
USER LEASE AGREEMENT (SDMFA-2003-~~KF~~F1)

dated as of ~~_____~~ September __, 2003

between

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

User Lessor

and

~~[RAPID CITY]~~ OF ABERDEEN,

User Lessee

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

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This USER LEASE AGREEMENT (SDMFA-2003-~~KF~~1), dated as of ~~June~~ September [], 2003 (this “*User Lease*”), is between [STATE OF SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES], a [], as User Lessor (the “*User Lessor*”), and [~~RAPID~~ CITY OF ABERDEEN], a [], as User Lessee (the “*User Lessee*”).

RECITALS

WHEREAS, the Trust has agreed to lease the Facility and grant the Access Rights to the ~~Lessee~~ Lessees pursuant to the Lease;

WHEREAS, the ~~Lessee has~~ Lessees have agreed to sublease the Facility and grant the Access Rights to the Sublessee pursuant to the Sublease;

WHEREAS, the User Lessee desires to sublease from the User Lessor and the User Lessor is willing to sublease to the User Lessee the Facility (including the Access Rights) upon, and subject to, the terms and conditions of this User Lease;

WHEREAS, the User Lessor has agreed to assign all of its rights to this User Lease, by way of collateral assignment, to the Lessor pursuant to the ~~General Mortgage, the~~ Sublease, the Lease and the ~~Lease~~ Pledge Agreement for further assignment to the Lender pursuant to the Loan Agreement;

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

SECTION 1. Interpretation, Definitions and Rules of Usage.

Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in Appendix A to the Participation Agreement (SDMFA-2003-~~KF~~1) (the “*Participation Agreement*”), dated as of September [], 2003, among ~~SDMFA Aberdeen~~ Statutory Trust SDMFA-2003-~~KF~~1, South Dakota Municipal Facilities Authority, the User Lessor, the User Lessee, ~~KBC Bank N.V., AIG-FP Funding (Cayman) Limited, AIG-FP Special Finance (Cayman) Limited and [U.S. Bank National Association]~~, The Fifth Third Leasing Company, Aberdeen Lender Trust SDMFA-2003-F1, The Royal Bank of Scotland plc, New York Branch, AIG Financial Products Corp. and Wilmington Trust Company, not in its individual capacity except as expressly set forth therein, but solely as Trustee and the rules of usage set forth therein shall apply hereto.

SECTION 2. Leasing of Facility.

Subject to the terms and conditions of the Participation Agreement and this User Lease, on the Closing Date the User Lessor shall sublease the Facility and grant the Access Rights to the User Lessee and the User Lessee shall sublease the Facility and accept the grant of the Access Rights from the User Lessor, such subleasing and granting of rights to be evidenced by the execution by the User Lessor and the User Lessee of the User Lease Supplement. [It is the intent of the parties to this User Lease that this User Lease will constitute a lease agreement and not a security agreement or conditional sales agreement].

SECTION 3. User Lease Term, User Rent and Other Payments.

(a) **User Lease Term.**

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

(b) **User Lease Rent.**

The User Lessee shall pay or cause to be paid User Lease Rent to the User Lessor with respect to the Facility throughout the User Lease Term on each Rent Payment Date during the User Lease Term. The amount payable as User Lease Rent is the amount set forth under the column "User Lease Rent Payable" corresponding to such Rent Payment Date on Exhibit B-1 of the User Lease Supplement, subject to adjustment as provided in Section 3(d).

(c) **User Supplemental Rent.**

The User Lessee shall also pay to the User Lessor, or to the Person entitled thereto, all User Supplemental Rent promptly as the same shall become due, and, in the event of any failure on the part of the User Lessee to pay any User Supplemental Rent when due and owing in accordance with the provisions of the Operative Documents, the Person entitled thereto shall have all rights, powers and remedies provided for herein or in any other Operative Document or by law or equity in the case of nonpayment of User Lease Rent. The User Lessee shall also pay as User Supplemental Rent interest at the Overdue Rate on any User Lease Rent or User Supplemental Rent not paid when due for any period for which the same shall be overdue.

(d) **Adjustments.**

The User Lease Rent, the Stipulated Loss Values set forth on Exhibit C to the User Lease Supplement, the Termination Values set forth on Exhibit D to the User Lease Supplement and the User Purchase Option Price amounts set forth on Exhibit E to the User Lease Supplement and all other relevant and affected exhibits and schedules to the Operative Documents shall be appropriately adjusted (in the case of User Lease Rent, Stipulated Loss Value or Termination Value, upward or downward and, in the case of the User Purchase Option Price, upward only) in the manner set forth herein to reflect (i) any changes to the Pricing Assumptions on or prior to the Closing Date, (ii) any change or proposed change in tax law prior to the Closing Date which in the reasonable opinion of the Owner Participant's tax counsel affects the Net Economic Return, or (iii) any refinancing pursuant to Section 19 of the Participation Agreement ~~or any reset of the Applicable Rate pursuant to Section 2.13 of the Loan Agreement.~~

All adjustments shall be made by the Owner Participant prior to the Closing Date (except in the case of clause (iii) above) (A) in a manner that (1) maintains the Net Economic Return and (2) to the extent possible consistent with clause (1), minimizes the Net Present Value of Rents and User Purchase Option Price, and (B) on the basis of the same methodology and assumptions (including the Pricing Assumptions and tax constraints as supported by the Appraisal) used by the Owner Participant in the original calculation of the ~~User~~ Lease Rent, the Stipulated Loss Values, the Termination Values and the ~~User~~ Purchase Option Price amounts (including compliance with Revenue Procedures 2001-28 and 2001-29 and Section 467 of the Code, as

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

(e) ***Manner of Payment.***

All User Lease Rent and User Supplemental Rent (other than Excepted Property) shall be paid by the User Lessee to the User Lessor at its principal office as set forth in Schedule I to the Participation Agreement, or to such other address as the User Lessor shall specify, in immediately available funds consisting of Dollars, so that the User Lessor receives the full amount of such payment no later than 1:00 p.m. (New York time) on the due dates thereof, *provided, however*, that ~~with respect to (i) User Lease Rent not otherwise prepaid on the Closing Date pursuant to Section 3(f) hereof and (ii) User Supplemental Rent~~, until all of the obligations of the ~~Lessee~~Lessees under the Operative Documents shall have been paid and performed in full, the User Lessor hereby directs, and the User Lessee hereby agrees, that all User Lease Rent and User Supplemental Rent (other than Excepted Property) shall be paid by wire transfer directly to the Trust, or so long as the Lien of the Loan Agreement shall not have been discharged pursuant to Section ~~7.01~~7.1 thereof to the Lender, to their respective accounts as set forth in Schedule I to the Participation Agreement or as the Lender may otherwise direct in a written notice received by the User Lessee at least ten (10) days prior to the applicable payment date. If any User Lease Rent or User Supplemental Rent is due on a day which is not a Business Day, such User Lease

Rent or User Supplemental Rent shall be paid on the next succeeding Business Day with the same effect as if paid on the date when due and without additional interest. Payments constituting Excepted Property shall be made to the Person entitled thereto at the address for such Person given in Schedule I to the Participation Agreement. ~~All amounts payable to the Trust constituting the Equity Portion of Lease Rent, Termination Value, Stipulated Loss Value, Fair Market Sales Value and User Purchase Option Price shall be paid directly to the account of the Owner Participant set forth on such Schedule I.~~ All obligations of the User Lessee in this User Lease shall be done, performed or complied with at the User Lessee's sole cost and expense unless otherwise expressly provided herein.

~~(f) — **Prepayment Option.**~~

~~Notwithstanding anything to the contrary contained in this Section 3 or elsewhere in this User Lease, the User Lessee shall have the option to prepay all User Lease Rent due hereunder in respect of the Facility during the User Lease Term and the User Purchase Option Price payable upon the exercise by the User Lessee of the User Purchase Option contained in Section 14(a) by paying on the Closing Date and/or the next Business Day thereafter the Prepayment Amount. In the event such prepayment is made and upon indefeasible receipt of such corresponding Rent payment by the Lessor, no further User Lease Rent shall be payable by the User Lessee in respect of the User Lease Term and the User Lessee shall be immediately discharged from its obligations to pay User Lease Rent during the User Lease Term and the obligation to pay the User Purchase Option Price, if applicable; provided, however, that the User Lessee shall not be relieved from its obligation to pay User Supplemental Rent or increased User Lease Rent resulting from the adjustment described in Section 3(d) hereof. If the User Lessee does not exercise the User Purchase Option under Section 14(a) hereof, the User Lessee shall be entitled to receive a refund from the User Lessor of the portion of the Prepayment Amount equal in amount to the User Purchase Option Price to the extent the User Lessor has funds available to make such refund and such amounts are not otherwise required by the User Lessor to satisfy its obligations under the Operative Documents. If this User Lease is terminated with respect to the Facility prior to the scheduled end of the User Lease Term for any reason, the User Lessee shall not be entitled to a refund of any portion of the Prepayment Amount with respect to the Facility.~~

SECTION 4. Net Lease, etc.

This User Lease is a net lease. The User Lessee acknowledges and agrees that its obligations to pay all User Lease Rent and User Supplemental Rent due and owing in accordance with the terms hereof shall be absolute and unconditional and shall not be released, discharged or otherwise affected by any circumstance whatsoever, including, without limitation, (a) any setoff, counterclaim, recoupment, defense or other right which the User Lessee may have against the User Lessor, the Authority, the Lessor, the Owner Participant, the Holders, ~~the Payment Undertaker (or the provider of Acceptable Substitute Credit Protection), the Equity Payment Undertaker, the Custodian, the Strip Surety Provider, the LC Issuer~~ or any other Person for any reason whatsoever, (b) any defect in the title, condition, design, operation or fitness for use of, or any damage to or loss or theft or destruction of, the Facility, or any interference, interruption or cessation in or prohibition of the use or possession thereof by the User Lessee or any other Person for any reason whatsoever, including any such interference, interruption, cessation or prohibition resulting from the act of any Governmental Authority, (c) any Liens or rights of any

Person with respect to the Facility, (d) the termination, invalidity or unenforceability or lack of due authorization or other infirmity of or defect in the ~~User Head Lease, the~~ Head Lease, this User Lease or any other Operative Document or any lack of right, power or authority of the User Lessor or the User Lessee to enter into this User Lease or any document, instrument or agreement related thereto or any other Operative Document or of the ~~User Head Lessor and the User Head Lessee to enter into the User Head Lease or of the~~ Head Lessor or the Head Lessee to enter into the Head Lease, (e) any insolvency, bankruptcy, reorganization or similar proceedings by or against the User Lessee, the Head Lessor, ~~the User Head Lessor~~ or any other Person, (f) to the extent permitted by Applicable Law, the Authority, the State or the User ~~Lessee~~ at any time having immunity from suit, prejudgment attachment, attachment in aid of execution or execution on the grounds of sovereignty or otherwise, the occurrence or existence of any force majeure event or exercise of police power, (g) the existence, invalidity or unenforceability of or defect in, or the exercise of rights with respect to, any security for the ~~Lessee's~~ Lessee's Obligations, including but not limited to ~~the Equity Payment Agreement, the Account Collateral, the Account Pledge and Security Agreement, the Custody Agreement, the Strip Surety Policy, the Standby Letter of Credit, the Payment Agreement, the Payment Undertaker Guaranty, the Equity Payment Undertaking Guaranty, Acceptable Substitute Credit Protection,~~ any Acceptable Lease Collateral or any other agreement or instrument relating thereto or any security or collateral provided in substitution therefor, (h) any certificate, draft or other document ~~presented under the Payment Agreement, the Equity Payment Agreement, any Account Pledge and Security Agreement, the Custody Agreement, any Standby Letter of Credit or any Strip Surety Policy~~ proving (or being alleged) to be forged, fraudulent, invalid, unauthorized or uncollectible in any respect, or any statement therein (including any statement with respect to amount) proving (or being alleged) to be untrue or inaccurate in any respect whatsoever or (i) any other occurrence, event or other cause whether similar or dissimilar to the foregoing, any present or future law notwithstanding, it being the intention of the parties hereto that all User Lease Rent and User Supplemental Rent payable by the User Lessee hereunder shall continue to be payable in all events in the manner and at the times provided herein. Such User Lease Rent and User Supplemental Rent shall not be subject to any abatement and the payments thereof shall not be subject to any setoff, suspension, determent, diminution or reduction for any reason whatsoever, including any present or future claims of the User Lessee against the User Lessor or any other Person under this User Lease or otherwise. If for any reason whatsoever this User Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, the User Lessee nonetheless agrees to pay to the User Lessor, the Lessor or to the Lender, as the case may be, an amount equal to each User Lease Rent payment and User Supplemental Rent payment under Section 3 at the time such payment would have become due and payable in accordance with the terms hereof had this User Lease not been terminated in whole or in part.

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

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

SECTION 5. Representations, Warranties and Agreements.

(a) THE USER LESSOR LEASES AND THE USER LESSEE TAKES THE FACILITY AND EACH PART THEREOF “AS-IS” AND “WHERE-IS” AND NONE OF THE USER LESSOR, THE SUBLESSORS, THE LESSOR, THE TRUST COMPANY, THE HOLDERS OR THE OWNER PARTICIPANT MAKES OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE QUALITY, CONDITION, VALUE, WORKMANSHIP, DESIGN, OPERATION, COMPLIANCE WITH SPECIFICATIONS, CONSTRUCTION, PERFORMANCE OR MERCHANTABILITY, FITNESS OR SUITABILITY FOR USE OR PURPOSE OF THE FACILITY OR ANY PART THEREOF, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE FACILITY OR ANY PART THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE FACILITY OR ANY PART THEREOF AND NO HOLDER SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE TO THE FACILITY OR ANY PART THEREOF AND THE USER LESSEE ACKNOWLEDGES AND AGREES THAT (A) THE USER LESSOR IS NOT A MANUFACTURER OR A DEALER IN FACILITIES OF SUCH KIND OR ANY PART THEREOF AND (B) THE FACILITY IS LEASED HEREUNDER SUBJECT TO ALL APPLICABLE LAWS, INCLUDING, WITHOUT LIMITATION, PLANNING AND ZONING REGULATIONS, BUILDING RESTRICTIONS AND OTHER LAWS NOW IN EFFECT OR HEREAFTER ADOPTED, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY THE USER LESSOR.

(b) The User Lessor covenants that during the User Lease Term, so long as no User Lease Event of Default shall have occurred and be continuing, the User Lessee’s rights under this User Lease, including the possession, use and quiet enjoyment of the Facility, shall not be interrupted by the User Lessor or any Person claiming any interest in the Facility by, through or under the User Lessor (it being agreed that the User Lessor’s covenant hereunder does not extend to actions taken by the Lessor, the ~~Sublessor~~Sublessors, the Holders or any Person claiming by, through or under any of the foregoing). The User Lessee hereby (i) acknowledges the transactions contemplated by the Operative Documents, including the leasing of the Facility and granting of the Access Rights under the ~~User Head Lease, the~~ Head Lease, the Lease and the Sublease, the assignment of the User Lessor's rights herein to the Trust pursuant to the Lease and the Sublease and ~~the collateral assignment pursuant to the General Mortgage and~~ to the Lender pursuant to the Loan Agreement and acknowledges that it is fully aware of the terms and conditions thereof, and (ii) agrees that all of its rights hereunder, including, without limitation, its right to retain any amounts owed to it, its right to exercise its purchase option and its right to quiet enjoyment, are subject and subordinate to the Lease and the Sublease and that,

notwithstanding any provision hereof, the User Lessee shall have no rights hereunder which exceed or are in conflict with any rights of the Sublessee under the Sublease or the ~~Authority~~Lessees under the Lease.

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

(a) **Possession and Subleasing.**

The User Lessee shall not sublease or otherwise in any manner deliver, relinquish or transfer possession of, or permit any other Person to deliver, relinquish or transfer possession of, the Facility to any other Person during the User Lease Term; *provided, however*, that the User Lessee may, without the prior written consent of the User Lessor, so long as no Event of Default shall have occurred and be continuing:

(i) sublease the Facility for a period not extending beyond the end of the User Lease Term (unless the User Lessee has delivered an irrevocable written notice that it elected to exercise the User Purchase Option in accordance with Section 14) to any waste water facility operator (which may include any state, county or city which provides waste water ~~treatment~~treatment service) domiciled in the State of South Dakota which is not the subject of any bankruptcy, insolvency or similar proceeding; or

(ii) deliver temporary possession of the Facility or any Part for testing, service, repair, maintenance or overhaul work on the Facility or such Part or for alterations or modifications in or additions to the Facility or such Part to the extent required or permitted by the terms of this User Lease;

provided further, that the User Lessee's Obligations, this User Lease and all of the other Operative Documents shall continue in full force and effect notwithstanding any such sublease or delivery of temporary possession and that the rights of any sublessee shall be expressly subject and subordinate to all the terms of this User Lease, the Sublease, the Lease and the other Operative Documents. Such sublease shall not provide the sublessee thereunder with any purchase option for the Facility. No sublease or other relinquishment of possession of the Facility or any Part shall in any way discharge or diminish the User Lessee's Obligations or constitute a waiver of, or inhibit in any way, the User Lessor's rights or remedies hereunder or the Lessor's right to exercise remedies in the place of the User Lessor upon a Lease Event of Default and the User Lessee shall remain primarily liable hereunder for the performance of all the terms of this User Lease and the other Operative Documents as if such ~~transfer~~sublease had not occurred and all the terms and conditions of this User Lease and the other applicable Operative Documents shall remain in full force and effect. If such sublease provides that the sublessee thereunder shall be primarily responsible (as between such sublessee and the User Lessee) for maintenance of the Facility, such sublease shall require that such sublessee maintain the Facility on terms and conditions substantially the same as set forth in the maintenance provisions of this User Lease. No sublessee shall have the right to further sublease the Facility. The User Lessee shall give the User Lessor, the ~~Sublessor~~Sublessors, the Lessor and the Lender ten (10) days' prior written notice of any sublease that has a term of more than six (6) months. In addition, prior to the User Lessee's entering into any sublease, the Trust, the Trustee, the

Owner Participant and the Lender shall each have received a certificate from the User Lessee's insurance broker stating that the insurance provided pursuant to Section 10 hereof covers the operation of the Facility by the sublessee. The User Lessee shall provide the User Lessor, the Trustee, the Trust Company, the Owner Participant and each Holder promptly upon request copies of any such sublease. The User Lessee shall also, prior to entering into any sublease, agree to indemnify the User Lessor, the Owner Participant, the Trust and the Holders in form and substance satisfactory to them for any adverse tax and other consequences of such sublease. Any reference in this User Lease to a "permitted sublessee" shall mean a sublessee under a sublease permitted by this Section 6(a).

(b) ***Operation and Use.***

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

(c) ***Maintenance.***

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

by any applicable Governmental Authority or by any manufacturer of the Facility or any Part in connection with the preservation of material warranties.

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

The User Lessee shall, in accordance with the current practices of the User Lessee, (i) maintain, or cause to be maintained, operating logs, based on readings of input and output of the Facility, which logs shall be compiled into an annual operating report, (ii) keep, or cause to be kept, maintenance and repair information in sufficient detail to indicate the nature and date of major work done, (iii) maintain, or cause to be maintained, such procedures as are necessary to operate and maintain the Facility and the complete set of specifications (which specifications shall reflect each alteration, modification or addition to the Facility pursuant to Section 8(c) having a cost in excess of one percent of the Facility Value), (iv) maintain, or cause to be maintained, inspection, diagnostic and preventive maintenance reports to the extent required by Applicable Law and (v) maintain, or cause to be maintained, records which are adequate to enable an engineer not otherwise familiar with the Facility to identify and locate the various components of the Facility. The User Lessee shall cause such reports, information, procedures, specifications and records to be kept on file by the User Lessee at the User Lessee's offices or such other location as the User Lessee may designate from time to time by notice to the User Lessor, the ~~Sublessor~~Sublessors, the Lessor and the Lender and such reports, information, procedures, specifications and records shall, as between the User Lessee, the User Lessor, the ~~Sublessor~~Sublessors and the Lessor, be deemed the property of the Lessor upon the expiration or earlier termination of this User Lease and the return of the Facility to the User Lessor in accordance with the terms of this User Lease, and copies shall be made available to the User Lessor, the ~~Sublessor~~Sublessors and the Lessor at such offices or locations in connection with any inspection pursuant to, and subject to the provisions of, Section 7; *provided, however*, that so long as no User Lease Default or User Lease Event of Default shall have occurred and be continuing, such reports (but not such information, procedures, specifications or records) may be destroyed in accordance with the User Lessee's normal document retention program applicable to the Facility but in no event prior to three (3) years after the date of such reports and records.

(e) ***Reports.***

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

(ii) At the time of delivery of the audited financial statements referred to in Section 11(b)(ii) of the Participation Agreement and (unless the User Purchase Option shall have been exercised) on the User Lease Expiration Date or the Termination Date, the User Lessee shall furnish or cause to be furnished to the User Lessor, the Trust and the Lender a report in respect of the preceding calendar year, which reports shall contain a brief description of the following matters in respect of the Facility: (A) health and safety matters, to the extent the same shall have given rise to claims against the User Lessee or its insurers in excess of \$100,000; (B) significant activities, such as major

system overhauls, alterations, modifications and other capital expenditures having a value in excess of five percent (5%) of the total Facility Value; (C) the total cost of all replacement Parts and describing separately and in reasonable detail each replacement Part having a value in excess of five percent (5%) of the total Facility Value; (D) environmental matters and any environmental or safety report related to the Facility or any portion thereof filed with any Governmental Authority; and (E) any further subleases relating to the use of the Facility or any portion thereof entered into during the preceding calendar year. In addition, upon a written request which sets forth a detailed explanation of the need for the information requested, the User Lessee shall furnish the User Lessor and the Lessor with any reports reasonably requested by the User Lessor or the Lessor to the extent such report relates to the Facility and can be compiled from information which is readily available to the User Lessee.

SECTION 7. Inspection.

The User Lessee acknowledges that each of the Lessor, the Holders and the Head Lessor, or their authorized representatives (which includes the Owner Participant) have been given certain inspection rights as set forth in Section 7 of the Lease and that it is fully aware of the terms and conditions relating to such inspection rights. The User Lessee shall permit and shall not interfere with the inspection rights granted to the Lessor, the Holders and the Head Lessor under the Lease and shall make any permitted sublease of the Facility expressly subject to the inspection rights under the Lease. The User Lessor shall have no right to inspect the Facility. Unless a Lease Event of Default or Lease Major Default shall have occurred and be continuing (in which case any such inspection under this Section 7 shall be at the sole risk and expense of the User Lessee), any inspection or observation made pursuant to this Section 7 shall be at the sole expense and risk of the Lessor, the Holders or the Head Lessor, as applicable.

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

(a) Replacement of Parts.

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

~~Sublessor~~Sublessors or any Lessee Person upon return of the Facility pursuant to the Operative Documents. In addition, no replacement of any Part pursuant to this Section 8(a), whether permanent or temporary, shall diminish the value, utility, estimated residual value or remaining useful life of the Facility ~~for~~ change the nature of the Facility from that which it was designed as of the Closing Date as the same may have been modified in accordance with this User Lease through the date of such replacement. **]**

(b) ***Ownership of Parts.***

Any Part (except for a temporary replacement part) at any time removed from the Facility shall remain the property of the User Head Lessor (subject to Permitted Liens) and subject to the ~~User Head Lease, the~~ Head Lease, the Lease, the Sublease and this User Lease, no matter where located, until such time as such Part shall be replaced by a part or parts that have been incorporated or installed in or attached to the Facility and that meets the requirements for replacement Parts specified in Section 8(a). Immediately upon any replacement Part (except for a temporary replacement part) becoming incorporated or installed in or attached to the Facility as provided in Section 8(a), without further act, (i) title to the replaced part shall thereupon vest in the User Lessee or its designee, free and clear of all rights of the ~~User~~ Head Lessor, the ~~Head~~ Lessor, the ~~Lessor, the Sublessor~~Sublessors, the User Lessor, and the Holders and the replaced part shall no longer be deemed a Part hereunder; (ii) title to such replacement Part shall thereupon vest in the ~~User~~ Head Lessor (subject to Permitted Liens); (iii) such replacement Part shall become subject to ~~the User Head Lease,~~ the Head Lease, the Lease, the Sublease and this User Lease and be deemed part of the Facility for all purposes hereof to the same extent as the Parts originally incorporated or installed in or attached to the Facility and (iv) so long as the Lien of the Loan Agreement has not been discharged, such replacement Part shall be subject to the Lien of the Loan Agreement.

(c) ***Alterations, Modifications and Additions.***

The User Lessee or any permitted sublessee, as the case may be, at its sole cost and expense, shall make or cause to be made such alterations and modifications in and additions to the Facility as may be required from time to time by Applicable Law; *provided*, that the User Lessee or such permitted sublessee may in good faith contest the validity or application of any such requirement in any reasonable manner which does not adversely affect the Lessor's Head Lease Interest in the Facility or the existence or priority of the Lien of the Loan Agreement and does not involve any risk of the imposition of criminal liability or unindemnified civil liability on the Lessor or any Participant or any risk of the sale, forfeiture or loss of any material portion of the Facility. In addition, the User Lessee or any permitted sublessee, as the case may be, at its sole cost and expense, may from time to time make such alterations and modifications in, and additions to, the Facility as the User Lessee or such permitted sublessee reasonably may deem desirable, including removal (without replacement) of Parts which the User Lessee or such permitted sublessee deems obsolete or no longer appropriate or suitable for use in the Facility; *provided*, that any alterations, modifications, additions or removals pursuant to this Section 8(c) do not (i) diminish the value, utility, remaining useful life or estimated residual value of the Facility (assuming the Facility to be in the condition required by this User Lease); (ii) cause the Facility to constitute "*limited use property*" within the meaning of Revenue Procedure 2001-28, as amended; (iii) cause the Facility to be commercially usable only by the User ~~Lessee~~, the State,

the Authority or an Affiliate of any thereof or ~~(iii)~~(iv) alter the primary function of the Facility as a wastewater collection and treatment works facility. Title to any severable Part not required by Applicable Law to be incorporated or installed in, or attached or added to, the Facility as the result of such alteration, modification, removal or addition shall remain in the User Lessee or such permitted sublessee, as the case may be, and may be removed at any time during the User Lease Term; *provided*, that (i) such Part is in addition to, and not in replacement of or substitution for, any Part originally incorporated or installed in or attached or added to the Facility at the time of the delivery thereof hereunder or any Part in replacement of, or substitution for, any such Part, (ii) such Part is not otherwise required to be incorporated or installed in or attached to the Facility pursuant to the terms hereof, (iii) such Part can be removed from the Facility without damage and without diminishing the value, utility or remaining useful life of the Facility which the Facility would have had at such time had such alteration, modification, removal or addition not occurred, assuming the Facility was maintained, serviced, repaired, overhauled and tested in the condition and manner required by the terms of this User Lease (including as the Facility may have been upgraded from time to time in accordance with the requirements of this User Lease), (iv) no User Lease Event of Default shall have occurred and be continuing, and (v) the cost of such Part was not paid for or financed by the Lessor or the Owner Participant (a “**Severable Part**”). Title to all other such Parts shall, without further act or payment, vest in the ~~User-Head~~ Lessor and shall be subject to ~~the User-Head Lease~~, the Head Lease, the Lease, the Sublease and this User Lease and the User Lessee shall take any and all action necessary to ensure that the Lessor has the same legal access and other rights to such other Parts as the Lessor has to the Facility. Upon termination of this User Lease in circumstances where the Facility is returned to the User Lessor, the User Lessor and the Lessor shall have the right to purchase for its then fair market value any such Severable Part not removed prior to the return to the User Lessor (including return pursuant to the exercise of remedies under Section 17) of the Facility including such Part. If the User Lessor or the Lessor does not elect to purchase a Severable Part, the User Lessee may at its option either remove such Severable Part or return the Facility with such Severable Part intact (and in the case of such a return, title to such Severable Part shall, without further act or payment, vest in the ~~User-Head~~ Lessor and be subject to ~~the User-Head Lease and~~ the Head Lease).

SECTION 9. Event of Loss.

(a) Event of Loss.

Upon the occurrence of an Event of Loss with respect to the Facility, the User Lessee shall notify the ~~User-Head~~ Lessor, the ~~Head~~-Lessor, the ~~Lessor, the Sublessor~~Authority, the User Lessor and the Lender of such occurrence within ten (10) days thereof, and by written notice to the Lessor and the Lender given within fifteen (15) days after the occurrence of such Event of Loss ~~specifying, which written notice shall specify~~ the date of such Event of Loss and ~~describing~~describe the nature thereof (the “**Event of Loss Notice**”). The User Lessee shall purchase the Head Lease Interest by paying to the User Lessor on the first Stipulated Loss Value Determination Date occurring after the User Lessee delivers (or is required to deliver) the Event of Loss Notice (the “**Loss Payment Date**”): (A) either (I) the Stipulated Loss Value for such Loss Payment Date or (II) if such Event of Loss is attributable to an act of the State of South Dakota (or any political subdivision thereof or any agency or instrumentality of either in the case of the events described in clauses (iii) and (iv) of the definition of Event of Loss), the higher of such

Stipulated Loss Value ~~(set forth on Exhibit C of the User Lease Supplement for such Loss Payment Date)~~ and the Fair Market Sales Value of the Head Lease Interest, *plus* (B) any User Lease Rent due and owing by the User Lessee prior to such Loss Payment Date that remains unpaid, together with interest at the Overdue Rate for the period from the due date thereof to the date of payment (for such Loss Payment Date) *plus* (C) User Supplemental Rent, due and owing, to the extent susceptible to quantification, on or before such Loss Payment Date by the User Lessee to the User Lessor or any other Person under the Operative Documents; ~~provided, that if the User Lessee has made the prepayment referred to in Section 3(f), the User Lessee's obligation to pay such Stipulated Loss Value shall be reduced pro tanto by any amounts received by the Lessor or its assignee in respect of such Event of Loss.~~

Upon payment in full of all amounts payable pursuant to this Section 9(a), (1) the obligation of the User Lessee to pay any User Lease Rent shall be terminated as of the Loss Payment Date, (2) the User Lease Term shall end and (3) the User Lessor will be deemed to have transferred to the User Lessee, "as-is, where-is" without recourse or warranty (except as to the absence of Lessor's Liens), all of the Head Lease Interest in and to the Facility and the User Lessee shall assume all obligations of the Head Lessee under the Head Lease. Upon such transfer, the User Lessor shall cause the Sublessor to cause the Lessor to request the Lender and (to the extent necessary or advisable) the Holders to execute and deliver to the User Lessee an appropriate instrument releasing the Facility from the Lien of the Loan Agreement.

(b) ***Non-Insurance Payments Received on Account of an Event of Loss.***

Any payments on account of an Event of Loss (other than proceeds of insurance which shall be applied as required by Sections 10(e) and (h)) with respect to the Facility received at any time by the Lessor, the ~~Sublessor, the User Head Lessor~~ Sublessors, the Head Lessor, the User Lessor, the User Lessee or any other permitted sublessee or any other Person from any Governmental Authority or other Person that do not exceed the amounts required to be paid by the ~~Lessee, the Sublessee or the User Lessee~~ Lessees pursuant to Section 9(a) of the Lease, ~~the Sublease or this User Lease, respectively,~~ shall be paid to the ~~User~~ Lessor (or, if the Lien of the Loan Agreement has not been discharged pursuant to Section ~~7.01~~ 7.1 of the Loan Agreement, the Lender) and applied in reduction of the ~~Lessee's, the Sublessee's and the User Lessee's~~ Lessees' obligations to pay such amounts if not previously paid (net of any and all costs, losses and expenses incurred by the User Lessor in connection therewith) and the balance, or, if all amounts required to be paid by Section 9(a) above have been paid by the ~~Lessee, the Sublessee and the User Lessee~~ Lessees, all such payments, shall be divided among ~~the User Head Lessor,~~ the Head Lessor, the Lessor, the User Lessor and the User Lessee as their interests may appear.

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

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

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

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

(d) ***Application of Payments During Existence of Defaults.***

Any amount referred to in this Section 9 or in Section 10 which is payable to the ~~User~~ Head Lessor, the ~~Head-Lessor~~ Authority, the State or the User Lessee shall not be paid to any such parties, or, if it has been previously paid directly to any such parties, shall not be retained by such parties, if at the time of such payment a User Lease Event of Default shall have occurred and be continuing, but shall be paid to and held by the Lessor (or, if the Lien of the Loan Agreement has not been discharged pursuant to Section ~~7.01~~ 7.1 of the Loan Agreement, the Lender) as security for the ~~Lessee's~~ Lessees' Obligations, the User Lessee's Obligations and/or the Sublessee's Obligations, and shall be applied towards payment of the ~~Lessee's~~ Lessees' Obligations, the User Lessee's Obligations and/or the Sublessee's Obligations, and at such time as there shall not be continuing any such User Lease Event of Default such amount (to the extent not so applied) shall be paid over to the User Lessee or its designee.

SECTION 10. Insurance.

(a) ***Property and Liability Insurance.***

Subject to the User Lessee rights set forth in Section 10(c), the User Lessee will at all times carry and maintain, or cause to be carried and maintained, with nationally recognized insurance companies licensed in the State of South Dakota (i) all risk physical damage insurance insuring against all risks of physical loss or damage to the Facility on such terms and conditions not less favorable to the Additional Insureds or the Facility as is then carried by the User ~~Lessee~~ or the ~~Lessee~~ Authority with respect to its other similar property owned, leased, subleased or operated by the User ~~Lessee~~ or the ~~Lessee~~ Authority; *provided* that, such insurance for the

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

(b) ***Insurance Policies.***

Any insurance policies carried in accordance with this Section 10, and any policies taken out in substitution or replacement for any such policies, (i) shall name the Lessor, the Trustee, the Trust Company, the Trust, the Owner Participant, ~~the Strip Surety Provider~~ and the Holders as additional insureds (collectively, the "***Additional Insureds***") as their respective interests may appear (but without imposing on any such party liability to pay premiums with respect to such insurance), and (ii) as to physical damage insurance, shall name the Lender, for so long as the Lien of the Loan Agreement shall not have been discharged pursuant to Section ~~7.01~~7.1 thereof, and thereafter the Lessor as loss payee, and shall include waivers by the insurer of all claims for premiums against each Additional Insured. Each such insurance policy shall provide that all of the provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the User Lessee), (A) shall operate in the same manner as if there were a separate policy covering each ~~insured~~Additional Insured, (B) shall be primary without right of contribution from any insurance carried by any Additional Insured, (C) shall provide that the insurers waive any rights of setoff, counterclaim, deduction or subrogation against the Additional Insureds and that none of the respective interests of the Additional Insureds in such policies shall be invalidated by any act or omission of, or breach of warranty or condition contained in such policies by, the User Lessee or, in the case of any Additional Insured, any other insured (except that the property insurance may provide that it can be cancelled upon not less than ten (10) days notice in the case of nonpayment of premium, fraud or material misrepresentation by the User Lessee), (D) shall provide that, in respect of the

respective interests of each Additional Insured in such policies, the insurance shall not be invalidated by any action or inaction of ~~the~~either Lessee, the Sublessee or the User Lessee, any permitted sublessee or any Affiliate of any thereof and (E) shall provide that no cancellation, expiration or lapse of coverage for nonpayment of premium or otherwise, no reduction in coverage and no other change of coverage which adversely affects the interests of any Additional Insured, ~~and~~ shall be effective as to any such Additional Insured until thirty (30) days (ten (10) days in the case of cancellation of the property insurance due to nonpayment of premium, fraud or material misrepresentation by the User Lessee) after receipt by such Additional Insured of written notice from the insurers of such cancellation, expiration, lapse, reduction or change. The User Lessee shall, at its own expense, make, or cause to be made, all proofs of loss and take all other commercially reasonable steps necessary to collect the proceeds of such insurance.

(c) ***Self Insurance.***

So long as it is the User Lessee's policy to self insure in respect of liability risks relating to the Facility, the User Lessee may, in satisfaction of the insurance obligations contained in Section 10(a), self insure with respect to such risks up to (i) [\$_____] per occurrence if the Dollar-denominated unenhanced long term senior debt obligations of the User Lessee are rated at least AA- by S&P and Aa3 by Moody's, and (ii) otherwise, [\$_____] per occurrence. In neither case may the User Lessee discriminate against the Facility as compared to other similar property owned, leased, subleased or operated by the User Lessee or the ~~Lessee.~~Authority.

(d) ***Notification of Claim.***

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

(e) ***Application of Insurance Proceeds.***

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

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

(ii) if such payments are received with respect to an Event of Loss, so much of such payments remaining as shall not exceed the amounts required to be paid by the User Lessee pursuant to Section 9(a) shall be applied in reduction of the User Lessee's obligation to pay such amounts if not already paid by the User Lessee, and to reimburse

the User Lessee if such amounts shall have been paid, and the balance, if any, of such payments shall be promptly paid over to, or retained by, the User Lessee.

(f) ***Insurance Certificates.***

The User Lessee shall furnish, or cause to be furnished, to each Additional Insured, on the Closing Date and each anniversary thereafter, a report from an independent firm of insurance brokers reasonably acceptable to the Lessor and the Lender (the “***Insurance Broker***”), describing in reasonable detail the insurance then carried and maintained with respect to the Facility and stating the opinion of such firm that (i) such insurance complies with the terms of this Section 10, (ii) ~~that~~ such insurance together with any self-insurance permitted hereby complies with the requirements of this Section 10 and (iii) the coverages, terms and conditions of the insurance carried pursuant to Section 10(a) is not less favorable to the Additional Insureds or the Facility than the insurance then carried by the User Lessee with respect to other property owned, leased, subleased or operated by the User Lessee or the Lessee which is similar to the Facility. In addition, the User Lessee will also cause such Insurance Broker to deliver to each Additional Insured on or prior to the Closing Date and on or prior to the date of expiration of any insurance policy referenced in a previously delivered certificate of insurance, a new certificate of insurance, substantially in the same form as delivered by the User Lessee to such parties on the date hereof except for the changes in the report or the coverage consistent with the terms hereof. To the extent that the insurance (other than self insurance) required under this Section 10 shall not be maintained, the User Lessor, the ~~Sublessor~~Sublessors or any Additional Insured may at its sole option, but shall be under no duty to, provide such insurance and, in such event, the User Lessee shall, upon demand, reimburse the User Lessor, the ~~Sublessor~~Sublessors or such Additional Insured, as the case may be, for the reasonable cost thereof to the User Lessor, the ~~Sublessor~~Sublessors or such Additional Insured, as the case may be, together with interest thereon at the Overdue Rate from the date of payment by such Person to the date of reimbursement; *provided*, that no exercise by the User Lessor, the ~~Sublessor~~Sublessors or the Lessor of such option shall in any way affect the provisions of this User Lease, including the provisions that failure by the User Lessee to maintain, or cause to be maintained, the prescribed insurance shall constitute a User Lease Event of Default under Section 16(i).

(g) ***Copies and Descriptions of Policies.***

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

(h) ***Insurance For Own Account.***

Each of the User Lessor, the ~~Sublessor~~Sublessors, the Trust, the Trustee, the Owner Participant, ~~the Strip Surety Provider~~ and the Holders shall have the right to carry insurance on

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

SECTION 11. Liens.

The User Lessee shall not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to the Facility or title thereto or any interest therein or in the Lease, the Sublease or this User Lease except Permitted Liens. The User Lessee shall promptly, at its own expense, take or cause to be taken such action as may be necessary to duly discharge any Lien other than a Permitted Lien arising at any time.

SECTION 12. Further Assurances.

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

SECTION 13. Return of the Facility.

(a) Return of the Facility. [Subject to review by Framatome]

(i) Unless the Head Lease Interest with respect to the Facility shall have been transferred to the User Lessee pursuant to this User Lease, the User Lessee shall, at its own expense, promptly return the Facility to the User Lessor or its designee upon the expiration of this User Lease. Upon such return, the Facility shall be free and clear of all Liens (other than Permitted Liens described in clauses [(j) - (l)] of the definition thereof) and shall be in as good condition as it was in on the Closing Date (ordinary wear and tear

excepted) and shall have been maintained and operated in compliance with Section 6 hereof. At the time of such return, the User Lessee shall make available all such rights ~~as of~~ the User Lessee which are necessary, desirable or useful to operate the Facility pursuant to the ~~{Support and Operating Agreement}~~ and in accordance with Applicable Law; *provided, however*, that nothing in the preceding proviso shall derogate from the terms of ~~any Service Contract~~ the Support and Operating Agreement or any Capacity Purchase Agreement. Simultaneously with such return of the Facility, the User Lessee shall (A) deliver to the User Lessor or its designee the following items: (i) originals or clear copies of all leases, subleases, licenses, certificates, permits, authorizations and approvals relating to the use and occupancy of the Facility; (ii) (x) plans and specifications for all mechanical, electrical and HVAC systems pertaining to the Facility, and (y) as-built drawings, blueprints, operating and repair manuals (including original manufacturers' operating manuals), engineering logs and preventive maintenance records relating to the Facility or any alteration, modification or additions to the Facility, any replacement Parts or any Severable Part not removed from the Facility at the time of, or in connection with, the return of the Facility; (iii) keys (including, without limitation, electronic security cards) to all locks contained in the Facility; and (iv) to the extent not otherwise described above, originals or copies of all documents, plans, maps, specifications, manuals, drawings and other documentary materials relating to the installation, operation, maintenance, construction, design, modification and repair of ~~such~~ the Facility as shall be in the User Lessee's or any Affiliate of the User Lessee's possession and as shall be necessary or useful for the continued operation of the Facility. The User Lessee shall effect return of the Facility by executing and delivering to the User Lessor an instrument or instruments reasonably satisfactory to the Lessor, the Owner Participant and the User Lessor or its designee evidencing surrender by the User Lessee of all of the User Lessee's rights to the Facility under this User Lease and to the possession thereof.

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

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

(b) *Environmental and Safety Report.* ~~{Subject to review by Owner Participant's Environmental Consultant}~~ At least 60 days but not more than 180 days prior to the return of the Facility pursuant to this Section 13 or a transfer to a third party in connection with the exercise of remedies under Section 17 or pursuant to Section 14 hereof, the User Lessee will at its own cost and expense provide to the ~~Trust~~Lessor, the ~~Sublessor~~Sublessors and the User Lessor or their respective designees an Environmental and Safety Report; *provided* that the User Lessee shall represent to the ~~Trust~~Lessor, the ~~Sublessor~~Sublessors and the User Lessor or their respective designees in writing on the date of return that no material adverse change in the environmental and safety conditions of the Facility has occurred in the period between the date of such Environmental and Safety Report and the date of return. The investigation connected with the Environmental and Safety Report shall include, without limitation of the foregoing, information concerning (i) Environmental and Safety Standards ~~and~~, (ii) any violations of or non-compliance with Environmental Laws, and (iii) any other potential liabilities arising under Environmental Laws, including, without limitation, those relating to releases of Hazardous Substances and environmental contamination. Upon completion of the investigation, the User Lessee shall, at its sole cost and expense, diligently and in good faith (1) conduct any reasonable additional investigations and provide to the ~~Trust~~Lessor, the ~~Sublessor~~Sublessors and the User Lessor or their respective designees reports thereof that may be recommended by the environmental and safety consultant as requested by the Lessor providing the Environmental and Safety Report as necessary to identify and determine the extent and likelihood of any presence or emission of or contamination by any Hazardous Substances and conditions representing a risk to human health and life or the environment ~~that may be present in excess of Environmental and Safety Standards~~ and any violation of, or non-compliance with, Applicable Law and (2) develop and execute a plan to correct and remedy such contamination, emission, conditions presenting risks, violation or non-compliance ~~in compliance~~ with Applicable Law. The ~~Trust~~Lessor, the ~~Sublessor~~ ~~and~~Sublessors, the User Lessor (or their respective designees) and the User Lessee shall consult with one another concerning the appropriate scope of all reports and investigations and remedial efforts subsequent to the Environmental and Safety Report, and the User Lessee shall keep the ~~Trust~~Lessor, the ~~Sublessor~~Sublessors and the User Lessor ~~or its designee~~(or their respective designees) informed with respect to any discussions and negotiations with any applicable Governmental Authority concerning potential plans to correct any violation or non-compliance or to conduct remedial activities. Any remediation plan shall include, but shall not be limited to, plans for full response, remediation, removal, or other corrective action, and the protection, or mitigative action associated with the protection, of natural resources including wildlife, aquatic species, vegetation and Persons associated with, or employed at, the Facility or any modification thereto, required by any Applicable Law.

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

(a) User Purchase Option.

The User Lessee may give the User Lessor, the Sublessor, the ~~Trust~~Lessor, the Owner Participant, the Lender and the Holders irrevocable written notice in accordance with Section 14(b) (a "*User Purchase Notice*"), to purchase from the User Lessor (to the extent of the User Lessor's interest therein), on the User Lease Expiration Date, the Head Lease Interest with respect to the Facility by paying an amount equal to (1) ~~if the User Lessee has not made the~~

~~prepayment pursuant to Section 3(f),~~ the User Purchase Option Price for the Facility (such User Purchase Option Price to be payable in installments on the dates and in the amounts set forth on Exhibit E to the User Lease Supplement, as the same may be adjusted pursuant to Section 3(d) hereof) ~~or, if the User Lessee has made such prepayment, zero~~ and (2) all accrued and unpaid User Rent (including, without limitation, as User Supplemental Rent, all reasonable out-of-pocket costs and expenses incurred by the User Lessor, the ~~Sublessor~~Sublessors, the ~~Trust~~Lessor, the Owner Participant, ~~the Strip Surety Provider~~, each Holder and the Lender in connection with the User Lessee's exercise of such User Purchase Option) through and including the last day of the User Lease Term (such Rent to be payable on the User Lease Expiration Date) (the "**User Purchase Option**"); ~~provided, however,~~ that the Sublessee is permitted to exercise the State Purchase Option under the Sublease and that the Lessee is permitted to exercise the Purchase Option under the Lease; ~~provided further, however,~~ that (I) if a User Lease Major Default or User Lease Event of Default shall have occurred and be continuing on the date of the User Purchase Notice, it shall be a condition to the consummation of the User Purchase Option that no such User Lease Major Default or User Lease Event of Default shall be continuing on the User Lease Expiration Date and (II) no User Lease Major Default or User Lease Event of Default shall have occurred and be continuing on the User Lease Expiration Date (it being understood that the User Lessee shall have the right to cure any such User Lease Major Default or User Lease Event of Default concurrently with its exercise of the User Purchase Option). Upon payment in full of the entire User Purchase Option Price and all amounts constituting User Rent payable pursuant to the preceding sentence, the Head Lease Interest in and to the Facility (to the extent of the User Lessor's interest therein) shall be automatically conveyed to the User Lessee or its designee, and without recourse or warranty (except as to the absence of User Lessor's Liens), and the User Lessor shall, at the User Lessee's expense, provided that the User Lessor's expenses shall be reasonable and documented, execute and deliver to the User Lessee appropriate instruments conveying the Head Lease Interest in and to the Facility to the User Lessee or its designee. If the User Lessee shall fail to exercise the User Purchase Option or if the User Lessee shall not be entitled to exercise the User Purchase Option due to the existence of any circumstance referred to in the proviso of the first sentence of this Section 14(a), the User Lessee shall have no further rights pursuant to this Section 14(a).

(b) **Notices.**

The User Lessee may elect the User Purchase Option by delivering an irrevocable notice to the User Lessor, the ~~Sublessor~~Sublessors, the ~~Trust~~Lessor, the Owner Participant and the Holders not more than 36 months prior to the User Lease Expiration Date and not later than the later of (i) 24 months prior to such User Lease Expiration Date, and (ii) 30 days after the User Lessee shall have received a copy of the Reminder Notice delivered by the Lessor pursuant to Section 14(b) of the Lease.

(c) **State Purchase Option and Purchase Option.**

If the User Lessee exercises the User Purchase Option under Section 14(a) hereof, the User Lessor, as Sublessee under the Sublease, shall exercise the State Purchase Option under Section 14(a) of the Sublease and shall perform all of its obligations thereunder in connection with the State Purchase Option. The User Lessor shall not exercise the State Purchase Option under Section 14(a) of the Sublease unless and until the User Lessee has exercised the User

Purchase Option under Section 14(a) hereof. If the User Lessee has not exercised the User Purchase Option, ~~and the Lessee~~ Sublessee has not exercised the State Purchase Option under the Sublease and the Lessees have not exercised the Purchase Option under the Lease, the User Lessee agrees to perform or to cause to be performed all of the obligations of the Authority Lessees under Section 14(d)(i) of the Lease in the event the ~~Trust~~ Lessor exercises the Service Contract Option with respect to the Facility, and all of the obligations of the Authority Lessees under Section 14(d)(ii) of the Lease in the event the Trust exercises the Return Option with respect to the Facility.

~~(e) — *Intentionally Omitted.*~~

(d) *Intentionally Omitted.*

(e) *Burdensome Events.*

If a Burdensome Event shall have occurred and be continuing and the Lessee and the Sublessee are permitted to exercise their rights to purchase under Section 14(e) of the Lease and the Sublease, respectively, the User Lessee shall have the right, at its sole cost and expense, by written notice delivered to the User Lessor, the ~~Sublessor~~ Sublessors, the Lessor and, if the Lien of the Loan Agreement has not been discharged pursuant to Section ~~7.0~~ 7.1 of the Loan Agreement, the Lender within 180 days of such Burdensome Event specifying the scheduled date of purchase (which shall be the next Termination Value Determination Date occurring after such notice), to irrevocably elect to purchase the Head Lease Interest in the Facility (to the extent of the User Lessor's interest therein) for a purchase price (the "*Burdensome Buyout Price*") equal to: (A) in the case of a Burdensome Event described in clause (b) of the definition thereof that is attributable to an act of the State of South Dakota or any political subdivision thereof that is discriminatory in nature (it being understood that a law of general application shall not be deemed to be discriminatory), the higher of the sum of the Fair Market Sales Value of the Head Lease Interest and any User Lease Rent due and owing by the User Lessee prior to such Termination Value Determination Date that remains unpaid, together with interest at the Overdue Rate for the period from the due date thereof to the date of payment on such Termination Value Determination Date and the Termination Value (set forth on Exhibit D of the User Lease Supplement for such Termination Value Determination Date); or (B) in the case of any other Burdensome Event, the Termination Value for the Facility for such Termination Value Determination Date, *plus* in either case of (A) or (B) all costs and expenses (including legal fees and expenses) incurred by all parties to the Operative Documents with respect thereto; ~~provided, that if the User Lessee has made the prepayment referred to in Section 3(f), the User Lessee's obligation to pay such Termination Value or Fair Market Sales Value shall be reduced pro tanto by the amount received by the Trust or its assignee on behalf of the Lessee and the Sublessee as at such Termination Value Determination Date.~~ If, but only if, the User Lessee exercises its purchase option under this Section 14(e), the User Lessor shall exercise and perform its corresponding purchase option pursuant to Section 14(e) of the Sublease.

(f) *Exercise of Burdensome Buyout.*

If the User Lessee elects to purchase the Head Lease Interest pursuant to Section 14(e), upon payment to the User Lessor of (A) the Burdensome Buyout Price, *plus* (B) User Lease Rent

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

(g) ***Termination of Lease.***

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

SECTION 15. Voluntary Termination.

(a) ***Termination by Sale.***

On or after the fifth anniversary of the Closing Date, the User Lessee shall have the right at its option on at least 90 days' (but not more than 360 days') prior notice to the User Lessor, the ~~Lessor, the~~ Owner Participant and, so long as the Lien of the Loan Agreement shall not have been discharged pursuant to Section ~~7.01~~7.1 of the Loan Agreement, the Lender, specifying a proposed date of termination (which shall be a Rent Payment Date) (the "***Termination Date***"), to terminate this User Lease; *provided* such notice includes a certificate of the User Lessee's board of directors that the Facility has become economically or technologically obsolete or surplus to the User Lessee's requirements.

During the period following the giving of such notice of termination until the Termination Date, the User Lessee as non-exclusive agent for the User Lessor, the ~~Sublessor~~Sublessors and the ~~Trust~~Lessor shall use its best efforts to obtain bids for the cash purchase of, and the User Lessor, the ~~Sublessor~~Sublessors, the ~~Trust~~Lessor or their respective agents may endeavor to sell, the Head Lease Interest. In the event that the User Lessee receives an offer to purchase the Head Lease Interest, the User Lessee shall immediately certify in writing

to the User Lessor, the ~~Sublessor~~Sublessors, the ~~Trust~~Lessor and the Owner Participant the amount and terms of such offer, the proposed date of such purchase and the name and address of the party submitting such offer (which shall not be the User Lessee, the Sublessee, the ~~Lessee~~Lessees or any of their respective Affiliates or any Person with an arrangement with the User Lessee, the Sublessee, ~~the~~either Lessee or any of their respective Affiliates for the continued use of the Facility for the benefit of the User Lessee, the Sublessee, the ~~Lessee~~Lessees or any of their respective Affiliates). Unless the User Lessor shall have previously elected to take possession of the Facility in accordance with Section 15(c), on the Termination Date, or such other date of sale as shall be consented to in writing by the User Lessor, the ~~Sublessor~~Sublessors and the ~~Trust~~Lessor, which date shall thereafter be deemed the Termination Date, the User Lessee (as agent for the User Lessor, the ~~Sublessor~~Sublessors and the ~~Trust~~Lessor) shall (i) arrange the sale of the Head Lease Interest for cash to whomever shall have submitted the highest bid for the cash purchase of the Head Lease Interest and (ii) upon delivery to the Lessor of the cash purchase price, together with all amounts required under Section 15(b) below, deliver the Facility in accordance with the return conditions of Section 13 together with an assignment of the Head Lease Interest, or cause the Facility and the Head Lease Interest to be delivered, conveyed and assigned, to the party which shall have agreed to purchase the Head Lease Interest in the manner which may be agreed upon between the User Lessee and such party and to assume all obligations of the Head Lessee under the Head Lease. The User Lessor, the ~~Sublessor~~Sublessors or the ~~Trust~~Lessor shall be under no duty to solicit bids, to inquire into the efforts of the User Lessee to obtain bids or otherwise take any action in connection with any such sale other than to transfer to the purchaser selected in accordance with this Section 15(a) certified by the User Lessee to ~~the User Lessor~~such parties, without recourse or warranty except with respect to the absence of ~~{Lessor's Liens}~~, all of its right, title and interest in and to the Head Lease Interest against receipt of the payments provided for herein. If, but only if, the User Lessee exercises its termination rights under this Section 15 in respect of the Facility, the User Lessor, as Sublessee under the Sublease, shall exercise and perform its corresponding termination rights in respect of the Facility pursuant to Section 15 of the Sublease.

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

The total selling price realized at such sale shall be paid over to the User Lessor and, in addition, on the Termination Date, the User Lessee shall pay in immediately available funds (i) to the User Lessor an amount equal to the excess, if any, of (A) the Termination Value with respect to the Facility as of the Termination Date over (B) the net proceeds of the sale of the Head Lease Interest (to the extent of the User Lessor's interest therein), plus (ii) to the User Lessor and any other Person entitled thereto, all User Supplemental Rent on or before (or after, to the extent susceptible to quantification on or before) the Termination Date, plus (iii) to the User Lessor, all overdue User Lease Rent payable before the Termination Date together with interest at the Overdue Rate for the period from the due date thereof to the date of payment; ~~provided, that if the User Lessee has made the prepayment referred to in Section 3(f), the User Lessee's obligation to pay Termination Value (or any amount measured thereby) shall be reduced pro tanto by any amounts received by the Lessor or its assignee in respect of such termination and the net proceeds of the sale of the Head Lease Interest then being sold~~however, that if all of the obligations of the Lessees under the Operative Documents have not been paid and performed in full, all payments received and due pursuant to this Section 15 shall be paid over to the Lessor.

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

Provided that the User Lessor has not elected to retain its Head Lease Interest as provided below, the User Lessee may, not less than ten (10) days prior to any proposed Termination Date under this Section 15 and on not more than two occasions during the User Lease Term, irrevocably notify the User Lessor, the ~~Sublessor~~Sublessors, the Lessor, the Owner Participant and the Holders (if applicable) in writing of its election to revoke a termination notice given by the User Lessee pursuant to paragraph (a) of this Section 15 (and if, but only if, the User Lessee revokes such notice the User Lessor shall provide a corresponding revocation notice pursuant to Section 15(c) of the Sublease); *provided, however*, that the User Lessee may not revoke such termination notice following the election by the Lessor under the Lease to take possession of the Facility pursuant to Section 15(c) of the Lease. The User Lessor shall provide the User Lessee with a copy of the notice of the Lessor of such preemptive election and upon receipt of such notice, the User Lessee shall cease its efforts to arrange the sale of the Head Lease Interest as provided above and shall reject all bids theretofore or thereafter received, if any. If the Lessor exercises its preemptive election, on the Termination Date, the User Lessee shall deliver, or cause to be delivered, the Facility to the User Lessor in accordance with the terms of Section 13 and shall pay (i) all User Lease Rent payable on or before the Termination Date, *plus* (ii) all unpaid User Supplemental Rent due on or before (or after, to the extent susceptible to quantification on or before) the Termination Date.

(d) ***Termination of User Lease.***

Upon conveyance of the Head Lease Interest to a purchaser thereof as contemplated by Section 15(a) or a return of the Facility to the User Lessor as contemplated by Section 15(c), as the case may be, and upon payment by the User Lessee of all amounts payable by the User Lessee under either Section 15(b) or 15(c), as the case may be, the obligations of the User Lessee to pay User Lease Rent shall cease and the User Lease Term shall end as of the Termination Date. Upon termination of this User Lease as provided herein, neither the User Lessee, nor any Affiliate of the User Lessee, shall operate or otherwise use the Facility for any purpose: unless otherwise provided in the Operative Documents.

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

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

SECTION 16. User Lease Events of Default.

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

(a) the User Lessee shall fail to make any payment of User Lease Rent, Stipulated Loss Value, Termination Value or Fair Market Sales Value (without regard to whether such payments are subject to appropriation or are limited by constraints on capacity or issuance limitations under South Dakota law) when due and such failure shall continue for a period of five (5) Business Days after the earlier of (x) the date on which the User Lessee has knowledge of such nonpayment and (y) receipt by the User Lessee of a written notice of nonpayment from the Owner Participant, the User Lessor, ~~the~~either Sublessor, the Lessor or any of the Holders; or the User Lessee shall fail to make any other payment of User Supplemental Rent and such failure shall continue unremedied for a period of thirty (30) days after receipt by the User Lessee of a written notice of nonpayment from the Owner Participant, the User Lessor, ~~the~~either Sublessor, the Lessor or any of the Holders; or

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

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

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

(e) an order, judgment or decree shall be entered in any proceeding by any court of competent jurisdiction appointing, without the consent of the User Lessee, a receiver, trustee, assignee or liquidator or similar official of the User Lessee, or of any substantial part of its

property, or sequestering any substantial part of the property of the User Lessee, and any such order, judgment or decree or appointment or sequestration shall remain in force undismissed, unstayed or unvacated, for a period of 90 days after the date of entry thereof; or

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

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

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

(B) the Lessor shall have elected, or shall be deemed to have elected, the Service Contract Option with respect to the Facility pursuant to Section 14(d)(i) of the Lease, and the User Lessee shall have failed to [perform or cause to be performed all of the obligations of the ~~Authority~~ Lessees under Section 14(d)(i) of the Lease, or the Lessor shall have elected the Return Option and the User Lessee shall have failed to perform or cause to be performed all of the obligations of the ~~Authority~~ Lessees under Section 14(d)(ii) of the Lease]; or

(C) the User Lessor shall have elected the Return Option with respect to the Facility pursuant to Section 14(d)(ii) hereof and the User Lessee shall have failed to comply with its obligations under Section 14(d)(ii) hereof; or

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

(j) intentionally omitted; or

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

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

SECTION 17. Remedies.

Upon the occurrence of any User Lease Event of Default and at any time thereafter so long as the same shall be continuing, the User Lessor may, at its option and sole discretion, declare this User Lease to be in default by a notice to the User Lessee (except that upon occurrence of a User Lease Event of Default described in Section 16(d), (e), (f), (g), (h) or (k) or a Sublease Event of Default described in Section 16(d), (e), (f), (g), (h) or (k) of the Sublease, or a Lease Event of Default described in Section 16(d), (e), (f), (g), (h) or (k) of the Lease, this User Lease shall automatically be deemed to be in default); and at any time after this User Lease shall be declared in default or be deemed to be in default pursuant to this sentence, unless such declaration shall have been rescinded, the User Lessor may in its sole discretion do, and the User Lessee shall comply with, one or more of the following with respect to the Facility, as the User Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, Applicable Law then in effect; *provided*, that, the User Lessor shall exercise the remedies set forth below, if, but only if, the Lessor under the Lease is exercising the corresponding remedy under the Lease:

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

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

the User Lessor elects to exercise its rights under said paragraph in lieu of its rights under paragraph (c) below];

(c) whether or not the User Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a) or paragraph (b) above with respect to the Facility, the User Lessor, by written notice to the User Lessee specifying the next Termination Value Determination Date not earlier than 10 days from the date of such notice as the payment date, may cause the User Lessee to pay to the User Lessor, and the User Lessee shall pay to the User Lessor, on the payment date specified in such notice, any installment of User Lease Rent due and owing with respect to the Facility prior to such payment date and all User Supplemental Rent due on or before (or after, to the extent susceptible to quantification on or before) such payment date, plus as liquidated damages for loss of a bargain and not as a penalty (in lieu of the User Lease Rent payable with respect to the Facility after such payment date) whichever one of the following amounts the User Lessor in its sole discretion shall specify in such notice: (i) an amount equal to the excess, if any, of the Termination Value (set forth on Exhibit D to the User Lease Supplement computed as of such Termination Value Determination Date), computed as of such payment date, over the Fair Market Rental Value of the Head Lease Interest with respect to the Facility after discounting such Fair Market Rental Value annually (effective on the payment date) to present worth as of such payment date at the Applicable Rate; or (ii) an amount equal to the excess, if any, of the Termination Value (set forth on Exhibit D to the User Lease Supplement computed as of such Termination Value Determination Date), over the Fair Market Sales Value of the Head Lease Interest with respect to the Facility as of such payment date; plus, in the case of each of the preceding clauses (i) and (ii), interest, to the extent permitted by Applicable Law, at the Overdue Rate on the amount of such excess, if any, from such payment date to the date of actual payment of such amount; *provided*, that if the Facility cannot be repossessed, Fair Market Rental Value and Fair Market Sales Value for purposes of this Section 17(c) shall be deemed to be equal to zero;

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

(e) by written notice to the User Lessee specifying a Termination Value Determination Date which shall not be earlier than 10 days from the date of such notice, cause

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

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

~~(g) intentionally omitted;~~

~~(h) intentionally omitted; or~~

~~(i) unless the Head Lease Interest has been sold pursuant to clause (b) above, but whether or not the User Lessor or its assignee has previously exercised any of the foregoing remedies to demand payment of Termination Value with respect to the Head Lease Interest or any amount determined by reference thereto or unpaid User Supplemental Rent, the User Lessor may, by notice to the User Lessee specifying a Termination Value Determination Date with respect to the Facility not earlier than 10 days from the date of such notice as the payment date, require that the User Lessee pay to the User Lessor, and the User Lessee shall pay to the User Lessor on the payment date specified in such notice the Equity Portion of any Lease Rent due and owing on or prior to such date and all User Supplemental Rent due to the User Lessor, the Owner Participant, the Trust or the Trust Company on or before (or after to the extent susceptible to quantification on or before) such payment date plus, as liquidated damages for loss of bargain and not as a penalty (in lieu of the Equity Portion of Lease Rent payable with respect to the Equipment after such payment date) an amount equal to the Equity Portion of Termination Value with respect to the Facility on such payment date.~~

In addition, the User Lessee shall be liable for any User Supplemental Rent due hereunder before or after any termination hereof and all costs and expenses (including reasonable attorney’s fees and disbursements) incurred by reason of the occurrence of any User Lease Event of Default or the exercise of the User Lessor’s remedies with respect thereto, including all costs and expenses incurred in connection with the retaking or return of the Facility (or any damages suffered as a result thereof) in accordance with the terms of Section 13 or placing the Facility in the condition required by Section 13 or any appraisal of the Facility. The User Lessor agrees to give the User Lessee timely notice of any sale of, or offer to otherwise dispose of or sublease, the Facility pursuant to this Section 17. At any sale pursuant to this Section 17, the User Lessor, any

Participant or any Affiliates thereof may bid for and purchase or sublease, as the case may be, such property or leasehold interests at such sale or offer to sublease. Except as otherwise expressly provided above, no remedy referred to in this Section 17 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the User Lessor at law or in equity; and the exercise or beginning of exercise by the User Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by the User Lessor of any or all such other remedies. No express or implied waiver by the User Lessor of any User Lease Event of Default hereunder shall in any way be, or construed to be, a waiver of any future or subsequent User Lease Event of Default.

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

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

If the User Lessee fails to make any payment of User Lease Rent or User Supplemental Rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, the User Lessor may, but shall be under no obligation to, make such payment or perform or comply with such agreement. The amount of such payment by the User Lessor and the amount of the reasonable expenses of the User Lessor incurred in connection with such payment or the performance of or compliance by the User Lessor with such agreement, as the case may be, together with interest thereon at the Overdue Rate, shall be deemed User Supplemental Rent, payable by the User Lessee upon demand of the User Lessor. No such payment or performance by the User Lessor shall be deemed to waive any User Lease Default or User Lease Event of Default or relieve the User Lessee of its obligations hereunder or under the other Operative Documents.

SECTION 19. Assignment.

Subject to Section 6(a) hereof and Section 11(c) of the Participation Agreement, the User Lessee will not, without the prior written consent of the ~~User Lessor and the~~ Trust (to be given or withheld in their sole discretion), assign any of its rights or obligations hereunder or permit its rights or obligations hereunder to be assigned. The User Lessor will not, without the prior written consent of the User Lessee, the Trust and, so long as the Lien of the Loan Agreement shall not have been discharged pursuant to Section ~~7.01~~7.1 thereof, the Holders, assign any of its rights or obligations hereunder except in accordance with the Operative Documents.

SECTION 20. Investment of Security Funds.

Any amounts otherwise payable to the User Lessee under this User Lease or any other Operative Document but which shall be paid to or retained by the User Lessor pursuant to the terms hereof as a result of any User Lease Default or User Lease Event of Default shall be held by the Lender or, if the Lien of the Loan Agreement shall have been discharged pursuant to Section 7.01 thereof, the Trust, as security for the obligations of (i) the User Lessee under this User Lease, (ii) the Lessee under the Lease and (iii) the Sublessee under the Sublease, and the

other Operative Documents to which any of the foregoing is a party, at such time as there shall not be continuing any such User Lease Default or User Lease Event of Default, such amounts, net of any amounts theretofore applied to the User Lessee's Obligations, shall be paid to the User Lessee. Any such amounts which are held by the Lender or the User Lessor (as the case may be) pending payment to the User Lessee shall, until paid to the User Lessee as provided herein or until applied against the User Lessee's Obligations in connection with any exercise of remedies hereunder or under the Lease or the Sublease, be invested in Permitted Investments by the Lender or the Trust (as the case may be) as directed from time to time in writing by the User Lessee and at the expense and risk of the User Lessee. Any gain (including interest received) realized as the result of any such Permitted Investment (net of any fees, commissions, Taxes and other expenses, if any, incurred in connection with such Permitted Investment) shall be applied in the same manner as the principal invested.

SECTION 21. Acknowledgment of Assignment for Security.

In consideration of the Trust's entering into the Lease and the Authority and the User entering into the Sublease and in order to secure (i) the Authority's obligations and the User's obligations under the Lease and the other Operative Documents and (ii) the State's obligations under the Sublease and the other Operative Documents, the User Lessor has agreed in the Sublease and the General Mortgage Pledge Agreement and ~~the each~~ Sublessor has agreed in the Lease and the General Mortgage Pledge Agreement, among other things, to assign by way of assignment for security to the Trust all of its right, title and interest in and to this User Lease, subject to the conditions set forth therein and the User Lessee hereby acknowledges and consents to such assignments. In addition, in order to secure the indebtedness evidenced by the Loan Certificates and certain other amounts owing to the Lender under the Operative Documents, the Trust has agreed in the Loan Agreement, among other things, to assign to the Lender such interest in the User Lessor's right, title and interest in and to this User Lease and to assign certain of its rights under the Lease and the Lease Supplement and to grant a security interest in favor of the Lender in the Head Lease Interest in the Facility, subject to the reservations and conditions therein set forth. The User Lessee hereby acknowledges and consents to such assignments and to the creation of such security interest and acknowledges receipt of copies of the Trust Agreement, the Lease, the Sublease, ~~the General Mortgage~~ and the Loan Agreement, it being understood that such consent shall not affect any requirement or the absence of any requirement for any consent under any other circumstances. Until the Lien of the Loan Agreement has been released pursuant to Section ~~7.01~~7.1 thereof, certain rights of the User Lessor with respect to this User Lease (other than ~~User Lease~~-Excepted Property) to the extent set forth in and subject in each case to the exceptions set forth in the Loan Agreement and the General Mortgage Pledge Agreement, shall be exercisable by the Lender. Thereafter and until the Lien of ~~General Mortgage~~the Pledge Agreement has been released, certain rights of the User Lessor with respect to this User Lease or the Facility shall be exercisable by the Trust as provided ~~in the General Mortgage~~herein.

SECTION 22. Miscellaneous.

(a) **Notices.**

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

(b) **Counterparts.**

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

(c) **Amendments.**

Neither this User Lease nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by both parties- **hereto.**

(d) **Agreement of Lease.**

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

(e) **GOVERNING LAW.**

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

(f) **Benefit and Binding Effect.**

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

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

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

(h) *Severability.*

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

(i) *Entire Agreement.*

This User Lease, together with the agreements, instruments and other documents required to be executed and delivered in connection herewith, supersedes all prior agreements and understandings of the parties with respect to the subject matter covered hereby.

(j) *Currency.*

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

SECTION 23. User Lessee Options.

With respect to the selection (or deemed selection) by the User Lessee of any option under Section 14(a), 14(e), 15(a) or 15(c) of this User Lease, the User Lessor hereby agrees that, as Sublessee under the Sublease, it shall perform the corresponding option under Section 14(a), 14(e), 15(a) or 15(c) of the Sublease and that the ~~Lessee~~Lessees shall perform the corresponding option under Section 14(a), 14(e), 15(a) or 15(c) of the Lease and that the User Lessor, as Sublessee under the Sublease, shall not select any option under Section 14(a), 14(e), 15(a) or 15(c) of the Sublease until the User Lessee has selected (or been deemed to have selected) the corresponding option under Section 14(a), 14(e), 15(a) or 15(c) of ~~the~~this User Lease.

SECTION 24. State Appropriation.

If and to the extent that the User Lessee fails to pay any amount that is due and payable hereunder by the date such amount is 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.

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

USER LESSOR:

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

By: _____

Name:

Title:

USER LESSEE:

~~[RAPID-CITY]~~ OF ABERDEEN

By:

Name:

Mayor

Attest:

By: _____

Name:

Title:

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

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

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

By: _____
Name:
Title:

~~USER LEASE SUPPLEMENT~~

~~THIS~~ USER LEASE SUPPLEMENT (SDMFA-2003-~~K~~F1)

This USER LEASE SUPPLEMENT (SDMFA-2003-F1) dated ~~June~~September __, 2003 (~~This~~this “*User Lease Supplement*”) is between [STATE OF SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES], a [] (the “*User Lessor*”), and [~~RAPID CITY~~] OF ABERDEEN, a [] (the “*User Lessee*”).

WHEREAS, the User Lessor and the User Lessee have heretofore entered into the User Lease Agreement (SDMFA-2003-~~K~~F1), dated as of ~~June~~-September [], 2003 (the “*User Lease*”), which User Lease provides for the execution and delivery of User Lease Supplements in substantially the form hereof for the purpose of subleasing the Facility and granting the Access Rights when delivered by the User Lessor to the User Lessee in accordance with the terms thereof. All of the terms and provisions of the User Lease are hereby incorporated by reference in this User Lease Supplement to the same extent as if fully set forth herein (including those terms providing that capitalized terms used therein and not otherwise defined therein shall have the meanings given such terms in Appendix A to the Participation Agreement, and the rules of usage set forth therein shall apply thereto);

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

Section 1. The User Lessor hereby delivers and subleases the Facility described in Exhibit A hereto and grants the Access Rights to the User Lessee and the User Lessee hereby accepts and subleases the Facility and accepts the grant of the Access Rights from the User Lessor, under the User Lease as herein supplemented.

Section 2. The payment schedule for User Lease Rent and the allocation of User Lease Rent are as set forth in Exhibit B-1.

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

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

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

~~Section 6. The Prepayment Amount is in the amount set forth in Exhibit F hereto.~~

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

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

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

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

USER LESSOR:

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

By: _____
Name:
Title:

USER LESSEE:

[~~RAPID~~ CITY OF ABERDEEN]

By: _____
Name:
Mayor

Attest:

By: _____
Name:
Title:

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

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

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

By: _____
Name:
Title:

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

DESCRIPTION OF FACILITY; FACILITY VALUES

<u>Facility</u>	<u>Description</u>	<u>Serial Number</u>	<u>Facility Value</u>
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USER LEASE RENT PAYMENT SCHEDULE

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

ALLOCATION OF USER LEASE RENT

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

STIPULATED LOSS VALUES

Stipulated Loss Value
Determination Date

Stipulated Loss Value

Equity Portion of
Stipulated Loss Value

TERMINATION VALUES

Termination Value
Determination Date

Termination Value

Equity Portion of
Termination Value

USER PURCHASE OPTION PRICE

<u>Installment Payment Date</u>	<u>User Purchase Option Installment Amount</u>	<u>Equity Portion of Installment Amount</u>
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~~PREPAYMENT AMOUNT~~

Total Prepayment Amount for the Facility: \$[~~—~~]