

PARTICIPATION AGREEMENT (SDMFA-2003-~~KF~~F1),

dated as of ~~—~~September____, 2003,

among

SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY,

~~[STATE OF~~ SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES],

~~[RAPID CITY]~~OF ABERDEEN,

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

THE FIFTH THIRD LEASING COMPANY,

~~KBC BANK N.V.,~~

ABERDEEN LENDER TRUST SDMFA-2003-F1,

~~AIG-FP FUNDING (CAYMAN) LIMITED,~~

THE ROYAL BANK OF SCOTLAND PLC,
NEW YORK BRANCH,

~~AIG-FP SPECIAL FINANCE (CAYMAN) LIMITED,~~

AIG FINANCIAL PRODUCTS CORP.

and

~~[U.S. BANK NATIONAL ASSOCIATION]~~
WILMINGTON TRUST COMPANY,
not in its individual capacity except as
expressly set forth herein, but solely as Trustee

Lease Financing of Waste Water Collection and Treatment Facility

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PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT (SDMFA-2003-~~KF~~1), dated as of ~~June~~September __, 2003 (this “Agreement” or this “Participation Agreement”), is among SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY, a body corporate and politic of the State of South Dakota (the “Authority”), [STATE OF SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES], a [], [~~RAPID-CITY~~] OF ABERDEEN, a [], ~~SDMFA ABERDEEN~~ STATUTORY TRUST SDMFA-2003-~~KF~~1, a [~~Connecticut statutory trust~~], ~~KBC BANK N.V., a Belgian limited company, AIG-FP FUNDING (CAYMAN) LIMITED, an exempted company with limited liability incorporated in the Cayman Islands, AIG-FP SPECIAL FINANCE (CAYMAN) LIMITED, an exempted company with limited liability incorporated in the Cayman Islands, and [U.S. BANK NATIONAL ASSOCIATION]~~Delaware statutory trust, THE FIFTH THIRD LEASING COMPANY, an Ohio corporation, ABERDEEN LENDER TRUST SDMFA-2003-F1, a Delaware statutory trust, THE ROYAL BANK OF SCOTLAND PLC, NEW YORK BRANCH, a New York State licensed branch office of a bank organized under the laws of Scotland, AIG FINANCIAL PRODUCTS CORP., a Delaware corporation, and WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual capacity, except as expressly set forth herein, but solely as trustee.

RECITALS

- A. The Owner Participant is concurrently entering into the Trust Agreement with the Trust Company in order to form the Trust for the benefit of the Owner Participant;
- B. Subject to the terms and conditions hereof, pursuant to the ~~User~~Head Lease, the ~~User~~Head Lessor has agreed to lease and deliver the Facility and grant the Access Rights to the ~~User~~Head Lessee, and the ~~User~~Head Lessee has agreed to lease ~~the Facility and accept the grant of the Access Rights from the User Head Lessor for the User Head Lease Term and concurrently with delivery thereof, subject to the terms and conditions hereof and pursuant to the Head Lease, the Head Lessor has agreed to sublease and deliver the Facility and grant the Access Rights to the Trust, and the Trust has agreed to sublease~~ the Facility and accept the grant of the Access Rights from the Head Lessor for the Head Lease Term;
- C. Subject to the terms and conditions hereof, pursuant to the Lease, the Trust has agreed to lease and deliver the Facility to the ~~Lessee~~Authority and the User, and the ~~Lessee has~~Authority and the User have agreed to lease the Facility from the Trust for the Lease Term and, concurrently with the leasing thereof, pursuant to the Sublease, the ~~Sublessor has~~Authority and the User have agreed to sublease and deliver the Facility to the Sublessee, and the Sublessee has agreed to sublease the Facility from the ~~Sublessor~~Authority and the User and, concurrently with the subleasing thereof, pursuant to the User Lease, the User Lessor has agreed to sublease and deliver the Facility to the User Lessee, and the User Lessee has agreed to sublease the Facility from the User Lessor;

- D. Subject to the terms and conditions hereof, pursuant to this Agreement and the Loan Agreement, the Lender has agreed to make the ~~loans~~loan represented by the Loan ~~Certificates~~Certificate in an aggregate amount equal to the Loan Amount on the Closing Date to the Trust and pursuant to this Agreement the Owner Participant has agreed to make a capital contribution on the Closing Date to the Trust in an amount equal to the Owner Participant's Commitment, such amounts to be applied as set forth herein; and
- E. Subject to the terms and conditions hereof, pursuant to the Loan Agreement, the Trust has agreed to issue to the Lender, the Loan ~~Certificates~~Certificate evidencing the ~~loans~~loan to be made by the Lender to the Trust, and to assign to the Lender as security for the due and punctual payment by the Trust of all amounts payable under the Loan ~~Certificates~~Certificate and the other Operative Documents and the faithful performance by the Trust of all other obligations thereunder, all right, title and interest of the Trust in and to the Head Lease and the Lease, subject to the rights of the Lessee under the Lease, and certain other Collateral, but excluding in each case Excepted Property and subject to Excepted Rights.;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

SECTION 1. INTERPRETATION, DEFINITIONS AND RULES OF USAGE.

Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in Appendix A hereto and the rules of usage set forth therein shall apply hereto.

SECTION 2. PARTICIPATION.

(a) ***Closing Date; Leasing.*** Subject to the terms and conditions of this Agreement and in reliance on the agreements, representations and warranties herein contained and made pursuant hereto, on the Closing Date:

(i) each of the ~~User~~ Head Lessor and the ~~User~~ Head Lessee agrees to enter into the ~~User~~ Head Lease with respect to the Facility;

(ii) ~~concurrently with the delivery of the Facility pursuant to the User Head Lease, each of the Head Lessor and the Trust agrees to enter into the Head Lease with respect to the Facility;~~ intentionally omitted;

(iii) the Trust agrees to lease the Facility to ~~the~~each Lessee, and ~~the~~each Lessee shall lease the Facility from the Trust, pursuant to the Lease;

(iv) concurrently with the lease of the Facility pursuant to the Lease, ~~the~~each Sublessor agrees to sublease the Facility to the Sublessee, and the Sublessee shall sublease the Facility from the ~~Sublessor~~Sublessors, pursuant to the Sublease;

(v) concurrently with the lease and sublease of the Facility pursuant to the Lease and the Sublease, the User Lessor agrees to sublease the Facility to the User Lessee, and the User Lessee shall sublease the Facility from the User Lessor, pursuant to the User Lease;

(vi) each of the User, ~~the Authority~~ and the Trust agrees to enter into the ~~Access~~Support and Operating Agreement;

(vii) the Lender agrees to make the non-recourse secured ~~loans~~loan represented by ~~each of~~ the Loan ~~Certificates~~Certificate to the Trust in an aggregate amount equal to the Loan Amount, such ~~loans~~loan to be paid by the Lender in immediately available funds to the Trust at such account as the Trust may specify in payment instructions to the Lender on or prior to the Closing Date to be held in trust by the Trust for the benefit of the Lender until applied by the Trust as provided in clause (ix) below;

(viii) the Owner Participant agrees to pay an amount equal to the Owner Participant's Commitment to the Trust for the purpose of funding a portion of the Head Lease Payment, in immediately available funds at such account as the Trust may specify in payment instructions to the Owner Participant on or prior to the Closing Date to be held in trust by the Trust for the benefit of the Owner Participant until applied by the Trust as provided in clause (ix) below;

(ix) the Trust, upon receipt in full of each Participant's Commitment, together with instructions from such Participant or its special counsel to release such Participant's Commitment, agrees to transfer such funds into the Trust Estate, and the Trust agrees, upon release of such funds to the Trust Estate, to release the amounts so received in immediately available funds from the accounts referred to in clauses (vii) and (viii) above to the account of the Trust set forth in Schedule I hereto and the Trust agrees to pay such amounts to the Head Lessor as the Head Lease Payment for the Facility under the Head Lease to the account of the Head Lessor set forth in Schedule I hereto;

(x) ~~upon receipt of the amounts described in clause (ix), the Head Lessor agrees to pay such amounts to the User Head Lessor as the User Head Lease Payment for the Facility under the User Head Lease to the account of the User Head Lessor set forth in Schedule I hereto; and~~intentionally omitted; and

(xi) the Trust agrees to execute and deliver the Loan ~~Certificates~~Certificate to the Lender, in an aggregate principal amount equal to the Loan Amount, against release to it in full of such amount.

(b) *Notice of Closing Date.* The ~~User~~ Head Lessor agrees to give each of the Participants, ~~the Payment Undertaker, the Equity Payment Undertaker, the LC Issuer, the Strip Surety Provider,~~ and the Trust at least three (3) Business Days' prior notice of the scheduled Closing Date (which shall in no event be later than [~~_____~~September 30], 2003). The making available by the Lender of the Loan Amount as provided in Section 2(a)(vii) shall be deemed a waiver of such notice by the Lender. The making available by the Owner Participant

of the Owner Participant's Commitment as provided in Section (2)(a)(viii) shall be deemed a waiver of such notice by the Owner Participant and by the Trust.

(c) **Closing.** The closing of the transactions contemplated hereby shall take place on the Closing Date at the offices of King & Spalding LLP, 1185 Avenue of the Americas, New York, New York, 10036, or such other place as the parties to the Operative Documents may agree.

(d) **Postponement of Closing Date.** A scheduled Closing Date for the Facility in respect of which notice has been given or waived pursuant to Section 2(b) may be postponed from time to time (but in no event to a date later than [~~_____~~ September 30], 2003) for any reason if the ~~User~~-Head Lessor gives the Owner Participant, the Lender, ~~the Payment Undertaker, the Equity Payment Undertaker, the LC Issuer, the Strip Surety Provider~~ and the Trust written notice of such postponement with notice of the date to which such Closing Date has been postponed. The ~~User~~-Head Lessor agrees that if, prior to receipt of the postponement notice under this Section 2(d), a Participant has provided funds to the Trust on the Closing Date in accordance with Section 2(a), the ~~User~~-Head Lessor will reimburse such Participant for any loss of the use of its funds at the Applicable Rate for the period from and including the date such Participant has so provided funds to, but excluding, the earlier of (i) the date on which such funds are returned to such Participant (it being agreed that funds returned after 2:00 p.m. New York time on any Business Day shall be deemed to be returned on the next succeeding Business Day) and (ii) the date the Facility is delivered, accepted and leased under the Head Lease, the Lease, the Sublease and the User Lease; *provided*, that not later than the third Business Day following the originally scheduled Closing Date (or any subsequently scheduled Closing Date pursuant to this Section 2(d)) or such earlier date as any Participant may demand, all funds from the Participants in respect of their respective Commitments shall be returned to the Participants together with funds for loss of use as aforesaid by wire transfer of immediately available funds. In the event of any postponement of the Closing Date, the term "**Closing Date**" as used in this Agreement shall mean the date of any such postponed Closing Date.

(e) **Investment of Funds.** If funds have been made available to the Trust by any Participant and if the scheduled Closing Date has been postponed pursuant to Section 2(d), until such funds are redistributed to such Participant, the Trust, as directed by the ~~User~~-Head Lessor in person or by telephone (to be confirmed promptly in writing) during the period such funds are held in trust by the Trust pursuant to Section 2(f), will use reasonable efforts to invest such funds from time to time at the ~~User~~-Head Lessor's expense and risk in Permitted Investments. Subject to payment for the account of the relevant Participant of any interest due to it as provided in Section 2(d), any net gain realized on the investment of such funds (including interest) shall be paid to the ~~User~~-Head Lessor by the Trust on the earlier of (i) the date such funds are returned to the Participants pursuant to Section 2(d) and (ii) the Closing Date. The Trust shall not be liable for any interest on or loss resulting from such Permitted Investments (or the sale of such Permitted Investments) and, if such funds are applied as set forth under Section 2(a)(ix) on the Closing Date, the ~~User~~-Head Lessor shall pay the Trust an amount equal to any net loss realized on the investment of such funds and, otherwise, the ~~User~~ Head Lessor shall pay the Participants an amount equal to any net loss realized on the investment of such funds (or the sale of such Permitted Investments). In order to obtain funds for payment of the amounts set forth in Section 2(a)(ix), or to return funds made available to the Trust by any Participant, the Trust is

authorized to sell any investments or obligations purchased as aforesaid. The Trust shall not be required to make available funds to provide for the payment of amounts specified in Section 2(a)(ix) and the Trust shall not be required to accept delivery of the Facility under the Head Lease until the Trust shall have had a reasonable time to sell such obligations and obtain the sale proceeds therefrom in funds of the type originally received and has received payment from the ~~User~~-Head Lessor as provided above.

(f) ***Funds Held in Trust.*** All funds made available to the Trust by any Participant under Section 2(a) and any investments made or obligations purchased by the Trust pursuant to Section 2(e) shall be held in trust by the Trust (but not as part of the Collateral or the Trust Estate) and shall remain the sole property of such Participant unless and until transferred to the Trust to provide for the payment of amounts specified in Section 2(a)(ix).

~~(g) ***Delivery Procedure.***~~

~~Simultaneously with the delivery to the Authority of the Facility under the User Head Lease, the Authority agrees under the User Head Lease to accept delivery of the Facility in its then condition (the parties hereto agreeing that the Authority shall have no responsibility to verify the conformity of the Facility to any condition whatsoever). Execution by the User Head Lessor and the User Head Lessee of the User Head Lease shall be conclusive evidence that delivery and acceptance under the User Head Lease have taken place.~~

SECTION 3. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE PARTICIPANTS, THE TRUST, AND THE TRUST COMPANY, ~~THE EQUITY PAYMENT UNDERTAKER, THE LC ISSUER, THE STRIP SURETY PROVIDER AND THE PAYMENT UNDERTAKER.~~

The obligations of each Participant, the Trust, and the Trust Company, ~~the Equity Payment Undertaker, the LC Issuer, the Strip Surety Provider and the Payment Undertaker~~ hereunder and under any other Operative Document are subject to the fulfillment to the satisfaction of such Person on or before the Closing Date of the following conditions precedent:

(a) Such Participant, the ~~Equity Payment Undertaker, the~~ Trust Company, ~~the Trust, the LC Issuer, the Strip Surety Provider~~ and the ~~Payment Undertaker~~ Trust shall have received due notice pursuant to Section 2(b) or 2(d) or such notice shall have been waived or deemed to have been waived.

(b) In the case of any Participant, no change shall have occurred in Applicable Law that, in the opinion of such Participant or its counsel, would make it illegal for such Participant to provide its Commitment in accordance with and for the purposes specified in Section 2 or to execute and deliver any Operative Document to which it is a party or to enter into any transaction contemplated by the Operative Documents or for each of the Authority, the State and the User to enter into the transactions contemplated by the Operative Documents.

(c) In the case of the Owner Participant, the Lender shall have made the Loan Amount available in accordance with Section 2(a)(vii).

(d) In the case of the Lender, the Owner Participant shall have made available the Owner Participant's Commitment in accordance with Section 2(a)(viii).

(e) In the case of the Lender, there shall have been duly issued and delivered by the Trust to the Lender, against payment therefor, each of the Loan Certificates, such Loan Certificates substantially in the form attached to the Loan Agreement and dated the Closing Date.

(f) This Agreement and each of the following other Operative Documents and other documents shall have been duly authorized, executed and delivered by the parties thereto (other than such Person), shall be satisfactory in form and substance to such Person, and shall be in full force and effect, and, unless otherwise specified, an executed original, if such Person is a party thereto (and, otherwise, a conformed copy), of the following documents shall have been delivered to each such Person:

(i) the Trust Agreement;

~~(ii) the User Head Lease;~~

~~(iii) the User Head Lease Supplement substantially in the form attached to the User Head Lease as Exhibit A thereto;~~

(ii) ~~(iv)~~ the Head Lease;

(iii) ~~(v)~~ the Head Lease Supplement substantially in the form attached to the Head Lease as Exhibit A thereto;

(iv) ~~(vi)~~ the Lease (original counterpart delivered to the Lender on the Closing Date);

(v) ~~(vii)~~ the Lease Supplement substantially in the form attached to the Lease as Exhibit A thereto (original ~~counterparts~~ counterpart delivered to the Lender on the Closing Date);

(vi) ~~(viii)~~ the Sublease (original counterpart delivered to the Lender on the Closing Date);

(vii) ~~(ix)~~ the Sublease Supplement substantially in the form attached to the Sublease as Exhibit A thereto (original counterpart delivered to the Lender on the Closing Date);

(viii) ~~(x)~~ the User Lease (original counterpart delivered to the Lender on the Closing Date);

(ix) ~~(xi)~~ the User Lease Supplement substantially in the form attached to the User Lease as Exhibit A thereto (original counterpart delivered to the Lender on the Closing Date);

~~(xii) the General Mortgage;~~

(x) intentionally omitted;

(xi) ~~(xiii)~~ the Loan Agreement;

(xii) ~~(xiv)~~ each Loan Certificate (original counterpart of each delivered to the Lender on the Closing Date);

(xiii) ~~(xv)~~ the Tax Indemnification Agreement in form and substance satisfactory to ~~the~~[each] Lessee and the Owner Participant (to be delivered only to such parties);

(xiv) ~~(xvi)~~ the Support and Operating Agreement;

~~(xvii) the Access Agreement;~~

~~(xviii) the Equity Payment Agreement (original counterpart delivered to the Trust on the Closing Date);~~

~~(xix) the Payment Agreement (original counterpart delivered to the Lender on the Closing Date);~~

~~(xx) the Equity Payment Undertaker Guaranty;~~

~~(xxi) intentionally omitted;~~

~~(xxii) the Payment Undertaker Guaranty;~~

~~(xxiii) the Insurance and Indemnity Agreement and the Strip Surety Policy substantially in the form attached to the Insurance and Indemnity Agreement as Annex A thereto (executed copy delivered only to the Trust), and the Assignment Agreement;~~

(xv) ~~(xxiv)~~ the ~~Account Pledge and Security~~ Agreement;

~~(xxv) the Custody Agreement;~~

~~(xxvi) the Letter of Credit and Reimbursement Agreement;~~

~~(xxvii) the Standby Letter of Credit and the Standby Letter of Credit Guaranty (executed copy delivered only to the Trust);~~

(xvi) ~~(xxviii)~~ the letter agreement from Allco Finance Corporation referred to in Section 13 hereof;

~~(xxix) [the Authority Guaranty;]~~

(xvii) the Floating Rate Loan Agreement;

~~(xviii) (xxx) [the State Guaranty]~~ Swap Agreement; and

~~(xxxi) [the User Guaranty].~~

(xix) the Credit Default Option.

(g) Such Person shall have received the following, each dated as of the Closing Date, in form and substance satisfactory to it:

(i) incumbency certificates or powers of attorney, as the case may be, of the Authority, the State, the User, the Owner Participant, the Trust and the Trust Company regarding the officers of each authorized to execute and deliver the Operative Documents to which each is a party and any other documents and agreements delivered in connection therewith;

(ii) in the case of the Owner Participant, the Appraisal, [and, in the case of the Lender, a letter of the Appraiser as to the fair market value of the Facility as of the Closing Date];

(iii) certified copies of all documents evidencing the corporate or trust actions of the Owner Participant, the Authority, the State, the User, the Trust and the Trust Company, including resolutions of the boards of directors or trustees or delegations of authority (other than with respect to the Owner Participant), of each such Person duly authorizing the execution, delivery and performance by each such Person of each of the Operative Documents to which it is or is to be a party and the transactions contemplated hereby and thereby;

(iv) certified copies of the bylaws and charter of the Owner Participant and the Trust Company and a certified copy of the ~~board~~-resolution or ordinance adopted by the governing body of (1) the Authority dated [_____, 2003]; (2) [the State dated [_____, 2003]] and (3) the User dated [_____, 2003], in each case as amended, supplemented or otherwise modified through the Closing Date; and

(v) such other documents and evidence with respect to the Owner Participant, the Trust Company, the Authority, the State, ~~the User, the Payment Undertaker, the Equity Payment Undertaker, the Payment Undertaker Guarantor, the Equity Payment Undertaker Guarantor, the LC Issuer and the Strip Surety Provider~~ and the User as such Person may reasonably request in order to establish the consummation of the transactions contemplated by the Operative Documents, the taking of all corporate proceedings in connection therewith and compliance with the conditions herein set forth.

(h) On the Closing Date (i) the representations and warranties of the Trust, the Trust Company, each Participant, the Authority, the State, ~~the User, the Payment Undertaker, the Equity Payment Undertaker, the Payment Undertaker Guarantor, the Equity Payment Undertaker Guarantor, the LC Issuer and the Strip Surety Provider~~ and the User, contained herein or in any of the other Operative Documents other than the Tax Indemnification Agreement shall be true and accurate on and as of such date as though made on and as of such date except to the extent that such representations and warranties relate solely to an earlier date

(in which case such representations and warranties shall be true and accurate on and as of such earlier date) and (ii) no event shall have occurred and be continuing, or would result from the transactions contemplated by the Operative Documents, which constitutes a Lease Event of Default, an Event of Loss, a Burdensome Event, a Loan Event of Default or an event which with notice or lapse of time or both would become a Lease Event of Default, an Event of Loss, a Burdensome Event or a Loan Event of Default.

(i) Each Participant, the ~~Payment Undertaker, the Equity Payment Undertaker, the LC Issuer, the Strip Surety Provider, the Payment Undertaker Guarantor, the Equity Payment Undertaker Guarantor, the~~ Trust Company and the Trust shall have received favorable opinions dated the Closing Date and addressed to it from (i) [_____], [General Counsel] of the Authority, and (ii) [_____], special counsel for the Authority, each in form and substance reasonably satisfactory to it, covering such matters incident to the transactions contemplated hereby as it may reasonably request.

(j) Each Participant, the Trust Company and the Trust shall have received favorable opinions dated the Closing Date and addressed to it from (i) [_____], [General Counsel] of the State, and (ii) [_____], special counsel for the State, each in form and substance reasonably satisfactory to it, covering such matters incident to the transactions contemplated hereby as it may reasonably request.

~~(k) (j) Each Participant, the Payment Undertaker, the Equity Payment Undertaker, the LC Issuer, the Strip Surety Provider, the Payment Undertaker Guarantor, the Equity Payment Undertaker Guarantor, the Trust Company and the Trust shall have received favorable opinions dated the Closing Date and addressed to it from (i) [_____], [General Counsel] of the State, and (ii) [_____], special counsel for the State, in form and substance reasonably satisfactory to it, covering such matters incident to the transactions contemplated hereby as it may reasonably request.~~

~~(k) — Each Participant, the Payment Undertaker, the Equity Payment Undertaker, the LC Issuer, the Strip Surety Provider, the Payment Undertaker Guarantor, the Equity Payment Undertaker Guarantor~~ Each Participant, the Trust Company and the Trust shall have received favorable opinions dated the Closing Date and addressed to it from (i) [_____], [General Counsel] of the User, and (ii) Chapman ~~&and~~ Cutler LLP and/or Dorsey & Whitney LLP, special counsel for the User, each in form and substance reasonably satisfactory to it, covering such matters incident to the transactions contemplated hereby as it may reasonably request.

~~(l) The Trust and the Owner Participant shall have received a letter from an authorized signatory of the Equity Payment Undertaker regarding the Equity Payment Undertaker's solvency.~~ Intentionally omitted.

(m) Each Participant, ~~the Payment Undertaker, the Equity Payment Undertaker, the LC Issuer, the Strip Surety Provider, the Payment Undertaker Guarantor, the Equity Payment Undertaker Guarantor~~, the Trust Company and the Trust shall have received favorable opinions dated the Closing Date and addressed to it from (i) King & Spalding LLP, special New York counsel for the Owner Participant, and (ii) ~~[Wilfried Kupers], [General Counsel of the Legal Division] of~~ James Hubbard], in-house counsel for the Owner Participant, each in form and

substance reasonably satisfactory to it, covering such matters incident to the transactions contemplated hereby as it may reasonably request.

(n) Each Participant, the ~~Payment Undertaker, the Equity Payment Undertaker, the LC Issuer, the Strip Surety Provider, the Payment Undertaker Guarantor, the Equity Payment Undertaker Guarantor, the~~ Trust Company and the Trust shall have received a favorable opinion dated the Closing Date and addressed to it from (i) [], special South Dakota counsel for the Trust and the Trust Company and (ii) [~~Bingham McCutchen LLP~~], special ~~Connecticut~~Delaware counsel for the Trust and the Trust Company, ~~in each case,~~ in form and substance reasonably satisfactory to it, covering such matters incident to the transactions contemplated hereby as it may reasonably request.

(o) Each Participant, the Trust Company, ~~the Strip Surety Provider~~ and the Trust shall have received favorable opinions dated the Closing Date and addressed to it from (i) ~~White & Case LLP, special New York counsel for the Payment Undertaker, the Equity Payment Undertaker and the LC Issuer, (ii) Maples and Calder, special Cayman Islands counsel to the Lender and the Payment Undertaker, (iii) Douglas L. Poling, General Counsel of the Equity Payment Undertaker and the LC Issuer, and (iv) Kathleen E. Shannon, Esq., Associate General Counsel of the Payment Undertaker Guarantor and the Equity Payment Undertaker Guarantor, each~~ [], special [] counsel to the Lender, in form and substance reasonably satisfactory to it, covering such matters incident to the transactions contemplated hereby as it may reasonably request.

(p) ~~The Owner Participant and the Trust shall have received an opinion dated the Closing Date and addressed to it from the General Counsel or Associate General Counsel of the Strip Surety Provider and the LC Issuer, in form and substance reasonably satisfactory to it, covering such matters incident to the transaction contemplated hereby as it may reasonably request.~~ Intentionally omitted.

(q) The Owner Participant shall have received a favorable opinion dated the Closing Date and addressed to it from King & Spalding LLP, special tax counsel for the Owner Participant, in form and substance satisfactory to it, covering such tax matters incident to the transactions contemplated hereby as it may reasonably request.

(r) In the case of each Participant and the Trust, the Floating Rate Lender shall have delivered a certificate covering certain representations and warranties incident to the transactions contemplated hereby as it may reasonably request.

(s) ~~(s)~~ Intentionally omitted.

~~(s) — [The General Mortgage shall be recorded in the [—].]~~

(t) UCC financing statements covering (i) the rights of the Trust in the Head Lease and the Lease, and (ii) the rights of the ~~Trust in all of the Equity Collateral, (iii) the rights of the Lender in all of the Collateral, and (iv) the [Mortgaged Property (as defined in the General Mortgage)]~~ shall have been executed (or otherwise authenticated to the satisfaction of the relevant secured party) and delivered by the appropriate parties as debtor for the benefit of the appropriate parties as secured party, and in each case duly filed in all places as, in the reasonable

opinion of counsel for the Trust, the Owner Participant or the Lender, are necessary or desirable to perfect said security or other interests.

(u) [A consent to the transaction from each of the Environmental Protection Agency, the South Dakota Conservancy District, the SRF Program, the South Dakota Department of Environment and Natural Resources and the Board of Water and Natural Resources shall have been issued to the Authority, [the State] and the User, a copy of each of which shall have been delivered to each Participant.]

(v) The Owner Participant shall have received an opinion of Allco Finance Corporation (or such other investment advisor as shall be acceptable to the Owner Participant), in form and substance satisfactory to it.

(w) The Owner Participant shall have received (i) an opinion letter addressed to the Owner Participant ~~and~~, in form and substance satisfactory to it, from Marsh USA Inc. with respect to insurance during the Service Contract Period and (ii) an opinion letter addressed to the Owner Participant ~~and~~, in form and substance satisfactory to it, from [Collateral Guaranty LLC], with respect to the Residual Value Insurance.

(x) In the case of each Participant, Allco Finance Corporation shall have delivered a certificate as to the number and nature of offerees it solicited in connection with the Loan Certificates and interests in the Trust Estate.

(y) All actions required to have been taken on or prior to the Closing Date (i) in connection with the transactions contemplated by this Agreement and the other Operative Documents, (ii) in order that the Facility may be operated as of the Closing Date for its intended purposes, and (iii) to protect and preserve all leasehold interests and to protect, preserve and perfect all security interests or other interests as contemplated by the Operative Documents shall have been taken by any governmental or political agency, subdivision or instrumentality of the United States (including the SRF, the Environmental Protection Agency, the South Dakota ~~Department of Environment and Natural Resources~~ Conservancy District, the State and the Board of Water and Natural Resources) or the State of South Dakota, as the case may be, and all orders, permits, waivers, exemptions, authorizations, approvals, consents, registrations and filings of or with such entities required to be in effect on or prior to the Closing Date in connection with the transactions contemplated by this Agreement and the other Operative Documents shall have been issued or made, and all such orders, permits, waivers, exemptions, authorizations, approvals, consents, registrations and filings shall be in full force and effect, on the Closing Date.

(z) No action or proceeding shall have been instituted nor shall any action or proceeding be threatened before any court or governmental agency, nor shall any order, judgment or decree have been issued by any court or governmental agency at the time of the Closing Date, to set aside, restrain, enjoin or prevent the completion and consummation of this Agreement and the other Operative Documents or the transactions contemplated hereby and thereby.

(aa) ~~{Each Participant, the Trust Company and the Trust shall have received a report from the {User's} insurance broker describing the insurance then carried and maintained on and in respect of the Facility and a certificate that such insurance coverage complies with that required pursuant to Section 10 of the Lease}.~~

(bb) ~~The Undertaking Fee shall have been paid to the Payment Undertaker pursuant to the Payment Agreement, the Equity Undertaking Fee shall have been paid to the Equity Payment Undertaker pursuant to the Equity Payment Agreement, the Equity Payment Undertaker shall have delivered the Account Collateral to the Custodian in accordance with Section 4.2 of the Equity Payment Agreement, the fees payable to the LC Issuer shall have been paid pursuant to the Letter of Credit and Reimbursement Agreement, and the fees required to be paid to the Strip Surety Provider pursuant to the Insurance and Indemnity Agreement shall have been paid (subject to adjustments as provided therein).~~ Intentionally omitted.

(cc) There shall not have occurred any change or proposed change in tax law (including, without limitation, the Code, regulations, rulings, or case law) that would adversely affect any of the Participants with respect to the transactions contemplated by the Operative Documents.

(dd) The Owner Participant shall have received a report as to environmental matters from the Environmental Consultant and a report of the Engineer, each in form and substance satisfactory to the Owner Participant.

(ee) The Owner Participant shall have received a report and opinion, in form and substance satisfactory to it, from [London Economics Inc.] in relation to the feasibility of the Service Contract Option.

(ff) Allco Finance Corporation shall have (i) timely registered the transactions contemplated by the Operative Documents as a “confidential corporate tax shelter” pursuant to Treasury Regulation Section 301.6111-2, by having prepared and timely filed Form 8264, “Application for Registration of a Tax Shelter” in accordance with Treasury Regulation Section 301.6111-2(e), (ii) made available copies of such registration filing and the registration number assigned thereto by the Internal Revenue Service to the parties hereto and their counsel, and (iii) prepared and made available for execution by the parties hereto and their counsel an agreement designating Allco Finance Corporation as the “designated organizer” responsible for the registration described in clause (i), pursuant to Treasury Regulation Section 301.6111-1T (Q&A-38).

(gg) All Taxes, if any, payable in connection with the execution, delivery, recording and filing of the documents and instruments referred to in Sections 3(s) and 3(t) hereof or in connection with the issuance of the Loan Certificates on the Closing Date shall have been duly paid in full or otherwise provided for.

(hh) The Trust Company shall have delivered evidence of its filing made pursuant to Section 131(3) of the New York State Banking Law.

(ii) Each Participant shall have received excerpts of the warranty provisions, if any, that relate to the Facility, and a certificate by the User certifying that notice has been given to

each Manufacturer of the assignment of such Manufacturer's warranties [**and all licenses related to the Facility**].

Notwithstanding the foregoing, the obligation of a Participant or the Trust to perform its obligations under this Agreement shall not be subject to the satisfaction of any condition within such Person's control or the control of any Affiliate of such Person (it being understood that the conditions described in Section 3(g)(ii), (~~er~~), (t), (v), (w), (dd) and (~~ee~~) shall not be deemed to be within the control of the Owner Participant, and that counsel to any Person shall not be deemed to be within the control of such Person to the extent such counsel is unable to render a favorable opinion as to matters of law reasonably requested by such Person to be addressed in such counsel's opinion).

SECTION 4. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE AUTHORITY, THE STATE AND THE USER.

Section 4.1 Conditions Precedent to Obligations of the Authority.

The Authority's ~~obligations to (i) enter into the User Head Lease with respect to the Facility as User Head Lessee with the User Head Lessor and (ii) enter into the Head Lease with respect to the Facility as Head Lessor with the Trust, and (iii) obligation~~ to lease the Facility from the Trust as a Lessee under the Lease, ~~are~~ is subject to the fulfillment to the satisfaction of the Authority on or before the Closing Date of the following conditions precedent:

(a) Each of the Operative Documents shall have been duly authorized, executed and delivered by the parties thereto (other than the State, the User and the Authority), shall be in form and substance satisfactory to the Authority and shall be in full force and effect and an executed original thereof shall have been delivered to the Authority if the Authority is a party thereto (and, otherwise, a conformed copy).

(b) The Authority shall have received the following, in each case in form and substance satisfactory to it:

(i) incumbency certificates of the parties referred to in Section 3(g)(i) (other than the State, the User and the Authority);

(ii) copies of the documents referred to in Section 3(g)(iii), (iv) and (v) (other than those relating to the State, the User and the Authority);

(iii) each opinion referred to in Sections 3(i), (j), (k), (m), (n) and (o), each such opinion addressed to the Authority or accompanied by a letter from the counsel rendering such opinion authorizing the Authority to rely upon such opinion as if it were addressed to the Authority;

(iv) the certificate referred to in Section 3(x);

(v) the UCC filing statements and evidence of the recordings and consents [and proofs of publication] referred to in Sections 3(s), (t) and (u); and

(vi) such other customary documents and evidence, with respect to the Owner Participant, the Lender, the Trust Company and the Trust, as the Authority may reasonably request in order to establish the consummation of the transactions contemplated by the Operative Documents, the taking of all corporate proceedings in connection therewith and compliance with the conditions herein set forth.

(c) No change shall have occurred in Applicable Law that, in the opinion of the Authority or its counsel, would make it illegal for the Authority to enter into the transactions contemplated by the Operative Documents.

(d) On the Closing Date, the representations and warranties of the Trust, the Trust Company, ~~each Participant, the Payment Undertaker, the Payment Undertaker Guarantor, the Equity Payment Undertaker, the Equity Payment Undertaker Guarantor, the LC Issuer and the Strip Surety Provider~~ and each Participant contained herein or in any other Operative Document other than the Tax Indemnification Agreement shall be true and accurate on and as of such date as though made on and as of such date except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties shall be true and accurate on and as of such earlier date).

(e) No action or proceeding shall have been instituted nor shall any action or proceeding be threatened before any court or governmental agency, nor shall any order, judgment or decree have been issued by any court or governmental agency at the time of the Closing Date, to set aside, restrain, enjoin or prevent the completion and consummation of this Agreement and the other Operative Documents or the transactions contemplated hereby and thereby.

(f) The Lender and the Owner Participant shall have made available their respective Commitments in accordance with Section 2(a)(vii) and (viii).

(g) The Authority shall have received a favorable opinion dated the Closing Date and addressed to it from [_____], special counsel to the Authority, in form and substance satisfactory to it, covering such tax matters incident to the transactions contemplated hereby as it may reasonably request.

(h) ~~The Authority shall have received favorable opinions dated the Closing Date and addressed to it from Cayman Islands counsel, in form and substance satisfactory to it, as to the absence of any Cayman Islands withholding Taxes on payments by the Payment Undertaker.~~ Intentionally omitted.

(i) There shall not have occurred any change or proposed change in tax law (including, without limitation, the Code, regulations, rulings, or case law) that would adversely affect the Authority with respect to the transactions contemplated by the Operative Documents.

(j) All actions required to have been taken on or prior to the Closing Date in connection with the transactions contemplated by this Agreement and the other Operative Documents shall have been taken by any governmental or political agency, subdivision or instrumentality of the United States (including the Environmental Protection Agency) or the State of South Dakota (including the South Dakota Conservancy District), as the case may be,

and all orders, permits, waivers, exemptions, authorizations, approvals, consents, registrations and filings of or with such entities required to be in effect on or prior to the Closing Date in connection with the transactions contemplated by this Agreement and the other Operative Documents shall have been issued or made, and all such orders, permits, waivers, exemptions, authorizations, approvals, consents, registrations and filings shall be in full force and effect, on the Closing Date.

~~(k) — The Authority shall have received from the Lender a copy of the Cayman Islands tax certificates on tax concessions, which certificates shall refer to the Lender.~~

~~(l) — The Authority shall have received from the Payment Undertaker a copy of the Cayman Islands tax certificates on tax concessions, which certificates shall refer to the Payment Undertaker.~~

Notwithstanding the foregoing, the Authority's performance under this Agreement shall not be subject to the satisfaction of any condition within the control of the Authority, the State or the User or any Affiliate thereof.

Section 4.2 Conditions Precedent to Obligations of the State.

The State's obligation to sublease the Facility from the Authority and the User as Sublessee under the Sublease, is subject to the fulfillment to the satisfaction of the State on or before the Closing Date of the following conditions precedent:

(a) Each of the Operative Documents shall have been duly authorized, executed and delivered by the parties thereto (other than the State, the Authority and the User), shall be in form and substance satisfactory to the State and shall be in full force and effect and an executed original thereof shall have been delivered to the State if the State is a party thereto (and, otherwise, a conformed copy).

(b) The State shall have received the following, in each case in form and substance satisfactory to it:

(i) incumbency certificates of the parties referred to in Section 3(g)(i) (other than the State, the Authority and the User);

(ii) copies of the documents referred to in Section 3(g)(iii), (iv) and (v) (other than those relating to the State, the Authority and the User);

(iii) each opinion referred to in Sections 3(i), (j), (k), (m), (n) and (o), each such opinion addressed to the State or accompanied by a letter from the counsel rendering such opinion authorizing the State to rely upon such opinion as if it were addressed to the State;

(iv) the certificate referred to in Section 3(x);

(v) the UCC filing statements and evidence of the recordings and consents [and proofs of publication] referred to in Sections 3(s), (t) and (u); and

(vi) such other customary documents and evidence, with respect to the Owner Participant, the Lender, the Trust Company and the Trust, as the State may reasonably request in order to establish the consummation of the transactions contemplated by the Operative Documents, the taking of all corporate proceedings in connection therewith and compliance with the conditions herein set forth.

(c) No change shall have occurred in Applicable Law that, in the opinion of the State or its counsel, would make it illegal for the State to enter into the transactions contemplated by the Operative Documents.

(d) On the Closing Date, the representations and warranties of the Trust, the Trust Company, each Participant, the ~~Payment Undertaker, the Payment Undertaker Guarantor, the Equity Payment Undertaker, the Equity Payment Undertaker Guarantor, the LC Issuer and the Strip Surety Provider~~ Floating Rate Lender and the Swap Party contained herein or in any other Operative Document other than the Tax Indemnification Agreement shall be true and accurate on and as of such date as though made on and as of such date except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties shall be true and accurate on and as of such earlier date).

(e) No action or proceeding shall have been instituted nor shall any action or proceeding be threatened before any court or governmental agency, nor shall any order, judgment or decree have been issued by any court or governmental agency at the time of the Closing Date, to set aside, restrain, enjoin or prevent the completion and consummation of this Agreement and the other Operative Documents or the transactions contemplated hereby and thereby.

(f) The Lender and the Owner Participant shall have made available their respective Commitments in accordance with Section 2(a)(vii) and (viii).

(g) Intentionally omitted.

(h) Intentionally omitted.

(i) There shall not have occurred any change or proposed change in tax law (including, without limitation, the Code, regulations, rulings, or case law) that would adversely affect the State with respect to the transactions contemplated by the Operative Documents.

(j) All actions required to have been taken on or prior to the Closing Date in connection with the transactions contemplated by this Agreement and the other Operative Documents shall have been taken by any governmental or political agency, subdivision or instrumentality of the United States (including the Environmental Protection Agency) or the State of South Dakota (including the South Dakota Conservancy District), as the case may be, and all orders, permits, waivers, exemptions, authorizations, approvals, consents, registrations and filings of or with such entities required to be in effect on or prior to the Closing Date in connection with the transactions contemplated by this Agreement and the other Operative Documents shall have been issued or made, and all such orders, permits, waivers, exemptions, authorizations, approvals, consents, registrations and filings shall be in full force and effect, on the Closing Date.

Notwithstanding the foregoing, the State's performance under this Agreement shall not be subject to the satisfaction of any condition within the control of the Authority, the State, the User or any Affiliate of any thereof.

Section 4.3 Conditions Precedent to Obligations of the User.

The User's obligation to (i) enter into the ~~User~~ Head Lease with respect to the Facility as ~~User~~ Head Lessor with the ~~Authority~~ Trust, and ~~the User's obligation to~~ (ii) sublease the Facility from the State as User Lessee under the User Lease, are subject to the fulfillment to the satisfaction of the User on or before the Closing Date of the following conditions precedent:

(a) Each of the Operative Documents shall have been duly authorized, executed and delivered by the parties thereto (other than the User, the State and the Authority), shall be in form and substance satisfactory to the User and shall be in full force and effect and an executed original thereof shall have been delivered to the User if the User is a party thereto (and, otherwise, a conformed copy).

(b) The User shall have received the following, in each case in form and substance satisfactory to it:

(i) incumbency certificates of the parties referred to in Section 3(g)(i) (other than the User, the State and the Authority);

(ii) copies of the documents referred to in Section 3(g)(iii), (iv) and (v) (other than those relating to the User, the State and the Authority);

(iii) each opinion referred to in Sections 3(i), (j), (k), (m), (n) and (o), each such opinion addressed to the User or accompanied by a letter from the counsel rendering such opinion authorizing the User to rely upon such opinion as if it were addressed to the User;

(iv) the certificate referred to in Section 3(x);

(v) the UCC filing statements and evidence of the recordings and consents [and proofs of publication] referred to in Sections 3(s), (t) and (u); and

(vi) such other customary documents and evidence, with respect to the Owner Participant, the Lender, the Trust Company and the Trust, as the User may reasonably request in order to establish the consummation of the transactions contemplated by the Operative Documents, the taking of all corporate proceedings in connection therewith and compliance with the conditions herein set forth.

(c) No change shall have occurred in Applicable Law that, in the opinion of the User or its counsel, would make it illegal for the User to enter into the transactions contemplated by the Operative Documents.

(d) On the Closing Date, the representations and warranties of the Trust, the Trust Company, ~~each Participant, the Payment Undertaker, the Payment Undertaker Guarantor, the~~

~~Equity Payment Undertaker, the Equity Payment Undertaker Guarantor, the LC Issuer and the Strip Surety Provider~~ and each Participant contained herein or in any other Operative Document other than the Tax Indemnification Agreement shall be true and accurate on and as of such date as though made on and as of such date except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties shall be true and accurate on and as of such earlier date).

(e) No action or proceeding shall have been instituted nor shall any action or proceeding be threatened before any court or governmental agency, nor shall any order, judgment or decree have been issued by any court or governmental agency at the time of the Closing Date, to set aside, restrain, enjoin or prevent the completion and consummation of this Agreement and the other Operative Documents or the transactions contemplated hereby and thereby.

(f) The Lender and the Owner Participant shall have made available their respective Commitments in accordance with Section 2(a)(vii) and (viii).

(g) [The User shall have received a favorable opinion dated the Closing Date and addressed to it from [_____], special counsel to the User, in form and substance satisfactory to it, covering such tax matters incident to the transactions contemplated hereby as it may reasonably request.]

(h) Intentionally omitted.

(i) There shall not have occurred any change or proposed change in tax law (including, without limitation, the Code, regulations, rulings, or case law) that would adversely affect the User with respect to the transactions contemplated by the Operative Documents.

(j) All actions required to have been taken on or prior to the Closing Date in connection with the transactions contemplated by this Agreement and the other Operative Documents shall have been taken by any governmental or political agency, subdivision or instrumentality of the United States (including the Environmental Protection Agency) or the State of South Dakota, as the case may be, and all orders, permits, waivers, exemptions, authorizations, approvals, consents, registrations and filings of or with such entities required to be in effect on or prior to the Closing Date in connection with the transactions contemplated by this Agreement and the other Operative Documents shall have been issued or made, and all such orders, permits, waivers, exemptions, authorizations, approvals, consents, registrations and filings shall be in full force and effect, on the Closing Date.

Notwithstanding the foregoing, the User's performance under this Agreement shall not be subject to the satisfaction of any condition within the control of the Authority, the State, the User or any Affiliate of any thereof.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY, THE STATE AND THE USER.

Section 5.1 Representations and Warranties of the Authority.

The Authority hereby represents and warrants that on the Closing Date:

(a) The Authority is a body corporate and politic of the State of South Dakota duly organized and established pursuant to the MFA Act and the laws of the State of Dakota and has the full power, authority and legal right to conduct its business as presently conducted, to own or hold under lease the property it purports to own or hold under lease and to enter into and perform its obligations under this Agreement and each of the other Operative Documents to which it is or will become a party, including, but not limited to, the full power, authority and legal right to ~~receive from the User Head Lessor the User Head Lease Interest under the User Head Lease, to grant to the Trust the Head Lease Interest under the Head Lease, to~~ lease the Facility from the Lessor under the Lease and to sublease the Facility to the Sublessee under the Sublease.

(b) The execution, delivery and performance of this Agreement and each of the other Operative Documents to which it is or will become a party have been duly authorized by all necessary action on the part of the Authority and do not and will not violate the MFA Act or any of its ~~ordinances~~resolutions. Each Operative Document to which the Authority is a party has been duly and validly executed and delivered by the Authority and neither the execution, delivery and performance of any such Operative Document nor the consummation of the transactions contemplated thereby, nor compliance by the Authority with any of the terms and conditions thereof:

(i) require the Authority to obtain any consent or approval of, or to give notice to, or to take any other action in respect of, any Governmental Authority (other than the consents referred to in Section 3(u), which have been obtained) or any trustee or holder of any indebtedness or obligations of the Authority; and

(ii) do or will contravene the MFA Act, any of its ~~ordinances~~resolutions or any Applicable Law binding on or applicable to it or its property, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien (other than the respective rights of parties to the Operative Documents created under the Operative Documents) upon the property of the Authority under any agreement or instrument to which the Authority is a party or by which the Authority or its properties are bound or affected where the effect thereof would be to adversely affect the ability of the Authority to perform its obligations under any of the Operative Documents.

(c) Assuming due authorization, execution and delivery by each of the other parties hereto and ~~thereto~~to the other Operative Documents and that each of this Agreement and the other Operative Documents is the legal, valid, binding and enforceable obligation of such other parties, this Agreement and each of the other Operative Documents to which the Authority is or will be a party constitutes (or when executed and delivered will constitute) a legal, valid and binding obligation of the Authority enforceable against it in accordance with the terms hereof and thereof.

(d) There are no pending or, to its knowledge, threatened claims, actions, litigation, suits or proceedings (whether or not purportedly on behalf of the Authority) against or affecting the Authority or any of its properties by or before any court or governmental or administrative agency in respect of any of the Operative Documents to which it is or will be a party or the transactions contemplated thereby or which will or are reasonably likely to, or, except as described in Schedule IV, may, either individually or in the aggregate, adversely affect the ability of the Authority to pay or perform its obligations under the Operative Documents to which it is or will be a party or the value, utility or use of the Facility.

(e) ~~]~~The Authority is not entitled to immunity from liability or suit in respect of its obligations under the Operative Documents to which it is or will be a party; and the Authority is subject to service of process and legal proceedings may be commenced and maintained against the Authority for enforcement and collection in respect of any of the Authority's obligations under such Operative Documents.~~]~~

(f) The Assuming such Person's sole business activity in the State of South Dakota is its participation in the transactions contemplated by the Operative Documents, the qualification of the Holders, the ~~Payment Undertaker, the Equity Payment Undertaker, the Payment Undertaker Guarantor, the Equity Payment Undertaker Guarantor, the~~ Trust, the Trustee, ~~the Strip Surety Provider, the LC Issuer~~ or the Owner Participant to do business under the laws of the State of South Dakota or any governmental subdivision thereof does not constitute a condition to, and the failure so to qualify does not affect, the exercise by any of them of any right, privilege or remedy under the Operative Documents or the enforcement of such right, privilege or remedy.

(g) The Authority possesses (y) all certificates, franchises, licenses, permits, authorizations, rights and concessions and consents of or from all Governmental Authorities and all other applicable authorities and agencies, which are required for the ~~granting by the User Head Lessor of the User Head Lease Interest to the Authority and the granting by the Head Lessor of the Head Lease Interest to the Trust and the~~ leasing and subleasing of the Facility and (z) all material certificates, franchises, licenses, permits, authorizations, rights and concessions and consents of or from all Governmental Authorities and all other applicable authorities and agencies, which are required for ~~the operation of the Facility and~~ the conduct of its business as it is now being conducted; and

(i) all such certificates, franchises, licenses, permits, authorizations, rights and concessions and consents are in full force and effect and the Authority is in material compliance with all the terms and conditions thereof; and

(ii) no additional certificates, franchises, licenses, permits, authorizations, rights, concessions or consents ~~nor~~or changes to any of the foregoing are required as a result of the transactions contemplated by the Operative Documents.

(h) ~~The choice of the laws of the State of New York to govern the Operative Documents will be recognized and applied by a South Dakota court in a legal proceeding to enforce the Operative Documents brought in such court.~~ Intentionally omitted.

(i) It is not necessary in the State of South Dakota to ensure the legality, validity, enforceability or admissibility in evidence of the Operative Documents that any of them or any other instrument be filed, recorded, registered or enrolled in any court or public office or elsewhere in the State of South Dakota or that any stamp, registration or similar Tax be paid in the State of South Dakota on or in relation to any of the Operative Documents and, other than the filings described in Sections 3(s) and 3(t) and the filing of continuation statements in connection therewith, no action in the State of South Dakota, including any filing or recording of any document or notice, is necessary or required in the State of South Dakota to establish the Authority's right, title and interest in the User Head Lease Interest, the Trust's right, title and interest in the Head Lease Interest or to establish and perfect the Lease, the Sublease, the User Lease or to create and perfect a valid first priority security interest of the Trust in the ~~Payment Agreement, the Equity Payment Agreement or the~~ General Mortgage or to establish and perfect the first priority security interest of the Lender under the Loan Agreement as against the Authority or any third parties or in order to avoid having the transactions contemplated hereby or by the other Operative Documents being presumed or held fraudulent or void against the Authority's creditors.

(j) Neither the Authority nor any Person acting on its behalf has directly or indirectly (i) offered any interest in the Facility or the Trust Estate for sale or lease to, or solicited any offers to buy any thereof from, or otherwise approached or negotiated in respect thereof with, any Person other than the Owner Participant and not more than ten (10) other institutional investors or (ii) directly or indirectly offered the Loan Certificates or any interest therein for sale to, or solicited any offers to buy any thereof from, any Person other than the Lender. The Authority has not taken and will not take any action in connection with the transactions contemplated by the Operative Documents that would result in a violation of Section 5 of the ~~United States Securities Act of 1933, as amended~~, or any state securities law.

(k) No condition or event exists which constitutes a Lease Default, a Lease Event of Default, a Sublease Default, a Sublease Event of Default, a User Lease Default, a User Lease Event of Default or an Event of Loss.

(l) ~~The User has good and marketable legal title to the Facility and the Authority has good and marketable transferable interest in the User Head Lease Interest, each free and clear of all Liens (other than the [SRF, bonds, etc.]).~~ **Intentionally omitted.**

(m) Neither the Authority nor any Affiliate of the Authority is (i) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended or (ii) a "holding company", an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company", required to register under the Public Utility Holding Company Act of 1935, as amended.

(n) The location (as such term is used in Section 9-307 of the UCC as in effect in the State of South Dakota) of the Authority is the State of South Dakota. [The Authority has no organizational identification number] (as such term is used in Section 9-516 of the UCC as in effect in the State of South Dakota). The Authority's correct legal name is "South Dakota Municipal Facilities Authority."

(o) The obligations of the Authority under this Agreement and the other Operative Documents to which it is or will be a party are at least *pari passu* in right of payment with all other unsecured claims against the general credit of the Authority, except that certain obligations of the Authority (e.g., wage claims) are mandatorily preferred under Applicable Law and except that the obligations of the Authority under the Operative Documents, to the extent of the relevant collateral, are, in fact, secured.

(p) The Authority is not insolvent.

(q) [Describe available financials].—~~Since [_____], 2003, there has been no material adverse change in the financial condition or results of operation of the Authority.~~

(r) None of the information furnished to the Participants by or on behalf of the Authority in connection with the negotiation of the transactions contemplated by this Agreement contains any untrue statement of a material fact and there is no fact known to the Authority which the Authority has not disclosed to each Participant in writing which materially affects adversely or, so far as the Authority can reasonably foresee, will materially affect adversely the Facility or the financial condition of the Authority or will impair the ability of the Authority to perform its obligations under any of the Operative Documents.

(s) On the Closing Date, all sales, use, stamp or transfer Taxes and all governmental fees and charges arising under Applicable Law in respect of the Facility due and payable by the Authority as of the Closing Date upon or in any way arising out of the sale or leasing of the Facility and the transactions contemplated by the Operative Documents will have been paid or duly provided for by the Authority or such transactions shall be exempt from such Taxes.

(t) Assuming the accuracy of the representations made in Sections 6(h), ~~8.1(g)~~ and ~~8.28~~(g), the execution and delivery of this Agreement and the other Operative Documents and the consummation of the transactions contemplated thereby and the compliance by the Authority with the provisions of the Operative Documents will not constitute any non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code. No (i) employee pension benefit plans (other than multiemployer plans), both as defined in ERISA (“*Plans*”), maintained by the Authority or any Person which is under common control with the Authority within the meaning of Section 4001(b) of ERISA, nor (ii) any trusts created thereunder, are subject to ERISA.

(u) The Authority is not in default under any mortgage, deed of trust, indenture or other instrument or agreement to which the Authority is a party or by which it or any of its properties or assets may be bound, or in violation of any Applicable Law, which default or violation could have an adverse effect on its ability to pay or perform any of its obligations under the Operative Documents to which it is or will be a party.

(v) The Authority is not engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of buying or carrying margin stock (within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System) and no part of the Loan Amount or the Owner Participant’s Commitment will be used by the Authority to purchase or carry any such margin stock, or to refinance any borrowing, the

proceeds of which were used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock.

(w) The Authority is not authorized, nor to the best of its knowledge after due inquiry is there any pending law or legislation that if enacted would authorize it in its capacity as a [municipality, if applicable, or otherwise] or by name under the laws of the State of South Dakota, to be a debtor under the United States Bankruptcy Code, and no governmental officer or organization is empowered under such laws to authorize the Authority in its capacity as a [municipality, if applicable, or otherwise] or by name to be a debtor under the United States Bankruptcy Code.

(x) No grants, [trust certificates], tax exempt bonds or other debt were used or issued to finance the acquisition of the Facility by the User, other than the Bonds.

(y) **[The manufacturer warranties related to the Facility commenced, for the Facility, when the Facility was preliminarily or conditionally accepted and shall run for [] years.]**

Section 5.2 Representations and Warranties of the State.

The State hereby represents and warrants that on the Closing Date:

(a) The State has the full power, authority and legal right to conduct its business as presently conducted, ~~{to bind the State of South Dakota in its entirety,}~~ to own or hold under lease the property it purports to own or hold under lease and to enter into and perform its obligations under this Agreement and each of the other Operative Documents to which it is or will become a party, including, but not limited to, the full power, authority and legal right to sublease the Facility from the ~~Sublessor~~Sublessors under the Sublease.

(b) The execution, delivery and performance of this Agreement and each of the other Operative Documents to which it is or will become a party have been duly authorized by all necessary action on the part of the State and do not and will not violate any Applicable Law. Each Operative Document to which the State is a party has been duly and validly executed and delivered by the State and neither the execution, delivery and performance of any such Operative Document nor the consummation of the transactions contemplated thereby, nor compliance by the State with any of the terms and conditions thereof:

(i) require the State to obtain any consent or approval of, or to give notice to, or to take any other action in respect of, any Governmental Authority (other than the consents referred to in Section 3(u), which have been obtained) or any trustee or holder of any indebtedness or obligations of the State; and

(ii) do or will contravene any Applicable Law binding on or applicable to it or its property, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien (other than the respective rights of parties to the Operative Documents created under the Operative Documents) upon the property of the State under any agreement or instrument to which the State is a party or by which the State or its

properties are bound or affected where the effect thereof would be to adversely affect the ability of the State to perform its obligations under any of the Operative Documents.

(c) Assuming due authorization, execution and delivery by each of the other parties hereto and ~~hereto~~ to the other Operative Documents and that each of this Agreement and the other Operative Documents is the legal, valid, binding and enforceable obligation of such other parties, this Agreement and each of the other Operative Documents to which the State is or will be a party constitutes (or when executed and delivered will constitute) a legal, valid and binding obligation of the State enforceable against it in accordance with the terms hereof and thereof.

(d) There are no pending or, to its knowledge, threatened claims, actions, litigation, suits or proceedings (whether or not purportedly on behalf of the State) against or affecting the State or any of its properties by or before any court or governmental or administrative agency in respect of any of the Operative Documents to which it is or will be a party or the transactions contemplated thereby or which will or are reasonably likely to, or, except as described in Schedule IV, may, either individually or in the aggregate, adversely affect the ability of the State to pay or perform its obligations under the Operative Documents to which it is or will be a party or the value, utility or use of the Facility.

(e) ~~†~~The State is not entitled to immunity from liability or suit in respect of its obligations under the Operative Documents to which it is or will be a party; and the State is subject to service of process and legal proceedings may be commenced and maintained against the State for enforcement and collection in respect of any of the State's obligations under such Operative Documents. ~~†~~

(f) ~~The~~ Assuming such Person's sole business activity in the State of South Dakota is its participation in the transactions contemplated by the Operative Documents, ~~the~~ qualification of the Holders, the ~~Payment Undertaker, the Equity Payment Undertaker, the Payment Undertaker Guarantor, the Equity Payment Undertaker Guarantor, the~~ Trust, the Trustee, ~~the Strip Surety Provider, the LC Issuer~~ or the Owner Participant to do business under the laws of the State of South Dakota or any governmental subdivision thereof does not constitute a condition to, and the failure so to qualify does not affect, the exercise by any of them of any right, privilege or remedy under the Operative Documents or the enforcement of such right, privilege or remedy.

(g) The State possesses (y) all certificates, franchises, licenses, permits, authorizations, rights and concessions and consents of or from all Governmental Authorities and all other applicable authorities and agencies, which are required for the subleasing of the Facility and (z) all material certificates, franchises, licenses, permits, authorizations, rights and concessions and consents of or from all Governmental Authorities and all other applicable authorities and agencies, which are required for the ~~operation of the Facility and the~~ conduct of its business as it is now being conducted; and

(i) all such certificates, franchises, licenses, permits, authorizations, rights and concessions and consents are in full force and effect and the State is in material compliance with all the terms and conditions thereof; and

(ii) no additional certificates, franchises, licenses, permits, authorizations, rights, concessions or consents ~~nor~~ changes to any of the foregoing are required as a result of the transactions contemplated by the Operative Documents.

(h) ~~The choice of the laws of the State of New York to govern the Operative Documents will be recognized and applied by a South Dakota court in a legal proceeding to enforce the Operative Documents brought in such court.~~ Intentionally omitted.

(i) It is not necessary in the State of South Dakota to ensure the legality, validity, enforceability or admissibility in evidence of the Operative Documents that any of them or any other instrument be filed, recorded, registered or enrolled in any court or public office or elsewhere in the State of South Dakota or that any stamp, registration or similar Tax be paid in the State of South Dakota on or in relation to any of the Operative Documents and, other than the filings described in Sections 3(s) and 3(t) and the filing of continuation statements in connection therewith, no action in the State of South Dakota, including any filing or recording of any document or notice, is necessary or required in the State of South Dakota to establish and perfect the Lease, the Sublease or the User Lease or to create and perfect a valid first priority security interest of the Trust in the ~~Payment Agreement, the Equity Payment Agreement or the~~ General Mortgage or to establish and perfect the first priority security interest of the Lender under the Loan Agreement as against the State or any third parties or in order to avoid having the transactions contemplated hereby or by the other Operative Documents being presumed or held fraudulent or void against the State's creditors.

(j) Neither the State nor any Person acting on its behalf has directly or indirectly (i) offered any interest in the Facility or the Trust Estate for sale or lease to, or solicited any offers to buy any thereof from, or otherwise approached or negotiated in respect thereof with, any Person other than the Owner Participant and not more than ten (10) other institutional investors or (ii) directly or indirectly offered the Loan Certificates or any interest therein for sale to, or solicited any offers to buy any thereof from, any Person other than the Lender. The State has not taken and will not take any action in connection with the transactions contemplated by the Operative Documents that would result in a violation of Section 5 of the ~~United States Securities Act of 1933, as amended~~, or any state securities law.

(k) No condition or event exists which constitutes a Sublease Default, a Sublease Event of Default, a User Lease Default, a User Lease Event of Default or an Event of Loss.

(l) ~~The User has good and marketable legal title to the Facility and the Authority has good and marketable transferable interest in the User Head Lease Interest, each free and clear of all Liens (other than the [SRF, bonds, etc.]).~~ Intentionally omitted.

(m) Neither the State nor any Affiliate of the State is (i) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended or (ii) a "holding company", an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company", required to register under the Public Utility Holding Company Act of 1935, as amended.

(n) The location (as such term is used in Section 9-307 of the UCC as in effect in the State of South Dakota) of the State is the State of South Dakota. [The State has no organizational identification number] (as such term is used in Section 9-516 of the UCC as in effect in the State of South Dakota). The State's correct legal name is "[_____]."

(o) The obligations of the State under this Agreement and the other Operative Documents to which it is or will be a party are at least *pari passu* in right of payment with all other unsecured claims against the general credit of the State, except that certain obligations of the State (e.g., wage claims) are mandatorily preferred under Applicable Law and except that the obligations of the State under the Operative Documents, to the extent of the relevant collateral, are, in fact, secured.

(p) The State is not insolvent.

(q) The audited financial statements of the State for the fiscal years ending on [December 31], 2000, [December 31], 2001 and [December 31], 2002, in each case as reported by [Macias, Gini & Company LLP] (copies of which have been furnished to each of the Participants), have been prepared in accordance with generally accepted accounting principles consistently applied and present fairly the financial position of the State as of such dates and the results of its operations and cash flows for the fiscal year then ended. Since [~~_____~~ December 31, 2002], 2003, there has been no material adverse change in the financial condition or results of operation of the State.

(r) None of the information furnished to the Participants by or on behalf of the State in connection with the negotiation of the transactions contemplated by this Agreement contains any untrue statement of a material fact and there is no fact known to the State which the State has not disclosed to each Participant in writing which materially affects adversely or, so far as the State can reasonably foresee, will materially affect adversely the Facility or the financial condition of the State or will impair the ability of the State to perform its obligations under any of the Operative Documents.

(s) On the Closing Date, all sales, use, stamp or transfer Taxes and all governmental fees and charges arising under Applicable Law in respect of the Facility due and payable by the State as of the Closing Date upon or in any way arising out of the sale or leasing of the Facility and the transactions contemplated by the Operative Documents will have been paid or duly provided for by the State or such transactions shall be exempt from such Taxes.

(t) Assuming the accuracy of the representations made in Sections 6(h), ~~8.1(g) and 8.2.8(g)~~, the execution and delivery of this Agreement and the other Operative Documents and the consummation of the transactions contemplated hereby and thereby and the compliance by the State with the provisions of the Operative Documents will not constitute any non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code. No ~~(i) employee pension benefit plans (other than multiemployer plans), both as defined in ERISA ("Plans"),~~ Plans maintained by the State or any Person which is under common control with the State within the meaning of Section 4001(b) of ERISA, nor (ii) any trusts created thereunder, are subject to ERISA.

(u) The State is not in default under any mortgage, deed of trust, indenture or other instrument or agreement to which the State is a party or by which it or any of its properties or assets may be bound, or in violation of any Applicable Law, which default or violation could have an adverse effect on its ability to pay or perform any of its obligations under the Operative Documents to which it is or will be a party.

(v) The State is not engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of buying or carrying margin stock (within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System).

(w) The State is not authorized, nor to the best of its knowledge after due inquiry is there any pending law or legislation that if enacted would authorize it in its capacity as a [municipality, if applicable, or otherwise] or by name under the laws of the State of South Dakota to be a debtor under the United States Bankruptcy Code, and no governmental officer or organization is empowered under such laws to authorize the State in its capacity as a [municipality, if applicable, or otherwise] or by name to be a debtor under the United States Bankruptcy Code.

(x) No grants, [trust certificates], tax exempt bonds or other debt were used or issued to finance the acquisition of the Facility by the User, other than the Bonds.

(y) **[The manufacturer warranties related to the Facility commenced, for the Facility, when the Facility was preliminarily or conditionally accepted and shall run for [] years.]**

Section 5.3 Representations and Warranties of the User.

The User represents and warrants that on the Closing Date:

(a) The User is a ~~[]~~ **body corporate and politic and a municipality** of the State of South Dakota duly organized and established pursuant to the Enabling Act and the laws of the State of Dakota and has the full power, authority and legal right to conduct its business as presently conducted, to own or hold under lease the property it purports to own or hold under lease and to enter into and perform its obligations under this Agreement and each of the other Operative Documents to which it is or will become a party, including, but not limited to, the full power, authority and legal right to grant to the ~~Authority Trust~~ **the User** Head Lease Interest under the ~~User~~ **Head Lease to lease the Facility from the Trust under the** Lease and to sublease the Facility from the User Lessor under the User Lease.

(b) The execution, delivery and performance of this Agreement and each of the other Operative Documents to which it is or will become a party have been duly authorized by all necessary action on the part of the User and do not and will not violate the Enabling Act or any of its ordinances. Each Operative Document to which the User is a party has been duly and validly executed and delivered by the User and neither the execution, delivery and performance of any such Operative Document nor the consummation of the transactions contemplated thereby, nor compliance by the User with any of the terms and conditions thereof:

(i) require the User to obtain any consent or approval of, or to give notice to, or to take any other action in respect of, any Governmental Authority (other than the consents referred to in Section 3(u), which have been obtained) or any trustee or holder of any indebtedness or obligations of the User; and

(ii) do or will contravene the Enabling Act, any of its ordinances or any Applicable Law binding on or applicable to it or its property, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien (other than the respective rights of parties to the Operative Documents created under the Operative Documents) upon the property of the User under any agreement or instrument to which the User is a party or by which the User or its properties are bound or affected where the effect thereof would be to adversely affect the ability of the User to perform its obligations under any of the Operative Documents.

(c) Assuming due authorization, execution and delivery by each of the other parties hereto and ~~hereto~~ to the other Operative Documents and that each of this Agreement and the other Operative Documents is the legal, valid, binding and enforceable obligation of such other parties, this Agreement and each of the other Operative Documents to which the User is or will be a party constitutes (or when executed and delivered will constitute) a legal, valid and binding obligation of the User enforceable against it in accordance with the terms hereof and thereof.

(d) There are no pending or, to its knowledge, threatened claims, actions, litigation, suits or proceedings (whether or not purportedly on behalf of the User) against or affecting the User or any of its properties by or before any court or governmental or administrative agency in respect of any of the Operative Documents to which it is or will be a party or the transactions contemplated thereby or which will or are reasonably likely to, or, except as described in Schedule IV, may, either individually or in the aggregate, adversely affect the ability of the User to pay or perform its obligations under the Operative Documents to which it is or will be a party or the value, utility or use of the Facility.

(e) [The User is not entitled to immunity from liability or suit in respect of its obligations under the Operative Documents to which it is or will be a party; and the User is subject to service of process and legal proceedings may be commenced and maintained against the User for enforcement and collection in respect of any of the User's obligations under such Operative Documents.]

(f) ~~The~~ Assuming such Person's sole business activity in the State of South Dakota is its participation in the transactions contemplated by the Operative Documents, ~~the~~ qualification of the Holders, the ~~Payment Undertaker, the Equity Payment Undertaker, the Payment Undertaker Guarantor, the Equity Payment Undertaker Guarantor, the~~ Trust, the Trustee, ~~the Strip Surety Provider, the LC Issuer~~ or the Owner Participant to do business under the laws of the South Dakota or any governmental subdivision thereof does not constitute a condition to, and the failure so to qualify does not affect, the exercise by any of them of any right, privilege or remedy under the Operative Documents or the enforcement of such right, privilege or remedy.

(g) The User possesses (y) all certificates, franchises, licenses, permits, authorizations, rights and concessions and consents of or from all Governmental Authorities and all other applicable authorities and agencies, which are required for the granting of ~~the User Head Lease Interest and~~ the Head Lease Interest and the leasing or subleasing of the Facility and (z) all material certificates, franchises, licenses, permits, authorizations, rights and concessions and consents of or from all Governmental Authorities and all other applicable authorities and agencies, which are required for the operation of the Facility and the conduct of its business as it is now being conducted; and

(i) all such certificates, franchises, licenses, permits, authorizations, rights and concessions and consents are in full force and effect and the User is in material compliance with all the terms and conditions thereof; and

(ii) no additional certificates, franchises, licenses, permits, authorizations, rights, concessions or consents ~~nor~~or changes to any of the foregoing are required as a result of the transactions contemplated by the Operative Documents;

(h) ~~The choice of the laws of the State of New York to govern the Operative Documents will be recognized and applied by a South Dakota court in a legal proceeding to enforce the Operative Documents brought in such court.~~ Intentionally omitted.

(i) It is not necessary in the State of South Dakota to ensure the legality, validity, enforceability or admissibility in evidence of the Operative Documents that any of them or any other instrument be filed, recorded, registered or enrolled in any court or public office or elsewhere in the State of South Dakota or that any stamp, registration or similar Tax be paid in the State of South Dakota on or in relation to any of the Operative Documents and, other than the filings described in Sections 3(s) and 3(t) and the filing of continuation statements in connection therewith, no action in the State of South Dakota, including any filing or recording of any document or notice, is necessary or required in the State of South Dakota to establish the Trust's right, title and interest in the Head Lease Interest or ~~the Authority's interest in the User Head Lease Interest or~~ to establish and perfect the Lease, the Sublease, the User Lease or to create and perfect a valid first priority security interest of the Trust in the Payment Agreement, the Equity Payment Agreement or the General Mortgage or to establish and perfect the first priority security interest of the Lender under the Loan Agreement as against the User or any third parties or in order to avoid having the transactions contemplated hereby or by the other Operative Documents being presumed or held fraudulent or void against the User's creditors.

(j) Neither the User nor any Person acting on its behalf has directly or indirectly (i) offered any interest in the Facility or the Trust Estate for sale or lease to, or solicited any offers to buy any thereof from, or otherwise approached or negotiated in respect thereof with, any Person other than the Owner Participant and not more than ten (10) other institutional investors or (ii) directly or indirectly offered the Loan Certificates or any interest therein for sale to, or solicited any offers to buy any thereof from, any Person other than the Lender. The User has not taken and will not take any action in connection with this transaction that would result in a violation of Section 5 of the ~~United States Securities Act of 1933, as amended,~~ or any state securities law.

(k) No condition or event exists which constitutes a User Lease Default or a User Lease Event of Default or an Event of Loss.

(l) The User has good and marketable legal title to the Facility ~~and the Authority has good and marketable transferable interest in the User Head Lease Interest, each free and clear of all Liens (other than the [SRF, bonds, etc.])~~, free and clear of all Liens (other than the Permitted Liens), and the Trust will hold a good and valid leasehold interest in the Facility and will have full rights to the use and possession of the Facility (including the Access Rights) upon leasing the Facility pursuant to the Head Lease as contemplated herein.

(m) Neither the User nor any Affiliate of the User is (i) an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended or (ii) a “holding company”, an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company”, required to register under the Public Utility Holding Company Act of 1935, as amended.

(n) The location (as such term is used in Section 9-307 of the UCC as in effect in the State of South Dakota) of the User is the State of South Dakota. ~~[The User has no organizational identification number] (as such term is used in Section~~ The name of the User, as debtor (as referred to in Section 9-516503 of the UCC as in effect in the State of South Dakota). ~~The User’s correct legal name is “[_____].” is “[_____].”~~ The description of the collateral that is set forth in Schedule A to each of the UCC Financing Statements in which the Trust is named as the secured party and the User is named as the debtor and that relate to the Head Lease or the Lease, as the case may be, reasonably identifies the collateral covered by such financing statement.

(o) The obligations of the User under this Agreement and the other Operative Documents to which it is or will be a party are at least *pari passu* in right of payment with all other unsecured claims against the general credit of the User, except that certain obligations of the User (e.g., wage claims) are mandatorily preferred under Applicable Law and except that the obligations of the User under the Operative Documents, to the extent of the relevant collateral, are, in fact, secured.

(p) The User is not insolvent.

(q) The audited financial statements of the User for the fiscal years ending on [December 31], 2000, [December 31], 2001 and [December 31], 2002, in each case as reported by [Macias, Gini & Company LLP] (copies of which have been furnished to each of the Participants), have been prepared in accordance with generally accepted accounting principles consistently applied and present fairly the financial position of the User as of such dates and the results of its operations and cash flows for the fiscal year then ended. Since [_____], 2003, there has been no material adverse change in the financial condition or results of operation of the User.

(r) None of the information furnished to the Participants by or on behalf of the User in connection with the negotiation of the transactions contemplated by this Agreement contains any untrue statement of a material fact and there is no fact known to the User which the User has

not disclosed to each Participant in writing which materially affects adversely or, so far as the User can reasonably foresee, will materially affect adversely the Facility or the financial condition of the User or will impair the ability of the User to perform its obligations under any of the Operative Documents.

(s) On the Closing Date, all sales, use, stamp or transfer Taxes and all governmental fees and charges arising under Applicable Law in respect of the Facility due and payable as of the Closing Date upon or in any way arising out of the sale or leasing of the Facility and the transactions contemplated by the Operative Documents will have been paid or duly provided for by the User or such transactions shall be exempt from such Taxes.

(t) Assuming the accuracy of the representations made in Sections 6(h), ~~8.1(g)~~ and ~~8.28~~(g), the execution and delivery of this Agreement and the other Operative Documents and the consummation of the transactions contemplated hereby and thereby and the compliance by the User with the provisions of the Operative Documents will not constitute any non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code. No (i) ~~employee pension benefit plans (other than multiemployer plans), both as defined in ERISA (“Plans”)~~ Plans maintained by the User or any Person which is under common control with the User within the meaning of Section 4001(b) of ERISA, nor (ii) any trusts created thereunder, are subject to ERISA.

(u) The User is not in default under any mortgage, deed of trust, indenture or other instrument or agreement to which the User is a party or by which it or any of its properties or assets may be bound, or in violation of any Applicable Law, which default or violation could have an adverse effect on its ability to pay or perform any of its obligations under the Operative Documents to which it is or will be a party.

(v) The User is not engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of buying or carrying margin stock (within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System) and no part of the Loan Amount or the Owner Participant’s Commitment will be used by the User to purchase or carry any such margin stock, or to refinance any borrowing, the proceeds of which were used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock.

(w) The User is not authorized, nor to the best of its knowledge after due inquiry is there any pending law or legislation that if enacted would authorize it in its capacity as a [municipality, if applicable, or otherwise] or by name under the laws of the State of South Dakota to be a debtor under the United States Bankruptcy Code, and no governmental officer or organization is empowered under such laws to authorize the User in its capacity as a [municipality, if applicable, or otherwise] or by name to be a debtor under the United States Bankruptcy Code.

(x) No grants, [trust certificates], tax exempt bonds or other debt were used or issued to finance the acquisition of the Facility by the User, other than the Bonds.

(y) [The manufacturer warranties related to the Facility commenced, for the Facility, when the Facility was preliminarily or conditionally accepted and shall run for [] years.]

(z) *Compliance With Rules, Regulations and Laws.*

(i) The construction, location, occupancy, operation and use of the Facility comply in all material respects with (A) all Applicable Laws, including, without limitation, having, complying and maintaining all permits required under Applicable Law, except as set forth on Schedule [VII], (B) any restrictive covenant or deed restriction of record affecting the Facility Site or the Facility, including all applicable zoning, planning and building regulations and (C) any agreement relating to the Facility or the Facility Site, other than any failure so to comply which could not reasonably be expected to have a material adverse effect on (x) the Facility or (y) the ability of the User to perform its obligations under the Operative Documents or the rights of the other parties to the Operative Documents;

(ii) Except as would not, individually or in the aggregate, have a material adverse effect on the business or financial condition of the User, the State or the Authority, there does not exist after due inquiry, to the User's, the State's or the Authority's actual knowledge, a state of facts which would reasonably lead to the conclusion that, nor has the User, the State or the Authority given to or received from any Governmental Authority or private party, any written notice, letter, citation, allegation, inspection result, report, order, warning, complaint, inquiry, claim, demand, or other communication that:

(A) wastes, sludges, or other Hazardous Substances or materials from or associated with the Facility have been released, threatened to be released, discharged or disposed at or from the Facility for which the User, the State or the Authority has liability;

(B) wastes, sludges, or other Hazardous Substances or materials from or associated with the Facility have been released, threatened to be released, discharged or disposed at any other property or location for which the User, the State or the Authority has liability;

(C) the User, the State or the Authority, in connection with the Facility, has violated (unless such violation has been corrected and no other obligations associated with the violation remain outstanding) or is about to violate any Environmental Law;

(D) the Facility lacks any permits, pollution-control equipment or other items required by Environmental Law;

(E) the Facility is not in compliance with any requirements of Environmental Law, including, without limitation, permits required under Environmental Law;

(F) any proposed or scheduled changes to Environmental Laws would require new pollution-control equipment, modified permits or operational changes at the Facility;

(G) the User, the State or the Authority has any liability for the costs of investigating, cleaning up, remediating or otherwise responding to any environmental contamination or release of Hazardous Substances pertaining to the Facility;

(H) the User, the State or the Authority has any liability for natural resource damages related to the Facility or its operations;

(I) the Facility is subject to a Lien in favor of any Governmental Authority arising from or relating to a release of Hazardous Substances or a Governmental Authority's response to the release;

(J) the Facility has, or has ever had, any underground storage tanks used to hold Hazardous Substances; or

(K) any action, suit, claim or proceeding arising under any Environmental Law and relating to the Facility is pending or threatened;

(iii) All operations and activities at the Facility have been conducted in material compliance with all Environmental Laws. The Facility has not been used for the disposal of Hazardous Substances. Except for the use and operation of the Facility for its intended purpose, no operations or activities have been conducted at the Facility to manufacture, treat, transport, store or handle any Hazardous Substance which operations or activities (A) are controlled or regulated under Environmental Law or (B) are prohibited under Environmental Law, except, in each such case, to the extent that any Governmental Authority other than the User, the State or the Authority was aware of such operations or activities and has indicated in writing that it will not require that further action be taken in respect of them, and there is no reasonable potential for citizen suits or third party claims relating to such operations or activities; and

(iv) To the actual knowledge of the User, the State and the Authority, after due inquiry, the Facility is free from contamination by Hazardous Substances in amounts or concentrations that materially violate Environmental Law or are required to be investigated, monitored, reported, removed or remedied by Environmental Law except as set forth on Schedule [VI].

(aa) **No Adverse Events.** On the Closing Date, there is not present an event or condition physically affecting the Facility Site that would materially impair the value of the Facility or interfere with access thereto which is not reflected in the information provided in writing to the Appraiser by the User, the Authority or the State.

(bb) **[Adequate Rights.** The right and interest of the User in and to the Facility Site will be sufficient (the determination of such sufficiency being based upon facts and circumstances existing or reasonably foreseeable on the Closing Date) to enable the

~~{Trust Lessor,}~~ the Lessee, any permitted sublessee or transferee or ~~an~~any operator acting on behalf of the Trust, ~~the Lessee or its permitted sublessee or transferee~~ (including, without limitation, any Operator under the Support and Operating Agreement), to obtain access to and operate the Facility upon such Person's taking possession of the Facility in substantially the same manner in which it has been operated by the User; *provided* that the Facility is operated in compliance with Applicable Law, including any permit requirements, and all Environmental Laws. The User has no reason to believe, based on the facts and circumstances existing on the Closing Date, that there will be any licenses, permits, authorizations or approvals of any Governmental Authority or supply, disposal or other contracts which are required at the time of and after such taking of possession to enable the ~~{Trust,}~~Lessor, the Lessee or any permitted sublessee or transferee ~~or an operator~~ or any operator (including, without limitation, any Operator under the Support and Operating Agreement) to operate the Facility in substantially the same manner in which it has been operated by the User and which may be required to be reapplied for or renewed, as the case may be, and in all cases which the User has no reason to believe cannot be renewed or replaced by the Lessor, the Lessee, such permitted sublessee or transferee or an operator, as the case may be, upon such Person's taking possession of the Facility. Notwithstanding the foregoing, the User makes no representation or warranty regarding the future need for water treatment consistent with then existing conditions.]

(cc) *[Alternative Operator.* Neither Applicable Law as in effect on the Closing Date nor any agreement will prevent the Facility from being operated by a Person (other than the User or any Affiliate) duly qualified under Applicable Law to transport, collect and treat waste water; and such approvals as may be required or advisable in connection therewith may be obtained in the ordinary course so long as (i) such Person is financially responsible and technically qualified to operate a waste water ~~transport~~collection and treatment works facility, (ii) the Facility is operated and maintained in compliance with all Applicable Law (including, but not limited to, any applicable discharge and connection permits), and (iii) the operation of the Facility by a Person other than the User does not prevent the User from continuing to be able to discharge its statutory, regulatory and public responsibilities (which responsibilities do not require that the User itself be the operator of the Facility).]

(dd) *Plans and Specifications; Technical Conditions.* The User maintains at its head office in [Aberdeen, South Dakota] plans and specifications sufficient in order to permit the operation and maintenance of the Facility in accordance with Prudent Engineering Practice and in conformity with Applicable Law. The operations and maintenance programs relating to the Facility are consistent with such plans and specifications, Applicable Law and Prudent Industry Practice. On the Closing Date, the Facility has the capacity and functional ability to perform in operation, on a continuing basis, the function for which it was designed in accordance with the Plans and Specifications, subject to ordinary wear and tear.

(ee) *User as Capacity Purchaser.* Neither Applicable Law as in effect on the Closing Date nor any agreement (1) will prevent the User from entering into a Capacity Purchase Agreement with respect to the Facility between the User as a purchaser of Capacity and the Trust, and performing the obligations of a purchaser of Capacity under a Capacity Purchase Agreement, or (2) will prevent a Person (other than the User, the State or the Authority (or any Affiliate of any thereof) that is a Qualified Bidder from entering into a Capacity Purchase Agreement with respect to the Facility between the Qualified Bidder as a purchaser of Capacity

and the Trust, and performing the obligations of a purchaser of Capacity under a Capacity Purchase Agreement.

SECTION 6. REPRESENTATIONS AND WARRANTIES OF THE OWNER PARTICIPANT.

The Owner Participant hereby represents and warrants that on the Closing Date:

(a) It is a ~~limited company~~corporation duly organized, validly existing and in good standing under the laws of ~~Belgium~~the State of Ohio, and has the full corporate power, authority and legal right under the laws of such jurisdiction to conduct its business as presently conducted and to own its properties or hold such properties under lease and to enter into and perform its obligations under this Agreement and each of the other Operative Documents to which it is or will be a party.

(b) It has duly authorized, executed and delivered this Agreement and duly authorized each of the other Operative Documents to which it is or will be a party and, on the Closing Date, it will have duly executed and delivered each such other Operative Document, and assuming due authorization, execution and delivery by each of the other parties thereto and that each of this Agreement and such other Operative Documents is the legal, valid, binding and enforceable obligation of such other parties, each of this Agreement and such other Operative Documents constitutes (or will, when executed and delivered by the Owner Participant, constitute) a legal, valid and binding obligation of the Owner Participant, enforceable against the Owner Participant in accordance with its terms.

(c) The execution, delivery and performance by the Owner Participant of this Agreement and each of the other Operative Documents to which it is or will be a party are not in violation of its incorporation documents or bylaws or of any Applicable Law (*provided* that no representation or warranty is made as to any Applicable Law to the extent the Owner Participant may be subject thereto as a result of the activities of the ~~Lessee~~Authority, the State or the User or any Applicable Law applicable to the Facility (other than any law related to the Owner Participant's ability to make its investment with respect to the Facility as contemplated herein) or the operation thereof), do not require any stockholder approval or approval or consent of any trustee or holder of any indebtedness or obligations of the Owner Participant and do not and will not contravene the provisions of, or constitute a default under, any material indenture, agreement, long-term lease, license or other agreement or instrument to which the Owner Participant is a party or by which it or any of its properties may be bound or affected.

(d) Neither the execution and delivery by the Owner Participant of this Agreement and each of the other Operative Documents to which it is or will be a party, nor the consummation by the Owner Participant of any of the transactions contemplated hereby or thereby, nor the performance by the Owner Participant of any of its obligations hereunder or thereunder require the Owner Participant to obtain the consent or approval of, give notice to, register with, or take any other action in respect of, any Governmental Authority, or register with or take any other action with respect to, any Applicable Law (*provided* that no representation or warranty is made as to any Applicable Law to the extent the Owner Participant may be subject thereto as a result of the activities of the ~~Lessee~~Authority, the State or the User or any

Applicable Law applicable to the Facility (other than any law related to the Owner Participant's ability to make its investment with respect to the Facility as contemplated herein) or the operation thereof).

(e) The Facility, the Head Lease Interest and the Trust Estate are free of Lessor's Liens attributable to the Owner Participant.

(f) There are no pending or, to the knowledge of the Owner Participant, threatened actions, suits or proceedings (whether or not purportedly on behalf of the Owner Participant) against or affecting the Owner Participant or any of its property before or by any court or administrative agency in respect of the Operative Documents to which it is a party or the transactions contemplated thereby or which, if adversely determined, will materially adversely affect the financial condition, business or operations of the Owner Participant or the ability of the Owner Participant to perform its obligations under this Agreement and each of the other Operative Documents to which it is or will become a party.

(g) Neither the Owner Participant nor any Person acting on its behalf has offered any interest in the Facility, the Loan Certificates, the Trust Estate or the Collateral for sale to, or solicited any offers to buy any thereof from, or otherwise approached or negotiated in respect of any thereof with, any Person or Persons whomsoever other than ten (10) other institutional investors. No representation or warranty contained in this Section 6(g) shall include or cover any action of Allco Finance Corporation or any of its Affiliates whether or not purportedly on behalf of the Owner Participant.

(h) No part of the funds to be used by the Owner Participant to acquire the interests to be acquired by it under this Agreement constitute assets of any Plan subject to Part 4 of Subtitle B of Title I of ERISA or a plan or individual retirement account subject to Section 4975 of the Code, *provided* that no representation is made as to the source of the funds used to purchase the Loan Certificates.

SECTION 7. REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF THE TRUST COMPANY AND THE TRUST.

Section 7.1 Representations, Warranties and Agreements of the Trust Company.

The Trust Company hereby represents, warrants and agrees that on the Closing Date:

(a) It is a ~~national~~Delaware banking ~~association~~corporation duly ~~organized~~incorporated and validly existing in good standing under the laws of the ~~United States~~State of Delaware and has the corporate and trust power and authority to enter into and perform its obligations under this Agreement and the other Operative Documents to which it is or will be a party (each, a "*Trust Company Document*").

(b) The execution, delivery and performance by the Trust Company of each Trust Company Document has been duly authorized by all necessary corporate action on its part, and neither the execution and delivery thereof nor its performance of any of the terms and provisions thereof will (i) violate any United States federal Applicable Law relating to its banking or trust powers or any law or regulation of the State of ~~---~~Delaware or any political subdivision

thereof ~~relating to its banking or trust powers~~, (ii) contravene, result in any breach of, or constitute any default under, its charter or ~~bylaws~~by-laws or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it or its properties may be bound or affected or (iii) require any consent or approval of, or notice to or registration with, or any other action with respect to, any United States federal Governmental Authority governing its banking or trust powers or any Governmental Authority of the State of ~~[]~~Delaware or any political subdivision thereof ~~relating to its banking or trust powers~~.

(c) Each Trust Company Document has been duly executed and delivered by the Trust Company, and, assuming the due authorization, execution and delivery by the other parties thereto, each Trust Company Document, to the extent expressly stated to be the obligation of the Trust Company (including the undertakings in this Section 7.1), constitutes the legal, valid and binding obligation of the Trust Company, enforceable against the Trust Company in accordance with its terms.

(d) There are no pending or, to the knowledge of the Trust Company, threatened actions, suits or proceedings against it before any court or administrative agency in respect of any Trust Company Document or the transactions contemplated thereby or which, if determined adversely to it, would materially adversely affect its ability to perform its obligations under any of the Trust Company Documents.

(e) ~~The location (as such term is used in Section 9-307 of the applicable UCC) of the Trust Company is []. The organizational identification number (as such term is used in Section 9-516 of the applicable UCC) assigned to the Trust Company by the Comptroller of the Currency is [] and the Trust Company's correct legal name is "U.S. Bank National Association".~~ Intentionally omitted.

(f) It has not (i) conveyed any interest in the Head Lease Interest to any Person or (ii) subjected the Head Lease Interest to any Lien other than pursuant to the Lease and the Lien of the Loan Agreement.

(g) Neither it nor anyone authorized to act on its behalf has (i) offered any interest in respect of the Facility, the Head Lease Interest, the Loan Certificates, the Trust Estate or the Collateral for sale to, or solicited any offers to buy any thereof from, or otherwise approached or negotiated in respect of any thereof with any Person or Persons whomsoever or (ii) directly or indirectly taken or will take any action that would subject the offering, issuance or sale of the Loan Certificates or the offering or sale of any interest in respect of the Facility, the Head Lease Interest or the Trust Estate to the requirements of the Securities Act or the Trust Indenture Act.

(h) On the Closing Date and on the date of any transfer by the Trust of its right, title, and interest in the Head Lease Interest pursuant to Section 8, 9, 14 or 15 of the Lease, the Facility, the Head Lease Interest and the Trust Estate shall be free of Lessor's Liens attributable to the Trust Company.

(i) The Trust Company is the duly constituted trustee under the Trust Agreement.

(j) No condition or event exists which constitutes a Loan Default or Loan Event of Default attributable to the Trust Company.

Section 7.2 Representations, Warranties and Agreements of the Trust.

The Trust hereby represents, warrants and agrees that on the Closing Date:

(a) (i) The Trust has been duly established and is validly existing under the laws of the State of ~~Connecticut~~Delaware, and (ii) the Trust has the power and authority to enter into and perform its obligations under this Agreement and the other Operative Documents to which it is or will be party (the “*Trust Documents*”).

(b) The execution, delivery and performance by it of each Trust Document has been duly authorized by all necessary action and do not and will not (i) violate any United States federal law or regulation relating to its banking or trust powers or any Applicable Law of the State of ~~[] or the State of [Connecticut]~~Delaware or any political subdivision thereof, (ii) contravene, result in any breach of, or constitute any default under, its ~~charter or bylaws~~organic documents or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it or its properties may be bound or affected or (iii) require any consent or approval of, or notice to or registration with, or any other action with respect to, any United States federal Governmental Authority governing its banking or trust powers or any Governmental Authority of the State of ~~[] or the State of [Connecticut]~~Delaware or any political subdivision thereof ~~(other than those that have already been obtained)~~; and the Trust is not, and will not throughout the Lease Term be, a party to any indenture, mortgage, bank credit agreement, note or bond purchase agreement, long-term lease, license or other agreement or instrument other than the Trust Documents or other documents contemplated hereby or thereby (or any other documents or instruments incidental hereto or thereto) or incidental organizational and similar documents.

(c) Each Trust Document has been duly executed and delivered by the Trust and, assuming the due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Trust, enforceable against the Trust in accordance with its terms.

(d) There are no pending or, to its knowledge, threatened actions, suits or proceedings against it before any court or administrative agency.

(e) It has not (i) conveyed any interest in the Head Lease Interest to any Person or (ii) subjected the Head Lease Interest to any Lien other than pursuant to the Lease and the Lien of the Loan Agreement.

(f) The location (as such term is used in Section 9-307 of the applicable UCC) of the Trust is ~~[Connecticut]~~the State of Delaware. The organizational identification number (as such term is used in Section 9-516 of the applicable UCC) assigned to the Trust by the State of ~~[Connecticut]~~Delaware is ~~[*]~~3695098 and the Trust’s ~~correct~~exact legal name is “SDMFA Aberdeen Statutory Trust SDMFA-2003-~~K~~F1”.

(g) Neither it nor anyone acting on its behalf has (i) offered any interest in respect of the Facility, the Head Lease Interest, the Loan Certificates, the Trust Estate or the Collateral for sale to, or solicited any offers to buy any thereof from, or otherwise approached or negotiated in respect of any thereof with any Person or Persons whomsoever, or (ii) directly or indirectly taken

or will take any action that would subject the offering, issuance or sale of the Loan Certificates to the requirements of the Securities Act or the Trust Indenture Act.

(h) On the Closing Date the Trust shall have received whatever interest was conveyed to it by the Head Lessor under the Head Lease, and on the Closing Date and on the date of any transfer by the Trust of its right, title, and interest in the Head Lease Interest pursuant to Section 8, 9, 14 or 15 of the Lease, the Facility, the Head Lease Interest and the Trust Estate shall be free of Lessor's Liens attributable to the Trust.

(i) No condition or event exists which constitutes a Default or Event of Default under the Head Lease or a Loan Default or Loan Event of Default not arising out of or attributable to a Lease Event of Default.

(j) The Trust has the right, power and authority under the Trust Agreement to grant pursuant to the Loan Agreement a Lien on and a security interest in the Collateral described therein to the Lender for the uses and purposes herein and therein set forth, and there is no financing statement or other filed or recorded instrument which the Trust has executed as debtor now on file in any public office covering any of such Collateral except the financing statements or other instruments filed or to be filed in respect of and for the security interest provided for in the Operative Documents.

SECTION 8. REPRESENTATION, WARRANTIES AND AGREEMENTS OF THE LENDER, THE FLOATING RATE LENDER AND THE PAYMENT UNDERTAKER, SWAP PARTY

Section 8.1 ~~Representations~~ Representation, Warranties and Agreements of the Lender.

The Lender hereby represents, warrants and agrees that on the Closing Date:

(a) It is ~~an exempted company with limited liability~~ a Delaware statutory trust duly organized and validly existing in good standing under the laws of the ~~Cayman Islands~~ State of Delaware and has full power, authority and legal right under the laws of the ~~Cayman Islands~~ State of Delaware to enter into and perform its obligations under this Agreement and the other Operative Documents to which it is or will be a party.

(b) The execution, delivery and performance by it of each Operative Document to which it is or will be a party has been duly authorized by all necessary corporate action on its part, and neither the execution and delivery thereof nor its performance of any of the terms and provisions thereof will (i) violate any ~~Cayman Islands~~ Applicable Law relating to its powers as a ~~limited liability company or any law or regulation of any political subdivision thereof~~ statutory trust, or (ii) require any consent or approval of, or notice to or registration with, or any other action with respect to, any ~~Cayman Islands~~ Governmental Authority ~~governing its powers as a limited liability company or any political subdivision thereof~~.

(c) Each Operative Document to which it is or will be a party has been duly executed and delivered by it, and, assuming the due authorization, execution and delivery by the other

parties thereto, each Operative Document to which it is a party constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms.

(d) There are no pending or, to its knowledge, threatened actions, suits or proceedings against it before any court or administrative agency in respect of any Operative Document to which it is or will be a party or the transactions contemplated thereby or which, if determined adversely to it, would materially adversely affect its ability to perform its obligations under any of the Operative Documents to which it is or will be a party.

(e) (i) It is actively engaged in the business of making loans, the Loan is being made by it in the ordinary course of its business, and it will treat the Loan as a loan on its books and records.

(ii) It is acquiring the Loan Certificates for its own account and in the ordinary course of its business and not with a view to resale or distribution thereof; ~~provided,~~ that the disposition of its properties shall at all times be and remain within its control; and it will not offer, solicit, or sell any Loan Certificate or any interest therein in violation of the Securities Act or so as to require qualification of the Loan Agreement under the Trust Indenture Act.

(f) It acknowledges that the Loan Certificate or Loan Certificates held by it has or have not been registered under the Securities Act and that such Loan Certificate or Loan Certificates must be held until maturity unless otherwise permitted by the Operative Documents or the subsequent disposition thereof is registered under the Securities Act or is a transaction exempt from such registration.

(g) No part of the funds to be used by it to purchase any Loan Certificate held by it constitutes the assets of any Plan subject to Part 4 of Subtitle B of Title I of ERISA or a plan or individual retirement account subject to Section 4975 of the Code.

(h) ~~It is one of the entities referred to in the Cayman Islands tax certificates on tax concession, copies of which have been delivered to the Authority.~~ Intentionally omitted.

(i) ~~Except as provided in the DPU Loan Agreement and the Prefunding Indemnity Letter, all~~ All arrangements, agreements or understandings by contract or by law with respect to the Loan Certificate or Loan Certificates held by it or its rights and obligations under the Loan Agreement ~~between or among it and any party (to the extent they relate to the transactions contemplated hereby) between the Lender (or any Affiliate thereof), on the one hand, and any Person that has obligations under or with respect~~ to any Operative Document ~~(or any Affiliate of such Person), on the other hand,~~ are set forth in the Operative Documents; ~~each of the DPU Loan Agreement and the Prefunding Indemnity Letter, when executed and delivered, will be in form and substance substantially similar to the form of such agreement and letter provided to counsel for the Owner Participant as of the date hereof~~ (other than []).

(j) Except as expressly required or permitted pursuant to Section 2.12 or ~~4.07~~ 4.7 of the Loan Agreement, it has not and shall not sell, transfer, pledge or assign the Loan Certificates held by it or the Loan Agreement or any proceeds therefrom or interest therein or otherwise transfer, directly or indirectly, the credit risk associated with the Loan Agreement or the Loan

Certificates held by it (by way of participation or otherwise) to any Person (or any Affiliate of such Person) who has obligations under or with respect to any Operative Document other than any of its Affiliates ~~(provided, that such Affiliate may not be the Payment Undertaker, any provider of Acceptable Substitute Credit Protection or a direct or indirect subsidiary thereof)~~ without the consent of the Owner Participant; *provided*, that no transfer shall be permitted without the prior written consent of the Owner Participant and the Authority User if such transfer would have the effect of increasing any withholding taxes from the level being imposed on any payment under the Loan Certificates.

(k) It hereby waives any and all rights it may have under Applicable Law, its general operating conditions, or otherwise to offset or otherwise satisfy any obligations that it may have to, or which may be asserted against it by, the Lessee Lessees, the Owner Participant, or the Lessor, ~~any issuer of Acceptable Substitute Credit Protection or the Payment Undertaker~~ against any claims it may have or have the right to assert against such Persons pursuant to the Loan Certificates, the Loan Agreement or any other Operative Document, except that this waiver shall not in any way or in any respect result in any diminution of its rights with respect to the security interests granted to it by the Lessor pursuant to the Loan Agreement.

(l) Each shareholder, member or equity holder of the Lender has and will have limited liability within the meaning of United States Treasury Regulations Section 301.7701-3(b)(ii) and the Lender shall not elect to be treated as other than an “association” for United States federal income tax purposes.

(m) It is not an Affiliate of the Lessee, the Sublessee or the User Lessee.

~~(n) — (i) It does not have the power to direct the management, operations or business activities of the Payment Undertaker, (ii) it does not hold in excess of 10% of the voting or ownership interest in the Payment Undertaker, and (iii) it does not guarantee (by contract or by law) any obligations of the Payment Undertaker.~~

Section 8.2 Representations, Warranties and Agreements of the Payment Undertaker Floating Rate Lender.

The ~~Payment Undertaker~~ Floating Rate Lender hereby represents, warrants and agrees that on the Closing Date:

(a) It is ~~an exempted company with limited liability~~ a New York State licensed branch office of a bank organized under the laws of Scotland duly organized, and validly existing ~~and~~ in good standing under the laws of ~~the Cayman Islands~~ Scotland and has ~~the~~ full power, authority and legal right ~~under the laws of the Cayman Islands to conduct its business and to own its property or hold such property under lease and~~ to enter into and perform its obligations under ~~this Agreement and the Payment Agreement~~ the Operative Documents to which it is or will be a party.

(b) ~~This Agreement and the Payment Agreement have been duly executed and delivered by it and the~~ The execution, delivery and performance ~~of this Agreement and the Payment Agreement have~~ by it of each Operative Document to which it is or will be a party has been duly authorized by all necessary corporate action on ~~the part of the Payment Undertaker, do~~

~~not its part, and neither the execution and delivery thereof nor its performance of any of the terms and provisions thereof will (i) violate any Applicable Law relating to its powers as a New York State licensed branch office of a bank organized under the laws of Scotland or any law or regulation of any political subdivision of the State of New York or Scotland, or (ii) require any consent or approval of, or the giving of notice to or registration with, or the taking of any other action inwith respect ofto, any Governmental Authority or any trustee or holder of any indebtedness or obligations of the Payment Undertaker except as has heretofore been obtained, and do not and will not contravene any Applicable Law binding on or applicable to it or its property, or contravene the provisions of, or constitute a default under, or result in the creation of any Lien upon the property of the Payment Undertaker under, any agreement to which the Payment Undertaker is a party.~~

(c) ~~Assuming~~Each Operative Document to which it is or will be a party has been duly executed and delivered by it, and, assuming the due authorization, execution and delivery by ~~each of the other parties hereto and thereto and that each of this Agreement and the Payment Agreement is thereto, each Operative Document to which it is a party constitutes the legal, valid, and binding and enforceable obligation of such other parties, this Agreement and the Payment Agreement constitute the legal, valid and binding obligation of the Payment Undertaker~~obligation of it, enforceable against it in accordance with ~~theits~~its terms ~~hereof and thereof.~~

(d) There are no pending or, to its knowledge, threatened actions, suits or proceedings against ~~or affecting it or any of its properties by or it~~ before any court or administrative agency in respect of ~~this Agreement, the Payment Agreement or the transactions contemplated thereby or which will materially adversely affect the financial condition, business or operations of the Payment Undertaker or the ability of the Payment Undertaker to perform any Operative Document to which it is or will be a party or the transactions contemplated thereby or which, if determined adversely to it, would materially adversely affect its ability to perform its obligations under this Agreement and the Payment Agreement~~ under any of the Operative Documents to which it is or will be a party.

(e) (i) It is actively engaged in the business of making loans, the Floating Rate Loan is being made by it in the ordinary course of its business, and it will treat the Floating Rate Loan as a loan on its books and records.

(ii) It is acquiring the Floating Rate Loan Certificates for its own account and in the ordinary course of its business and not with a view to any resale or distribution thereof, provided that the disposition of its properties shall at all times be and remain within its control; and it will not offer, solicit, or sell any Floating Rate Loan Certificate or any interest therein in violation of the Securities Act or so as to require qualification of the Floating Rate Loan Agreement under the Trust Indenture Act.

(f) It acknowledges that the Floating Rate Loan Certificates held by it have not been registered under the Securities Act and that such Floating Rate Loan Certificates must be held until maturity unless otherwise permitted by the Operative Documents or the

subsequent disposition thereof is registered under the Securities Act or is a transaction exempt from such registration.

(g) No part of the funds to be used by it to purchase any Floating Rate Loan Certificate held by it constitutes the assets of any Plan subject to Part 4 of Subtitle B of Title I of ERISA or a plan or individual retirement account subject to Section 4975 of the Code.

(h) Intentionally omitted.

(i) All arrangements, agreements or understandings by contract or by law with respect to the Floating Rate Loan Certificate or Loan Certificates held by it or its rights and obligations under the Floating Rate Loan Agreement (to the extent they relate to the transactions contemplated hereby) between the Floating Rate Lender (or any Affiliate thereof), on the one hand, and any Person that has obligations under or with respect to any Operative Document (or any Affiliate of such Person), on the other hand, are set forth in the Operative Documents (other than []).

(j) Except as expressly required or permitted pursuant to Section 2.12 or 4.7 of the Floating Rate Loan Agreement, it has not and shall not sell, transfer, pledge or assign the Floating Rate Loan Certificate or Floating Rate Loan Certificates held by it or the Floating Rate Loan Agreement or any proceeds therefrom or interest therein or otherwise transfer, directly or indirectly, the credit risk associated with the Floating Rate Loan Agreement or the Floating Rate Loan Certificate or Floating Rate Loan Certificates held by it (by way of participation or otherwise) to any Person (or any Affiliate of such Person) who has obligations under or with respect to any Operative Document other than any of its Affiliates without the consent of the Owner Participant; provided that no transfer shall be permitted without the prior written consent of the Owner Participant and the Authority if such transfer would have the effect of increasing any withholding taxes from the level being imposed on any payment under the Floating Rate Loan Certificates.

(k) It hereby waives any and all rights it may have under Applicable Law, its general operating conditions, or otherwise to offset or otherwise satisfy any obligations that it may have to, or which may be asserted against it by, the Lender, the Lessee, the Owner Participant or the Lessor against any claims it may have or have the right to assert against such Persons pursuant to the Floating Rate Loan Certificates, the Floating Rate Loan Agreement or any other Operative Document, except that this waiver shall not in any way or in any respect result in any diminution of its rights with respect to the security interests granted to it by the Lender pursuant to the Floating Rate Loan Agreement.

(l) Each shareholder, member or equity holder of the Floating Rate Lender has and will have limited liability within the meaning of United States Treasury Regulations Section 301.7701-3(b)(ii), [and the Floating Rate Lender shall not elect to be treated as other than an “association” for United States federal income tax purposes].

(m) It is not an Affiliate of the Lessee, the Sublessee or the User Lessee.

Section 8.3 Representations, Warranties and Agreement of the Swap Party.

The Swap Party hereby represents, warrants and agrees that on the Closing Date:

(a) It is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has full power, authority and legal right under the laws of the State of Delaware to enter into and perform its obligations under this Agreement and the other Operative Documents to which it is or will be a party.

(b) The execution, delivery and performance by it of each Operative Document to which it is or will be a party has been duly authorized by all necessary corporate action on its part, and neither the execution and delivery thereof nor its performance of any of the terms and provisions thereof will (i) violate any Applicable Law, or (ii) require any consent or approval of, or notice to or registration with, or any other action with respect to, any Governmental Authority.

(c) Each Operative Document to which it is or will be a party has been duly executed and delivered by it, and, assuming the due authorization, execution and delivery by the other parties thereto, each Operative Document to which it is a party constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms.

(d) There are no pending or, to its knowledge, threatened actions, suits or proceedings against it before any court or administrative agency in respect of any Operative Document to which it is or will be a party or the transactions contemplated thereby or which, if determined adversely to it, would materially adversely affect its ability to perform its obligations under any of the Operative Documents to which it is or will be a party.

~~(e) Neither it nor any of its Affiliates is an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended. No part of the funds to be used by the Swap Counterparty to acquire the interest to be acquired by it under this Agreement constitute assets of any Plan subject to Part 4 of Subtitle B of Title I of ERISA or a plan or individual retirement account subject to Section 4975 of the Code.~~

~~(f) Except as provided in the DPU Loan Agreement, all~~All arrangements, agreements or understandings by contract or by law with respect to the ~~Payment~~Swap Agreement, ~~the Payment Undertaker Guaranty, the Payment Undertaker’s~~ or its rights and obligations under the ~~Payment Agreement and the Payment Undertaker Guarantor’s rights and obligations under the Payment Undertaker Guaranty, in each case between or among such Payment Undertaker and its Affiliates on the one hand and the Authority and its Affiliates~~Swap Agreement (to the extent they relate to the transactions contemplated hereby) between the Swap Party (or any Affiliate thereof), on the one hand, and any Person that has obligations under or with respect to any Operative Document (or any Affiliate of such Person), on the other hand, are set forth in the Operative Documents, ~~and the DPU Loan Agreement, when executed and delivered, will be in form and substance substantially similar to the form of such agreement provided to counsel for the Owner Participant as of the date hereof. The Payment Undertaker has not and will not take~~

~~or accept a pledge or assignment of the Loan Certificates or the Loan Agreement or any proceeds therefrom or interest therein or otherwise become a transferee, directly or indirectly of the credit risk associated with the Loan Agreement or the Loan Certificates (by way of participation or otherwise) from the Holders or any other Person without the consent of the Owner Participant.~~
(other than []).

~~(g) No part of the funds to be used by it to perform the obligations of the Payment Undertaker constitute the assets of any Plan subject to Part 4 of Subtitle B of Title I of ERISA or a plan or individual retirement account subject to Section 4975 of the Code.~~It has not and shall not sell, transfer, pledge or assign the Swap Agreement or any proceeds therefrom or interest therein or otherwise transfer, directly or indirectly, the credit risk associated with the Swap Agreement (by way of participation or otherwise) to any Person (or any Affiliate of such Person) who has obligations under or with respect to any Operative Document other than any of its Affiliates without the consent of the Owner Participant.

~~(h) It is one of the entities referred to in the Cayman Islands tax certificates on tax concession, copies of which have been delivered to the Authority.~~Any shareholder, member or equity holder of the Swap Party, if any, has and will have limited liability within the meaning of United States Treasury Regulations Section 301.7701-3(b)(ii) [and the Swap Party shall not elect to be treated as other than an “association” for United States federal income tax purposes.]

(i) It is not an Affiliate of the Lessee, the Sublessee or the User Lessee.

SECTION 9. LIABILITIES OF THE PARTICIPANTS.

No party hereto shall have any obligation or duty to any other party hereto with respect to the transactions contemplated hereby except those obligations or duties expressly imposed on it in the Operative Documents to which it is a party and under Applicable Law.

SECTION 10. CERTAIN CONSENTS TO OPERATIVE DOCUMENTS; PERFORMANCE.

(a) *Certain Consents to Operative Documents.* Each of the Authority, the State and the User hereby consents in all respects to the execution and delivery of the Loan Agreement and to all the terms thereof, including the assignment of the Head Lease Interest and the Lessor’s interest in the Lease, ~~the Payment Agreement and the Payment Undertaker Guaranty~~ as security thereunder. Except as otherwise provided herein, nothing in this Section 10 shall be construed to require the consent to any further supplement to or amendment, waiver or modification of the terms of the ~~User Head Lease, the~~ Head Lease, the Loan Agreement, the Lease, the Sublease, ~~or the User Lease, the Payment Agreement or the Payment Undertaker Guaranty~~ or by any Person not a party thereto.

(b) *Performance.* Each party hereto agrees that it will accept performance (i) by the User or any other third party of the obligations of the State or the Authority under the Operative Documents as if the same had been performed by the State or the Authority, as the case may be, (ii) by the State of the obligations of the User or the Authority under the Operative Documents as if the same had been performed by the User or the Authority, as the case may be, and (iii) by the

Authority of the obligations of the User or the State under the Operative Documents as if the same had been performed by the User or the State, as the case may be, but in all cases without prejudice to the rights of subrogation, subject to Section 18 hereof.

SECTION 11. CERTAIN AGREEMENTS OF THE AUTHORITY, THE STATE AND THE USER.

(a) Each of the Authority, the State and the User covenants and agrees with each Participant and the Trust to cause to be done, executed, or otherwise authenticated, acknowledged and delivered, at its expense, each and every such further act, conveyance and assurance as such party shall reasonably require for accomplishing the purpose of this Agreement and the other Operative Documents. Without limiting the generality of the foregoing, each of the Authority, the State and the User shall execute, or otherwise authenticate, and deliver all such documents and instruments (including the filing of UCC continuation statements) as shall be required or as may be requested by any Participant or the Trust from time to time, at no cost or expense to such Participant or the Trust, and shall promptly take or cause to be taken all other action necessary from time to time in order to establish, protect, maintain and perfect the rights and remedies intended to be created by the Loan Agreement, as against the Trust, the Head Lease, as against the Head Lessor, the Lease, as against the Lessee, ~~and the General Mortgage~~, as against the Lessee, the Sublessee and the User Lessee], on the Facility, the Trust's security interest in the ~~Equity Collateral~~Acceptable Lease Collateral (if a Credit Event shall have occurred and the Lessees shall have delivered such Acceptable Lease Collateral pursuant to Section 21 hereof), and the Lien of the Loan Agreement on the Collateral ~~and the Lien of the General Mortgage on the Mortgaged Property~~ pledged thereunder (and, in connection therewith and pursuant to the directions of the Authority, the State or the User, the Trust agrees, at the expense of the Authority, the State or the User, as the case may be, to sign, or otherwise authenticate, and deliver all financing statements and other instruments and perform all other acts necessary or advisable to enable the Authority, the State or the User to perform such acts required to be performed by such parties under this Section 11(a)).

(b) Each of the Authority, the State and the User covenants and agrees with each Participant, ~~the Strip Surety Provider, the LC Issuer~~ and the Trust as follows:

(i) it shall furnish to the Trust, the ~~Strip Surety Provider, the LC Issuer, the~~ Owner Participant and the Lender (A) prompt telephonic advice after it obtains knowledge that there exists a Lease Default, Lease Event of Default, Sublease Default, Sublease Event of Default, User Lease Default, User Lease Event of Default or Event of Loss, confirmed promptly thereafter by an Officer's Certificate describing such Lease Default ~~or~~, Lease Event of Default, Sublease Default, Sublease Event of Default, User Lease Default, User Default or Event of Loss in reasonable detail, with a statement of the action with respect thereto taken or proposed to be taken, (B) immediate notice in writing if it enters into any transaction or a meeting of its board is called to initiate formal consideration of the terms of a transaction as described in Section 11(c), and (C) from time to time such other information as the Trust, the Owner Participant, ~~the Strip Surety Provider, the LC Issuer~~ or any ~~of the Holders~~Holder may reasonably request relating to it (including its financial condition and financial affairs), the Facility or the transactions contemplated by the Operative Documents, including, without limitation, a copy of its

budget for each fiscal year commencing [January 1], 2003 (which it need not furnish if it is available for downloading from its website on the Internet and it provides a link to such website to the Trust, the Owner Participant, ~~the Strip Surety Provider, the LC Issuer~~ and the Holders) and any financial statements or reports for each fiscal quarter to the extent such financial statements are released by it to the public; and

(ii) it will prepare and furnish to each of the Trust, the ~~Strip Surety Provider, the LC Issuer, the~~ Lender and the Owner Participant promptly but in any event within [210] days after the end of each of its fiscal years, commencing with its fiscal year ending [December 31], 2003, its audited financial statements for such fiscal year reported on without qualification as to scope by a South Dakota State recognized firm of independent certified public accountants, and an Officer's Certificate of the Authority, the State or the User, as the case may be, accompanying such financial statements certifying that such officer is familiar with or has reviewed the terms of the Operative Documents to which the Authority, the State or the User, as the case may be, is a party (including, without limitation, Section 21(d)) and has made, or caused to be made under such officer's supervision, a review of the transactions and conditions of the Authority, the State or the User, as the case may be, during the preceding fiscal year and that such review has not disclosed the existence during such period, and such officer does not have knowledge of the existence as of the date of such certificate, of any condition or event which constituted or constitutes a Lease Default, a Sublease Default or a User Lease Default that is then continuing as of the date of such certificate, a Lease Event of Default, a Loan Event of Default or an Event of Loss or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Authority, the State or the User, as the case may be, has taken or is taking or proposes to take with respect thereto and as to any matters that are to be reported pursuant to this Section 11(b)).

(c) Neither the ~~Sublessee~~User Authority, the State nor the User ~~Lessee~~ shall consolidate with, change its ownership or control or merge into any other Person or convey, assign, transfer or lease all or substantially all of its assets (each such transaction, a "**Section 11(c) Event**") to any Person (whether in a single transaction or a series of related transactions and whether or not such action is voluntarily taken by the ~~User Lessee~~Authority, the State or the ~~Sublessee~~User or is the result of legislative action) without (X) the consent of the Participants ~~and the Strip Surety Provider~~ unless the successor entity (1) shall be a U.S. Person; (2) (x) shall acquire substantially all of the ~~User Lessee~~Authority's, the State's or the ~~Sublessee~~User's assets, respectively, or (y) shall have long term Dollar denominated senior unenhanced sales tax secured debt obligations all of which shall be rated at least [AA] by S&P and [Aa2] by Moody's and, in each case, such successor entity shall be a political subdivision of the State of South Dakota and Applicable Law relating to the successor entity with respect to bankruptcy, appropriations and immunity matters and enforceability of indemnitees and remedies shall be no less favorable to the Participants, ~~the Strip Surety Provider~~ and the Trust than the corresponding Applicable Law relating to the ~~User Lessee~~Authority, the State or the ~~Sublessee, respectively~~User, as the case may be, immediately prior to such Section 11(c) Event; (3) shall have substantially the same or greater rights, powers and benefits as the ~~User Lessee~~Authority, the State or the ~~Sublessee~~User had under the Enabling Act or the MFA Act, respectively, and other Applicable Law and (4) shall have assumed the obligation of the User

Lessee or the ~~Sublessee~~Authority, the State or the User, respectively, to operate substantially the same waste water collection and treatment facilities as were operated by the ~~User Lessee~~Authority, the State or the ~~Sublessee, respectively~~User, as the case may be, prior to such Section 11(c) Event; and (Y) reimbursing each Participant, ~~[and the Trust,] the Strip Surety Provider, the Payment Undertaker and the Equity Payment Undertaker~~ for their reasonable costs and expenses incurred in connection therewith. Upon any consolidation, change in ownership or control, or merger, or any conveyance, assignment, transfer or lease of all or substantially all of the assets of the ~~User Lessee~~Authority, the State or the ~~Sublessee, respectively~~User, as the case may be, the successor entity formed by such consolidation, change in ownership or control, or merger, or the Person to which such conveyance, transfer, lease or assignment is made shall succeed to, and be substituted for, and may exercise every right and power, and shall expressly assume and be liable for every duty and obligation, of the ~~User Lessee~~Authority, the State or the ~~Sublessee, respectively~~User, as the case may be, under this Agreement and the other Operative Documents with the same effect as if such successor entity or such Person, as the case may be, had been named as an original party herein or therein and such successor entity or Person, as the case may be, shall deliver copies of all such filings, other documents and opinions necessary and appropriate to maintain the Trust's interest in and to ~~the Equity~~any Acceptable Lease Collateral, the Head Lease Interest, the ~~Authority's interest in and to the User Head Lease Interest, the~~ perfection of the security interest created by the ~~General Mortgage~~Pledge Agreement and, so long as the Loan Agreement is in effect, the perfection of the security interests created by the Loan Agreement and all other certificates, documents and opinions which the Participants reasonably determine to be necessary or appropriate in connection with the assumption to effect the same and no Lease Default or Lease Event of Default shall exist as a result of such merger, consolidation, conveyance, transfer, lease or assignment. Upon any such consolidation, change in ownership or control, merger, conveyance, transfer, lease or assignment, the Operative Documents shall remain in full force and effect. Without limiting the generality of the foregoing, in connection with any Section 11(c) Event, the ~~User Lessee~~Authority, the State or the ~~Sublessee~~User, as the case may be, shall be required to:

(i) execute and deliver to the Trust and each Participant ~~not~~no later than thirty (30) days before the date of consummation of such Section 11(c) Event (the "**Deadline**") (A) an agreement reasonably satisfactory in form and substance to the Trust and each Participant containing an effective assumption by such Person of the due and punctual performance and observance of each covenant and condition of this Agreement and the other Operative Documents to be performed or observed by the Authority, the State and the User; (B) copies of all such filings and other documents necessary and appropriate to maintain all of the ~~Authority's right, title and interest in and to the User Head Lease Interest, the~~ Trust's right, title and interest in and to the Head Lease and the Lease, the Sublease and the User Lease and the priority and perfection of the security interests created by the ~~Equity Payment Agreement, any other Equity Collateral, the~~ Loan Agreement [and the General Mortgage]; and (C) all other certificates and documents that the Participants and the Trust reasonably determine to be necessary or appropriate in connection with the assumption to effect the same; and

(ii) deliver (by the Deadline) to the Trust and each Participant an opinion of counsel reasonably satisfactory to the Trust and each Participant stating that upon such consolidation, change in ownership or control, merger, conveyance, transfer, lease or

assignment, and the execution and delivery of the assumption agreement referenced in clause ~~H(e)~~(i) above, all of the State's, the User's and the Authority's obligations under the Operative Documents, including, without limitation, the due and punctual performance and observance of each covenant and condition of this Agreement and the other Operative Documents to be performed or observed by such ~~person~~Person, shall have been effectively assumed by such Person; and that such assumption agreement has been duly authorized, executed and delivered by, and constitutes a legal, valid and binding agreement of, such Person enforceable against such Person in accordance with its terms subject to such reasonable exceptions customarily stated with respect to such opinions (such opinion also to address such other matters as any Participant or the Trust may reasonably request).

(d) The User ~~Lessee~~ covenants and agrees for the benefit of each Holder, so long as the Lien of the Loan Agreement has not been discharged pursuant to Section ~~7.01~~7.1 thereof, and for the benefit of the Trust, that the User ~~Lessee~~ will (i) six (6) months prior to the fifth anniversary of the relevant filing date and six (6) months prior to each five year anniversary thereafter or on the earliest permissible date for filing following any change in Applicable Law, file or cause to be filed continuation statements with respect to the financing statements filed pursuant to Section 3(t) (or any other similar document relating to such security interests) to obtain, preserve and protect the first priority security interest of the Lender and the Trust created thereby, as applicable, and (ii) take or cause to be taken all other action necessary from time to time to obtain, preserve and protect the first priority security interest of the Lender and the Trust in the Lease Collateral ~~[and the Mortgaged Property]~~.

(e) The Authority shall not at any time permit ~~(i) any Liens to exist on the Payment Agreement or any Acceptable Substitute Credit Protection (unless such Payment Agreement or Acceptable Substitute Credit Protection has been replaced with Acceptable Substitute Credit Protection in accordance with Section 21(b)) other than Liens in favor of the Trust and the Holders contemplated in the Operative Documents or liens created after such Payment Agreement and the related Payment Undertaker Guaranty or any Acceptable Substitute Credit Protection, as the case may be, have been released from the Liens created under the Operative Documents in accordance with Section 21(b) of this Agreement or (ii) any Liens to exist on the Equity Payment Agreement or other Equity~~any Acceptable Lease Collateral other than the Liens in favor of the Trust contemplated in the Operative Documents.

(f) ~~Each of the User Head Lessor and the User Head Lessee covenants that it will not terminate the User Head Lease other than in accordance with and as expressly permitted under the Operative Documents.~~Intentionally Omitted.

(g) [The User and the Authority each represents and warrants that any amounts that become payable by the User or the Authority under this Agreement and the other Operative Documents are, and will be, at least *pari passu* in right of payment with all other unsecured claims against the general credit of the User and the Authority, respectively, and payable from (i) all revenues and fees and advertising revenues, together with any investment income thereon, derived from the facilities and properties maintained and operated by the User and the Authority, respectively; (ii) all sales tax proceeds received by the Authority pursuant to [], an ordinance of the Authority imposing a transactions and use tax, passed and adopted on [] (collectively

the “Sales Tax”) which are available to be used by the Authority to make payments on its unsecured obligations, after first applying such funds to the payment or satisfaction of debt service requirements relating to all securities or obligations secured by a pledge of such Sales Tax proceeds, together with any investment income therefrom; and (iii) any other general revenues of the User and the Authority, respectively; [provided that the interest of the Participants in the Facility are subject and subordinate to:

(i) any statutory mortgage lien on, pledge or other interest in, the Facility or the Revenues, whether now or hereafter created or made, that secure any outstanding Bonds ~~or any Additional Bonds hereafter issued and outstanding~~; and

(ii) any lien, claim of payment or other interest in or with respect to any Revenues now or hereafter pledged to secure any ~~Bonds or Additional~~ Bonds and any other requirement concerning the receipt or application of Revenues under or pursuant to any Bond Ordinance or User Loan Agreement.]

(h) Each of the User and the Authority covenants and agrees to use its best efforts to give the Owner Participant, the Lender and the Trust at least 45 days’ prior written notice of any contemplated change in their name or location (as such term is used in Section 9-307 of the UCC as in effect in the State of South Dakota) and in any event shall give such notice within thirty (30) days after such change.

(i) ***[Obligations of the User under the Operative Documents as general obligations of the User.*** For the purpose of providing the necessary funds to make required payments of User Lease Rent and User Supplemental Rent under the Operative Documents and to perform other obligations of the User under the Operative Documents, the full faith, credit and resources of the User are hereby pledged, and ad valorem taxes shall be levied on all the taxable property in the User, in addition to ad valorem taxes levied to pay operating expenses and general obligation debt of the User or for any other purposes, at times and in amounts sufficient to pay (unless and to the extent the User furnishes funds from any other source), when due, such amounts and all other payments under the Operative Documents.]

(j) ~~***[User’s Right to Issue Additional Bonds.]*** Additional Bonds may be issued by the User to finance improvements or additions to, or expansion, maintenance, equipping or operations of, the Facility so long as, prior to the issuance of such Additional Bonds, the User has taken or caused to be taken any and all action necessary to raise the rates and charges and taken or caused to be taken any other necessary action so that the rate covenant set forth in Section 11(k) will be met for the twelve (12) months following the issuance of such Additional Bonds and has delivered to the Authority a written forecast of a Consultant that such rate covenant will be met during such twelve (12) month period, setting forth in detail its calculations; provided, however, that, for expansions of the Facility, the Consultant’s forecast may state that, for such twelve (12) month period, both (1) Net Revenues Available for Debt Service will equal at least 100% of debt service on all Additional Bonds and (2) assuming that the expansion was complete and placed in service on the date of the forecast and all other conditions expected to be in effect on the expected date of completion were in effect on the date of the forecast, Net Revenues Available for Debt Service would equal at least 110% of Revenue Bond Debt Service.~~ ***Intentionally omitted.***

(k) **[Rate Covenant.** The User agrees that in each fiscal year it shall ensure that its Net Revenues Available for Debt Service equal at least 110% of its Revenue Bond Debt Service. Notwithstanding anything provided to the contrary in the preceding sentence, if the User has issued Facility Revenue Debt to finance the construction of expansions to the Facility (the “*Expansion Debt*”) and the construction was not complete at the start of the fiscal year, the coverage ratio shall be 110% of all Revenue Bond Debt Service except the Expansion Debt, and 100% of such Expansion Debt. Any capitalized interest funded from the proceeds of such Expansion Debt or other sources shall be counted as Net Revenues Available for Debt Service in the period for which such capitalized interest is to be applied to pay interest on the Expansion Debt.]

(l) **[Debt or general obligation of the State of South Dakota.** Any obligations of the State under the Sublease or in connection with the Sublease shall be payable solely out of the [Lease Revenues] **[term not defined]** and Appropriated Payments, if any, as provided in Section 11 [] **[this should be a reference to section H of the suggested provisions supplied by Allco from local South Dakota - local counsel to supply section.]** Under no circumstances shall the Sublease or any related document or other instrument constitute a general obligation of, or create any lien, charge or liability against, the State of South Dakota, the State or any property thereof, within the meaning of the Constitution or statutes of South Dakota. Neither the Sublease nor any related document or any other instrument of conveyance entered into by the State of South Dakota, [the State] or the Authority shall be a debt of the State of South Dakota, [the State] or the Authority within the meaning of the constitution or statutes of the State of South Dakota nor shall the Sublease or any other agreement or instrument be construed as a guarantee by the State of South Dakota, [the State] or the Authority of the obligations of any other person. Nothing in the Sublease shall be construed to authorize the State or the Authority, or any department, board, commission, or other agency of the State of South Dakota to create an obligation of the State of South Dakota within the meaning of the constitution or statutes of South Dakota.]

(m) **[Nonimpairment Covenant of the State.** The State pledges and agrees with the Participants, the Trust, the Trustee, the User and the Authority that the State will not limit or alter the rights and powers vested in the Authority, the User or any other public entity by the MFA Act so as to impair the terms of any contract made by the State, the Authority, the User or any other public entity with such party or in any way impair the rights and remedies of such party until such contract is satisfied.]

(n) **[Appropriation Covenant.**

(i) **[Request from the Authority for the State to request appropriations.** If and to the extent that any amount is due and payable under or in connection with the Sublease and such amount has not been paid when due, the Authority hereby covenants and agrees to (1) notify the State that it has failed to pay such amount, and (2) request that the State 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.]

(ii) *[Request from the State for the State Legislature to request appropriations.* If and to the extent that any amount is due and payable under or in connection with the User Lease and the User has failed to pay such amount when due, the State hereby covenants and agrees to 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. Such request shall be made on the earlier of (1) if the Legislature is then in session, three (3) Business Days of receipt of such notice or (2) if the Legislature is not then in session, at least [___] days prior to the commencement of the next legislative session to occur.

Notwithstanding anything in the Sublease to the contrary, the cost and expense of the performance by the State of its obligations under the Sublease and the incurrence of any liabilities of the State under the Sublease, including, without limitation, the payment of all Sublease Rent and all other amounts required to be paid by the State under the Sublease, shall be subject to and dependent upon moneys being made legally available from time to time. Anything herein to the contrary notwithstanding, it is understood that the obligations of the State under the Sublease are conditioned upon funds being provided to it through legislative appropriations.

It is expressly understood that a failure to pay Sublease Rent as to any part of the Facility shall constitute a failure to pay Sublease Rent as to all of the Facility.]

SECTION 12. INTENTIONALLY OMITTED.

SECTION 13. TRANSACTION COSTS.

If the Facility is delivered, accepted and leased as provided herein, the parties hereto understand that Allco Finance Corporation has agreed to pay all Transaction Costs pursuant to a letter agreement dated as of the date hereof. Neither the Trust, the Trust Company, the Lender, the Owner Participant, the ~~Payment Undertaker, the Equity Payment Undertaker, the Strip Surety Provider, the LC Issuer~~ Floating Rate Lender, the Swap Party, the State, the User nor the Authority shall have any responsibility for payments of Transaction Costs.

SECTION 14. TRANSFERS BY OWNER PARTICIPANT, HOLDERS, TRUST AND HEAD LESSOR.

(a) ***Transfer of the Owner Participant's Interest.*** Prior to the expiration or earlier termination of the Lease Term, the Owner Participant shall not assign, convey or otherwise transfer any of its right, title to, or interest in the Trust Estate or any of the Operative Documents, except that the Owner Participant may transfer all or part of its interest in the Trust Estate to one or more Persons (a "***Transferee***") (provided there shall be no more than three (3) Transferees at any one time) upon compliance with the following conditions:

(i) the Transferee shall be (A) an Affiliate of the transferor Owner Participant, (B) a financial institution (1) active as an Owner Participant or other financing party in lease financings in the United States or an Affiliate thereof (an "***Active Investor***") or (2) advised by an Active Investor, (C) a reputable and active lessor or an

Affiliate thereof or (D) a financial institution reasonably acceptable to the User, ~~the Strip Surety Provider~~ and the Majority Holders;

(ii) the Transferee shall enter into an Assignment and Assumption Agreement in substantially the form of Exhibit A hereto and, in addition, will furnish an opinion of counsel (which counsel shall be reasonably acceptable to the User and the Majority Holders) reasonably satisfactory in form and substance to the Trust, the User and the Majority Holders confirming that any such ~~transferee~~ Transferee shall have the requisite power and authority and legal right to enter into and carry out the transactions contemplated hereby, and that such agreement has been duly authorized, executed and delivered by the Transferee and is legal, binding and enforceable in accordance with its terms, subject to such reasonable exceptions customarily stated with respect to such opinions;

(iii) the Transferee or other Person that shall provide a Transferee Guaranty in substantially the form of Exhibit B hereto (or in the event such Transferee or other Person is a partnership, the general partner thereof) shall have a combined capital and surplus or tangible net worth of at least \$50,000,000, unless the Owner Participant agrees to provide a guaranty with respect to the obligations of such Transferee;

(iv) any fees, charges and expenses incurred by the Trust, the Authority, the State, the User, the Lender, the ~~Payment Undertaker~~ Floating Rate Lender, the ~~Equity Payment Undertaker~~ Swap Party, and the Holders in connection with any transfer or proposed transfer pursuant to this Section 14(a), including the reasonable out-of-pocket expenses of such parties and reasonable legal fees and expenses, will be paid by the transferring Owner Participant and in no case will the Trust, the Holders, the Lender, the ~~Payment Undertaker, the Equity Payment Undertaker~~ Floating Rate Lender, the Swap Party, the User, the State or the Authority be responsible for any such fees, charges or expenses;

(v) the Transferee, and any Person that shall provide a Transferee Guaranty, shall be a U.S. Person; and

(vi) no part of the Transferee's interest in the Trust Estate will be acquired with funds that constitute the assets of any Plan subject to Part 4 of the Subtitle B of Title I of ERISA or a plan or individual retirement account subject to Section 4975 of the Code.

Upon any such conveyance by the Owner Participant to a Transferee permitted by this Section 14, to the extent of the interest transferred, the Transferee shall be deemed the "Owner Participant" for all purposes hereof and shall be deemed to have made all the investments in the beneficial ownership of the Trust Estate previously made by the Owner Participant in respect of the right, title and interest so conveyed and will be deemed to have made and become bound as of the time of such conveyance by the representations, warranties and covenants made by the Owner Participant herein and in the other Operative Documents; and each reference in this Agreement, the Trust Agreement, the Lease, the Sublease, the User Lease, the Tax Indemnification Agreement and the other Operative Documents to the Owner Participant making

the transfer shall thereafter be deemed a reference to the Transferee as the Owner Participant to the extent of the interest transferred. Upon any such conveyance by the Owner Participant to a Transferee permitted by the foregoing provisions of this Section 14, the transferor Owner Participant shall be relieved of all of its liabilities and obligations hereunder and under the Trust Agreement to the extent of the interest so transferred (except for any liability existing at the time of such conveyance by the transferring Owner Participant). If the Owner Participant proposes to transfer its interests pursuant to this Section 14, it shall give no less than thirty (30) days' (or in the case of transfer to an Affiliate, five (5) days') prior notice thereof to the Trust, the User and the Lender, specifying the name and address of the proposed transferee and information sufficient to determine whether the conditions of this Section 14 have been or shall be satisfied. Anything herein to the contrary notwithstanding, if at the time of any transfer to a Transferee a Lease Event of Default shall have occurred and be continuing, the consent of the User to any such transfer shall not be required, none of the conditions set forth above with respect to such transfer need to be complied with to the User's satisfaction and the Owner Participant shall not be required to pay the fees, charges and expenses of the User in connection with any such transfer or proposed transfer.

~~Notwithstanding the foregoing, the Owner Participant may freely transfer its interest in the Trust Estate and the Operative Documents to (i) the Strip Surety Provider pursuant to the Assignment Agreement or in connection with a demand for payment under any Strip Surety Policy and/or (ii) the LC Issuer pursuant to the Assignment Agreement or in connection with a demand for payment under the Standby Letter of Credit. The provisions in the penultimate sentence of the foregoing paragraph of this Section 14(a) shall be of no force or effect with respect to a transfer to the Strip Surety Provider or the LC Issuer as described in this paragraph; provided, however, that with respect to any such assignment and as a condition precedent to such an assignment, (A) the Lender shall be provided with the agreement and opinion referred to in subsection (a)(ii) above (the form of such agreement and opinion to be provided to the Lender not less than one Business Day prior to the effective date of such assignment), (B) any fees, charges and expenses of the Holders referred to in subsection (a)(iv) above in connection with such assignment shall be paid by the Strip Surety Provider or the LC Issuer, as applicable, (C) no "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the Code shall occur in connection with such assignment, and (D) the Strip Surety Provider's or the LC Issuer's, as applicable, tangible net worth immediately following such assignment shall not be less than the lesser of \$50,000,000 and the tangible net worth of the Owner Participant immediately prior to such assignment; provided, further, that if clause (C) above cannot be complied with in connection with such assignment, the Strip Surety Provider or the LC Issuer, as applicable, shall be entitled to designate another entity to receive such assignment in its place so long as (x) clause (C) above is complied with, (y) the Strip Surety Provider or the LC Issuer, as applicable, guarantees all of the obligations of its designee under the agreement referred to in subsection (a)(ii) above, and (z) an opinion covering the items set forth in subsection (a)(ii) above with respect to such guaranty is provided to the Holders.~~

(b) ***Transfer of Holder's Interest.*** Subject to Section 8.1(j) hereof, a Holder (or any subsequent Holder of a Loan Certificate as permitted herein) may assign, convey or otherwise transfer its right, title and interest in and to any Loan Certificate to any Person or Persons who, as provided in Section ~~2.072.7~~ of the Loan Agreement, will be deemed to have made and become bound, as of the date of the transfer, by the representations, warranties and covenants made by

the transferring ~~Holders~~Holder herein and in the other Operative Documents (*mutatis mutandis*); *provided, however*, that prior to the Maturity Date there shall be only one Holder at any point in time (who may enter into participation agreements with respect to its interests in the Loan Certificates but who shall not transfer its right, title and interest in the Loan Certificates to more than one Person prior to the Maturity Date); *provided, further*, that such transfer shall not increase the ~~Lessee's~~Lessees' liability under Section 15(c) with respect to United States federal withholding Taxes.

(c) ***Transfer of the Trust's Interest.*** Prior to the expiration or earlier termination of the Lease Term, except as expressly provided for in the Lease or any other Operative Document, the Trust shall not assign, convey or otherwise transfer any of its right, title or interest in and to the Head Lease Interest, the Trust Agreement, the Collateral or any of the other Operative Documents except in connection with a transfer, sale or other disposition of its entire right, title and interest in and to the Operative Documents and provided the prior written consent of the User, ~~the Strip Surety Provider~~ and the Lender has been obtained, such consent to be given or withheld in the sole discretion of each such party.

(d) ***Transfer of the Head Lessor's Interest.*** Prior to the expiration or earlier termination of the Head Lease Term, the Head Lessor shall not transfer, sell or assign any of its right, title or interest in the Facility (in connection with a cross-border lease or otherwise) or its rights and obligations under any of the other Operative Documents (other than a transfer pursuant to Section 11(c)) without the prior written consent of the Trust, the Owner Participant and the Lender, such consent to be given or withheld in the sole discretion of each party.

~~(e) ***Transfer of the User Head Lessor's Interest.*** Prior to the expiration or earlier termination of the User Head Lease Term, the User Head Lessor shall not transfer, sell or assign any of its right, title or interest in the Facility (in connection with a cross border lease or otherwise) or its rights and obligations under any of the other Operative Documents (other than a transfer pursuant to Section 11(e)) without the prior written consent of the Trust, the Owner Participant and the Lender, such consent to be given or withheld in the sole discretion of each party.~~

SECTION 15. INDEMNIFICATION.

(a) ***General Indemnity.*** Whether or not any of the transactions contemplated hereby shall be consummated and whether or not an Indemnitee has also been indemnified as to Costs or Expenses by any other Person, the Authority, the State and the User hereby agree to assume, jointly and severally, and do hereby assume, jointly and severally, liability for, and hereby agree to indemnify, jointly and severally, and do hereby indemnify, jointly and severally, and hereby agree to protect, defend, save and keep harmless on an After-Tax Basis, jointly and severally, each Indemnitee and each of their Related Indemnitees from and against any and all liabilities, obligations, losses, damages, penalties, settlements, claims, actions, suits, proceedings or judgments of any kind and nature, costs, expenses (including reasonable attorneys' fees and disbursements) and disbursements (including those reasonable and documented costs and expenses, including reasonable legal and consultant fees and expenses, incurred by such party in connection with the transactions contemplated by the Operative Documents including in connection with amendments, supplements, modifications, consents or waivers of any of the

Operative Documents whether or not entered into but only if such amendments, supplements, modifications, consents or waivers are initiated or requested or agreed to, in each case, by the Authority, the State or the User or are expressly required by the terms of the Operative Documents or are required by Applicable Law or are executed in connection with any amendment to the Operative Documents that is required by law or made after a Lease Event of Default) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against any Indemnitee:

(i) in any way relating to or arising out of this Agreement or any of the other Operative Documents or otherwise in connection with the transactions contemplated hereby or thereby or the enforcement of any of the rights, remedies or terms of any thereof;

(ii) in any way relating to the ~~User Head Lease Interest, the~~ Head Lease Interest, the Facility or any Part;

(iii) in any way arising out of or related to the manufacture, acquisition, purchase, acceptance, non-acceptance or rejection, design, ownership, delivery, non-delivery, lease, sublease, subsublease, assignment, possession, use, non-use, financing, mortgaging, control, operation, maintenance, insurance, testing, condition, repair, overhaul, storage, substitution, replacement, servicing, sale (including all costs incurred in making the Facility, ~~the User Head Lease Interest,~~ the Head Lease Interest or any Part ready for sale after the exercise of remedies as a result of a Lease Event of Default), return or other disposition of the Facility or of any Part thereof including any claim for patent, trademark or copyright infringement and any claim based on theories of negligence, warranty, absolute liability, latent or other defects, strict liability, statutory liability or tort or injury, environmental control, violation of public health or safety, noise or pollution and any Liens;

(iv) in any way relating to or arising out of any failure by the Authority, the State or the User to perform or observe any covenant, condition or agreement in or the falsity of any representation or warranty of the Authority, the State or the User made in or pursuant to any Operative Document (other than the Tax Indemnification Agreement);

(v) in any way relating to or arising out of the offer, issuance, delivery, acquisition or sale or holding of any interest in the Loan Certificates or the Trust Estate, or out of the offer, sale or holding of any interest in any indebtedness in connection with any refinancing of the Loan Certificates attempted or consummated as contemplated by Section 19, the exercise of the Service Contract Option ~~or the replacement of the Payment Agreement, the Equity Payment Agreement, the Standby Letter of Credit, the Acceptable Lease Collateral or the Strip Surety Policy as contemplated by Section 21;~~

(vi) in connection with the occurrence of a non-exempt “prohibited transaction” within the meaning of Section 406 of ERISA or Section 4975 of the Code in connection with any of the transactions contemplated by this Agreement and the other Operative Documents;

(vii) in any way relating to or arising out of or with respect to the Loan Agreement and the Collateral and all amounts payable under the Loan Agreement other than principal and interest; or

(viii) including the ongoing fees, expenses and disbursements of the Trust (including the ongoing fees, expenses and disbursement of the Trust Company and the reasonable compensation and expenses of its counsel, accountants or other skilled persons in its employ) arising out of the Trust's discharge of its duties under the Operative Documents.

(all of the foregoing, "**Costs or Expenses**"); *provided*, that the Authority, the State and the User shall not be obligated to pay and shall have no indemnity liability for any Costs or Expenses:

(A) to the extent required to be paid by the Owner Participant pursuant to Section 14;

(B) imposed on or against an Indemnitee to the extent that such Costs or Expenses are caused by (x) the gross negligence or willful misconduct of such Indemnitee or any of its Related Indemnitees or (y) the inaccuracy or breach of any representation, warranty, covenant or undertaking contained in this Agreement or any other Operative Document of such Indemnitee or any of its Related Indemnitees, unless caused by an inaccuracy or breach by the Authority, the State, the User of any of their respective representations, warranties, covenants or undertakings contained in this Agreement or any other Operative Document;

(C) (1) to the extent imposed on the Owner Participant, the Trust or the Trust Company or any of their respective Related Indemnitees, as a result of a voluntary transfer or other voluntary disposition of the Trust Estate or any interest therein by the Owner Participant or the Trust or any such Related Indemnitee (it being understood that any transfer or disposition expressly permitted by Section 8, 9, 14, 15 or 17 of the Lease (or any provision of the Loan Agreement relating to a transfer pursuant to any such section of the Lease) or requested by the Authority, the State or the User is not a voluntary transfer or voluntary disposition) unless such transfer or disposition shall occur at any time after a Lease Event of Default shall have occurred and is continuing, (2) to the extent imposed on the Owner Participant, the Trust or the Trust Company or any of their respective Related Indemnitees, as a result of a transfer or disposition of the Trust Estate or any interest therein by the Owner Participant or the Trust or any such Related Indemnitee resulting from bankruptcy or other proceedings for the relief of debtors in which the Owner Participant or the Trust or Related Indemnitee is the debtor, whether voluntary or involuntary, unless such bankruptcy or other proceeding was caused by or attributable to the occurrence of a Lease Event of Default, or (3) to the extent imposed on a Holder, as a result of a transfer or disposition by such Holder of any interest in any Loan Certificate, the Collateral or the Trust Estate unless such transfer or disposition shall occur at any time that a Lease Event of Default shall have occurred and be continuing or in connection

with the exercise of the Service Contract Option, a refinancing in accordance with Section 19 ~~or a transfer of the Loan Certificates in connection with the replacement of the Payment Agreement in accordance with Section 21(b);~~

(D) to the extent imposed with respect to any claim based on events occurring after the earlier of (x) the expiration or earlier termination of the Lease Term in circumstances not requiring the return of the Facility and (y) the satisfaction by the ~~Lessee~~Lessees of all ~~its~~their obligations under Section 13 of the Lease (except, in each case, during the exercise of remedies pursuant to Section 17 of the Lease following the occurrence and during the continuance of a Lease Event of Default);

(E) with respect to an Indemnitee to the extent that such Costs or Expenses are Taxes (or a loss of tax benefits) [**(other than claims arising under Section 15(a)(vi))**] or Costs or Expenses of contesting such Taxes (or such loss of tax benefits) whether or not such Taxes or Costs or Expenses (or such loss of tax benefits) are indemnified for under any provision of this Agreement or any other Operative Document except to the extent necessary to make any required payment on an After-Tax Basis; *provided*, that this clause (E) shall not apply to Costs or Expenses of a Lender Indemnitee relating to the contest of a Tax by an Indemnitee other than a Lender Indemnitee;

(F) in the case of the Owner Participant, the Trust, the Trust Company or any of their respective Related Indemnitees, to the extent that such Costs or Expenses arise from a Loan Event of Default attributable to such Person and that does not arise out of or is not based upon a Lease Event of Default;

(G) in the case of the Owner Participant, the Trust, the Trust Company or any of their respective Related Indemnitees, that would not have arisen but for the establishment of a successor Trust other than in accordance with the Operative Documents and without the consent of the Authority, the State or the User, if such consent is required by the Operative Documents;

(H) in the case of the Owner Participant and the Trust, to the extent that such Costs or Expenses arise from a Lessor's Lien attributable to such Person (including the discharge thereof);

(I) in the case of any Holder, ~~(i)~~ to the extent that such Costs or Expenses constitute principal or interest under the Loan Agreement ~~or (ii) resulting from the replacement of the Payment Agreement or any Acceptable Substitute Credit Protection pursuant to Section 21 to the extent such Costs or Expenses constitute a payment that is the economic equivalent of interest or an increase in the Applicable Rate;~~

(J) in the case of the Owner Participant and the Trust, any Cost or Expense incurred by the Owner Participant to the extent attributable to a failure

on the part of the Trust to distribute, in accordance with the Trust Agreement, any amounts received and distributed or distributable by it thereunder; or

(K) incurred by an Indemnitee that constitutes an ordinary and usual operating or overhead expense (other than expenses incurred in connection with (i) a Lease Event of Default or (ii) a repricing, a refinancing, the issuance or replacement of any ~~Equity~~ Acceptable Lease Collateral ~~or the substitution of the Payment Undertaker~~ delivered pursuant to Section 21 hereof).

Nothing herein shall be deemed to constitute a guaranty of any useful life or present or future residual value of the Facility or the Head Lease Interest or a guaranty that any amount of principal and interest due under the Loan Agreement will be paid. Payments due from the Authority, the State and the User to each Indemnitee pursuant to this Section 15(a) shall be made directly to such Indemnitee within thirty (30) days after demand. This Agreement constitutes a separate agreement with respect to each Indemnitee and is enforceable directly by each such Indemnitee whether or not the Trust has made a claim for Supplemental Rent on behalf of such Indemnitee under the Lease. Payments by the Lessee Authority, the State or the User shall be payable in Dollars (the amount thereof to be determined, in the case of indemnification for any amount paid by an Indemnitee in a foreign country, with respect to the exchange rate in effect on the date of such payment by the Indemnitee of the indemnified liability). Nothing contained herein shall give the Trust the right to waive, amend or otherwise modify any rights of any other Indemnitee under this Agreement or any other Operative Document.

If any of the Authority, the State or the User has knowledge of any claim or liability indemnified under this Section 15(a), it shall give prompt written notice thereof to the applicable Indemnitees, and if any Indemnitee shall have any such knowledge, it shall give prompt written notice thereof to any of the Authority, the State or the User but in any event within thirty (30) days of obtaining such knowledge (*provided*, that failure of any Indemnitee to give such notice shall not affect the Authority's, the State's or the User's indemnity obligations hereunder except to the extent the failure to give notice within such period precludes the Authority, the State or the User from contesting a claim). In case any action, suit or proceeding shall be brought against any Indemnitee for which indemnity may be sought under this Section 15(a), such Indemnitee shall notify any of the Authority, the State or the User in writing of the commencement thereof (*provided*, that failure to give such notice shall not affect the Authority's, the State's or the User's obligations hereunder except to the extent the failure to give notice within such period precludes any of the foregoing from contesting a claim) and the Authority, the State or the User may, at their expense, participate in and may assume (such assumption constituting the Authority's, the State's or the User's, as the case may be, acknowledgment of such Indemnitee's right to indemnification with respect to such claim, and, to the extent that the Indemnitee shall require, the Authority, the State or the User shall assume (subject to the following provisions of this paragraph), in each case in good faith and in a commercially reasonable manner), the defense thereof; *provided*, that none of the Authority, the State or the User shall admit liability on such Indemnitee's part or settle such action without the consent of such Indemnitee, which consent shall not be unreasonably withheld. If the Authority, the State or the User assumes the defense of such action, suit or proceeding, such Indemnitee may participate in such defense at such Indemnitee's expense. Notwithstanding the foregoing, if (1) an actual or potential conflict of interest exists where it is advisable for such Indemnitee to be represented by separate counsel,

(2) such action, suit or proceeding involves the potential imposition of criminal liability or material civil penalty on such Indemnitee, (3) such proceedings could involve a material risk of the sale, forfeiture or loss of the Collateral, in the case of a Holder and its Related Indemnitees, ~~the Equity~~any Acceptable Lease Collateral, in the case of the Owner Participant and its Related Indemnitees, or ~~the User Head Lease Interest~~, the Head Lease Interest, the Trust Estate, the Facility or, in each case, any material portion thereof or interest therein, and such Indemnitee informs any of the Authority, the State or the User that such Indemnitee desires to be represented by separate counsel, or (4) a Lease Event of Default shall have occurred and be continuing, such Indemnitee shall have the right to control its own defense of such claim and the Costs or Expenses in connection therewith (including the fees and expenses of such Indemnitee's counsel) shall be borne by the Authority, the State and the User, jointly and severally. With respect to any amount which the Authority, the State or the User is requested by an Indemnitee to pay by reason of this Section 15(a), the Indemnitee shall, if requested by the Authority, the State or the User and prior to any payment, submit such additional information to the such parties as they may reasonably request to substantiate the requested payment.

Each Indemnitee agrees that if an event, condition or circumstance exists, occurs or is anticipated to occur that could reasonably be expected to result in a claim for indemnification hereunder, such Indemnitee will, at the request of the Authority, the State or the User and at the Authority's, the State's or the User's, as the case may be, expense, sign such forms or documents that are prepared by the Authority, the State or the User, as the case may be, and, in the reasonable determination of such party, are necessary to eliminate the need to make such claim or to mitigate such indemnity, or both; *provided, however*, that such Indemnitee shall not be required to execute any form or document if, in the reasonable determination of such Indemnitee, such action could reasonably be expected to result in any liability, loss (including loss of anticipated benefits), cost or expense to such Indemnitee.

(b) ***Survival of Indemnities; Effect of Other Indemnities; Subrogation.*** The representations, warranties, indemnities and agreements of each of the parties provided for in this Agreement, and each party's obligations under any and all thereof, shall survive the payment of the amounts provided in Section 2(a)(ix), the delivery and lease of the Facility under the ~~User Head Lease and the~~ Head Lease, the delivery and lease of the Facility under the Lease, the Sublease and the User Lease and the expiration or other termination of this Agreement and each of the other Operative Documents.

The Authority's, the State's and the User's joint and several indemnity obligations provided for in this Agreement shall be those of a primary obligor whether or not the Person indemnified shall also be indemnified with respect to the same matter under the terms of this Agreement or any other Operative Document and the Person seeking indemnification from the Authority, the State or the User pursuant to any provision of this Agreement may proceed directly against any of the Authority, the State or the User without first seeking to enforce any other right of indemnification. Upon the payment in full by the Authority, the State or the User of any indemnity provided for under this Agreement, the Authority, the State and the User shall be, to the extent permitted by law, subrogated to any right and remedy of the Person indemnified, other than with respect to Taxes and other than with respect to any of such Indemnitee's insurance policies; *provided*, that the Authority shall not be subrogated to the rights of the Trust against the Owner Participant under Section ~~7.01~~7.1 of the Trust Agreement. If an Indemnitee

receives any refund, reimbursement or other payment, in whole or in part, with respect to any Cost or Expense paid or reimbursed by the Authority, the State or the User hereunder, it shall (unless a Payment Default, a Bankruptcy Default or a Lease Event of Default shall have occurred and be continuing in which case such Indemnitee may apply such refund, reimbursement or other payment to the amounts then owing by the Authority pursuant to the Lease or hold the same as security therefor) promptly pay over to the Authority the amount so received (but not an amount in excess of the amount the Authority, the State or the User or any of their respective insurers, has paid in respect of such Cost or Expense).

(c) ***General Tax Indemnity.***

(i) The Authority agrees that all payments of Rent shall be free and clear of, and without deduction for, any and all withholdings of any nature whatsoever, whether or not an exclusion pursuant to Section 15(c)(ii) applies. If any deduction or withholding is required with respect to a payment of Rent, the Authority shall pay an additional amount such that the net amount actually received by each such Indemnitee, after such deduction or withholding, will be equal on an After-Tax Basis to all such amounts that would be received by such Indemnitee if no such deduction or withholding had been required. If, for any reason, the Authority is required to make any payment of withholding Tax to a taxing authority (which payment was not deducted from the payment made by the Authority to the Indemnitee on whom such Tax is imposed) ~~or the Authority is required to reimburse or indemnify a Payment Undertaker under Section 3.05 of the Payment Agreement or the Equity Payment Undertaker under Section 2.6 of the Equity Payment Agreement~~ with respect to, or as a result of, any withholding Tax imposed with respect to a payment pursuant to the Operative Documents which withholding Tax in either case is not the responsibility of the Authority under this Section 15(c), then, upon written request of the Authority, such Indemnitee promptly (and in any event within twenty days after receipt of notice of payment of the withholding Tax and appropriate payment documentation with respect thereto) shall pay to the Authority an amount that equals such withholding Tax.

Subject to the exclusions set forth in Section 15(c)(ii)(D), (J), (L), (O), (P) and (S), if any amount payable with respect to a Loan Certificate becomes subject to any Tax imposed by way of withholding, the Authority shall indemnify and hold harmless the Holders against such withholding Taxes and shall pay an additional amount as Supplemental Rent for distribution to the Holders so that the net amount actually received by the Holders after such deduction or withholding, will be equal on an After-Tax Basis to all such amounts that would have been received by the Holders had no such deduction or withholding been required.

Notwithstanding anything to the contrary contained herein, the Authority will indemnify the Trust Company, the Trust, the Trustee, the Trust Estate and the Owner Participant (and any Related Indemnitee of any of the foregoing) on an After-Tax Basis for any obligation with respect to withholding Taxes imposed on the Trust Company, the Trust, the Trustee, the Trust Estate and the Owner Participant (or any Related Indemnitee of any of the foregoing) with respect to the Loan Certificates (or any debt issued to refinance or refund such Loan Certificates pursuant to Section 19 of this Agreement or otherwise with the consent of the Authority) or as a result of a claim by the Internal Revenue Service asserted against the Trust Company, the Trust,

the Trustee, the Trust Estate or the Owner Participant (or any Related Indemnitee of any of the foregoing) with respect to any such withholding Tax; *provided, however*, that the Authority shall be subrogated to the rights and defenses of any such Person that it has indemnified or held harmless in respect of such withholding Taxes; *provided further, however*, that the Authority shall have no liability for such withholding Taxes that would not have been imposed but for (x) the failure of any such Person to be and remain an entity that is a U.S. Person, or (y) the gross negligence or willful misconduct of any such Person.

Notwithstanding anything to the contrary contained herein, the Authority will indemnify the Trust Company, the Trust, the Trustee, the Trust Estate, the Holders, ~~the Payment Undertaker~~ and the Owner Participant (and any Related Indemnitee of any of the foregoing) on an After-Tax Basis for any Tax imposed on the Trust Company, the Trust, the Trustee, the Trust Estate, the Holders, ~~the Payment Undertaker~~ and the Owner Participant (or any Related Indemnitee of any of the foregoing) as a result of a breach of the representation contained in Section 5(x) of this Agreement without regard to the exclusions contained in Section 15(c)(ii) below.

(ii) The Authority agrees to pay punctually as and when due and payable, and to indemnify, protect, defend and hold harmless each Indemnitee on an After-Tax Basis from and against, Taxes howsoever imposed, whether imposed upon or with respect to, or payable by, any Indemnitee, the Authority, the User, the Operative Documents, the Head Lease Interest, the Facility, the Trust Estate or any part thereof or interest therein, by any foreign or any United States federal, state or local government or, in each case, any political subdivision, territory, possession or taxing authority thereof or therein or any international taxing authority upon or with respect to:

(1) the Head Lease Interest, the Facility, the Trust Estate or any part thereof or interest therein including the performance of any labor or services or the furnishing of any materials or other property in respect thereof;

(2) the manufacture, purchase, financing, refinancing, mortgaging, pledging, servicing, maintenance, modification, repair, replacement, insuring, improvement, transfer of title, assignment, purchase, erection, installation, de-installation, testing, acceptance or rejection, ownership, delivery, non-delivery, lease, sublease, sub-sublease, transportation, storage, possession, use, non-use, location, operation, alteration, substitution, registration, licensing, export, import, redelivery, condition, sale, abandonment, return or other disposition thereof or action or event with respect thereto;

(3) the Operative Documents, as supplemented, modified or amended;

(4) the rentals, receipts or earnings arising therefrom or with respect to any transactions contemplated by the Operative Documents;

(5) the Loan Certificates, their issuance, ownership or disposition (or constructive disposition), modification, reoptimization, refinancing, or any payments with respect to principal or interest or premium on, or any other amounts payable under, the Loan Certificates or any other indebtedness issued in accordance with the Operative Documents;

(6) any contract relating to the manufacture, leasing, subleasing, sub-subleasing, construction, acquisition or delivery of the Facility in each case, as supplemented, modified or amended; or

(7) otherwise with respect to, or in connection with, the transactions contemplated by the Operative Documents.

provided, however, that the Authority shall not be obligated to pay pursuant to this Section 15(c) and shall have no indemnity liability pursuant to this Section 15(c) for:

(A) With respect to the Facility, Taxes imposed on an Indemnitee to the extent resulting from an event occurring after the expiration or earlier termination of the Lease and the payment by the Authority of all amounts due under the Operative Documents (in either case provided that the use and possession of the Facility has been returned in accordance with the requirements of the Lease and the obligations of the Authority under the Operative Documents have been fulfilled in full) other than pursuant to the exercise of remedies in connection with a Lease Event of Default; *provided*, that the exclusion in this clause (A) shall not apply to the extent such Taxes (i) relate to or arise from events occurring or matters arising prior to, or simultaneously with, the expiration or earlier termination of the Lease, (ii) are imposed with respect to any payments due under the Operative Documents after such expiration or earlier termination, (iii) (so long as the Authority or an Affiliate is the Head Lessor under the Head Lease) are Taxes imposed with respect to the Head Lease, or (iv) result from any act or omission of the Head Lessor or its Affiliates that is not expressly required or expressly permitted under the Operative Documents, any breach of any representation, warranty or covenant of the Head Lessor or the gross negligence or willful misconduct of the Head Lessor or any of its Affiliates;

(B) In the case of an Indemnitee other than a Lender Indemnitee, Taxes imposed on the Trust Company in its individual capacity that are based on or measured by the fees or other compensation received by the Trust Company for services rendered as Trustee under the Trust Agreement;

(C) Taxes (other than Taxes that are, or are in the nature of, sales, use, property, ad valorem, rental, stamp, transfer, value added, excise, license or withholding Taxes or Taxes imposed under Section 4975 of the Code) imposed on, based on or measured by gross or net income, gross or net receipts, capital or net worth and Taxes in the nature of capital gains, accumulated earnings, personal holding company, excess profits, succession or estate, minimum, alternative

minimum, preference, franchise, conduct of business or other similar tax imposed by (i) in the case of any Indemnitee, the United States federal government, (ii) other than with respect to a Lender Indemnitee, the State of South Dakota or any local jurisdiction therein, or (iii) in the case of any Indemnitee, any foreign government or foreign taxing authority, or any state or local government or state or local taxing authority in the United States (other than the State of South Dakota or any local government or taxing authority thereof or therein with respect to any Indemnitee other than a Lender Indemnitee), in each case, other than Taxes that would not have been imposed but for (A) the use, location, operation or registration of the Facility or Part thereof in the jurisdiction imposing such Tax, (B) the execution or delivery of any Operative Document in such jurisdiction, (C) the identity, organization, activities, business, place of residence, status, domicile or presence of the Authority or any Lessee Person or, in the case of a Lender Indemnitee, or any Affiliate thereof, the Trust or the Owner Participant in such jurisdiction, (D) the making of any payment under the Operative Documents by any Person other than such Indemnitee or an Affiliate thereof or otherwise by the Authority or any Lessee Person in such jurisdiction or (E) with respect to the Lessor or the Owner Participant or any Related Indemnitee of either thereof the location of ~~the Payment Undertaker, the Payment Undertaker Guarantor or the Payment Agreement or the location of the Equity Payment Undertaker, the Equity Payment Undertaker Guarantor or the Equity Payment Agreement, any Acceptable Substitute Credit Protection (or the issuer thereof), any New Strip Surety Policy or New Strip Surety Provider (or the issuer thereof), the LC Issuer or any New Standby Letter of Credit Issuer, or any other~~any Lease Collateral or issuer of such Lease Collateral in such jurisdictions; *provided*, that there shall not be excluded under this clause (C) any amounts necessary to make any payment required to be made under the Operative Documents on an After-Tax Basis;

(D) Taxes imposed on an Indemnitee resulting from any gross negligence or willful misconduct of such Indemnitee or any Affiliate thereof (*provided, however*, that neither the Trust nor the Trust Company shall be considered an Affiliate of the Owner Participant for purposes of this exclusion (D) unless acting at the written request of the Owner Participant) or as a result of the inaccuracy or breach of any representation or covenant of such Indemnitee in any of the Operative Documents (unless such inaccuracy or breach is caused by the Authority's breach of any representation or covenant under the Operative Documents);

(E) Taxes imposed on an Indemnitee by a taxing authority where the jurisdictional basis for such Tax, at the rate imposed, exists as a result of the activities of the Indemnitee in such jurisdiction unrelated to the transactions contemplated by the Operative Documents;

(F) So long as the non-payment of the contested Tax does not result in the Holders failing to receive all payments when due under the Loan Agreement and, in the case of the Owner Participant or the Lessor, the Trust failing to receive all payments of Lease Rent and Supplemental Rent when due, Taxes that are

being contested in accordance with the provisions of Section 15(c)(iii) during the pendency of such contest and Taxes imposed on an Indemnatee resulting from such Indemnatee's failure to comply with the provisions of Section 15(c)(iii) hereof to the extent such failure effectively precludes the contest of such Taxes under Section 15(c)(iii) below;

(G) With respect to an Indemnatee, sales or other transfer Taxes imposed on such Indemnatee, the Facility or any Operative Documents or any interest in or arising under any of the foregoing, in each case, that result from (i) any voluntary sale, assignment, transfer or other disposition by such Indemnatee of any interest in the Facility or any Part thereof or any interest therein, any interest or obligation arising under the Operative Documents or from any voluntary sale, assignment, transfer or other disposition of any interest in such Indemnatee, (ii) any involuntary sale, assignment, transfer or other disposition of any of the foregoing interests resulting from any bankruptcy or other proceeding for the relief of debtors or the protection of creditors in which such Indemnatee is a debtor or (iii) any foreclosure by a creditor of such Indemnatee; *provided, however,* this clause (G) shall not apply to any such sale, assignment, transfer, foreclosure or other disposition occurring while a Lease Event of Default or, in the case of a Lender Indemnatee, a Loan Event of Default (that is not the result of a Lease Event of Default) has occurred and is continuing or to any loss, damage, destruction, casualty, requisition, seizure or condemnation of all or any part of the Facility or to any sale, assignment, transfer or other disposition resulting from the exercise of any of the Authority's rights or obligations under the Operative Documents, including, without limitation, any substitution, replacement, lease or removal of the Facility or the exercise of any purchase option under the Lease and in the case of a Holder upon transfer of the Loan Certificate pursuant to Section 2.12 or 7.01 of the Loan Agreement (it being understood that any transfer or disposition expressly permitted by Section 8, 9, 14(a), 14(f) or 15 of the Lease or Section 2.12, 4.07 or 7.01 of the Loan Agreement or requested by the Authority is not a voluntary transfer or disposition);

(H) Any interest, penalties, fines or additions to Tax imposed on an Indemnatee resulting from activities of such Indemnatee unrelated to the transactions contemplated by the Operative Documents or from the failure of such Indemnatee, after timely written request of the Authority, to file when due any report or return required by a taxing authority or remit any Tax timely and in the form prescribed by law, unless such failure results from a failure of the Authority to satisfy its obligations under Section 15(c)(vi) or (vii);

(I) Any Taxes imposed on the Lessor or Owner Participant or any Affiliate thereof that would not have been imposed but for the existence of any Lessor's Lien attributable to it;

(J) Taxes imposed on any Lender Indemnatee (other than ~~the Payment Undertaker, the Payment Undertaker Guarantor, the Strip Surety Provider and any New Strip Surety Provider and, in each case, their respective~~ any Acceptable

Credit Party] and its successors, permitted assigns, Affiliates, agents, directors, officers and employees) that would not have been imposed upon such Indemnitee but for any failure of such Indemnitee, after written notification by the Authority of such requirement (accompanied by a draft form of any such requirement prepared by the Authority at the Authority's expense) within a reasonable period prior to the required date of compliance, to comply with any certification, information, documentation, reporting or other similar requirements concerning the nationality, residence, identity or connection with the jurisdiction imposing such Taxes, if such compliance is required by statute or regulation of the jurisdiction imposing such Tax as a precondition to relief or exemption from or reduction in such Taxes; *provided*, that, in the good faith opinion of such Indemnitee, such Indemnitee was eligible to comply with such requirement and such procedure would not expose such Indemnitee or any Affiliate thereof to any adverse consequences or to any increased risk (material to it in the context of this transaction) in respect thereof (as determined in the sole discretion of such Indemnitee) (that is not indemnified against by the Authority); *provided, further, however*, that the exclusion set forth in this clause (J) shall not apply if such failure to comply was due to a failure of the Authority to provide reasonable assistance on request in complying with such requirement;

(K) Taxes imposed on the Trust Company as a result of an act or failure to act of the Trust, in its capacity as trustee and not in its individual capacity, in breach of its covenants, warranties or other obligations under the Trust Agreement to which it was appointed as Trustee;

(L) Taxes payable by a transferee of an original Indemnitee to the extent of the excess of such Taxes over the amount of such Taxes which would have been imposed on the original Indemnitee had there not been a transfer by the relevant original Indemnitee from which such transferee derives its interest; *provided*, that this clause (L) shall not apply (i) with respect to any transfer occurring while a Lease Event of Default or, in the case of a Lender Indemnitee, a Loan Event of Default (that is not the result of a Lease Event of Default) has occurred and is continuing, (ii) in the case of a Lender Indemnitee, with respect to any transfer required by the Operative Documents or Applicable Law; (iii) in the case of a Lender Indemnitee, with respect to any transfer in connection with increased costs or an illegality event; (iv) to any amounts necessary to make any payment required to be made under the Operative Documents on an After-Tax Basis, or (v) in the case of any Holder, to any Taxes imposed under Section 4975 of the Code unless such Holder has breached the representation and warranty set forth in Section 8.1(g) of this Agreement;

(M) Taxes imposed on the Owner Participant for which the Authority is otherwise obligated to indemnify the Owner Participant pursuant to the Tax Indemnification Agreement; *provided*, that this clause (M) shall only operate to prevent duplication of the obligation of the Authority to pay amounts pursuant to the Tax Indemnification Agreement;

(N) Any Tax that is enacted or adopted after the Closing Date by its express terms as a direct substitute for or directly in lieu of any Tax that would have been imposed on such Indemnitee and would be expressly excluded from the Authority's indemnification obligations under this Section 15(c)(ii);

(O) With respect to any Lender Indemnitee (other than ~~the Payment Undertaker, the Payment Undertaker Guarantor, the Strip Surety Provider and any New Strip Surety Provider, and, in each case, their respective~~[any Acceptable Credit Party] and its successors, permitted assigns, Affiliates, agents, directors, officers and employees), Taxes that would not have been imposed but for the failure of such Holder, or such Indemnitee insofar as the Holder's forms relate to such Indemnitee, to deliver or cause to be delivered to the Authority (i) within thirty (30) days after the Closing Date or if later, the date such Holder became a Holder under the Loan Agreement, or in any event, prior to the date the first payment of interest is made to such Holder pursuant to the Loan Agreement, two originally executed copies of IRS Form W-8BEN, W-8ECI, W-8IMY with all necessary attachments or W-9 or applicable successor form, unless such Holder is unable to do so as a result of a change of law after the Closing Date, in each case evidencing a complete exemption from U.S. withholding Taxes or, in the case of a transferee Holder, a level of U.S. withholding Tax subject to indemnification hereunder no greater than the level of indemnification to which its transferor Holder would have been entitled hereunder on the date of such transfer and (ii) in the case of IRS Form W-8ECI, or applicable successor form, on or before the first payment of interest made to such Holder in the fourth calendar year following the year in which such form was previously delivered to the Authority;

(P) With respect to a Holder, Taxes imposed as a result of the Holder being treated as a "bank" under Code Section 881(c)(3)(A) as in effect and interpreted on the Closing Date;

(Q) [Reserved].

(R) Taxes included (and paid) as a part of Transaction Costs;

(S) Taxes imposed on any Indemnitee resulting from an amendment, modification, supplement or waiver to any Operative Document to which the Lessee is not a party, to which the Indemnitee (or, in the case of the Owner Participant, the Trust if acting at the express direction of the Owner Participant) is a party, and as to which the Lessee neither requested nor consented to in writing, unless such amendment, modification, supplement or waiver (i) was required by Applicable Law or the Operative Documents, (ii) may be necessary or appropriate to, and is in conformity with, any amendment to any Operative Document requested by or consented to by the Lessee in writing, or (iii) is made while a Lease Event of Default under the Lease shall have occurred and be continuing; or

(T) Taxes imposed on the Owner Participant or Trust, as a result of such Indemnitee failing to be a U.S. Person; ;

~~(U) In the case of the Equity Payment Undertaker, withholding Taxes in respect of any payment made (or to be made) by it under the Equity Payment Agreement; and~~

~~(V) In the case of a Payment Undertaker, withholding Taxes in respect of any payment made (or to be made) by such Payment Undertaker under its Payment Agreement. For the avoidance of doubt, the indemnity obligation of the Authority for any such withholding Taxes is set forth in the Payment Agreement.~~

In the event that any Taxes are imposed on a Lender Indemnitee and indemnifiable hereunder, such Lender Indemnitee agrees to transfer its interest in the Operative Documents and the transactions contemplated thereby to an Affiliate ~~(except that at no time during the existence of the Loan may a Holder be the same Person as the Payment Undertaker or the Payment Undertaker Guarantor)~~ (existing or to be formed) in a jurisdiction selected by the Authority in order to reduce or eliminate such Taxes *provided* that the Authority shall be responsible for all Taxes and costs incurred by the Indemnitees and such Affiliate transferee, and the Affiliates of each, as a result of such transfer as identified by such Indemnitee and Affiliate.

The Holders, the ~~Payment Undertaker, the Equity Payment Undertaker, the~~ Owner Participant and the Trust, at the sole cost and expense of the Authority (including but not limited to the Indemnitee's internal costs for use of its personnel and resources), will use their respective reasonable efforts to minimize Taxes indemnifiable by the Authority under this Section 15(c), including by complying with reasonable requests by the Authority to do or to refrain from doing any act (including, to the extent it is eligible to do so, the execution of any certificates or similar documents required to establish an exemption or relief from any Tax), if such efforts or any such compliance is, in the good faith discretion of the Holders, the ~~Payment Undertaker, the~~ Owner Participant, ~~the Equity Payment Undertaker~~ and the Trust, of a purely ministerial nature and has no adverse impact on the Holders, the ~~Payment Undertaker, the~~ Owner Participant, ~~the Equity Payment Undertaker~~ or the Trust or any Affiliate of any of the foregoing or on the business or operations of any of the foregoing (unless such adverse impact is one of a nature and quality such that it is subject to indemnification and the Authority has indemnified the Indemnitee against such adverse impact in a manner satisfactory to the Indemnitee). The Authority shall indemnify each Indemnitee for any Taxes that may be imposed on them as a consequence of such compliance, whether or not an exclusion pursuant to this Section 15(c)(ii) would otherwise apply.

(iii) Contests.

(A) Initiation. If a written claim is made against an Indemnitee or if any proceeding shall be commenced against any Indemnitee (*provided*, that such Indemnitee shall have received written notice of such proceeding) for any Taxes with respect to which the Authority would be liable for payment or indemnity under this Section 15(c), such Indemnitee shall promptly notify the Authority in writing and shall not take any action with respect to such claim, proceeding or Tax without the written consent of the Authority for 30 days after the receipt of such notice by the Authority; *provided, however*, that, in the case of any such claim or proceeding, if such Indemnitee shall be required by law or regulation to

take action prior to the end of such 30-day period, such Indemnitee shall, in such notice to the Authority, so inform the Authority, and such Indemnitee shall not take any action with respect to such claim, proceeding or Tax without the written consent of the Authority before 5 days prior to the date on which the Indemnitee shall be required by law or regulation to take action. However, the failure of an Indemnitee to give the notices referred to in this section shall not diminish the Authority's obligations hereunder except to the extent such failure materially adversely affects the ability of the Authority to contest such claim.

(B) Control. If requested by the Authority in writing within 30 days (or such shorter period as provided for in clause (A) of this Section 15(c)(iii)) of receipt of a notice described in clause (A) of this Section 15(c)(iii), such Indemnitee either (I) in the case of any Tax that may be procedurally segregated and contested independently from any Tax that is not subject to indemnification by the Authority, unless an adverse determination of such contest would, in such Indemnitee's good faith judgment, have an adverse effect on such Indemnitee's tax liability arising out of transactions unrelated to the Operative Documents, shall permit the Authority to contest (such contest to be conducted in the name of the Authority, if permitted by law, or, otherwise, in the name of the Indemnitee, *provided*, that, if the Indemnitee determines at any time, in its good faith discretion, that permitting the Authority to conduct or continue to conduct such contest could have adverse business or other consequences to such Indemnitee, such Indemnitee shall have the right to control (or reassert control over) such contest) or (II) in the case of a Tax which cannot be procedurally segregated and contested independently from Taxes not subject to indemnification by the Authority, shall itself, contest (or shall request the Authority to contest) in good faith (including, without limitation, by pursuit of judicial appeals and administrative procedures), the validity, applicability or amount of such Taxes by (A) resisting payment thereof, (B) not paying the same except under protest if protest shall be necessary and proper or (C) if payment shall be made, seeking a refund thereof in appropriate administrative and/or judicial proceedings; *provided*, *however*, that in no event shall such contest be required or permitted or continued unless:

(1) in the case of a contest controlled by the Authority the amount at issue (taking into account all similar and logically related issues) exceeds \$50,000;

(2) prior to taking such action, the Authority shall have agreed in writing to pay such Indemnitee, and shall pay on demand, all reasonable costs and expenses that such Indemnitee shall incur in connection with contesting such claim (including, without limitation, all legal, investigatory and accounting fees and disbursements);

(3) the action to be taken will not result in any danger of sale, forfeiture or loss of the Facility or any Part or interest therein or the

creation of any Lien (except for Permitted Liens) on the Facility or any Part or interest therein or the Trust Estate or any interest therein;

(4) there is no risk of criminal liability that may be imposed with respect to such Indemnatee;

(5) no Lease Event of Default or Payment Default or Bankruptcy Default shall have occurred and be continuing;

(6) if such contest is to be initiated by the payment of, and the claiming of a refund for, such Taxes, the Authority shall advance the amount thereof plus interest, penalties and additions to Tax with respect thereto to such Indemnatee on an interest-free basis with no additional net after-tax cost to such Indemnatee to make such payment and shall indemnify such Indemnatee against any adverse tax consequences arising from such advance;

(7) independent tax counsel selected by the Authority and reasonably acceptable to the Indemnatee shall have furnished the Indemnatee, upon the request of such Indemnatee, with an opinion, prepared at the Authority's expense, to the effect that there is a Reasonable Basis to contest such claim;

(8) in the case of a contest controlled by the Authority, the Authority shall have acknowledged in writing its obligation to indemnify the Indemnatee in respect of such contested Tax in the event such contest is unsuccessful; *provided*, that the Authority shall not be bound by such acknowledgment if and to the extent that there is a final resolution of the contest which clearly demonstrates that it is not liable hereunder for such Tax; and

(9) in no event shall an Indemnatee be required, or the Authority permitted, to appeal an adverse judicial determination to the United States Supreme Court.

Notwithstanding anything contained herein to the contrary, (a) an Indemnatee will not be required to contest (and the Authority shall not be permitted to contest) a claim with respect to the imposition of any Tax if such Indemnatee shall waive its right to indemnification under this Section 15 with respect to such claim and shall pay the Authority any amounts advanced to, or on behalf of, the Indemnatee, pursuant to clause (6) of the preceding paragraph, by the Authority with respect to such claim and (b) an Indemnatee shall not be required to contest any claim if the subject matter thereof shall be of a continuing nature and the relevant legal issue shall have previously been decided adversely pursuant to this Section 15(c)(iii) unless the Authority shall have delivered an opinion of independent tax counsel selected by the Indemnatee and reasonably

acceptable to the Authority that based on a change in law after such previous decision, and taking into account such previous decision, it is more likely than not that the Indemnitee will prevail on such claim.

If an Indemnitee fails to perform its obligations pursuant to this Section 15 such failure shall not diminish or relieve the Authority of any liability for indemnification unless the contest of a claim is materially adversely affected as a result of such failure.

(C) Conduct. The party conducting the contest (“**Controlling Party**”), subject to preserving the attorney client privilege in the Controlling Party’s reasonable judgment, shall consult in good faith with the other party (“**Noncontrolling Party**”) and its counsel with respect to the contest of such claim for Taxes (or claim for refund) and shall provide copies of all material documents (or the relevant excerpts thereof) or notices received from the relevant taxing authority to the extent relating to the contest of a claim hereunder, but the decisions regarding any actions to be taken shall be made by the Controlling Party in its good faith judgment. The Noncontrolling Party shall be permitted, to the extent practicable, to review and comment on any material written submissions made by the Controlling Party, but solely to the extent relating to such claim for Taxes. The Controlling Party shall have the right to select independent nationally-recognized counsel to conduct the contest.

(iv) Tax Savings. If an Indemnitee shall actually realize any tax savings, as a result of any Tax paid or indemnified against by the Authority under this Section 15(c) and not previously taken into account in determining the Authority’s indemnity obligation hereunder, whether by way of deduction, credit, offset, allocation or otherwise or would have received such a refund or credit but for a counterclaim by the relevant taxing authority unrelated to transactions contemplated by the Operative Documents and not indemnified by the Authority hereunder (a “**Tax Savings**”), and such Tax Savings has not been previously taken into account in computing the amount of an indemnity required to be paid by the Authority hereunder, such Indemnitee shall pay to the Authority, so long as no Payment Default or Bankruptcy Default or Lease Event of Default shall have occurred or be occurring, within 30 days immediately following such realization, the amount of such Tax Savings plus any Tax Savings realized (minus any detriment sustained) by such Indemnitee as a result of a payment pursuant to this sentence. For purposes of determining whether the Owner Participant is able to use any item of non-United States tax (“foreign tax”) as a credit or deduction, such Tax shall be deemed to be used as and when determined by the Owner Participant in its own discretion, exercised in good faith. If any Indemnitee shall obtain a refund (including by way of credit) of all or any part of any Tax which the Authority shall have paid for such Indemnitee or reimbursed such Indemnitee for, then such Indemnitee shall so long as no Payment Default or Bankruptcy Default or Lease Event of Default shall have occurred and be continuing, pay to the Authority any such refund (including any applicable interest received with respect to such refund). An Indemnitee shall not be obligated pursuant to this Section 15(c)(iv) to make a payment (A) before such time as the Authority shall have made all payments then due under the Operative Documents and any Lease Event of

Default or Payment Default or Bankruptcy Default that shall have occurred shall no longer be continuing or (B) in excess of the amounts paid by the Authority to such Indemnitee pursuant to this Section 15(c) in respect of the Taxes giving rise to such Tax Savings (minus any amounts previously paid to the Authority by such Indemnitee pursuant to this clause (iv) in respect of the Taxes giving rise to such Tax Savings or refund), *provided*, that any such amounts not paid to the Authority pursuant to the limitation contained in clause (B) of this sentence shall be carried forward to reduce, *pro tanto*, any future amounts that the Authority may be obligated to pay to such Indemnitee pursuant to this Section 15(c) in respect of the Taxes giving rise to such Tax Savings or refund. The disallowance, loss, recapture or reduction of any credit, refund or other Tax Savings with respect to which an Indemnitee has made a payment to the Authority under this clause (iv) shall be treated as a Tax for which the Authority is obligated to indemnify such Indemnitee hereunder, without regard to the exclusions set forth in Section 15(c)(ii).

(v) *Payment.* The Authority shall pay any Taxes for which it is liable pursuant to this Section 15(c) directly to the appropriate taxing authority (if direct payment is practicable and permitted), or otherwise upon written demand of an Indemnitee which shall describe in reasonable detail the nature and amount of such Tax and the basis pursuant to this Section 15(c) for payment by the Authority, to such Indemnitee, within 30 days of such demand, but in no event prior to the date which is 5 days prior to the date such Tax is due. Any payment which the Authority shall be required to make to or for the account of any Indemnitee with respect to any Taxes subject to indemnification under this Section 15(c) shall be made on an After-Tax Basis. Any payments pursuant to this Section 15(c) to be made to an Indemnitee or the Authority shall be made within the time periods specified in this Section 15(c) directly to the person entitled thereto in immediately available funds at such bank or to such account as specified by the payee in written directions to the payor, or, if no such directions shall have been given, by check of the payor, payable to the order of the payee by certified mail, return receipt requested, postage prepaid at its address as set forth in Schedule I hereto. Interest at the Overdue Rate shall be paid, on demand, on any amount or indemnity not paid when due pursuant to this Section 15 until the same shall be paid. Such interest shall be paid in the same manner as the unpaid amount in respect of which such interest is due.

(vi) *Reports.* If required or permitted by Applicable Law, the Authority shall prepare and file all reports or returns required with respect to any Tax with respect to which the Authority is required to indemnify hereunder, unless such Indemnitee has notified the Authority in writing that such Indemnitee intends to file such report or return. If, pursuant to the preceding sentence, the Authority shall not be required to file any such reports or returns, the Authority shall, to the extent practicable, prepare any such reports or returns for signature by the appropriate Indemnitee and on a timely basis forward the same, together with the amount of any Tax payable in connection therewith to such Indemnitee. If such report, return or statement is required to reflect items in addition to Taxes imposed on or indemnified against under this Section 15(c) as determined by such Indemnitee, the Authority shall provide such Indemnitee with information within a reasonable time (but in no event later than fifteen Business Days prior to the due date thereof) sufficient to permit such report, return or statement to be properly made. If it is

not practicable for the Authority to prepare any such reports or returns or determine the amount of Tax payable, the Authority shall so notify such Indemnatee and the Authority and such Indemnatee shall cooperate in good faith to ensure that all reporting and payment obligations are satisfied. Any statements for Taxes received by an Indemnatee shall be promptly forwarded to the Authority by such Indemnatee. The Authority shall furnish to the appropriate Indemnatee within 30 days after the date any Taxes referred to in this Section 15(c) are payable by the Authority, official receipts, to the extent available, of the appropriate taxing authority or other proof satisfactory to such Indemnatee of the payment of such Taxes. The Authority shall not file any report or return that is required to be filed with respect to any Taxes that are subject to indemnification under this Section 15(c) in a manner inconsistent with the Trust's interest in the Facility pursuant to the Head Lease, as described in Section 19 of the Tax Indemnification Agreement.

(vii) *Information.* The Authority shall provide such information to an Indemnatee that is not within the control of such Indemnatee or reasonably available to such Indemnatee and is in the Authority's control or is reasonably available to the Authority, which such Indemnatee may reasonably require to enable it to fulfill its tax filing obligations, including but not limited to its United States federal, state and local tax filing obligations, and its rights and obligations with respect to tax audit and litigation proceedings. Each Indemnatee shall provide such information that is not within the control of the Authority or reasonably available to the Authority as is in such Indemnatee's control or is reasonably available to such Indemnatee and is not determined by such Indemnatee, in its sole discretion, to be confidential, which the Authority may reasonably require to enable it to fulfill its tax filing obligations, including but not limited to its United States federal, state and local tax filing obligations; *provided, however*, that, an Indemnatee is not required to provide the Authority any Tax returns, pricing files, credit files, any confidential legal opinions or any other expert report provided to that Indemnatee.

(viii) *Holder Withholding Taxes.* Notwithstanding anything herein to the contrary, no reduction in the amounts received by the Holders by virtue of any withholding Tax which is determined not to be subject to indemnification under this Section 15(c) shall constitute a Lease Default or Lease Event of Default or a Loan Default or Loan Event Default under the Loan Agreement, and except to the extent (and only to the extent) that the Authority is required pursuant to this Section 15(c) to make an additional payment to the Holders in respect of such withholding Taxes, payment of any amount due hereunder or under any Loan Certificate, net of withholding Taxes shall, to the extent of such withholding, be deemed payment in full of the corresponding amount due. Neither the Lessor, the Trust nor the Owner Participant shall have any liability or obligation pursuant to the Operative Documents to the Holders with respect to any such withholding Taxes.

(ix) *Verification.* At the Authority's request, the amount of any indemnity payment by the Authority pursuant to this Section 15(c) or any payment by the Lessor to the Authority pursuant to this Section 15(c) shall be verified by an independent United States public accounting firm mutually acceptable to the Authority and the Indemnatee

who shall be asked to verify whether the Indemnitee's computations are correct and to report its conclusions to both the Authority and the Indemnitee, it being agreed that in the case of a Lender Indemnitee, outside public accounting firm regularly employed by such Indemnitee shall be reasonably acceptable to the Authority so long as such firm is of recognized national or international standing. The Indemnitee and the Authority hereby agree to provide such firm with all information and materials as shall be reasonably necessary or desirable in connection therewith; *provided*, that in no event will such public accounting firm or any other Person have any right to examine the tax returns or the books and records of the Indemnitee. The fee of such firm shall be paid by the Authority, *provided* that the Indemnitee shall pay such fee if such verification results in an adjustment in the Authority's favor of 5% or more of the amount originally determined to be due by such Indemnitee, *provided further* that the Trust Company will never be required to make such payment. Any information provided to such firm by any Person shall be and remain the exclusive property of such Person and shall be deemed by the parties to be (and such firm will confirm in writing that they will treat such information as) the private, proprietary and confidential property of such Person, and no Person other than such Person and such firm shall be entitled thereto, and all such materials shall be returned to such Person. Such firm shall make its determination within 30 days. If such firm shall determine that such computations are incorrect, then such firm shall determine what it believes to be the correct computations. The computations of the public accounting firm shall be (absent manifest error) final, binding and conclusive upon the Authority and the Lessor. Notwithstanding anything herein to the contrary, the sole responsibility of the public accounting firm shall be to verify the computations of the amount payable and interpretations of this Agreement or any other Operative Document are not within the scope of such public accounting firm's responsibilities.

Each Indemnitee shall have sole control over the positions taken with respect to its tax returns and filings and each such Indemnitee shall determine in its sole judgment the allocation of any tax benefit, saving, deduction, credit or detriment with respect to its tax returns and filings for purposes of calculations made under this Section 15.

(x) *After-Tax Basis.* The Authority agrees that, with respect to any indemnity to an Indemnitee under this Section 15(c), the Authority's indemnity obligation shall include an amount necessary to hold such Indemnitee harmless on an After-Tax Basis from and against any Taxes required to be paid or accrued by such Indemnitee with respect to the receipt or accrual of such indemnity (including any amounts received or accrued under this Section 15(c)).

(xi) *Affiliated Group.* For purposes of this Section 15(c), the Owner Participant as an Indemnitee shall include any combined, consolidated or affiliated group (and any member thereof) of which the Owner Participant is or shall become a member.

(xii) *Forms.* Each Indemnitee agrees to furnish from time to time to the Authority or to such other person as the Authority may designate, at the Authority's written request (which request shall include a completed draft of the form in question) and expense, such duly executed and properly completed forms as may be considered necessary or appropriate in order to claim any reduction of or exemption from

withholding or other Tax which the Authority may be required to indemnify against hereunder (but only if and to the extent that such Indemnitee is legally entitled to furnish such forms and that such forms may be executed by such Indemnitee without exposing such Indemnitee (in the good faith opinion of such Indemnitee) to any adverse consequences or to any increased risk in respect thereof (as determined in the sole discretion of the Indemnitee) (whether or not indemnified against by the Authority).

(d) **Indemnitees.** By accepting the benefits and rights of this Section 15, each Lender Indemnitee that is not a party hereto agrees to be bound by the same duties and obligations to the Authority under this Section 15 that are imposed upon the Lender.

SECTION 16. COOPERATION.

In the event that the transactions contemplated hereby shall become burdensome to the Authority or the User due to a change in Applicable Law or any other matter beyond its control, the Owner Participant, the Trust, the Trust Company, and each Lender Indemnitee shall undertake reasonably to cooperate with the Authority or the User, as the case may be, at the sole expense of the Authority or the User, to eliminate or reduce or recover such costs or obligations, including by means of restructuring the transaction in a manner not adverse to any party or transferring its interests to an Affiliate; *provided, however*, that the Authority, the State and the User shall indemnify, on a joint and several basis, each of the Owner Participant, the Trust, and each Lender Indemnitee to the satisfaction of any such party (determined in its sole discretion exercised in good faith) for any adverse effect resulting from such restructuring; *provided, further*, that ~~(i) no party shall as a result of such undertaking be required to take any action increasing the costs or risks to such party associated with the transactions contemplated by the Operative Documents or altering the affected party's obligations under the Operative Documents and (ii) a Lender or a Holder shall not transfer any of its interest to any Affiliate that is a Payment Undertaker and no Payment Undertaker shall transfer any of its interest to any Affiliate that is a Lender or a Holder irrespective of any indemnification provided by the Authority, the State or the User pursuant to this Agreement.~~

SECTION 17. WAIVER OF JURY TRIAL AND IMMUNITY.

EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ITS RIGHT TO A JURY TRIAL IN ANY SUCH SUIT, ACTION OR PROCEEDING ARISING AS A RESULT OF OR RELATING TO THE TRANSACTIONS CONTEMPLATED BY THE OPERATIVE DOCUMENTS.

To the extent that the Authority, the State or the User may have, or may hereafter become entitled to or have attributed to it (whether or not claimed), any right of immunity, on the grounds of sovereignty or otherwise, from any action, suit or proceeding, from setoff or counterclaim, from the jurisdiction of any court, from service of process upon it or any agent, from attachment prior to judgment, from attachment upon or in aid of execution of judgment or from execution of judgment or other legal process or proceeding for the giving of any relief or for the enforcement of judgments, in any jurisdiction, the Authority, the State or the User hereby irrevocably and unconditionally, to the fullest extent permitted by law, waives and agrees not to

plead or claim any such immunity for itself or any of its property, assets or revenues wherever located with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Agreement or the Facility, the other Operative Documents to which it is a party or any document delivered pursuant hereto or thereto, in each case for the benefit of the Lessor, the Owner Participant, the Holders, any other Indemnitee and their respective permitted successors and assigns, it being intended that the foregoing waiver and agreement shall be effective, irrevocable and not subject to withdrawal in any and all jurisdictions.

SECTION 18. CONCERNING THE TRUST COMPANY.

Except as otherwise expressly provided for herein or in any other Operative Document, the Trust Company is executing this Agreement and each of the other Operative Documents to which it is a party solely in its capacity as Trustee under the Trust Agreement and not in its individual capacity and in no case shall the Trust Company (or any entity acting as successor Trustee under the Trust Agreement) or the Owner Participant be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of the Trustee or the Trust hereunder (all such liability, if any, other than as described by the proviso hereto, being expressly waived by the parties hereto); *provided*, that the Trust Company (or any such entity acting as successor Trustee under the Trust Agreement) shall be personally liable hereunder for its own gross negligence or willful misconduct and for its breach of its covenants, representations and warranties contained herein, to the extent covenanted or made by the Trust Company, and for its failure to exercise ordinary care in handling money.

SECTION 19. REFINANCINGS.

(a) So long as no Lease Event of Default shall have occurred and be continuing, upon the written request of the Authority delivered at least thirty (30) days prior to the date specified in such request for the refinancing, the Owner Participant, the Holders and the Trust agree, at the sole cost and expense of the Authority (whether or not such refinancing is consummated), to cooperate with the Authority promptly and in good faith to negotiate with a view toward causing a refinancing or refinancings of the obligations represented by all of the Loan Certificates then outstanding under the Loan Agreement with funds made available for such purpose solely through Dollar-denominated debt loans to the Trust in the private market (with lenders unrelated to any Lessee Person), the proceeds of which the Trust shall pay to the Holders to pay in full the aggregate principal amount of the Loan Certificates outstanding and accrued interest thereon and to cause adjustments to be made, so as to reflect any such refinancing, in accordance with the provisions of Section 3(d) of the Lease, it being understood that any such refinancings may be made at any time but on no more than two occasions (excluding any refinancing made pursuant to Section 20(n)); *provided, however*, that such refinancing will not directly or indirectly constitute any non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code; *provided further, however*, that the Owner Participant shall not be required to effect any such refinancing unless the terms and conditions of the refinancing will not be any less favorable taken as a whole to the Owner Participant than the terms and conditions of the Loan Certificates being refinanced and the other conditions set forth in this Section 19 shall have been satisfied; *provided further, however*, that the Owner Participant shall in any event have the right to consent to any such refinancing, which consent the Owner Participant may withhold in the Owner Participant's sole, good faith discretion; except that the Owner Participant

shall not have such consent right, if and to the extent King & Spalding LLP, or such other counsel selected by the Owner Participant and reasonably acceptable to the Authority, delivers, at the cost and expense of the Authority, an opinion to the Owner Participant (which opinion the Owner Participant agrees to timely request at the time of such refinancing) that such refinancing and any actions in connection therewith (including, without limitation, any rent adjustment or payment of costs in connection therewith) does not result in (i) the payment of contingent rent within the meaning of the Regulations under Section 467 of the Code, (ii) a substantial modification of the Lease within the meaning of such Regulations or (iii) any other adverse tax consequences, together with such other opinions reasonably requested by the Owner Participant.

(b) The Owner Participant's obligations to take any action in connection with a proposed refinancing shall be subject to the satisfaction or waiver by the Owner Participant and, with respect to Section 19(b)(H) and (I), the Lender of the following conditions precedent:

(A) any loan certificates ("*New Loan Certificates*") issued in such refinancing shall be in the form of non-recourse loans denominated in Dollars having a final maturity date no later than the final maturity date of the existing Loan Certificates;

(B) on the closing date of the refinancing, there shall be an adjustment, if necessary, to Lease Rent, Termination Values, Stipulated Loss Values and the Purchase Option Price pursuant to Section 3(d) of the Lease, and corresponding changes to ~~the Payment Agreement, the Equity Payment Agreement, the Strip Surety Policy, the Standby Letter of Credit and the Notional Amounts Schedule;~~ any Acceptable Lease Collateral;

(C) on the closing date of the refinancing, no Lease Event of Default shall have occurred and be continuing;

(D) such refinancing shall be for an amount not greater than the aggregate principal amount of the outstanding Loan Certificates being refinanced;

(E) there shall be no adverse effect to the Owner Participant in connection with such refinancing and the Net Economic Return shall not be adversely affected by the consummation of such refinancing;

(F) all necessary authorizations, approvals and consents in connection with such refinancing shall have been obtained from each Person whose authorization, approval or consent is necessary to consummate such refinancing, and such authorizations, approvals and consents shall be in full force and effect on the closing date of such refinancing;

(G) all payment dates for principal and interest payments on the New Loan Certificates shall be Rent Payment Dates;

(H) the documentation of such refinancing (including opinions of counsel, including tax counsel, and other ancillary documents) shall be reasonably

satisfactory to the Owner Participant and the Lender (acting at the direction of the requisite Holders); and

(I) the Authority shall pay (i) to the Owner Participant, the Lender, the Holders, ~~the Strip Surety Provider~~ and the Trust, on an After-Tax Basis, all out-of-pocket costs and expenses (including reasonable legal fees and expenses and reasonable fees and expenses of any financial advisors) and all applicable stamp duties (including fines and penalties) and registration or other out-of-pocket fees and expenses incurred by the Owner Participant, the Lender, the Holders, the Trust Company, ~~the Strip Surety Provider~~ and the Trust in connection with such refinancing (whether or not such refinancing is consummated), (ii) to the Lender and the Holders, all other amounts due and owing to the Lender and the Holders, as the case may be, under the Operative Documents, and (iii) to the Owner Participant in connection with a refinancing under this Section 19, a refinancing fee of \$~~10,000.~~ [10,000].

SECTION 20. CERTAIN COVENANTS.

(a) The Owner Participant and, upon the Owner Participant's instruction, the Trust, will give the User and the Lender at least thirty (30) days' prior written notice of any proposed amendment or supplement to the Trust Agreement (other than an amendment solely effecting a transfer of the Owner Participant's interest in the Trust Estate, the notice periods with respect to which are set forth in Section 14(a)) and deliver true, complete and fully executed copies to each of them of any amendment or supplement to the Trust Agreement. So long as the Lien of the Loan Agreement shall not have been discharged in accordance with Section ~~7.01~~7.1 thereof, no amendment or supplement to the Trust Agreement or any other Operative Document that could adversely affect the interests of the Holders shall become effective without the prior written consent of the Lender (acting at the direction of the requisite Holders) and, so long as no Lease Event of Default shall have occurred and be continuing, no amendment or supplement to the Trust Agreement or any other Operative Document that could adversely affect the interests of the Authority, the State or the User shall become effective without the prior written consent of the User (it being understood that an amendment to the Trust Agreement to change the name of the Owner Participant to the Transferee in connection with a transfer effected in compliance with Section 14 shall not have an adverse effect on either such party). The Owner Participant agrees (i) solely for the benefit of the Holders, that it will not revoke or otherwise terminate the Trust as long as the Loan Agreement is in effect and (ii) solely for the benefit of the ~~Lessee~~Lessees (*provided* the Lease shall not have been duly declared in default following the occurrence of a Lease Event of Default) that it will not revoke or otherwise terminate the Trust during the Lease Term without the prior written consent of the ~~User~~Lessees except that, notwithstanding either of the foregoing clauses or any other provision of the Operative Documents to the contrary, the Owner Participant shall have the right to terminate the Trust without the consent of any other party to the Operative Documents, at any time, if in connection therewith the Owner Participant shall simultaneously create a new trust upon substantially the same terms and conditions as the Trust so terminated and shall cause the Trust Estate to be vested in the trustee under the new trust upon the same terms and conditions so applied to such terminated Trust; *provided, however*, that in connection with any such termination, (A) none of the creation of such new trust, the termination of the Trust, or the transactions consummated in connection therewith will have any

adverse impact on any of the Authority's, the State's or the User's rights or obligations or the Holders' rights under the Operative Documents (including with respect to the continuing validity and binding effect of the Loan Agreement and the Loan Certificates issued pursuant thereto and the continuing first priority lien status of the Lien created by the Trust under the Loan Agreement), (B) the Authority, the State and the User shall have no responsibility to indemnify any Indemnitee under any provision of any Operative Document for any Taxes or other consequences that in either case would not have been incurred but for such termination and transfer, (C) the Owner Participant shall reimburse the Authority, the State, the User, the Lender, and the Holders, ~~the Payment Undertaker, the Strip Surety Provider and the LC Issuer~~ for any Taxes (including any Taxes for which the Authority, the State or the User, shall have made an indemnity payment pursuant to the Operative Documents) and for reasonable costs and expenses (including reasonable fees and expenses of counsel) that in either case would not have been incurred but for such termination and transfer, (D) the Owner Participant shall provide the Authority, the State, the User, and the Holders, ~~the Payment Undertaker, the Strip Surety Provider and the LC Issuer~~ with an opinion in form and substance reasonably satisfactory to them as to the effect of such termination and transfer (including with respect to the continuing first priority lien status of the security interest granted by the Trust pursuant to the Loan Agreement), and (E) immediately after such transfer, the beneficiary of the new trust shall be the same as the beneficiary of the Trust. The Owner Participant shall not instruct the Trustee to take any action that is expressly prohibited by this Agreement or any other Operative Documents and further agrees (1) promptly to provide instructions to the Trustee, upon the request of the Trustee and as otherwise expressly required or permitted under the Trust Agreement, so as to enable the Trustee to perform its duties and obligations under the Operative Documents in accordance with the terms and provisions thereof and (2) not to remove or replace the institution acting as Trustee unless the Owner Participant shall have obtained the prior written consent of the User and the Lender (which consent shall not be unreasonably delayed or refused, and which consent, in the case of the User, shall not be required if a Lease Event of Default shall have occurred and be continuing) prior to such removal or replacement.

(b) The Trust will not incur any indebtedness for money borrowed, or enter into any business or other activity, except as contemplated hereby and by the other Operative Documents and the Owner Participant agrees not to furnish instructions to the Trust, or otherwise cause the Trust, to take any such action. The Trust agrees to use its best efforts to procure the release from the Lien of the Loan Agreement of any property subject thereto whenever the transfer of such property is required under the Lease.

(c) Notwithstanding anything herein to the contrary, the Holders and the Trust hereby agree for the benefit of the User, the State and the Authority that, without the consent of the User, they will not, so long as no Lease Event of Default shall have occurred and be continuing, make any amendment that will (i) affect the principal amount of or interest on the Loan Certificates or the time or times when any payments under the Loan Certificates become due or (ii) otherwise amend, modify or supplement the Loan Agreement in any manner that would adversely affect the User, the State or the Authority; *provided*, that whether or not a Lease Event of Default shall have occurred and be continuing no such action shall be taken with respect to any provisions of the Loan Certificates or the Loan Agreement which would increase the payment obligations thereunder other than as expressly permitted by Section 21(b) of this Agreement and Sections 2.12 and 2.13 of the Loan Agreement. The Holders and the Trust

further agree that any such amendment or modification of the Loan Agreement or the Loan Certificates without the User's consent in violation of the previous sentence shall be void and ineffective as against the User, the State and the Authority. The Holders and the Trust agree promptly to furnish to the User copies of any supplement, amendment, waiver or modification of any of the Operative Documents to which the User, the State or the Authority are not a party.

(d) If the ~~Authority purchases~~Lessees purchase the Head Lease Interest in accordance with any provision of the Operative Documents, (i) the Trust will assign its rights under the Head Lease to the Authority or its designee, other than any rights relating to the period prior to such purchase, (ii) the Authority will assume all obligations of the Head Lessee under the Head Lease and (iii) the expenses incidental to such purchase, including the reasonable legal and other fees and expenses of the Trust, the Owner Participant, the Head Lessor, the Lender and the Holders, shall be borne and paid solely by the ~~Authority~~Lessees.

(e) The Owner Participant agrees for the benefit of the Authority, so long as the Head Lease shall not have been terminated in accordance with its terms, and for the benefit of the Holders, so long as the Lien of the Loan Agreement shall not have been discharged in accordance with Section ~~7.0~~7.1 thereof, that it will not directly or indirectly create, incur, assume or suffer to exist any Lessor's Lien attributable to it on the Facility or any interest therein, the Head Lease Interest, the Trust Estate or the Collateral or any interest therein. The Owner Participant agrees that it will, at its own cost and expense, promptly take such action as may be necessary duly to discharge promptly any such Lessor's Lien attributable to it; *provided, however,* that the Owner Participant shall not be required to remove such a Lessor's Lien for so long as (a) such Lessor's Lien is being diligently contested in good faith by appropriate proceedings, (b) neither such Lessor's Lien nor such proceedings involve any imminent danger of the sale, forfeiture, loss or restriction on use of the Facility, and (c) the existence of such Lessor's Lien does not affect the priority or perfection of, or otherwise jeopardize, the Lien of the Loan Agreement or interfere with the peaceful and quiet possession and enjoyment of the Facility by the ~~Lessee~~Lessees or any permitted sublessee.

(f) Each of the Trust, the Trustee and the Trust Company agrees that it will not directly or indirectly create, incur, assume or suffer to exist any Lessor's Lien attributable to it in its individual capacity on the Facility or any interest therein, the Head Lease Interest, the Trust Estate or the Collateral or any interest therein. The Trust Company agrees that it will, at the cost and expense of the Trust Company, promptly take such action as may be necessary duly to discharge promptly any such Lessor's Lien attributable to it, the Trustee or the Trust; *provided, however,* that the Trust Company shall not be required to remove such a Lessor's Lien for so long as (a) such Lessor's Lien is being diligently contested in good faith by appropriate proceedings, (b) neither such Lessor's Lien nor such proceedings involve any imminent danger of the sale, forfeiture, loss or restriction on use of the Facility, and (c) the existence of such Lessor's Lien does not affect the priority or perfection of, or otherwise jeopardize, the Lien of the Loan Agreement or interfere with the peaceful and quiet possession and enjoyment of the Facility by the Lessee or any permitted sublessee.

(g) Notwithstanding any of the provisions of this Agreement or any other Operative Document to the contrary, so long as no Lease Event of Default shall have occurred and be continuing, the Trust and the Owner Participant each agrees that it will not take any action that

interferes with the peaceful and quiet possession and enjoyment of the Facility by the ~~Lessee~~Lessees or any permitted sublessee (it being agreed that the Trust's and the Owner Participant's covenant hereunder does not extend to actions taken by the Holders or any other party to the Operative Documents). Notwithstanding any of the provisions of this Agreement or any other Operative Document to the contrary, so long as no Lease Event of Default shall have occurred and be continuing, the Holders will not take any action that interferes with the peaceful and quiet possession and enjoyment of the Facility by the ~~Lessee~~Lessees or any permitted sublessee. Notwithstanding any of the provisions of this Agreement or any other Operative Document to the contrary, so long as no Lease Event of Default shall have occurred and be continuing, ~~the Payment Undertaker will not~~neither the Floating Rate Lender nor the Swap Party will take any action that interferes with the peaceful and quiet possession and enjoyment of the Facility by the ~~Lessee~~Lessees or any permitted sublessee.

(h) Intentionally omitted.

(i) Each of the Authority, the State and the User agrees that neither it nor any Affiliate thereof shall acquire (directly or indirectly) any Loan Certificate or any interest or participation therein.

(j) Each of the Authority, the State and the User agrees that neither it nor its Affiliates will amend any of the Operative Documents to which it or its Affiliates are a party without the consent of the Owner Participant, the Trust and the Lender; *provided, however*, that the consent of the Lender shall not be required in connection with any amendments of the ~~Account Pledge and Security Agreement, the Custody Agreement, the Tax Indemnification Agreement, the Strip Surety Policy, the Insurance and Indemnity Agreement, the Standby Letter of Credit, the Assignment Agreement~~any Acceptable Lease Collateral documents pursuant to Section 21 hereof or the rent adjustment provision of the Lease ~~{~~(subject however to Section 3(f) of the Lease concerning minimum rent~~}~~) or any indemnity provisions of this Agreement that by their express terms apply only to Persons that do not include any of the Lender Indemnitees and that do not affect any of the Lender Indemnitees. Each of the Authority and the State agree that neither it nor its Affiliates will amend any of the Operative Documents to which it or its Affiliates are a party without the consent of the User.

(k) To the fullest extent permitted by Applicable Law: (i) each of the Authority, the State, the User, the Owner Participant, the ~~Payment Undertaker~~Floating Rate Lender, the Swap Party, the Trust and the Trust Company hereby irrevocably waives any and all rights it now has or may have in the future to commence, or be a petitioning creditor in connection with the commencement of, an involuntary bankruptcy petition against the Trust or the Trust Company, (ii) each of the Authority, the State, the User, the Owner Participant, the ~~Payment Undertaker~~Floating Rate Lender, the Swap Party, the Trust and the Trust Company hereby covenants that it will not at any time solicit or otherwise induce any party to commence, or be a petitioning creditor in connection with the commencement of, an involuntary bankruptcy petition against the Trust, the Trust Company, the User or the Authority and (iii) the Trust agrees that it shall not file any voluntary petition in bankruptcy or any answer seeking reorganization in a proceeding under any bankruptcy, insolvency or other similar law (as now or hereafter in effect).

(l) ~~Each of the Authority, the State and the User agrees~~ If the Lessees have delivered any Acceptable Letter of Credit pursuant to Section 21 hereof, the Lessees shall agree that none of the Owner Participant, the Trust, the Trustee or the Trust Company shall be liable or in any way responsible for any actions taken by or on behalf of the ~~Strip Surety Provider or the LC Issuer~~ Acceptable Credit Party with respect to such Acceptable Letter of Credit (or any actions taken by the Trust at the direction of ~~the Strip Surety Provider or the LC Issuer~~ such Acceptable Credit Party) pursuant to the exercise of ~~its~~ any subrogation rights under the ~~Strip Surety Policy or the Standby~~ Acceptable Letter of Credit. The Trust confirms for the benefit of the ~~Authority, the State, the User~~ Lessees and the Holders that it will perform its obligations as required in Article II of the Trust Agreement.

(m) Each of the Trust and the Trust Company agrees to use its best efforts to give the Owner Participant, the Lender, the Head Lessor and the ~~Lessee~~ Lessees at least 45 days' prior written notice of any contemplated change in its or the Trustee's name or location (as such term is used in Section 9-307 of the UCC as in effect in the State of ~~Connecticut~~ Delaware) or of the Trust's chief executive office or the place where the Trust's records are kept (as set forth in Section 7.1(e) and Section 7.2(f)) and in any event shall give such notice within 30 days of such change.

(n) The Authority ~~agrees~~ and the User agree that, in the event that it is determined that an illegality event under Section 2.12 of the Loan Agreement occurs that cannot be avoided within the time limits set forth therein, the Authority and the User shall arrange within 60 Business Days following such determination (but in any event not later than the time required pursuant to Applicable Law) for a third party lender (which may not be the Authority or its Affiliates or Tax Affiliates) to purchase the Loan Certificates from the Holder affected by such illegality, and such Holder agrees to sell all of such Holder's right, title and interest in and to the Loan Certificates held by such Holder (without recourse or warranty, other than as to such Holder's title to and right to sell such Loan Certificates) for a purchase price equal to the outstanding principal amount thereof and accrued and unpaid interest thereon to the date of such purchase and upon such sale of the Loan Certificates, the Authority shall pay to such Holder all other amounts due and payable to such Holder under the Operative Documents by the Authority. In lieu of arranging such third party sale, the Authority may satisfy its obligations under this Section 20(n) by arranging a refinancing of such Loan Certificates pursuant to and in accordance with and subject to satisfaction of the terms and conditions set forth in Section 19 hereof.

(o) ~~The Payment Undertaker agrees that for so long as the Payment Undertaker's obligations under the Payment Agreement shall not have been terminated in accordance with the terms thereof, the Payment Undertaker expressly acknowledges and agrees that it shall maintain a distinct legal identity separate from each Holder and it shall not convey or transfer any obligation under the Payment Agreement to any Holder.~~ Intentionally omitted.

(p) Intentionally omitted.

(q) The Owner Participant agrees that it will not and will not permit any Person acting on its behalf to offer, solicit or sell any interest in the Trust Estate in violation of the Securities Act or so as to require qualification of the Loan Agreement under the Trust Indenture Act.

(r) Each Holder agrees that: (i) it will not offer, solicit or sell any Loan Certificates or any interest therein in violation of the Securities Act or so as to require qualification of the Loan Agreement under the Trust Indenture Act, and (ii) it will not transfer or sell any Loan Certificate to the ~~Payment Undertaker, the Payment Undertaker Guarantor or to the Lessee~~ Authority, the State, the User or any of its Affiliates or Tax Affiliates, ~~and (iii) it will maintain a distinct legal identity separate from the Payment Undertaker and the Payment Undertaker Guarantor.~~

(s) The Lender agrees that, under the law in effect on the Closing Date, each Lender Indemnitee ~~(other than the Payment Undertaker, the Payment Undertaker Guarantor, the Strip Surety Provider, any New Strip Surety Provider, the LC Issuer, any New Standby Letter of Credit Issuer and, in each case, their respective successors, permitted assigns, Affiliates, agents, directors, officers and employees)~~ will be subject to no greater United States withholding tax than such Lender Indemnitee would be if it were an association taxable as a corporation for United States federal income tax purposes.

(t) Notwithstanding any provision in the Operative Documents, each Holder expressly acknowledges and agrees that it will not transfer or permit the transfer of any of its rights, interests or obligations in or under any of the Operative Documents unless the transferee thereof, as a successor or additional Holder, shall have furnished to the Authority and the Owner Participant evidence reasonably satisfactory to the Authority and the Owner Participant that indemnified withholding taxes under the Code are not increased in respect of payments made to it under the Operative Documents.

~~(u) — Intentionally omitted.~~

~~(v) — The Policy Payment Account referred to in the Strip Surety Policy shall be the Owner Participant's account set forth on Schedule I unless the Owner Participant notifies the Strip Surety Provider of a change of such account.~~

~~(w) — The Lender, so long as the Loan Agreement is in effect, and thereafter the Lessor, in either case, as "Holder" of the Payment Undertaker Guaranty (individually, the "**Guaranty Holder**") agrees that if (i) the Lessee receives under Section 16(a) of the Lease a notice of nonpayment of Lease Rent, Stipulated Loss Value, Termination Value, Fair Market Sales Value or any other Supplemental Rent and (ii) such nonpayment is the result of the breach by the Payment Undertaker of its payment obligations under the Payment Agreement, the Guaranty Holder shall, upon request by the Lessee, immediately deliver to the Payment Undertaker Guarantor under the Payment Undertaker Guaranty a Notice (as defined in the Payment Undertaker Guaranty) for the related Shortfall (as defined in Exhibit A to the Payment Undertaker Guaranty). The Guaranty Holder further agrees that if it does not so deliver such Notice to the Payment Undertaker Guarantor within five (5) Business Days of receipt of such request from the Lessee, then the Lessee may, as agent and attorney in fact for the Guaranty Holder (only for purposes of delivering such Notice), deliver such Notice to the Payment Undertaker Guarantor.~~

SECTION 21. ~~PAYMENT AGREEMENT AND EQUITY COLLATERAL~~. CREDIT SUPPORT

(a) ~~*Payment Agreement.* At all times after the Closing Date to and including the Maturity Date, unless Acceptable Substitute Credit Protection has been provided pursuant to Section 21(b), the Authority shall cause the Payment Agreement to be in effect requiring the Payment Undertaker thereunder to make payments thereunder on each Rent Payment Date and Termination Value Determination Date in amounts equal to the Debt Lease Payments payable on such dates with respect to the Loan Certificate.~~ *Required Credit Support.*

~~(b) *Replacement of Payment Agreement.* If at any time the long term unsecured senior debt obligations of the Payment Undertaker (or, so long as the Payment Undertaker Guaranty is in effect, the long term unsecured senior debt obligations of the Payment Undertaker Guarantor), or in the case of any Acceptable Substitute Credit Protection issued by a bank or other financial institution, the issuer of such Acceptable Substitute Credit Protection, are not rated at least [A] by S&P and [A3] by Moody's, the Authority, in cooperation with the Owner Participant, shall, at its own cost and expense, within sixty (60) days of the earlier of (x) the date of a Responsible Officer's obtaining actual knowledge of such failure by the obligor (or its guarantor) to meet such standard or (y) demand therefor from the Owner Participant, replace the Payment Agreement to which such Payment Undertaker is a party or any such Acceptable Substitute Credit Protection provided hereunder with Acceptable Substitute Credit Protection (as provided herein). In addition, the Authority may at any time and for any reason replace the Payment Agreement or any Acceptable Substitute Credit Protection provided hereunder with Acceptable Substitute Credit Protection (as provided herein). In connection with any such replacement, each Holder that holds Loan Certificates immediately prior to such replacement shall not be entitled to reset the Applicable Rate pursuant to Section 2.13 of the Loan Agreement or to otherwise receive any payment that would be the economic equivalent of an increase in the Applicable Rate without the Owner Participant's consent, which consent may be withheld in the Owner Participant's sole discretion, exercised in good faith; *provided*, that if such Holder in its sole discretion exercised in good faith is unwilling to continue holding the Loan Certificates in the absence of such a reset or increase in the Applicable Rate in accordance with Section 2.13 of the Loan Agreement and the Owner Participant has not consented to such reset, increase or payment, then it shall be a condition to the provision of any Acceptable Substitute Credit Protection as provided herein that the Authority shall have arranged for a third party lender (which may not be the Authority[, **the State, the User**] or any of [**their respective**] Affiliates or Tax Affiliates) to purchase all, but not less than all, of the Loan Certificates held by such Holder, and such Holder agrees to sell all of such Holder's right, title and interest in and to such Loan Certificates (without recourse or warranty, other than as to such Holder's title to and right to sell such Loan Certificates) for a purchase price equal to the outstanding principal amount thereof and accrued and unpaid interest thereon to the date of such purchase and upon any such sale of the Loan Certificates, the Authority shall pay to such Holder all other amounts due and payable to such Holder by the Authority under the Operative Documents. The parties hereto agree to execute such documents as are necessary to implement this Section 21(b) and (i) to create and effect, to the reasonable satisfaction of the Lessor and the Holders that will hold Loan Certificates after the replacement, a first priority perfected security interest in such Acceptable Substitute Credit Protection (and the Lessor's interest therein) in favor of the Lessor and the Lender, respectively, and (ii) to release the Payment Agreement and the Payment Undertaker~~

~~Guaranty with respect thereto or any Acceptable Substitute Credit Protection that is being replaced hereunder from the Liens of all Operative Documents upon receipt of the replacement Acceptable Substitute Credit Protection (and such first priority perfected security interest). The Authority shall deliver to the parties hereto all such documents at least ten (10) days prior to the anticipated execution thereof. Such documents shall be in form and substance reasonably satisfactory to such parties. No replacement undertaken by the Authority in accordance with this Section 21(b) shall be effective, and the Lender's security interest in the Trust's interest in such Payment Agreement and the Payment Undertaker Guaranty or any Acceptable Substitute Credit Protection provided hereunder in substitution therefor shall not terminate, prior to the execution and delivery of documents in form and substance reasonably satisfactory to the parties thereto and hereto.~~

~~(c) — **Standby Letter of Credit.** The Authority shall on or before the Closing Date cause a Standby Letter of Credit to be issued and at all times after the Closing Date to and including the Lease Expiration Date, unless a New Standby Letter of Credit has been provided in accordance with this Section 21(c), the Authority shall cause such Standby Letter of Credit to be in effect. In the event the Termination Values are increased in connection with a rental adjustment pursuant to Section 3(d) of the Lease, the Authority shall cause appropriate modifications to be made to the amounts payable under the Standby Letter of Credit to provide for the payment of the increased Termination Values. The Authority, in cooperation with the Owner Participant, may, and in the event (i) the Standby Letter of Credit ceases to be collateralized pursuant to the Account Pledge and Security Agreement or (ii) the long term senior unsecured debt obligations of the LC Issuer are not rated at least [AA-] by S&P and [Aa3] by Moody's, shall (within thirty (30) days of demand therefor by the Owner Participant), at its own cost and expense, provide the Trust with a New Standby Letter of Credit issued by a New Standby Letter of Credit Issuer. The Authority shall deliver to the Trust and the Owner Participant opinions of counsel, together with such New Standby Letter of Credit, in form and substance satisfactory to the Owner Participant as to the due authorization, execution and delivery by, and enforceability of the obligations thereunder against the New Standby Letter of Credit Issuer. Upon provision of a New Standby Letter of Credit to the Trust and the indefeasible payment in full of all Equity Lease Payments and all Supplemental Rent owing by the Authority to the Lessor and the Owner Participant under the Operative Documents, the Trust will transfer its rights with respect to the Standby Letter of Credit to the Authority.~~

~~(d) — **Strip Collateral.** The Authority shall on or before the Closing Date cause a Strip Surety Policy to be issued and at all times after the Closing Date to and including the Lease Expiration Date or such longer period as described in the Strip Surety Policy dated as of the Closing Date, unless a New Strip Surety Policy has been provided in accordance with this Section 21(d), the Authority shall cause such Strip Surety Policy to be in effect. In the event the Termination Values are increased in connection with a rental adjustment pursuant to Section 3(d) of the Lease, the Authority shall make appropriate modifications to the amounts payable under the Strip Surety Policy to provide for the payment of the increased Termination Values (less the amount set forth on the Notional Amounts Schedule as adjusted from time to time). The Authority, with the consent of the Owner Participant may, and in the event the Strip Surety Provider has been released from its obligations under the Strip Surety Policy pursuant to the Assignment Agreement or the long term Dollar denominated unsecured senior debt obligations of the Strip Surety Provider are not rated at least [AA-] by S&P and [Aa3] by Moody's, or in the~~

~~event the obligations of the Strip Surety Provider under the Operative Documents to which it is a party cease to be legal or enforceable under Applicable Law, the Authority, in cooperation with the Owner Participant, shall (within forty five (45) days of the earlier of (x) the date of a Responsible Officer's obtaining actual knowledge of such failure by the obligor (or its guarantor) to meet such standard or (y) demand therefor by the Owner Participant), at its own cost and expense, provide the Trust with a New Strip Surety Policy duly issued by a New Strip Surety Provider. The Authority shall deliver to the Trust and the Owner Participant opinions of counsel, together with such New Strip Surety Policy, in form and substance satisfactory to the Owner Participant as to the due authorization, execution and delivery by, and enforceability of the obligations thereunder against the New Strip Surety Provider. Upon provision of a New Strip Surety Policy to the Trust and the indefeasible payment in full of all Equity Lease Payments and all Supplemental Rent owing by the Authority to the Lessor and the Owner Participant under the Operative Documents, the Trust will transfer its rights with respect to the Strip Surety Policy to the Authority.~~

~~—The compliance of the Authority will this Section 21 shall not release, relieve, modify, novate, waive or reduce the obligations of the Authority to any Person under the Lease, the Participation Agreement or any other Operative Document or diminish in any way the rights of the Trust under the Lease, the Participation Agreement or any other Operative Document.~~

~~(e) — **Equity Payment Agreement.**~~

~~(i) — The Authority shall on the Closing Date (A) enter into the Equity Payment Agreement and pay the Equity Undertaking Fee pursuant to such Equity Payment Agreement, (B) cause the Custodian and the Equity Payment Undertaker to enter into the Custody Agreement with the Trust, and (C) cause the Equity Payment Undertaker to enter into the Account Pledge and Security Agreement with the Trust. At all times on and after the Closing Date to and including the date on which the final installment of the Purchase Option Price is due pursuant to Section 14(a) of the Lease, the Authority shall maintain the Equity Payment Agreement, subject to the right to cause a replacement thereof pursuant to the terms of this Section 21(e), and hereby grants to the Lessor a first priority perfected pledge and security interest in the Equity Collateral, and all payments thereunder and proceeds thereof, to secure payment of the Lessee's Obligations, and the Authority shall not permit to exist any other Liens thereon. In the event the Equity Portion of Lease Rent and the Equity Portion of Purchase Option Price on each of the dates and in the amounts on each such date as set forth on Exhibit B-1 and Exhibit E to the Lease Supplement are increased in connection with a rental adjustment pursuant to Section 3(d) of the Lease, the Authority shall amend the Equity Payment Agreement to provide for the payment of the increased Equity Lease Payments.~~

~~(ii) — On or after the date the Lease is terminated for whatever reason and all payments due in connection therewith under the Operative Documents, including, if applicable, the payment of all installments due in connection with the exercise of the Purchase Option in respect of the Facility, have been paid in full, the Authority shall have the right, so long as no Lease Major Default or Lease Event of Default shall have occurred and be continuing, to cause the Lessor (at the written instruction of the Owner Participant) to execute and deliver a payment certificate to the Equity Payment~~

~~Undertaker with respect to the Equity Payment Agreement and direct the Equity Payment Undertaker to pay the Early Termination Amount to the Authority. In the event the Lease is terminated pursuant to Section 9 of the Lease and all amounts due thereunder and under the other Operative Documents have been paid in full, the scheduled payments under the Equity Payment Agreement attributable to the Facility may be reduced pursuant to Section 3.2(e) of the Equity Payment Agreement or the corresponding provisions of any document executed in connection with the substitution therefor of Acceptable Lease Collateral, and the Authority shall have the right, so long as no Lease Major Default or Lease Event of Default shall have occurred and be continuing, to cause the Lessor (at the written instruction of the Owner Participant) to execute and deliver a payment certificate to the Equity Payment Undertaker with respect to the Equity Payment Agreement and direct the Equity Payment Undertaker to pay the Partial Early Termination Amount with respect to the Facility to the Authority, subject always to the condition that the Equity Payment Agreement shall at all times be sufficient to provide for payment of the Equity Portion of Lease Rent and the Equity Portion of Purchase Option Price on each of the dates and in the amounts on each such date as set forth on Exhibit B-1 and Exhibit E to the Lease Supplement, as adjusted pursuant to Section 3(d) of the Lease. The Lessor covenants and agrees that, at the Authority's cost and expense and at no after-tax cost to the Owner Participant, promptly upon request of the Authority, it shall authorize such withdrawal and payment to the Authority and countersign any written request required to be delivered in respect thereof.~~

~~(iii) — So long as no Lease Event of Default or Lease Major Default shall have occurred and be continuing, the Authority shall be entitled at its sole risk and expense, with the prior written consent of each of the Lessor and the Owner Participant (which consent shall not be unreasonably withheld subject to the requirement of Acceptable Lease Collateral), to replace the Equity Payment Agreement with substitute Acceptable Lease Collateral which shall be sufficient to provide for payment of the Equity Portion of Lease Rent and the Equity Portion of Purchase Option Price on each of the dates and in the amounts on each such date as set forth on Exhibit B-1 and Exhibit E to the Lease Supplement, as adjusted pursuant to Section 3(d) of the Lease, and execute, or otherwise authenticate, and deliver all documents and instruments necessary to create for the benefit of the Lessor a first priority perfected pledge and security interest in and to all of the Authority's right, title and interest in and to such replacement Acceptable Lease Collateral. The documentation in connection with the grant of a first priority perfected security interest in any replacement Acceptable Lease Collateral (including opinions of counsel and any filing or other actions necessary to perfect the security interest created thereby) shall be reasonably satisfactory to the Owner Participant. In connection with any such replacement, there shall be no interruption in such security interest in the Equity Payment Agreement or Acceptable Lease Collateral substituted therefor in consequence of any such optional replacement and no increased risk of avoidance (or other intervention by the Trust in bankruptcy or similar Person) of the security interest in the Equity Payment Agreement or Acceptable Lease Collateral under any applicable bankruptcy or insolvency law in the reasonable opinion of the Owner Participant.~~

~~(iv) — So long as the Lease is in effect and until payment in full of all Lessee's Obligations, the Authority agrees that if the Dollar denominated long term senior~~

~~unsecured debt obligations of the Equity Payment Undertaker Guarantor or the issuer of any Acceptable Lease Collateral substituted therefor (or the guarantor of such issuer's obligations in respect of such Acceptable Lease Collateral, if there is such a guaranty) in respect of any Equity Payment Agreement or Acceptable Lease Collateral are not rated at least [Aa2] by Moody's and [AA] by S&P at any time or the Equity Payment Undertaker shall fail to maintain the collateral required pursuant to Section [*] of the Equity Payment Agreement, the Authority shall (A) provide the Lessor, within sixty (60) days of the earlier of (x) the date of a Responsible Officer's of the Authority obtaining actual knowledge of any such failure by the obligor (or its guarantor) to meet such standard and (y) the date of receipt by the Authority of notice from the Lessor or the Owner Participant of such event, with replacement Acceptable Lease Collateral in accordance with this Section 21(e)(iv) whether or not a Lease Event of Default or Lease Major Default shall have occurred and be continuing, and (B) execute and deliver all documents and instruments necessary to create for the benefit of the Lessor a first priority perfected pledge and security interest in and to all of the Authority's right, title and interest in and to such replacement Acceptable Lease Collateral; *provided* that all Acceptable Lease Collateral, including any such replacement Acceptable Lease Collateral shall provide for payment of the Equity Portion of Lease Rent and the Equity Portion of Purchase Option Price on each of the dates and in the amounts on each such date as set forth on Exhibit B-1 and Exhibit E to the Lease Supplement, as adjusted pursuant to Section 3(d) of the Lease. The documentation in connection with the grant of a first priority perfected security interest in any such replacement of an Equity Payment Agreement or Acceptable Lease Collateral (including opinions of counsel and any filing or other actions necessary to perfect the security interest created thereby) shall be satisfactory to the Owner Participant. In connection with any such replacement, there shall be no interruption in such security interest in the Equity Payment Agreement or Acceptable Lease Collateral in consequence of any such optional replacement and no increased risk of avoidance (or other intervention by the Trust in bankruptcy or similar Person) of the security interest in the replacement Equity Payment Agreement or Acceptable Lease Collateral under any applicable bankruptcy or insolvency law in the opinion of the Owner Participant.~~

~~(v) — In the event that any payment that may be made to the Trust or the Owner Participant at any time under the Equity Payment Agreement or of Acceptable Lease Collateral would become subject to any withholding, deduction or other Tax imposed by the law of any jurisdiction (a "*Tax Event*"), the Authority shall (unless the Owner Participant shall otherwise expressly consent in writing), by not later than the 30th-day following the earlier of (i) receipt by the Authority of notice by the Equity Payment Undertaker, the Trust or the Owner Participant, and (ii) the obtaining by the Authority of actual knowledge thereof, (y) cause such Equity Payment Agreement or Acceptable Lease Collateral to be amended or adjusted, in a manner reasonably satisfactory to the Owner Participant, to provide payment under such Equity Payment Agreement or of such Acceptable Lease Collateral to be increased by the amount of such withholding or deduction or (z) replace such Equity Payment Agreement or Acceptable Lease Collateral with other Acceptable Lease Collateral pursuant to clause (ii), above; *provided* that such other Acceptable Lease Collateral is not subject to a withholding, deduction or other Tax. The Authority agrees that it will, unless its actual knowledge of the occurrence of a Tax Event is based upon notice thereof from the Equity Payment Undertaker or issuer of the~~

~~Acceptable Lease Collateral, give notice to the Trust or the Owner Participant of the occurrence of a Tax Event promptly upon its obtaining actual knowledge thereof. Nothing in this Section 21(e) or in the Equity Payment Agreement shall release, relieve, modify, novate, waive or reduce the obligations of the Lessee to any Person under any Operative Document.~~

~~(vi) If on any date a payment under the Equity Payment Agreement is to be made, the Trust or the Owner Participant has received (prior to receipt of any payment then due under the Equity Payment Agreement) payment in full of all amounts stated to be due under the Lease on such date, then the Owner Participant or the Trust, upon instruction from the Owner Participant, shall (A) pay to the Authority the amounts received by the Trust or the Owner Participant from the Equity Payment Undertaker on such date or (B) on the instructions of the Authority, instruct the Equity Payment Undertaker to pay such amounts then due under the Equity Payment Agreement directly to the Authority.~~

~~(vii) Notwithstanding the foregoing, if a Lease Major Default or a Lease Event of Default has occurred and is continuing or the Authority is then insolvent, neither the Owner Participant nor the Trust shall make such payment to the Authority pursuant to paragraph (vi) above or give such instruction to the Equity Payment Undertaker pursuant to paragraph (vi) above but instead the Trust shall hold such amounts as security for Lessee's Obligations until applied toward the satisfaction of such obligations and, to the extent not so applied, shall pay to the Authority any such amount then held when all such Lessee's Obligations have been indefeasibly paid to the Owner Participant.~~

~~(viii) Notwithstanding the foregoing, if an event under Section 4.4 of the Equity Payment Agreement has occurred and is continuing, neither the Owner Participant nor the Trust shall make such payment to the Authority pursuant to paragraph (vi) above or give such instruction to the Equity Payment Undertaker pursuant to paragraph (vi) above but instead the Trust shall hold such amounts as security for the Authority's obligations to pay the Equity Lease Payments as provided in Section 20 of the Lease until such time as the Lessee complies with its obligations to provide Acceptable Lease Collateral; provided, however, that if one of the events referred to in clause (vii) above shall occur while the Trust is holding such amounts, the provisions of clause (vii) shall control.~~

~~(f) **Costs, Fees and Expenses.** The Authority shall pay or cause to be paid, promptly and in any event within thirty (30) days after the same shall become due and payable (but without duplication of any other amount payable pursuant to any Operative Document), all costs, fees and expenses (other than those that constitute Transaction Costs) of the Owner Participant, the Holders, the Trust, the Trust Company, the Payment Undertaker, the Equity Payment Undertaker, the LC Issuer and the Strip Surety Provider reasonably incurred by them in connection with the Authority's compliance with the provisions of this Section 21 (including any reasonable fees, expenses and disbursements of counsel incurred by any of such Persons in connection therewith, but excluding (unless consented to by the Owner Participant as provided above) any payment that would be the economic equivalent of interest on the Loan Certificates or an increase in the Applicable Rate). In addition, if the Authority provides Acceptable Substitute Credit Protection in accordance with Section 21(b), and the Loan Certificates shall at~~

~~any time thereafter be prepaid pursuant to Section 2.10 of the Loan Agreement or purchased by the Owner Participant or its designee pursuant to Section 4.07 of the Loan Agreement, the Authority shall pay to the Holders an amount equal to any Make Whole Amount due in connection with such prepayment or purchase. If the Authority chooses to provide Acceptable Substitute Credit Protection, and this results in additional Taxes to the Holders, the Authority shall be responsible for the payment of such additional Taxes. The Holders shall furnish to the Authority a notice setting forth a brief description of the additional Taxes and, in reasonable detail, the calculation of the amount of such additional Taxes, which notice shall be conclusive absent manifest error; provided that such calculation shall be made on a reasonable basis. The Holders shall endeavor to give the Authority prompt notice of any additional Taxes and shall use its reasonable efforts to avoid or mitigate the amount of any additional Taxes to be indemnified by the Authority; provided that no Holder shall be obligated to take any steps that such Holder determines in good faith will, in its reasonable opinion, be adverse to its business or operations. Upon such notice from a Holder, the Authority shall promptly pay or reimburse such Holder for the payment of such additional Taxes in accordance with the provisions of Section 15(c). In addition, such indemnification rights shall be governed by the provisions set forth in Section 15(c).~~

~~(g) — *Notices to the Payment Undertaker.* As promptly as practicable after the Loan Certificates have been refinanced, purchased or prepaid in accordance with the Operative Documents (other than in connection with an event which causes payment of the Early Termination Amount under the Payment Agreement and other than any voluntary transfer of the Loan Certificates) or the Lessee has provided Acceptable Substitute Credit Protection to replace the Payment Agreement, (i) the Holders or, upon instruction, the Trust will deliver a written notice to the Payment Undertaker to the effect that the applicable event has occurred, (ii) if the Trust gives such notice, it will simultaneously request a written acknowledgment from the Holders that the Payment Agreement is no longer subject to the Lien of the Loan Agreement and (iii) the Holders will deliver to the Payment Undertaker, as promptly as practicable after receiving such a request from the Trust or giving such notice, a written acknowledgment that the Payment Agreement is no longer subject to the Lien of the Loan Agreement. Each of the Trust and the Holders hereby agrees that it shall not give any notices which would cause the Early Termination Amount or Partial Early Termination Amount to become payable if an event which requires the payment of such Early Termination Amount or Partial Early Termination Amount has not occurred.~~

~~(h) — *Payments to the Lessee of Amounts Payable Under the Payment Agreement Under Certain Circumstances.*~~

~~(i) If, on any Specified Payment Date or Termination Amount Payment Date prior to the occurrence of a Release Event, a Holder has received payment in full of the principal of and accrued interest on the Loan Certificate due on such day prior to receipt of any payment then due under the Payment Agreement (including in connection with a refinancing of the Loan Certificates pursuant to a Refinancing Loan), then the Trust shall, but only with the prior written consent of the Lender as pledgee of the Trust's rights under such Payment Agreement, (i) pay to the Authority (or as the Authority directs) the amount received by the Trust from the Payment Undertaker on such day or on the instructions of the Authority, instruct the Payment Undertaker to pay such amount then~~

~~due under such Payment Agreement directly to the Authority (or as the Authority directs). Each Holder agrees to give such consent if no Lease Major Default or Lease Event of Default has occurred and is then continuing, and, in the case in which such payment to such Holder has been received from the Authority, the Authority was solvent at the time of such payment, but otherwise shall only give such consent in its sole discretion.~~ (A) a Credit Event described in clause [] of the definition thereof shall have occurred and be continuing, the Lessees shall, within thirty (30) days after the occurrence of such Credit Event, provide to the Lessor an Equity Deposit and, at all times thereafter, subject to the provisions of Section 21(b), maintain such Equity Deposit, free and clear of all Liens (other than any Liens granted in favor of the Lessor in accordance with the Operative Documents), until the Lease Termination Date or, in the event the Lessees elect to exercise the Purchase Option, until payment in full of the Purchase Option Price; or (B) any Credit Event shall have occurred and be continuing, the Lessees shall, within thirty (30) days after the occurrence of such Credit Event, (a) unless the Lessees have provided an Equity Deposit pursuant to clause (A) above, provide to the Lessor an Equity Deposit and, at all times thereafter, subject to the provisions of Section 21(b), maintain such Equity Deposit, free and clear of all Liens (other than any Liens granted in favor of the Lessor in accordance with the Operative Documents), until the Lease Termination Date or, in the event the Lessees elect to exercise the Purchase Option, until payment in full of the Purchase Option Price, and (b) cause to be issued to the Lessor an Acceptable Letter of Credit, drawable at all times in an amount equal to the Drawing Amount, and at all times thereafter, subject to the provisions of Section 21(b), maintain such Acceptable Letter of Credit or other Acceptable Letters of Credit until the final installment of the Purchase Option Price has been paid in full, in each case in an amount not less than the Drawing Amount applicable from time to time.

(ii) ~~After a Release Event occurs under circumstances when the Payment Agreement has not been terminated, the Trust shall (i) pay to the Authority (or as the Authority directs) the amount received by the Trust from the Payment Undertaker from time to time or (ii) on the instruction of the Authority, instruct the Payment Undertaker to pay amounts due from time to time under such Payment Agreement directly to the Authority (or as the Authority directs).~~ In conjunction with furnishing any collateral under Section 21(a)(i) (such collateral to be referred to herein as “Required Collateral”), the Lessees shall deliver to the Owner Participant and the Trust (A) opinions of counsel in form and substance satisfactory to the Owner Participant as to due authorization, execution and delivery by, and enforceability of the obligations thereunder or the pledge thereof, against the issuers of such Required Collateral; (B) UCC financing statements covering the rights of the Trust in the Required Collateral; and (C) all documents and instruments necessary to create for the benefit of the Lessor a first priority pledge and security interest in and to all of the Lessees’ right, title and interest in and to such Required Collateral.

~~Notwithstanding the foregoing, if prior to or after a Release Event (other than in connection with the provision of Acceptable Substitute Credit Protection in accordance with Section 21(b)) a Lease Major Default or Lease Event of Default has occurred and is continuing or in the case in~~

~~which such payment to a Holder has been received from the Authority, the Authority was insolvent at the time of such payment (and, as a consequence, the Holder of the Loan Certificate has not consented to the payments or instruction described in paragraph (i) of this Section 21(h)), the Trust shall not make such payment to the Authority pursuant to this Section 21(h) or give such instruction to the Payment Undertaker pursuant to this Section 21(h), but shall hold the amount so received from the Payment Undertaker as security for the Lessee's obligations under the Operative Documents as provided in Section 20 of the Lease until applied toward the satisfaction of such obligations and, to the extent not so applied, shall pay any of such amount then held over to the Authority when all such obligations have been fully satisfied.~~

(iii) At the time the Lessees provide Required Collateral pursuant to clause (i) above or this clause (iii), the Credit Party for such Required Collateral shall meet the Ratings Test. Thereafter, the Lessees may at any time and, if at any time the Credit Party for any Required Collateral ceases to have the Requisite Rating, the Lessees shall, within thirty (30) days after the earlier of (A) the date on which either Lessee shall have Actual Knowledge of such cessation and (B) the date of receipt by either Lessee of notice thereof from the Lessor, cause such Required Collateral to be replaced by a replacement Acceptable Letter of Credit (in an amount not less than the Drawing Amount) (the collateral being replaced being referred to as "Replaced Collateral"), the Credit Party of which is an Acceptable Credit Party; provided that, in the case of Replaced Collateral that is an Acceptable Letter of Credit furnished pursuant to clause (b) of Section 21(a)(i)(B), the Lessees may, in lieu of providing a replacement Acceptable Letter of Credit, pledge to the Lessor U.S. Government Obligations having a fair market value not less than 110% of the Drawing Amount; provided such U.S. Government Obligations are marked to market on an annual basis. Upon the issuance and delivery to the Lessor of any such replacement Collateral, together with the opinion, financing statements and documents and instruments required by Section 21(a)(ii), the Lessor shall surrender the Replaced Collateral to the Lessees. The Lessor shall not be permitted to transfer or assign its interest in any Required Collateral except in connection with a transfer or other disposition of its entire interest in, to and under the Operative Documents.

(iv) Any Required Collateral provided pursuant to this Section 21(a) shall secure the Lessees' Obligations owing to the Lessor (whether or not demand therefor has been made). Any Acceptable Letter of Credit provided hereunder shall be drawable if such letter of credit is not renewed or replaced by another Acceptable Letter of Credit at least thirty (30) days prior to its expiration date. In the event the Lessees fail timely to discharge any of the obligations in respect of the maintenance or replacement of any Acceptable Lease Collateral required to be provided hereunder, the Lessor may immediately apply the proceeds of any drawing under any Acceptable Letter of Credit constituting part of any Acceptable Lease Collateral required to be provided hereunder then held by the Lessor as provided in the Operative Documents in satisfaction of the obligations of the Lessees then due and owing under the Operative Documents. Alternatively, the Lessor shall be entitled to draw on an Acceptable Letter of Credit and hold the proceeds thereof as collateral security for the Lessees' Obligations to the Lessor under the Operative

Documents on terms and conditions reasonably satisfactory to the Owner Participant. The Lessees hereby grant to the Lessor a first priority security interest in such proceeds for such purpose. At any time while the Lessor is holding any proceeds so deposited, the Lessor shall have the right to apply such proceeds in satisfaction of the obligations of the Lessees then due and owing under the Operative Documents.

(v) The Lessees shall give the Lessor and the Owner Participant not more than sixty (60) and not less than thirty (30) days' notice of the scheduled expiration of any Required Collateral. In addition the Lessees shall cause the replacement or renewal of any Required Collateral at least thirty (30) days prior to the expiration or termination date of any such Required Collateral. The Lessees shall promptly notify the Lessor and the Owner Participant if the Lessees have not secured a replacement or renewal of any such Required Collateral at least thirty (30) days prior to the scheduled expiration thereof. Upon the issuance of any such replacement or renewal Required Collateral and provided that such Required Collateral conforms to the requirements of this Section 21(a), the Lessor shall surrender the original of the Required Collateral being so replaced or renewed to the issuer of the Required Collateral being replaced or renewed for cancellation (or, if requested by the Lessees, to the Lessees).

(vi) Each Lessee agrees that, at any time when an Acceptable Letter of Credit is required to be maintained for the benefit of the Lessor under this Agreement, it will, by not later than each Adjustment Notice Date, cause a determination of the Market Value of the Equity Deposit to be made as of such Adjustment Notice Date (subject to the terms of such definition). If the Market Value of the Equity Deposit together with the maximum drawing amount of such Acceptable Letter of Credit is less than the Maximum Default Exposure Amount for the Market Adjustment Period immediately following such Adjustment Notice Date, then the Lessees shall cause the maximum drawing amount of any such Acceptable Letter of Credit to be increased so that the Market Value of the Equity Deposit together with the maximum drawing amount of any such Acceptable Letter of Credit shall be at least equal to the Maximum Default Exposure Amount for such period. The Lessees will give notice to the Owner Participant with respect to whether the maximum drawing amount of such Acceptable Letter of Credit is required to be increased in respect of the Market Adjustment Period immediately following such Adjustment Notice Date. If such an increase is required, the Lessees will, by not later than the first day of such Market Adjustment Period, cause the maximum drawing amount of such Acceptable Letter of Credit to be so increased or cause an additional Acceptable Letter of Credit or a replacement Acceptable Letter of Credit to be issued to the Lessor, such that the aggregate maximum drawing amount of all Acceptable Letters of Credit is at least equal to the required Drawing Amount for such Market Adjustment Period. If the Market Value of the Acceptable Lease Collateral on an Adjustment Notice Date exceeds the Maximum Default Exposure Amount for the Market Adjustment Period immediately following such Adjustment Notice Date, then the Lessees shall have the right to cause the maximum drawing amount of any such Acceptable Letter of Credit to be reduced as of the

first day of such Market Adjustment Period, provided that in no event shall the Market Value of the Equity Deposit together with such reduced maximum drawing amount under all Acceptable Letters of Credit be less than the Maximum Default Exposure Amount for such Market Adjustment Period.

(vii) As long as a Credit Event has occurred and is continuing, if at any time there are Taxes that would be imposed by withholding by any taxing authority on payments that are to be made under any Acceptable Letter of Credit as notified by the beneficiary or the issuer thereof to the Lessees, the Lessees shall, within thirty (30) days after receipt by the Lessees of such notice, cause the drawable amount of such Acceptable Letter of Credit to be increased by an amount at least equal to the amount of such Taxes so that the net amount payable to the beneficiary thereof will not be less than the amount required by this Section 21(a) (or the Lessees shall cause another Acceptable Letter of Credit to be issued for such additional amount).

(b) Expenses. The Lessees agree to pay all costs and expenses incurred by the parties hereto in connection with any action required or permitted by this Section 21.

(c) ~~(i)~~-No Release. The exercise by the ~~Authority~~Lessees of ~~its~~their rights under, and the performance by the ~~Authority~~Lessees of ~~its~~their obligations under, this Section 21 shall not release, relieve, modify, novate, waive or reduce the obligations of the ~~Authority~~Lessees to any Person under the Lease, the Participation Agreement or any other Operative Document or diminish in any way the rights of the Trust under the Lease, the Participation Agreement or any other Operative Document.

(d) Adjustment. In the event the Termination Values are increased in connection with a rental adjustment pursuant to Section 3(d) of the Lease, the Lessees shall cause appropriate modifications to be made to the amounts payable under and Acceptable Lease Collateral or other collateral substituted therefor, to provide for the payment of the increased Termination Values.

SECTION 22. MISCELLANEOUS.

(a) *Notices.* Unless otherwise specifically provided herein, all notices required or permitted by the terms hereof shall be in writing. Any written notice shall become effective when received. Any written notice shall either be mailed, certified or registered mail (airmail, if international), return receipt requested with proper first class (airmail, if international) postage prepaid, or sent by facsimile transmission, or by overnight delivery service or delivered by hand. Any notice sent by facsimile transmission shall become effective on the date such facsimile is sent, as established by evidence of such transmission. Any notice delivered by overnight delivery service or by hand shall be effective on the date of receipt (as may be established by evidence of delivery by such service or messenger). Any written notice shall be directed to the parties, (i) to the respective addresses set forth in Schedule I attached hereto, or to such other address or telex or telecopy number as such party may designate by notice given to the other parties to this Agreement, or (ii) if to any subsequent Holder, at such address as such Holder shall have furnished by notice to the parties hereto. Notwithstanding any of the provisions hereof or of any other Operative Document, neither the ~~Lessee~~Authority, the ~~Sublessee~~State,

the User-~~Lessee~~, the ~~Head Lessor, the User~~ Head Lessor, the Owner Participant nor the Trust shall be required to give notice to any Holder unless the ~~Lessee~~Authority, the ~~Sublessee~~State, the User-~~Lessee~~, the ~~Head Lessor, the User~~ Head Lessor, the Owner Participant or the Trust, as the case may be, shall have previously received notice of the identity of such Holder and the address to which notices are to be sent.

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

(c) **Amendments.** Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification is sought.

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

(e) **Benefit and Binding Effect.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the ~~User~~ Head Lessor and its successors and permitted assigns, the Head Lessor and its successors and permitted assigns, the ~~Lessee~~Authority and its successors and permitted assigns, the ~~Sublessee~~State and its successors and permitted assigns, the ~~User Lessee~~User and its successors and permitted assigns, each Participant and its successors and permitted assigns, the ~~Payment Undertaker~~Floating Rate Lender and its successors and permitted assigns, the Trust and its successors and permitted assigns, the Trust Company and its successors and permitted assigns and any Indemnitees.

(f) **Entire Agreement.** This Agreement, together with the other Operative Documents and any agreements, instruments and other documents required to be executed and delivered in connection herewith, represents the entire agreement of the parties hereto and supersedes all prior agreements and understandings of the parties with respect to the subject matter covered hereby.

(g) **Certain Assurances.** Each party hereto shall do, execute, acknowledge and deliver, or shall cause to be done, executed, acknowledged and delivered, to the extent permitted by Applicable Law all such further acts, conveyances and assurances as the Trust, any Participant, ~~any Payment Undertaker~~, the Head Lessor, the User Head Lessor, the Lessee, the Sublessee or the User Lessee shall reasonably require for accomplishing the purposes of and carrying out obligations of such party under this Agreement and the other Operative Documents.

(h) **Covenant of the Holders.** Subject to Section ~~7.01~~7.1 of the Loan Agreement, each Holder agrees, undertakes and confirms for the benefit of the ~~Authority~~Lessees that, upon the due exercise by the ~~Authority~~Lessees of any right to purchase the Head Lease Interest under the Lease in accordance with and subject to the conditions set forth in the Lease, the Holders

will, upon and subject to the ~~Authority~~Lessees having duly and fully paid or caused to be paid to the Holders, as assignee of the Trust pursuant to the Loan Agreement, all Lease Rent, Supplemental Rent and other amounts due and payable to the Holders under the Lease and each of the other Operative Documents (or which may become due and payable to the Holders as a result of such purchase on the date such purchase is effected), release the Head Lease Interest from the Lien of the Loan Agreement. The Trust and the Holders by their acceptance of the Loan Certificates hereby consent or are deemed to consent to the foregoing.

(i) ***Bankruptcy of Trust Estate.*** If (i) all or any part of the Trust Estate becomes the property of a debtor subject to the reorganization provisions of Title 11 of the United States Code, as amended from time to time, and (ii) pursuant to such reorganization provisions the Owner Participant is required, by reason of the Owner Participant being held to have recourse liability to the debtor or the trustee of the debtor directly or indirectly, to make payment on account of any amount payable as principal or interest on the Loan Certificates, and (iii) a Holder actually receives any Excess Amount as defined below, which reflects any payment by the Owner Participant on account of clause (ii) above, such Holder shall promptly refund to the Owner Participant such Excess Amount. For purposes of this Section 22(i), “***Excess Amount***” means the amount by which such payment exceeds the amount which would have been received by such Holder if the Owner Participant had not become subject to the recourse liability referred to in clause (ii) above. Nothing contained in this Section 22(i) shall prevent any Holder from enforcing any personal recourse obligation (and retaining the proceeds thereof) of the Owner Participant as expressly set forth in this Agreement (other than referred to in clause (ii) above) or the Trust Agreement (and any exhibits or annexes thereto).

(j) Intentionally omitted.

(k) Intentionally omitted.

(l) Intentionally omitted.

(m) ~~***Third Party Beneficiaries.*** It is the intention of the parties hereto that the Equity Payment Undertaker, the LC Issuer and the Strip Surety Provider each be a third party beneficiary of this Participation Agreement to the extent set forth in Sections 15 and 21(f) of this Agreement and elsewhere herein, and the Equity Payment Undertaker, the LC Issuer and the Strip Surety Provider shall each be entitled to enforce the rights created in its favor hereunder.~~Intentionally omitted.

(n) ***Confidentiality.*** Each party hereto agrees that it will not use or intentionally disclose or permit its agents to disclose, directly or indirectly, any information obtained from any of the parties hereto or in connection with any portion of any Operative Document which is not required to be publicly filed or otherwise available for public inspection, and each such party will use all reasonable efforts to have all such information kept confidential except that:

(i) each party may use, retain and disclose any such information to:

(A) its legal counsel, consultants and public accountants, any Indemnitee or Related Indemnitee and any of its potential transferees if such person agrees to keep such information confidential to the extent provided herein; and

(B) any governmental agency or instrumentality or any regulatory or other supervisory body requesting or requiring such disclosure;

(ii) each party may use, retain and disclose any such information which has been publicly disclosed (other than by such party or any Affiliate thereof in breach of this Section 22(n)) or has rightfully come into the possession of such party or any Affiliate thereof (other than from another party hereto);

(iii) to the extent that such party or any Affiliate thereof may have received a subpoena or other written demand under color of legal right for such information, or is otherwise required by Applicable Laws to disclose such information, such party or Affiliates may disclose such information; and

(iv) any party hereto may use, retain and disclose such information:

(A) in connection with the exercise of any of its rights or remedies or the performance of its obligations under any Operative Document; and

(B) as expressly contemplated by this Agreement or any other Operative Document.

No party hereto will issue any press release or other public relations materials with respect to this transaction without the consent of all other parties hereto.

~~(o) — The Trust agrees that if at any time a demand is made under any Strip Surety Policy, it will provide a copy of such demand to the Authority.~~

(o) ~~(p)~~ **Owner for U.S. Tax and Other Purposes.** It is hereby agreed by all parties hereto that for all United States federal, state and local income and franchise tax purposes it is intended that the ~~User Head Lease and the~~ Head Lease will be treated as ~~a sale of the Facility by the User Head Lessor to the User Head Lessee and~~ a sale of the Facility by the Head Lessor to the Head Lessee, that the Trust will be treated as the owner and a lessor of the Facility, that the Lease will be treated as a “true lease” (and not as a conditional sale or financing of the Facility), and that ~~the~~each Lessee will be treated as a lessee of the Facility under the Lease.

SECTION 23. SUSPENSION OF REMEDIES.

Notwithstanding anything contained herein or in the other Operative Documents to the contrary, each of the Authority, the State and the User acknowledges and agrees that, until all amounts due to the Lender, the Owner Participant, the Trust and the Holder under the Operative Documents have been indefeasibly paid in full and the Liens of the Loan Agreement, ~~the General Mortgage (but only with respect to the Lien in favor of the Trust)~~ and any other Operative Document or document contemplated by an Operative Document creating or intended to create any security interest for the benefit of the Lender, the Owner Participant or the Trust, have been discharged: (i) none of the ~~Authority~~User or any Affiliate or designee thereof shall, or shall have the right, as original party or assignee or otherwise, to exercise any remedies against the ~~User~~State, or to take any other action, adverse to the interest of the Lender, the Owner Participant or the Trust, under the ~~User Head Lease;~~Sublease, (ii) none of the ~~User~~Authority or

any Affiliate or designee thereof shall, or shall have the right, as original party or assignee or otherwise, to exercise any remedies against the ~~Authority~~State, or to take any other action, adverse to the interest of the Lender, the Owner Participant or the Trust, under the ~~User Head Lease~~Sublease, (iii) none of the ~~Authority~~State or any Affiliate or designee thereof shall, or shall have the right, as original party or assignee or otherwise, to exercise any remedies against the ~~State~~Authority or the User, or to take any other action, adverse to the interest of the Lender, the Owner Participant or the Trust, under the Sublease, ~~(iv) none of the State or any Affiliate or designee thereof shall, or shall have the right, as original party or assignee or otherwise, to exercise any remedies against the Authority or the User, or to take any other action, adverse to the interest of the Lender, the Owner Participant or the Trust, under the Sublease or the User Lease,~~ ~~(v) or the User Lease, and (iv)~~ none of the User or any Affiliate or designee thereof shall, or shall have the right, as original party or assignee or otherwise, to exercise any remedies against the State, or to take any other action, adverse to the interest of the Lender, the Owner Participant or the Trust, under the User Lease; *provided* that the Authority, the State and the User shall be entitled to file a proof of claim and do all things necessary to preserve such claim in any bankruptcy or similar proceeding.

SECTION 24. RECOURSE TO THE AUTHORITY

Each party hereto acknowledges and agrees that recourse to the Authority is limited to the assets received by the Authority under the Operative Documents.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Participation Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

SOUTH DAKOTA MUNICIPAL
FACILITIES AUTHORITY

By: _____
Name:
Title:

~~KBC BANK N.V.~~
[STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES]

By: _____
Name:
Title:

~~AIG FP FUNDING (CAYMAN) LIMITED~~
CITY OF ABERDEEN

By: _____
Name:
Mayor:

Attest:

By: _____
Name:
Title:

~~AIG FP SPECIAL FINANCE (CAYMAN)
LIMITED~~
THE FIFTH THIRD LEASING
COMPANY

By: _____
Name:
Title:

ABERDEEN LENDER TRUST SDMFA-2003-F1

~~[SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES]~~

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

By: _____
Name:
Title:

~~[RAPID CITY]~~
THE ROYAL BANK OF SCOTLAND PLC, NEW YORK BRANCH

By: _____
Name:
Title:

~~U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity except as expressly set forth herein, but solely as Trustee~~

AIG FINANCIAL PRODUCTS CORP.

By: _____
Name:
Title:

WILMINGTON TRUST COMPANY, not in its individual capacity except as

expressly set forth herein, but solely as Trustee

By: _____
Name: _____
Title: _____

~~SDMFA~~ **ABERDEEN** STATUTORY
TRUST SDMFA-2003-~~K~~**F**1

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

By: _____
Name:
Title:

SCHEDULE I

Names and Addresses; Payment Information

1. Names and Addresses

~~Head Lessor and Lessee:~~

Authority:

South Dakota Municipal Facilities Authority
[Address]

Attn: []
Telecopy: []

User ~~Head Lessor and User Lessee:~~

~~[Rapid~~ City of Aberdeen
[Address]

Attn: []
Telecopy: []

~~Sublessee and User Lessor:~~

State:

~~[State]~~
[State of South Dakota Department of Environment and Natural Resources]
[Address]

Attn: []
Telecopy: []

~~Head Lessee and Lessor:~~

Trust:

~~SDMFA~~ ABERDEEN STATUTORY TRUST SDMFA-2003-~~K~~F1
~~e/o U.S. Bank National Association~~
~~550 South Hope Street, 5th Floor~~
~~Los Angeles, South Dakota 90071~~
c/o Wilmington Trust Company
1100 North Market Street
Wilmington, DE 19890

Attn.: Corporate Trust ~~Services~~ Administration
Telecopy: ~~(213) 533-8729~~ (302) 636-4141

Telephone: (302) 636-6000

Owner Participant:

~~KBC Bank N.V.
[125 West 55th Street
New York, NY 10019]~~

The Fifth Third Company
38 Fountain Square Plaza
Cincinnati, OH 45263

Attn.: ~~[*]~~Leasing Group
Telephone: (513) 579-4139
Telecopy: ~~[*]~~(513) 744-6716

Trustee:

~~U.S. Bank National Association
Wilmington Trust Company
550 South Hope Street, 5th Floor
Los Angeles, South Dakota 90071
Wilmington, DE 19890~~

Attn.: Corporate Trust ~~Services~~Administration
Telecopy: ~~(213) 533-8729~~ (302) 636-4141
Telephone: (302) 636-6000

Lender:

~~AIG FP Funding (Cayman) Limited
c/o Maples and Calder
P.O. Box 309
Ugland House
South Church Street
Grand Cayman, Cayman Islands
British West Indies~~

~~Attn.: _____ Company Secretary
Telecopy: _____ (345) 949-8088~~

~~with a copy to:~~

~~AIG Financial Products Corp.
50 Danbury Road~~

~~Wilton, Connecticut 06897~~

~~Attn:—Operations: Thomas Ward~~

~~Other: Chief Financial Officer~~

~~Telecopy:—(203) 222-4780~~

Payment Undertaker:

Aberdeen Lender Trust SDMFA-2003-F1

[Address]

Attn.: [_____]

Telecopy: [_____]

Floating Rate Lender:

~~AIG-FP Special Finance (Cayman) Limited~~

~~e/o Maples and Calder~~

~~P.O. Box 309~~

~~Ugland House~~

~~South Church Street~~

~~Grand Cayman, Cayman Islands~~

~~British West Indies~~

The Royal Bank of Scotland, plc,

New York Branch

101 Park Avenue, 12th Floor

New York, New York 10178

~~Attn.:—Company Secretary~~

Attn: Commercial Loan Department

Telephone: (212) 401-1420

~~Telecopy: (345) 949-8088~~ 212) 401-1336

with a copy to:

~~AIG-FP Financial Products Corp.~~

~~50 Danbury Road~~

~~Wilton, Connecticut 06897~~

~~Attn:—Operations: Thomas Ward~~

~~Other: Chief Financial Officer~~

~~Telecopy:—(203) 222-4780~~

Custodian:

~~U.S. Bank National Association~~
Senior Vice President
Lombard Asset Finance
~~550 South Hope Street, 5~~101 Park Avenue, 12th Floor
~~Los Angeles, CA 90071~~
New York, New York 10178

Telephone: (212) 401-3587
Telecopy: (212) 401-3404

Swap Party:

~~Attn.: Corporate Trust Services~~
AIG Financial Products Corp.
[Address]
Telephone:
Telecopy: ~~(213) 533-8729~~

2. Payment Information

Head Lessor and Lessee:

Authority:

South Dakota Municipal Facilities Authority
[Address]

Attn: []
Telecopy: []

Payment Instructions

Bank: []
ABA #: []
Acct. #: []
Acct. Name: []

User ~~Head Lessor and User Lessee:~~

~~[Rapid City~~ of Aberdeen]
[Address]

Attn: []
Telecopy: []

Payment Instructions

Bank: []
ABA #: []
Acct. #: []
Acct. Name: []

Sublessee and User Lessor:

State:

[State]
[State of South Dakota Department of Environment and Natural Resources]
[Address]

Attn: []
Telecopy: []

Payment Instructions

Bank: []
ABA #: []
Acct. #: []
Acct. Name: []

Head Lessee and Lessor:

Trust:

~~SDMFA~~ABERDEEN STATUTORY TRUST ~~SDMFA-2003-KF1~~
~~c/o U.S. Bank National Association~~
c/o Wilmington Trust Company
~~550 South Hope~~1100 North Market Street, ~~5th Floor~~
~~Los Angeles, South Dakota 90071~~
Wilmington, DE 19890

Attn.: Corporate Trust ~~Services~~Administration
Telecopy: ~~(213) 533-8729~~ (302) 636-4141
Telephone: (302) 636-6000

Payment Instructions

~~Bank: U.S. Bank National Association~~

~~ABA #: [*]—~~

Bank: Wilmington Trust Company
Wilmington, DE

ABA No.: 031100092
Acct. #: [*]
~~CR.:~~ [*]
Ref: SMBC-2003-F1
~~Attn.:~~ [*]: Tira Johnson
~~F/C/O:~~ [*]

Lender:

~~AIG FP Funding (Cayman) Limited
e/o Maples and Calder
P.O. Box 309
Ugland House
South Church Street
Grand Cayman, Cayman Islands
British West Indies~~

~~Attn.:~~ ~~Company Secretary~~
~~Telecopy:~~ ~~(345) 949-8088~~

~~with a copy to:~~

~~AIG Financial Products Corp.
50 Danbury Road
Wilton, Connecticut 06897~~

~~Attn.:~~ ~~Operations: Thomas Ward~~
~~Other:~~ ~~Chief Financial Officer~~
~~Telecopy:~~ ~~(203) 222-4780~~

Payment Instructions

Bank: ~~Bank of New York, New York~~

ABA #: ~~021000018~~

Acct. #: ~~8900439025~~

~~For the account of AIG Financial Products Corp.~~

Aberdeen Lender Trust SDMFA-2003-F1

[Address]

Attn.: []

Telecopy: []

Owner Participant:

~~KBC Bank N.V.~~

~~[125 West 55th Street~~

~~New York, NY 10019]~~

The Fifth Third Leasing Company

38 Fountain Square Plaza

Cincinnati, OH 45263

Attention: ~~[*]~~Leasing Group

Telephone: 513-579-4139

Telecopy: ~~[*]~~513-744-6716

Payment Instructions

Bank: ~~KBC~~The Fifth Third Bank ~~N.V.~~, Cincinnati, Ohio

ABA #: ~~[*]~~042000314

Account #: ~~[*]~~

Reference: Leasing Account

Floating Rate Lender:

The Royal Bank of Scotland, plc,

New York Branch

101 Park Avenue, 12th Floor

New York, New York 10178

Attn: Commercial Loan Department

Telephone: (212) 401-1420

Telecopy: (212) 401-1336

Payment Instructions

Bank:

ABA #:

Account #:

Reference: **[*]**

Swap Party:

AIG Financial Products Corp.

[Address]

Payment Instructions

Bank:

ABA #:

Account #:

Reference:

SCHEDULE II

Refinancing Loan Amortization Schedule

Payment Date	Principal Due	Accrued Interest	Amount Payable	Principal Outstanding after Application of Preceding Columns
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SCHEDULE III

Notional Amounts Schedule

Schedule IV

Litigation

I. User:

II. State:

III. Authority:

[Schedule VI]

Bonds

[Schedule VI]

User Loan Agreements

[Schedule VII]

Exceptions to Compliance with Applicable Law

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT (SDMFA-2003-~~K~~F1) (this “*Agreement*”) dated as of [_____] between [_____] a [_____] (the “*Transferor*”) and [_____] a [_____] (the “*Transferee*”).

WITNESSETH:

WHEREAS, the parties hereto desire to effect (a) the transfer by the Transferor to the Transferee of all of the right, title and interest of the Transferor in, under and with respect to, among other things, (i) the Participation Agreement (SDMFA-2003-~~K~~F1) (the “*Participation Agreement*”), dated as of ~~June~~ [September], 2003 among SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY, [STATE OF SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES], [~~RAPID~~ CITY OF ABERDEEN], ~~SDMFA ABERDEEN~~ STATUTORY TRUST SDMFA-2003-~~K1~~, ~~KBC BANK N.V., AIG FP FUNDING (CAYMAN) LIMITED, AIG FP SPECIAL FINANCE (CAYMAN) LIMITED, and U.S. BANK NATIONAL ASSOCIATION~~ F1, 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 ~~otherwise~~ expressly set forth therein, but solely as Trustee, (ii) the Trust Agreement (SDMFA-2003-F1) (the “*Trust Agreement*”), dated as of [*], between ~~U.S. BANK NATIONAL ASSOCIATION~~ WILMINGTON TRUST COMPANY and the Transferor and (iii) the Trust Estate (as defined in the Trust Agreement) and (b) the assumption by the Transferee of the obligations of the Transferor accruing thereunder; and

WHEREAS, Section 14(a) of the Participation Agreement permits such transfer;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do hereby agree as follows:

Section 1. Definitions. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in Appendix A to the Participation Agreement and the rules of usage set forth therein shall apply hereto.

Section 2. Assignment.

(a) Effective as of the date hereof, the Transferor hereby irrevocably sells, assigns, transfers and conveys to the Transferee all of its right, title and interest in and to the Trust Estate and the Participation Agreement, the Trust Agreement, the Tax Indemnification Agreement and all other Operative Documents and agreements and instruments executed and delivered by the Transferor and the other parties thereto at any time prior to the execution and delivery by the

Transferor of this Agreement in connection with any of the foregoing (collectively the “**Transaction Documents**”), except such rights of the Transferor as have accrued prior to the date hereof (the “**Transfer Date**”) (such excepted rights to include, without limitation, the right to receive any amounts due or accrued to Transferor under the Trust Agreement as of the Transfer Date).

(b) Transferor hereby covenants and agrees to pay over to Transferee, if and when received following the Transfer Date, any amounts (including any sums payable as interest in respect thereof) paid to or for the benefit of Transferor that, under subsection (a) hereof, belong to Transferee, and Transferee hereby covenants and agrees to pay over to Transferor, if and when received following the Transfer Date, any amounts (including any sums payable as interest in respect thereof) paid to or for the benefit of Transferee that, under subsection (a) hereof, belong to Transferor.

Section 3. Assumption. On and as of the Transfer Date, the Transferee hereby assumes all of the obligations, liabilities and duties of the Transferor under each Transaction Document (such assumed obligations, as may be amended, supplemented, revised or restated at any time and from time to time, but not including those duties and obligations of Transferor required to be performed by it on or prior to the Transfer Date under the Transaction Documents, being defined as the “**Assumed Obligations**”) and confirms that it shall be deemed a party to each Transaction Document as if it were named as the Owner Participant therein, and effective on and as of the Transfer Date, the Transferor shall have no further duty, obligation, liability or burden under the Transaction Documents or other contract, agreement, document or other instrument relating thereto other than those duties and obligations of Transferor required to be performed by it on or prior to the Transfer Date under the Operative Documents.

Section 4. Representations and Warranties. The Transferee hereby represents and warrants to the Transferor that:

(a) it is a [_____] duly organized, validly existing and in good standing under the laws of [the State of _____] [the United States], and has the full [corporate] [banking] power, authority and legal right under the laws of such jurisdiction to conduct its business and to own its properties or hold such properties under lease and to enter into and perform its obligations under this Agreement and to perform the Assumed Obligations and each of the Transaction Documents to which it is or will be a party;

(b) it has duly authorized, executed and delivered this Agreement and the performance of this Agreement and the Assumed Obligations and each of the other Transaction Documents to which it is or will be a party have been duly authorized and this Agreement and the Assumed Obligations constitute and, any other Transaction Document to which the Transferee will be a party, when executed and delivered, will constitute, legal, valid and binding obligations of the Transferee, enforceable against the Transferee in accordance with their terms;

(c) the execution, delivery and performance by the Transferee of this Agreement and the performance of the Assumed Obligations and each of the Transaction Documents to which it is or will be a party are not in violation of its [incorporation documents or bylaws] [constituent documents] or of any Applicable Law, do not require any [stockholder approval or] approval or

consent of any trustee or holder of any indebtedness or obligations of the Transferee and do not and will not contravene the provisions of, or constitute a default under, any material indenture, agreement, long-term lease, license or other agreement or instrument to which the Transferee is a party or by which it or any of its properties may be bound or affected;

(d) neither the execution and delivery by the Transferee of this Agreement and each of the Transaction Documents to which it is or will be a party nor the consummation by the Transferee of any of the transactions contemplated hereby or thereby nor the performance by the Transferee of any of the Assumed Obligations hereunder require the Transferee to obtain the consent or approval of, give notice to, register with, or the taking of any other action in respect of, any Governmental Authority, or register with, or take any other action with respect to, any Applicable Law;

(e) there are no pending or, to the knowledge of the Transferee, threatened actions, suits or proceedings (whether or not purportedly on behalf of the Transferee) against or affecting the Transferee or any of its property before or by any court or administrative agency which, if adversely determined, will materially adversely affect the financial condition, business or operations of the Transferee or the ability of the Transferee to perform the Assumed Obligations and its obligations under this Agreement and each of the Transaction Documents to which it is or will become a party;

(f) the Transferee is acquiring its interest in the Trust Estate for investment and not with a view to any resale or distribution thereof, but subject, nevertheless, to any requirement of law that the disposition of its property remain within its control at all times, and that neither it nor anyone authorized by it to act on its behalf has offered any interest in the Facility, the Head Lease Interest, the Loan Certificates, the Trust Estate, or the Collateral for sale to, or solicited any offers to buy any thereof from, or otherwise approached or negotiated in respect of any thereof with any Person or Persons whomsoever;

(g) upon the execution of this Agreement, there will be no Lessor's Lien attributable to the Transferee on the Facility or any interest therein, the Head Lease Interest or on the Trust Estate;

(h) no part of the funds to be used by the Transferee to acquire the interests to be acquired by it hereunder constitutes assets of any Plan subject to Part 4 of Subtitle B of Title I of ERISA or a plan or individual retirement account subject to Section 4975 of the Code;

(i) the Transferee is a United States Person;

(j) no condition or event exists which constitutes a Loan Default or Loan Event of Default attributable to the Transferee; and

(k) [[The Transferee] [The Person that is delivering a Transferee Guaranty in substantially the form of Exhibit B to the Participation Agreement] has a combined capital and surplus or tangible net worth of at least \$50,000,000, as of the date hereof.] [The Transferee is an Affiliate of the Transferor and has a combined capital and surplus or tangible net worth at least equal to that of the Transferor on the Transfer Date.] [The Transferor is delivering a Transferee Guaranty substantially the form of Exhibit B to the Participation Agreement.]

Section 5. Reliance. The representations, warranties, covenants and agreements of the Transferee are made for the benefit of, and may be relied upon by, the Owner Participant, the Lessor, the Lessee, the Holders, ~~the Payment Undertaker, the Equity Payment Undertaker, the Payment Undertaker Guarantor, the Equity Payment Undertaker Guarantor, the LC Issuer, the Strip Surety Provider~~, and their respective successors and assigns.

SECTION 6. GOVERNING LAW. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 7. Waiver of Jury Trial and Immunity. The provisions of section 17 of the Participation Agreement are hereby incorporated by reference herein.

Section 8. Notices. All notices and other communications required under the terms and conditions hereof shall be given and shall be effective in accordance with the provisions of Section 22(a) of the Participation Agreement; *provided* that notices to the parties listed below shall be sent to their respective addresses listed below (or at such other address for a party as shall be specified by like notice: *provided* that notices of a change of address shall be effective only upon receipt thereof):

(a) If to the Transferor, to:

(b) If to the Transferee, to:

Section 9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered on the date first above written.

[TRANSFEROR]

By: _____

Name:

Title:

[TRANSFeree]

By: _____

Name:

Title:

TRANSFEEE GUARANTY (SDMFA-2003-~~K~~F1)

TRANSFEEE GUARANTY (SDMFA-2003-~~K~~F1), dated as of [_____] (the “*Guaranty*”) by _____, a _____ (the “*Guarantor*”) to and for the benefit of the Owner Participant, the Trust Company, the Trust, and the Trustee, ~~the Lessee, the Holders, the Payment Undertaker, the LC Issuer and the Strip Surety Provider~~ referred to in the Participation Agreement described below (collectively, together with their permitted successors and assigns, “*Beneficiaries*” and, individually, a “*Beneficiary*”).

WITNESSETH:

WHEREAS, ~~KBC Bank N.V., a Belgian limited company~~The Fifth Third Leasing Company, an Ohio corporation, is Owner Participant under that certain Participation Agreement (SDMFA-2003-~~K~~F1) dated as of ~~June~~[September], 2003 (the “*Participation Agreement*”), among SOUTH DAKOTA MUNICIPAL FACILITIES AUTHORITY, [STATE OF SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES], ~~[RAPID CITY],~~SDMFA OF ABERDEEN, ABERDEEN STATUTORY TRUST (SDMFA-2003-~~K1~~), ~~KBC BANK N.V.F1,~~THE FIFTH THIRD LEASING COMPANY (the “*Owner Participant*”), ~~AIG-FP FUNDING (CAYMAN) LIMITED, AIG-FP SPECIAL FINANCE (CAYMAN) LIMITED, and [U.S. BANK NATIONAL ASSOCIATION]~~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;

WHEREAS, by the Assignment and Assumption Agreement (SDMFA-2003-~~K~~F1) dated as of the date hereof (the “*Assignment and Assumption Agreement*”), (i) the Owner Participant sells and assigns, except to the extent expressly reserved to the Owner Participant, to [_____] (the “*Transferee*”), an undivided interest in all of its right, title and interest in, and to, the Trust Estate, and under the Transaction Documents (as defined in the Assignment and Assumption Agreement) (the Assignment and Assumption Agreement and the Transaction Documents, together, collectively the “*Relevant Documents*”) and (ii) the Transferee purchases and accepts from the Owner Participant the assignment of such interest in the Trust Estate and the Transaction Documents and the Transferee assumes the Assumed Obligations as defined in the Assignment and Assumption Agreement (such Assumed Obligations, as may be amended, supplemented, revised or restated at any time and from time to time, but not including those duties and obligations of the Owner Participant required to be performed by it on or prior to the Transfer Date (as defined in the Assignment and Assumption Agreement) under the Transaction Documents, being defined as the “*Assumed Obligations*”) and the Beneficiaries agree to such assumption in reliance on obtaining this Guaranty; and

WHEREAS, pursuant to Section 14(a) of the Participation Agreement, the Guarantor shall hereby guarantee the payment and performance of the Assumed Obligations.

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Guarantor agrees with the Beneficiaries as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in Appendix A to the Participation Agreement, and the rules of usage set forth therein shall apply hereto.

2. Guaranty. (a) The Guarantor hereby unconditionally and irrevocably guarantees to each Beneficiary, as primary obligor and not merely as surety, (A) the complete and timely performance of the Assumed Obligations and all obligations of the Transferee arising under or pursuant to the Transaction Documents or the Assignment and Assumption Agreement and (B) the complete and timely payment when due of any and all sums which are now or hereafter imposed on or payable by the Owner Participant pursuant to any provisions of the Transaction Documents or the Assignment and Assumption Agreement (the performance and payment obligations described in this sentence above being the “*Obligations*”). This Guaranty is an absolute, present and continuing guaranty of prompt payment and performance, not of collection, and is in no way conditional or contingent upon any attempt to collect from or bring action against the Transferee or perfect or enforce any security or upon any other action, occurrence or circumstance whatsoever.

3. Waivers. The Guarantor hereby expressly and irrevocably waives presentment, demand, protest, promptness, diligence and notice as to the obligations and covenants guaranteed hereby and acceptance of this Guaranty, and waives any other circumstance which might otherwise constitute a defense available to, or a discharge of the undersigned or a guarantor, and agrees that it shall not be required to consent to, or receive any notice of, any amendment or modification of, or waiver, consent or extension with respect to the Operative Documents that may be made or given as provided therein. The Guarantor agrees to pay any costs and expenses (including reasonable counsel fees) in connection with the enforcement of this Guaranty.

4. No Discharge. The obligations of the Guarantor hereunder are absolute, unconditional and irrevocable and will not be discharged by or otherwise affected by any circumstance that might otherwise constitute a defense to, or discharge of the obligations of, a surety or guarantor under Applicable Law, including, without limiting the generality of the foregoing, any of the following events or circumstances: (a) any waiver, rescission or modification of, or amendment or supplement to the Operative Documents; (b) any furnishing or acceptance of additional security or any release of any security; (c) any waiver, consent or other action or inaction or any exercise or non-exercise of any right, remedy or power with respect to the Transferee, or any change in the structure of the Transferee; (d) any insolvency, bankruptcy, reorganization, arrangement, composition, liquidation, dissolution, or similar proceedings with respect to the Transferee; (e) any invalidity, irregularity or unenforceability of all or any part of the Obligations or of any security therefor; or (f) any other condition or occurrence whatsoever. This Guaranty is a primary obligation of the Guarantor. The Guarantor further agrees that, without limiting the generality of this Guaranty, if any Beneficiary shall be prevented by applicable law from exercising its remedies (or any of them) against the Transferee under the

Operative Documents, such Beneficiary shall be entitled to receive hereunder from the Guarantor, upon demand therefor the sums that would have otherwise been due to such Beneficiary had such remedies been able to be exercised.

5. Reinstatement of Guaranty. The obligations of the Guarantor under this Guaranty shall be automatically reinstated if and to the extent that for any reason the payment by or on behalf of the Transferee in respect of its payment under the Operative Documents is rescinded or must be otherwise restored by any Beneficiary, whether in connection with any proceedings in bankruptcy or reorganization or otherwise, and the Guarantor agrees that it will indemnify each Beneficiary on demand for all reasonable costs and expenses (including, without limitation, fees and expenses of counsel) incurred by such Beneficiary in connection with such rescission or restoration.

6. Payments. All payments to be made by the Guarantor under this Guaranty to a Beneficiary shall be paid to such Beneficiary at the address provided for in Schedule I of the Participation Agreement or, if no address is provided, at the address and to the account specified in the notice demanding payment be made by the Guarantor. The Guarantor hereby guarantees that payments hereunder shall be made in Dollars by wire transfer on the date due at or before 1:00 p.m. (New York City time) in immediately available funds to the party to which such payment is to be made and shall be paid without set-off, counterclaim, deduction or withholding, except as required by Applicable Law, *provided*, if any withholding Taxes are so imposed under Applicable Law, the Guarantor shall pay an additional amount such that the net amount actually received by the Person entitled thereto, free of withholding, will equal the amount then due absent such withholding.

7. Representations and Warranties. The Guarantor hereby represents and warrants to each Beneficiary that:

(a) it is a [_____] duly organized, validly existing and in good standing under the laws of [the State of _____] [the United States], and has the full [corporate] [banking] power, authority and legal right under the laws of such jurisdiction to conduct its business as presently conducted by it and to own its properties or hold such properties under lease and to enter into and perform its obligations under this Guaranty;

(b) it is a United States person within the meaning of section 7701(a)(30) of the Code;

(c) it has duly authorized, executed and delivered this Guaranty and the performance of this Guaranty, and this Guaranty constitutes legal, valid and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with its terms;

(d) the execution, delivery and performance by the Guarantor of this Guaranty does not violate any of its [incorporation documents or bylaws] [constituent documents] or of any Applicable Law, does not require any [stockholder approval or] approval or consent of any trustee or holder of any indebtedness or obligations of the Guarantor and does not and will not contravene the provisions of, or constitute a default under, any material indenture, agreement,

long-term lease, license or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties may be bound or affected;

(e) neither the execution and delivery by the Guarantor of this Guaranty nor the consummation by the Guarantor of any of the transactions contemplated hereby nor the performance by the Guarantor of any of the Obligations hereunder require the Guarantor to obtain the consent or approval of, give notice to, register with, or take any other action in respect of, any Governmental Authority, or register with, or take any other action with respect to, any Applicable Law;

(f) there are no pending or, to the knowledge of the Guarantor, threatened actions, suits or proceedings (whether or not purportedly on behalf of the Guarantor) against or affecting the Guarantor or any of its property before or by any court or administrative agency which, if adversely determined, will materially adversely affect the financial condition, business or operations of the Guarantor or the ability of the Guarantor to perform its obligations under this Guaranty; and

(g) as of the date hereof, it has a combined capital and surplus or tangible net worth of no less than \$50,000,000.

8. Miscellaneous. (a) This Guaranty shall: (i) be binding upon the Guarantor, its successors and assigns; (ii) inure to the benefit of, and be enforceable by, each Beneficiary and its successors and assigns, but shall not, and is not intended to, create rights in any other third party; and (iii) not be waived, amended or modified without the written consent of each Beneficiary.

(b) No failure or delay on the part of any Beneficiary in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(c) The rights and remedies provided and contemplated by the Guaranty are cumulative and not exclusive of any rights or remedies provided by law.

(d) All notices, requests, comments or other communications required or desired to be given hereunder shall be given in writing by hand, by overnight courier, by first-class mail, postage prepaid, return receipt requested, or by telecopy or facsimile addressed to the Guarantor and the Beneficiaries at the address set forth at the head of this Guaranty.

(e) Captions in this Guaranty are solely for convenience and shall not be used to interpret any provision hereof.

(f) Any provision of this Guaranty which is determined by competent authority to be prohibited and 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.

(g) This Guaranty represents the entire agreement of the Guarantor and supersedes any prior oral or written agreement with respect to the subject matter hereof.

(h) No representation, warranty, covenant or agreement of the Guarantor contained herein shall survive the termination of this Guaranty.

9. Termination. This Guaranty and the duty of the Guarantor to perform the Obligations shall immediately terminate upon the earlier of (a) the date of payment or satisfaction in full of the Obligations, (b) a disposition by the Guarantor directly or indirectly of its interest in the Owner Participant but only if the transferee (i) has a tangible net worth of at least \$50,000,000 (unless the Owner Participant has a tangible net worth of at least \$50,000,000) and (ii) expressly covenants in writing to assume and agree to perform the agreements set forth herein and shall make the representations and warranties set forth in Section 7 hereof, (c) the Owner Participant shall have transferred all of its interest in the Trust in accordance with the terms and conditions set forth in the Participation Agreement, or (d) the date on which the tangible net worth of the Owner Participant shall exceed \$50,000,000.

10. Limitation on Guaranteed Obligations. Notwithstanding any other provision contained in this Guaranty to the contrary, "Obligations" shall not include any payment obligations or other covenants and agreements the liability for which is limited to the "income and proceeds of the Trust" or for which the Owner Participant is not personally liable pursuant to the terms of the Operative Documents.

11. GOVERNING LAW. THIS GUARANTY SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

[\[The remainder of this page left intentionally blank.\]](#)

IN WITNESS WHEREOF, the undersigned ~~have~~has caused this Guaranty to be duly executed by its duly authorized representative as of the day and year first written above.

[GUARANTOR]

By _____
Name:
Title: