shall be paid to or retained by the Lessor pursuant to the terms hereof as a result of any Default or Lease Event of Default shall be held by the Lender or, if the Lien of the Loan Agreement shall have been discharged pursuant to Section ~~7.01~~7.1 thereof, the Lessor, as security for the obligations of the ~~Lessee~~Lessees under this Lease and the other Operative Documents to which either is a party, and, at such time as there shall not be continuing any such Default or Lease Event of Default, such amounts, net of any amounts theretofore applied to the ~~Lessee's~~Lessees' Obligations, shall be paid to the ~~Lessee~~Lessees. Any such amounts which are held by the Lender or the Lessor (as the case may be) pending payment to the ~~Lessee~~Lessees shall, until paid to the ~~Lessee~~Lessees as provided herein or until applied against the ~~Lessee's~~Lessees' Obligations in connection with any exercise of remedies hereunder, be invested in Permitted Investments by the Lender or the Lessor (as the case may be) as directed from time to time in writing by the ~~Lessee~~Lessees and at the expense and risk of the ~~Lessee~~Lessees. Any gain (including interest received) realized as the result of any such Permitted Investment (net of any fees, commissions, Taxes and other expenses, if any, incurred in connection with such Permitted ~~Investment~~Investments) shall be applied in the same manner as the principal invested.

SECTION 21. Acknowledgment of Assignment for Security.

In order to secure the indebtedness evidenced by the Loan Certificates and all other amounts owing to the Holders under the Operative Documents, the Lessor has agreed in the Loan Agreement, among other things, to assign to the Lender, for its benefit and the benefit of the Holders, its rights under this Lease and the Lease Supplements and to grant a security interest in favor of the Lender, all of the Lessor's right, title and interest in and to the Head Lease Interest, subject to the reservations and conditions therein set forth. The ~~Lessee~~Lessees hereby ~~consents~~consent to such assignment and to the creation of such mortgage and security interest and ~~acknowledges~~acknowledge receipt of copies of the Trust Agreement and 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. Until the Lien of the Loan Agreement has been discharged pursuant to Section ~~7.01~~7.1 thereof, all rights of the Lessor with respect to this Lease, the Lease Rent, Supplemental Rent and other amounts referred to in the Granting Clause of the Loan Agreement or the Head Lease Interest (or any part thereof) (other than, in each case, Excepted Property), to the extent set forth in and subject in each case to the exceptions set forth in the Loan Agreement, shall be exercisable by the Lender. In addition, in consideration of the Lessor entering into this Lease and in order to secure the ~~Lessee's obligations~~Lessees' Obligations under ~~the~~this Lease and the other Operative Documents, ~~the~~each Lessee has agreed in ~~the General Mortgage~~this Lease, among other things, to assign by way of assignment for security to the Trust all of its respective right, title and interest in and to the Sublease and the User Lease, if any, subject to the conditions set forth therein and the Sublessee has acknowledged and consented to such assignment in the Sublease and the User Lessee has acknowledged and consented to such assignment in the User Lease.

SECTION 22. 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 Lease may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall, subject to the next sentence and the legends appearing on the cover and signature page hereof, be an original, but all such counterparts shall together constitute but one and the same instrument. TO THE EXTENT, IF ANY, THAT THIS LEASE CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART CONTAINING THE RECEIPT THEREFOR EXECUTED BY THE LENDER ON THE PAGE FOLLOWING THE SIGNATURE PAGES HEREOF.

(c) *Amendments.*

Neither this 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~~ the parties hereto.

(d) *Agreement of Lease.*

This Lease shall constitute an agreement of lease, and nothing contained herein shall be construed as conveying to the ~~Lessee~~ Lessees any right, title to or interest in the Facility except as a lessee only.

(e) *GOVERNING LAW.*

THIS 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 LESSEE~~ SOUTH DAKOTA.

(f) *Benefit and Binding Effect.*

The terms and provisions of this Lease shall inure to the benefit of and be binding on the Lessor and the ~~Lessee~~ Lessees and their respective successors and permitted assigns.

(g) *Waiver of Jury Trial and Immunity.*

The provisions of Section 17 of the Participation Agreement are incorporated herein by reference as though fully set out herein.

(h) *Severability.*

Any provision of this 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.

(i) *Entire Agreement.*

This 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 hereto with respect to the subject matter covered hereby.

(j) *Currency.*

All Lease Rent and Supplemental Rent are to be paid in Dollars.

SECTION 23. Liability of the ~~Trust Company~~Lessor Limited.

Except as otherwise specifically provided in the Participation Agreement, all and each of the representations, warranties, undertakings and agreements made in this Lease on the part of the Lessor are made and intended not as personal representations, warranties, undertakings and agreements by or for the purpose or with the intention of binding the Trust Company personally, but are made and intended for the purpose of binding only the Trust, with all recourse being limited to the Trust. This Lease is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon it under the Trust Agreement. Except as otherwise specifically provided in the Participation Agreement or in any other Operative Document, no personal liability or responsibility is assumed by the Trust Company hereunder and no such liability or responsibility shall at any time be imposed on the Trust Company on account of any representation, warranty, undertaking or agreement hereunder of the Lessor either express or implied, all such personal liability, if any, being expressly waived by ~~the~~each Lessee; *provided, however,* that nothing in this Section 23 shall be construed to limit the scope or substance of the liability of the Trust Company (A) in its individual capacity as expressly set forth in any Operative Document, (B) in respect of the representations, warranties and agreements of the Trust Company in its individual capacity as expressly set forth in any Operative Document to which the Trust Company and/or the Lessor is a party, and (C) in its individual capacity and as Trustee for the consequences of its own gross negligence or willful misconduct or the failure to use ordinary care in the administration of funds.

SECTION 24. Lessee Options.

The ~~Lessee~~Lessees hereby ~~agrees~~agree that ~~it~~they shall not select any option under Section 14(a), 14(e), 15(a) or 15(c) of this Lease until the Sublessee and the User Lessee have selected (or been deemed to have selected) the corresponding option under Section 14(a), 14(e), 15(a) or 15(c) of the Sublease or the User Lease, as the case may be.

SECTION 25. Joint and Several Liability.

The term “Lessee” as used herein shall mean and include the Authority and the User (including the successors and permitted assigns of either thereof), each of whom shall be jointly and severally bound hereby.

SECTION 26. Recourse to Authority; Appropriation Covenant.

(a) Recourse to Authority.

The Lessor acknowledges that recourse to the Authority is limited to the assets received by the Authority under or in connection with the Operative Documents.

(b) Appropriation Covenant.

If and to the extent that any amount that is due and payable under or in connection with the Sublease is not paid when due, the Authority hereby covenants and agrees to (1) notify the Sublessee that it has failed to pay such amount, and (2) request that the Sublessee promptly request the Governor to prepare and submit to the Legislature of the

State of South Dakota a request for appropriations in an amount sufficient to pay such amount and any related charges due or to become due as a result thereof. The request described in clause (2) shall be made on the earlier of (A) if the Legislature is then in session, three (3) Business Days of receipt of such notice or (B) if the Legislature is not then in session, at least [] days prior to the commencement of the next legislative session to occur.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

LESSOR:

~~SDMFA~~ABERDEEN STATUTORY TRUST
SDMFA-2003-~~KF~~1

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

By: _____

Name:

Title:

~~LESSEE~~LESSEES:

STATE OF SOUTH DAKOTA MUNICIPAL
FACILITIES AUTHORITY

By:

~~By:~~ _____

Name:

Title:

By:

Name:

Title:

CITY OF ABERDEEN

By:

Name:

Title:

Attest:

By:

Name:

Title:



CERTAIN OF THE RIGHT, TITLE AND INTEREST IN AND TO THIS LEASE AGREEMENT (SDMFA-2003-~~K~~F1) HAVE BEEN ASSIGNED TO AND ARE SUBJECT TO A FIRST PRIORITY SECURITY INTEREST IN FAVOR OF THE UNDERSIGNED, AS THE LENDER UNDER THE LOAN AND SECURITY AGREEMENT (SDMFA-2003-~~K~~F1) DATED AS OF ~~JUNE~~-SEPTEMBER __, 2003. THIS LEASE AGREEMENT (SDMFA-2003-F1) HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. ONLY THE ORIGINAL COUNTERPART CONTAINS THE RECEIPT THEREFOR EXECUTED BY THE UNDERSIGNED; ON THE PAGE FOLLOWING THE SIGNATURE PAGES THEREOF. SEE SECTION 22(b) HEREOF FOR INFORMATION CONCERNING THE RIGHTS OF THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF.

Receipt of this original counterpart of the foregoing Lease Agreement is hereby acknowledged on this __ day of ~~June~~September, 2003.

~~AIG FP FUNDING (CAYMAN) LIMITED,~~
~~as Lender~~ ABERDEEN STATUTORY
TRUST SDMFA-2003-F1, as Lender

By Wilmington Trust Company, not in its
individual capacity except, but solely
as Trustee

By: _____
Name:
Title:

LEASE SUPPLEMENT (SDMFA-2003-F1)

THIS LEASE SUPPLEMENT (SDMFA-2003-~~K~~F1) dated ~~June~~-[____], 2003 (This "*Lease Supplement*") is ~~between~~-SDMFA among ABERDEEN STATUTORY TRUST SDMFA-2003-~~K~~F1, a ~~Connecticut~~Delaware statutory trust (the "*Lessor*"), and STATE OF SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY, a body corporate and politic of the State of South Dakota (the "*Lessee Authority*") and CITY OF ABERDEEN, a [_____] (the "*User*", together with the Authority, the "*Lessees*").

WHEREAS, the Lessor and the ~~Lessee~~Lessees have heretofore entered into the Lease Agreement (SDMFA-2003-~~K~~F1) dated as of ~~June~~-[____], 2003 (the "*Lease*"), which Lease provides for the execution and delivery of Lease Supplements in substantially the form hereof for the purpose of leasing the Facility and granting the Access Rights when delivered by the Lessor to the ~~Lessee~~Lessees in accordance with the terms thereof. All of the terms and provisions of the Lease are hereby incorporated by reference in this 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 Lease:

Section 1. The Lessor hereby delivers and leases the Facility described in Exhibit A hereto and grants the Access Rights to the ~~Lessee~~Lessees and the ~~Lessee~~Lessees hereby ~~accepts~~accept and ~~leases~~lease the Facility and accepts the grant of the Access Rights from the Lessor; under the Lease as herein supplemented.

Section 2. The payment schedule for Lease Rent and the allocation of Lease Rent and the schedules of Prepaid Rent Balance and Prepaid Rent Loan Balance are as set forth in Exhibits B-1, B-2 and B-3.

Section 3. Stipulated Loss Values are in the amounts as set forth in Exhibit C hereto.

Section 4. Termination Values are in the amounts as set forth in Exhibit D hereto.

Section 5. The Purchase Option Price is in the amount set forth in Exhibit E hereto payable, to the extent permitted under Section 14(a) of the Lease, in installments on the dates and in the amounts set forth on such Exhibit E.

To the extent, if any, that this Lease Supplement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease Supplement may be created through the transfer or possession of any

counterpart other than the original counterpart containing the receipt therefor executed by the Lender on the signature page thereof.

THIS 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 LESSEE~~ SOUTH DAKOTA.

[The remainder of the page intentionally left blank.]

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

LESSOR:

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

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

By: _____

Name:

~~Title:~~

Title:

~~LESSEE:~~

LESSEES:

STATE OF SOUTH DAKOTA MUNICIPAL
FACILITIES AUTHORITY

By: _____

Name:

~~Title: _____~~

Title:

CITY OF ABERDEEN

By: _____

Name:

Mayor

Attest:

By: _____

Name:

Title:

CERTAIN OF THE RIGHT, TITLE AND INTEREST IN AND TO THIS LEASE SUPPLEMENT HAVE BEEN COLLATERALLY ASSIGNED TO AND ARE SUBJECT TO A FIRST PRIORITY SECURITY INTEREST IN FAVOR OF THE UNDERSIGNED, AS THE LENDER UNDER THE LOAN AND SECURITY AGREEMENT (SDMFA-2003-~~K~~F1) DATED AS OF ~~JUNE~~SEPTEMBER, 2003. THIS LEASE SUPPLEMENT HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. ONLY THE ORIGINAL COUNTERPART CONTAINS THE RECEIPT THEREFOR EXECUTED BY THE UNDERSIGNED, ON THE PAGE FOLLOWING THE SIGNATURE PAGES THEREOF. SEE SECTION 22(b) OF THE LEASE AGREEMENT (SDMFA-2003-F1) FOR INFORMATION CONCERNING THE RIGHTS OF THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF.

Receipt of this original counterpart of the foregoing Lease Supplement is hereby acknowledged on this ___ day of ~~June~~September, 2003.

~~AIG FP FUNDING (CAYMAN) LIMITED,~~
~~as Lender~~ABERDEEN STATUTORY
TRUST SDMFA-2003-F1, as Lender

By Wilmington Trust Company, not in its
individual capacity except, but solely
as Trustee

By: _____
Name:
Title:

DESCRIPTION OF FACILITY; FACILITY VALUES

<u>Facility</u>	<u>Description</u>	<u>Serial Number</u>	<u>Facility Value</u>
-----------------	--------------------	----------------------	-----------------------

LEASE RENT PAYMENT SCHEDULE

Rent Payment Date	Lease Rent Payable	Equity Portion of Lease Rent Payable
----------------------	-----------------------	--

ALLOCATION OF LEASE RENT

<u>Allocable from</u>	<u>Allocable to</u>	<u>Lease Rent Allocated</u>
[Closing Date]	[Closing Date + 3 months]	0.00
[Closing Date + 3 months]	Dec. 31, 2004	[]
Jan. 1, 2004	Dec. 31, 2005	[]
Jan. 1, 2005	Dec. 31, 2006	[]
Etc.		

PREPAID RENT LOAN BALANCES

<u>Date</u>	<u>Prepaid Rent Balance</u>	<u>Reduction of Prepaid Rent Loan Balance Resulting from Changes in the Prepaid Rent Balance</u>	<u>Prepaid Rent Loan Accrued Interest</u>	<u>Prepaid Rent Loan Balance after Application of Preceding Columns</u>
-------------	---------------------------------	--	---	---

STIPULATED LOSS VALUES

Stipulated Loss Value
Determination Date

Stipulated Loss Value

Equity Portion of
Stipulated Loss Value

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

TERMINATION VALUES

Termination Value
Determination Date

Termination Value

Equity Portion of
Termination Value

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

PURCHASE OPTION PRICE

Installment
Payment Date

Purchase Option
Installment Amount

Equity Portion of
Installment Amount

Exhibit B

to Lease Agreement (SDMFA-2003-~~K~~F1)

SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY

[Address]

Attention: []

Telecopy: []

CITY OF ABERDEEN

[Address]

Attention: []

Telecopy: []

Reminder Notice

Dear Sirs:

Please be informed that, pursuant to the Lease Agreement (SDMFA-2003-~~K~~F1), dated as of ~~June~~
~~—, 2003, between SDMFA~~September [], 2003 (the “Lease”), among ABERDEEN
STATUTORY TRUST ~~SDMFA-2003-K1 and the~~F1, SOUTH DAKOTA MUNICIPAL
FACILITIES AUTHORITY and the CITY OF ABERDEEN, you will be entitled to exercise
your purchase option pursuant to Section 14(a) thereof during the period beginning
[] and ending [] as to the Facility (as defined therein), subject to
the conditions set forth in such Section 14(a) of the Lease).

Very truly yours,

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

~~[c/o U.S. Bank National Association~~

~~c/o Wilmington Trust Company~~

~~550 South Hope~~1100 North Market Street, ~~5th Floor~~

~~Los Angeles, California 90071~~

Wilmington, DE 19890

Attn.: Corporate Trust ~~Services~~Administration

Telecopy: ~~(860) 244-1884~~ (302) 636-4141

By: _____

Name:

Title:

SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY
[Address]

Attention: []]
Telecopy: []]

CITY OF ABERDEEN
[Address]

Attention: []]
Telecopy: []]

Lessor's Election Notice

Dear Sirs:

Please be informed that, pursuant to the Lease Agreement (SDMFA-2003-~~K~~F1), dated as of ~~June~~ September [], 2003 (the "*Lease*") ~~between SDMFA, among Aberdeen~~ Statutory Trust SDMFA-2003-~~K~~F1, a ~~[Connecticut]~~ Delaware statutory trust, as Lessor, and South Dakota Municipal Facilities Authority and the City of Aberdeen, as ~~Lessee~~ Lessees:

[insert the following language if the Capacity Purchase Agreement is elected as to the Facility]

[We hereby exercise the Service Contract Option pursuant to Section 14(c) thereof with respect to the Facility. Please provide us with one or more Capacity Purchase ~~Agreements and the Residual Value Insurance~~ Bids from one or more Qualified Bidders in accordance with the terms of Section 14(d)(i)(~~B~~) of the Lease.]

[We also request that you provide us with one or more [Operation Bids ~~to enter into an amendment and restatement of the Support and Operating Agreement~~] with respect to the ~~Facility~~ from one or more Qualified Operators in accordance with the terms of Section 14(d)(~~ii~~)(A) of the Lease.]

[insert the following language if the Return Option is elected as to the Facility]

[We hereby exercise the Return Option pursuant to Section 14(c) of the Lease with respect to the Facility. Please deliver to the Lessor the Facility on the Lease Expiration Date in accordance with Section 14(d)(ii) of the Lease.]

Very truly yours,

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

~~[By U.S. Bank National Association~~By
Wilmington Trust Company, not in its
individual capacity except, but solely as
Trustee]

By: _____
Name:
Title: