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June 18, 2008

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**PUBLIC SERVICE
COMMISSION**

HAND DELIVERY

Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: The Application of Big Rivers Electric Corporation for: (i) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (ii) Approval of Transactions, (iii) Approval to Issue Evidences of Indebtedness, and (iv) Approval of Amendments to Contracts; and of E.ON U.S. LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing, Inc. for Approval of Transactions
Case No. 2007-00455

Dear Ms. Stumbo:

Big Rivers Electric Corporation ("Big Rivers"), in connection with the joint application in this proceeding, is proposing to terminate its leveraged leases with Bank of America Leasing Corporation ("Bank of America"), one of two equity parties involved in the leverage lease transactions consummated by Big Rivers in 2000.¹

Under the existing Leverage Lease, Bank of America through two Owner Participant Trusts presently holds the beneficial interest in two leases of undivided interests in the Wilson Station. Under both of these leases, the undivided interests in the leased plants are leased back to Big River such that the Owner Participant leases are "invisible" to the public as far as the operation of the plants is concerned.

In connection with the restructuring of its finances associated with the Unwind Transaction, Big Rivers has agreed to terminate Bank of America's interest in those leases on the terms first stated in the letter agreement² and now presented in the Bank of America Termination

¹ The Commission approved the Leverage Lease in its Orders of November 24, 1999 and March 29, 2000 in *In the Matter of Big Rivers Electric Corporation's Application for Approval of a Leverage Lease of Three Generating Units*, Case No. 99-450.

² Big Rivers Exhibit 67 filed on April 23, 2008 (filed under a petition for confidential treatment).

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Agreement³ both of which are filed in the record in this proceeding. Under the Bank of America Cost Share Agreement,⁴ Big Rivers, E.ON U.S. LLC ("E.ON US") and the two smelter customers have agreed to divide the amount that will be paid to Bank of America under the Bank of America Termination Agreement.

The termination payment to Bank of America is supported by a financial instrument known as an Investment Contract. American International Group, Inc, the insurance company which initially provided the Investment Contract in support of the termination payment, has offered E.ON US a set and favorable formula to terminate the Investment Contract through, but not past June 30, 2008. Waiting until after June 30, based on current market conditions, will cost E.ON US an additional \$8 million.

E.ON US desires to take advantage of this offer by liquidating the Investment Contract and using the proceeds plus a payment from E.ON US to terminate the Bank of America lease before June 30, 2008. In doing so, E.ON US is willing to assume the risk that if the Unwind Transaction does not close, Big Rivers and the two smelter customers are not obligated to fund their contribution toward the termination of the Bank of America Leveraged Lease. In exchange for assuming this risk, E.ON US gains the opportunity of saving approximately \$8 million should the Unwind Transaction close later this summer.

Big Rivers and E.ON US acknowledge that the Commission's November 24, 1999 Order in Case No.2000-118⁵ makes it clear that amendments to the agreements originally proposed between Big Rivers and E.ON US in Case Nos. 97-204 and 98-267 require approval. And the Orders of November 24, 1999 and March 29, 2000 Case No. 99-450 also require Commission approval of amendments to the documents approved therein.

The payment by E.ON US to terminate the Bank of America lease does not require an amendment to the documents approved by the Commission in Case Nos. 97-204, 98-267 or Case No. 99-450 or require the approval of the documents tendered by Big Rivers to date in this proceeding except for minor amendments to the Operating and Support Agreement for the Wilson Station to reflect the fact that the Bank of America lease will have terminated. This amendment is not required at the time of the Bank of America termination, but will be signed at closing of the Unwind Transaction. The change in the timing of the termination of the Bank of America lease will have no different effect upon the finances or operation of Big Rivers than if the lease were terminated along with the Unwind Transaction closing.

³ Big Rivers Exhibit 4 filed on June 11, 2008.

⁴ Big Rivers Exhibit 5 filed on June 11, 2008.

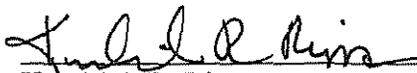
⁵ *In the Matter of: The Application Of Big Rivers Electric Corporation, LG&E Energy Marketing Inc., Western Kentucky Energy Corp., WKE Station Two Inc., and WKE Corp. For Approval of Amendments to Transaction Documents*

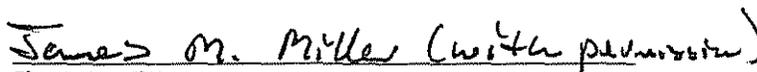
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The termination of one of the leases a previously approved in these cases does not require prior approval by the Commission because the inherent right to terminate the lease by the mutual consent of the parties is not restricted or limited by the terms of the lease. The termination of the Investment Contract will not cause Big Rivers to issue any new obligation or assume any new obligation or liability in place of the Investment Contract.

Big Rivers and E.ON US wish to discuss to termination the Investment Contract by June 30, 2008 at the Informal Conference on June 19, 2008 before proceeding further.

Yours very truly,


Kendrick R. Riggs


Jim M. Miller
Sullivan, Mountjoy, Stainback & Miller, P.S.C.
100 St. Ann Street
P.O. Box 727
Owensboro, KY 42302-0727
Telephone (270) 926-4000
Direct Dial (270) 691-1640
Fax (270) 683-6694

KRR:ec

cc: Parties of Record (email and regular U.S. Mail)

Enclosures:

1. FBR-1 Facility Lease Agreement
2. Surety Bond (FBR-1)
3. ISDA Master Agreement (In Relation to FBR-1 Statutory Trust).
4. Three Orders of Kentucky Public Service Commission referenced herein

**FACILITY LEASE AGREEMENT
(FBR-1)**

Dated as of April 1, 2000

between

FBR-1 STATUTORY TRUST,
acting through State Street Bank and Trust Company of Connecticut,
National Association, not in its individual capacity
but solely as Trustee of the Owner Trust,
as Facility Lessor

and

BIG RIVERS ELECTRIC CORPORATION,
as Facility Lessee

D. B. WILSON UNIT NO. 1

CERTAIN OF THE RIGHT, TITLE AND INTEREST OF THE FACILITY LESSOR IN AND TO THIS FACILITY LEASE AGREEMENT (FBR-1) HAVE BEEN ASSIGNED TO AND ARE SUBJECT TO A FIRST PRIORITY LIEN AND SECURITY INTEREST IN FAVOR OF AME INVESTMENTS, LLC, AS AGENT UNDER THE LEASEHOLD MORTGAGE AND SECURITY AGREEMENT (FBR-1), DATED AS OF APRIL 1, 2000. THIS FACILITY LEASE AGREEMENT (FBR-1) HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. ONLY THE ORIGINAL COUNTERPART CONTAINS THE RECEIPT THEREFOR EXECUTED BY THE AGENT ON THE SIGNATURE PAGE THEREOF. SEE SECTION 23 FOR INFORMATION CONCERNING THE RIGHTS OF THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF.

This instrument was prepared by, and when recorded should be returned to, James M. Miller, Esq., Sullivan, Mounjoy, Stainback & Miller, P.S.C., 100 St. Ann Building, Owensboro, Kentucky 42303.

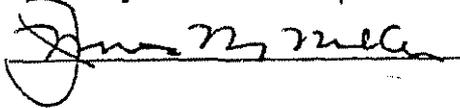
Signed: 

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FACILITY LEASE AGREEMENT (FBR-1)

This **FACILITY LEASE AGREEMENT (FBR-1)**, dated as of April 1, 2000 (as amended, supplemented or otherwise modified from time to time and in accordance with the provisions hereof, this "Facility Lease" or this "Agreement"), between **FBR-1 STATUTORY TRUST**, acting through State Street Bank and Trust Company of Connecticut, National Association, a national banking association organized and existing under the laws of the United States, not in its individual capacity but solely as Trustee of a Connecticut statutory trust created by the Trust Agreement (FBR-1), dated as of April 1, 2000 between the Trustee and the OP Trust (together with its successors and permitted assigns, the "Facility Lessor") located at Goodwin Square, 225 Asylum Street, Hartford, County of Hartford, Connecticut 06103, and **BIG RIVERS ELECTRIC CORPORATION**, a rural electric cooperative organized under the laws of the Commonwealth of Kentucky (together with its successors and permitted assigns, the "Facility Lessee") located at 201 Third Street, Henderson, County of Henderson, Kentucky 42420.

WHEREAS, the Facility Lessee owns the Site, more particularly described in Exhibit C hereto and the Easement Site more particularly described in Exhibit D hereto;

WHEREAS, the Facility Lessee owns the Facility;

WHEREAS, the Facility is more particularly described in Exhibit A hereto;

WHEREAS, pursuant to the Ground Lease, the Facility Lessor has acquired from the Facility Lessee the Ground Interest for a term coterminous with the term of the Head Lease;

WHEREAS, pursuant to the Head Lease, the Owner Trust has leased from the Facility Lessee the Undivided Interest for a term equal to approximately 125% of the estimated remaining useful life of the Facility, subject to renewal as provided in the Head Lease;

WHEREAS, pursuant to this Facility Lease, the Facility Lessor will lease the Undivided Interest leased from the Facility Lessee pursuant to the Head Lease to the Facility Lessee for the term provided herein; and

WHEREAS, pursuant to the Ground Sublease, the Facility Lessee, as Ground Sublessee, will sublease the Ground Interest from the Owner Trust for the term provided therein.

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

SECTION 1. DEFINITIONS.

Capitalized terms used in this Facility Lease, including the recitals, and not otherwise defined herein shall have the respective meanings set forth in Appendix A hereto. The general provisions of Appendix A shall apply to the terms used in this Facility Lease and specifically defined herein.

SECTION 2. LEASE OF THE UNDIVIDED INTEREST.

The Facility Lessor hereby leases the Undivided Interest, upon the terms and conditions set forth herein, to the Facility Lessee for the Basic Term and the Facility Lessee hereby leases the Undivided Interest, upon the terms and conditions set forth herein, from the Facility Lessor. The Facility Lessee and the Facility Lessor understand and agree that (a) this lease of the Undivided Interest is subject to the interest of the Head Lessee under the Head Lease and the interests identified in the definition of Undivided Interest, (b) legal title to the Facility remains vested in the Head Lessor, (c) this lease of the Undivided Interest is subject and subordinate to the Lien of the First Mortgage and the Lien of the LG&E Interests, and (d) this lease is subject to those encumbrances set forth in the Title Report. The Undivided Interest shall be subject to the terms of this Facility Lease from the date on which this Facility Lease is executed and delivered. It is the express intention of the parties hereto that the Facility and every portion thereof is intended to be personal property for all purposes under Applicable Law, and shall be and remain severed and removable, from title to the real estate constituting the Site and the Easement Site to the maximum extent permitted by Applicable Law. Notwithstanding the foregoing, if any part of the Facility shall nevertheless be deemed to be real property, then this Facility Lease shall be deemed to be two separate Facility Leases, one of that portion of the Facility as shall constitute real property, and one of the remainder of the Facility.

SECTION 3. FACILITY LEASE TERM AND RENT

Section 3.1 Basic Term. The term of this Facility Lease shall commence on the Closing Date and shall terminate at 11:58 p.m. (New York City time) on the Expiration Date for the Facility (the "Basic Term"), subject to earlier termination pursuant to Section 10, 13, 14 or 17 hereof and extension under Section 15.4 or for an Extension Period pursuant to Section 17.2 hereof; *provided, however*, that, notwithstanding anything to the contrary set forth in this Section 3.1, in no event shall the Basic Term terminate so long as the Facility Lessor's interest under this Facility Lease shall be subject to the Lien of the Leasehold Mortgage.

Section 3.2 Basic Rent. The Facility Lessee hereby agrees to pay to the Facility Lessor Basic Rent for the lease of the Undivided Interest for each Rent Payment Period throughout the Basic Term in the amounts payable on each Rent Payment Date as indicated on Schedule 1 hereto ("Basic Rent") and allocated as set forth on Schedule 1-A, subject to Section 3.4 hereof. Each such payment of Basic Rent shall be in the amount set forth opposite such Rent Payment Date on Schedule 1 hereto, in each case, subject to Section 3.4 hereof.

Section 3.3 Supplemental Rent. The Facility Lessee also agrees to pay to the Facility Lessor, or to any other Person entitled thereto as expressly provided herein or in any other Operative Document, as appropriate, any and all Supplemental Rent, promptly as the same shall become due and owing, or where no due date is specified, promptly after demand by the Person entitled thereto, and in the event of any failure on the part of the Facility Lessee to pay any Supplemental Rent, the Facility Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise for the failure to pay Supplemental Rent. The Facility Lessee will also pay as Supplemental Rent to the extent permitted by Applicable Law, an amount equal to interest at the applicable Overdue Rate on any part of any payment of Basic Rent not paid when due for any period for which the same shall be overdue and on any Supplemental Rent

not paid when due (whether on demand or otherwise) for the period from (but excluding) such due date until the same shall be paid. All Supplemental Rent to be paid pursuant to this Section 3.3 shall be payable in the manner set forth in Section 3.5.

Section 3.4 Adjustment of Basic Rent, Etc. (a) [reserved]

(b) The Facility Lessee and the Facility Lessor agree that Basic Rent, Termination Values, Equity Portion of Basic Rent, Equity Portion of Termination Values, Debt Portion of Termination Value, the Purchase Option Price and the Capacity Charges and Liquidated Damage Amounts on Exhibit 3 to this Facility Lease for the Service Contract shall be adjusted, either upwards or downwards, to reflect the principal amount, amortization and interest rate on any Additional Loan Certificate issued pursuant to Section 11 of the Participation Agreement and Section 2.10 of the Leasehold Mortgage or to reflect the Reset Interest Rate as determined pursuant to Section 2.12 of the Leasehold Mortgage. Any adjustments pursuant to this Section 3.4(b) will be calculated to preserve the Owner Participant's Net Economic Return through the Basic Term and Service Contract Term, provided, however, that to the extent consistent with preserving such Net Economic Return, all adjustments shall minimize the present value to the Facility Lessee of the Basic Rent or, at the Facility Lessee's election, the Basic Rent and the Purchase Option Price. Adjustments will be made using the same method of computation and assumptions originally used (other than those that have changed as the result of the event giving rise to the adjustment) in the calculation of the Basic Rent and the Purchase Option Price. The adjustments contemplated by this Section 3.4(b) will result in corresponding adjustments to Termination Values, Equity Portion of Basic Rent, Equity Portion of Termination Values, the Purchase Option Price, Debt Portion of Termination Values, Capacity Charges and Liquidated Damage Amounts. All Basic Rent adjustments shall be consistent with Section 467 of the Internal Revenue Code as in effect at the time of the adjustment, including any final, proposed or temporary regulations or other administrative announcements issued thereunder and in no event shall such adjustment cause this Facility Lease to become a "disqualified leaseback or long-term agreement" within the meaning of Section 467 of the Internal Revenue Code and any such regulations or announcements thereunder.

(c) Anything herein or in any other Operative Document to the contrary notwithstanding, each installment of Basic Rent payable hereunder, whether or not adjusted in accordance with this Section 3.4, shall be in an amount at least sufficient to pay in full principal and interest payable on the Loan Certificates on each Rent Payment Date. Anything herein or in any other Operative Document to the contrary notwithstanding, Termination Values (excluding the Equity Portion of Termination Value) payable on any date under this Facility Lease and the initial installment of the Purchase Option Price, whether or not adjusted in accordance with this Section 3.4, shall, together with all other Basic Rent due and owing on such date, exclusive of any portion thereof that is an Excepted Payment, be in an amount at least sufficient to pay in full the principal of and accrued interest on the Loan Certificates payable on such date.

(d) Any adjustment pursuant to this Section 3.4 shall initially be computed by the Owner Participant. Once computed, the results of such computation shall promptly be delivered by the Owner Participant to the Facility Lessee, the Facility Lessor and the Lenders. Within 20 days after the receipt of the results of any such adjustment, the Facility Lessee may request that Babcock & Brown or another investment banking firm selected by the Facility Lessee and

reasonably satisfactory to the Owner Participant (the "Intermediary") verify, after consultation with the Owner Participant and the Facility Lessee, the accuracy of such adjustment in accordance with Section 3.4(b), and the Owner Participant and the Facility Lessee hereby agree to provide the Intermediary (on a confidential basis) with all information and materials as shall be reasonably necessary in connection therewith; provided, however, that the Owner Participant shall not be required to disclose its tax returns or other proprietary information. If the Intermediary confirms that such adjustment is in accordance with Section 3.4(b), it shall so certify to the Facility Lessee, the Facility Lessor, the Owner Participant and the Lenders, and such certification shall be final, binding and conclusive on the Facility Lessee, the Owner Participant and the Facility Lessor. If the Intermediary concludes that such adjustment is not in accordance with Section 3.4(b), it shall so certify to the Facility Lessee, the Facility Lessor, the Owner Participant and the Lenders, and the Owner Participant shall again compute the required adjustment consistent with the advice of the Intermediary. Such re-computation shall be subject to the provisions of this Section 3.4(d) and the results of such re-computation shall be final, binding and conclusive on the Facility Lessee, the Facility Lessor and the Owner Participant. If the Facility Lessee does not request verification of any adjustment within the period specified above, the computation provided by the Owner Participant shall be final, binding and conclusive on the Facility Lessee, the Facility Lessor and the Owner Participant. The final determination of any adjustment hereunder shall be set forth in an amendment to this Facility Lease, executed and delivered by the Facility Lessor and the Facility Lessee and consented to by the Owner Participant; provided, however, that any omission to execute and deliver such amendment shall not affect the validity and effectiveness of any such adjustment. The reasonable fees, costs and expenses of the Intermediary in verifying an adjustment pursuant to this Section 3.4(d) shall be paid by the Facility Lessee; provided, however, that, in the event that such Intermediary determines that the present value of Basic Rent or, at the Facility Lessee's election, Basic Rent and the Purchase Option Price payments, to be made under this Facility Lease as calculated by the Owner Participant are greater than the present value of the correct Basic Rent and Purchase Option Price payments as certified by the Intermediary, discounted annually at the Series B Loan Rate, by more than 0.10% of the Undivided Interest Cost, then such expenses of the Intermediary shall be paid by the Owner Participant. Notwithstanding anything herein to the contrary, the sole responsibility of the Intermediary shall be to verify the calculations hereunder and matters of interpretation of this Facility Lease or any other Operative Document shall not be within the scope of the Intermediary's responsibilities.

Section 3.5 Manner of Payments. (a) All Rent (whether Basic Rent or Supplemental Rent) shall be paid by the Facility Lessee in lawful currency of the United States in immediately available funds to the recipient not later than 11:00 a.m. (New York City time) on the date due. All Rent payable to the Facility Lessor (other than Excepted Payments) shall be paid by the Facility Lessee to the Owner Participant at its account at Fleet National Bank (ABA No. 011-500-010) Credit - (Account No. 015-5527767), or to such other place as the Facility Lessor shall notify the Facility Lessee in writing; provided, however, that so long as the Lien of the Leasehold Mortgage has not been discharged, the Facility Lessor hereby irrevocably directs (it being agreed and understood that such direction shall be deemed to have been revoked after the Lien of the Leasehold Mortgage shall have been fully discharged), and the Facility Lessee agrees, that all payments of Rent (other than Excepted Payments) payable to the Facility Lessor shall be paid by wire transfer directly to the Agent at the Agent's account identified in the Leasehold Mortgage or to such other place as the Agent shall notify the Facility Lessee in

writing pursuant to the Leasehold Mortgage. Payments constituting Excepted Payments shall be made to the Person entitled thereto at the address for such Person set forth in the Participation Agreement, or to such other place as such Person shall notify the Facility Lessee in writing.

(b) Payments made to the Facility Lessor from the proceeds of the Funding Agreement, payments made on the Government Securities or made under the Payment Agreement, the Payment Agreement FGIP, the Series B Loan FGIP and the Funding Agreement FGIP shall satisfy the Facility Lessee's obligation to pay amounts of Basic Rent or Supplemental Rent, as the case may be, to the extent of such payments.

Section 3.6 Business Day. Notwithstanding anything herein or in any other Operative Document to the contrary, if the date on which any payment is to be made pursuant to this Facility Lease or any other Operative Document is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day with the same force and effect as if made on such scheduled date and, provided such payment is made on such succeeding Business Day, no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

Section 3.7 Agreement with Respect to Amounts Payable Under Payment Agreement. The Facility Lessor hereby acknowledges that, pursuant to the Payment Agreement, the Payment Undertaker has undertaken to make Scheduled Payments to the Facility Lessor or its assignee or pledgee on each date specified therein, and other specified amounts on the terms set forth therein. These payments are payable when Basic Rent, Termination Value or amounts computed by reference to Termination Value, are due and, assuming exercise of the Purchase Option, when the first installment of the Purchase Option Price will be due under this Facility Lease, in an amount equal to that portion of Basic Rent, Termination Value and Purchase Option Price which corresponds to the principal and interest on the Series A Loan Certificate due on such date (including in respect of acceleration). The Facility Lessor hereby agrees that, upon any failure of the Facility Lessee to pay any such amount of Basic Rent, Termination Value, amounts defined by reference to Termination Value or the Purchase Option Price, if any, when due, that prior to exercising any remedy pursuant to Section 17 of this Facility Lease, the Facility Lessor will give the Facility Lessee notice of such failure in the form attached hereto as Exhibit B-1. Within four days of the Facility Lessee's receipt of such notice of such failure, the Facility Lessee may instruct the Facility Lessor by delivery of the notice to the Facility Lessor in the form of Exhibit B-2 hereto that the Facility Lessee desires that the Facility Lessor credit against amounts owed to the Facility Lessor by the Facility Lessee the amounts payable by the Payment Undertaker pursuant to the Payment Agreement, in which case, the Facility Lessor shall, at the sole cost and expense of the Facility Lessee, pursue due diligence to collect such amounts from the Payment Undertaker prior to pursuing the Facility Lessee for payment of such amounts under this Facility Lease (including the exercise of any remedy under Section 17) or any other Operative Document. If the Payment Undertaker has fully performed its obligations under the Payment Agreement in respect of such amounts of Rent, the Facility Lessor shall be conclusively presumed to have satisfied the foregoing requirement to give notice and pursue due diligence. In connection with the pursuit of such due diligence to collect such amounts from the Payment Undertaker, the Facility Lessee may be named as the account party in any litigation against the Payment Undertaker or filings necessary to preserve any claim against the Facility Lessee in respect of which the Facility Lessor is pursuing due diligence may be made (provided no effort is

made to collect any such amount from the Facility Lessee until the Facility Lessor's obligation set forth in the fourth sentence of this paragraph is fully performed).

SECTION 4. DISCLAIMER OF WARRANTIES; RIGHT OF QUIET ENJOYMENT

Section 4.1 Disclaimer of Warranties. (a) WITHOUT WAIVING ANY CLAIM THE FACILITY LESSEE MAY HAVE AGAINST ANY MANUFACTURER, VENDOR OR CONTRACTOR, THE FACILITY LESSEE ACKNOWLEDGES AND AGREES SOLELY FOR THE BENEFIT OF THE FACILITY LESSOR AND THE OWNER PARTICIPANT AND THEIR ASSIGNEES THAT (i) THE FACILITY AND EACH COMPONENT THEREOF ARE OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE ACCEPTABLE TO THE FACILITY LESSEE, (ii) THE FACILITY LESSEE IS SATISFIED THAT THE FACILITY AND EACH COMPONENT THEREOF ARE SUITABLE FOR THEIR RESPECTIVE PURPOSES, (iii) NEITHER THE FACILITY LESSOR NOR THE OWNER PARTICIPANT IS A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND, (iv) THE UNDIVIDED INTEREST IS LEASED HEREUNDER TO THE EXTENT PROVIDED HEREBY FOR THE BASIC TERM SPECIFIED HEREIN SUBJECT TO ALL APPLICABLE LAWS NOW IN EFFECT OR HEREAFTER ADOPTED, INCLUDING WITHOUT LIMITATION (1) ZONING REGULATIONS, (2) ENVIRONMENTAL LAWS OR (3) BUILDING RESTRICTIONS, AND IN THE STATE AND CONDITION OF EVERY PART THEREOF WHEN THE SAME FIRST BECAME SUBJECT TO THIS FACILITY LEASE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY THE FACILITY LESSOR OR THE OWNER PARTICIPANT, AND (v) THE FACILITY LESSOR LEASES FOR THE BASIC TERM SPECIFIED HEREIN AND THE FACILITY LESSEE TAKES THE UNDIVIDED INTEREST UNDER THIS FACILITY LEASE "AS-IS", "WHERE IS" AND "WITH ALL FAULTS", AND THE FACILITY LESSEE ACKNOWLEDGES THAT NEITHER THE FACILITY LESSOR, AS THE FACILITY LESSOR OR IN ITS INDIVIDUAL CAPACITY, NOR THE OWNER PARTICIPANT MAKES NOR SHALL BE DEEMED TO HAVE MADE, AND EACH EXPRESSLY DISCLAIMS, ANY AND ALL RIGHTS, CLAIMS, WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION, MERCHANTABILITY THEREOF OR AS TO THE TITLE OF THE FACILITY, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN TORT OR ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT THERETO, except that the Facility Lessor represents and warrants that on the Closing Date, the *Undivided Interest will be free of Facility Lessor's Liens.* It is agreed that all such risks, as between the Facility Lessor, the Owner Participant and the Lenders and their assignees on the one hand and the Facility Lessee on the other hand are to be borne by the Facility Lessee. None of the Facility Lessor, the Owner Trust, the OP Trust, the Owner Participant nor the Lenders shall have any responsibility or liability to the Facility Lessee or any other Person with respect to any of the following: (w) any liability, loss or damage caused or alleged to be caused directly or indirectly by the Facility or any Component or by any inadequacy thereof or deficiency or defect

therein or by any other circumstances in connection therewith; (x) the use, operation or performance of the Facility or any Component or any risks relating thereto; (y) any interruption of service, loss of business or anticipated profits or consequential damages; or (z) the delivery, operation, servicing, maintenance, repair, improvement, replacement or decommissioning of the Facility or any Component. The provisions of this paragraph (a) of this Section 4.1 have been negotiated, and, except to the extent otherwise expressly stated, the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties of the Facility Lessor, express or implied, with respect to the Facility or any Components thereof or the Undivided Interest that may arise pursuant to any Applicable Law now or hereafter in effect, or otherwise.

(b) During the Facility Lease Term, so long as no Event of Default shall have occurred and be continuing, the Facility Lessor hereby appoints irrevocably and constitutes the Facility Lessee its agent and attorney-in-fact, coupled with an interest, to assert and enforce, from time to time, in the name and for the account of the Facility Lessor and the Facility Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Facility Lessee, whatever claims and rights the Facility Lessor may have in respect of the Undivided Interest against the manufacturers of the Facility, or vendors or contractors with respect thereto or under any express or implied warranties relating to the Facility or the Undivided Interest.

Section 4.2 Quiet Enjoyment. The Facility Lessor agrees that, notwithstanding any provision of any other Operative Document, so long as no Event of Default shall have occurred and be continuing, it shall not itself interfere with or interrupt the quiet enjoyment of the use, operation and possession by the Facility Lessee of the interest in the Undivided Interest conveyed by this Facility Lease subject to the terms of this Facility Lease; provided that the Facility Lessor's covenant not to interfere or interrupt the Facility Lessee's quiet enjoyment does not purport to cover actions of (or interference or interruption by), or bind the Lenders, the obligees under the First Mortgage, any of the LG&E Entities, the Head Lessor or the Ground Lessor or any Affiliate of the foregoing and the Facility Lessor hereby disclaims any obligation or any liability for any such actions, interference or interruption by any such Persons.

SECTION 5. RETURN OF UNDIVIDED INTEREST

Section 5.1 Return. Upon (a) the expiration of the Basic Term unless the Facility Lessee shall have purchased the Undivided Interest pursuant to Section 15.1, (b) any early termination of this Facility Lease other than a termination in accordance with Section 10 or 13 or unless the Facility Lease Term shall be extended for an Extension Period pursuant to Section 17.2, or (c) termination of the Extension Period, the Facility Lessee, at its own expense, shall return the Undivided Interest by delivering possession of the same to the Facility Lessor at the location of the Facility on the Site near Centertown, Kentucky.

Section 5.2 Condition Upon Return. Except with respect to a return of any portion of the Undivided Interest pursuant to Section 14.3, at the time of any return of the Undivided Interest by the Facility Lessee in accordance with Section 5.1, the following conditions shall be complied with, all at the Facility Lessee's sole cost and expense:

(a) the right to use the Undivided Interest granted hereunder for the benefit of the Facility Lessee shall cease and terminate;

(b) the Facility will be in at least as good condition as if it had been maintained, repaired and operated during the Facility Lease Term in compliance with the provisions of this Facility Lease and there shall be no deferred maintenance, scheduled or otherwise, in respect of the Facility;

(c) the Facility Lessee shall cooperate with all reasonable requests of the Owner Participant or the Facility Lessor, at the expense of the Facility Lessee, for purposes of obtaining, or enabling the Owner Participant or the Facility Lessor or their respective designees to obtain, any and all licenses, permits, approvals and consents of any Governmental Entities or other Persons that are or will be required to be obtained by the Owner Participant or the Facility Lessor in connection with its use, operation or maintenance of the Undivided Interest on or after such return in compliance with Applicable Law;

(d) the Facility Lessee shall return and surrender possession of the Undivided Interest to the Facility Lessor (or its designee) free and clear of Liens (other than Permitted Liens referred to in clauses (v) and (x) (but only if the Undivided Interest is returned prior to the expiration of the LG&E Arrangements) and clauses (vi), (viii), (ix) and (xi) of the definition thereof), except to the extent of the interests of the Facility Lessor under the Head Lease and the Ground Lease;

(e) the Facility and all its material Components shall have at least the capability and functional ability to perform substantially as designed, on a continuing basis in normal commercial operation, all functions for which it was designed (ordinary wear and tear excepted);

(f) the Facility shall be in compliance with all requirements of manufacturers required for the maintenance in full force and effect of any material warranty then in effect; and

(g) no Component shall be a temporary Component and any replacement Component shall satisfy the standards of Section 7.2. Prior to redelivery of the Undivided Interest under this Section 5.2, the Facility Lessee shall, at its own cost and expense, perform any maintenance required in order to meet the conditions of return required in this Section 5.2. The Facility Lessee will also, at the cost and expense of the Facility Lessor, perform such maintenance on the Facility which is in addition to that otherwise required to be performed by the Facility Lessee hereunder as the Facility Lessor may reasonably specify (using its best efforts on a time-available basis for such work). If the Facility Lessee is unable to perform such requested maintenance, it will use its best efforts to arrange to have such maintenance performed by a Person acceptable to the Facility Lessor at market rates. The Facility Lessor shall promptly pay such rates charged by any such Person in connection with such requested maintenance. The Facility Lessee shall also surrender to the Facility Lessor originals or copies of all documents, instruments, plans, maps, specifications, manuals, drawings and other documentary materials relating to the installation, operation, maintenance, construction, design, modification and repair of the Facility, as shall be in the Facility Lessee's possession and shall be reasonably appropriate or necessary for the continued operation of the Facility. The Facility Lessee shall effect delivery of such Undivided Interest at its own cost and expense by executing and delivering to the Facility

Lessor an instrument or instruments in form and substance reasonably satisfactory to the Facility Lessor evidencing surrender by the Facility Lessee of the Facility Lessee's rights to the Undivided Interest under this Facility Lease and to the possession thereof. At least 120 but not more than 160 days prior to redelivery of the Undivided Interest pursuant to this Section 5.2, the Facility Lessee shall perform the Return Acceptance Tests under the supervision of an Independent Engineer (the fees and expenses of such Independent Engineer to be borne by the Facility Lessee), and shall promptly provide the results to the Facility Lessor (such results shall have previously been reviewed by such Independent Engineer and acceptable to it). If the Facility shall not pass such tests, the Facility Lessee shall, at its own expense, (x) take such actions as may be necessary and recommended by such Independent Engineer to enable the Facility to pass such tests, (y) permit such Independent Engineer to oversee such actions and (z) obtain such Independent Engineer's certification to the Owner Participant of the passage of such tests prior to such delivery date. At the Facility Lessor's request, if possible and commercially reasonable, the Facility Lessee shall provide insurance in accordance with Section 11 hereof for three months following the date of return of the Undivided Interest at the Facility Lessor's sole cost and expense which cost and expense shall equal the Facility Lessee's actual cost and expense for such insurance;

(h) At the time of any return of the Undivided Interest by the Facility Lessee pursuant to Section 14.3, the conditions set forth in clauses (a), (b), (c), (d), (f) and (g) of this Section 5.2 shall be complied with at the Facility Lessee's sole cost and expense.

Section 5.3 Environmental Reports and Permits. In connection with a return pursuant to Section 5.1 or Section 14.3, the Facility Lessee shall provide the Facility Lessor and the OP Trust, at least 180 days but not more than 270 days prior to such return, an inspection report prepared by a reputable environmental consulting firm (selected by the OP Trust and reasonably acceptable to the Owner Participant and the Facility Lessee) as to the environmental condition and the compliance or non-compliance with applicable Environmental Laws of the Facility and the Site, in form, scope and substance reasonably satisfactory to the OP Trust. The cost and expense of preparing and providing such report shall be for the account of the Facility Lessee. The provisions of such report shall not relieve the Facility Lessee of its indemnification obligations under the Participation Agreement or of any liability with respect to environmental conditions, known or unknown, in respect of the Facility or the Site and the Facility Lessee will take any and all actions with appropriate diligence and in good faith to ensure that the Facility and the Site comply with all applicable Environmental Laws. If such report shall indicate that either the Facility or the Site are not in compliance with applicable Environmental Laws, the Facility Lessee shall, within 90 days of the Facility Lessor having received such inspection report, (a) provide the OP Trust (with a copy to the Owner Participant) with a plan to bring the Facility and the Site (including, without limitation, each item disclosed on Schedule 3 to the Participation Agreement if such item indicates any non-compliance with applicable Environmental Laws at the time of the return at, in, on, under or as a result of migration from the Facility or the Site) into compliance (and if required by applicable Environmental Law, submit such plan to the applicable Governmental Entity for approval), which plan will be designed to ensure that the Facility and the Site (including, without limitation, each item disclosed on Schedule 3 to the Participation Agreement if such item indicates any non-compliance with applicable Environmental Laws at the time of the return at, in, on, under or as a result of migration from the Facility or the Site) will be brought into compliance with applicable

Environmental Laws as promptly as is reasonably practicable and without materially adversely affecting the continued operation of the Facility or the Site and (b) (i) place in escrow funds in an amount corresponding to the Facility Lessor's Percentage of the cost estimate of such remediation plan (as certified by the environmental consulting firm that prepared such report or another expert reasonably satisfactory to the OP Trust), which escrow shall provide for the payment of the costs of such plan as the same become due and payable or (ii) make other arrangements that are satisfactory to the OP Trust, as determined in its sole discretion acting in good faith, for such purposes. In addition, in connection with a return of the Undivided Interest pursuant to Section 5.1 or Section 14.3, if any environmental permit applicable to the Facility or the Site contains emission or discharge limits that apply jointly to (i) the Facility or the Site and (ii) any other facility or site, then the Facility Lessee, prior to such return, shall (a) use its best efforts to obtain environmental permits that pertain only to the Facility or the Site as a discrete and separate source distinct from any other facility or site or (b) make such other arrangements that are satisfactory to the OP Trust, as determined in the sole discretion of the OP Trust acting in good faith. The obligations of the Facility Lessee set forth in this Section 5.3 shall survive the termination of this Facility Lease and the expiration of the Facility Lease Term. The Facility Lessee and the Facility Lessor agree that references to "Site" in this Section 5.3 shall be deemed to include the Easement Sites.

Section 5.4 Expenses. The Facility Lessee agrees to pay or reimburse, on an After-Tax Basis, on demand, all costs and expenses incurred by the Facility Lessor, the OP Trust, the Owner Participant and the Lenders in connection with any return contemplated by this Section 5.

Section 5.5 Emissions Allowances. Subject to the rights of the LG&E Entities and their successors and assigns under the LG&E Arrangements, in connection with a return of the Undivided Interest pursuant to Section 5.1 or Section 14.3, the Facility Lessee shall immediately transfer to the Facility Lessor, free of all Liens, the Facility Lessor's Percentage of all Emissions Allowances allocated by the EPA or any other Governmental Entity to the Facility for all years beginning on or after the date of such return and a pro rata portion for the remainder of the year in which the return occurs. To the extent the Facility Lessee previously disposed of any such Emissions Allowances which should otherwise be transferred to the Facility Lessor upon such return, the Facility Lessee shall have the obligation on the date of such return to replace, at its sole cost and expense, all such Emissions Allowances and to transfer such Emissions Allowances, free of all Liens, to the Facility Lessor; *provided, however*, that from and after the date of such return and during the Head Lease Term, the Facility Lessee may purchase annually, at fair market value, from the Facility Lessor, any Emissions Allowances allocated by the EPA or any Governmental Entity which the Facility Lessor reasonably has determined in good faith are excess allowances that are not needed in connection with the Facility in order for the Facility to operate in full compliance with Environmental Laws.

SECTION 6. LIENS

The Facility Lessee will not directly or indirectly agree or purport to sell or hypothecate the Facility or create, incur, assume or suffer to exist any Lien on or with respect to the Facility, the Site, the Undivided Interest or any interest therein or in, to or on its interest in this Facility Lease or its interest in any other Operative Document, except Permitted Liens, and the Facility Lessee shall promptly notify the Facility Lessor of the imposition of any such Lien of which the

Facility Lessee is aware and shall promptly, at its own expense, take such action (including exercising its rights of eminent domain) as may be necessary to fully discharge or release any such Lien.

SECTION 7. MAINTENANCE; REPLACEMENTS OF COMPONENTS

Section 7.1 Maintenance. The Facility Lessee, at its own cost and expense, will cause the Facility to be maintained (a) in accordance with Prudent Utility Practice, (b) in substantial compliance with all Applicable Laws including Environmental Laws, (c) in substantial compliance with any standards imposed by any insurance policies maintained pursuant to the provisions of the WKEC Lease, and subsequent to the expiration of the WKEC Lease, any insurance policies maintained pursuant to the provisions of Section 11 of this Facility Lease and (d) during the term of the LG&E Arrangements, in compliance with the requirements of the LG&E Arrangements. If the Facility Lessor shall, in good faith, conclude that it believes the Facility is *not being maintained* (including the making of Required Modifications and Optional Modifications required by Prudent Utility Practice) in accordance with the standard required by the preceding sentence it may provide the Facility Lessee with written notice to such effect. If the Facility Lessee shall disagree with such conclusion, the Facility Lessor shall appoint an Independent Engineer to prepare a report as to whether the Facility has been maintained in accordance with such standard. If the Independent Engineer concludes the Facility has been maintained in accordance with the requirements of this Section, the costs of such Independent Engineer shall be borne by the Facility Lessor. If the Independent Engineer concludes that the Facility has not been maintained in accordance with the standard of this Section, the costs and expenses of such Independent Engineer shall be borne by the Facility Lessee. If the Independent Engineer concludes that the Facility has not been maintained in accordance with this Section, the Facility Lessee shall use its best efforts, including, during the term of the LG&E Arrangements, pursuing its available remedies under the WKEC Lease and related provisions of the LG&E Participation Agreement, to ensure compliance with the recommendations of such Independent Engineer including commencing any arbitration proceeding as provided for under the terms of the WKEC Lease and related provisions of the LG&E Participation Agreement. If the arbitration proceeding pursued in accordance with the WKEC Lease and related provisions of the LG&E Participation Agreement conclude that the Facility has been maintained in accordance with the standard set forth in the first sentence of this Section, such conclusion shall be conclusive for purpose of this Section of this Facility Lease.

Section 7.2 Replacement of Components. In the ordinary course of maintenance, service, repair or testing, the Facility Lessee, at its own cost and expense, may remove or cause to be removed from the Facility any Component; provided, however, that the Facility Lessee shall as promptly as practicable cause such Component to be replaced by a replacement Component which shall be free and clear of all Liens (except Permitted Liens). Following such replacement of a Component with a replacement Component, the Facility shall have a fair market value, residual value, and remaining useful life at least equal to that of the Facility prior to such replacement, assuming the Facility was in at least the condition and repair required to be maintained in accordance with the terms of this Facility Lease (each such replacement Component being herein referred to as a "Replacement Component"). An undivided interest equal to the Facility Lessor's Percentage in each Component at any time removed from the Facility shall remain subject to the Head Lease and this Facility Lease, wherever located, until

such time as such Component shall be replaced by a Replacement Component which has been incorporated in the Facility and which meets the requirements for Replacement Components specified above. Immediately upon any Replacement Component becoming incorporated in the Facility without further act (and at no cost to the Facility Lessor and with no adjustment to the Undivided Interest Cost or Basic Rent), (i) the replaced Component shall no longer be subject to the Head Lease or this Facility Lease, (ii) title to such Replacement Component shall vest in the Facility Lessee and shall become subject to the First Mortgage and the Subordinated Mortgage, (iii) an undivided interest equal to the Facility Lessor's Percentage in the Replacement Component shall thereupon become subject to the Head Lease, and (iv) an undivided interest equal to the Facility Lessor's Percentage in such Replacement Component shall become subject to this Facility Lease and be deemed a part of the Facility for all purposes hereof. Notwithstanding anything in this Section 7.2 or elsewhere in this Facility Lease to the contrary, if the Facility Lessee has determined that a Component is surplus or obsolete, it shall have the right to remove such Component without replacing it; provided that no such Component may be so removed without being replaced if such removal would diminish the fair market value or residual value of the Facility by more than a de minimis amount or diminish the remaining useful life of the Facility or cause the Facility or the Undivided Interest to become "limited use" property within the meaning of Rev. Proc. 76-30, 1976-2 C.B. 647.

Section 7.3 Records. The Facility Lessee shall maintain logs of the operation of the Facility, including, without limitation, the maintenance and repair reports (including, without limitation, costs), annual capital expenditure budgets, availability rates, forced outages and heat rates, to the extent that such records are kept as a normal part of the Facility Lessee's operations or are obtained from WKEC in accordance with the provisions of the LG&E Operative Documents. Such records shall (and with respect to records obtained from WKEC during the term of the LG&E Arrangements, to the extent permitted under the terms of the WKEC Lease and subject to the execution by the Facility Lessor or the Owner Participant, as applicable, of a confidentiality agreement in form and substance reasonably satisfactory to Big Rivers and WKEC), be made available upon the Facility Lessor's request during any inspection of the Facility by the Facility Lessor or the Owner Participant and shall be deemed the property of the Facility Lessor upon the expiration or earlier termination of the Facility Lease; provided, however, that the Facility Lessee shall be entitled to keep copies of such records.

SECTION 8. MODIFICATIONS

Section 8.1 Required Modifications and Modifications Required by LG&E Arrangements. The Facility Lessee, at its own cost and expense, shall make or cause to be made all Modifications to the Facility as are necessary, consistent with Prudent Utility Practice, to comply with Applicable Law (each, a "Required Modification"). Prior to the expiration or termination of the LG&E Arrangements, the Facility Lessee, at its own cost and expense, shall also cause to be made all Modifications to the Facility as are required by the LG&E Arrangements.

Section 8.2 Optional Modifications. Prior to the expiration of the term of the WKEC Lease, the Facility Lessee may, at its own cost and expense, permit to be made, and subsequent to the expiration of the term of the WKEC Lease, so long as no Bankruptcy Default, Payment Default or Event of Default exists, the Facility Lessee may, at its own cost and expense, make or cause to be made, any Modification to the Facility as the Facility Lessee considers desirable in

the proper conduct of its business (an "Optional Modification"); provided that each such Optional Modification to the Facility (a) is consistent with Prudent Utility Practice, (b) causes no physical damage to the Facility, (c) does not adversely affect the fair market value, residual value or remaining useful life of the Facility so as to cause such values or remaining useful life to fall below the fair market value, residual value or remaining useful life thereof immediately prior to such Optional Modification assuming the Facility was then in the condition required to be maintained by the terms of this Facility Lease, or (d) shall not cause the Facility or the Undivided Interest to become "limited use" property, within the meaning of Rev. Proc. 76-30, 1976-2 C.B. 647.

Section 8.3 Title to Modifications; Subjection to Head Lease and Facility Lease. Title to all Modifications to the Facility shall immediately vest in the Facility Lessee and shall become subject to the Lien of the First Mortgage and the Lien of the LG&E Interests (to the extent provided by the LG&E Arrangements). An undivided interest equal to the Facility Lessor's Percentage in all Required Modifications which are incorporated in the Facility shall immediately become subject to the Head Lease and this Facility Lease (at no cost to the Facility Lessor and with no adjustment to the Undivided Interest Cost) and be deemed a part of the Facility for all purposes hereof, and the Facility Lessee, at its own cost and expense, shall take such steps as the Facility Lessor may require from time to time to confirm that the foregoing Required Modifications (whether Severable Modifications or Nonseverable Modifications) are subject to the Head Lease.

Section 8.4 Report of Modifications. On or before April 1 of each year (commencing April 1, 2001) and on the expiration of the Facility Lease Term, the Facility Lessee shall furnish to the Facility Lessor a report stating the total cost of all Modifications and describing separately and in reasonable detail each Modification having a value in excess of \$5,000,000 placed in service during the period from the Closing Date to December 31, 2001 for the first report and annually thereafter based on a calendar year period for subsequent reports.

Section 8.5 Financing of Modifications. The Facility Lessee shall have the right to fund the costs of any Modification made pursuant to this Section 8 through the issuance of additional notes or bonds under the First Mortgage if permitted by, and in accordance with, the terms thereof.

SECTION 9. NET LEASE

This Facility Lease is a "net lease" and, notwithstanding anything herein to the contrary, the Facility Lessee's obligation to pay all Rent payable hereunder (and all amounts, including, without limitation, Termination Value, in lieu of Rent following termination of this Facility Lease) shall be absolute and unconditional under any and all circumstances and shall not be terminated, extinguished, diminished, lost or otherwise impaired, nor shall the Facility Lessee's other obligations hereunder or the Facility Lessor's rights hereunder be terminated, extinguished, diminished, lost or otherwise impaired, by any circumstance of any character or for any reason whatsoever, whether or not the same involves the loss of all or any part of the leasehold estate granted by this Facility Lease, including, without limitation, (i) any setoff, counterclaim, recoupment, defense or other right which the Facility Lessee may have against the Facility Lessor, the OP Trust, the Owner Participant or either Lender or any other Person, including,

without limitation, any breach by any of said parties of any covenant or provision under this Facility Lease or under any Transaction Document, (ii) any lack or invalidity of title or any defect in the title, condition, design, operation, merchantability or fitness for use of any of the Facility or any Component, or any foreclosure or deed in lieu of foreclosure of the First Mortgage, the LEM Mortgage or the LG&E Subordinated Mortgage, or any termination of this Facility Lease as a result thereof by operation of law or contract, or any eviction by paramount title or otherwise, or any unavailability of any of the Facility, the Site, the Easement Site, the Licenses, any Component, any other portion of the Facility Lessee's Interest or the interest of any other Person or any part of the foregoing for any reason whatsoever, (iii) any loss or destruction of, or damage to, any of the Facility or any Component or interruption or cessation in the use or possession thereof or any part of the foregoing by the Facility Lessee for any reason whatsoever and of whatever duration, (iv) the condemnation, requisitioning, expropriation, seizure or other taking of title to or use of the Facility, the Site, the Easement Site, any Component, any other portion of the Facility Lessee's Interest or any part of the foregoing by any Governmental Entity or otherwise, (v) the invalidity or unenforceability or lack of due authorization or other infirmity of this Facility Lease or any other Operative Document, (vi) the lack of right, power or authority of the Facility Lessor to enter into this Facility Lease or any other Operative Document, (vii) any ineligibility of the Facility or any Component for any particular use, whether or not due to any failure of the Facility Lessee to comply with any Applicable Law, (viii) any event of "force majeure" or any frustration, (ix) any legal requirement similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, (x) any insolvency, bankruptcy, reorganization or similar proceeding by or against the Facility Lessee or any other Person, (xi) any Lien of any Person with respect to the Facility, the Site, the Easement Site, any Component, any other portion of the Facility Lessee's Interest or any part of the foregoing, (xii) the existence of the Payment Agreement, the Payment Agreement FGIP, Payment Agreement Pledge, the Funding Agreement, the Funding Agreement FGIP, the Funding Agreement Pledge, the Government Securities, the Government Securities Pledge Agreement or the Series B Loan FGIP (other than to the extent of the Rent payments discharged from any remittance from and of such agreements, contract or FGIPs) and any other Operative Document, or (xiii) any other cause, whether similar or dissimilar to the foregoing, any present or future law notwithstanding, except as expressly set forth herein or in any other Operative Document, it being the intention of the parties hereto that all Rent payable by the Facility Lessee hereunder shall continue to be payable in all events in the manner and at times provided for herein. Such Rent shall not be subject to any abatement and the payments thereof shall not be subject to any setoff or reduction for any reason whatsoever, including any present or future claims of the Facility Lessee or any other Person against the Facility Lessor or any other Person under this Facility Lease or otherwise. To the extent permitted by Applicable Law, the Facility Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Facility Lease with respect to the Undivided Interest, except in accordance with Section 10, 13, 14 or 15. If for any reason whatsoever this Facility Lease shall be terminated in whole or in part by operation of law or otherwise, except as specifically provided herein, the Facility Lessee nonetheless agrees to the extent permitted by Applicable Law, to pay to the Facility Lessor an amount equal to each installment of Basic Rent and all Supplemental Rent due and owing, at the time such payment would have become due and payable in accordance with the terms hereof had this Facility Lease not been so terminated. The provisions of this Section 9 shall survive the

termination for any reason whatsoever of the leasehold interest created by this Facility Lease. Upon and after termination of the leasehold interest hereby granted for any reason whatsoever, the Facility Lessee shall pay to the Facility Lessor, in lieu of the Rent payable hereunder, an amount equal to such Rent, and this obligation is expressly agreed to be a covenant of the Facility Lessee that is independent of the existence of such leasehold interest. The obligations of the Facility Lessee to pay all amounts hereunder other than Rent are also covenants that are independent of the existence of such leasehold interest and shall survive the termination thereof for any reason whatsoever.

SECTION 10. EVENTS OF LOSS

Section 10.1 Occurrence of Events of Loss. The Facility Lessee will promptly notify the Facility Lessor, the OP Trust, the Owner Participant and the Lenders of any damage to, or other event with respect to, the Facility which the Facility Lessee reasonably anticipates may cause an Event of Loss described in clause (i), (ii) or (iii) of the definition of Event of Loss. The OP Trust, the Owner Participant or the Facility Lessor will promptly notify the Facility Lessee of any event of which it has Actual Knowledge that upon election of the Owner Participant would result in an Event of Loss described in clause (iv) of the definition of Event of Loss. If an Event of Loss described in clauses (i) or (ii) of the definition of Event of Loss shall occur, then no later than twelve months following such occurrence, the Facility Lessee shall notify the Facility Lessor, the OP Trust, the Owner Participant and the Lenders in writing of its election to either (a) if no Event of Default has occurred and is continuing, subject to the satisfaction of the conditions set forth in Section 10.3, rebuild the Facility (other than any Optional Modifications constituting Enhancements or Major Capital Improvements) suffering the Event of Loss in accordance with the Operative Documents and the LG&E Arrangements, and the First Mortgage so that the Facility shall have a fair market value, residual value and remaining useful life at least equal to that prior to such rebuilding, assuming that the Facility was in the condition and repair required to be maintained by this Facility Lease, or (b) terminate this Facility Lease pursuant to Section 10.2 hereof. If the Facility Lessee fails to make an election as provided above, an Event of Loss shall be deemed to occur as of the end of the twelve month period referred to in the third sentence of this Section 10.1 and the Facility Lessee will be deemed to have made the election to terminate this Facility Lease pursuant to Section 10.2.

Section 10.2 Payment of Relevant Termination Value; Termination of Basic Rent. (a) If (x) the Facility Lessee shall elect pursuant to Section 10.1 hereof not to rebuild the Facility following an Event of Loss described in clause (i) or (ii) of the definition of Event of Loss or an Event of Loss shall be deemed to occur pursuant to the last sentence of Section 10.1, or (y) an Event of Loss described in clause (iii) or (iv) of the definition of Event of Loss shall occur, then, on the next Termination Date following the Facility Lessee's notice of its election to terminate this Facility Lease referred to in the third sentence of Section 10.1 or the occurrence of a deemed Event of Loss pursuant to the last sentence of Section 10.1 in the case of clause (x) above, or on the next Termination Date occurring at least three months after such occurrence of such Event of Loss in the case of clause (y) above, the Facility Lessee shall pay to the Facility Lessor (A) the Termination Value determined as of the Termination Date, plus (B) all amounts of Supplemental Rent (including, without limitation, all costs and expenses of the Facility Lessor, the Trustee, the Owner Trustee, the OP Trust, the Owner Participant and the Lenders, and all sales, use, value added and other Taxes required to be indemnified by the Facility Lessee pursuant to Section 9.2

of the Participation Agreement associated with the exercise of the termination option pursuant to this Section 10.2) due and payable on or prior to such Termination Date, plus (C) any unpaid Basic Rent due before such Termination Date plus (D) if the Series B Loan Certificate shall be prepaid, any Make Whole Payment payable.

(b) Concurrently with the payment of all sums required to be paid pursuant to this Section 10.2, (1) Basic Rent for the Undivided Interest shall cease to accrue, (2) [reserved], (3) the Facility Lessee shall cease to have any liability to the Facility Lessor with respect to the Undivided Interest except for Supplemental Rent and other obligations (including, without limitation, those under Sections 9.1 and 9.2 of the Participation Agreement) surviving pursuant to the express provisions of any Operative Document, (4) the Facility Lessor will prepay or partially prepay the Loan Certificates pursuant to Section 2.10 of the Leasehold Mortgage, (5) the Facility Lessor will at the Facility Lessee's cost and expense execute and deliver to the Facility Lessee a release or termination or partial release or termination with respect to the Undivided Interest, as appropriate, of this Facility Lease, (6) the Facility Lessor shall transfer the Facility Lessor's Interest in the Undivided Interest to the Facility Lessee pursuant to this Section 10.2 and Section 9 of the Head Lease on an "as is", "where is" and "with all faults" basis, without representations or warranties other than a warranty as to the absence of Facility Lessor's Liens attributable to it accompanied by a warranty of the Owner Participant as to the absence of Owner Participant's Liens, and (7) this Facility Lease shall terminate with respect to the Undivided Interest and the Facility Lessor shall discharge the Lien of the Leasehold Mortgage on the Undivided Interest and execute and deliver appropriate releases and other documents or instruments necessary or desirable to effect the foregoing, all to be prepared, filed and recorded (as appropriate) at the cost and expense of the Facility Lessee.

(c) Any payments with respect to the Undivided Interest received at any time by the Facility Lessor or the Facility Lessee from any Governmental Entity as a result of the occurrence of an Event of Loss described in clause (iii) of the definition of Event of Loss shall be applied in accordance with the First Mortgage and the LG&E Arrangements and any payments from such Governmental Entity remaining after such application under the First Mortgage and the LG&E Arrangements shall be applied as follows:

(i) so much of such payments as shall not exceed the amount required to be paid by the Facility Lessee pursuant to clause (A) of paragraph (a) of this Section 10.2 shall be applied to the Facility Lessor in reduction of the Facility Lessee's obligation to pay such amount if not already paid by the Facility Lessee or, if already paid by the Facility Lessee, shall be applied to reimburse the Facility Lessee for its payment of such amount; and

(ii) the balance, if any, of such payments remaining thereafter shall be apportioned between the Facility Lessor and the Facility Lessee in the proportion that the value of the Facility Lessor's Interest bears to the value of the Facility Lessee's Interest.

Section 10.3 Rebuild. The Facility Lessee's right to rebuild the Facility pursuant to clause (a) of Section 10.1 hereof shall be subject to the fulfillment, at the Facility Lessee's sole cost and expense, in addition to the conditions contained in said clause (a), of the following conditions:

(a) on the date the Facility Lessee shall notify the Facility Lessor pursuant to Section 10.1 of its election to rebuild the Facility in accordance with this Section 10.3, the Facility Lessee shall deliver to the Owner Participant an opinion of independent tax counsel (such counsel to be selected by the Owner Participant and to be reasonably acceptable to the Facility Lessee), to the effect that such rebuilding will not cause any unindemnified adverse tax consequences to the OP Trust, the Owner Participant or any Affiliate. Any such indemnity must be in form and substance satisfactory to the Owner Participant in its sole discretion exercised in good faith, including, without limitation, in respect of security arrangements which the Owner Participant, in its sole discretion exercised in good faith, may require to collateralize any such indemnity;

(b) on the date the Facility Lessee shall notify the Facility Lessor pursuant to Section 10.1 of its election to rebuild the Facility in accordance with this Section 10.3, the Facility Lessee shall deliver to the OP Trust, the Owner Participant and the Lenders a report of an independent engineer qualified in the analysis of electric generating facilities (such engineer and such report to be reasonably satisfactory to such parties), to the effect that the rebuilding of the Facility is technologically feasible and economically viable and, unless the Facility Lessee shall have delivered to the Facility Lessor irrevocable notice of its election to exercise the Purchase Option with respect to the Undivided Interest, that it is reasonable to expect that such rebuilding can be completed by a date 18 months prior to the end of the Facility Lease Term;

(c) on the date the Facility Lessee shall notify the Facility Lessor pursuant to Section 10.1 of its election to rebuild the Facility in accordance with this Section 10.3, the Facility Lessee shall demonstrate to the reasonable satisfaction of the Owner Participant that it has adequate financial resources, from insurance proceeds or otherwise, to complete such rebuilding (including, prior to the expiration of the LG&E Arrangements, financial resources made available by any of the LG&E Entities, but excluding recourse to the Payment Agreement, the Funding Agreement or the Government Securities);

(d) the Facility Lessee shall cause the rebuilding of the Facility, other than Enhancements and Major Capital Improvements (except where WKEC elects to rebuild such Enhancement and Major Capital Improvements), to commence within 24 months of the occurrence of the event that caused such Event of Loss and will cause work on such rebuilding to proceed diligently thereafter and, in any event, so as to complete such work no later than 18 months prior to the end of the Facility Lease Term unless Big Rivers has previously exercised the Purchase Option with respect to the Undivided Interest under Section 15.1. In connection with such rebuilding, Enhancements and Major Capital Improvements incorporated in the Facility suffering the Event of Loss may or may not be rebuilt. The Lessee shall rebuild, or cause to be rebuilt, the Facility, other than Enhancements or Major Capital Improvements, to substantially the same general condition, character and use as existed prior to the damage or destruction causing such Event of Loss. If the Enhancements or Major Capital Improvements to the Facility are not rebuilt, the Facility Lessee shall be obligated to maintain, or cause to be maintained, the remains of such Enhancements or Major Capital Improvements in accordance with Prudent Utility Practice and Applicable Laws and all requirements of insurance policies required under the terms of Section 11. The Facility Lessee shall remove, or cause to be removed from the Site, the remains of any Enhancements or Major Capital Improvements which are not rebuilt, without damage to the Facility on the Site, no later than the expiration of the

LG&E Arrangements (or within a reasonable period after the termination of the LG&E Arrangements if the LG&E Arrangements are terminated prior to December 31, 2023). As the rebuilding of the Facility progresses, title to such rebuilt facilities (other than facilities constituting Severable Modifications prior to the Event of Loss) shall immediately vest in the Facility Lessee, subject to the Lien of the First Mortgage, and an undivided interest equal to the Facility Lessor's Percentage in such rebuilt facilities (other than facilities constituting Severable Modifications prior to the Event of Loss) shall become subject to the Head Lease and to this Facility Lease, automatically, for all purposes hereof, without any further act by any Person;

(e) insurance proceeds received at any time as a result of the occurrence of an Event of Loss described in clauses (i) and (ii) of the definition thereof will be applied in accordance with the provisions of the LG&E Arrangements, the First Mortgage and any sums remaining after such application will be applied in accordance with the provisions of this Facility Lease and the other Operative Documents. Any insurance proceeds remaining after such application shall be paid to the Facility Lessor (or, so long as the Lien of the Leasehold Mortgage shall not have been discharged in accordance with Section 7.01 thereof, the Agent), and remitted to the Facility Lessee from time to time upon requisition thereof by the Facility Lessee certifying in reasonable detail the actual cash expenditures made to date in connection with the rebuilding. On the date of completion of such rebuilding of the Facility, remaining insurance proceeds shall be paid over to the Facility Lessee; and

(f) on the date of the completion of such rebuilding of the Facility (the "Rebuilding Closing Date"), the following documents shall be duly authorized, executed and delivered and, if appropriate, filed for recordation by the respective party or parties thereto and shall be in full force and effect, and an executed counterpart of each thereto shall be delivered to the Facility Lessor, the OP Trust, the Owner Participant and the Lenders; (1) supplements to the Head Lease and this Facility Lease subjecting an undivided interest equal to the Facility Lessor's Percentage in such rebuilt facilities (other than facilities constituting Severable Modifications prior to the Event of Loss) to the Head Lease and this Facility Lease (with no change in Undivided Interest Cost or Basic Rent as a result of such replacement), (2) a supplement to the Leasehold Mortgage subjecting an undivided interest equal to the Facility Lessor's Percentage in such rebuilt facilities to the Lien of the Leasehold Mortgage, (3) supplements to the First Mortgage and Subordinated Mortgage subjecting an undivided interest equal to the Facility Lessor's Percentage in such rebuilt facilities to the Liens of the First Mortgage and Subordinated Mortgage, (4) such recordings and filings as may be reasonably requested by the OP Trust, the Owner Participant and the Lenders to be made or filed, (5) an opinion of counsel of the Facility Lessee, such counsel and such opinion to be reasonably satisfactory to OP Trust, the Owner Participant and the Lenders, to the effect that (w) the supplements to the Head Lease and this Facility Lease referred to in clause (1) above constitute effective instruments for subjecting such portion of the rebuilt facilities to the Head Lease and this Facility Lease, (x) the supplement to the Leasehold Mortgage referred to in clause (2) above constitutes an effective instrument for subjecting such portion of the rebuilt facilities to the Lien of the Leasehold Mortgage, (y) the supplements to the First Mortgage and Subordinated Mortgage referred to in clause (3) above constitute effective instruments for subjecting such portion of the rebuilt facilities to the Liens of the First Mortgage and Subordinated Mortgage, and (z) all filings and other actions necessary to perfect and protect the Facility Lessor's right, title and interest in such portion of the rebuilt facilities and to subject the Facility Lessor's right, title and interest in such portion of the rebuilt

facility to the Liens of the Leasehold Mortgage have been accomplished, and (6) satisfactory evidence as to the compliance with Section 11 of this Facility Lease with respect to the Facility, as so rebuilt.

Whether or not the transactions contemplated by this Section 10.3 are consummated, the Facility Lessee agrees to pay or reimburse, on an After-Tax Basis, any costs or expenses (including reasonable legal fees and expenses) incurred by the Facility Lessor, the OP Trust, the Owner Participant and the Lenders in connection with the transactions contemplated by this Section 10.3.

Section 10.4 Eminent Domain. In the event that during the Facility Lease Term the use of all or any portion of the Undivided Interest is requisitioned or taken by or pursuant to a request of any Governmental Entity under the power of eminent domain or otherwise for a period which does not constitute an Event of Loss, the Facility Lessee's obligation to pay all installments of Basic Rent shall continue for the duration of such requisitioning or taking. All sums payable for any such period by such Governmental Entity as compensation for such requisition or taking of possession shall be applied in accordance with the LG&E Arrangements and the First Mortgage, and any sums remaining after such application shall be payable to the Facility Lessee. Any amount referred to in this Section 10.4 which is payable to the Facility Lessee shall not be paid to the Facility Lessee, or if it has been previously paid directly to the Facility Lessee, shall not be retained by the Facility Lessee, if at the time of such payment a Payment Default, Bankruptcy Default or Event of Default shall have occurred and is continuing, but shall be paid to and held by the Facility Lessor (or, so long as the Lien of the Leasehold Mortgage shall not have been discharged in accordance with Section 7.01 thereof, the Agent) as security for the obligations of the Facility Lessee under this Facility Lease, and upon the earlier of (a) 180 days after the Facility Lessor (or, so long as the Lien of the Leasehold Mortgage shall not have been discharged in accordance with Section 7.01 thereof, the Agent) shall have received such amount, provided the Facility Lessor (or, so long as the Lien of the Leasehold Mortgage shall not have been discharged in accordance with Section 7.01 thereof, the Agent) has not proceeded to exercise any remedy under Section 17 and it is not stayed or prevented by law or otherwise from exercising such remedy and (b) such time as there shall not be continuing any such Payment Default, Bankruptcy Default or Event of Default, such amount shall be paid to the Facility Lessee.

SECTION 11. INSURANCE.

Section 11.1 Property Insurance. Subject to availability on commercially reasonable terms, the Facility Lessee will maintain, or cause to be maintained, property insurance with respect to the insurable values of the Facility in accordance with the terms of the LG&E Arrangements which, as of the Closing Date, is in an amount equal to gross book cost (less capitalized interest and one-half the capitalized engineering cost) of the Facility adjusted by the Handy-Whitman Index of Public Utility Construction Costs, or in the alternative, replacement cost new of the Facility as determined in an independent appraisal; and boiler and machinery insurance. All property insurance deductibles shall be as (i) customarily carried according to the standards prevailing in the electric power industry (including the independent power industry) for assets of similar size and nature, not to exceed \$1,000,000 and (ii) permitted under the insurance policies maintained pursuant to the WKEC Lease including the "deductible buyback"

arrangement maintained in accordance with the Lease which creates a layer of WKEC self insurance above the deductible levels.

Section 11.2 Liability Insurance. Subject to availability on commercially reasonable terms, the Facility Lessee will maintain or caused to be maintained commercial general liability insurance, in accordance with the terms of the LG&E Arrangements, insuring against claims for bodily injury (including death) and property damage to third parties arising out of the ownership, operation, maintenance, condition and use of the Facility, the Site and the Easement Site with limits not less than \$35 million per occurrence or in the aggregate with a deductible not to exceed \$1,000,000 per occurrence. If such amounts of liability insurance are not available on commercially reasonable terms, the Facility Lessee will maintain or cause to be maintained such amounts as are available on commercially reasonable terms not less than \$10 million per occurrence. The amounts of liability insurance required to be maintained or caused to be maintained by the Facility Lessee shall be subject to adjustment in accordance with the procedure for an independent insurance broker or consultant's review under Section 11.4.

Section 11.3 Provisions With Respect to Insurance. All commercial general liability and property insurance policies required to be maintained or caused to be maintained pursuant to this Section 11 will be placed with a company or companies having an A.M. Best rating of at least "A-" or, if not so rated, of comparable financial strength, and shall name the Facility Lessor, the OP Trust, the Trust Company, the OP Trustee, the Trustee, the Owner Participant, and the Lenders as additional insureds, as their interests may appear. All commercial general liability and property insurance policies required to be maintained pursuant to this Section 11 shall (i) provide for at least 30 days' prior written notice by the insurance carrier to the Facility Lessor, the OP Trust, the Owner Participant and the Lenders in the event of cancellation or non-renewal and (ii) contain a waiver by the issuer of any right of subrogation against any additional insured. All commercial general liability insurance policies required to be maintained pursuant to this Section 11 shall also (a) prohibit cancellation of such policy as a result of a breach of a warranty by the Facility Lessee, and (b) if any of such policies do not carry a separation of insureds provision, carry cross-liability endorsements. All insurance maintained pursuant to this Section 11 shall be primary without right of contribution of any other insurance carried by or on behalf of the Facility Lessor, the Owner Participant, the OP Trust or the Lenders with respect to their respective interests in the Facility, the Site or the Easement Site. The Facility 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.

Section 11.4 Reports. On or prior to April 1 of each year commencing on April 1, 2001, the Facility Lessee shall furnish the OP Trust, the Owner Participant and the Lenders with a letter signed by a Responsible Officer of the Facility Lessee (a) identifying all insurance coverages in place, indicating their status as additional insureds and certifying that all premiums in respect of such policies are paid in full, (b) to the effect that, based on the Facility Lessee's consultation with a reputable independent agent, broker or consultant, the limits of the commercial general liability insurance maintained or caused to be maintained by the Facility Lessee pursuant to Section 11.2 are adequate. The Facility Lessee shall deliver or cause to be delivered to the OP Trust, the Owner Participant and the Lenders certificates of insurance evidencing the insurance policies required to be carried by this Section 11 within 10 Business Days following the renewal of any such policies. In addition, on or prior to April 1, 2005 and by

every successive fifth yearly anniversary thereof, the Facility Lessee will provide the OP Trust, the Owner Participant and the Lenders with a letter of a reputable independent insurance broker or consultant to the effect that the limits of commercial general liability insurance maintained or caused to be maintained by the Facility Lessee pursuant to Section 11.2 is in accordance with the standards prevailing in the electric power industry (including the independent power industry) for assets of similar size and nature. If such letter of a reputable independent insurance broker or consultant states that the Facility Lessee does not maintain or caused to be maintained such insurance, the Facility Lessee will take such action as necessary to ensure that the commercial general liability insurance carried by it complies with such standards.

Section 11.5 Additional Insurance. The Facility Lessor (either directly or in the name of the OP Trust or the Owner Participant or both) or the Lenders may, at any time, at its own expense and for its own account carry insurance with respect to its interest in the Undivided Interest; provided, that such insurance does not in any way interfere with the Facility Lessee's ability to obtain insurance with respect to the Undivided Interest described in this Section 11. Any insurance payments received from policies maintained by the Facility Lessor or the Lenders pursuant to the previous sentence shall be retained by the Facility Lessor or the Lenders, as the case may be, without reducing or otherwise affecting the Facility Lessee's obligations hereunder.

SECTION 12. INSPECTION

During the Facility Lease Term, each of the Owner Participant, the OP Trust, the Facility Lessor, the Lenders and their representatives may, at reasonable times, after reasonable prior written notice to the Facility Lessee and, during the term of the LG&E Arrangements, WKEC, during normal business hours and at their own risk and expense (except, at the expense, but not risk, of the Facility Lessee when an Event of Default, Bankruptcy Default or Payment Default has occurred and is continuing), inspect the Facility, the Site and the Easement Site (together with such records with respect to operations and maintenance of the Facility as are in the possession of the Facility Lessee or that the Facility Lessee can cause to be provided to it); provided, however, that any such inspection will not interfere with the Facility Lessee's or, during the term of the LG&E Arrangements, WKEC's, normal commercial operation of the Facility and will be in accordance with the Facility Lessee's and, during the term of the LG&E Arrangements, WKEC's, safety and insurance programs. Upon request of the Owner Participant, the OP Trust, the Facility Lessor or a Lender (but no more often than annually, provided no Event of Default has occurred and is continuing), the Facility Lessee shall make available a Responsible Officer to discuss the business, financial condition or accounts of the Facility Lessee. In no event shall the Facility Lessor, the Owner Participant, the OP Trust, or the Lenders have any duty or obligation to make any such inspection and such Persons shall not incur any liability or obligation by reason of not making any such inspection.

SECTION 13. TERMINATION OPTION FOR BURDENSOME EVENTS

Section 13.1 Election to Terminate. After the occurrence and during the continuance of any of the events specified below, the Facility Lessee shall have the right, at its option, so long as (a) no Bankruptcy Default, Payment Default or Event of Default shall have occurred and be continuing, and (b) the Facility Lessee shall simultaneously exercise its election to terminate the Related Facility Lease pursuant to Section 13.1 thereof under the Related Lease Transaction

upon at least 30 days' prior written notice to the Facility Lessor, the OP Trust, the Owner Participant and the Lenders, to purchase the Facility Lessor's Interest in the Facility, and terminate this Facility Lease on the Termination Date specified in such notice (which shall be a date occurring not more than 90 days after such notice) if:

(i) it shall have become illegal for the Facility Lessee to continue this Facility Lease or for the Facility Lessee to make payments under this Facility Lease and the transactions contemplated by the Operative Documents cannot be restructured in a manner acceptable to the Transaction Parties; or

(ii) one or more events outside the control of the Facility Lessee and all other Facility Lessee Persons shall have occurred which will give rise to an obligation by the Facility Lessee to pay or indemnify under Section 9.1 or 9.2 of the Participation Agreement (other than costs and expenses resulting from a replacement of the Payment Agreement pursuant to Section 13.3 of the Participation Agreement or a refinancing of the Loan Certificates pursuant to Section 11.1 of the Participation Agreement or the imposition of any Kentucky tax as a result of Kentucky law in existence on the Closing Date); *provided, however*, that (a) the indemnity obligation (and the underlying cost or Tax) can be avoided in whole or in part by such termination and (b) the amount of such avoided payments would exceed (on a present value basis, discounted annually at the Series B Loan Rate, compounded on an annual basis to the date of the termination) three percent of the Undivided Interest Cost. If the OP Trust or the Owner Participant shall waive its right to, or shall arrange for payment of (without reimbursement by the Facility Lessee), amounts of indemnification payments under Section 9.1 or 9.2 of the Participation Agreement to cause such avoided payments,

pursuant to the express terms of any Operative Document, (3) the Facility Lessor shall pay all outstanding principal and accrued interest on the Loan Certificates and all other amounts due under the Leasehold Mortgage, (4) the Facility Lessor will execute and deliver to the Facility Lessee, to be prepared (and where appropriate recorded and filed), at the Facility Lessee's cost and expense, a release or termination of this Facility Lease with respect to the Undivided Interest, (5) the Facility Lessor will transfer, pursuant to this Section 13.2, Section 6 of the Ground Lease, Section 6 of the Ground Sublease and Section 9 of the Head Lease, the Facility Lessor's Interest in the Facility to the Facility Lessee on an "as is", "where is" and "with all faults" basis, without representations or warranties other than a warranty as to the absence of Facility Lessor's Liens attributable to it accompanied by a warranty of the Owner Participant as to the absence of Owner Participant's Liens, and (6) this Facility Lease shall terminate and the Facility Lessor shall cause to be discharged the Lien of the Leasehold Mortgage on the Undivided Interest and execute and deliver appropriate releases and other documents or instruments necessary or desirable to effect the foregoing, all to be prepaid, filed and recorded (if appropriate) at the cost and expense of the Facility Lessee. If after giving the notice referred to in Section 13.1, the Facility Lessee shall fail to complete the exercise of the termination option (other than in consequence of a failure of the Facility Lessor or the Owner Participant to fulfill their respective obligations under this Section 13), the Facility Lease Term shall continue and no Event of Default shall have been deemed to have occurred.

Section 13.3 Costs and Expenses. Whether or not the transactions contemplated by this Section 13 are consummated, the Facility Lessee agrees to pay or reimburse, on an After-Tax Basis, any and all costs and expenses (including reasonable legal fees and expenses) and sales, value added and other taxes covered by Section 9.2 of the Participation Agreement incurred by the Facility Lessor, the Trustee, the OP Trust, the Owner Participant and the Lenders in connection with the transactions contemplated by this Section 13.

SECTION 14. TERMINATION FOR OBSOLESCENCE

Section 14.1 Termination. Upon at least 270 days' prior written notice to the Facility Lessor, the Owner Participant and the Lenders, which notice shall contain the certification by the Board of Directors of the Facility Lessee to the effect that the Facility is economically or technologically obsolete or that the Facility is surplus to the Facility Lessee's needs, the Facility Lessee shall have the option, so long as (a) no Bankruptcy Default, Payment Default or Event of Default shall have occurred and be continuing and (b) the Facility Lessee shall simultaneously exercise the corresponding right to terminate the Related Facility Lease for obsolescence pursuant to Section 14 thereof under the Related Lease Transaction, to terminate this Facility Lease with respect to the Undivided Interest on any Rent Payment Date occurring on or after the fifth anniversary of the Closing Date (the "Obsolescence Termination Date") on the terms and conditions set forth in this Section 14.

Section 14.2 Solicitation of Offers. If the Facility Lessee shall give the Facility Lessor notice pursuant to Section 14.1 and the Facility Lessor shall not have elected to retain the Undivided Interest pursuant to Section 14.3 hereof, the Facility Lessee shall, as non-exclusive agent for the Facility Lessor, use its best efforts to obtain bids for the cash purchase of the Facility Lessor's Interest hereunder and under the Related Lease Transaction. The Facility Lessor shall also have the right to obtain bids for the cash purchase of the Facility Lessor's

Interest either directly or through agents other than the Facility Lessee. At least 120 days prior to the Obsolescence Termination Date, the Facility Lessee shall certify to the Facility Lessor each bid or offer, the amount and terms thereof and the name and address of the party (which shall not be the Facility Lessee, any cooperative member of the Facility Lessee or any Affiliate or Tax Affiliate of any thereof) submitting such bid or offer.

Section 14.3 Right of Facility Lessor to Retain the Undivided Interest. The Facility Lessor may irrevocably elect to retain, rather than sell, the Undivided Interest by giving notice to the Facility Lessee within 90 days of the receipt of the notice referred to in Section 14.1. If the Facility Lessor elects to retain the Undivided Interest pursuant to this Section 14.3, on the Obsolescence Termination Date (a) the Facility Lessee shall pay to the Facility Lessor all Supplemental Rent (including all costs and expenses of the Facility Lessor, the OP Trust, the Owner Participant and the Lenders and all sales, use, value added and other Taxes covered by Section 9.2 of the Participation Agreement associated with the exercise of the termination option pursuant to this Section 14.3) due and payable on such Obsolescence Termination Date, and (b) the Facility Lessee shall pay to the Facility Lessor any unpaid Basic Rent due before such Obsolescence Termination Date, but shall not be required to pay Termination Value. Concurrently with the payment of all sums required to be paid pursuant to this Section 14.3, (i) Basic Rent for the Undivided Interest shall cease to accrue, (ii) the Facility Lessee shall cease to have any liability hereunder to the Facility Lessor with respect to the Undivided Interest, except for Supplemental Rent (other than Termination Value) and other obligations (including, without limitation, those under Sections 9.1 and 9.2 of the Participation Agreement) surviving pursuant to the express terms of any Operative Document, (iii) the Facility Lessor shall pay or prepay all or a portion, as the case may be, of the outstanding principal and accrued interest on the Loan Certificates and all other amounts due under the Leasehold Mortgage, (iv) the Facility Lessee will return the Undivided Interest to the Facility Lessor in accordance with Section 5, and (v) this Facility Lease shall terminate with respect to the Undivided Interest and the Facility Lessor shall cause to be discharged the Lien of the Leasehold Mortgage with respect to the Undivided Interest and execute and deliver appropriate releases and other documents or instruments necessary or desirable to effect the foregoing, all to be prepaid, filed and recorded (if appropriate) at the cost and expense of the Facility Lessee. It shall be a condition to the termination of this Facility Lease pursuant to this Section 14.3, that the Facility Lessee shall pay all amounts that it is obligated to pay under this Section 14.3 and all other amounts due by the Facility Lessee under this Facility Lease and the other Operative Documents.

Section 14.4 Procedure for Exercise of Termination Option. If the Facility Lessor has not elected to retain the Undivided Interest in accordance with Section 14.3 hereof, on the Obsolescence Termination Date the Facility Lessor shall sell the Facility Lessor's Interest under this Section 14.4, Section 6 of the Ground Lease, Section 6 of the Ground Sublease and Section 9 of the Head Lease to the bidder or bidders (which shall not be the Facility Lessee or a cooperative member of the Facility Lessee or any Affiliate of any of the foregoing), that shall have submitted the highest cash bid or bids with respect to such Facility Lessor's Interest hereunder, and under the Related Lease Transaction and the Facility Lessee shall certify to the Facility Lessor, the OP Trust and the Owner Participant that such buyer is not the Facility Lessee or a cooperative member of the Facility Lessee or any Affiliate or Tax Affiliate of any of the foregoing. The total sale price attributable to the Undivided Interest realized at such sale shall be paid to the Facility Lessor and in addition, on the Obsolescence Termination Date, the Facility

Lessee shall pay to the Facility Lessor (a) the excess, if any, of the Termination Value determined as of such Obsolescence Termination Date over that portion of the total sale price that is attributable to the Undivided Interest and was paid to or retained by the Facility Lessor, without deduction from the sale price of the expenses, if any, incurred by the Facility Lessee, the Facility Lessor, the OP Trust, the Owner Participant and the Lenders in connection with such sale, (b) any unpaid Basic Rent due before such Obsolescence Termination Date, (c) all amounts of Supplemental Rent (including all costs and expenses (including reasonable legal, broker and finders' fees) of the Facility Lessor, the OP Trust, the Owner Participant and the Lenders and all costs, expenses and sales, use, value added and other Taxes covered by Section 9.2 of the Participation Agreement associated with the exercise of the termination option pursuant to this Section 14) due and payable on such Obsolescence Termination Date and (d) if the Series B Loan Certificate is prepaid, any Make Whole Payment payable. Concurrently with the payment of all sums required to be paid pursuant to this Section 14.4, (i) Basic Rent for the Undivided Interest shall cease to accrue, (ii) the Facility Lessee shall cease to have any liability hereunder to the Facility Lessor with respect to the Undivided Interest, except for Supplemental Rent and other obligations (including Sections 9.1 and 9.2 of the Participation Agreement) surviving pursuant to the express terms of any Operative Document, (iii) the Facility Lessor will prepay all outstanding principal and accrued interest on the Loan Certificates pursuant to Section 2.10 of the Leasehold Mortgage, (iv) the Facility Lessor will transfer (by an appropriate instrument of transfer in form and substance reasonably satisfactory to the Facility Lessor and prepared and recorded at the Facility Lessee's expense) the Facility Lessor's Interest under this Section 14.4, Section 6 of the Ground Lease, Section 6 of the Ground Sublease and Section 9 of the Head Lease to the purchaser on an "as is", "where is" and "with all faults" basis, without representations or warranties other than a warranty as to the absence of Facility Lessor's Liens accompanied by a warranty by the Owner Participant as to the absence of Owner Participant's Liens, (v) this Facility Lease shall terminate and the Facility Lessor shall cause to be discharged the Lien of the Leasehold Mortgage and execute and deliver appropriate releases and other documents or instruments necessary or desirable to effect the foregoing, all to be prepaid, filed and recorded (if appropriate) at the cost and expense of the Facility Lessee, and (vi) the Lien of the Subordinated Mortgage shall be discharged with respect to the Undivided Interest. Unless the Facility Lessor shall have elected to retain the Undivided Interest pursuant to Section 14.3 or the Facility Lessor with the consent of the Facility Lessee shall have entered into a legally binding contract to sell the Facility Lessor's Interest, the Facility Lessee may, at its election, revoke its notice of termination by written notice given to the Facility Lessor, the OP Trust, the Owner Participant and the Lenders at least 30 days prior to the scheduled Obsolescence Termination Date, in which event this Facility Lease shall continue with respect to the Undivided Interest; provided, however, that a notice of termination may be revoked on not more than two occasions during the Facility Lease Term. The Facility Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Facility Lessee to obtain bids or otherwise take any action in arranging any such sale of the Facility Lessor's Interest other than, if the Facility Lessor has not elected to retain the Undivided Interest, to transfer the Facility Lessor's Interest in accordance with clause (v) of the second preceding sentence. If no sale shall occur on the Obsolescence Termination Date, the notice of termination shall be deemed revoked and this Facility Lease shall continue as to the Undivided Interest in full force and effect in accordance with its terms. If after giving the notice referred to in Section 14.1, the Facility Lessee shall fail to complete the exercise of the termination option, this Facility Lease shall continue in full force

and effect in accordance with its terms and no Event of Default shall be deemed to have occurred and the Facility Lessee shall not be permitted to initiate a notice to terminate this Facility Lease pursuant to Section 14.1 following a third revocation in accordance with this sentence, unless the Facility Lessee's failure to complete the exercise of the termination option was a consequence of a failure of the Facility Lessor or the Owner Participant to fulfill their respective obligations under this Section 14.

Section 14.5 Costs and Expenses. Whether or not the transactions contemplated by Section 14.4 are consummated, the Facility Lessee agrees to pay or reimburse, on an After-Tax Basis, any and all costs and expenses (including reasonable legal fees and expenses) incurred by the Facility Lessor, the OP Trust, the Owner Participant and the Lenders in connection with the transactions contemplated by Section 14.4.

SECTION 15. END OF BASIC TERM OPTIONS

Section 15.1 The Facility Lessee's Purchase Option.

(a) Unless this Facility Lease shall have been previously terminated pursuant to Section 10, 13, 14 or 17 hereof, at any time not more than forty-eight months nor less than eighteen months prior to the Expiration Date, subject to the following sentence and Section 15.4(b) and Section 15.4(c), the Facility Lessee shall, by giving written notice to the Facility Lessor, the OP Trust and the Owner Participant, irrevocably elect either (A) so long as no Payment Default or Bankruptcy Default shall have occurred and be continuing and the Facility Lessee shall simultaneously exercise its election to purchase each "Undivided Interest" under Section 15.1 of the Other Facility Lease for which the Owner Participant is the "Owner Participant" under such Other Lease Transaction, to purchase the Undivided Interest on the Expiration Date for the Purchase Option Price in accordance with this Section 15.1 (the "Purchase Option") or (B) to arrange for a Service Purchaser, other than the Facility Lessee, a member of the Facility Lessee or an Affiliate of any thereof, to enter into a power purchase agreement with the Facility Lessor, or its successor in interest, pursuant to Section 15.2 hereof with respect to the Undivided Interest (the "Service Contract Option"). In the event that WKEC shall have elected to exercise its right to direct the Facility Lessee to exercise the Purchase Option pursuant to Section 20 of the Intercreditor Agreement, the Facility Lessee shall irrevocably elect the Purchase Option; *provided, however*, that such Purchase Option must be exercised by Big Rivers not later than the first day of the fifteenth month prior to the Expiration Date by giving written notice to the Facility Lessor and the Owner Participant to irrevocably elect to purchase the Undivided Interest on the Expiration Date for the Purchase Option Price in accordance with this Section 15.1; *provided, further, however*, that the Facility Lessee shall simultaneously have exercised its election to purchase each "Undivided Interest" pursuant to Section 15.1 of the Related Facility Lease under the Related Lease Transaction.

(b) If the Facility Lessee shall have exercised the Purchase Option, the Facility Lessee shall become unconditionally obligated to pay (i) on the Expiration Date, (1) the first installment of the Purchase Option Price in the amount of \$108,155,047.95, (2) all amounts of Supplemental Rent (including, without limitation, all costs and expenses (including reasonable legal fees) of the Facility Lessor, the OP Trust, the Owner Participant and the Lender and all costs, expenses and sales, use, value added and other Taxes covered by Section 9.2 of the

Participation Agreement associated with the exercise of the Purchase Option) due and payable on the Expiration Date, and (3) any unpaid Basic Rent due before the Expiration Date and the Basic Rent due and payable on the Expiration Date and (ii) subsequent installments of the Purchase Option Price in the amounts and on the dates set forth below:

Date	Amount
4/15/2027	\$13,954,606.06
6/15/2027	\$13,954,606.06
9/15/2027	\$13,954,606.06
12/15/2027	\$13,954,606.06

If the Facility Lessee shall fail to pay any installments of the Purchase Option Price in accordance with this Section 15.1(b), all remaining installments of the Purchase Option Price shall without further act, become immediately due and payable. The covenant to pay the subsequent installments of the Purchase Option Price for the Undivided Interest in accordance with the preceding sentence shall survive the termination of this Facility Lease.

Concurrently with the payment of the sums specified in clause (i) of this Section 15.1(b), (1) Basic Rent shall cease to accrue, (2) the Facility Lessee shall cease to have any liability to the Facility Lessor with respect to the Undivided Interest, except for Supplemental Rent and other obligations (including those under Sections 9.1 and 9.2 of the Participation Agreement and the additional installments of the Purchase Option Price payable in accordance with clause (ii) of this Section 15.1(b)) surviving pursuant to the express terms of any Operative Document, (3) the Facility Lessor will, by documents and instruments in form and substance reasonably satisfactory to the Facility Lessee, transfer the Facility Lessor's Interest to the Facility Lessee in accordance with this Section 15.1(b), Section 6 of the Ground Sublease and Section 9 of the Head Lease on an "as is", "where is" and "with all faults" basis, without representations or warranties other than a warranty as to the absence of Facility Lessor's Liens or Owner Participant's Liens and (4) this Facility Lease shall terminate and the Facility Lessor shall cause to be discharged the Lien of the Leasehold Mortgage and execute and deliver appropriate releases and all other documents or instruments necessary or desirable to effect the foregoing, all to be prepared, filed and recorded (as appropriate) at the cost and expense of the Facility Lessee.

(c) If WKEC shall have elected to exercise its right to direct the Facility Lessee to exercise the Purchase Option pursuant to Section 20 of the Intercreditor Agreement and the Facility Lessee shall have exercised the Purchase Option, the Facility Lessee shall become unconditionally obligated to pay on the Expiration Date (1) the Purchase Option Price in the amount of \$163,973,472.19, (2) all amounts of Supplemental Rent (including, without limitation, all costs and expenses (including reasonable legal fees) of the Facility Lessor, the OP Trust, the Owner Participant and the Lenders and all costs, expenses and sales, use, value added and other Taxes covered by Section 9.2 of the Participation Agreement associated with the exercise of the Purchase Option) due and payable on the Expiration Date, and (3) any unpaid Basic Rent due before the Expiration Date and the Basic Rent due and payable on the Expiration Date. Concurrently with the payment of the sums specified in this Section 15.1(c), (A) Basic Rent shall cease to accrue, (B) the Facility Lessee shall cease to have any liability to the Facility Lessor

with respect to the Undivided Interest, except for Supplemental Rent and the other obligations (including those under Sections 9.1 and 9.2 of the Participation Agreement) surviving pursuant to the express terms of any Operative Document, (C) the Facility Lessor will, by documents and instruments in form and substance reasonably satisfactory to the Facility Lessee, transfer the Facility Lessor's Interest to the Facility Lessee or its designee in accordance with this Section 15.1(c), Section 6 of the Ground Sublease and Section 9 of the Head Lease on an "as is", "where is" and "with all faults" basis, without representations or warranties other than a warranty as to the absence of Facility Lessor's Liens or Owner Participant's Liens and (D) this Facility Lease shall terminate and the Facility Lessor shall cause to be discharged the Lien of the Leasehold Mortgage and execute and deliver appropriate releases and all other documents or instruments necessary or desirable to effect the foregoing, all to be prepared, filed and recorded (as appropriate) at the cost and expense of the Facility Lessee.

(d) If the Facility Lessee shall fail to elect to exercise the Purchase Option or the Service Contract Option by the date eighteen months prior to the Expiration Date and if the Facility Lessee does not exercise the Purchase Option pursuant to the second sentence of Section 15.1(a) by the first day of the fifteenth month prior to the Expiration Date, the Facility Lessee will be deemed to have elected the Service Contract Option on such date fifteen months prior to the Expiration Date.

Section 15.2 Procedure for Service Contract Option.

(a) If the Facility Lessee shall have elected, or be deemed to have elected, the Service Contract Option pursuant to Section 15.1, the Facility Lessee shall be obligated to procure one or more Service Purchasers to enter into one or more Service Contracts (providing inter, alia for the payment of Service Fees) and, in connection therewith, the Facility Lessee shall arrange for the interest rate on the Loan Certificates to be reset or arrange for a Replacement Loan or Replacement Loans with one or more Replacement Lenders, all in accordance with Section 12A.1(b) of the Participation Agreement and Section 2.11 of the Leasehold Mortgage. In the event that the Facility Lessee elects or is deemed to have elected the Service Contract Option, it shall provide the Facility Lessor no later than 15 months prior to the relevant Expiration Date:

(i) with the name of the proposed Service Purchaser(s) together with sufficient information to permit the Facility Lessor to determine whether any such Person complies with the criteria for a Service Purchaser as set forth in the definition thereof and all other requirements of the Operative Documents (as soon as reasonably practicable);

(ii) a certificate executed by each proposed Service Purchaser stating that such proposed Service Purchaser has agreed in principle to enter into the Service Contract and indicating the amount of the Service Fees proposed to be paid thereunder and the Liquidated Damage Amounts proposed to be paid upon a default of the Service Purchaser thereunder;

(iii) any other documents reasonably requested by the Facility Lessor to enable the Facility Lessor to assess the compliance of each proposed Service Purchaser with the terms required for the Service Contract and the acceptability of each such proposed Service Purchaser;

(iv) a request that the Facility Lessor confirm that such proposed Service Purchaser(s) comply with the criteria for a Service Purchaser as set forth in the definition thereof; and

(v) a certificate signed by the Facility Lessee that the terms of the Service Contracts proposed by the Facility Lessee comply in the aggregate with the requirements of the definition thereof.

(b) Upon receipt of the documents, certificates and information required to be provided by the Facility Lessee pursuant to Section 15.2(a), the Facility Lessor shall conduct such due diligence that it in its good faith discretion considers necessary to evaluate the compliance of the proposed Service Contracts and the proposed Service Purchasers with the Operative Documents and negotiate in good faith the final terms of the Service Contract to be entered into with each proposed Service Purchaser. No later than 90 days prior to the Expiration Date, the Facility Lessor shall notify the Facility Lessee which proposed Service Contract it will accept. Such notification shall be accompanied by a certification executed by the Facility Lessor that, subject to the satisfaction of all conditions set forth in Section 12A.2 of the Participation Agreement, it will execute a Service Contract with the relevant Service Purchaser in the form attached to such certification, and on the Expiration Date, the Facility Lessee shall be in compliance with its obligations hereunder, including, without limitation, Section 5.

Section 15.3 Return Option. In the event that the Facility Lessee shall not have elected the Purchase Option, the Facility Lessor may, at its sole discretion, reject a qualifying Service Purchaser or qualifying Service Contract pursuant to Section 12A.5 of the Participation Agreement or otherwise elect to require the return of the Undivided Interest by the Facility Lessee on the Expiration Date in accordance with Section 5 hereof (the "Return Option"), such election to be made by delivering on or prior to the twentieth day prior to the Expiration Date to each of the Facility Lessee and the Lenders, a notice of such election and, to the Lenders with a copy to the Facility Lessee, an irrevocable undertaking of the Facility Lessor in form and substance satisfactory to the Lenders, to pay to the Lenders, on the Expiration Date the outstanding principal amount (after scheduled debt service on such date) of the Loan Certificates under the Leasehold Mortgage, and on such date the Facility Lessor shall pay to the Lenders such amount (it being understood that the Facility Lessor's rights contemplated by this Section 15.3 are contingent upon the Facility Lessor providing the Lenders arrangements reasonably satisfactory to ensure payment in full on the Expiration Date of the required amounts of outstanding principal and accrued interest then due by the Facility Lessor). Upon the delivery of a notice and undertaking pursuant to the preceding sentence of this Section 15.3, this Facility Lease shall terminate on the Expiration Date without any right or obligation of the Facility Lessee to procure the proposed Service Purchaser(s) to enter into the Service Contract, arrange for the interest rate on the Loan Certificates to be reset, or arrange for a Replacement Loan, all in accordance with Section 12A of the Participation Agreement, provided that the Facility Lessee must on such date pay any unpaid Basic Rent due and payable on or before such date and any unpaid Supplemental Rent as of such date.

Section 15.4 Elections Upon Failure to Enter into a Service Contract. (a) If the Facility Lessor shall have elected the Return Option, the Facility Lessee shall return the

Undivided Interest to the Facility Lessor on the Expiration Date in accordance with Section 5 hereof.

(b) In the event that (i) the Facility Lessee shall have elected or is deemed to have elected the Service Contract Option and the Facility Lessor shall have not elected the Return Option, (ii) the Facility Lessee shall have fulfilled its obligations to procure one or more qualifying proposed Service Purchasers pursuant to Section 15.2, (iii) the Facility Lessee shall have fulfilled its obligations under Section 12A.1(b) of the Participation Agreement and (iv) on the Expiration Date, the Service Purchasers shall for any reason, other than as contemplated in Section 15.4(c), fail to consummate the transactions contemplated in connection therewith, then the Facility Lessor shall deliver to the Facility Lessee notice thereof no later than the Expiration Date and the Facility Lessee shall have a further right exercisable on the Expiration Date to elect the Purchase Option in accordance with the terms of Section 15.1 and, if so elected, such Purchase Option shall be exercised on the Business Day next following the Expiration Date and, notwithstanding any other provision herein, the terms of this Facility Lease shall be automatically extended to 11:58 p.m. (New York City time) on the Business Day next following the Expiration Date; provided, however, that the Facility Lessee shall pay all amounts payable by the Facility Lessee under the Operative Documents and interest for each day that elapses from the Expiration Date to such next following Business Day at the Overdue Rate on the amounts otherwise payable by the Facility Lessee on the Expiration Date.

(c) In the event that the Facility Lessee shall have elected or is deemed to have elected the Service Contract Option and the Facility Lessor shall have not elected the Return Option and, on the Expiration Date, the Facility Lessor and the Service Purchaser(s) shall fail to consummate the transactions contemplated in the Service Contract solely as a result of the failure of the Facility Lessee (after exercising its reasonable best efforts) to locate, pursuant to Section 12A.1(b) of the Participation Agreement and Section 2.11 of the Leasehold Mortgage, ready, willing and able purchasers qualifying as Replacement Lenders (that are not the Facility Lessee, any member of the Facility Lessee, a Service Purchaser or any Affiliate or Tax Affiliate of any thereof) of the Loan Certificates (x) held by the Facility Lessee, any member of the Facility Lessee or any Affiliate or Tax Affiliate of any thereof or (y) held by any other Lender that has not proposed a new rate or for which the Quoted Rate has been rejected, the Facility Lessee shall have the right to cure such failure by electing on the Expiration Date to exercise the Purchase Option in accordance with the terms of Section 15.1 and, if so elected, such Purchase Option shall be exercised on the Business Day next following the Expiration Date and, notwithstanding any other provision herein, the terms of this Facility Lease shall be automatically extended to 11:58 p.m. (New York City) on the Business Day next following the Expiration Date; provided, however, that the Facility Lessee shall pay all amounts payable by the Facility Lessee under the Operative Documents and interest for each day that elapses from the Expiration Date to such next following Business Day at the Overdue Rate on the amounts otherwise payable by the Facility Lessee on the Expiration Date.

SECTION 16. EVENTS OF DEFAULT

The following events shall constitute "Events of Default" hereunder (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 Governmental Entity):

(a) the Facility Lessee shall fail to make any payment of any Basic Rent or the Purchase Option Price within five Business Days after the same shall have become due; or

(b) the Facility Lessee shall fail to make any payment of Termination Value required by Section 10, 13 or 14 within ten Business Days after the same shall have become due; or

(c) the Facility Lessee shall fail to make any payment of Supplemental Rent (other than as described in clause (a) or (b) of this Section 16), after the same shall have become due and such failure shall continue unremedied for a period of 30 Business Days after receipt by the Facility Lessee of written notice of such failure from the Facility Lessor, the Owner Participant or Lender; or

(d) any representation or warranty made by the Facility Lessee in the Operative Documents (other than the Tax Indemnity Agreement) shall be untrue, inaccurate or misleading in any material respect both when made and at the time in question and, if capable of remedy, no action to cure has commenced within 30 days after notice or, if such action has been taken and the Facility Lessee is diligently pursuing such cure, such action has not succeeded within a period of 180 days after such notice; or

(e) the Facility Lessee shall have failed to perform or observe any covenant, obligation or agreement to be performed or observed by it under any Operative Document (other than the Tax Indemnity Agreement) in any material respect (other than any covenant, obligation or agreement referred to in clauses (a), (b), (c), (f), (g), (h), (j), (k), (l), (m), (n), (r) or (s) of this Section 16) and, if capable of remedy, no action to cure has commenced within 30 days after notice or, if such action has been taken (including, without limitation, commencement of action under the LG&E Arrangements to compel compliance) and the Facility Lessee is diligently pursuing such cure, such action has not succeeded within a period of 180 days after such notice; provided, however, that in the case of the Facility Lessee's obligations set forth in the first sentence of Section 7.1 and Section 8.1 of this Facility Lease as they relate to compliance with Applicable Law, if, to the extent and for so long as, a test, challenge, appeal or proceeding for review of such compliance shall be prosecuted in good faith by the operator of the Facility, the failure by the Facility Lessee to comply with such requirement shall not constitute an Event of Default hereunder if, but only if, such test, challenge, appeal or proceeding shall not involve any danger of (i) the foreclosure, sale, forfeiture or loss of, or imposition of a Lien on, any part of the Facility, Site or the Easement Site or the impairment of the use, operation or maintenance of the Facility, Site or the Easement Site in any material respect or the value, utility or useful life of the Facility, the Site or any Easement Site, or (ii) any criminal liability being incurred by, or any material adverse effect on, the interests of the Facility Lessor, the OP Trust, the Owner Participant or the Lenders in the reasonable opinion of such Person including, without limitation, subjecting the Facility Lessor, the OP Trust, the Owner Participant or a Lender to regulation as a public utility under Applicable Law; and provided, further, in the case of the Facility Lessee's obligation set forth in the first sentence of Section 7.1 and Section 8.1 of this Facility Lease as it relates to compliance with Applicable Law, if the noncompliance is not of a type that can be

immediately remedied, the failure to comply shall not be an Event of Default hereunder if the Facility Lessee and operator of the Facility is taking all reasonable action to remedy such noncompliance and if, but only if, such noncompliance shall not involve any danger in the reasonable opinion of such Person described in clause (i) or (ii) of the preceding proviso; and provided, further, such noncompliance, or such test, challenge, appeal or proceeding shall not, unless the Facility Lessee has irrevocably elected the Purchase Option pursuant to Section 15.1, extend beyond a date that is 18 months prior to the Expiration Date; or

(f) the Facility Lessee shall fail to observe or perform its obligation to maintain the insurance required by Section 11 of this Facility Lease or its obligations under Section 5 of this Facility Lease; or

(g) the Expiration Date (or the date that is the Business Day next following the Expiration Date, if applicable, pursuant to Section 15.4(b) or Section 15.4(c) hereof) shall have occurred and none of the following events shall have occurred on or prior to such date:

(i) the Facility Lessee shall have made or shall cause to have made all payments required in connection with its exercise of the Purchase Option pursuant to Section 15.1 hereof; or

(ii) consistent with the Return Option provisions of Section 15.3, the Facility Lessee shall have delivered the Undivided Interest in accordance with the terms of the Facility Lease and shall have made the payments required to be made by it pursuant to Section 15.3; or

(iii) the Facility Lessee shall have elected or shall have been deemed to have elected the Service Contract Option and shall have fully complied with the requirements of Section 12A of the Participation Agreement and Section 15.2 hereof and the transactions contemplated by such sections shall have been consummated; or

(iv) the circumstances described in Section 15.4(b) or (c) hereof shall have occurred and the Facility Lessee shall have exercised the Purchase Option and paid all amounts required in connection therewith pursuant to Section 15.1 hereof plus the amounts required to be paid by it in the proviso to Section 15.4(b) or (c) hereof; or

(h) the Facility Lessee shall have failed to observe or perform its obligations set forth in Section 7.1, 7.2, 7.5, 7.6, 7.7 or 7.21 of the Participation Agreement; or

(i) if (x) RUS as a First Mortgage Mortgagee under the First Mortgage shall have declared the principal and interest on any notes and bonds issued thereunder to be immediately due and payable, or (y) any other First Mortgage Mortgagee under the First Mortgage shall have made the declaration described in clause (x) and shall not have withdrawn such declaration within 30 days thereafter or (z) any mortgagee (including the RUS) under the First Mortgage shall have given notice of intent to, or taken action to, commence foreclosure or any other dispossession remedy under the First Mortgage, or under Applicable Law; or

(j) the Facility Lessee shall (i) commence a voluntary case or other proceeding seeking relief under Title 11 of the United States Code or liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or apply for or consent to the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) consent to, or fail to controvert in a timely manner, any such relief or the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, (iii) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or (iv) fail to pay its debts generally as they become due or admit in writing its inability to do so or take any corporate steps with respect to the foregoing; or

(k) an involuntary case or other proceeding shall be commenced against the Facility Lessee seeking (i) liquidation, reorganization or other relief with respect to it or its debts under Title 11 of the United States Code or any bankruptcy, insolvency or other similar law now or hereafter in effect, or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official with respect to it or any substantial part of its property or (iii) the winding-up or liquidation of the Facility Lessee; and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days; or

(l) the Facility Lessee shall have failed to observe or perform its obligations set forth in Section 7.9 of the Participation Agreement and the Facility Lessee shall not cure such failure within 5 days after the Facility Lessee has Actual Knowledge or after notice from the Facility Lessor, the OP Trust, the Owner Participant or a Lender; or

(m) the Facility Lessee shall have failed to perform its obligations in connection with its right to sublease or assign as set forth in Section 18 of this Facility Lease; or

(n) the Qualifying Swap or the Qualifying Swap Surety Bond (or any Qualifying Letter of Credit, Qualifying Facility Lease Surety Bond, Qualifying Swap or Qualifying Swap Surety Bond in replacement thereof) shall cease to be the valid and enforceable obligations of the issuer thereof (regardless of whether such swap, letter of credit or surety bond meets the requirements for a "Qualifying Facility Lease Surety Bond" or a "Qualifying Swap" or a "Qualifying Letter of Credit" or a "Qualifying Swap Surety Bond") other than in circumstances where the OP Trust shall release the obligor under the Qualifying Swap or Qualifying Swap Surety Bond from its obligations thereunder pursuant to the Qualifying Swap; or

(o) an LG&E Entity shall have commenced an action to foreclose or commenced any other dispossessing remedy under the LEM Mortgage or the LG&E Subordinated Mortgage; or

(p) WKEC shall have terminated the WKEC Lease in consequence of a default by the Facility Lessee thereunder; or

(q) LEM shall have terminated the LEM Power Purchase Agreement in consequence of a default thereunder by the Facility Lessee; or

(r) the Facility Lessor's rights under the Ground Lease or the Head Lease shall have been terminated, revoked or rendered unenforceable for any reason or the Facility Lessee or

any Person acting on behalf of the Facility Lessee shall seek to repudiate or disaffirm the validity or enforceability of the Ground Lease, the Head Lease or any of the rights of the Facility Lessor thereunder; or

(s) the Facility Lessee shall have failed to observe or perform its obligations set forth in Section 7.10 of the Participation Agreement; or

(t) an "Event of Default" shall have occurred and be continuing under the Facility Lease (FBR-2), dated as of April 1, 2000 between FBR-2 Statutory Trust and Big Rivers.

SECTION 17. REMEDIES

Section 17.1 Remedies for Event of Default. Subject to Section 3.7 with respect to the Events of Default set forth in clauses (a) and (b) of Section 16, upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, this Facility Lease shall automatically be deemed to be in default without the need for giving any notice (the giving of which is waived to the fullest extent permitted by Applicable Law); and at any time thereafter, so long as the Facility Lessee shall not have remedied all outstanding Events of Default, the Facility Lessor may do one or more of the following as the Facility Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, Applicable Law then in effect:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Facility Lessee, at the Facility Lessee's sole cost and expense, of the applicable covenants and terms of this Facility Lease;

(b) by notice in writing to the Facility Lessee, terminate this Facility Lease and the Facility Lessee's Interest whereupon all right of the Facility Lessee to the possession and use of the Undivided Interest under this Facility Lease shall absolutely cease and terminate but the Facility Lessee shall remain liable as hereinafter provided; and thereupon, the Facility Lessor may demand that the Facility Lessee, and the Facility Lessee shall, upon written demand of the Facility Lessor and at the Facility Lessee's expense, forthwith return possession of the Undivided Interest to the Facility Lessor in the manner and condition required by, and otherwise in accordance with, all of the provisions of Section 5, except those provisions relating to periods of notice; and the Facility Lessor may thenceforth hold, possess and enjoy the same free from any right of the Facility Lessee, or its successor or assigns, to use the Undivided Interest for any purpose whatever;

(c) sell the Facility Lessor's Interest at public or private sale, as the Facility Lessor may determine, free and clear of any rights of the Facility Lessee under this Facility Lease and without any duty to account to the Facility Lessee with respect to such sale or for the proceeds thereof (except to the extent required by paragraph (f) below if the Facility Lessor elects to exercise its rights under said paragraph and by Applicable Law), in which event the Facility Lessee's obligation to pay Basic Rent hereunder due for any periods subsequent to the date of such sale shall terminate (except to the extent that Basic Rent is to be included in computations under paragraph (f) below if the Facility Lessor elects to exercise its rights under said paragraph);

(d) hold, keep idle or lease to others the Facility Lessor's Interest as the Facility Lessor in its sole discretion may determine, free and clear of any rights of the Facility Lessee under this Facility Lease and without any duty to account to the Facility Lessee with respect to such action or inaction or for any proceeds with respect thereto, except that the Facility Lessee's obligation to pay Basic Rent with respect to the Undivided Interest due for any periods subsequent to the date upon which the Facility Lessee shall have been deprived of possession and use of the Undivided Interest pursuant to this Section 17 shall be reduced by the net proceeds, if any, received by the Facility Lessor from leasing the Facility Lessor's Interest to any Person other than the Facility Lessee;

(e) whether or not the Facility Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (b) above with respect to the Facility Lessee's Interest, the Facility Lessor, by written notice to the Facility Lessee specifying a Termination Date that shall be not earlier than 10 days after the date of such notice, may demand that the Facility Lessee pay to the Facility Lessor, and the Facility Lessee shall pay to the Facility Lessor, on the Termination Date specified in such notice, any unpaid Basic Rent due before such Termination Date, any Supplemental Rent (and any Make Whole Payment) due and payable as of the payment date specified in such notice, plus as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due after the Termination Date specified in such notice), (i) an amount equal to the excess, if any, of the Termination Value computed as of the Termination Date specified in such notice over the Fair Market Sales Value of the Facility Lessor's Interest as of the Termination Date specified in such notice, or (ii) an amount equal to the Termination Value computed as of the Termination Date specified in such notice and, upon payment of such Termination Value by the Facility Lessee pursuant to this clause (ii) and all other Rent then due and payable by the Facility Lessee, the Facility Lessor will forthwith transfer to the Facility Lessee in accordance with this Section 17.1(e), Section 6 of the Ground Sublease and Section 9 of the Head Lease on an "as is", "where is" and "with all faults" basis, without representation or warranty other than a warranty as to the absence of Facility Lessor's Liens accompanied by a warranty of the Owner Participant as to the absence of the Owner Participant's Liens, the Facility Lessor's Interest and execute, acknowledge and deliver, and record and file (as appropriate), appropriate releases and all other documents or instructions necessary or desirable to effect the foregoing all in form and substance reasonably satisfactory to the Facility Lessor and at the cost and expense of the Facility Lessee, and upon payment of such amounts under either clauses (i) and (ii) of this paragraph (e), this Facility Lease, and the Facility Lessee's obligation to pay Basic Rent hereunder due for any periods subsequent to the date of such payment shall terminate;

(f) if the Facility Lessor shall have sold the Facility Lessor's Interest pursuant to paragraph (c) above, the Facility Lessor may, if it shall so elect, demand that the Facility Lessee pay to the Facility Lessor, and the Facility Lessee shall pay to the Facility Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due for any periods subsequent to the date of such sale), an amount equal to (A) any unpaid Basic Rent due before the date of such sale, plus (B) if that date is not a Rent Payment Date or a Termination Date, the daily equivalent of Basic Rent for the period from the preceding Termination Date to the date of such sale, plus (C) the amount, if any, by which the Termination Value computed as of the Termination Date next preceding the date of such sale or, if such sale occurs on a Rent Payment Date or a Termination Date then computed as of such date, exceeds the net proceeds of such sale,

and, upon payment of such amount, this Facility Lease and the Facility Lessee's obligation to pay Basic Rent for any periods subsequent to the date of such payment shall terminate; or

(g) whether or not the Facility Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (b) above with respect to the Facility Lessee's Interest, the Facility Lessor, by written notice to the Facility Lessee specifying a Termination Date that shall be not earlier than 10 days after the date of such notice, may demand that the Facility Lessee pay to the Facility Lessor, and the Facility Lessee shall pay to the Facility Lessor, on the Termination Date specified in such notice, (i) any unpaid Equity Portion of Basic Rent due before such Termination Date, plus (ii) any Supplemental Rent (and any Make Whole Payment) due and payable to the Facility Lessor, the OP Trust, or the Owner Participant as of the payment date specified in such notice, plus (iii) as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Equity Portion of Basic Rent due after the Termination Date specified in such notice), an amount equal to the Equity Portion of Termination Value computed as of the Termination Date specified in such notice. Upon payment of such Equity Portion of Termination Value by the Facility Lessee pursuant to this clause (g) and all other Rent then due and payable by the Facility Lessee under this clause (g), the Facility Lessee's obligation to pay Equity Portion of Basic Rent hereunder due for any periods subsequent to the date of such payment shall terminate. Payments of the Equity Portion of Termination Value made under this Section 17.1(g) shall reduce the Facility Lessee's obligation to pay Termination Value or amounts defined by reference to Termination Value under other paragraphs of this Section 17.1.

Whenever the Facility Lessee shall be required to pay Termination Value or amounts defined by reference to Termination Value pursuant to this Section 17.1, provided that the conditions set forth in the Facility Lessor (E) Secured Note shall have been satisfied and no acceleration has occurred pursuant to the Facility Lessor (E) Secured Note, the Facility Lessee may pay the Installment Payment Amount or amounts defined by reference to such Installment Payment Amount in accordance with the provisions of the Facility Lessor (E) Secured Note.

In addition, the Facility Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before, during or after the exercise of any of the foregoing remedies (and for damages in an amount equal to such Rent which would otherwise have accrued after eviction of the Facility Lessee or other termination of the leasehold created hereby pursuant to or in the course of the Facility Lessor's exercise of such remedies), and, on an After-Tax Basis, for legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Facility Lessor's remedies with respect thereto, including the repayment in full of any costs and expenses necessary to be expended in connection with the return of the Undivided Interest in accordance with Section 5 hereof, including, without limitation, any costs and expenses incurred by the Facility Lessor, the OP Trust, the Owner Participant or the Lenders in connection with retaking constructive possession of, or in repairing, the Undivided Interest in order to cause it to be in compliance with all maintenance standards imposed by this Facility Lease. The provisions of this Section 17.1 shall survive the termination for any reason whatsoever of this Facility Lease and the termination or cancellation for any reason whatsoever of the Facility Lessee's leasehold estate in the Undivided Interest.

Section 17.2 Extension of Basic Term for Extension Period. Notwithstanding a termination of the Facility Lease which may have occurred pursuant to paragraph (b) and pursuant to the exercise of a remedy under paragraph (e) of Section 17.1, if (i) so long as the conditions set forth in the Facility Lessor (E) Secured Note have been satisfied, the Facility Lessee shall exercise the option provided in the Facility Lessor (E) Secured Note to pay the Installment Payment Amount in installments as provided in such Facility Lessor (E) Secured Note, (ii) the Facility Lessee shall have paid all other amounts due and owing by it under this Facility Lease, including but not limited to, all amounts of Termination Value or amounts defined by reference to Termination Value in excess of the Installment Payment Amount and (iii) the remaining installments of the Installment Payment Amount shall not have been accelerated pursuant to the provisions of the Facility Lessor (E) Secured Note, the Facility Lease Term shall be extended to permit the Facility Lessee to remain in possession and control of the Undivided Interest in accordance with the terms of this Facility Lease during the period (the "Extension Period") during which such payments of the Installment Payment Amount continue to be made to the Facility Lessor in accordance with the provisions of the Facility Lessor (E) Secured Note. During the Extension Period, (1) no Basic Rent shall be due and payable, (2) the Facility Lessee's obligation to operate, maintain, repair and insure the Facility shall be governed by the provisions of this Facility Lease and the First Mortgage and (3) the Facility Lessee Reassignment Agreement and the Ground Sublease shall not terminate. If remaining payments of the Installment Payment Amount shall be accelerated under the Facility Lessor (E) Secured Note, the Extension Period shall automatically and immediately terminate and the Facility Lessor may exercise any additional remedies provided by Section 17.1 of this Facility Lease and terminate the Facility Lessee Reassignment Agreement and the Ground Sublease. The Extension Period shall continue so long as the Facility Lessee continues to pay the installment payments of the Installment Payment Amount when due in accordance with the provisions of the Facility Lessor (E) Secured Note.

Section 17.3 Cumulative Remedies. The remedies in this Facility Lease provided in favor of the Facility Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity; and the exercise or beginning of exercise by the Facility Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Facility Lessor of any or all of such other remedies, provided, however, that the liquidated damages amount set forth in paragraphs (e) and (f) above, shall be the sole and exclusive money damages remedy available to the Facility Lessor for an Event of Default. To the extent permitted by Applicable Law, the Facility Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Facility Lessor to sell, lease or otherwise use the Undivided Interest or any Component thereof in mitigation of the Facility Lessor's damages as set forth in this Section 17 or which may otherwise limit or modify any of the Facility Lessor's rights and remedies in this Section 17.

Section 17.4 No Delay or Omission to be Construed as Waiver. No delay or omission to exercise any right, power or remedy accruing to the Facility Lessor upon any breach or default by the Facility Lessee under this Facility Lease shall impair any such right, power or remedy of the Facility Lessor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default hereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default.

SECTION 18. THE FACILITY LESSEE'S RIGHT TO SUBLEASE; ASSIGNMENT

Section 18.1 Right to Sublease. The Facility Lessee will not have the right to relinquish use, possession or control of the Undivided Interest or any part thereof or sublease the Undivided Interest and further sublease the Ground Interest without the consent of the Facility Lessor, the Owner Participant and the Lenders except under the following conditions:

(i) the sublessee is (a) a solvent corporation organized under the laws of a State or Commonwealth of the United States or the District of Columbia not subject to bankruptcy proceedings and (b) it is, or its obligations under the sublease are guaranteed by, an experienced, reputable operator of electric utility assets;

(ii) the sublease does not extend beyond the Expiration Date or the Ground Sublease Term (and may be terminated upon early termination of this Facility Lease or the Ground Sublease Term) and is expressly subject and subordinate to the Head Lease, the Ground Lease, the Ground Sublease and this Facility Lease;

(iii) the Facility Lessee remains fully and primarily liable for its obligations under the Operative Documents;

(iv) all terms and conditions of the Head Lease, this Facility Lease and the other Operative Documents remain in effect;

(v) no Payment Default, Bankruptcy Default or Event of Default under this Facility Lease (or an event which, with notice or lapse of time or both shall cause such Defaults) shall be continuing;

(vi) the sublease prohibits further assignment, subletting or operation by another Person;

(vii) the sublease requires the sublessee to operate and maintain the Facility in a manner consistent with this Facility Lease and the Ground Sublease;

(viii) the sublease is collaterally assigned to the Facility Lessor as security for the obligations of the Facility Lessee under this Facility Lease and the Ground Sublease in a manner that is reasonably acceptable to the Facility Lessor, the Owner Participant and the Lenders;

(ix) the sublessee does not cause the Undivided Interest to become "tax-exempt use property" within the meaning of Section 168(h) of the Internal Revenue Code;

(x) any required mortgagee consents to such sublease are obtained under the First Mortgage, the LEM Mortgage, the LG&E Subordinated Mortgage or is otherwise, in each case, permitted thereunder and any other required creditor consents are obtained;

(xi) (a) at the time of entering into such sublease and immediately after giving effect thereto, the Facility Lessee's long term unenhanced debt obligations secured by the First Mortgage are rated at least BBB by S&P and Baa2 by Moody's, or (b) the long term senior

unsecured debt obligations of the sublessee or any guarantor (such guarantee to be in form and substance satisfactory to the Owner Participant) of such sublessee or guarantor has a rating of at least BBB by S&P and Baa2 by Moody's (or, if such sublessee or guarantor does not have long-term senior unsecured debt obligations rated by S&P and Moody's, the long-term senior secured debt obligations of such sublessee or guarantor shall be rated at least BBB+ by S&P and Baa1 by Moody's);

(xii) after giving effect to the sublease, the Qualifying Swap and Qualifying Swap Surety Bond continue to satisfy the requirements set forth in the definition of such terms and meet the requirements of Section 7.5 of the Participation Agreement;

(xiii) the sublease is permitted by the LG&E Arrangements; and

(xiv) the Owner Participant shall have received an opinion of independent tax counsel selected by the Owner Participant and reasonably acceptable to the Facility Lessee that the sublease does not result in any unindemnifiable adverse tax consequences to the Facility Lessor or the Owner Participant and any such indemnity must be satisfactory in form and substance (including with respect to arrangements in respect of collateral provided to secure such indemnity) to the Owner Participant in its sole discretion exercised in good faith.

Section 18.2 Right to Assign. (a) The Facility Lessee will have the right to assign its interest in this Facility Lease and the other Operative Documents and be released from its obligations under this Facility Lease and under the other Operative Documents (except to the extent set forth in clause (vii) below) only if the following conditions are satisfied:

(i) the assignment of its interest in this Facility Lease and the other Operative Documents is in connection with a sale by the Facility Lessee of its ownership interest in the Facility and the Site;

(ii) the entity to which the Facility Lessee's interest in the Facility Lease and the other Operative Documents shall be assigned (the "Assignee") shall assume all of the Facility Lessee's obligations under each of the Operative Documents and, if prior to their expiration, the LG&E Arrangements, such assumption to be in form and substance acceptable to the Owner Participant and the Lenders;

(iii) the conveyance of the Facility Lessee's interest in the Facility, assignment of the Facility Lessee's interest in the Operative Documents and the Assignee's assumption of the Facility Lessee's obligations thereunder, shall not create any unindemnified incremental Federal income tax liability to the Lenders or the Beneficial Interest Purchaser or the Owner Participant and, in the case of the Owner Participant, the Owner Participant shall receive an opinion of independent tax counsel satisfactory to the Owner Participant to such effect which opinion and any indemnity provided pursuant to this clause shall be satisfactory in form and substance (including with respect to arrangements in respect of collateral provided to secure such indemnity) to the Owner Participant in its sole discretion exercised in good faith;

(iv) the assignment of the Facility Lessee's interest in the Operative Documents and the assumption by the Assignee shall not expose the Owner Participant or the

Lender to the credit of the Assignee in excess of the then internal policy, rating agency or regulatory constraints of the Owner Participant or the Lenders and is consistent with the then existing criteria of the Owner Participant, the Lenders for similar transactions;

(v) the assignment shall not require any additional reserve requirements to be maintained by the Lenders in accordance with legal or accounting requirements then imposed on a Lender or a Lender's then current internal policies on capital maintenance, capital charges to be incurred or extensions of credit in respect of the assignment to the Assignee;

(vi) at the time of such conveyance, assignment and assumption and immediately after giving effect thereto, either (A) (1) the long-term senior unsecured debt obligations of the Assignee or a guarantor of the Assignee shall be rated at least A by S&P and A2 by Moody's or (2) if the Assignee or its guarantor does not have long-term senior unsecured debt obligations rated by S&P and Moody's, the long-term senior secured debt obligations of the Assignee or its guarantor shall be rated at least A+ by S&P and A1 by Moody's, or (B) (1) the Facility shall be operated by an operator which bears the costs and expenses of the operation of the Facility pursuant to a transaction similar to the LG&E Arrangements which operator shall be an affiliate of LG&E in circumstances where the LG&E long-term senior unsecured debt obligations are then rated at least A- by S&P and A3 by Moody's (or if LG&E does not have long-term senior unsecured debt obligations rated by S&P and Moody's, the long-term senior secured debt obligations of LG&E shall be rated at least A by S&P and A2 by Moody's) or an entity whose long-term senior unsecured debt obligations shall be rated at least A- by S&P and A3 by Moody's (or guaranteed by an entity with such ratings) (or if such entity or its guarantor does not have long-term senior unsecured debt obligations rated by S&P and Moody's, the long-term senior secured debt obligations of such entity or its guarantor shall be rated at least A by S&P and A2 by Moody's) and (2) the Assignee's long-term senior unsecured debt obligations are rated at least BBB by S&P and Baa2 by Moody's (or guaranteed by an entity with such ratings) (or if the Assignee or its guarantor does not have long-term senior unsecured debt obligations rated by S&P and Moody's, the long-term senior secured debt obligations of the Assignee or its guarantor shall be rated at least BBB+ by S&P and Baa1 by Moody's);

(vii) the Facility Lessee shall be secondarily liable for the indemnities set forth in Sections 9.1 and 9.2 of the Participation Agreement and under the Tax Indemnity Agreement in the form in which such indemnities exist on the date of such assignment unless or until (a) the long-term senior unsecured debt obligations of the Assignee or its guarantor shall be rated at least A by S&P and A2 by Moody's (or if the Assignee or its guarantor does not have long-term senior unsecured debt obligations rated by S&P and Moody's, the long-term senior secured debt obligations of the Assignee or its guarantor shall be rated at least A+ by S&P and A1 by Moody's) and (b) the Lien of the First Mortgage on the Facility, the Undivided Interest, the Operative Documents, the Site, the Easement Site (taking into account any portion of such Easement Sites released in accordance with the provisions of the Ground Lease) shall secure only the Secured Notes;

(viii) at the time of such assignment, and immediately thereafter, the long-term senior unsecured debt obligations or the financial strength rating of Ambac or such other provider, as the case may be, of the Qualifying Swap, Qualifying Facility Lease Surety

Bond or Qualifying Letter of Credit then in effect, in each case reasonably acceptable to the Owner Participant, shall be rated at least AA+ by Standard & Poor's and Aa1 by Moody's and such Qualifying Swap, Qualifying Swap Surety Bond, Qualifying Facility Lease Surety Bond or Qualifying Letter of Credit continues to satisfy the requirements set forth in the definition of such term and Section 7.5, 7.6 or 7.7 of the Participation Agreement, as the case may be;

(ix) no Payment Default, Bankruptcy Default or Event of Default shall have occurred and be continuing or shall occur as a result of such assignment;

(x) no event of default under the First Mortgage, the LEM Mortgage and the LG&E Subordinated Mortgage shall have occurred and be continuing or shall occur as a result of such assignment;

(xi) the Beneficial Interest Purchaser and Ambac shall have confirmed that the Qualifying Swap and the Qualifying Swap Surety Bond supporting the Qualifying Swap continue to be legal, valid, binding and enforceable obligations of the Beneficial Interest Purchaser and Ambac, respectively;

(xii) the Facility Lessee shall compensate Ambac for any additional capital charges or reserve requirement required by any legal, accounting or rating agency requirement, or Ambac's then current internal policies on capital maintenance or extensions of credit in respect of the assignment to the Assignee;

(xiii) the assignment shall be permitted by the First Mortgage and the LG&E Arrangements and all consents required thereunder have been obtained;

(xiv) the Assignee shall be an entity organized under the laws of a state of the United States or the District of Columbia;

(xv) no merger of the interest of the First Mortgage Mortgagees and any ownership interests of the Facility Lessee shall have occurred as a result of the assignment; and

(xvi) the Facility Lessee shall have agreed to indemnify each of the Owner Participant and the Lenders against any adverse consequences and any such indemnity shall be satisfactory in form and substance (including with respect to arrangements in respect of collateral provided to secure such indemnity) to each party in its sole discretion exercised in good faith.

(b) All documentation (including, without limitation, an assumption agreement of the assignee, assuming all of the Facility Lessee's obligations under each Operative Document) in connection with such assignment and release in accordance with this Section 18.2 shall be reasonably acceptable to the Facility Lessor, the Owner Participant, the OP Trust, the Lenders and Ambac. Each of the Facility Lessor, the Owner Participant, the OP Trust, the Lenders and Ambac shall be entitled to receive:

(i) an opinion of counsel for the Assignee, which counsel and opinion shall be reasonably acceptable to each such Person, to the effect that each document and agreement to which the Assignee is a party in connection with the assignment contemplated by

this Section 18.2 has been duly authorized, executed and delivered by the assignee and constitutes the legal, valid and binding obligation of the assignee;

(ii) an opinion from counsel for the Facility Lessor, which counsel and opinion shall be reasonably acceptable to such Persons, to the effect that each agreement to which the Facility Lessor is a party in connection with the assignment contemplated by this Section 18.2 has been duly authorized, executed and delivered by the Facility Lessor and constitutes the legal, valid and binding obligation of the Facility Lessor;

(iii) the following, in each case in form and substance reasonably satisfactory to such Persons:

(A) an incumbency certificate of the Assignee regarding the officers (or other authorized Persons) of the Assignee authorized to execute and deliver the documents referred to in this Section 18.2 to which it is a party and any other documents or agreements delivered in connection therewith;

(B) certified copies of all documents evidencing the corporate (or similar) actions of the Assignee including, without limitation, resolutions of the board of directors or other governing body of the Assignee duly authorizing the execution, delivery and performance by the Assignee of each of the documents required to implement the assignment and assumption contemplated by this Section 18.2 to which it is a party and the transactions contemplated thereby;

(C) certified copies of the by-laws and certificate of incorporation (or comparable organizational or governing documents) of the Assignee; and

(D) such other agreements, documents, certifications and opinions as such Persons shall reasonably determine are necessary or appropriate in connection with the consummation of such assignment; and

(iv) evidence that the assignment and assumption shall have been approved by any relevant federal or state regulatory agency or agencies, if and to the extent required by Applicable Law, and such other recordings, filings, financing statements, continuation statements or other instruments shall have been filed or made and all other actions shall have been taken as are necessary or desirable in the opinion of such Persons to maintain all of the Facility Lessor's right, title and interest in and to the Undivided Interest.

(c) The Facility Lessee agrees to pay or reimburse, or cause to be paid or reimbursed, on an After-Tax Basis, all costs and expenses, including reasonable legal fees and expenses incurred by the Facility Lessor, the Owner Participant, the OP Trust, and the Lenders and their respective Affiliates, in connection with the implementation of the assignment contemplated by this Section 18.2, whether or not any such transaction is consummated.

SECTION 19. FURTHER ASSURANCES

The Facility Lessee, at its own cost and expense, will duly execute and deliver to the Facility Lessor such further documents and assurances and take such further action as the

Facility Lessor may from time to time reasonably request in order to establish and protect the rights and remedies created in favor of the Facility Lessor hereunder or the Facility Lessee's obligations under any of the Operative Documents.

SECTION 20. FACILITY LESSOR'S RIGHT TO PERFORM

If the Facility Lessee fails to make any payment required to be made by it hereunder (other than Supplemental Rent in respect of a Purchase Option Price) or fails to perform or comply with any of its other agreements contained herein after notice to the Facility Lessee and failure of the Facility Lessee to so perform or comply within 10 days thereafter in the case of a failure to make any payment or 30 days thereafter in all other cases, the Facility Lessor, the OP Trust or the Owner Participant may itself make such payment or perform or comply with such agreement in a reasonable manner, but shall not be obligated hereunder to do so, and the amount of such payment and of the reasonable expenses of the Facility Lessor, the OP Trust or the Owner Participant incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Overdue Rate, to the extent permitted by Applicable Law, shall be deemed to be Supplemental Rent, payable by the Facility Lessee to the Facility Lessor on demand.

SECTION 21. NOTICES

Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) and (b) above, in each case addressed to each party and copy party hereto at its address set forth below or in the case of any such party or copy party hereto, at such other address as such party or copy party may from time to time designate by written notice to the other parties hereto:

If to the Facility Lessor:

FBR-1 Statutory Trust
c/o State Street Bank and Trust Company of Connecticut, National Association
Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103
Facsimile No.: (860) 244-1897
Telephone No.: (860) 244-1842
Attention: Corporate Trust Administration

with copies to the OP Trust:

FBR-1 OP Statutory Trust
c/o State Street Bank and Trust Company of Connecticut, National Association

Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103
Facsimile No.: (860) 244-1897
Telephone No.: (860) 244-1842
Attention: Corporate Trust Administration

with copies to the Owner Participant:

Fleet Real Estate, Inc.
c/o Fleet Capital Corporation
111 Westminster Street, 7th Floor
Providence, Rhode Island 02903
Facsimile No.: (401) 453-2536
Telephone No.: (401) 278-6495
Attention: Senior Credit Officer

and a copy to the Agent:

AME Investments, LLC
c/o Ambac Capital Corporation
One State Street Plaza
New York, New York 10004
Facsimile No.: (212) 208-3113
Telephone No.: (212) 208-3433
Attention: Managing Director

If to the Facility Lessee:

Big Rivers Electric Corporation
201 Third Street
Henderson, Kentucky 42420
Facsimile No.: (270) 827-2558
Telephone No.: (270) 827-2561
Attention: President and Chief Executive Officer

and a copy to the Agent at the address for notices set forth above and, in the case of Notice of a Default or Event of Default or cancellation or termination of the Facility Lease, to the RUS:

The Administrator
Rural Utilities Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Room 4051
Washington, D.C. 20250-1500

SECTION 22. SECURITY INTEREST AND INVESTMENT OF SECURITY FUNDS

Any moneys received by the Facility Lessor pursuant to Section 10.3(e) or Section 10.4 hereof shall, until paid to the Facility Lessee as provided in Section 10.3 (with respect to amounts received pursuant to Section 10.3) or as provided in Section 10.4 (with respect to amounts received pursuant to Section 10.4), be held by the Facility Lessor as security for the Facility Lessee's obligations under this Facility Lease and invested in Permitted Investments by the Facility Lessor (at the sole risk of the Facility Lessee) from time to time as directed in writing by the Facility Lessee (and the Facility Lessor during the continuation of a Payment Default, Bankruptcy Default or an Event of Default) if such investments are reasonably available for purchase. 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 or remitted to the Facility Lessee in the same manner as the principal invested.

SECTION 23. SECURITY FOR FACILITY LESSOR'S OBLIGATION TO THE LENDERS.

In order to secure the Secured Indebtedness, the Facility Lessor will by the Leasehold Mortgage assign and grant a Lien to the Agent (for the benefit of the Lenders) on all of the Facility Lessor's right, title and interest in, to and under this Facility Lease, the Facility Lessor's Interest and the Undivided Interest (other than Excepted Payments and Excepted Rights). The Facility Lessee hereby consents to such assignment and to the creation of such Lien and acknowledges receipt of a copy of the Leasehold Mortgage, it being understood that such consent shall not affect any requirement or the absence of any requirement for any consent of the Facility Lessee under any other circumstances. Unless and until the Facility Lessee shall have received written notice from the Agent that the Lien of the Leasehold Mortgage has been fully terminated, the Agent on behalf of the Lenders shall have the right to exercise the rights of the Facility Lessor under this Facility Lease to the extent set forth in and subject in each case to the exceptions set forth in the Leasehold Mortgage. TO THE EXTENT, IF ANY, THAT THIS FACILITY 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 FACILITY LEASE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART HEREOF OTHER THAN THE ORIGINAL COUNTERPART, WHICH SHALL BE IDENTIFIED AS THE COUNTERPART CONTAINING THE RECEIPT THEREFOR EXECUTED BY THE AGENT ON THE SIGNATURE PAGE THEREOF.

SECTION 24. MISCELLANEOUS.

Section 24.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance, without regard to the conflicts-of-laws provisions thereof except New York General Obligations Law Section 5-1401 except that (a) determinations of whether property is characterized as real or personal property, and (b) to the extent required, the enforceability of the remedies of possession, repossession and replevin hereunder, shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to the conflicts-of-laws provisions thereof.

Section 24.2 Severability. If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law of any jurisdiction, the validity, legality and enforceability of such provision in any other jurisdiction and of the remaining provisions hereof in any jurisdiction shall not be affected or impaired thereby.

Section 24.3 Headings and Table of Contents. The headings of the sections of this Facility Lease and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

Section 24.4 Successors and Assigns. (a) This Facility Lease shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof.

(b) Except as expressly provided herein or in the other Operative Documents, neither party hereto may assign its interests or transfer its obligations herein without the consent of the other party hereto.

Section 24.5 "True Lease". It is the intent of the parties to this Facility Lease that it be, and this Facility Lease shall be, a "true lease," and that, notwithstanding the fact that legal title to the Undivided Interest is vested in the Facility Lessee, the interest of the Facility Lessor under the Head Lease shall cause the Facility Lessor to be the owner of the Undivided Interest in the Facility for all United States income tax purposes and that this Facility Lease conveys to the Facility Lessee no right, title or interest in the Undivided Interest except as "sublessee" of the Undivided Interest.

Section 24.6 Amendments and Waivers. No term, covenant, agreement or condition of this Facility Lease may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto.

Section 24.7 Survival. Except for the provisions of Sections 3.3, 3.5, 3.6, 3.7, 5, 9, 15, 16 and 17 which shall survive, the warranties and covenants made by each party hereto shall not survive the expiration or termination of this Facility Lease.

Section 24.8 Counterparts. This Facility Lease may be executed by the parties hereto in separate counterparts, each of which, subject to Section 23, when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 24.9 Effectiveness. This Facility Lease has been dated as of the date first above written for convenience only. This Facility Lease shall be effective on the date of execution and delivery by the Facility Lessee and the Facility Lessor.

Section 24.10 Limitation of Liability. It is expressly understood and agreed by the parties hereto that (a) this Agreement is executed and delivered by State Street Bank and Trust Company of Connecticut, National Association, not individually or personally but solely as trustee under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part

of the Trustee is made and intended not as personal representations, undertakings and agreements by State Street Bank and Trust Company of Connecticut, National Association, but is made and intended for the purpose for binding only the Owner Trust, (c) nothing herein contained shall be construed as creating any liability on State Street Bank and Trust Company of Connecticut, National Association, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall State Street Bank and Trust Company of Connecticut, National Association, be personally liable for the payment of any indebtedness or expenses of the Owner Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Owner Trust under this Agreement.

(Signatures Follow on Next Page)

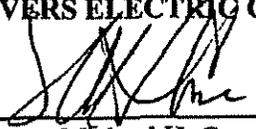
IN WITNESS WHEREOF, the Facility Lessor and the Facility Lessee have caused this Facility Lease to be duly executed and delivered by their respective officers thereunto duly authorized.

FBR-1 STATUTORY TRUST

By: State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Trustee under the Trust Agreement (FBR-1)

By: 
Name: Philip G. Kane, Jr.
Title: Vice President

BIG RIVERS ELECTRIC CORPORATION

By: 
Name: Michael H. Core
Title: President and Chief Executive Officer

STATE OF NEW YORK)
)
) ss:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 13th day of April, 2000, by Philip G. Kane, Jr., a vice President, of State Street Bank and Trust Company of Connecticut, National Association, a national banking association, on behalf of said association, as Trustee of FBR-1 Statutory Trust, as Facility Lessor. He ~~is~~ is personally known to me or has provided a current driver's license as identification.


Notary Public, _____

My Commission expires: _____

[Notarial Seal]

DAVID B. SABOFF
Notary Public, State of New York
No. 24-01HA4663692
Qualified in Kings County
Commission Expires March 30, 2002

STATE OF NEW YORK)
)
) SS:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 13th day of April, 2000, by Michael H. Core, President and Chief Executive Officer, of Big Rivers Electric Corporation, on behalf of said corporation, as Facility Lessee. He is personally known to me or has provided a current driver's license as identification.

Darlene Beauchamp
Notary Public, State of New York
My Commission expires: 11-9-00

[Notarial Seal]

DARLENE BEAUCHAMP
NOTARY PUBLIC, State of New York
No. 01BE6018104
Qualified in Bronx County
Commission Expires Nov. 9, 2000

APPENDIX A
to
Facility Lease

DEFINITIONS

APPENDIX A - DEFINITIONS

(FBR-1)

GENERAL PROVISIONS

In this Appendix A and each Operative Document (as hereinafter defined), unless otherwise provided herein or therein:

(a) the terms set forth in this Appendix A or in any such Operative Document shall have the meanings herein provided for and any term used in an Operative Document and not defined therein or in this Appendix A but in another Operative Document shall have the meaning provided for in such other Operative Document;

(b) any term defined in this Appendix A by reference to another document, instrument or agreement shall continue to have the meaning ascribed thereto whether or not such other document, instrument or agreement remains in effect;

(c) words importing the singular include the plural and vice versa;

(d) words importing a gender include either gender;

(e) a reference to a part, clause, section, paragraph, article, party, annex, appendix, exhibit, schedule or other attachment to or in respect of an Operative Document is a reference to a part, clause, section, paragraph, or article of, or a party, annex, appendix, exhibit, schedule or other attachment to, such Operative Document unless, in any such case, otherwise expressly provided in any such Operative Document;

(f) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws varying, consolidating or replacing the same from time to time, and a reference to a statute includes all regulations, policies, protocols, codes, proclamations and ordinances issued or otherwise applicable under that statute unless, in any such case, otherwise expressly provided in any such statute or in such Operative Document;

(g) a definition of or reference to any document, instrument or agreement includes an amendment or supplement to, or restatement, replacement, modification or novation of, any such document, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used;

(h) a reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time;

(i) if a capitalized term describes, or shall be defined by reference to, a document, instrument or agreement that has not as of any particular date been executed and delivered and such document, instrument or agreement is attached as an exhibit to the Participation Agreement (as hereinafter defined), such reference shall be deemed to be to such

form and, following such execution and delivery and subject to paragraph (g) above, to the document, instrument or agreement as so executed and delivered;

(j) a reference to any Person (as hereinafter defined) includes such Person's successors and permitted assigns (in the designated capacity);

(k) any reference to "days" shall mean calendar days unless "Business Days" (as hereinafter defined) are expressly specified;

(l) if the date as of which any right, option or election is exercisable, or the date upon which any amount is due and payable, is stated to be on a date or day that is not a Business Day, such right, option or election may be exercised, and such amount shall be deemed due and payable, on the next succeeding Business Day with the same effect as if the same was exercised or made on such date or day (without, in the case of any such payment, the payment or accrual of any interest or other late payment or charge, provided such payment is made on such next succeeding Business Day);

(m) a reference to the satisfaction, release and/or discharge of the Leasehold Mortgage (as hereinafter defined) or the encumbrance thereof (or words of similar import) shall, whether or not so expressly stated, be deemed to be a reference to the satisfaction, release and discharge in full and cancellation of the Leasehold Mortgage in accordance with the express provisions thereof;

(n) words such as "hereunder", "hereto", "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof;

(o) a reference to "including" means including without limiting the generality of any description preceding such term, and for purposes hereof and of each Operative Document the rule of *ejusdem generis* shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned; and

(p) annexes, exhibits, appendices, schedules, supplements and other attachments to any document, instrument or agreement are part of such document, instrument or agreement.

DEFINED TERMS

"Acceptable Credit Bank" shall mean a bank whose long-term debt is rated at least "AA" by S&P and "Aa2" by Moody's.

"Acceptable Substitute Collateral" shall mean any (x) Dollar denominated instruments or securities issued by and carrying the full faith and credit or equivalent support of (a) the government of the United States, The Netherlands, the United Kingdom, the Federal Republic of Germany, Switzerland or Japan, (b) the World Bank, the Asian Development Bank, the International Finance Corporation, or (c) such other institutions as are reasonably acceptable to

the Owner Participant and, if the Lien of the Leasehold Mortgage has not been discharged, the Series A Lender, so long as at the time of substituting the Acceptable Substitute Collateral described in this clause (x) for the Payment Agreement or other Acceptable Substitute Collateral (i) in the case of any instrument or security issued by an issuer described in clause (a) or (b) only, there has not been a material adverse change in the financial condition of the issuer or of the Person providing the full faith and credit or equivalent support (the "Support Entity") of such Acceptable Substitute Collateral since the Closing Date (including, without limitation, any downgrading or proposed downgrade of the credit rating of such issuer or of such Support Entity or the credit rating of such issuer or of such Support Entity being placed under review); (ii) the nature and amount of such Acceptable Substitute Collateral is acceptable to the appropriate credit investment or other approval committees or officer of the Owner Participant and Big Rivers and, if the Lien of the Leasehold Mortgage has not been discharged, the Series A Lender, with respect to limitations on total credit exposure to such Acceptable Substitute Collateral issuer or Support Entity, or, if applicable, limitations on total credit exposure to the country in which such Support Entity is the government; (iii) there is no then generally applicable lending or other internal policy of the Owner Participant or Big Rivers and, if the Lien of the Leasehold Mortgage has not been discharged, the Series A Lender, that would be inconsistent with its continued participation in this transaction with the Acceptable Substitute Collateral; (iv) it is not illegal for the parties to enter into such arrangements with such Acceptable Substitute Collateral; (v) there is no material litigation, dispute or arbitration proceeding between the Owner Participant, Big Rivers or, if the Lien of the Leasehold Mortgage has not been discharged, the Series A Lender, on the one hand and the issuer or Support Entity of such Acceptable Substitute Collateral on the other hand which litigation is threatened, pending or in progress; and (vi) such Acceptable Substitute Collateral shall remain in full force and effect at all times until the Reset Date and shall at all times have a marked to market value equal to at least 120% of the outstanding principal amount of the Series A Loan Certificate and provide for the payment of amounts equal to the Basic Rent, Termination Value or Purchase Option Price in excess of the sum of the Equity Portion of Basic Rent plus debt service due and payable on any Rent Payment Date under the Series B Loan Certificate, the sum of the Equity Portion of Termination Value plus the outstanding principal balance of the Series B Loan Certificate on any date of computation or the sum of Equity Portion of the Purchase Option Price plus the outstanding principal balance of the Series B Loan Certificate on the Expiration Date (as Basic Rent, Termination Value and Purchase Option Price may be adjusted from time to time pursuant to Section 3.4(b) of the Facility Lease), (taking into account a requirement that such Acceptable Substitute Collateral be marked to market at least once annually and at such other time as the Owner Participant and, so long as the Lien of the Leasehold Mortgage is not discharged, the Series A Lender, may reasonably request), in each case, at the times such amounts are payable, or (y) one or more standby letters of credit or a payment agreement substantially similar to the initial Payment Agreement (A) issued by a bank or financial institution qualifying as of the date of issuance of such Acceptable Substitute Collateral as an Acceptable Credit Bank and (B) in the case of any letter of credit, having an aggregate stated amount at least equal to the outstanding principal amount of, and interest expected to accrue over the next twelve months on, the Series A Loan Certificate, or in the case of a payment agreement, providing for the payment of amounts equal to the Basic Rent, Termination Value or Purchase Option Price in excess of the sum of the Equity Portion of Basic Rent plus debt service due and payable on any Rent Payment Date under the Series B Loan Certificate, the sum of the Equity Portion of Termination Value plus the

outstanding principal balance of the Series B Loan Certificate on any date of computation or the sum of the Equity Portion of the Purchase Option Price (as Basic Rent, Termination Value and Purchase Option Price may be adjusted from time to time pursuant to Section 3.4(b) of the Facility Lease), so long as at the time of substituting the Acceptable Substitute Collateral described in this clause (y) for the Payment Agreement or other Acceptable Substitute Collateral (i) the nature and amount of such Acceptable Substitute Collateral is acceptable to the appropriate credit investment or other approval committees or officer of the Owner Participant and Big Rivers and, if the Lien of the Leasehold Mortgage has not been discharged, the Series A Lender, with respect to limitations on total credit exposure to such Acceptable Substitute Collateral issuer, or, if applicable, limitations on total credit exposure to the country in which such issuer is located; (ii) there is no then generally applicable lending or other internal policy of the Owner Participant and Big Rivers and, if the Lien of the Leasehold Mortgage has not been discharged, the Series A Lender, that would be inconsistent with its continued participation in this transaction with the Acceptable Substitute Collateral; (iii) it is not illegal for the parties to enter into such arrangements with such Acceptable Substitute Collateral; (iv) there is no material litigation, dispute or arbitration proceeding between the Owner Participant, Big Rivers or, if the Lien of the Leasehold Mortgage has not been discharged, the Series A Lender or any Ambac Party, on the one hand and the issuer of such Acceptable Substitute Collateral on the other hand which litigation is threatened, pending or in progress; and (v) such Acceptable Substitute Collateral shall remain in full force and effect at all times until the Reset Date (*provided* that a letter of credit may have an earlier expiry date so long as suitable arrangements are agreed to respecting substitution of new letters of credit or cash thereof during such period), which Acceptable Substitute Collateral shall be accompanied by such certificates, opinions and other documents as the Owner Participant and, if the Lien of the Leasehold Mortgage has not been discharged, the Series A Lender, may reasonably request to evidence the enforceability of such Acceptable Substitute Collateral.

“Acceptable Substitute Investment Collateral” shall mean (i) direct obligations of the Department of the Treasury of the United States of America, (ii) obligations of any governmental agency whose obligations represent the full faith and credit of the United States of America, or (iii) debt obligations of Freddie Mac, Fannie Mae and Ginnie Mae.

“ACP Secured Amount” shall have the meaning specified in the Beneficial Interest Purchaser Secured Note.

“Actual Knowledge” shall mean, with respect to any Transaction Party, actual knowledge of, or receipt of written notice by (i) an officer or managing general partner of such a Transaction Party having responsibility for the administration of the Overall Transaction; or (ii) with respect to environmental matters, any officer, employee or managing general partner of such a Transaction Party having responsibility for environmental management or compliance.

“Additional Loan Certificates” shall mean any Loan Certificates issued under the Leasehold Mortgage in connection with a refinancing of, or the resetting of the Loan Rate of, Loan Certificates previously issued under the Leasehold Mortgage.

“Additional Unit” shall have the meaning set forth in Section 16 of the Head Lease.

“Additional Wilson Owners” shall have the meaning set forth in Section 16 of the Head Lease.

“Advisor” shall have the meaning specified in Section 12A.2(d) of the Participation Agreement.

“Advisor to Big Rivers” shall mean Babcock & Brown.

“Affiliate” of a particular Person shall mean any Person directly or indirectly controlling, controlled by or under common control with such particular Person. For purposes of this definition, “control” when used with respect to any particular Person shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“After-Tax Basis”, in the context of determining the amount of a payment to be made on such basis, shall mean the payment of an amount which, after reduction by the net increase in Taxes of the recipient of such payment and its Affiliates (or any consolidated or combined group of which it is a member) which net increase shall be calculated by taking into account any reduction in such Taxes resulting from any Tax benefits realized or the present value of any reduction in such Taxes resulting from any Tax benefits to be realized by the recipient and its Affiliates (or any consolidated or combined group of which it is a member) as a result of such payment, shall be equal to the amount required to be paid. In calculating the amount payable by reason of this provision, all income taxes payable and tax benefits realized or to be realized shall be determined on the assumptions that (i) the payor and payee are each subject to the applicable income taxes at the highest marginal tax rates then applicable to corporate taxpayers taxed on the same basis as the payor or payee, respectively, that are in effect in the applicable jurisdictions at the time such amount is paid or received (or properly accrued), and (ii) all tax benefits are utilized at the highest marginal rates then applicable to corporate taxpayers taxed on the same basis as the payor or payee, respectively, that are then in effect in the applicable jurisdictions.

“Agent” shall mean AME Investments, LLC, a Delaware limited liability company or any successor agent appointed pursuant to Section 7.04 of the Leasehold Mortgage.

“Agreement Collateral” shall have the meaning specified in Section 2(a) of the Payment Agreement Pledge.

“Ambac” shall mean Ambac Assurance Corporation, a Wisconsin domiciled stock insurance corporation.

“Ambac Credit Products Secured Note” shall mean the Ambac Credit Products Secured Note (FBR-1), dated April 18, 2000, made by Big Rivers to the Beneficial Interest Purchaser and secured by the First Mortgage.

“Ambac Parties” shall mean Ambac, the Payment Undertaker, the Series A Lender and the Beneficial Interest Purchaser and each direct or indirect member of any limited liability company constituting any of the foregoing.

“Amendment” shall have the meaning specified in Section 6(o) of the Tax Indemnity Agreement.

“Amortization Deductions” shall have the meaning set forth in Section 2(k) of the Tax Indemnity Agreement.

“Applicable Law” shall mean, without limitation, all applicable laws, including, without limitation, all Environmental Laws, and treaties, judgments, decrees, injunctions, writs and orders of any court, arbitration board or Governmental Entity and rules, regulations, orders, ordinances, licenses and permits of any Governmental Entity.

“Applicable Rate” shall mean, in the case of either Lender, the applicable Loan Rate, and in the case of the Owner Participant or the OP Trust, the Prime Rate plus 2% per annum.

“Appraisal” shall mean the appraisal prepared by the Appraiser with respect to the Facility Lessor’s Undivided Interest referred to in Section 4.14 of the Participation Agreement.

“Appraisal Procedure” shall mean a procedure for determining Fair Market Rental Value of the Ground Interest, whereby if the parties are unable to agree upon a Fair Market Rental Value of the Ground Interest, within 30 days after commencement of the Appraisal Procedure, the Fair Market Rental Value of the Ground Interest, shall be determined by appraisal. The parties will consult with the intent of selecting a mutually acceptable Independent Appraiser. If a mutually acceptable Independent Appraiser is selected, the Fair Market Rental Value of the Ground Interest shall be determined by such Independent Appraiser. If the parties are unable to agree upon a single Independent Appraiser within a 15-day period, the OP Trust and the Owner Participant will retain an Independent Appraiser. Within 15 days after the OP Trust’s and the Owner Participant’s selection of an Independent Appraiser, the Ground Lessor shall select an Independent Appraiser. If the Ground Lessor fails to retain an Independent Appraiser within such period, the Fair Market Rental Value of the Ground Interest shall be determined by the Independent Appraiser retained by the OP Trust and the Owner Participant. The Independent Appraiser selected by the Ground Lessor and the Independent Appraiser selected by the OP Trust and the Owner Participant shall select a consensus Independent Appraiser within 10 days. If the Independent Appraisers cannot agree on a consensus Independent Appraiser within 10 days, the consensus Independent Appraiser shall be selected by the American Arbitration Association. If the parties are able to agree upon a single Independent Appraiser, or the two Independent Appraisers are able to agree upon a consensus Independent Appraiser, the single Independent Appraiser or the three Independent Appraisers, as the case may be, shall within 30 days make a determination of such Fair Market Rental Value of the Ground Interest. If there shall be a panel of three Independent Appraisers, the appraisal which differs most from the other two appraisals with respect to the Ground Interest shall be excluded and the remaining two appraisals shall be averaged and such average shall constitute Fair Market Rental Value of the Ground Interest. Fees and expenses relating to all such appraisals shall be payable by the Ground Lessor.

“Appraiser” shall mean Deloitte & Touche LLP Valuation Group.

“Assigned LG&E Agreement Percentage” shall mean, as of any Year or Partial Year, the percentage for such Year or Partial Year set forth on Schedule A to the Facility Lessee Assignment Agreement, as such percentages may be adjusted in accordance with Section 3.3 of the Facility Lessee Assignment Agreement.

“Assumed Tax Rate” shall have the meaning set forth in Section 2(c) of the Tax Indemnity Agreement.

“Assumption Agreement” shall mean Assumption Agreement in the form of Exhibit S to the Participation Agreement.

“Auction Rate” shall mean the rate of interest determined pursuant to clause (ii) of the definition of “Reset Interest Rate”.

“Banker” shall mean an internationally recognized financial institution or investment banking firm selected by the OP Trust and the Owner Participant to locate a potential purchaser or purchasers of Loan Certificates as provided in Section 2.11 of the Leasehold Mortgage.

“Bankruptcy Code” shall mean the United States Bankruptcy Code of 1978, as amended from time to time, 11 U. S. C. § 101 *et seq.*

“Bankruptcy Default” shall mean an event that is, or in the case of Section 16(k) of the Facility Lease with the passage of time would become, an Event of Default under Section 16(j) or 16(k) of the Facility Lease.

“Base Power” shall have the meaning specified in Section 4.1(a) of the LEM Power Purchase Agreement.

“Basic Rent” shall mean the amounts payable on each Rent Payment Date as indicated on Schedule I to the Facility Lease and as allocated as set forth on Schedule 1-A to the Facility Lease and as further defined in Section 3.2 of the Facility Lease, as the same may be adjusted from time to time pursuant to and in accordance with Section 3.4 of the Facility Lease and Section 12A.6 of the Participation Agreement.

“Basic Term” shall have the meaning specified in Section 3.1 of the Facility Lease.

“Beneficial Interest” shall mean the interest of the Owner Participant in the OP Trust.

“Beneficial Interest Purchaser” shall mean Ambac Credit Products, LLC, a Delaware limited liability company.

“Beneficial Interest Purchaser Secured Note” shall mean the Ambac Credit Products Secured Note.

“Big Rivers” shall mean Big Rivers Electric Corporation (formerly Big Rivers Rural Electric Co-operative Corporation), a Kentucky rural electric cooperative, together with its successors and permitted assigns.

“Big Rivers Person” shall have the meaning assigned to such term in Section 9.2(b)(i) of the Participation Agreement.

“Big Rivers Subsidiary” shall mean Big Rivers Leasing Corporation, a Delaware corporation and a wholly-owned subsidiary of Big Rivers.

"Big Rivers Swap" shall mean the Master Agreement, dated April 18, 2000, between the Beneficial Interest Purchaser and Big Rivers, together with the associated schedule and confirmation, in substantially the form of Exhibit X to the Participation Agreement.

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which commercial banking institutions are authorized or required by law, regulation or executive order to be closed in (i) Henderson, Kentucky (ii) New York, New York, (iii) Denver, Colorado or (iv) Hartford, Connecticut.

"Capacity Charges" shall mean the "Capacity Charges" for a Service Contract, set forth in Schedule 3-B to the Facility Lease and as the same may be adjusted from time to time as contemplated by Section 12A.6 of the Participation Agreement and Section 3.4 of the Facility Lease.

"CFC" shall mean National Rural Utilities Cooperative Finance Corporation, a District of Columbia cooperative corporation.

"Change in Tax Law" shall have the meaning set forth in Section 6(d) of the Tax Indemnity Agreement.

"Citibank" shall mean Citibank, N.A., a national banking association.

"Claim" shall mean any liability (including, without limitation, in respect of negligence (whether passive or active or other torts), strict or absolute liability in tort or otherwise, warranty, latent or other defects (regardless of whether or not discoverable), statutory liability, property damage, bodily injury or death), obligation, loss, settlement, damage, claim, action, suit, proceeding (whether civil or criminal), demand, order, decree, directive, judgment, penalty, fine and other legal or administrative sanction, judicial or administrative proceeding, cost, expense or disbursement, including reasonable legal, investigation and expert fees, expenses and reasonable related charges, of whatsoever kind and nature.

"Closing" shall have the meaning specified in Section 2.2(a) of the Participation Agreement.

"Closing Date" shall mean the Scheduled Closing Date or such later date on which the Closing shall occur.

"Code" shall mean the Internal Revenue Code of 1986 as in effect on the Closing Date.

"Collateral" shall have the meaning specified in the Leasehold Mortgage.

"Commitment", with respect to the Owner Participant, shall mean the Owner Participant's Commitment, with respect to the Series A Lender, shall mean the Series A Loan Commitment and, with respect to the Series B Lender, shall mean the Series B Loan Commitment.

"Component" shall mean any appliance, part, instrument, appurtenance, accessory, furnishing, equipment or other property of whatever nature that may from time to time be incorporated in the Facility, except to the extent constituting Modifications.

"Confirmation" shall mean the Confirmation, dated April 18, 2000, by and between the Qualifying Swap Provider and the OP Trust, to the Qualifying Swap issued by the Qualifying Swap Provider to the OP Trust on the Closing Date.

"Covered Obligations" shall have the meaning set forth in the Qualifying Swap Surety Bond issued by Ambac on the Closing Date.

"D. B. Wilson Plant" shall mean the D. B. Wilson Unit No. 1 more particularly described in Exhibits A-1 and A-2 to the Head Lease.

"Debt" of any Person shall mean at any date, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (iv) all obligations of such Person as lessee (other than under leases contemplated by the Operative Documents) which are capitalized in accordance with generally accepted accounting principles, (v) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit or similar instrument, (vi) all Debt secured by a Lien on any asset of such Person, whether or not such Debt is otherwise an obligation of such Person, and (vii) all Debt of others directly or indirectly guaranteed by such Person.

"Debt Portion of Termination Value" shall mean as of any date of determination the principal balance on the Loan Certificates scheduled (in accordance with the payment terms of the Loan Certificates) to be outstanding on such date of determination.

"Debt Secured Amount" shall have the meaning specified in the Facility Lessor (D) Secured Note.

"Deduction Loss" shall have the meaning set forth in Section 4(a) of the Tax Indemnity Agreement.

"Default" shall mean an event that with the passage of time or giving of notice or both would constitute an Event of Default.

"Demand for Payment" shall have the meaning specified in paragraph 1 of the Qualifying Swap Surety Bond issued by Ambac on the Closing Date.

"Depreciation Deductions" shall have the meaning set forth in Section 1 of the Tax Indemnity Agreement.

"Directive" shall mean any instrument in writing executed in accordance with the Leasehold Mortgage by the Holders, or their duly authorized agent or attorney-in-fact, representing the Required Lenders, directing the Agent to take or refrain from taking any actions specified in such instrument or otherwise advising the Agent.

"Dollars" or the sign "\$" shall mean United States dollars or other lawful currency of the United States.

“Early Payment Date” shall have the meaning specified in Section 3.2 of the Payment Agreement.

“Easement” shall mean the rights of easements granted by the Ground Lessor to the Ground Lessee under the Ground Lease more particularly described in the definition of Ground Interest.

“Easement Site” shall have the meaning set forth in the definition of Ground Interest.

“Emissions Allowances” shall mean those allowances granted by the EPA or any other Governmental Entity to emit specified units of designated Hazardous Substances.

“Energy” shall have the meaning specified in Section 1.1 of the Operating and Support Agreement.

“Energy Charges” shall mean all amounts that are or will be payable by a Service Purchaser in respect of the Required Energy Estimate, which shall be equal to the aggregate allocable cost to produce the energy required to be delivered in respect of the relevant Service Contract, which shall include (to the extent appropriate) the allocable costs (to the extent attributable to the Undivided Interest) for: (i) required supplies, lubricants and chemicals, (ii) fuel and, if applicable, fuel handling services, (iii) any fee paid by or to be paid to the Operator, (iv) labor and managerial expense, (v) consumables, (vi) contract services (including labor or parts or both) for major overhauls, (vii) initial and periodic third-party tests that are required or reasonably elected with respect to the Facility, major components, controls and environmental equipment and performance, (viii) maintenance and servicing of environmental equipment, (ix) insurance (including business interruption insurance), and (x) all other reasonable operating and maintenance costs and expenses but, in each of the preceding clauses (i) through (x) (including any state and federal taxes directly related to the operation and maintenance of the Facility (other than any income taxes imposed on the Operator)), only to the extent that such costs are not fixed, but vary depending on the level of energy produced (excluding, in any event, any debt-related payments in respect of the Replacement Loans made or to be made by or on behalf of the Owner Trust and any expenses included in the Fixed Energy Charges).

“Enhancements” shall mean Optional Modifications to the Facility, the principal purpose of which is to increase the rated capacity of the Facility above the rated capacity of the Facility on July 15, 1998 or to improve the efficiency of the Facility. For the avoidance of doubt, Enhancement shall be deemed to have the same meaning for purposes of the Facility Lease and the other Operative Documents as the term “Enhancements” has in the WKEC Lease and shall not mean any Required Modifications.

“Engineer” shall mean Black & Veatch.

“Engineering Report” shall mean the report of the Engineer required by Section 4.12 of the Participation Agreement.

“Entitlement Share” shall have the meaning set forth in Section 4.1 of the Operating Agreement.

“Environmental Claims” shall mean any Claims relating in any way to any Environmental Law, Hazardous Substance or actual or alleged injury or threat of injury to human health, safety, natural resources or the environment.

“Environmental Consultant” shall mean Woodward-Clyde Consultants.

“Environmental Laws” shall mean any federal, state or local laws, ordinances, rules, orders, statutes, decrees, judgments, injunctions, directives, permits, licenses, approvals, codes and regulations relating to the environment, human health, safety, natural resources or any Hazardous Substance, as each may from time to time be amended, supplemented or supplanted.

“Environmental Report” shall mean the reports of the Environmental Consultant provided pursuant to Section 4.12 of the Participation Agreement entitled “Baseline Environmental Audit Report, Big Rivers Power Plants” and “Environmental Audit Report Supplement, Big Rivers Power Plants,” each dated July, 1998.

“EPA” shall mean the United States Environmental Protection Agency or any successor agency.

“Equity Investment” shall mean the OP Trust’s investment in the Owner Trust contemplated by Section 2.1 of the Participation Agreement.

“Equity Portion of Basic Rent” shall mean for any Rent Payment Date the difference between (i) Basic Rent scheduled to be paid under the Facility Lease on such Rent Payment Date and (ii) the principal and interest scheduled to be paid on the Loan Certificates on such Rent Payment Date.

“Equity Portion of Liquidated Damage Amounts” shall mean the portion of any payment in respect of Liquidated Damage Amounts that is in excess of the sum of (i) the scheduled (in accordance with the payment terms of the Loan Certificates) outstanding principal balance of the Loan Certificates on such date of determination and (ii) scheduled accrued interest thereon.

“Equity Portion of Party A Fixed Amount” shall mean the amount set forth in Column B1 of the Schedule to the Confirmation (as set forth and defined in the Qualifying Swap).

“Equity Portion of Purchase Option Price” shall mean the sum of (i) the excess of (1) the initial installment of the Purchase Option Price set forth in clause (1) of the first sentence of Section 15.1(b) of the Facility Lease over (2) the scheduled (in accordance with the payment terms of the Loan Certificates) outstanding principal balance of the Loan Certificates on the Expiration Date plus scheduled accrued interest thereon after giving effect to any Basic Rent due on such date, and (ii) the additional amounts of the Purchase Option Price set forth in clause (ii) of the first sentence of Section 15.1(b) of the Facility Lease.

“Equity Portion of Service Fees” shall mean the portion of any payment in respect of Service Fees that is in excess of the portion of such amount equal to the principal and interest scheduled to be paid on the Loan Certificates on the Services Fees Payment Date.

“Equity Portion of Termination Value” shall mean in respect of any determination of Termination Value or amount determined by reference to Termination Value payable pursuant to

the Operative Documents an amount equal to the excess, if any, of (i) the Termination Value set forth opposite the Termination Date corresponding to such date of determination on Schedule 2 of the Facility Lease over (ii) the balance on the Loan Certificates scheduled (in accordance with the payment terms of the Loan Certificates) to be outstanding on such date of determination, all as set forth as the "Equity Portion Termination Value" on Schedule 2 to the Facility Lease.

"Equity Secured Amount" shall have the meaning set forth in the Facility Lessor (E) Secured Note.

"Equity Secured Amount Payment Date" shall have the meaning set forth in the Facility Lessor (E) Secured Note.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Escrow Agreement" shall mean the Escrow Agreement, dated as of the Closing Date, by and among RUS, Big Rivers and State Street Bank and Trust Company of Connecticut, National Association, an escrow agent.

"Event of Default" shall have the meaning specified in Section 16 of the Facility Lease.

"Event of Loss" with respect to the Facility shall mean any of the following events:

(i) the loss of use thereof due to destruction or damage to the Facility that renders repair uneconomic (defined to mean damage requiring repairs the cost of which exceeds the greater of \$25,000,000 or 15% of the then net book value of the Facility) or that renders the Facility permanently unfit for normal use or which does not satisfy the preconditions for rebuilding of the Facility set forth in Section 10.3 of the Facility Lease; or

(ii) any damage to the Facility that results in an insurance settlement on the basis of a total loss or an agreed constructive or a compromised total loss; or

(iii) the seizure, expropriation, condemnation or requisition of the use of, or title to, the Facility or the Site by any Governmental Entity (other than as a result of the exercise of powers of eminent domain by Big Rivers or any of its members or Affiliates) that (a) following all efforts to contest such loss, shall have resulted in the loss by Big Rivers of title to the Facility or the Site, the loss by the Owner Trust of the Facility Lessor's Interest, or the loss by the Facility Lessee of the Facility Lessee's Interest, or (b) shall have resulted in the loss by the Facility Lessee of possession of, but not of title to, the Facility Lessee's Interest if such loss of possession shall be for an indefinite period or, unless the Facility Lessee shall have exercised the Purchase Option, if such loss of possession shall be for a stated period which shall be continuing on a date 18 months or less prior to the end of the Basic Term, following all efforts to contest any such loss of use, in each case unless the existence of an Event of Loss resulting from such seizure, expropriation, condemnation or requisition of use or title is waived by the Facility Lessor; or

(iv) if elected in writing by the Owner Participant or the OP Trust, and only in circumstances where the termination of the Head Lease or the Facility Lease shall

remove the basis of the regulation described below, subjection of the Owner Participant or the OP Trust or the Owner Trust to any public utility regulation of any Governmental Entity or law relating to public utilities which in the reasonable opinion of the Owner Participant or the OP Trust is burdensome, or the subjection of the Owner Participant's, the OP Trust's or the Owner Trust's interest in the Head Lease or the Facility Lease to any rate of return regulation by any Governmental Entity, in either case by reason of the participation of the Owner Trust, the OP Trust or the Owner Participant in the transactions contemplated by the Operative Documents and not, in any event, as a result of (a) investments, loans or other business activities of the Owner Participant or its Affiliates in respect of equipment or facilities similar in nature to the Facility or any part thereof or in any other electrical, steam, cogeneration or other energy or utility related equipment or facilities or the general business or other activities of the Owner Participant or its Affiliates or the nature of any of the properties or assets from time to time owned, leased, operated, managed or otherwise used or made available for use by the Owner Participant or its Affiliates or (b) a failure of the Owner Participant to perform routine, administrative or ministerial actions the performance of which would not subject the Owner Participant to any adverse consequence (as determined by the Owner Participant, in its sole discretion acting in good faith), provided that Big Rivers, the OP Trust, the Owner Trust and the Owner Participant agree to cooperate and to take reasonable measures to alleviate the source or consequence of any regulation constituting an Event of Loss under this clause (iv), at the cost and expense of the party requesting such cooperation and so long as there shall be no adverse consequences to the Owner Trust, the OP Trust and the Owner Participant or any Ambac Party as a result of such cooperation or the taking of reasonable measures.

The date of occurrence of an Event of Loss described in clauses (i) or (ii) above shall be the date of the Facility Lessee's notice to the Facility Lessor, the OP Trust, the Owner Participant and the Lenders pursuant to Section 10.1 of the Facility Lease that it does not elect to rebuild Plant Wilson pursuant to Section 10.3 of the Facility Lease with respect to the Undivided Interest but to pay the Termination Value and terminate the Facility Lease with respect to the Undivided Interest pursuant to Section 10.2 thereof, or the date an Event of Loss is deemed to occur pursuant to the last sentence of Section 10.1 of the Facility Lease. The date of occurrence of an Event of Loss described in clause (iii) above shall be the date of the loss of title, loss of the Facility Lessor's Interest, or loss of the Facility Lessee's Interest, by Big Rivers, the Owner Trust and the Facility Lessee, respectively, or, in the case of a loss of possession or use by the Facility Lessee but not of title, following all efforts to contest such loss, the date of loss of possession in the case of a loss of possession for an indefinite period or for a stated period which shall continue beyond the date which is 18 months prior to the end of the Basic Term. The date of occurrence of an Event of Loss described in clause (iv) shall be the date of imposition of such regulation.

"Excepted Payments" shall mean and include (i)(A) any indemnity (whether or not constituting Supplemental Rent and whether or not an Event of Default exists) payable to the Trust Company, the Owner Trust, the OP Trust or the Owner Participant or to their respective Indemnitees and successors and permitted assigns (other than either Lender) pursuant to Section 2.3, 9.1 or 9.2 of the Participation Agreement, Section 7.01 of the Trust Agreement, Section 7.01 of the OP Trust Agreement and any payments under the Tax Indemnity Agreement and (B) any amount payable by the Facility Lessee to the Owner Trust, the OP Trust or the Owner Participant to reimburse any such Person for its costs and expenses in exercising its rights under the Operative Documents, (ii)(A) any insurance proceeds payable to the Owner Trust, the OP Trust or the

Owner Participant under insurance separately maintained by the Owner Trust, the OP Trust or the Owner Participant with respect to the Facility as permitted by Section 11 of the Facility Lease or Section 14 of the Head Lease and (B) any proceeds of personal injury or property damage liability insurance maintained under any Operative Document for the benefit of the Owner Trust, the OP Trust or the Owner Participant, (iii) any amount payable to the OP Trust as the purchase price of the OP Trust's right and interest in the Trust Estate or any amount payable to the Owner Participant as the purchase price of the Owner Participant's right and interest in the Beneficial Interest, (iv) any amounts payable to the OP Trust in respect of the Rights Sharing Agreement, the Qualifying Swap and the Covered Obligations (as defined in the Qualifying Swap Surety Bond) under the Qualifying Swap Surety Bond (or comparable amounts (or such amount as may otherwise be defined in the Qualifying Facility Lease Surety Bond or Qualifying Letter of Credit, as the case may be) payable to the OP Trust or the Owner Participant under any Qualifying Letter of Credit or Qualifying Facility Lease Surety Bond issued in replacement thereof) (whether or not any of the foregoing arrangements continue to be "qualifying" under the definitions thereof), (v) the Equity Portion of Basic Rent, Equity Portion of the Purchase Option Price, the Equity Portion of Termination Value, the Equity Portion of Service Fees or the Equity Portion of Liquidated Damage Amounts or amounts defined by reference to any of the foregoing; (vi) any amounts payable to the Owner Participant upon the exercise by it of the Special Equity Remedy pursuant to Section 11A of the Participation Agreement; (vii) any payments or distributions to the Owner Trust, the OP Trust or the Owner Participant attributable to any Qualifying Swap, Qualifying Swap Surety Bond, Qualifying Facility Lease Surety Bond or any Qualifying Letter of Credit (whether any of the foregoing arrangements continue to be "qualifying" under the definitions thereof), (viii) any payments or distributions to the Owner Participant or the OP Trust attributable to the Subordinated Mortgage; (ix) the Equity Secured Amount under the Facility Lessor (E) Secured Note and any payments or distributions to the Owner Trust thereunder and (x) any payments in respect of interest, or any payments made on an After-Tax Basis, to the extent attributable to payments referred to in clause (i) through (ix) above that constitute Excepted Payments.

"Excepted Rights" shall have the meaning specified in Section 5.05 of the Leasehold Mortgage.

"Excess Amount" shall have the meaning specified in Section 13.3 of the Participation Agreement.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Excluded Property" shall mean Excepted Payments and Excepted Rights, collectively.

"Excluded Taxes" shall have the meaning specified in Section 9.2(b) of the Participation Agreement.

"Expiration Date" shall mean January 4, 2027.

"Extension Period" shall have the meaning assigned to such term in Section 17.2 of the Facility Lease.

"Facility" shall mean Plant Wilson.

“Facility Lease” shall mean the Facility Lease Agreement (FBR-1), dated as of April 1, 2000, between the Facility Lessor and the Facility Lessee, in substantially the form of Exhibit C to the Participation Agreement.

“Facility Lease Term” shall mean the “Basic Term” specified in Section 3.1 of the Facility Lease unless the Facility Lease is earlier terminated in accordance with its terms in which case the Facility Lease Term ends on the date of such termination.

“Facility Lessee” shall mean Big Rivers as lessee of the Undivided Interest under the Facility Lease.

“Facility Lessee Assignment Agreement” shall mean the Facility Lessee Assignment and Assumption Agreement, dated as of April 1, 2000, between the Facility Lessee and the Facility Lessor, in substantially the form of Exhibit F to the Participation Agreement.

“Facility Lessee Group” shall have the meaning set forth in Section 1 of the Tax Indemnity Agreement.

“Facility Lessee Person” shall mean the Facility Lessee, any sublessee, assignee, user or operator of all or a portion of the Facility, and any Affiliate or member of the foregoing but shall not include the Owner Trust, the OP Trust or the Owner Participant.

“Facility Lessee Reassignment Agreement” shall mean the Facility Lessee Reassignment and Assumption Agreement, dated as of April 1, 2000, between the Facility Lessee and the Facility Lessor, in substantially the form of Exhibit G to the Participation Agreement.

“Facility Lessee’s Interest” shall mean Big Rivers’ right, title and interest in, to and under (i) the Undivided Interest under the Facility Lease, (ii) the Ground Interest under the Ground Sublease, and (iii) the WKEC Lease and the LEM Power Purchase Agreement under the Facility Lessee Reassignment Agreement.

“Facility Lessor” shall mean the Owner Trust as lessor of the Undivided Interest under the Facility Lease.

“Facility Lessor Group” shall have the meaning set forth in Section 6(a) of the Tax Indemnity Agreement.

“Facility Lessor’s Interest” shall mean the Owner Trust’s right, title and interest in, to and under (i) the Undivided Interest under the Head Lease, (ii) the Ground Interest under the Ground Lease, and (iii) the WKEC Lease and the LEM Power Purchase Agreement under the Facility Lessee Assignment Agreement.

“Facility Lessor’s Lien” shall mean any Lien on the Trust Estate or any part thereof arising as a result of (i) Taxes or Claims against or affecting the Owner Trust, the Trust Company or any Affiliate thereof that is not related to, or that is in violation of, any Operative Document or the transactions contemplated thereby, (ii) Claims against or any act or omission of the Owner Trust, the Trust Company or any Affiliate thereof that is not related to, or that is in violation of, any Operative Document or the transactions contemplated thereby or that is in breach of any

covenant or agreement of the Owner Trust or the Trust Company set forth therein, (iii) Taxes imposed upon the Owner Trust, the Trust Company or any Affiliate thereof that are not indemnified against by Big Rivers pursuant to any Operative Document or (iv) Claims against or affecting the Owner Trust, the Trust Company or any Affiliate thereof arising out of the voluntary or involuntary transfer by the Owner Trust of any portion of the interest of such Owner Trust in the Facility Lessor's Interest, except as contemplated by the Operative Documents or during the continuance of an Event of Default or in connection with a transfer under any Qualifying Swap (without regard to whether such instrument continues to be qualified within the meaning of such defined term) or in connection with a transfer to Big Rivers or any LG&E Entity or other transfer as contemplated by the terms of the Operative Documents.

... "~~Facility Lessor's Percentage~~" shall mean 28.61244655%.

"Facility Lessor (D) Secured Note" shall mean the secured note entitled "Facility Lessor (D) Secured Note (FBR-1)", dated April 18, 2000, made by Big Rivers to the Facility Lessor, secured by the First Mortgage.

"Facility Lessor (E) Secured Note" shall mean the secured note entitled "Facility Lessor (E) Secured Note (FBR-1)", dated April 18, 2000, made by Big Rivers to the Facility Lessor, secured by the First Mortgage.

"Facility Lessor Secured Notes" shall mean, collectively, the Facility Lessor (D) Secured Note and the Facility Lessor (E) Secured Note.

"Fair Market Rental Value" of the Ground Interest shall mean the rental value that would be obtained in an arms-length transaction between an informed and willing lessee under no compulsion to lease and an informed and willing lessor under no compulsion to lease.

"Fair Market Sales Value of the Facility Lessor's Interest" shall mean the cash price obtainable for the Facility Lessor's Interest in an arm's length sale between an informed and willing purchaser under no compulsion to purchase and an informed and willing seller under no compulsion to sell, assuming that (i) the conditions contained in Sections 7 and 8 of the Facility Lease shall have been complied with in all respects, (ii) the Facility Lessor's Interest is free and clear of all Liens (other than Facility Lessor's Liens and OP Trust's Liens) and (iii) in circumstances where the LG&E Agreements have not expired or terminated, the Facility Lessor's Interest shall take into account the rights and obligations of the Facility Lessor in the WKEC Lease and the LEM Power Purchase Agreement under the Facility Lessee Assignment Agreement (except for purposes of Section 17 of the Facility Lease, as to which the Facility Lessor's Interest, shall be valued on an "as-is", "where-is" and "with all faults" basis and shall take into account all Liens (other than Facility Lessor's Liens or OP Trust's Liens). If the Fair Market Sales Value of the Facility Lessor's Interest (or such portion thereof, as the case may be) is to be determined during the continuance of an Event of Default or in connection with the exercise of remedies by the Facility Lessor pursuant to Section 17 of the Facility Lease, such value shall be determined by an appraiser appointed solely by the Facility Lessor; *provided, however,* in any such case where the Facility Lessor shall be unable to obtain constructive possession sufficient to realize the economic benefit of the Facility Lessor's Interest, Fair Market Sales Value of the Facility Lessor's Interest (or such portion thereof, as the case may be) shall be

deemed equal to \$0. If in any case other than that described in the preceding sentence the parties are unable to agree upon a Fair Market Sales Value of the Facility Lessor's Interest (or such portion thereof, as the case may be) within 30 days after a request therefor has been made, the Fair Market Sales Value of the Facility Lessor's Interest (or such portion thereof, as the case may be) shall be determined by appraisal. The Owner Participant, OP Trust and Big Rivers will consult with the intent of selecting a mutually acceptable Independent Appraiser. If a mutually acceptable Independent Appraiser is selected, the Fair Market Sales Value of the Facility Lessor's Interest (or such portion thereof, as the case may be) shall be determined by such Independent Appraiser. If Big Rivers, the Owner Participant and the OP Trust are unable to agree upon a single Independent Appraiser within a 15-day period, the Owner Participant and the OP Trust will retain an Independent Appraiser. Within 15 days after the Owner Participant's and the OP Trust's selection of an Independent Appraiser, Big Rivers shall select an Independent Appraiser. If Big Rivers fails to retain an Independent Appraiser within such period, the Fair Market Sales Value of the Facility Lessor's Interest (or such portion thereof, as the case may be) shall be determined by the Independent Appraiser retained by the Owner Participant and the OP Trust. The Independent Appraiser selected by Big Rivers and the Independent Appraiser selected by the Owner Participant and the OP Trust shall select a consensus Independent Appraiser within 10 days. If the Independent Appraisers cannot agree on a consensus Independent Appraiser within 10 days, the consensus Independent Appraiser shall be selected by the American Arbitration Association. If the parties are able to agree upon a single Independent Appraiser or the two Independent Appraisers are able to agree upon a consensus Independent Appraiser, the single Independent Appraiser or the three Independent Appraisers, as the case may be, shall within 30 days make a determination of such Fair Market Sales Value of the Facility Lessor's Interest (or such portion thereof, as the case may be). If there shall be a panel of three Independent Appraisers, the appraisal which differs most from the other two appraisals with respect to the Facility Lessor's Interest (or such portion thereof, as the case may be), shall be excluded and the remaining two appraisals shall be averaged and such average shall constitute Fair Market Sales Value of the Facility Lessor's Interest (or such portion thereof, as the case may be). Fees and expenses relating to all such appraisals shall be payable by Big Rivers.

"Federal Power Act" shall mean the Federal Power Act, as amended.

"Final Determination" shall have the meaning set forth in Section 1 of the Tax Indemnity Agreement.

"Final Lender Payment Date" means the date on which the principal of and interest on the Loan Certificates is paid in full, all amounts payable to the Lenders under all other Operative Documents have been paid in full and the Lien of the Leasehold Mortgage has terminated in accordance with its terms.

"First Mortgage" shall mean (i) the Restated Mortgage and Security Agreement, dated as of July 15, 1998, made by Big Rivers, as mortgagor, and the United States of America, acting through the Administrator of the Rural Electrification Administration, now known as the RUS, Ambac and CFC, as mortgagees, as amended by Supplemental Mortgage and Security Agreement No. 1 to Restated Mortgage and Security Agreement, dated as of April 1, 2000, adding the Beneficial Interest Purchaser and the Facility Lessor, as mortgagees, and as the same may heretofore from time to time be supplemented, modified, amended, renewed, extended or

consolidated, or (ii) any one or more other mortgages, deeds to secure debt, deeds of trust, trust indentures or other security instruments from time to time entered into by Big Rivers as a substitute or replacement for such instrument and constituting a lien on substantially all of the tangible property previously subject to such instrument.

“First Mortgage Mortgagees” shall mean RUS, Ambac, CFC, PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust and FBR-2 Statutory Trust, each as identified in the First Mortgage Supplement, and the Beneficial Interest Purchaser.

“First Mortgage Supplement” shall mean the Supplemental Mortgage and Security Agreement No. 1 to Restated Mortgage and Security Agreement, dated as of April 1, 2000, adding the Beneficial Interest Purchaser, PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust and FBR-2 Statutory Trust, each as identified in the First Mortgage Supplement, as mortgagees under the First Mortgage.

“Fixed Energy Charges” shall mean, with respect to a Service Contract, the amounts that are or will be payable by a Service Purchaser in respect of fixed operating and maintenance costs and expenses, including (i) any fee paid or to be paid to an Operator, (ii) property taxes and other fixed taxes to the extent paid by the Owner Trust (or the Service Purchaser) to the Operator, (iii) insurance (including business interruption insurance) and (iv) all other reasonable fixed operating and maintenance costs and expenses, not otherwise included in the definition of Energy Charges (excluding, in any event, any debt-related payments in respect of the Replacement Loans made or to be made by or on behalf of the Owner Trust) allocable to the Required Capacity and the Required Energy Estimate as reflected in the relevant Service Contract.

“Foreign Tax Credit Loss” shall have the meaning set forth in Section 4(a) of the Tax Indemnity Agreement.

“Form U-7(d)” shall mean the certificate to be filed pursuant to Rule 7(d) of the Holding Company Act for the purpose of exempting the Owner Participant, the OP Trust and the Owner Trust from registration under the Holding Company Act.

“Full Payment Termination Amount” shall have the meaning specified in Section 1.1 of the Payment Agreement.

“Full Payment Termination Date” shall have the meaning specified in Section 1.1 of the Payment Agreement.

“Funding Agreement” shall mean the Funding Agreement, dated April 19, 2000, between the Funding Agreement Issuer, the Big Rivers Subsidiary and the Owner Trust, in substantially the form of Exhibit O to the Participation Agreement.

“Funding Agreement FGIP” means the financial guaranty insurance policy dated the Closing Date, in substantially the form of Exhibit Q to the Participation Agreement.

“Funding Agreement Pledge” shall mean the Funding Agreement Pledge Agreement (FBR-1), dated as of April 1, 2000, between the Big Rivers Subsidiary, the Beneficial Interest Purchaser and the First Mortgage Mortgagees.

“Funding Agreement Issuer” shall mean AIG Matched Funding Corp., a Delaware corporation.

“GAAP” shall mean generally accepted accounting principles.

“Governmental Entity” shall mean and include any national government, any political subdivision of a national government or of any state, country or local jurisdiction therein or any board, commission, department, division, organ, instrumentality, court or agency of any thereof.

“Government Securities” shall have the meaning assigned thereto in the Government Securities Pledge Agreement.

“Government Securities Collateral Agent” shall mean State Street Bank and Trust Company of Connecticut, National Association, as Government Securities Collateral Agent under the Government Securities Pledge Agreement.

“Government Securities Intermediary” shall mean State Street Bank and Trust Company of Connecticut, National Association, as Government Securities Intermediary under the Government Securities Pledge Agreement.

“Government Securities Pledge Agreement” shall mean the Government Securities Pledge Agreement, dated as of April 1, 2000, among the Big Rivers Subsidiary, the Beneficial Interest Purchaser, the Facility Lessor, the First Mortgage Mortgagees and the Government Securities Collateral Agent and Government Securities Intermediary.

“Ground Interest” shall mean (i) an undivided interest equal to the Facility Lessor’s Percentage in a leasehold interest in the Site, including the right as tenant-in-common with the Other Facility Lessors and other sublessees under the Other Lease Transactions to non-exclusive possession of the Site, (ii) a nonexclusive easement (the “Landfill Easement”) in, to, over, and across that parcel of land referred to as “Easement Area No. 10”, as more completely described on Exhibit 2 to the Ground Lease, Exhibit 2 to the Ground Sublease, Exhibit C to the Head Lease and Exhibits D to the Facility Lease and the Leasehold Mortgage (the “Landfill Site” or the “Easement Site”), and (iii) the nonexclusive right to use the Licenses.

“Ground Lease” shall mean the Ground Lease Agreement (FBR-1), dated as of April 1, 2000, between the Ground Lessor and the Ground Lessee, in substantially the form of Exhibit D to the Participation Agreement.

“Ground Lease Basic Term” shall have the meaning specified in Section 2.4 of the Ground Lease.

“Ground Lease Documents” shall mean, collectively, the Ground Lease and the Ground Sublease.

“Ground Lease Renewal Term” shall have the meaning specified in Section 2.3 of the Ground Lease.

“Ground Lease Term” shall mean the Ground Lease Basic Term and any Ground Lease Renewal Term or Terms elected by the Ground Lessee pursuant to Section 2.3 of the Ground Lease.

“Ground Lessee” shall mean the Owner Trust as lessee of the Ground Interest under the Ground Lease.

“Ground Lessor” shall mean Big Rivers as lessor of the Ground Interest under the Ground Lease.

“Ground Lessor’s Release Rights” shall have the meaning set forth in Section 4.2 of the Ground Lease.

“Ground Sublease” shall mean the Ground Sublease Agreement (FBR-1), dated as of April 1, 2000, between the Ground Sublessor and the Ground Sublessee, in substantially the form of Exhibit E to the Participation Agreement.

“Ground Sublease Extension Period” shall have the meaning specified in Section 2.3 of the Ground Sublease.

“Ground Sublease Term” shall have the meaning specified in Section 2.2 of the Ground Sublease and shall include a Ground Sublease Extension Period provided by Section 2.3 of the Ground Sublease.

“Ground Sublessee” shall mean Big Rivers as sublessee of the Ground Interest under the Ground Sublease.

“Ground Sublessor” shall mean the Owner Trust as sublessor of the Ground Interest under the Ground Sublease.

“Guarantor” shall mean any Person which shall guaranty the obligations of a Transferee under the Operative Documents in accordance with Section 5.1 of the Participation Agreement.

“Guaranty” shall mean any guaranty of the obligations of a Transferee executed pursuant to Section 5.1 of, and in substantially the form of Exhibit T to, the Participation Agreement.

“Hazardous Substance” shall mean any (i) polychlorinated biphenyls, lead, radon gas, urea formaldehyde foam insulation, asbestos, petroleum, petroleum derivatives or products or crude oil or any fraction thereof, or (ii) substance, material, chemical, waste or gas (a) that is toxic, explosive, corrosive, flammable, infectious or radioactive, or defined as a “hazardous substance,” “hazardous waste,” “hazardous material,” “hazardous chemical,” “toxic chemical,” “toxic substance,” “pollutant,” “contaminant,” or the like under any Environmental Law, (b) exposure to which or the presence, use, generation, treatment, Release, transport or storage of which is now or hereafter prohibited, limited, restricted or regulated under any Environmental Law or by

any Governmental Entity, or (c) that could require investigation, response or remediation, or could support the assertion of an Environmental Claim.

“Head Lease” shall mean the Head Lease Agreement (FBR-1), dated as of April 1, 2000, between the Head Lessee and the Head Lessor, in substantially the form of Exhibit B to the Participation Agreement.

“Head Lease Basic Term” shall have the meaning specified in Section 3.1 of the Head Lease.

“Head Lease Renewal Term” shall have the meaning specified in Section 3.2 of the Head Lease.

“Head Lease Rent” shall have the meaning specified in Section 3.3 of the Head Lease.

“Head Lease Term” shall have the meaning specified in Section 3.2 of the Head Lease.

“Head Lessee” shall mean the Owner Trust as lessee of the Undivided Interest under the Head Lease.

“Head Lessor” shall mean Big Rivers as lessor of the Undivided Interest under the Head Lease.

“Henderson” shall mean the City of Henderson, Kentucky, a municipal corporation and political subdivision of the Commonwealth of Kentucky, and shall include the City of Henderson Utility Commission.

“Holder” shall mean a holder of a Loan Certificate.

“Holding Company Act” shall mean the Public Utility Holding Company Act of 1935, as amended.

“Indemnitee” shall have the meaning specified in Section 9.1(a) of the Participation Agreement.

“Independent Appraiser” shall mean a Person independent of the Owner Participant, the OP Trust and Big Rivers having experience in the business of evaluating facilities similar to the Facility.

“Independent Engineer” shall mean an independent engineer selected by the OP Trust and, so long as no Event of Default shall have occurred and be continuing, reasonably acceptable to Big Rivers and the Owner Participant.

“Installment Payment Amount” shall mean, at any time Termination Value or an amount defined by reference to Termination Value shall be payable under Section 17.1 of the Facility Lease, the difference at such time between (i) the Equity Portion of Termination Value and (ii) the amount payable at such time by the Funding Agreement Provider under the Funding Agreement.

“Intercreditor Agreement” shall mean the Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement, dated as of April 1, 2000, among Big

Rivers, the LG&E Entities, the United States, Ambac, CFC, PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust, PBR-1 OP Statutory Trust, PBR-2 OP Statutory Trust, PBR-3 OP Statutory Trust, FBR-1 OP Statutory Trust, FBR-2 OP Statutory Trust, Bluegrass Leasing, Fleet Real Estate, Inc., the Lenders and the Beneficial Interest Purchaser in substantially the form of Exhibit I to the Participation Agreement.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended and in effect from time to time.

“Interest Deductions” shall have the meaning set forth in Section 2(d) of the Tax Indemnity Agreement.

“Intermediary” shall have the meaning specified in Section 3.4(d) of the Facility Lease.

“IRS” shall mean the Internal Revenue Service of the United States Department of Treasury or any successor agency.

“Joint Use Facilities” shall mean those relating to Plant Wilson and described on Exhibit D to the Head Lease.

“Landfill Easement” shall have the meaning set forth in the definition of Ground Interest.

“Landfill Site” shall have the meaning set forth in the definition of Ground Interest.

“Lease Party Interests” shall have the meaning set forth in the sixth recital to the Subordinated Mortgage.

“Leaschold Mortgage” shall mean the Leasehold Mortgage and Security Agreement (FBR-1), dated as of April 1, 2000, between the Owner Trust and the Lenders, in substantially the form of Exhibit H to the Participation Agreement.

“LEM” shall mean LG&E Energy Marketing Inc., an Oklahoma corporation.

“LEM Mortgage” shall mean the Mortgage and Security Agreement dated July 15, 1998 by Big Rivers in favor of LEM, WKEC and the Station Two Subsidiary.

“LEM Power Purchase Agreement” shall mean the Power Purchase Agreement dated July 15, 1998, between Big Rivers and LEM.

“Lender” and collectively, the **“Lenders”** shall mean each of the Series A Lender and the Series B Lender.

“Lender’s Account” and collectively the **“Lender’s Accounts”** shall mean the Series A Lender’s Account and the Series B Lender’s Account.

“LG&E Arrangements” shall mean the transactions and arrangements provided for under the LG&E Operative Documents.

“LG&E Entities” shall mean WKEC, LEM and Station Two Subsidiary.

“LG&E Interests” shall mean (i) the interest of WKEC under the WKEC Lease, (ii) the interests of WKEC and LEM under the LEM Mortgage and (iii) the interests of WKEC, LEM and the Station Two Subsidiary under the LG&E Subordinated Mortgage.

“LG&E Operative Documents” shall mean the “Operative Documents” as defined in the WKEC Lease.

“LG&E Participation Agreement” shall mean the New Participation Agreement, dated April 6, 1998, among Big Rivers and the LG&E Entities.

“LG&E Subordinated Mortgage” shall mean the Subordinated Mortgage and Security Agreement, dated July 15, 1998 by Big Rivers in favor of WKEC, LEM and the Station Two Subsidiary.

“Licenses” shall mean (i) that certain airspace encroachment permit issued to Big Rivers by the Department of Transportation of the Commonwealth of Kentucky, dated May 12, 1982, (ii) that certain agreement entered into between the Commonwealth of Kentucky and Big Rivers on May 5, 1980, and (iii) that certain agreement entered into between the Commonwealth of Kentucky and Big Rivers on February 6, 1981, as amended by that certain amendment to agreement dated November 3, 1981.

“Lien” shall mean any mortgage, security deed, security title, pledge, lien, charge, encumbrance, lease, security interest, servitude, easement, right of way or title retention arrangement.

“Liquidated Damage Amounts” shall mean the “Liquidated Damage Amounts” for a Service Contract, set forth in Schedule 3-C to the Facility Lease as each such amount may be adjusted from time to time as contemplated by Section 12A.6 of the Participation Agreement and Section 3.4 of the Facility Lease.

“Loan Bankruptcy Default” shall mean an event that is, or with the passage of time would become, a Loan Event of Default under Section 4.01(e) or 4.01(f) of the Leasehold Mortgage.

“Loan Certificate Register” shall have the meaning specified in Section 2.07 of the Leasehold Mortgage.

“Loan Certificates” shall mean the Series A Loan Certificate and the Series B Loan Certificate, each dated the Closing Date, in substantially the form of Exhibits A and B to the Leasehold Mortgage, in an initial principal amount equal to the Series A Loan Commitment and the Series B Loan Commitment, respectively, issued by the Owner Trust to the Series A Lender and the Series B Lender, respectively, pursuant to Section 2.01 of the Leasehold Mortgage.

“Loan Commitments” shall mean the Series A Loan Commitment and the Series B Loan Commitment.

“Loan Default” shall mean any event or occurrence which, with the passage of time or the giving of notice or both, would become a Loan Event of Default.

“Loan Event of Default” shall have the meaning specified in Section 4.01 of the Leasehold Mortgage.

“Loan Extension” shall mean that on the last day of the Basic Term either (a) the Lender shall agree to retain the Loan Certificates in accordance with Section 2.11(c) of the Leasehold Mortgage or (b) a third party lender (x) shall purchase the Loan Certificates in accordance with Section 2.11(e) of the Leasehold Mortgage or (y) shall make a replacement loan pursuant to a Leasehold Mortgage in substantially the form of the Leasehold Mortgage, with such changes thereto, *mutatis mutandis*, as shall be mutually agreeable to the parties.

“Loan Maturity Dates” shall mean the Series A Loan Maturity Date and the Series B Loan Maturity Date.

“Loan Payment Default” shall mean failure of the Facility Lease to make any payment in respect of the principal of, or interest on, any Loan Certificate when the same shall have become due without regard to any grace period or notice requirement.

“Loan Rate” and collectively the **“Loan Rates”** shall mean with respect to the Series A Loan, the Series A Loan Rate and with respect to the Series B Loan, the Series B Loan Rate.

“Loan Refinancing Date” shall have the meaning specified in Section 11. 1 of the Participation Agreement.

“Loans” shall mean the loans evidenced by the Series A Loan Certificate and Series B Loan Certificate.

“Loss” shall have the meaning set forth in Section 4 of the Tax Indemnity Agreement.

“Major Capital Improvements” shall mean Optional Modifications to the Facility constituting a significant structural expansion of the Facility. For the avoidance of doubt Major Capital Improvements shall be deemed to have the same meaning for purposes of the Facility Lease and the other Operative Documents as the term “Major Capital Improvements” has in the WKEC Lease and shall not mean any Required Modifications.

“Make Whole Payment” shall be, as of any date of prepayment of the Series B Loan Certificate an amount equal to the sum of (a) the present value of any funding losses imputed by the Series B Lender to have been incurred as a result of such prepayment and (b) one-half of one percent (0.5%) of the amount prepaid. Such Make Whole Payment shall be determined and calculated in accordance with the methodology set forth below:

(A) Determine the difference between: (1) the rate estimated by the Series B Lender on the date the rate was fixed to be its cost to fund the loan in the manner set forth in its then current methodology; minus (2) the rate estimated by the Series B Lender on the date the surcharge is calculated to be its cost, less dealer concessions and other issuance costs, to fund a new fixed rate loan in accordance with its then current methodology having the same fixed rate period and repayment characteristics as the balance being repaid. If such difference is negative, skip to (F).

(B) Divide the result determined in (A) above by the number of times interest is payable during the year.

(C) For each interest period (or portion thereof) during which interest was scheduled to accrue at the fixed rate, multiply the amount determined in (B) above by the principal balance scheduled to have been outstanding during such period (such that there is a calculation for each interest period during which the amount repaid was scheduled to have been outstanding at the fixed rate).

(D) Determine the present value of each calculation made under (C) above as of the date of calculation based upon the scheduled time that interest on the amount repaid would have been payable and a discount rate equal to the rate set forth in (A)(2) above.

(E) Add all of the calculations made under (D) above.

(F) Multiply the amount prepaid, converted, or not borrowed by one-half of one percent (0.5%).

(G) Add the amounts determined in (E) and (F) above.

Nothing contained herein shall prevent the Series B Lender from funding its loans in any manner as the Series B Lender may, in its sole discretion, elect, and the surcharges provided for herein shall not be increased or decreased based on the actual methods chosen by the Series B Lender to fund or hedge the loan being repaid.

“Maximum Annual Power Purchase Amount” shall mean:

(i) during each full Year during the period beginning on the Effective Date through December 31, 2000, the Assigned LG&E Agreement Percentage of 5,112,750 megawatt-hours of Base Power;

(ii) during each full Year during the period beginning on January 1, 2001 through December 31, 2010 (inclusive), the Assigned LG&E Agreement Percentage of 5,327,285 megawatt-hours of Base Power;

(iii) during the Year 2011, the Assigned LG&E Agreement Percentage of 6,321,741 megawatt-hours of Base Power and during each Year following December 31, 2011, the Assigned LG&E Agreement Percentage of 7,008,000 megawatt-hours of Base Power; and

(iv) during any Partial Year, the Maximum Annual Power Purchase Amount is the Maximum Annual Power Purchase Amount for that Year, multiplied by a fraction whose numerator is the number of days in such Partial Year and whose denominator is 365.

“Maximum Hourly Power Purchase Amount” shall mean (i) during any hour through December 31, 2000, the Assigned LG&E Agreement Percentage of not more than 572 megawatt-hours of Base Power, (ii) during any hour of any Year between January 1, 2001 and December 31, 2010 (inclusive), the Assigned LG&E Agreement Percentage of not more than

597 megawatt-hours of Base Power, (iii) during any hour during the Year 2011, the Assigned LG&E Agreement Percentage of not more than 717 megawatt-hours of Base Power, and (iv) during any hour of any Year following December 31, 2011, the Assigned LG&E Agreement Percentage of not more than 800 megawatt-hours of Base Power.

“Minimum Annual Power Purchase Amount” shall mean:

(i) during each full Year during the period beginning on the Closing Date through December 31, 2000, the Assigned LG&E Agreement Percentage of 2,687,750 megawatt-hours of Base Power;

(ii) during each full Year during the Period beginning on January 1, 2001 through December 31, 2010 (inclusive), the Assigned LG&E Agreement Percentage of 2,902,285 megawatt-hours of Base Power;

(iii) during the Year 2011, the Assigned LG&E Agreement Percentage of 3,699,741 megawatt-hours of Base Power and during each Year following December 31, 2011, the Assigned Power Purchase Agreement Percentage of 4,300,000 megawatt-hours; and

(iv) during any Partial Year, the Minimum Annual Power Purchase Amount is the Minimum Annual Power Purchase Amount for that Year, multiplied by a fraction whose numerator is the number of days in such Partial Year and whose denominator is 365.

“Minimum Hourly Power Purchase Amount” shall mean (i) during any hour through December 31, 2000, Assigned LG&E Agreement Percentage of 272 megawatt-hours of Base Power, (ii) during any hour of any Year between January 1, 2001 and December 31, 2010 (inclusive), Assigned LG&E Agreement Percentage of 297 megawatt-hours of Base Power, (iii) during any hour during the Year 2011, the Assigned LG&E Agreement Percentage of 517 megawatt-hours of Base Power, and (iv) during any hour of any Year following December 31, 2011, the Assigned LG&E Agreement Percentage of 600 megawatt-hours of Base Power.

“Modification” shall mean an addition, betterment or enlargement of the Facility. Modifications shall include any Required Modifications, Optional Modifications (including, without limitation, Enhancements and Major Capital Improvements), Severable Modifications or Nonseverable Modifications, but do not include Components.

“Monthly Margin Payments” shall have the meaning assigned to such term in the WKEC Lease.

“Moody’s” shall mean Moody’s Investors Service, Inc. and any successor thereto.

“Mortgaged Site” shall mean the area of land subject to the First Mortgage and the Subordinated Mortgage.

“Net Economic Return” shall mean the Owner Participant’s anticipated (i) nominal after-tax yield through the Facility Lease Term and the term of the Service Contract (computed using the multiple investment sinking fund method), (ii) total after-tax cash flow and (iii) for each of the five years commencing with the Closing Date and ending with the fifth anniversary of the

Closing Date, not less than 90% of the after-tax cash flows, determined upon the Pricing Assumptions attached as Schedule 5 to the Participation Agreement.

“New Lender” shall have the meaning set forth in Section 2.11(a) of the Leasehold Mortgage.

“Nonseverable Modifications” shall mean any Modification that is not readily removable from the Facility without causing material damage to the Facility.

“Notice” shall have the meaning set forth in Section 5(a) of the Tax Indemnity Agreement.

“Obsolescence Termination Date” shall have the meaning specified in Section 14.1 of the Facility Lease.

“Officer’s Certificate” shall mean with respect to any Person, a certificate signed by the Chairman of the Board, the President, or a Vice President of such Person or the managing general partner or any person authorized by or pursuant to the organizational documents, the by-laws or any resolution of the Board of Directors or Executive Committee of such Person (whether general or specific) to execute, deliver and take actions on behalf of such Person in respect of any of the Operative Documents.

“OP Trust” shall mean the Connecticut statutory trust designated “FBR-1 OP Statutory Trust” created by the OP Trust Agreement.

“OP Trust Agreement” shall mean the OP Trust Agreement (FBR-1), dated as of April 1, 2000, between the Owner Participant and the Trust Company in substantially the form of Exhibit A-1 to the Participation Agreement.

“OP Trust Estate” shall mean all the estate, right, title and interest of the OP Trust in, to and under the Trust Estate, the Qualifying Swap, Qualifying Swap Surety Bond, any Qualifying Facility Lease Surety Bond, any Qualifying Letter of Credit, including all funds advanced to the OP Trust by the Owner Participant, all installments and other payments of Basic Rent, Supplemental Rent and Termination Value under the Facility Lease, condemnation awards, purchase price, sale proceeds, insurance proceeds and all other proceeds, rights and interests of any kind for or with respect to the estate, right title and interest of the OP Trust in, to and under the Trust Estate, the Qualifying Swap, the Qualifying Swap Surety Bond, any Qualifying Facility Lease Surety Bond, any Qualifying Letter of Credit and any of the foregoing, but shall not include Excepted Payments or Excepted Rights.

“OP Trust’s Lien” shall mean any Lien on the OP Trust Estate or any part thereof arising as a result of (i) Taxes or Claims against or affecting the OP Trust, the Trust Company or any Affiliate thereof that is not related to, or that is in violation of, any Operative Documents or the transactions contemplated thereby, (ii) Claims against or any act or omission of the OP Trust, the Trust Company or any Affiliate thereof that is not related to, or that is in violation of, any Operative Document or the Overall Transaction or that is in breach of any covenant or agreement of the OP Trust or the Trust Company set forth therein, (iii) Taxes imposed upon the OP Trust, the Trust Company or any Affiliate thereof that are not indemnified against by Big Rivers pursuant to any Operative Document or (iv) Claims against or affecting the OP Trust, the Trust Company or any Affiliate thereof arising out of the voluntary or involuntary transfer by the OP

Trust of any portion of the interest of such OP Trust in the Owner Trust Beneficial Interest, except as contemplated by the Operative Documents or during the continuance of any Event of Default or in connection with a transfer under a Qualifying Swap (without regard to whether such instrument continues to be qualified within the meaning of such defined term) or in connection with a transfer to Big Rivers or any LG&E Entity or other transfer contemplated by the terms of the Operative Documents.

“OP Trustee” shall mean State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as OP Trustee under the OP Trust Agreement, and each other Person which may from time to time be acting as OP Trustee in accordance with the provisions of the OP Trust Agreement.

“Operating and Support Agreement” shall mean the Operating and Support Agreement, dated as of April 1, 2000, among the Owner Trust, the Other Facility Lessors and Big Rivers, in substantially the form of Exhibit U to the Participation Agreement.

“Operative Documents” shall mean the Participation Agreement, the Head Lease, the Facility Lease, the Ground Lease, the Ground Sublease, the Leasehold Mortgage, the Loan Certificates, the OP Trust Agreement, the Trust Agreement, the Big Rivers Swap, the Tax Indemnity Agreement, the Operating and Support Agreement, the Payment Agreement, the Payment Agreement FGIP, the Payment Agreement Pledge, the Series B Loan FGIP, the Rights Sharing Agreement, the Government Securities, the Government Securities Pledge Agreement, the Facility Lessee Assignment Agreement, the Facility Lessee Reassignment Agreement, the Funding Agreement, the Funding Agreement Pledge, the Funding Agreement FGIP, the Agreement to Amend Promissory Note, the Secured Notes, any Qualifying Swap (without regard to whether any such instrument continues to be qualified within the meaning of the defined term herein), any Qualifying Swap Surety Bond, the Partial Release of Security Interest, any Qualifying Facility Lease Surety Bond, any Qualifying Letter of Credit, the First Mortgage Supplement, the Subordinated Mortgage, the Intercreditor Agreement, the LG&E Consent, the Stock Pledge Agreement, the Escrow Agreement and other documents, agreements and certificates (including any certificates delivered on the Closing Date relied on for purposes of rendering any opinion and any short-form or memorandum of any of the above documents for recording purposes) in connection with the transactions contemplated by the documents defined in this definition of “Operative Documents”.

“Operator” shall mean Big Rivers or any successor operator appointed pursuant to Section 7 of the Operating and Support Agreement.

“Optional Modification” shall have the meaning specified in Section 8.2 of the Facility Lease.

“Other Facility Lease” shall mean each other “Facility Lease” in substantially the same form as the Facility Lease, of an undivided interest in the Facility from an Other Facility Lessor to Big Rivers, as lessee, in connection with an Other Lease Transaction.

“Other Facility Lessors” shall mean the other “Owner Trusts” on behalf of equity investors acquiring long term leasehold interests in the Facility, the Site and the Ground Interest and subleasing such interests to Big Rivers, in connection with an Other Lease Transaction.

“Other Lease Transaction” shall mean each of the other transactions, each dated as of April 1, 2000, involving the lease of undivided interests in leasehold interests in the Facility and the Site and interests in the Ground Interests to owner trusts on behalf of equity investors, and the simultaneous sublease of such interests to Big Rivers, all on substantially the same terms and conditions as under the Overall Transaction.

“Overall Transaction” shall mean the transactions contemplated by the Operative Documents.

“Overdue Rate” shall mean 2% per annum over the rate of interest publicly announced from time to time by Citibank at its New York, New York office as its prime rate for domestic commercial loans, such rate to change as and when such prime rate changes. For purpose of this definition, “prime rate” shall mean that rate announced by Citibank from time to time as its prime rate as that rate may change from time to time with changes to occur on the date Citibank’s prime rate changes.

“Owner Participant” shall mean Fleet Real Estate, Inc., a Rhode Island corporation together with its successors and permitted assigns.

“Owner Participant’s Commitment” shall mean \$20,060,359.39 (which shall not include the Transaction Costs for which the Owner Participant is responsible under Section 2.3(a) of the Participation Agreement).

“Owner Participant’s Lien” shall mean any Lien on the OP Trust Estate or any part thereof arising as a result of (i) Taxes or Claims against or affecting the Owner Participant or any Affiliate thereof not related to, or that are in violation of, any Operative Document or the transactions contemplated thereby, (ii) Claims against or any act or omission of the Owner Participant or any Affiliate thereof that is not related to, or that is in violation of, any Operative Document or the transactions contemplated thereby or that is in breach of any covenant or agreement of the Owner Participant set forth therein, (iii) Taxes imposed upon the Owner Participant or any Affiliate thereof that are not indemnified against by Big Rivers pursuant to the Operative Documents or (iv) Claims against or affecting the Owner Participant or any Affiliate thereof arising out of the voluntary or involuntary transfer by the Owner Participant (except as contemplated by the Operative Documents or during the continuance of an Event of Default) of any portion of the interest of the Owner Participant in the Beneficial Interest.

“Owner Trust” shall mean the Connecticut statutory trust created by the Trust Agreement.

“Owner Trust Beneficial Interest” shall mean the beneficial interest of the OP Trust in the Owner Trust.

“Partial Release of Security Interest” shall mean the Consent and Partial Release of Security Interest, dated as of April 1, 2000 by the United States acting through the Acting Administrator of the RUS, Ambac and CFC.

“Partial Year” shall have the meaning specified in the LEM Power Purchase Agreement.

“Participants” shall mean the Owner Participant, the OP Trust and the Lenders.

“Participation Agreement” shall mean the Participation Agreement (FBR-1), dated as of April 1, 2000, among Big Rivers, the Owner Trust, the OP Trust, the Trust Company, the Owner Participant and the Lenders.

“Payment Agreement” shall mean the Payment Agreement (FBR-1), dated as of April 1, 2000, between the Big Rivers Subsidiary and the Payment Undertaker, in substantially the form of Exhibit J to the Participation Agreement.

“Payment Agreement Fee” shall have the meaning specified in Section 1.1 of the Payment Agreement.

“Payment Agreement FGIP” shall mean the financial guaranty insurance policy, in substantially the form of Exhibit L to the Participation Agreement.

“Payment Agreement Insurer” shall mean Ambac as issuer of the Payment Agreement FGIP.

“Payment Agreement Pledge” shall mean the Payment Agreement Pledge Agreement (FBR-1), dated as of April 1, 2000 among the Big Rivers Subsidiary, the Owner Trust, the Beneficial Interest Purchaser and the First Mortgage Mortgagees, in substantially the form of Exhibit K to the Participation Agreement.

“Payment Collateral” has the meaning set forth in the Granting Clause of the Leasehold Mortgage.

“Payment Date” shall have the meaning specified in Section 1 of the Payment Agreement.

“Payment Default” shall mean the failure to pay any Basic Rent or Supplemental Rent when due without regard to any grace period or notice requirement.

“Payment Undertaker” shall mean AME Asset Funding, LLC, a Delaware limited liability company.

“Permitted Act” shall have the meaning set forth in Section 1 of the Tax Indemnity Agreement.

“Permitted Encumbrances” shall mean all Liens now or hereafter existing and permitted to exist on the Facility or the Sites under the First Mortgage as in effect on the Closing Date.

“Permitted Investments” shall mean investments in (a) overnight loans to or other customary overnight investments in commercial banks of the type referred to in paragraph (d) below, (b) obligations of the United States, (c) open market commercial paper of any corporation (other than Big Rivers) incorporated under the laws of the United States or any State thereof which is rated not less than “prime-1” or its equivalent by Moody’s and “A-1” or its equivalent by S&P maturing within one year after such investment, (d) certificates of deposit issued by commercial banks organized under the laws of the United States or any State thereof or a domestic branch of a foreign bank (i) having a combined capital and surplus in excess of \$500,000,000 and (ii) which are rated “AA” (or “Aa”) or better by S&P and/or Moody’s; *provided* that no more than \$20,000,000 may be invested in such deposits at any one such bank and (e) a money market fund

registered under the Investment Company Act of 1940, as amended, the portfolio of which is limited to U.S. government obligations and U.S. agency obligations.

“Permitted Liens” shall mean (i) the interests of Big Rivers, the Owner Participant, the OP Trust, the Owner Trust, the Beneficial Interest Purchaser, Ambac, the Agent and the Lenders under any of the Operative Documents; (ii) the Lien of the First Mortgage; (iii) all Permitted Encumbrances; (iv) the Lien of the Subordinated Mortgage; (v) the Liens of the WKEC Lease, the LEM Mortgage and the LG&E Subordinated Mortgage; (vi) all Facility Lessor’s Liens, OP Trust’s Liens and Owner Participant’s Liens; (vii) the Lien of the Leasehold Mortgage; (viii) the interests of the Other Facility Lessors in the Facility, the Sites and the lenders thereto in the Other Lease Transactions; (ix) [reserved]; (x) the “Permitted Liens” as defined in the WKEC Lease as of the Closing Date; (xi) those Liens identified in the Title Report and (xii) the interests of the Additional Wilson Owners.

“Person” shall mean any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Plan” shall mean any “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to ERISA, any “plan” (as defined in Section 4975(e)(1) of the Internal Revenue Code) that is subject to Section 4975 of the Internal Revenue Code, any trust created under any such plan or any “governmental plan” (as defined in Section 3(32) of ERISA or Section 414(d) of the Internal Revenue Code) that is organized in a jurisdiction having prohibitions on transactions with government plans similar to those contained in Section 406 of ERISA or Section 4975 of the Internal Revenue Code.

“Plant Green” shall mean Plant Robert D. Green.

“Plant Wilson” shall mean D. B. Wilson Unit No. 1 more particularly described in Exhibits A-1 and A-2 to the Head Lease.

“Power” shall have the meaning specified in the LEM Power Purchase Agreement.

“Power Load Profile” shall mean, with respect to any Service Contract, the periodic energy demand and usage profile (taking into account the Required Capacity and Required Energy Estimate applicable to any such Service Contract) for any relevant period during the Service Contract Term (expressed as a range of kilowatt hours).

“Prime Rate” shall mean the “prime rate” of Citibank described in the definition of “Overdue Rate.”

“Prudent Utility Practice” shall mean, at a particular time, the practices, methods and acts that an entity in the electric power industry (including an independent power producer) owning and operating the Facility over its useful life would engage in to produce power and that (i) are then commonly used in prudent engineering and operations to operate electrical equipment and associated mechanical and civil facilities lawfully and with safety, reliability, efficiency and expedition; or (ii) in the exercise of reasonable judgment, could have been expected to achieve the desired result consistent with applicable law, safety reliability, efficiency and expedition.

“Prudent Utility Practice” is not necessarily limited to the optimum practice, method or act, but may be a spectrum of possible practices, methods or acts.

“Purchase Option” shall have the meaning specified in Section 15.1 of the Facility Lease.

“Purchase Option Price” shall mean \$163,973,472.19.

“Qualifying Facility Lease Surety Bond” shall mean a valid and enforceable surety bond of a Qualifying Surety Bond Provider or guaranteed (such guaranty to be in form and substance acceptable to the OP Trust and the Owner Participant) by a Qualifying Surety Bond Provider (a) securing Big Rivers’ obligations under the Facility Lease and Section IIA of the Participation Agreement to pay the Equity Portion of Termination Value, (b) in form and substance acceptable to the OP Trust and the Owner Participant, and (c) providing for a maximum amount payable from time to time and at all times equal to the Equity Portion of Termination Value, and (d) providing for a stated expiration date not earlier than the last date an installment of the Purchase Option Price is due as set forth in Section 15.1 of the Facility Lease plus the applicable preference period under the Bankruptcy Code.

“Qualifying Letter of Credit” shall mean a valid and enforceable irrevocable, standby letter of credit in form and substance acceptable to the OP Trust and Owner Participant issued by a Qualifying Letter of Credit Bank (i) having a stated expiration date not earlier than one year after the date of original issuance, and (ii) unless the expiry date shall be on or after the Expiration Date, providing for a draw thereunder, if not renewed or replaced with a Qualifying Letter of Credit or Qualifying Facility Lease Surety Bond (or in the case of Section 7.7 (c) of the Participation Agreement, a Qualifying Swap Surety Bond) prior to its expiry or within 60 days of the issuer ceasing to be a Qualifying Letter of Credit Bank.

“Qualifying Letter of Credit Bank” shall mean a bank, the long term senior unsecured debt of which is rated at least “Aa2” by Moody’s and “AA” by S&P so long as such bank (and its guarantor, if applicable) does not violate the credit policies of the Owner Participant at the date of issuance of the relevant letter of credit, including with respect to credit exposure limits.

“Qualifying Surety Bond Provider” shall mean an insurer, the long-term senior unsecured debt obligations or financial strength rating of which at the time of issuance of a Qualifying Facility Lease Surety Bond or a Qualifying Swap Surety Bond, as the case may be, is rated at least “Aa2” by Moody’s and “AA” by S&P, and the long-term senior unsecured debt obligations or financial strength rating of which thereafter is rated at least “Aa2” by Moody’s and “AA” by S&P, so long as such insurer (and its guarantor, if applicable) does not violate the credit policies of the Owner Participant at the date of issuance of the relevant surety bond, including with respect to credit exposure limits.

“Qualifying Swap” shall mean a valid and enforceable obligation of a Qualifying Swap Provider (which must be supported by a Qualifying Swap Surety Bond (in the form of Exhibit W to the Participation Agreement), issued by a Qualifying Surety Bond Provider or a Qualifying Letter of Credit issued by a Qualifying Letter of Credit Bank) (a) to purchase the Owner Trust Beneficial Interest for a purchase price equal to Termination Value, (b) in substantially the form of Exhibit V to the Participation Agreement including provisions no less favorable to the Owner

Participant, the OP Trust and the Facility Lessor than in the form of Exhibit V, to the Participation Agreement or in such other form acceptable to the Owner Participant and the OP Trust; *provided, however*, that any replacement of the Qualifying Swap issued on the Closing Date shall provide for payment of the Equity Portion of Termination Value in full and in a lump sum on the termination date without an option for the Qualifying Swap Provider to make any payments in installments, (c) providing for a maximum amount payable from time to time and at all times equal to Termination Value, and (d) with an expiration or termination date no earlier than the date of the last installment of the Purchase Option Price due as set forth in Section 15.1 of the Facility Lease plus the applicable preference period under the Bankruptcy Code.

“Qualifying Swap Provider” shall mean the Beneficial Interest Purchaser (for so long as it is solvent), and thereafter, an entity, the long-term senior unsecured debt obligations or financial strength rating of which at the time of issuance of a Qualifying Swap, is rated at least “Aa2” by Moody’s and “AA” by S&P, so long as such entity (and its guarantor, if applicable) does not violate the credit policies of the Owner Participant at the date of issuance of the relevant swap, including with respect to credit exposure limits.

“Qualifying Swap Surety Bond” shall mean a valid and enforceable surety bond issued by a Qualifying Surety Bond Provider, payable to the OP Trust, (a) to secure all of the Qualifying Swap Provider’s obligations under the Qualifying Swap, (b) in substantially the form of Exhibit W to the Participation Agreement or in such other form acceptable to the Owner Participant and the OP Trust, (c) providing for a maximum amount payable from time to time and at all times at least equal to the Equity Portion of Termination Value and (d) with an expiration or termination date no earlier than the last date an installment of the Purchase Option Price is due as set forth in Section 15.1 of the Facility Lease plus the applicable preference period under the Bankruptcy Code.

“Quoted Rate” shall mean the rate of interest determined pursuant to clause (i) of the definition of Reset Interest Rate.

“Rating Agencies” shall mean S&P and Moody’s.

“Reasonable Basis” for a position shall exist if tax counsel may properly advise reporting such position on a tax return in accordance with Formal Opinion 85-352 issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association (or any successor to such opinion).

“Rebuilding Closing Date” shall have the meaning specified in paragraph (f) of Section 10.3 of the Facility Lease.

“Records” shall have the meaning set forth in Section 11 of the Tax Indemnity Agreement.

“Related Facility Lease” shall mean each other “Facility Lease,” in substantially the same form as the Facility Lease, under the Related Lease Transaction.

“Related Lease Transaction” shall mean the transaction contemplated by the Other Lease Transaction for which the Owner Participant is the “Owner Participant” under such Other Lease Transaction.

“Release” shall mean the actual or threatened release, deposit, disposal or leakage of any Hazardous Substance at, into, upon or under any land, water or air, or otherwise into the environment including, without limitation, by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouring, escaping, emptying, placement or the like.

“Released Property” shall have the meaning set forth in Section 4.2 of the Ground Lease.

“Remainder Property” shall mean that portion of the Mortgaged Site located in Ohio County, Kentucky and vested in Big Rivers as of the Closing Date other than the Site and the Easement Site.

“Rent” shall mean all Basic Rent and all Supplemental Rent.

“Rent Payment Date” shall mean July 18, 2000 and each January 4, commencing January 4, 2001, to and including January 4, 2027.

“Rent Payment Period” shall mean (a) in the case of the first Rent Payment Period, the period commencing on July 18, 2000 and ending on January 4, 2001, (b) each 12 month or shorter period commencing on each Rent Payment Date thereafter through and including January 4 and (c) in the case of the final Rent Payment Period, the period from January 4, 2026 to and including January 4, 2027.

“Replacement Component” shall have the meaning specified in Section 7.2 of the Facility Lease.

“Replacement Lender” shall mean “New Lender” as defined in Section 2.11 of the Leasehold Mortgage.

“Replacement Loan” shall mean a loan having a principal amount, maturity and amortization as set forth in Schedule A to the Loan Certificate (as such amounts may be adjusted from time to time) and having other terms reasonably acceptable to the Owner Participant, except that the interest rate shall be the Reset Interest Rate.

“Required Capacity” shall mean, with respect to any Service Contract, the electrical capacity (expressed in megawatts) required to be delivered to or at the direction of or available for the Service Purchaser in the manner contemplated by its Service Contract.

“Required Energy Estimate” shall mean, with respect to any Service Contract, the estimate of peak demand and annual energy usage derived from such Service Contract expressed as a range of kilowatt hours required to be delivered each month to or at the direction of the Service Purchaser contemplated by its Service Contract.

“Required Lenders” shall mean the Lender or Lenders which at the time of such determination shall be the Holders, owners or obligees of a majority in aggregate amount of the Secured Indebtedness.

“Required Modification” shall have the meaning specified in Section 8.1 of the Facility Lease.

“Reset Date” shall mean as of 11:59 p.m. (New York City time) on the last day of the Basic Term.

“Reset Interest Rate” with respect to any Loan Certificate, shall mean one of the following determined in accordance with the procedures set forth in Section 2.12 of the Leasehold Mortgage: (i) a fixed interest rate per annum, computed on the basis of a 360 day year of twelve 30-day months with interest payable annually, determined by the Lender in the Lender’s reasonable good faith judgment, based on prevailing market conditions and the maturity, credit risk and other terms and conditions of such Loan Certificate and the Leasehold Mortgage, the lending policies of the Lender at the time and any other factors which the Lender deems relevant (referred to as the “Quoted Rate”), or (ii) the lowest fixed interest rate per annum computed on the basis of a 360 day year of twelve 30-day months with interest payable annually that allows the Advisor, using reasonable efforts, including soliciting offers from entities proposed by the Owner Participant or the Facility Lessee, to locate one or more Persons ready, willing and able to purchase the Loan Certificate from the Lender at a price equal to the outstanding principal amount thereof plus interest accrued thereon to such date (referred to as the “Auction Rate”).

“Responsible Officer” shall mean, with respect to any Person other than the Owner Trust or OP Trust, (i) its or its managing general partner’s Chairman of the Board, its President, any Senior Vice President, the Chief Financial Officer, any Vice President, the Treasurer or any other management employee (a) that has the power to take the action in question and has been authorized, directly or indirectly, by the Board of Directors of such Person, (b) working under the direct supervision of such Chairman of the Board, President, Senior Vice President, Chief Financial Officer, Vice President or Treasurer and (c) whose responsibilities include the administration of the transactions and agreements contemplated by the Operative Documents, and (ii) with respect to the Owner Trust, the OP Trust, Trustee, the OP Trustee and Trust Company an officer in the corporate trust department of the Trust Company.

“Return Acceptance Tests” shall mean performance standards or tests meeting or exceeding the following conditions:

(i) The Facility’s efficiency as expressed as net unit heat rate in Btu’s of heat input per net kilowatt of output measured by the Facility’s performance monitoring system is greater than or equal to such Unit’s efficiency so expressed for the preceding 12 months;

(ii) The Facility’s net capacity expressed in megawatts measured by the Facility’s performance monitoring system is greater than or equal to the value of such net capacity during the preceding 12 months;

(iii) The Facility’s availability, as defined by information submitted to the North American Reliability Council, must be greater than or equal to such availability so defined during the preceding 12 months;

(iv) The Facility’s forced outage rate and factors, as defined by information submitted to the North American Reliability Council, must be greater than or equal to such rate and factors for the preceding 12 months;

(v) Documentation must be provided to the Owner Participant, the OP Trust and the Facility Lessor reasonably sufficient to permit the Owner Participant, the OP Trust and the Facility Lessor to conclude that the Facility has operated in accordance with all Applicable Laws and regulatory requirements for the preceding 12 months; and

(vi) All scheduled maintenance, replacement of Components and Required Modifications items must be concluded.

“Rights Sharing Agreement” shall mean the Rights Sharing Agreement (FBR-1), dated as of April 18, 2000, among the Owner Participant, the OP Trust, the Beneficial Interest Purchaser, the Lenders and Ambac in substantially the form of Exhibit A-2 to the Participation Agreement.

“RUS” shall mean the Rural Utilities Services, an agency of the United States Department of Agriculture, or where appropriate, the United States of America acting through the Administrator of the Rural Utilities Service.

“S&P” shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

“Scheduled Closing Date” shall mean April 18, 2000, or such later date set for Closing in a notice of postponement pursuant to Section 2.2(c) of the Participation Agreement.

“Scheduled Payment” shall have the meaning specified in Section 1.1 of the Payment Agreement.

“Scheduled Payment Date” shall mean a Rent Payment Date.

“Secured Indebtedness” shall have the meaning set forth in the Leasehold Mortgage.

“Secured Notes” shall mean the Facility Lessor (D) Secured Notes, the Facility Lessor (E) Secured Note and the Beneficial Interest Purchaser Secured Note.

“Secured Parties” shall have the meaning specified in Section 1.1 of the Payment Agreement.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security” shall have the same meaning as in Section 2(l) of the Securities Act.

“Series A Lender” shall mean AME Investments, LLC, a Delaware limited liability company, or any subsequent holder of the Series A Loan Certificate.

“Series A Lender’s Account” shall mean the account (No. 794693) maintained by the Series A Lender with Citibank or such other account of the Series A Lender in New York, New York, as the Series A Lender may from time to time specify in a notice to the other parties to the Participation Agreement.

“Series A Loan” shall mean the loan evidenced by the Series A Loan Certificate.

“Series A Loan Certificate” shall mean the Series A Loan Certificate, dated the Closing Date, in substantially the form of Exhibit A to the Leasehold Mortgage, in an initial principal amount equal to the Series A Loan Commitment, issued by the Owner Trust to the Series A Lender pursuant to Section 2.01 of the Leasehold Mortgage.

“Series A Loan Commitment” shall mean \$90,100,724.50.

“Series A Loan Maturity Date” shall mean January 4, 2039.

“Series A Loan Rate” shall mean (a) for the period from and including the Closing Date to, but not including the Reset Date, 7.42286% per annum, and (b) for the period from and including the Reset Date until the Series A Loan Certificate is paid in full, the Reset Interest Rate.

“Series B Lender” shall mean CoBank, ACB or any subsequent holder of the Series B Loan Certificate.

“Series B Lender’s Account” shall mean COBANK, ACB, Ref. 14213021-Big Rivers Electric Corporation, Attn: Senior Customer Service Representative, ABA No. 307088754 or such other account as the Series B Lender may from time to time specify in a notice to the other parties to the Participation Agreement.

“Series B Loan” shall mean the loan evidenced by the Series B Loan Certificate.

“Series B Loan Certificate” shall mean the Series B Loan Certificate, dated the Closing Date, in substantially the form of Exhibit B to the Leasehold Mortgage, in an initial principal amount equal to the Series B Loan Commitment, issued by the Owner Trust to the Series B Lender pursuant to Section 2.01 of the Leasehold Mortgage.

“Series B Loan Commitment” shall mean \$10,011,191.61.

“Series B Loan FGIP” shall mean the financial guaranty insurance policy, dated the Closing Date, made by Ambac in favor of the Series B Lender, insuring the timely payment of principal and interest on the Series B Loan.

“Series B Loan FGIP Provider” shall mean Ambac.

“Series B Loan Maturity Date” shall mean January 4, 2039.

“Series B Loan Rate” shall mean (a) for the period from and including the Closing Date to, but not including the Reset Date, 8.01445% per annum, and (b) for the period from and including the Reset Date until the Series B Loan Certificate is paid in full, the Reset Interest Rate.

“Service Contract” shall mean, with respect to the Undivided Interest, an agreement between the Facility Lessor and Service Purchaser entered into pursuant to Section 15.3 of the Facility Lease (a) commencing on the Expiration Date and ending on the Service Contract Expiration Date, unless earlier terminated in accordance with the express provisions thereof, (b) providing for the sale by the Facility Lessor and purchase by the Service Purchaser of power and energy generated by the Facility, reflecting the Facility Lessor’s undivided leasehold interest in the

Facility and commensurate entitlement to the output of the Facility and (c) containing such other terms and conditions provided in Schedule 3-A to the Facility Lease.

“Service Contract Commencement Date” shall have the meaning specified in Section 12A.1(a) of the Participation Agreement.

“Service Contract Credit Support” shall mean collateral security for the obligations of the Service Purchaser under the Service Contract in the form of a letter of credit or a guaranty, in either event reasonably satisfactory to the OP Trust and the Owner Participant, *provided*, that the issuing bank or the guarantor has a rating of its long-term senior unsecured debt obligations of at least AA- by S&P and Aa3 by Moody’s and is not the Facility Lessee, any member of the Facility Lessee, or any Affiliate or Tax Affiliate thereof.

“Service Contract Execution Date” shall have the meaning specified in Section 12A.1(a) of the Participation Agreement.

“Service Contract Expiration Date” shall mean in the case of a Service Contract entered into on the Expiration Date December 4, 2039.

“Service Contract Liquidated Damages” shall have the meaning specified in Schedule 3-B to the Facility Lease.

“Service Contract Option” shall have the meaning specified in Section 15(a) of the Facility Lease.

“Service Contract Term” shall mean the period commencing on the day following the Expiration Date and ending on the Service Contract Expiration Date.

“Service Fees” shall mean, collectively, the Capacity Charge, the Fixed Energy Charge and the Energy Charge under the Service Contract.

“Service Fees Payment Date” shall mean each January 4 commencing January 4, 2028 through January 4, 2039 and December 4, 2039.

“Service Purchaser” shall mean a Person which is not the Facility Lessee, a member of the Facility Lessee or an Affiliate or Tax Affiliate of any of the foregoing, subject to the Owner Participant’s then-current credit exposure limits, that is the purchaser of the power and energy generated by Plant Green pursuant to a Service Contract and has:

(q) a rating of its long-term senior unsecured debt obligations of at least AA- by S&P or Aa3 by Moody’s; or

(r) provided the Owner Participant with either collateral security for such Person’s obligations under the Service Contract in the form of a letter of credit or a guaranty from an Affiliate of such Person having the credit ratings specified in clause (a) above, in either event reasonably satisfactory to the Owner Participant and the OP Trust.

“Severable Modifications” shall mean any Modification that is readily removable from the Facility without causing material damage to the Facility and shall not mean any Required Modifications.

“Site” shall mean the land on which the Facility is situated. The Site is more particularly described in Exhibit 1 to the Ground Lease, Exhibit 1 to the Ground Sublease, Exhibit B to the Head Lease and Exhibits C to the Facility Lease and the Leasehold Mortgage and excludes the Facility.

“Special Equity Remedy” shall have the meaning specified in Section 11A of the Participation Agreement.

“Specified Sum” shall have the meaning specified in Section 1.1 of the Payment Agreement.

“State Deductions” shall have the meaning set forth in Section 2(s) of the Tax Indemnity Agreement.

“Station Two Subsidiary” shall mean LG&E Station Two Inc., a Kentucky corporation.

“Stock Pledge Agreement” shall mean the Stock Pledge Agreement, dated as of April 1, 2000, made by Big Rivers in favor of State Street Bank and Trust Company of Connecticut, National Association, as Collateral Agent.

“Subordinated Mortgage” shall mean the Subordinated Mortgage, dated as of April 1, 2000 among Big Rivers, Ambac, the Beneficial Interest Purchaser, PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust, PBR-1 OP Statutory Trust, PBR-2 OP Statutory Trust, PBR-3 OP Statutory Trust, FBR-1 OP Statutory Trust, FBR-2 OP Statutory Trust, Bluegrass Leasing and Fleet Real Estate, Inc., in substantially the form of Exhibit R to the Participation Agreement.

“Subordinated Secured Parties” shall have the meaning set forth in the Subordinated Mortgage.

“Subsidiary” of any Person shall mean any corporation, association, or other business entity of which more than 50% (by number of votes) of the voting stock at the time outstanding shall at the time be owned, directly or indirectly, by such Person or by any other corporation, association or trust which is itself a Subsidiary within the meaning of this definition, or collectively by such Person and any one or more such Subsidiaries.

“Summary of Terms” shall mean the Summary of Terms and Conditions agreed to by Philip Morris Capital Corporation, Fleet Capital Leasing, Ambac, the Series A Lender, the Funding Agreement Provider and Big Rivers on November 8, 1999.

“Supplemental Rent” shall mean any and all amounts, liabilities and obligations (other than Basic Rent) which the Facility Lessee assumes, agrees or is obligated to pay under the Operative Documents to the Facility Lessor or any other Person, including, but not limited to, Termination Value and all Make Whole Payments and if and to the extent applicable, the Purchase Option Price.

“Support Entity” shall have the meaning specified in the definition of Acceptable Substitute Collateral or Acceptable Substitute Investment Collateral, as applicable.

“Tax” or “Taxes” shall mean all charges, assessments and impositions, including, without limitation, all fees, taxes (including, without limitation, net or gross income taxes, net or gross receipts taxes, license taxes, franchise taxes (including, but not limited to, bank franchise taxes), sales taxes, use taxes, transfer, excise, mortgage, recording, intangible and similar taxes, value-added taxes, ad valorem taxes, property taxes (personal and real, tangible and intangible) and stamp taxes), levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any government or other taxing authority.

“Tax Advance” shall have the meaning specified in Section 9.2(g)(3) of the Participation Agreement.

“Tax Affiliate” shall mean any Affiliate of Big Rivers or any member of Big Rivers’ or the Big Rivers Subsidiary’s “lessee group” as defined in Revenue Procedure 75-21.

“Tax Benefit” shall have the meaning specified in Section 9.2(e) of the Participation Agreement.

“Tax Benefits” shall have the meaning set forth in Section 2(c) of the Tax Indemnity Agreement.

“Tax Claim” shall have the meaning specified in Section 9.2(g)(1) of the Participation Agreement.

“Tax Indemnitee” shall have the meaning specified in Section 9.2(a) of the Participation Agreement.

“Tax Indemnity Agreement” shall mean the Tax Indemnity Agreement (FBR-1), dated as of April 1, 2000, among Big Rivers and the Owner Participant.

“Term” shall mean the Basic Term of the Facility Lease plus the period, if any, in which the Facility Lessee continues to have a subleasehold interest in the Facility pursuant to Section 17.3 of the Facility Lease.

“Termination Date” shall mean each of the monthly dates during the Facility Lease Term identified as a “Termination Date” on Schedule 2 of the Facility Lease.

“Termination Value” when referred to with respect to a Termination Date shall mean the Termination Value set forth on Schedule 2 of the Facility Lease, for such Termination Date and when referred to without reference to a Termination Date means the Termination Value applicable from time to time with the Termination Value applicable on any day being the Termination Value set forth on Schedule 2 of the Facility Lease for such day or if such day is not listed on Schedule 2 of the Facility Lease for the next day listed on such Schedule. Termination Value shall be adjusted from time to time as provided in the Operative Documents, it being understood and agreed that, as set forth in such schedule, such amounts have been computed so

as to reflect a credit for Basic Rent paid but allocated to the periods after such Termination Date and to include an additional amount for Basic Rent previously accrued but not yet paid.

"Title Report" shall mean the supplemental record examination and report dated December 22, 1999, and addendum to such report dated the Closing Date of Stoll, Keenon & Park LLP.

"Transaction Costs" shall mean the following:

- (i) [reserved];
- (ii) the reasonable fees and expenses of Hunton & Williams, special New York counsel to the Owner Participant, for their services rendered in connection with the negotiation, execution and delivery of the Summary of Terms, the Participation Agreement and the other Operative Documents;
- (iii) the reasonable fees and expenses of Long, Aldridge & Norman LLP and Orrick, Herrington & Sutcliffe LLP, special counsels for Big Rivers, and Sullivan, Mountjoy, Stainback & Miller, P.S.C., general counsel to Big Rivers, for their services rendered in connection with the negotiation, execution and delivery of the Summary of Terms, Participation Agreement and the other Operative Documents;
- (iv) the reasonable fees and expenses of Shipman & Goodwin LLP, special counsel for the Trust Company, for their services rendered in connection with the negotiation, execution and delivery of the Participation Agreement and the other Operative Documents;
- (v) the reasonable fees and expenses of Stites & Harbison and Stoll, Keenon & Park, LLP, special Kentucky tax counsel and special Kentucky counsel, respectively, for the Owner Participant, for their services rendered in connection with their review of the Operative Documents (including preparation of the Title Report by Stoll, Keenon & Parks LLP);
- (vi) the reasonable fees and expenses of Wyatt, Tarrant & Combs, special Kentucky counsel for the Series A Lender, Ambac, the Beneficial Interest Purchaser and the Payment Undertaker, for their services rendered in connection with their review of the Participation Agreement and the other Operative Documents;
- (vii) the reasonable fees and expenses of Steptoe & Johnson LLP, special counsel for the Series B Lender, for their services rendered in connection with the negotiation, execution and delivery of the Participation Agreement and the other Operative Documents;
- (viii) the reasonable fees and expenses of Cadwalader, Wickersham & Taft, special counsel for the Series A Lender, Ambac, the Beneficial Interest Purchaser and the Payment Undertaker, for their services rendered in connection with the negotiation, execution and delivery of the Summary of Terms, the Participation Agreement and the other Operative Documents;

(ix) the initial fees and expenses of the Owner Trust and the OP Trust in connection with the execution and delivery of the Participation Agreement and the other Operative Documents to which the Owner Trust or the OP Trust is or will be a party;

(x) the fees of the Engineer, for its services rendered in connection with delivering the Engineering Report required by Section 4.12 of the Participation Agreement;

(xi) the fees of the Appraiser, for its services rendered in connection with delivering the Appraisal required by Section 4.14 of the Participation Agreement;

(xii) the fees and expenses of the Advisor to Big Rivers and Wheeler Peak Consulting, for their services rendered in connection with the transactions contemplated by the Participation Agreement;

(xiii) the Payment Agreement Fee payable to the Payment Undertaker equal to \$292,018.63;

(xiv) the fee paid to Beneficial Interest Purchaser in consideration for the Qualifying Swap;

(xv) the fees of the Environmental Consultant for its report delivered pursuant to Section 4.12 of the Participation Agreement;

(xvi) the out-of-pocket expenses of the Owner Participant (including computer time procurement) up to a maximum amount equal to the product of (a) \$30,000 and (b) the fraction obtained by dividing the Facility Lessor's Percentage by the sum of (1) the "Facility Lessor's Percentage" of each Other Facility Lessor and (2) the Facility Lessor's Percentage;

(xvii) the loan origination fee paid to the Series B Lender;

(xviii) surveyors fees for the survey of the Site and the Easement Site required by Section 4.13 of the Participation Agreement;

(xix) the fees of Citibank in connection with its services under the Participation Agreement;

(xx) the reasonable fees and expenses of the LG&E Entities (including the reasonable fees and expenses of Greenebaum, Doll & McDonald PLLC, special counsel to the LG&E Entities, for their services rendered in connection with the review of the Summary of Terms and the Operative Documents); and

(xxi) the reasonable fees and expenses of James McIllwain, engineering consultant to Big Rivers, for his services in connection with the transactions contemplated by the Operative Documents.

(xxii) the fee paid to Ambac in consideration for the Series B Loan FGIP;

(xxiii) the reasonable out-of-pocket fees and expenses of the Funding Agreement Issuer in connection with negotiation, execution and delivery of the Funding Agreement and the Funding Agreement Pledge (including the reasonable fees and expenses of White & Case, LLP as counsel to the Funding Agreement Issuer);

(xxiv) the reasonable fees and expenses incurred by Big Rivers to obtain a private credit rating of Big Rivers' obligations under the Big Rivers Swap (including the fees and expenses of Goldman, Sachs & Co., Moody's and S&P);

(xxv) the reasonable out-of-pocket expenses of RUS in connection with obtaining RUS consent to the Overall Transaction (including the reasonable fees and expenses of Patton Boggs LLP in connection with its review of the Summary of Terms and the Operative Documents);

(xxvi) the reasonable out-of-pocket expenses of CFC in connection with its review of the Overall Transaction (including the reasonable fees and expenses of its counsel for their services rendered in connection with its review of the Operative Documents); and

(xxvii) the fees of the agent for service of process appointed to act for the Owner Trust and OP Trust in Kentucky.

Notwithstanding the foregoing, Transaction Costs shall not include internal costs and expenses such as salaries and overhead of whatsoever kind or nature nor costs incurred by the parties to the Participation Agreement pursuant to arrangements with third parties for services (other than those expressly referred to above or listed on Schedule I to the Participation Agreement), such as computer time procurement (other than out-of-pocket expenses of the Owner Participant referred to above), financial analysis and consulting, advisory services, and costs of a similar nature.

"Transaction Documents" shall mean the Operative Documents, the First Mortgage, and any other documents, agreements, certificates or other arrangements contemplated thereby.

"Transaction Party" shall mean, individually or collectively as the context shall require, all or any of the parties to the Operative Documents.

"Transferee" shall have the meaning specified in Section 5.1(a) of the Participation Agreement.

"Treasury Regulations" shall mean regulations, including temporary or proposed regulations, issued, published or promulgated under the Internal Revenue Code.

"Trust Agreement" shall mean the Trust Agreement (FBR-1), dated as of April 1, 2000, among the OP Trust and the Trustee, in substantially the form of Exhibit A to the Participation Agreement.

"Trust Company" shall mean State Street Bank and Trust Company of Connecticut, National Association, in its individual capacity.

"Trust Estate" shall mean all the estate, right, title and interest of the Owner Trust in, to and under the Ground Interest, the Undivided Interest, and the Operative Documents, including all

funds advanced to the Owner Trust by the OP Trust, all installments and other payments of Basic Rent, Supplemental Rent and Termination Value under the Facility Lease, condemnation awards, purchase price, sale proceeds, insurance proceeds and all other proceeds, rights and interests of any kind for or with respect to the estate, right, title and interest of the Owner Trust in, to and under the Ground Interest, the Undivided Interest, and the Operative Documents and any of the foregoing, but shall not include Excepted Payments or Excepted Rights.

“Trustee” shall mean State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Trustee under the Trust Agreement, and each other Person which may from time to time be acting as Trustee in accordance with the provisions of the Trust Agreement.

“Uncontrollable Forces” shall have the meaning set forth in Section 8.2 of the Operating Agreement.

“Undivided Interest” shall mean an undivided interest equal to the Facility Lessor’s Percentage in the assets constituting the Facility more particularly described in Exhibits A-1 and A-2 to the Head Lease, including the right as tenant-in-common with the Other Facility Lessors and other lessees under the Other Lease Transactions, in all cases to nonexclusive possession of the Facility.

“Undivided Interest Cost” shall mean \$120,172,275.50.

“Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as in effect in the applicable jurisdiction.

“United States” shall mean the United States of America.

“U.S. Tax Assumptions” shall have the meaning set forth in Section 2 of the Tax Indemnity Agreement.

“Wilson Unit” shall mean Plant Wilson.

“WKEC” shall mean Western Kentucky Energy Corp., a Kentucky corporation.

“WKEC Lease” shall mean the Lease and Operating Agreement, dated July 15, 1998, between WKEC and Big Rivers.

“Year” shall have the meaning specified in the LEM Power Purchase Agreement.

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**EXHIBIT A
to
Facility Lease**

DESCRIPTION OF THE FACILITY

Description of the Facility is as set forth in Exhibits A-1 and A-2 to the Head Lease.

EXHIBIT B-1
to
Facility Lease

FORM OF FACILITY LESSOR'S
NOTICE OF NON-PAYMENT OF RENT

[Date]

Big Rivers Electric Corporation
201 Third Street
Henderson, Kentucky 42420
Attention: President and Chief Executive Officer

Re: Facility Lease (FBR-1), dated as of
April 1, 2000
Notice of Non-payment of Rent

Dear _____:

FBR-1 Statutory Trust, acting by and through its Trustee, State Street Bank and Trust Company of Connecticut, National Association, as Facility Lessor under the Facility Lease referred to above (capitalized terms used in this Notice and not otherwise defined having the meanings given them in the Facility Lease), hereby gives Big Rivers Electric Corporation, as Facility Lessee, notice pursuant to Section 3.7 of the Facility Lease that the payment of [Basic Rent] [Termination Value] [Purchase Option Price] due on [_____] was not paid when due.

Very truly yours,

FBR-1 STATUTORY TRUST
acting by and through State Street Bank and Trust
Company of Connecticut, National Association, not
in its individual capacity, but solely as Trustee

cc: AME Investments, LLC
Rural Utilities Service

EXHIBIT B-2
to
Facility Lease

FORM OF FACILITY LESSEE'S REQUEST TO FACILITY LESSOR TO PURSUE
REMEDIES AGAINST PAYMENT UNDERTAKER

[Date]

FBR-1 Statutory Trust
acting by and through
State Street Bank and Trust Company of Connecticut, National Association,
not in its individual capacity
but solely as Trustee

Re: Facility Lease (FBR-1), dated as of
April 1, 2000
Instruction to Pursue Due Diligence Against Payment Undertaker

Dear [_____]:

We are in receipt of your notice dated [_____] in respect of the non-payment of [Basic Rent] [Termination Value] [installment of Purchase Option Price] on [_____] under the Facility Lease referred to above (capitalized terms used in this Instruction and not otherwise defined having the meanings given them in the Facility Lease). Pursuant to Section 3.7 of the Facility Lease, the Facility Lessee hereby instructs you, as Facility Lessor, to pursue due diligence to collect such amounts in respect of unpaid Rent from the Payment Undertaker prior to pursuing the Facility Lessee for payment of such amounts under the Facility Lease (including the exercise of any remedy under Section 17 of the Facility Lease) or any other Operative Document.

Very truly yours,

BIG RIVERS ELECTRIC CORPORATION
as Facility Lessee

cc: AME Investments, LLC
The Administrator of the Rural Utilities Service

EXH. B-2-1

DESCRIPTION OF SITE

AREA NO. 1

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found P-60) located in the north right of way of Kentucky Highway No. 85 and the southwest property corner of Peabody Coal Company, Deed Book 265, Page 418, THENCE with the north right of way line of Kentucky Highway 85 North 81 Degrees 31 Minutes 38 Seconds West, 2849.52 feet to a point in the lease line; THENCE with the lease line with the following courses:

North 45 Degrees 20 Minutes 09 Seconds East, 146.91 feet to a point; THENCE
North 06 Degrees 22 Minutes 18 Seconds East, 3.76 feet to a point; THENCE
North 06 Degrees 22 Minutes 10 Seconds East, 22.32 feet to a point; THENCE
North 04 Degrees 11 Minutes 48 Seconds East, 16.21 feet to a point; THENCE
North 02 Degrees 05 Minutes 05 Seconds East, 16.41 feet to a point; THENCE
North 02 Degrees 07 Minutes 12 Seconds East, 12.57 feet to a point; THENCE
North 02 Degrees 07 Minutes 00 Seconds East, 12.56 feet to a point; THENCE
North 02 Degrees 05 Minutes 41 Seconds East, 19.89 feet to a point; THENCE
North 02 Degrees 05 Minutes 44 Seconds East, 19.99 feet to a point; THENCE
North 03 Degrees 14 Minutes 43 Seconds East, 20.81 feet to a point; THENCE
North 05 Degrees 09 Minutes 38 Seconds East, 20.83 feet to a point; THENCE
North 06 Degrees 29 Minutes 14 Seconds East, 17.91 feet to a point; THENCE
North 07 Degrees 41 Minutes 14 Seconds East, 17.86 feet to a point; THENCE
North 08 Degrees 26 Minutes 18 Seconds East, 1052.72 feet to a point; THENCE
North 08 Degrees 32 Minutes 16 Seconds East, 1052.62 feet to a point; THENCE
North 08 Degrees 42 Minutes 54 Seconds East, 63.21 feet to a point; THENCE
North 08 Degrees 59 Minutes 03 Seconds East, 63.48 feet to a point; THENCE
North 12 Degrees 10 Minutes 52 Seconds East, 57.23 feet to a point; THENCE
North 17 Degrees 08 Minutes 51 Seconds East, 43.18 feet to a point; THENCE
North 21 Degrees 31 Minutes 45 Seconds East, 64.79 feet to a point; THENCE
North 25 Degrees 32 Minutes 54 Seconds East, 65.84 feet to a point; THENCE
North 30 Degrees 13 Minutes 37 Seconds East, 61.68 feet to a point; THENCE
North 35 Degrees 30 Minutes 31 Seconds East, 45.73 feet to a point; THENCE
North 40 Degrees 28 Minutes 42 Seconds East, 68.24 feet to a point; THENCE
North 45 Degrees 16 Minutes 44 Seconds East, 69.75 feet to a point; THENCE
North 49 Degrees 10 Minutes 06 Seconds East, 49.49 feet to a point; THENCE
North 52 Degrees 54 Minutes 20 Seconds East, 36.43 feet to a point; THENCE

North 57 Degrees 06 Minutes 43 Seconds East, 54.28 feet to a point; THENCE
North 62 Degrees 03 Minutes 57 Seconds East, 55.72 feet to a point; THENCE
North 65 Degrees 50 Minutes 35 Seconds East, 67.01 feet to a point; THENCE
North 69 Degrees 18 Minutes 23 Seconds East, 49.54 feet to a point; THENCE
North 72 Degrees 49 Minutes 58 Seconds East, 36.96 feet to a point; THENCE
North 77 Degrees 33 Minutes 35 Seconds East, 54.84 feet to a point; THENCE
North 84 Degrees 23 Minutes 42 Seconds East, 54.79 feet to a point; THENCE
North 89 Degrees 19 Minutes 12 Seconds East, 62.20 feet to a point; THENCE
South 87 Degrees 39 Minutes 16 Seconds East, 93.19 feet to a point; THENCE
South 83 Degrees 33 Minutes 14 Seconds East, 93.06 feet to a point; THENCE
South 81 Degrees 29 Minutes 39 Seconds East, 318.70 feet to a point; THENCE
North 70 Degrees 22 Minutes 09 Seconds East, 900.97 feet to a point; THENCE
South 77 Degrees 19 Minutes 31 Seconds East, 335.87 feet to a point in the northwest property
corner of Peabody Coal, Deed Book 265, Page 418; THENCE with the west property line of
Peabody Coal Company the following courses:
South 56 Degrees 14 Minutes 49 Seconds East, 379.49 feet to a point; THENCE
South 37 Degrees 57 Minutes 54 Seconds East, 263.04 feet to a point; THENCE
South 12 Degrees 25 Minutes 21 Seconds East, 174.28 feet to a point; THENCE
South 05 Degrees 12 Minutes 21 Seconds West, 313.38 feet to a point; THENCE
South 08 Degrees 21 Minutes 32 Seconds West, 493.65 feet to a point; THENCE
South 13 Degrees 50 Minutes 47 Seconds West, 315.70 feet to a point; THENCE
North 81 Degrees 30 Minutes 59 Seconds West, 51.99 feet to a point; THENCE
South 08 Degrees 28 Minutes 25 Seconds West, 2025.00 feet to a point to the POINT OF
BEGINNING and CONTAINING 216.95 acres (more or less).

AREA NO. 2

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found P-61) located in the south
right of way of Kentucky Highway No. 85 and the west margin of Cave Hill Road, THENCE
North 81 degrees 31 minutes 38 seconds West, 187.07 feet to the true POINT OF BEGINNING,
THENCE leaving said right of way South 08 degrees 06 minutes 49 seconds West 2579.94 feet
to a point; THENCE North 81 degrees 29 minutes 39 seconds West 824.24 feet to a point;
THENCE North 54 degrees 06 minutes 36 seconds West 711.82 feet to a point; THENCE North
06 degrees 10 minutes 36 seconds East 572.65 feet to a point; THENCE South 81 degrees 54
minutes 58 seconds East 122.40 feet to a point; THENCE North 08 degrees 30 minutes 55
seconds East 1046.68 feet to a point; THENCE South 79 degrees 47 minutes 20 seconds East
43.36 feet to a point; THENCE North 08 degrees 28 minutes 44 seconds East 568.72 feet to a
point; THENCE North 28 degrees 51 minutes 37 seconds West, 156.63 feet to a point in the
north right of way of Kentucky Highway No. 85; THENCE with said highway right of way
South 81 degrees 31 minutes 38 seconds East, 62.88 feet to a point; THENCE leaving north
highway right of way South 28 degrees 51 minutes 37 seconds East, 75.46 feet to a point in the
south right of way of Kentucky Highway No. 85; THENCE with said right of way South 81
degrees 31 minutes 38 seconds East, 186.08 feet to a point; THENCE leaving the south right of
way line N 11 degrees 37 minutes 19 seconds West, 63.89 feet to a point in the north right of

way line; THENCE with the north right of way line South 81 degrees 31 minutes 38 seconds East, 53.24 feet to a point; THENCE leaving the north right of way line South 11 degrees 37 minutes 18 seconds East, 63.89 feet to a point in the south right of way line; THENCE with the south right of way line South 81 degrees 31 minutes 38 seconds East, 22.03 feet to a point; THENCE leaving the south right of way line North 08 degrees 30 minutes 58 seconds East, 60.00 feet to a point in the north right of way line; THENCE with the north right of way line South 81 degrees 31 minutes 38 seconds East, 50.00 feet to a point; THENCE leaving the north right of way line South 08 degrees 30 minutes 58 seconds West, 60.00 feet to a point in the south right of way line; THENCE with said south right of way South 81 degrees 31 minutes 38 seconds East 971.30 feet to the POINT OF BEGINNING and CONTAINING 79.30 acres (more or less).

AREA NO. 3

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found P-61) located in the south right of way of Kentucky Highway No. 85 and the west margin of Cave Hill Road, THENCE with the south margin of Kentucky Highway No. 85 right of way, North 81 degrees 31 minutes 38 seconds West, 187.07 feet to a point in said road right of way; THENCE with the east boundary of Lease Area No. 2 South 8 degrees 06 minutes 49 seconds West, 2579.94 feet to the true POINT OF BEGINNING; THENCE South 08 degrees 13 minutes 04 seconds West, 916.48 feet to a point; THENCE North 80 degrees 39 minutes 41 seconds West, 28.56 feet to a point; THENCE South 49 degrees 10 minutes 23 seconds West, 52.44 feet to a point; THENCE South 56 degrees 46 minutes 31 seconds West, 102.40 feet to a point; THENCE South 59 degrees 14 minutes 52 seconds West, 107.31 feet to a point; THENCE South 61 degrees 12 minutes 33 seconds West, 113.74 feet to a point; THENCE South 83 degrees 28 minutes 23 seconds West, 73.68 feet to a point; THENCE North 87 degrees 55 minutes 42 seconds West, 87.77 feet to a point; THENCE South 86 degrees 49 minutes 56 seconds West, 174.63 feet to a point; THENCE North 82 degrees 02 minutes 29 seconds West, 571.03 feet to a point; THENCE North 77 degrees 39 minutes 00 seconds West, 170.86 feet to a point; THENCE North 65 degrees 11 minutes 23 seconds West, 164.57 feet to a point; THENCE North 56 degrees 26 minutes 30 seconds West, 150.13 feet to a point; THENCE North 46 degrees 07 minutes 29 seconds West, 144.11 feet to a point; THENCE North 37 degrees 34 minutes 28 seconds West, 1278.51 feet to a point; THENCE North 51 degrees 00 minutes 40 seconds West, 2293.32 feet to a point; THENCE North 15 degrees 29 minutes 22 seconds East, 1231.81 feet to a point; THENCE South 88 degrees 30 minutes 46 seconds East, 112.47 feet to a point; THENCE South 13 degrees 56 minutes 14 seconds West, 1161.99 feet to a point; THENCE South 50 degrees 45 minutes 09 seconds East, 2007.78 feet to a point; THENCE North 78 degrees 11 minutes 16 seconds East, 124.78 feet to a point; THENCE South 66 degrees 20 minutes 19 seconds East, 500.42 feet to a point; THENCE North 47 degrees 25 minutes 02 seconds East, 471.41 feet to a point; THENCE South 39 degrees 00 minutes 38 seconds East, 438.62 feet to a point; THENCE South 52 degrees 36 minutes 13 seconds West, 530.57 feet to a point; THENCE South 35 degrees 57 minutes 12 seconds East, 673.09 feet to a point; THENCE South 61 degrees 31 minutes 44 seconds East, 169.02 feet to a point; THENCE South 80 degrees 27 minutes 43 seconds East, 977.71 feet to a point; THENCE North 53 degrees 35 minutes 38 seconds East, 274.10 feet to a point; THENCE

EXH. C-3

North 08 degrees 57 minutes 07 seconds East, 682.57 feet to a point; THENCE South 81 degrees 29 minutes 40 seconds East, 152.99 feet to the POINT OF BEGINNING and CONTAINING 43.51 acres (more or less).

AREA NO. 4

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found P-61) located in the west right of way of Cave Hill Road and being the southeast property corner of the Big Rivers Corporation property; THENCE with the south property line of the Big Rivers Corporation, North 81 degrees, 28 minutes 06 seconds West, 375.01 feet to the true POINT OF BEGINNING, THENCE North 81 degrees 27 minutes 56 seconds West, 20.00 feet to a point; THENCE North 08 degrees 18 minutes 14 seconds East, 16.84 feet to a point; THENCE North 08 degrees 09 minutes 43 seconds East, 22.59 feet to a point; THENCE North 08 degrees 28 minutes 28 seconds East, 102.88 feet to a point; THENCE North 08 degrees 32 minutes 13 seconds East, 102.69 feet to a point; THENCE North 06 degrees 48 minutes 35 seconds East, 38.42 feet to a point; THENCE North 02 degrees 46 minutes 15 seconds East, 67.42 feet to a point; THENCE North 01 degrees 18 minutes 11 seconds West, 50.57 feet to a point; THENCE North 05 degrees 06 minutes 34 seconds West, 76.53 feet to a point; THENCE North 09 degrees 00 minutes 16 seconds West, 76.74 feet to a point; THENCE North 14 degrees 12 minutes 45 seconds West, 53.17 feet to a point; THENCE North 20 degrees 05 minutes 48 seconds West, 39.30 feet to a point; THENCE North 25 degrees 44 minutes 01 seconds West, 59.92 feet to a point; THENCE North 31 degrees 26 minutes 54 seconds West, 61.52 feet to a point; THENCE North 35 degrees 29 minutes 43 seconds West, 59.38 feet to a point; THENCE North 38 degrees 41 minutes 51 seconds West, 43.32 feet to a point; THENCE North 42 degrees 37 minutes 04 seconds West, 64.56 feet to a point; THENCE North 47 degrees 41 minutes 40 seconds West, 65.39 feet to a point; THENCE North 52 degrees 47 minutes 20 seconds West, 34.12 feet to a point; THENCE North 86 degrees 49 minutes 56 seconds East, 54.06 feet to a point; THENCE South 47 degrees 38 minutes 11 seconds East, 63.57 feet to a point; THENCE South 42 degrees 42 minutes 46 seconds East, 67.75 feet to a point; THENCE South 38 degrees 50 minutes 13 seconds East, 45.66 feet to a point; THENCE South 35 degrees 36 minutes 22 seconds East, 62.19 feet to a point; THENCE South 31 degrees 08 minutes 12 seconds East, 64.08 feet to a point; THENCE South 25 degrees 09 minutes 29 seconds East, 62.65 feet to a point; THENCE South 19 degrees 56 minutes 00 seconds East, 41.79 feet to a point; THENCE South 15 degrees 01 minutes 10 seconds East, 55.84 feet to a point; THENCE South 10 degrees 19 minutes 17 seconds East, 81.28 feet to a point; THENCE South 05 degrees 47 minutes 57 seconds East, 81.07 feet to a point; THENCE South 01 degrees 13 minutes 40 seconds East, 54.05 feet to a point; THENCE South 03 degrees 49 minutes 22 seconds West, 71.40 feet to a point; THENCE South 08 degrees 57 minutes 19 seconds West, 40.86 feet to a point; THENCE South 11 degrees 36 minutes 59 seconds West, 31.93 feet to a point; THENCE South 13 degrees 33 minutes 33 seconds West, 31.92 feet to a point; THENCE South 15 degrees 23 minutes 15 seconds West, 29.16 feet to a point; THENCE South 15 degrees 00 minutes 12 seconds West, 28.88 feet to a point; THENCE South 13 degrees 55 minutes 48 seconds West, 23.30 feet to a point; THENCE South 12 degrees 16 minutes 34 seconds West, 43.45 feet to a point; THENCE South 08 degrees 18 minutes 24

seconds West, 52.98 feet to the POINT OF BEGINNING and CONTAINING 0.81 acres (more or less).

AREA NO. 5

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found P-61) located in the south right of way of Kentucky Highway No. 85 and the west margin of Cave Hill Road, THENCE with the south right of way of Kentucky Highway No. 85 North 81 degrees 31 minutes 38 seconds West, 2629.49 feet to the true POINT OF BEGINNING, THENCE leaving said highway right of way South 59 degrees 41 minutes 44 seconds West, 123.22 feet to a point; THENCE South 49 degrees 08 minutes 50 seconds West, 150.24 feet to a point; THENCE South 33 degrees 29 minutes 23 seconds West, 196.47 feet to a point; THENCE South 16 degrees 24 minutes 56 seconds West, 222.23 feet to a point; THENCE South 08 degrees 29 minutes 57 seconds West, 204.80 feet to a point; THENCE South 08 degrees 27 minutes 12 seconds West, 1338.81 feet to a point; THENCE South 09 degrees 11 minutes 35 seconds West, 50.00 feet to a point; THENCE South 05 degrees 16 minutes 31 seconds West, 50.00 feet to a point; THENCE South 01 degrees 21 minutes 25 seconds West, 50.00 feet to a point; THENCE South 02 degrees 33 minutes 48 seconds East, 50.00 feet to a point; THENCE South 06 degrees 29 minutes 35 seconds East, 50.00 feet to a point; THENCE South 10 degrees 23 minutes 40 seconds East, 50.00 feet to a point; THENCE South 13 degrees 48 minutes 52 seconds East, 37.28 feet to a point; THENCE South 78 degrees 11 minutes 17 seconds West, 37.00 feet to a point; THENCE North 13 degrees 20 minutes 06 seconds West, 50.42 feet to a point; THENCE North 09 degrees 35 minutes 00 seconds West, 50.00 feet to a point; THENCE North 05 degrees 49 minutes 03 seconds West, 50.00 feet to a point; THENCE North 02 degrees 03 minutes 15 seconds West, 50.00 feet to a point; THENCE North 01 degrees 41 minutes 17 seconds East, 50.00 feet to a point; THENCE North 05 degrees 26 minutes 31 seconds East, 50.00 feet to a point; THENCE North 09 degrees 11 minutes 22 seconds East, 50.00 feet to a point; THENCE North 08 degrees 30 minutes 25 seconds East, 2193.09 feet to a point; THENCE South 81 degrees 31 minutes 38 seconds East, 20.00 feet to a point; THENCE South 08 degrees 30 minutes 25 seconds West, 60.00 feet to a point in the south right of way of Kentucky Highway No. 85, THENCE with said highway right of way South 81 degrees 31 minutes 38 seconds East, 272.12 feet to a point; THENCE leaving said highway right of way North 61 degrees 18 minutes 27 seconds East, 89.33 feet to a point; THENCE North 74 degrees 19 minutes 31 seconds East, 14.74 feet to a point in the north right of way of Kentucky Highway No. 85; THENCE with said highway right of way South 81 degrees 31 minutes 38 seconds East, 72.93 feet to a point; THENCE leaving said highway right of way South 74 degrees 16 minutes 38 seconds West, 31.09 feet to a point; THENCE South 68 degrees 03 minutes 13 seconds West, 81.53 feet to a point; THENCE South 60 degrees 39 minutes 54 seconds West, 9.74 feet to the POINT OF BEGINNING and CONTAINING 3.44 Acres (more or less).

AREA NO. 6

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found P-61) located in the south right of way of Kentucky Highway No. 85 and the west margin of Cave Hill Road North 81 degrees 31 minutes 38 seconds West, 2,349.39 feet to the true POINT OF BEGINNING, THENCE leaving said highway right of way South 37 degrees 42 minutes 20 seconds West, 28.54 feet to a point, THENCE South 12 degrees 43 minutes 35 seconds West, 49.87 feet to a point, THENCE South 81 degrees 45 minutes 26seconds East, 39.74 feet to a point, THENCE South 08 degrees 37 minutes 53 seconds West, 232.78 feet to a point, THENCE North 82 degrees 05 minutes 51 seconds West, 226.95 feet to a point, THENCE North 02 degrees 56 minutes 39 seconds East, 235.15 feet to a point, THENCE South 81 degrees 44 minutes 02 seconds East, 169.75 feet to a point, THENCE North 02 degrees 34 minutes 47 seconds East, 47.03 feet to a point, THENCE North 34 degrees 55 minutes 48 seconds West, 25.68 feet to a point, THENCE North 66 degrees 53 minutes 13 seconds West, 37.28 feet to a point in the south right of way of Kentucky Highway No. 85, THENCE with said highway right of way South 81 degrees 31 minutes 38 seconds East, 116.91 feet to the POINT OF BEGINNING and CONTAINING 1.37 Acres (more or less).

AREA NO. 7

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found P-60) located in the north right of way of Kentucky Highway No. 85 and in the southwest property corner of Peabody Coal Company (Deed Book 265, Page 418), THENCE with the north margin of Kentucky Highway No. 85 right of way, North 81 degrees 31 minutes 38 seconds West, 2849.52 feet to a point in said road right of way, THENCE leaving the said highway right of way and with the west Lease Line of Area 1 with the following courses:

North 45 degrees 20 minutes 09 seconds East, 146.91 feet to a point; THENCE

North 6 degrees 22 minutes 18 seconds East, 3.76 feet to a point; THENCE

North 6 degrees 22 minutes 10 seconds East, 22.32 feet to a point; THENCE

North 4 degrees 11 minutes 48 seconds East, 16.21 feet to a point; THENCE

North 2 degrees 05 minutes 05 seconds East, 16.41 feet to a point; THENCE

North 2 degrees 07 minutes 12 seconds East, 12.57 feet to a point; THENCE

North 2 degrees 07 minutes 00 seconds East, 12.56 feet to a point; THENCE

North 2 degrees 05 minutes 41 seconds East, 11.34 feet to the true

POINT OF BEGINNING; THENCE with the South Lease Line of Area 7 with the following courses: North 72 degrees 27 minutes 58 seconds West, 37.35 feet to a point; THENCE

North 61 degrees 28 minutes 14 seconds West, 137.20 feet to a point; THENCE

North 62 degrees 16 minutes 31 seconds West, 77.42 feet to a point; THENCE

North 65 degrees 58 minutes 41 seconds West, 77.95 feet to a point; THENCE

North 74 degrees 26 minutes 20 seconds West, 69.17 feet to a point; THENCE

North 82 degrees 53 minutes 41 seconds West, 72.74 feet to a point; THENCE

EXH. C-6

North 88 degrees 23 minutes 49 seconds West, 111.99 feet to a point; THENCE
North 88 degrees 17 minutes 39 seconds West, 75.21 feet to a point; THENCE
North 80 degrees 41 minutes 31 seconds West, 85.66 feet to a point; THENCE
North 74 degrees 43 minutes 12 seconds West, 188.66 feet to a point; THENCE
North 78 degrees 05 minutes 54 seconds West, 126.76 feet to a point; THENCE
North 80 degrees 30 minutes 48 seconds West, 104.10 feet to a point; THENCE
North 83 degrees 44 minutes 04 seconds West, 106.48 feet to a point; THENCE
North 84 degrees 42 minutes 26 seconds West, 130.24 feet to a point; THENCE
North 85 degrees 25 minutes 13 seconds West, 132.99 feet to a point; THENCE
North 87 degrees 21 minutes 26 seconds West, 122.38 feet to a point; THENCE
North 88 degrees 03 minutes 31 seconds West, 110.96 feet to a point; THENCE
North 84 degrees 03 minutes 57 seconds West, 113.41 feet to a point; THENCE
North 81 degrees 06 minutes 48 seconds West, 175.56 feet to a point; THENCE
North 83 degrees 01 minutes 36 seconds West, 83.63 feet to a point; THENCE
North 89 degrees 14 minutes 07 seconds West, 70.74 feet to a point; THENCE
South 85 degrees 44 minutes 14 seconds West, 67.05 feet to a point; THENCE
South 83 degrees 13 minutes 59 seconds West, 109.49 feet to a point; THENCE
South 84 degrees 35 minutes 57 seconds West, 75.45 feet to a point; THENCE
South 89 degrees 37 minutes 52 seconds West, 70.82 feet to a point; THENCE
North 87 degrees 19 minutes 12 seconds West, 176.49 feet to a point; THENCE
South 87 degrees 55 minutes 22 seconds West, 54.27 feet to a point; THENCE
South 79 degrees 54 minutes 34 seconds West, 44.99 feet to a point; THENCE
South 67 degrees 01 minutes 49 seconds West, 47.68 feet to a point; THENCE
South 46 degrees 23 minutes 52 seconds West, 57.68 feet to a point; THENCE
South 34 degrees 48 minutes 00 seconds West, 53.58 feet to a point; THENCE
South 40 degrees 08 minutes 26 seconds West, 69.71 feet to a point; THENCE
South 51 degrees 50 minutes 23 seconds West, 82.79 feet to a point; THENCE
South 63 degrees 53 minutes 37 seconds West, 80.24 feet to a point; THENCE
South 80 degrees 50 minutes 58 seconds West, 76.29 feet to a point; THENCE
North 73 degrees 58 minutes 47 seconds West, 72.01 feet to a point; THENCE
North 60 degrees 14 minutes 56 seconds West, 69.20 feet to a point; THENCE
North 54 degrees 32 minutes 53 seconds West, 59.69 feet to a point; THENCE
North 37 degrees 01 minutes 34 seconds West, 62.64 feet to a point; THENCE
North 29 degrees 21 minutes 30 seconds West, 65.17 feet to a point; THENCE
North 28 degrees 22 minutes 39 seconds West, 577.79 feet to a point; THENCE
North 29 degrees 46 minutes 13 seconds West, 105.31 feet to a point; THENCE
North 30 degrees 06 minutes 23 seconds West, 87.89 feet to a point; THENCE
North 33 degrees 20 minutes 35 seconds West, 102.13 feet to a point; THENCE
North 37 degrees 49 minutes 39 seconds West, 132.35 feet to a point; THENCE
North 42 degrees 26 minutes 05 seconds West, 128.30 feet to a point; THENCE
North 48 degrees 38 minutes 25 seconds West, 134.42 feet to a point; THENCE
North 53 degrees 59 minutes 01 seconds West, 123.20 feet to a point; THENCE
North 58 degrees 25 minutes 40 seconds West, 109.74 feet to a point; THENCE
North 63 degrees 27 minutes 22 seconds West, 129.81 feet to a point; THENCE
North 68 degrees 05 minutes 38 seconds West, 125.05 feet to a point; THENCE
North 73 degrees 31 minutes 58 seconds West, 115.25 feet to a point; THENCE

EXH. C-7

North 77 degrees 39 minutes 26 seconds West, 93.92 feet to a point; THENCE
North 81 degrees 17 minutes 26 seconds West, 87.03 feet to a point; THENCE
North 84 degrees 08 minutes 38 seconds West, 110.59 feet to a point; THENCE
North 85 degrees 45 minutes 31 seconds West, 242.87 feet to a point; THENCE
South 47 degrees 25 minutes 24 seconds West, 7.29 feet to a point; THENCE
South 00 degrees 36 minutes 55 seconds East, 30.54 feet to a point; THENCE
South 07 degrees 05 minutes 20 seconds East, 72.60 feet to a point; THENCE
South 05 degrees 33 minutes 13 seconds East, 87.45 feet to a point; THENCE
South 02 degrees 47 minutes 40 seconds East, 761.61 feet to a point; THENCE
South 00 degrees 23 minutes 03 seconds East, 118.72 feet to a point; THENCE
South 02 degrees 27 minutes 41 seconds West, 81.71 feet to a point; THENCE
South 04 degrees 55 minutes 31 seconds West, 86.62 feet to a point; THENCE
South 05 degrees 34 minutes 14 seconds West, 104.50 feet to a point; THENCE
South 04 degrees 30 minutes 26 seconds West, 80.27 feet to a point; THENCE
South 02 degrees 06 minutes 54 seconds West, 50.70 feet to a point; THENCE
South 00 degrees 33 minutes 40 seconds West, 49.94 feet to a point; THENCE
South 02 degrees 50 minutes 54 seconds East, 57.31 feet to a point; THENCE
South 04 degrees 08 minutes 50 seconds East, 57.95 feet to a point; THENCE
South 05 degrees 47 minutes 47 seconds East, 48.61 feet to a point; THENCE
South 02 degrees 43 minutes 59 seconds East, 50.16 feet to a point; THENCE
South 00 degrees 03 minutes 00 seconds West, 51.66 feet to a point; THENCE
South 01 degrees 53 minutes 57 seconds West, 26.43 feet to a point; THENCE
South 33 degrees 39 minutes 25 seconds East, 18.78 feet to a point; THENCE
South 22 degrees 32 minutes 01 seconds East, 27.91 feet to a point; THENCE
South 64 degrees 10 minutes 14 seconds West, 60.57 feet to a point; THENCE
North 17 degrees 59 minutes 58 seconds West, 16.27 feet to a point; THENCE
North 31 degrees 58 minutes 07 seconds West, 34.89 feet to a point; THENCE
North 42 degrees 44 minutes 05 seconds West, 35.01 feet to a point; THENCE
North 52 degrees 01 minutes 33 seconds West, 34.97 feet to a point; THENCE
North 57 degrees 10 minutes 33 seconds West, 34.94 feet to a point; THENCE
North 63 degrees 41 minutes 53 seconds West, 80.07 feet to a point in the southwest margin of
Lease Area 10; THENCE with the southwest margin of Lease Area 10 North 06 degrees 39
minutes 35 seconds West, 66.22 feet to a point in the north Lease Line of Area 7; THENCE with
the north lease line with the following courses:
South 66 degrees 20 minutes 42 seconds East, 109.15 feet to a point; THENCE
South 58 degrees 47 minutes 12 seconds East, 35.03 feet to a point; THENCE
South 55 degrees 08 minutes 00 seconds East, 34.97 feet to a point; THENCE
South 48 degrees 39 minutes 40 seconds East, 34.96 feet to a point; THENCE
South 41 degrees 33 minutes 33 seconds East, 12.15 feet to a point; THENCE
North 00 degrees 03 minutes 05 seconds East, 46.92 feet to a point; THENCE
North 02 degrees 44 minutes 03 seconds West, 48.89 feet to a point; THENCE
North 05 degrees 47 minutes 51 seconds West, 48.30 feet to a point; THENCE
North 04 degrees 08 minutes 48 seconds West, 58.59 feet to a point; THENCE
North 02 degrees 50 minutes 50 seconds West, 58.34 feet to a point; THENCE
North 00 degrees 33 minutes 37 seconds East, 51.02 feet to a point; THENCE
North 02 degrees 06 minutes 54 seconds East, 51.56 feet to a point; THENCE

North 04 degrees 30 minutes 30 seconds East, 80.64 feet to a point; THENCE
North 02 degrees 50 minutes 11 seconds East, 104.95 feet to a point; THENCE
North 04 degrees 55 minutes 30 seconds East, 85.98 feet to a point; THENCE
North 02 degrees 27 minutes 45 seconds East, 80.32 feet to a point; THENCE
North 00 degrees 23 minutes 02 seconds West, 117.35 feet to a point; THENCE
North 02 degrees 47 minutes 40 seconds West, 760.25 feet to a point; THENCE
North 05 degrees 33 minutes 16 seconds West, 86.32 feet to a point; THENCE
North 07 degrees 05 minutes 20 seconds West, 74.21 feet to a point; THENCE
North 00 degrees 36 minutes 51 seconds East, 32.56 feet to a point; THENCE
North 24 degrees 01 minutes 26 seconds East, 27.81 feet to a point; THENCE
North 70 degrees 50 minutes 05 seconds East, 27.81 feet to a point; THENCE
South 85 degrees 45 minutes 31 seconds East, 243.29 feet to a point; THENCE
South 84 degrees 08 minutes 37 seconds East, 111.76 feet to a point; THENCE
South 81 degrees 17 minutes 29 seconds East, 88.73 feet to a point; THENCE
South 77 degrees 39 minutes 26 seconds East, 95.95 feet to a point; THENCE
South 73 degrees 31 minutes 58 seconds East, 117.75 feet to a point; THENCE
South 68 degrees 05 minutes 37 seconds East, 127.70 feet to a point; THENCE
South 63 degrees 27 minutes 25 seconds East, 132.35 feet to a point; THENCE
South 58 degrees 25 minutes 37 seconds East, 112.22 feet to a point; THENCE
South 53 degrees 59 minutes 02 seconds East, 125.77 feet to a point; THENCE
South 48 degrees 38 minutes 25 seconds East, 137.44 feet to a point; THENCE
South 42 degrees 26 minutes 05 seconds East, 131.14 feet to a point; THENCE
South 37 degrees 49 minutes 40 seconds East, 134.73 feet to a point; THENCE
South 33 degrees 20 minutes 35 seconds East, 104.15 feet to a point; THENCE
South 30 degrees 06 minutes 24 seconds East, 88.82 feet to a point; THENCE
South 29 degrees 46 minutes 20 seconds East, 105.76 feet to a point; THENCE
South 28 degrees 22 minutes 39 seconds East, 577.90 feet to a point; THENCE
South 29 degrees 21 minutes 28 seconds East, 62.90 feet to a point; THENCE
South 37 degrees 01 minutes 36 seconds East, 56.01 feet to a point; THENCE
South 54 degrees 32 minutes 51 seconds East, 53.57 feet to a point; THENCE
South 60 degrees 14 minutes 56 seconds East, 64.09 feet to a point; THENCE
South 73 degrees 58 minutes 50 seconds East, 61.70 feet to a point; THENCE
North 80 degrees 50 minutes 57 seconds East, 65.12 feet to a point; THENCE
North 63 degrees 53 minutes 40 seconds East, 72.60 feet to a point; THENCE
North 51 degrees 50 minutes 21 seconds East, 76.55 feet to a point; THENCE
North 40 degrees 08 minutes 26 seconds East, 65.23 feet to a point; THENCE
North 34 degrees 47 minutes 56 seconds East, 55.23 feet to a point; THENCE
North 46 degrees 23 minutes 58 seconds East, 66.19 feet to a point; THENCE
North 67 degrees 01 minutes 42 seconds East, 56.53 feet to a point; THENCE
North 79 degrees 54 minutes 41 seconds East, 50.48 feet to a point; THENCE
North 87 degrees 55 minutes 27 seconds East, 57.61 feet to a point; THENCE
South 87 degrees 19 minutes 16 seconds East, 176.93 feet to a point; THENCE
North 89 degrees 37 minutes 59 seconds East, 68.70 feet to a point; THENCE
North 84 degrees 35 minutes 58 seconds East, 73.77 feet to a point; THENCE
North 83 degrees 13 minutes 57 seconds East, 109.78 feet to a point; THENCE
North 85 degrees 44 minutes 16 seconds East, 69.02 feet to a point; THENCE

EXH. C-9

South 89 degrees 14 minutes 11 seconds East, 73.68 feet to a point; THENCE
South 83 degrees 01 minutes 36 seconds East, 85.76 feet to a point; THENCE
South 81 degrees 06 minutes 48 seconds East, 175.28 feet to a point; THENCE
South 84 degrees 03 minutes 54 seconds East, 111.59 feet to a point; THENCE
South 88 degrees 03 minutes 32 seconds East, 110.09 feet to a point; THENCE
South 87 degrees 21 minutes 29 seconds East, 123.07 feet to a point; THENCE
South 85 degrees 25 minutes 12 seconds East, 133.68 feet to a point; THENCE
South 84 degrees 42 minutes 27 seconds East, 130.68 feet to a point; THENCE
South 83 degrees 44 minutes 03 seconds East, 107.58 feet to a point; THENCE
South 80 degrees 30 minutes 43 seconds East, 105.58 feet to a point; THENCE
South 78 degrees 05 minutes 55 seconds East, 128.28 feet to a point; THENCE
South 74 degrees 43 minutes 13 seconds East, 187.98 feet to a point; THENCE
South 80 degrees 41 minutes 33 seconds East, 82.10 feet to a point; THENCE
South 88 degrees 17 minutes 38 seconds East, 73.19 feet to a point; THENCE
South 88 degrees 23 minutes 48 seconds East, 113.40 feet to a point; THENCE
South 82 degrees 53 minutes 42 seconds East, 76.40 feet to a point; THENCE
South 74 degrees 26 minutes 22 seconds East, 73.61 feet to a point; THENCE
South 65 degrees 58 minutes 36 seconds East, 81.14 feet to a point; THENCE
South 62 degrees 16 minutes 32 seconds East, 78.60 feet to a point; THENCE
South 61 degrees 28 minutes 15 seconds East, 134.52 feet to a point; THENCE
South 72 degrees 27 minutes 54 seconds East, 26.17 feet to a point in the west Lease Line of
Area 1; THENCE with the west Lease Line of Area 1, South 02 degrees 05 minutes 37 seconds
West, 31.12 feet to the POINT OF BEGINNING and CONTAINING 5.75 Acres (more or less).

AREA NO. 8

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found S-1) THENCE South 11
degrees 09 minutes 20 seconds East, 1062.89 feet to the true POINT OF BEGINNING;
THENCE South 04 degrees 42 minutes 54 seconds East, 170.26 feet to a point; THENCE South
88 degrees 58 minutes 16 seconds West, 418.58 feet to a point; THENCE North 06 degrees 01
minutes 46 seconds West, 148.35 feet to a point; THENCE North 85 degrees 57 minutes 36
seconds East, 421.14 feet to the POINT OF BEGINNING and CONTAINING 1.53 Acres (more
or less).

AREA NO. 9

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found P-61) located in the south
right of way of Kentucky Highway No. 85 and the west right of way line of Cave Hill Road;
THENCE with the south right of way line of Kentucky Highway No. 85, North 81 degrees 31

minutes 38 seconds West, 3044.08 feet to the true POINT OF BEGINNING, THENCE leaving said highway right of way South 45 degrees 20 minutes 09 seconds West, 259.98 feet to a point; THENCE North 81 degrees 30 minutes 00 seconds West, 1945.87 feet to a point; THENCE South 79 degrees 14 minutes 04 seconds West, 2797.72 feet to a point; THENCE North 03 degrees 50 minutes 38 seconds West, 2055.57 feet to a point; THENCE South 86 degrees 48 minutes 20 seconds West, 443.01 feet to a point; THENCE North 03 degrees 43 minutes 40 seconds West, 202.05 feet to a point; THENCE North 84 degrees 10 minutes 02 seconds East, 509.25 feet to a point; THENCE South 04 degrees 49 minutes 24 seconds East, 225.58 feet to a point; THENCE South 86 degrees 48 minutes 25 seconds West, 20.23 feet to a point; THENCE South 03 degrees 50 minutes 38 seconds East, 1982.08 feet to a point in the south right of way line of Kentucky Highway No. 85; THENCE with the south right of way line of Kentucky Highway No. 85 with the following courses:

North 85 degrees 31 minutes 07 seconds East, 16.22 feet to a point; THENCE North 81 degrees 12 minutes 35 seconds East, 30.02 feet to a point; THENCE North 80 degrees 38 minutes 53 seconds East, 303.61 feet to a point; THENCE North 79 degrees 57 minutes 36 seconds East, 128.18 feet to a point; THENCE North 78 degrees 09 minutes 15 seconds East, 99.93 feet to a point; THENCE North 77 degrees 18 minutes 10 seconds East, 99.89 feet to a point; THENCE North 76 degrees 39 minutes 24 seconds East, 99.87 feet to a point; THENCE North 76 degrees 07 minutes 58 seconds East, 580.21 feet to a point; THENCE North 75 degrees 53 minutes 58 seconds East, 647.62 feet to a point; THENCE North 75 degrees 09 minutes 07 seconds East, 313.61 feet to a point; THENCE North 75 degrees 52 minutes 47 seconds East, 28.33 feet to a point; THENCE North 76 degrees 41 minutes 08 seconds East, 99.94 feet to a point; THENCE North 78 degrees 10 minutes 57 seconds East, 100.02 feet to a point; THENCE North 80 degrees 42 minutes 04 seconds East, 99.74 feet to a point; THENCE North 83 degrees 37 minutes 10 seconds East, 99.94 feet to a point; THENCE North 86 degrees 13 minutes 15 seconds East, 100.03 feet to a point; THENCE North 89 degrees 07 minutes 04 seconds East, 99.97 feet to a point; THENCE South 88 degrees 46 minutes 32 seconds East, 99.86 feet to a point; THENCE South 85 degrees 58 minutes 00 seconds East, 100.02 feet to a point; THENCE South 84 degrees 06 minutes 50 seconds East, 100.03 feet to a point; THENCE South 81 degrees 45 minutes 02 seconds East, 750.87 feet to a point; THENCE South 81 degrees 06 minutes 32 seconds East, 592.01 feet to a point; THENCE South 81 degrees 31 minutes 38 seconds East, 247.93 feet to a point; THENCE leaving the south right of way of Kentucky Highway No. 85 North 45 degrees 20 minutes 09 seconds East, 74.99 feet to a point in the north right of way of Kentucky Highway No. 85; THENCE with said highway right of way South 81 degrees 31 minutes 38 seconds East, 62.79 feet to a point; THENCE leaving the north right of way line South 45 degrees 20 minutes 09 seconds West, 74.99 feet to the POINT OF BEGINNING and CONTAINING 20.99 Acres (more or less).

AREA NO. 11 (MOORING PODS)

An area located near Matanzas, Ohio County, Kentucky and described as follows:

EXH. C-11

COMMENCING at a concrete monument with a brass plate (found S-1) **THENCE** North 13 degrees 18 minutes 36 seconds West, 528.97 feet to the true **POINT OF BEGINNING**; **THENCE** South 04 degrees 08 minutes 34 seconds East, 219.94 feet; **THENCE** South 03 degrees 59 minutes 21 seconds East, 196.80 feet; **THENCE** South 02 degrees 45 minutes 55 seconds East, 195.84 feet; **THENCE** South 02 degrees 58 minutes 44 seconds East, 194.37 feet; **THENCE** South 03 degrees 46 minutes 15 seconds East, 194.98 feet; **THENCE** South 03 degrees 40 minutes 27 seconds East, 412.56 feet; **THENCE** South 86 degrees 19 minutes 36 seconds West, 60.00 feet; **THENCE** North 03 degrees 40 minutes 27 seconds West, 412.51 feet; **THENCE** North 03 degrees 46 minutes 15 seconds West, 195.34 feet; **THENCE** North 02 degrees 58 minutes 43 seconds West, 194.89 feet; **THENCE** North 02 degrees 45 minutes 56 seconds West, 195.31 feet; **THENCE** North 03 degrees 59 minutes 21 seconds West, 196.08 feet; **THENCE** North 04 degrees 08 minutes 34 seconds West, 219.86 feet; **THENCE** North 85 degrees 51 minutes 28 seconds East, 60.00 feet to the **POINT OF BEGINNING** and **CONTAINING 1.95 Acres (more or less)**.

AREA NO. 12 (RAILROAD SPUR)

TOGETHER WITH:

Those parcels of land comprising the connecting railroad spur property being more particularly described as follows:

PEABODY COAL COMPANY-CHINN TRACT (PARCEL 100): Beginning at a point in the north margin of a county road, said point is 138.09 feet left of the Railroad centerline station 166 + 00.01; thence North 8 Degrees 32 Minutes 39 Seconds East 32.91 feet to a point 128.14 feet left of centerline station 168 + 30.29; thence South 82 Degrees 48 Minutes 48 Seconds East 70.52 feet to a point on an arc in the west right-of-way line of the Railroad right-of-way; thence with said arc to the right and 80.00 feet parallel with the railroad centerline having a radius of 1273.57 feet for a distance of 323.05 feet to a point 60.00 feet left of centerline station 169 + 21.91; thence North 6 Degrees 53 Minutes 16 Seconds East 60.64 feet to a point; thence North 8 Degrees 15 Minutes 17 Seconds East 62.66 feet to a point 60.00 feet left of centerline Equation Station 170 + 41.92 Back Equals 184 + 97.24 Ahead; thence with the west right-of-way and 60.00 feet left North 8 Degrees 30 Minutes 00 Seconds East 482.19 feet to a point 60.00 feet left of centerline station 169 + 79.43; thence South 81 Degrees 09 Minutes East 236.48 feet to a point in the east margin of a coal haul road; thence with said coal haul road as follows: South 8 Degrees 04 Minutes 18 Seconds West 261.21 feet, South 4 Degrees 32 Minutes 28 Seconds West 91.36 feet, South 3 Degrees 23 Minutes 49 Seconds West 91.91 feet, South 0 Degrees 14 Minutes 33 Seconds East 92.22 feet, South 6 Degrees 21 Minutes 06 Seconds East 92.21 feet, South 11 Degrees 12 Minutes 53 Seconds East 92.22 feet, South 12 Degrees 58 Minutes 20 Seconds East 92.22 feet, South 14 Degrees 43 Minutes 57 Seconds East 92.37 feet, South 5 Degrees 38 Minutes 59 Seconds West 75.30 feet to a point 246.87 feet right of centerline station 164 + 50.86 and being a point in the North margin of a county road; thence with the north margin of said county road North 81 Degrees 41 Minutes 10 Seconds West 409.95 feet to the point of beginning containing 6.104 acres, more or less.

AND BEING a portion of the same property conveyed to Peabody Coal Company by Annie Lee Chinn, widow, by deed dated July 12, 1976, of record in Deed Book 219, page 723, Ohio County, Kentucky, Court Clerk's office.

ADDINGTON 56 ACRE TRACT (PARCEL 110): Beginning at a point in the west right-of-way line of the Railroad right-of-way, said point is 70.00 feet left of centerline station 56 + 82.91; thence with the west right-of-way line of the Railroad right-of-way North 34 Degrees West 129.17 feet, North 33 Degrees 42 Minutes 29 Seconds West 69.17 feet, North 32 Degrees 17 Minutes 47 Seconds West 54.12 feet to a point on an arc to the right in the west right-of-way line of the Railroad right-of-way, said point is 70.00 feet left of centerline station 59 + 31.89 and the centerline arc has a radius of 1273.24 feet; thence with the arc for a distance of 678.48 feet to a point 70.00 feet left of centerline station 65 + 75.00; thence South 87 Degrees 37 Minutes 54 Seconds West 30.00 feet to a point on the arc 100.00 feet left of centerline station 65 + 75.00; thence continuing with said arc 100 feet parallel with the Railroad centerline for a distance of 135.66 feet to a point 100.00 feet left of centerline station 67 + 00.78; thence with the west right-of-way line of the Railroad right-of-way North 3 Degrees 33 Minutes 33 Seconds East 55.84 feet; North 6 Degrees 18 Minutes 33 Seconds East 69.14 feet; North 6 Degrees East 699.22 feet to a point 100.00 feet left of centerline station 75 + 20.00; thence North 84 Degrees West 60.00 feet to a point 160.00 feet left of centerline station 75 + 20.00, said point being in the west right-of-way line of the Railroad right-of-way; thence with the west right-of-way line of the railroad right-of-way North 6 Degrees East 442.56 feet to a point 160.00 feet left of centerline station 79 + 62.56; thence South 82 Degrees 35 Minutes East 320.10 feet to a point 160.00 feet right of centerline station 79 + 54.64, said point being in the east right-of-way line of the Railroad right-of-way; thence with the east right-of-way line of the Railroad right-of-way South 6 Degrees West 734.84 feet to a point 160.00 feet right of centerline station 72 + 20.00; thence North 84 Degrees West 50.00 feet to a point 110.00 feet right of centerline station 72 + 20.00, said point being in the east right-of-way line of the Railroad right-of-way; thence with the east right-of-way line of the Railroad right-of-way South 6 Degrees West 399.22 feet South 6 Degrees 19 Minutes 01 Seconds West 72.58 feet, South 3 Degrees 04 Minutes 10 Seconds West 42.48 feet to a point on an arc to the left in the east right-of-way line of the Railroad right-of-way, said point is 110.00 feet right of centerline station 67 + 00.78 and the centerline arc has a radius of 1273.24 feet; thence with the arc for a distance of 114.92 feet to a point 110.00 feet right of centerline station 65 + 75.00; thence South 87 Degrees 37 Minutes 54 Seconds West 35.00 feet to a point on the arc; thence continuing with said arc 75.00 feet parallel with the Railroad centerline for a distance of 605.24 feet to a point 75.00 feet right of centerline station 59 + 31.89; thence with the east right-of-way line of the Railroad right-of-way South 32 Degrees 18 Minutes 14 Seconds East 49.49 feet, South 33 Degrees 42 Minutes 46 Seconds East 66.97 feet, South 34 Degrees East 218.59 feet, South 33 Degrees 54 Minutes 14 Seconds East 38.51 feet to a point 75.00 feet right of centerline station 55 + 55.34; thence North 82 Degrees 34 Minutes west 193.32 feet to the point of beginning containing 11.298 acres, more or less.

ADDINGTON 64 ACRE TRACT (PARCEL 120): Beginning at a point on an arc to the left in the west right-of-way line of the Railroad right-of-way, said point is 70.00 feet left of centerline station 53 + 93.07, said centerline having a radius of 1273.24 feet; thence with the arc for a distance of 75.79 feet to a point 70.00 feet left of centerline station 54 + 73.27; thence with the west right-of-way line of the Railroad right-of-way North 32 Degrees 31 Minutes 34 Seconds West 64.29 feet, North 33 Degrees 49 Minutes 26 Seconds West 52.62 feet, North 34 Degrees

West 89.42 feet to a point 70.00 feet left of centerline station 56 + 82.91; thence South 82 Degrees 34 Minutes East 193.32 feet to a point 75.00 feet right of centerline station 55 + 55.34, said point being in the east right-of-way line of the Railroad right-of-way; thence with the east right-of-way line of the Railroad right-of-way South 33 Degrees 36 Minutes 59 Seconds East 15.45 feet, South 32 Degrees 30 Minutes 52 Seconds East 69.80 feet to a point on an arc to the right, said point is 75.00 feet right of centerline station 54 + 73.27; thence with the arc having a radius of 1273.24 feet for a distance of 42.25 feet to a point 75.00 feet right of centerline station 54 + 33.37; thence South 7 Degrees 11 Minutes East 117.92 feet to a point 8.06 feet right of centerline station 53 + 39.31; thence North 82 Degrees 34 Minutes West 94.03 feet to the point of beginning containing 0.809 acres, more or less.

Parcel 110 and Parcel 120 are a portion of the same property conveyed to Beaver Dam Coal Company by John Addington, et al, by deed dated November 7, 1964, of record in Deed Book 163, page 241, Ohio County, Kentucky, Court Clerk's Office.

AND ALSO BEING part of the same property conveyed by Peabody Coal Company, an Illinois corporation, to Peabody Coal Company, a Delaware corporation, by deed dated March 29, 1968, of record in Deed Book 178, page 395-508, Ohio County, Kentucky, Court Clerk's Office.

ADDINGTON 37.75 ACRE TRACT (Parcel 130): Beginning at a point in the west right-of-way line of the Railroad right-of-way, said point is 110.46 feet left of centerline station 50 + 54.58; thence North 43 Degrees 20 Minutes 33 Seconds West 75.61 feet to a point 147.40 feet left of centerline station 51 + 28.00, said point being in the west right-of-way line of the Railroad right-of-way; thence with the west right-of-way line of the Railroad right-of-way North 12 Degrees 25 Minutes 25 Seconds East 148.75 feet to a point on an arc to the left in the west right-of-way line of the Railroad right-of-way, said point is 70.00 feet left of centerline station 52 + 67.00, said centerline having a radius of 1273.24 feet thence with the arc for a distance of 119.14 feet to a point 70.00 feet left of centerline station 53 + 93.07; thence South 82 Degrees 34 Minutes East 94.03 feet to a point 8.06 feet right of centerline station 53 + 39.31; thence South 4 Degrees 29 Minutes 57 Seconds West 297.05 feet to the point of beginning containing 0.334 acres, more or less.

AND BEING a portion of the same property conveyed to Beaver Dam Coal Company by John Addington and Lucy Addington, his wife, by deed dated March 15, 1967, and of record in Deed Book 173, page 293, Ohio County, Kentucky, Court Clerk's Office.

AND ALSO BEING a part of the same property conveyed by Peabody Coal Company, an Illinois corporation, to Peabody Coal Company, a Delaware corporation, by deed dated March 29, 1968, of record in Deed Book 178, page 395-508, Ohio County, Kentucky, Court Clerk's Office.

IGLEHEART-GRIMES TRACTS (PARCEL 1): Beginning at a point in the west right-of-way line of the Railroad right-of-way and in the northeast intersection of Kentucky Highway No. 69 and a County Road, said point is 44.35 feet left of centerline station 5 + 10.00; thence with the West right-of-way line of the Railroad right-of-way and the East margin of said County Road as follows: North 5 Degrees 13 Minutes 09 Seconds East 2046.54 feet, North 6 Degrees 15 Minutes 04 Seconds East 1200.01 feet, North 5 Degrees 19 Minutes 39 Seconds East 1162.72

feet to a point 69.32 feet left of centerline station 49 + 85.00; thence North 4 Degrees 25 Minutes 31 Seconds East 343.70 feet to a point on an arc in the East right-of-way line of the Railroad right-of-way, said point is 55.00 feet right of centerline station 53 + 08.50; thence with said arc having a radius of 1273.24 feet for a distance of 830.21 feet to a point 55.00 feet right of centerline station 47 + 04.38; thence with the East right-of-way line of the Railroad right-of-way South 4 Degrees 40 Minutes 48 Seconds West 81.10 feet to a point 55.00 feet right of centerline station 46 + 25.56; thence South 84 Degrees 19 Minutes 04 Seconds East 20.00 feet to a point 75.00 feet right of centerline station 46 + 25.56; thence with the East right-of-way line of the Railroad right-of-way South 5 Degrees 57 Minutes 37 Seconds West 41.60 feet, to a point 75.00 feet right of centerline station 45 + 84.38 South 6 Degrees West 94.39 feet to a point 75.00 feet right of centerline station 44 + 90.00; thence North 84 Degrees West 20.00 feet to a point 55.00 feet right of centerline station 44 + 90.00; thence with the East right-of-way line of the Railroad right-of-way South 6 Degrees West 515.00 feet to a point 55.00 feet right of centerline station 39 + 75.00; thence South 84 Degrees East 20.00 feet to a point 75.00 feet right of centerline station 39 + 75.00; thence with the East right-of-way line of the Railroad right-of-way South 6 Degrees West 250.00 feet to a point 75.00 feet right of centerline station 37 + 25.00; thence North 84 Degrees West 20.00 feet to a point 55.00 feet right of centerline station 37 + 25.00 said point being in the East right-of-way line of the Railroad right-of-way; thence with the East right-of-way line of the Railroad right-of-way South 8 Degrees West 793.00 feet to a point 55.00 feet right of centerline station 29 + 32.00; thence South 84 Degrees East 15.00 feet to a point 70.00 feet right of centerline station 29 + 32.00; thence with the East right-of-way line of the Railroad right-of-way South 6 Degrees West 132.00 feet to a point 70.00 feet right of centerline station 28 + 00.00; thence South 84 Degrees East 70.00 feet to a point 140.00 feet right of centerline station 28 + 00.00; thence with the East right-of-way line of the Railroad right-of-way South 6 Degrees West 389.00 feet to a point 140.00 feet right of centerline station 24 + 11.00; thence North 84 Degrees West 50.00 feet to a point 90.00 feet right of centerline station 24 + 11.00; thence with the East line of the Railroad right-of-way South 6 Degrees West 231.00 feet to a point 90.00 feet right of centerline station 21 + 80.00; thence North 84 Degrees West 30.00 feet to a point 60.00 feet right of centerline station 21 + 80.00; thence with the East right-of-way line of the Railroad right-of-way South 8 Degrees West 261.79 feet to a point 60.00 feet right of centerline station 19 + 19.21; thence South 84 Degrees East 20.00 feet to a point 80.00 feet right of centerline station 19 + 18.21; thence with the East right-of-way line of the Railroad right-of-way South 5 Degrees 49 Minutes 10 Seconds West 37.45 feet, South 5 Degrees 24 Minutes 26 Seconds West 40.88 feet to a point on an arc, said point is 80.00 feet right of centerline station 18 + 38.21; thence with the arc to the left with a radius of 1909.88 feet for a distance of 115.00 feet to a point 80.00 feet right of centerline station 17 + 18.21; thence with the east right-of-way line of the Railroad right-of-way South 0 Degrees 35 Minutes 28 Seconds West 37.45 feet, South 0 Degrees 13 Minutes 03 Seconds West 40.55 feet, due South 313.21 feet to a point 80.00 feet right of centerline station 13 + 25.00; thence due East 20.00 feet to a point 100 feet right of centerline station 13 + 25.00; thence with the east right-of-way line of the Railroad right-of-way due South 163.40 feet, South 0 Degrees 31 Minutes 54 Seconds West 94.34 feet, South 3 Degrees 03 Minutes 32 Seconds West 74.40 feet to a point on an arc, said point is 100.00 feet right of centerline station 10 + 01.60; thence with said arc to the right having a radius of 954.93 feet for a distance of 214.97 feet to a point 100.00 feet right of centerline station 8 + 07.00 said point is in the North Margin of Kentucky Highway No. 69; thence with the North margin of Kentucky

Highway No. 69 South 50 Degrees 29 Minutes 47 Seconds West 336.17 feet to the point of beginning containing 19.008 acres, more or less.

AND BEING certain tracts of land described in a deed dated June 18, 1980, from Peabody Coal Company and Beaver Dam Coal Company, recorded in the Office of the Clerk of Ohio County, in Deed Book 237, page 103.

TOGETHER WITH that certain 4.454 acre tract being more particularly described as follows:

Beginning at a point in the west right-of-way line of the Railroad right-of-way, said point being a point in the south property line of Rex Igleheart and being 134.02 feet right of centerline station 136 - 15.00; thence North 83 Degrees 44 Minutes 15 Seconds West 508.14 feet to a point 200.47 feet left of centerline station 140 + 06.53; thence North 13 Degrees 32 Minutes 40 Seconds East 54.37 feet to a point 152.97 feet left of centerline station 140 + 33.60; thence North 76 Degrees 27 Minutes 20 Seconds West 45.50 feet to a point in the west property line, said point being 173.11 feet left of centerline station 140 + 70.20; thence with the property line North 13 Degrees 32 Minutes 40 Seconds East 440.00 feet to a point 232.14 feet right of centerline station 142 - 74.95; thence South 76 Degrees 27 Minutes 20 Seconds East 45.50 feet to a point 248.51 feet right of centerline station 142 + 10.24; thence South 13 Degrees 32 Minutes 40 Seconds West 204.35 feet to a point on an arc in the west right-of-way line of the Railroad right-of-way, said point being 60.00 feet right of centerline station 141 + 37.16; thence with said arc to the right and 60.00 feet parallel with the railroad centerline having a radius of 1910.08 feet for a distance of 89.89 feet to a point 60.00 feet right of centerline station 140 + 50.00; thence North 39 Degree 59 Minutes 32 Seconds East 240.00 feet to a point on an arc in the east right-of-way of the railroad right-of-way; thence with said arc to the right and 300.00 feet parallel with the railroad centerline having a radius of 1910.08 feet for a distance of 503.32 feet to a point 300.00 feet right of centerline station 136 + 15.00; thence South 53 Degrees 02 Minutes 26 Seconds West 165.98 feet to the point of beginning containing 4.454 acres, more or less.

TOGETHER WITH that certain 4.051 acre tract more particularly described as follows:

Beginning at a point in the west right-of-way line of the Railroad right-of-way, said point being 70.47 feet left of centerline station 129 + 50.00; thence South 72 Degrees 59 Minutes 18 Seconds West 49.53 feet to a point 120.00 feet left of centerline station 129 + 50.00, said point being on an arc; thence with said arc to the left and 120.00 feet parallel with the Railroad centerline having a radius of 1910.08 feet for a distance of 691.57 feet to a point 120.00 feet left of centerline station 136 + 87.92; thence North 74 Degrees 56 Minutes 29 Seconds West 289.02 feet to a point 272.18 feet left of centerline station 139 + 62.25; thence North 13 Degrees 32 Minutes 40 Seconds East 81.53 feet to a point 200.47 feet left of centerline station 140 + 06.53; thence South 83 Degrees 44 Minutes 15 Seconds East 508.14 feet to a point 134.02 feet right of centerline station 136 + 15.00; thence South 53 Degrees 02 Minutes 26 Seconds West 34.02 feet to a point 100.00 feet right of centerline station 136 + 15.00, said point being in the East right-of-way line of the Railroad right-of-way and on an arc; thence with said arc to the right and 100.00 feet to a point 100.00 feet right of centerline station 13 + 81.32; thence South 15 Degrees 39

Minutes 48 Seconds West 288.49 feet to the point of beginning containing 4.051 acres, more or less.

TOGETHER WITH that certain 7.634 acre tract being more particularly described as follows:

Beginning at a point in the west right-of-way line of the Railroad right-of-way, said point being 50.00 feet left of centerline station 109 + 65.27, aforesaid point being on an arc; thence with the arc to the right having a radius of 1910.08 feet for a distance of 569.26 feet to a point 50.00 feet left of centerline station 115 + 20.00; thence south 50 Degrees 59 Minutes 43 Seconds West 5.00 feet to a point 55.00 feet left of centerline station 115 + 20.00, said point being on the continuation of aforementioned arc; thence with the arc and 55.00 feet parallel with the centerline of the Railroad centerline for a distance of 267.56 feet to a point 55.00 feet left of centerline station 117 + 80.07; thence North 0 Degrees 42 Minutes 10 Seconds West 40.91 feet to a point 55.00 feet left of centerline station 118 + 20.00; thence North 0 Degrees 06 Minutes 03 Seconds West 40.36 feet to a point 55.00 feet left of centerline station 118 + 60.07; thence due North 482.81 feet to a point 55.00 feet left of centerline station 123 + 42.88; thence 0 Degrees 05 Minutes 09 Seconds West 36.87 feet to a point 55.00 feet left of centerline station 123 + 80.00; thence North 0 Degrees 40 Minutes 12 Seconds West 41.98 feet to a point 55.00 feet left of centerline station 124 + 22.58 being a point on an arc; thence with the arc to the left having a radius of 1910.08 feet for a distance of 511.94 feet to a point 55.00 feet left of centerline station 129 + 50.00; thence South 72 Degrees 59 Minutes 18 Seconds West 15.47 feet to a point 70.47 feet left of centerline station 129 + 50.00; thence North 15 Degrees 39 Minutes 48 Seconds East 280.49 feet to a point 100.00 feet right of centerline station 131 + 81.32, said point being in the east right-of-way line of the Railroad right-of-way, and on an arc; thence with the arc to the right having a radius of 1910.08 feet for a distance of 798.15 feet to a point 100.00 feet right of centerline station 124 + 22.88; thence South 0 Degrees 40 Minutes 24 Seconds East 44.52 feet to a point 100.00 feet right of centerline station 123 + 80.00; thence South 9 Degrees 05 Minutes 12 Seconds East 37.57 feet to a point 100.00 feet right of centerline station 123 + 42.88; thence due South 482.51 feet to a point 100.00 feet right of centerline station 118 + 60.07; thence South 0 Degrees 05 Minutes 59 Seconds East 39.54 feet to a point 100.00 feet right of centerline station 118 + 20.00; thence South 0 Degrees 41 Minutes 59 Seconds East 38.47 feet to a point 100.00 feet right of centerline station 117 + 80.07, said point being on an arc; thence with said arc to the left and 100.00 feet parallel with the railroad centerline having a radius of 1910.08 feet for a distance of 865.75 feet to a point 100 feet right of centerline station 108 + 66.49; thence North 84 Degrees 84 Minutes 07 Seconds West 178.84 feet to the point of beginning containing 7.634 acres, more or less.

TOGETHER WITH that certain 0.028 acre tract more particularly described as follows:

Beginning at a point in the east right-of-way line of the Railroad Right-of-Way, being 75.00 feet right of centerline station 100 + 49.11; thence North 80 Degrees 18 Minutes 40 seconds West 45.09 feet to a point, said point is 39.87 feet right of centerline station 100 + 77.29; thence North 7 Degrees 29 Minutes 32 Seconds East 55.77 feet to a point in the east Right-of-Way Line of the Railroad Right-of-Way, said point is 75.00 feet right of centerline station 101 + 20.06; thence with the east line of the Railroad right-of-way line

South 32 Degrees East 70.95 feet to the point of beginning and containing 0.028 acres, more or less.

AND BEING certain tracts of land described in a commissioner's deed dated September 3, 1982, from Betty White, Master Commissioner of the Ohio Circuit Court, for and on behalf of Rex Igleheart and Margaret Igleheart, husband and wife, Green River Production Credit Association, and the Farmer's Home Administration, recorded in the Office of the Clerk of Ohio County, in Commissioners Deed Book N, page 510.

TOGETHER WITH that certain 10.668 acre tract more particularly described as follows:

Beginning at a point in the West Right-of-Way Line of the Railroad Right-of-Way 160.00 feet left of centerline station 79 + 62.56; thence with the West Right-of-Way Line North 6 Degrees East 139.02 feet, North 5 Degrees 51 Minutes 36 Seconds East 46.37 feet, North 5 Degrees 13 Minutes 25 Seconds East 30.23 feet, thence with an arc Northwestwardly, said arc begins 160.00 feet left of centerline station 81 + 82.39, the centerline having a radius of 1909.86 feet, said arc is 61.94 feet in length; thence North 87 Degrees 13 Minutes 40 Seconds East 55.00 feet to a point 215.00 feet left of centerline station 82 + 50.00; thence continuing with an arc northwestwardly 215.00 feet parallel with the Railroad centerline having a radius of 1909.86 feet 958.44 feet to a point 215.00 feet left of centerline station 93 + 30.00; thence North 60 Degrees 22 Minutes 33 Seconds East 95.00 feet continuing with an arc northwestwardly 120.00 feet left of centerline for a distance of 36.61 feet to a point 120.00 feet left of centerline station 93 + 69.06; thence North 31 Degrees 18 Minutes 48 Seconds West 39.16 feet, North 31 Degrees 54 Minutes 19 Seconds West 38.40 feet, North 32 Degrees West 150.94 feet to a point 120.00 feet left of centerline station 96 + 00; thence north 58 Degrees East 45.00 feet to a point 75.00 feet left of centerline station 96 + 00; thence North 32 Degrees West 96.06 feet to a point 75.00 feet left of centerline station 96 + 96.06; thence North 7 Degrees 12 Minutes 20 Seconds East 237.30 feet to a point 75.00 feet right of centerline station 98 + 79.94; thence South 32 Degrees East 430.68 feet, South 31 Degrees 54 Minutes 15 Seconds East 39.43 feet, South 31 Degrees 18 Minutes 32 seconds East 42.28 feet to a point 75.00 feet right of centerline station 93 + 69.06; thence with an arc southeastwardly and 75.00 feet parallel with the centerline, said arc being 40.59 feet; thence North 60 Degrees 32 Minutes 33 Seconds East 75.00 feet to a point 150.00 feet right of centerline station 93 + 30.00; thence with an arc 150.00 feet parallel with the centerline 443.01 feet to a point 150.00 feet right of centerline station 89 + 19.25; thence North 72 Degrees 41 Minutes 49 Seconds East 40.00 feet to a point 190.00 feet right of centerline station 89 + 19.25; thence with an arc 190.00 feet parallel with the centerline of said arc being 735.82 feet in length to a point 190.00 feet right of centerline station 82 + 50.00; thence North 87 Degrees 13 Minutes 40 Seconds West 30.00 feet to a point 160.00 feet right of centerline station 82 + 50.00; thence with an arc 160.00 feet parallel with centerline for a distance of 73.27 feet to a point 160.00 feet right of centerline station 81 + 82.39; thence South 5 Degrees 13 Minutes 09 Seconds West 34.55 feet, South 5 Degrees 51 Minutes 23 Seconds West 48.80 feet, South 6 Degrees West 147.69 feet to a point 160.00 feet right of centerline station 79 + 54.64; thence Northwest 82 Degrees 35 Minutes West 320.10 feet to the point of beginning, containing 10.668 acres, more or less.

The coal and other minerals are excepted from this conveyance. Such coal and other minerals were conveyed by W.H. Fulkerson to T.J. Smith and J.W. Ford, dated October 17, 1902, and recorded in Deed Book 28, page 51, Ohio County Court Clerk's Office.

TOGETHER WITH that certain 1.266 acre tract more particularly described as follows:

Beginning at a point in the West Right-of-Way Line of the Railroad Right-of-Way 75.00 feet left of centerline station 96 - 96.06; thence with the West Right-of-Way line of said Railroad Right-of-Way North 32 Degrees West 473.17 feet to a point, said point is 75 feet left of centerline station 101 + 68.55; thence South 83 Degrees 18 Minutes 40 Seconds East 299.12 feet to a point, said point is 158.47 feet right of centerline station 99 + 82.26; thence South 7 Degrees 12 Minutes 20 Seconds West 369.35 feet to the point of beginning, containing 1.266 acres, more or less.

The coal and other minerals are excepted from this conveyance. Such coal and other minerals were conveyed by Logan Brown, et ux, to T.J. Smith and J.W. Ford, dated December 3, 1906, and recorded in Deed Book 26, page 36, Ohio County Court Clerk's Office.

AND BEING 2 certain tracts of land described in a deed dated September 17, 1980, from Elizabeth R. Johnson, unmarried, recorded in the Office of the Clerk of Ohio County, in Deed Book 237, page 806.

TOGETHER WITH that certain 2.53 acre tract more particularly described as follows:

Beginning at a point in the west right-of-way line of the Railroad right-of-way 75.00 feet left of centerline station 101 + 69.23; thence with the west right-of-way line of the Railroad right-of-way, North 32 degrees West 160.77 feet to a point 75.00 feet left of centerline station 103 + 30.00; thence North 56 Degrees East, 25.00 feet to a point, 50.00 feet left of centerline station 103 + 30.00; thence with the west right-of-way line of the Railroad right-of-way, North 32 Degrees West 383.40 feet to a point 50.00 feet left of centerline station 107 + 13.40; thence continuing with the west right-of-way line of the Railroad right-of-way, North 31 Degrees 51 Minutes 50 Seconds West 46.96 feet to a point; thence North 31 Degrees 13 Minutes 50 Seconds West 34.05 feet to a point 50.00 feet left of centerline station 107 + 93.40, said point being on an arc; thence with the arc Northwestwardly and 50.00 feet parallel with the Railroad centerline having a radius of 1410.08 feet for a distance of 176.37 feet to a point 50.00 feet left of centerline station 109 + 65.27; thence South 84 Degrees 06 Minutes 07 Seconds East 178.34 feet to a point 100.00 feet right of centerline station 108 + 66.49, said point being on an arc; thence with the said arc southeastwardly and 100.00 feet parallel with the railroad centerline, having a radius of 1910.08 feet for a distance of 69.27 feet to a point 100.00 feet right of centerline station 107 + 93.40; thence continuing with the East right-of-way line of the Railroad right-of-way South 31 Degrees 14 Minutes East 32.01 feet to a point; thence South 31 Degrees 51 Minutes 55 Seconds East 45.89 feet to a point 100.00 feet right of centerline station 107 + 13.40; thence South 58 Degrees West 25.00 feet to a point 75.00 feet right of centerline station 107 + 13.40; thence with the East right-of-way line, South 32 Degrees East 593.34 feet to a point 75.00 feet right of centerline station 101 + 20.06; thence South 7 Degrees 26 Minutes 42 Seconds West 55.39 feet to a point 39.81 feet

right of centerline station 100 + 77.29; thence North 83 Degrees 18 Minutes 40 Seconds West 147.09 feet to the point of beginning, containing 2.53 acres, more or less.

The coal and other minerals are excepted from this conveyance. Such coal and other minerals were conveyed by deed from Louis Brown, et ux, to Ohio County Land and Mining Co., dated September 21, 1907; and recorded in Deed Book 85, page 314, Ohio County Court Clerk's Office.

AND BEING a certain tract of land described in a commissioner's deed dated October 6, 1981, from Betty White, Master Commissioner of the Ohio Circuit Court, for and on behalf of Marvin Boling and Maude Boling, husband and wife, recorded in the Office of the Clerk of Ohio County, in Commissioners Deed Book N, page 429.

TOGETHER with that certain 5.369 acre tract more particularly described as follows:

Beginning at a point in the south right-of-way line of the Railroad right-of-way, said point being in the east property line of Carlos Brown, said point also being 173.11 feet left of centerline station 140 + 78.21, thence North 76 Degrees 27 Minutes 20 Seconds West 45.50 feet to a point in the south railroad right-of-way line, said point being 192.28 feet left of centerline station 141 + 23.83; thence North 13 Degrees 32 Minutes 40 Seconds East 144.03 feet to a point on an arc, said point being 60.00 feet left of centerline station 141 + 84.88; thence with said arc to the left and 60.00 feet parallel with the railroad centerline having a radius of 1910.08 feet for a distance of 605.05 feet to a point 60.00 feet left of centerline station 148 + 09.55; thence North 73 Degrees 18 Minutes 10 Seconds West 39.77 feet to a point 60.00 feet left of centerline station 148 + 50.00; thence North 73 Degrees 54 Minutes 09 Seconds West 39.24 feet to a point 60.00 feet left of centerline station 148 + 89.55; thence North 74 Degrees West 199.03 feet to a point 60.00 feet left of centerline station 150 + 88.58; thence North 73 Degrees 45 Minutes 46 Seconds West 62.12 feet to a point 60.00 feet left of centerline station 151 + 50.00; thence North 72 Degrees 24 Minutes West 60.66 feet to a point, on an arc in the south right-of-way line of the railroad right-of-way, said point being 60.00 feet left of centerline station 152 + 08.58; thence with said arc to the right and 60.00 parallel with the railroad centerline having a radius of 1273.57 feet for a distance of 258.03 feet to a point 60.00 feet left of centerline station 154 + 55.00; thence South 29 Degrees 47 Minutes 07 Seconds West 200.00 feet to a point on an arc in the south right-of-way line, said point being 260.00 feet left of centerline station 154 + 55.00; thence with said arc to the right and 260.00 feet parallel to the centerline having a radius of 1273.57 feet for a distance of 120.42 feet to a point 260.00 feet left of centerline station 155 + 35.00; thence North 34 Degrees 17 Minutes 03 Seconds East 200.00 feet to a point on an arc in the South right-of-way line, said point being 60.00 feet left of centerline station 155 + 55.00; thence with said arc to the right and 60.00 parallel to the centerline having a radius of 1273.57 feet for a distance of 210.76 feet to a point in the south right-of-way line, said point being in the west property line of Carlos Brown, said point also being 60.00 feet left of centerline station 157 + 56.28; thence with the west property line North 6 Degrees 49 Minutes 20 Seconds East 111.89 feet to a point 28.14 feet right of centerline station 158 + 24.39; thence North 7 Degrees 31 Minutes 10 Seconds West 55.51 feet to a point on an arc in the north right-of-way line of the railroad right-of-way, said point being also 60.00 feet

right of centerline station 158 + 71.49; thence with said arc to the left 60.00 feet parallel to the centerline having radius 1273.57 feet for a distance of 631.68 feet to a point 60.00 feet right of centerline station 152 + 08.58; thence South 72 Degrees 24 Minutes 28 Seconds East 56.49 feet to a point 60.00 feet right of centerline station 151 + 50.00; thence South 73 Degrees 45 Minutes 56 Seconds East 60.64 feet to a point 60.00 feet right of centerline station 150 + 88.58; thence South 74 Degrees East 199.03 feet to a point 60.00 feet right of centerline station 148 + 89.55; thence South 73 Degrees 54 Minutes 07 Seconds East 39.86 feet to a point 60.00 feet right of centerline station 148 + 50.00; thence South 73 Degrees 18 Minutes 01 Seconds East 41.69 feet to a point on an arc in the north right-of-way, said point being also 60.00 feet right of centerline station 148 + 09.55; thence with said arc to the right 60.00 feet parallel to the centerline having radius 1910.08 feet for a distance of 595.08 feet to a point 60.00 feet right of centerline station 142 + 32.59; thence North 13 Degrees 32 Minutes 40 Seconds East 166.84 feet to a point 216.63 feet right of centerline station 142 + 86.23; thence South 76 Degrees 27 Minutes 20 Seconds East 45.50 feet to a point in the east property line of Carlos Brown, said point being 232.14 feet right of centerline station 142 + 47.95; thence with the east property line South 13 Degrees 32 Minutes 40 Seconds West 440.00 feet to the point of beginning, containing 5.369 acres, more or less.

The coal and other minerals are excepted from this conveyance. Such coal and other minerals were conveyed by deed from J.B. Brown, et ux, to T.J. Smith and J.W. Ford, dated October 10, 1902, and recorded in Deed Book 28, page 69, Ohio County Court Clerk's Office.

AND BEING a certain tract of land described in a deed dated August 5, 1980, from Carlos Lee Brown and Lou Verna Brown, husband and wife, recorded in the Office of the Clerk of Ohio County, in Deed Book 237, page 434. The coal and other minerals were excepted from this conveyance.

TOGETHER WITH that certain 3.313 acre tract more particularly described as follows:

Beginning at a point on an arc in the west right-of-way line of the Railroad right-of-way, said point being a point in the East property line of Edward Lewis and being also 60.00 feet left of centerline station 158 + 71.92, thence with said arc to the right and 60.00 feet parallel with the railroad centerline having a radius of 1273.57 feet for a distance of 654.78 feet to a point 60.00 feet left of centerline station 164 + 97.24; thence North 82 Degrees 57 Minutes 10 Seconds West 110.63 feet to a point 164.23 feet left of centerline station 165 + 31.36; thence North 8 Degrees 51 Minutes 52 Seconds East 57.38 feet to a point 145.00 feet left of centerline station 165 + 79.58, said point being also in the South margin of a county road; thence South 80 Degrees 43 Minutes 39 Seconds East 496.89 feet to a point 311.56 feet right of centerline station 163 + 65.56, said point being also in the south margin of said county road; thence South 9 Degrees 09 Minutes 30 Seconds West 573.06 feet to the point of beginning, containing 3.313 acres, more or less.

The coal and other minerals are excepted from this conveyance. Such coal and other minerals were conveyed by deed from J.B. Igleheart, et ux, to T.J. Smith and J.W. Ford by deed dated December 30, 1903 and recorded in Deed Book 28, page 18. Ohio County Court Clerk's Office.

AND BEING a certain tract of land described in a certain deed, dated June 2, 1980, from Edward Lewis and Mary Lewis, his wife, recorded in the Office of the Clerk of Ohio County, in the state of Kentucky, in Deed Book 237, pages 1-2.

SOURCE OF TITLE FOR SITE

The same real property in which an interest was conveyed to the Facility Lessor by the Head Lease Agreement (FBR-1), of even date herewith, and recorded in Miscellaneous Book _____, Page _____ in the office of the County Clerk in which this instrument is being recorded.

EXHIBIT D
to
Facility Lease

DESCRIPTION OF EASEMENT SITE

EASEMENT AREA NO. 10

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found P-60) in the north right of way of Kentucky Highway No. 85 and corner to Peabody Coal Company (Deed Book 265, Page 418) THENCE with the north right of way of Kentucky Highway No. 85 the following courses:
North 81 degrees 31 minutes 38 seconds West, 3142.23 feet to a concrete monument No. P-1;
North 81 degrees 06 minutes 32 seconds West, 592.14 feet to a concrete monument No. P-3;
North 81 degrees 45 minutes 02 seconds West, 751.20 feet to a concrete monument No. P-6;
North 83 degrees 58 minutes 15 seconds West, 99.99 feet to a point;
North 85 degrees 56 minutes 40 seconds West, 100.01 feet to a point;
North 88 degrees 42 minutes 07 seconds West, 99.86 feet to a point;
South 89 degrees 27 minutes 48 seconds West, 99.98 feet to a point;
South 86 degrees 34 minutes 33 seconds West, 100.05 feet to a point;
South 84 degrees 01 minutes 34 seconds West, 100.03 feet to a point;
South 81 degrees 14 minutes 12 seconds West, 99.69 feet to a point;
South 78 degrees 32 minutes 28 seconds West, 100.01 feet to a point;
South 76 degrees 55 minutes 18 seconds West, 100.01 feet to a point;
South 76 degrees 07 minutes 38 seconds West, 52.42 feet to a concrete monument No. P-8
South 75 degrees 09 minutes 19 seconds West, 313.26 feet to a concrete monument No. P-10;
South 75 degrees 53 minutes 58 seconds West, 647.07 feet to a concrete monument No. P-12;
South 76 degrees 07 minutes 58 seconds West, 238.21 feet to a point, corner to the Point Pleasant Methodist Church cemetery, THENCE with the line of said cemetery North 00 degrees 09 minutes 58 seconds West, 478.07 feet to a point, corner to the cemetery lot, THENCE South 81 degrees 07 minutes 58 seconds West, 297.75 feet to a point, corner to the cemetery lot, THENCE South 00 degrees 10 minutes 43 seconds West, 504.79 feet to a point in the north right of way of Kentucky Highway No. 85 and corner to the cemetery lot, THENCE with the north right of way of Kentucky Highway No. 85 with the following courses: South 76 degrees 07 minutes 58 seconds West, 38.68 feet to a concrete monument No. P-14; THENCE South 76 degrees 35 minutes 59 seconds West, 99.72 feet to a point, THENCE South 77 degrees 14 minutes 48 seconds West, 99.93 feet to a point; THENCE South 77 degrees 48 minutes 50 seconds West, 26.45 feet to a point, corner to the Patterson heirs lot; THENCE with Patterson's line North 06 degrees 31 minutes 51 seconds East, 308.18 to a point, corner to Patterson; THENCE North 77 degrees 41 minutes 43 seconds West, 393.04 feet to a point, corner to Patterson; THENCE South 07 degrees 24 minutes 34 seconds West, 464.66 feet to a point, corner to Patterson in the north right of way of Kentucky Highway No. 85; THENCE with the

north right of way of Kentucky Highway No. 85, South 80 degrees 08 minutes 49 seconds West, 85.68 feet to a concrete monument with cap; THENCE South 81 degrees 14 minutes 42 seconds West, 29.35 feet to a point; THENCE South 85 degrees 28 minutes 55 seconds West, 30.20 feet to a point; THENCE South 89 degrees 35 minutes 59 seconds West, 29.70 feet to a point; THENCE North 78 degrees 57 minutes 25 seconds West, 29.99 feet to a point; THENCE North 60 degrees 02 minutes 20 seconds West, 30.18 feet to a point; THENCE North 31 degrees 24 minutes 40 seconds West, 29.91 feet to a point; THENCE North 13 degrees 11 minutes 43 seconds West, 29.99 feet to a point; THENCE North 04 degrees 01 minutes 24 seconds West, 12.95 feet to a concrete monument with cap; THENCE North 03 degrees 39 minutes 05 seconds West, 87.90 feet to a concrete monument with cap; THENCE North 05 degrees 04 minutes 42 seconds West, 34.95 feet to a point; THENCE North 05 degrees 16 minutes 04 seconds West, 35.19 feet to a point; THENCE North 07 degrees 24 minutes 55 seconds West, 34.82 feet to a point; THENCE North 10 degrees 17 minutes 16 seconds West, 34.97 feet to a point; THENCE North 14 degrees 56 minutes 47 seconds West, 34.98 feet to a point; THENCE North 22 degrees 32 minutes 02 seconds West, 35.02 feet to a point; THENCE North 33 degrees 39 minutes 26 seconds West, 35.01 feet to a point; THENCE North 41 degrees 33 minutes 40 seconds West, 34.95 feet to a point; THENCE North 48 degrees 39 minutes 41 seconds West, 34.96 feet to a point; THENCE North 55 degrees 07 minutes 59 seconds West, 34.97 feet to a point; THENCE North 58 degrees 47 minutes 13 seconds West, 35.03 feet to a concrete monument with cap; THENCE North 66 degrees 20 minutes 42 seconds West, 109.15 feet to a point in the north right of way of Kentucky Highway No. 85 and at the edge of water of the Green River; THENCE with the edge of water of the Green River the following courses:

North 09 degrees 13 minutes 58 seconds West, 72.26 feet to a point; THENCE North 03 degrees 17 minutes 54 seconds West, 229.50 feet to a point; THENCE North 08 degrees 14 minutes 41 seconds West, 252.93 feet to a point; THENCE North 03 degrees 00 minutes 53 seconds West, 215.63 feet to a point; THENCE North 02 degrees 04 minutes 28 seconds East, 237.27 feet to a point; THENCE North 07 degrees 15 minutes 35 seconds West, 315.42 feet to a point; THENCE North 01 degrees 32 minutes 03 seconds West, 226.01 feet to a point; THENCE North 02 degrees 16 minutes 32 seconds West, 189.92 feet to a point; THENCE North 00 degrees 11 minutes 13 seconds East, 348.84 feet to a point; THENCE North 00 degrees 48 minutes 52 seconds West, 327.97 feet to a point; THENCE North 00 degrees 36 minutes 25 seconds East, 310.56 feet to a point; THENCE North 06 degrees 38 minutes 49 seconds West, 316.18 feet to a point; THENCE North 14 degrees 59 minutes 36 seconds West, 340.20 feet to a point; THENCE North 30 degrees 28 minutes 58 seconds West, 288.23 feet to a point; THENCE North 38 degrees 32 minutes 32 seconds West, 330.33 feet to a point; THENCE North 44 degrees 36 minutes 56 seconds West, 220.44 feet to a point; THENCE North 55 degrees 27 minutes 23 seconds West, 233.18 feet to a point; THENCE North 67 degrees 20 minutes 23 seconds West, 181.83 feet to a point; THENCE North 70 degrees 22 minutes 20 seconds West, 191.97 feet to a point; THENCE North 82 degrees 41 minutes 58 seconds West, 176.80 feet to a point; THENCE North 76 degrees 13 minutes 30 seconds West, 122.96 feet to a point; THENCE leaving the Green River North 18 degrees 41 minutes 53 seconds East, 64.84 feet to a concrete monument with cap No. P-29; THENCE North 18 degrees 41 minutes 53 seconds East, 1174.84 feet to a

concrete monument with cap No. P-30; THENCE North 18 degrees 41 minutes 53 seconds East, 176.99 feet to a point in Rogine Creek; THENCE with Rogine Creek the following courses:
North 57 degrees 58 minutes 45 seconds East, 87.52 feet to a point; THENCE
North 62 degrees 39 minutes 58 seconds East, 105.52 feet to a point; THENCE
North 69 degrees 23 minutes 14 seconds East, 118.37 feet to a point; THENCE
North 86 degrees 50 minutes 13 seconds East, 157.60 feet to a point; THENCE
North 89 degrees 58 minutes 24 seconds East, 52.77 feet to a point; THENCE
South 69 degrees 58 minutes 36 seconds East, 19.77 feet to a point; THENCE
South 79 degrees 25 minutes 08 seconds East, 46.13 feet to a point; THENCE
North 59 degrees 41 minutes 39 seconds East, 99.80 feet to a point; THENCE
North 46 degrees 39 minutes 15 seconds East, 200.24 feet to a point; THENCE
North 74 degrees 38 minutes 04 seconds East, 98.71 feet to a point; THENCE
South 74 degrees 49 minutes 07 seconds East, 82.11 feet to a point; THENCE
North 60 degrees 32 minutes 20 seconds East, 50.38 feet to a point; THENCE
North 50 degrees 43 minutes 24 seconds East, 73.97 feet to a point; THENCE
North 40 degrees 22 minutes 55 seconds East, 74.08 feet to a point; THENCE
North 15 degrees 01 minutes 06 seconds West, 71.83 feet to a point; THENCE
North 16 degrees 32 minutes 45 seconds West, 142.27 feet to a point; THENCE
North 03 degrees 26 minutes 08 seconds East, 140.83 feet to a point; THENCE
North 58 degrees 58 minutes 16 seconds East, 78.71 feet to a point; THENCE
South 48 degrees 54 minutes 10 seconds East, 162.06 feet to a point; THENCE
North 77 degrees 10 minutes 01 seconds East, 45.05 feet to a point; THENCE
North 04 degrees 04 minutes 47 seconds East, 114.00 feet to a point; THENCE
North 55 degrees 06 minutes 14 seconds East, 124.92 feet to a point; THENCE
South 41 degrees 13 minutes 50 seconds East, 43.47 feet to a point; THENCE
South 26 degrees 42 minutes 02 seconds East, 48.70 feet to a point; THENCE
South 74 degrees 22 minutes 00 seconds East, 71.49 feet to a point; THENCE
North 44 degrees 20 minutes 24 seconds East, 117.99 feet to a point; THENCE
North 11 degrees 23 minutes 40 seconds West, 141.74 feet to a point; THENCE
North 04 degrees 43 minutes 28 seconds East, 102.60 feet to a point; THENCE
North 47 degrees 23 minutes 47 seconds East, 144.39 feet to a point; THENCE
North 66 degrees 31 minutes 02 seconds East, 209.42 feet to a point; THENCE
North 57 degrees 35 minutes 18 seconds East, 117.51 feet to a point; THENCE
South 53 degrees 34 minutes 35 seconds East, 72.93 feet to a point; THENCE
South 06 degrees 34 minutes 16 seconds East, 118.36 feet to a point; THENCE
South 64 degrees 08 minutes 48 seconds East, 45.02 feet to a point; THENCE
South 36 degrees 21 minutes 06 seconds West, 119.29 feet to a point; THENCE
South 02 degrees 26 minutes 18 seconds West, 131.77 feet to a point; THENCE
South 65 degrees 39 minutes 42 seconds East, 72.33 feet to a point; THENCE
North 66 degrees 54 minutes 29 seconds East, 100.70 feet to a point; THENCE
North 82 degrees 02 minutes 58 seconds East, 5.14 feet to a point; THENCE leaving Rogine
Creek North 04 degrees 48 minutes 23 seconds West, 44.33 feet to a concrete monument with
cap No. P-31; THENCE North 04 degrees 48 minutes 23 seconds West, 1579.21 feet to a
concrete with cap No. P-32; THENCE North 80 degrees 07 minutes 59 seconds East, 1455.81
feet to a concrete monument with cap No. P-33; THENCE South 06 degrees 09 minutes 07
seconds East, 1897.78 feet to a concrete monument with cap No. P-34; THENCE North 73

degrees 30 minutes 27 seconds East, 647.44 feet to a concrete monument with cap No. P-35; THENCE North 52 degrees 22 minutes 43 seconds East, 742.62 feet to a concrete monument with cap No. P-36; THENCE North 84 degrees 11 minutes 16 seconds East, 726.05 feet to a concrete monument with cap No. P-37; THENCE North 07 degrees 43 minutes 55 seconds East, 970.83 feet to a concrete monument with cap No. P-38; THENCE South 83 degrees 22 minutes 50 seconds East, 635.61 feet to a concrete monument with cap No. P-39; THENCE North 78 degrees 11 minutes 18 seconds East, 155.63 feet to a concrete monument with cap No. P-40; THENCE South 15 degrees 37 minutes 53 seconds East, 385.80 feet to a concrete monument with cap No. P-41; THENCE South 12 degrees 47 minutes 53 seconds East, 540.13 feet to a concrete monument with cap No. P-42; THENCE South 16 degrees 44 minutes 15 seconds East, 2655.86 feet to a concrete monument with cap No. P-43; THENCE South 25 degrees 30 minutes 17 seconds East, 2046.96 feet to a point; THENCE North 70 degrees 22 minutes 09 seconds East, 409.74 feet to a point; THENCE South 77 degrees 19 minutes 31 seconds East, 335.87 feet to a point, corner to the Peabody Coal Company Tract (Deed Book 265, Page 418); THENCE with the west line of the Peabody Coal Company Tract, with the following courses: South 56 degrees 14 minutes 49 seconds East, 379.49 feet to a point; THENCE South 37 degrees 57 minutes 54 seconds East, 263.04 feet to a point; THENCE South 12 degrees 25 minutes 21 seconds East, 174.28 feet to a point; THENCE South 05 degrees 12 minutes 21 seconds West, 313.38 feet to a point; THENCE South 08 degrees 21 minutes 32 seconds West, 493.65 feet to a point; THENCE South 13 degrees 50 minutes 47 seconds West, 315.70 feet to a point; THENCE North 81 degrees 30 minutes 59 seconds West, 51.99 feet to a monument with cap No. P-59; THENCE South 08 degrees 28 minutes 25 seconds West, 2025.00 feet to the POINT OF BEGINNING and CONTAINING 1357 Acres (more or less).

There is excepted from the above described Area No. 10, Area No. 1, Area No. 7, Area No. 8, and a portion of Area No. 9 and described as follows:

AREA NO. 1

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found P-60) located in the north right of way of Kentucky Highway No. 85 and the southwest property corner of Peabody Coal Company, Deed Book 265, Page 418, THENCE with the north right of way line of Kentucky Highway 85 North 81 Degrees 31 Minutes 38 Seconds West, 2849.52 feet to a point in the lease line; THENCE with the lease line with the following courses:

North 45 Degrees 20 Minutes 09 Seconds East, 146.91 feet to a point; THENCE North 06 Degrees 22 Minutes 18 Seconds East, 3.76 feet to a point; THENCE North 06 Degrees 22 Minutes 10 Seconds East, 22.32 feet to a point; THENCE North 04 Degrees 11 Minutes 48 Seconds East, 16.21 feet to a point; THENCE North 02 Degrees 05 Minutes 05 Seconds East, 16.41 feet to a point; THENCE North 02 Degrees 07 Minutes 12 Seconds East, 12.57 feet to a point; THENCE North 02 Degrees 07 Minutes 00 Seconds East, 12.56 feet to a point; THENCE North 02 Degrees 05 Minutes 41 Seconds East, 19.89 feet to a point; THENCE North 02 Degrees 05 Minutes 44 Seconds East, 19.99 feet to a point; THENCE

North 03 Degrees 14 Minutes 43 Seconds East, 20.81 feet to a point; THENCE
North 05 Degrees 09 Minutes 38 Seconds East, 20.83 feet to a point; THENCE
North 06 Degrees 29 Minutes 14 Seconds East, 17.91 feet to a point; THENCE
North 07 Degrees 41 Minutes 14 Seconds East, 17.86 feet to a point; THENCE
North 08 Degrees 26 Minutes 18 Seconds East, 1052.72 feet to a point; THENCE
North 08 Degrees 32 Minutes 16 Seconds East, 1052.62 feet to a point; THENCE
North 08 Degrees 42 Minutes 54 Seconds East, 63.21 feet to a point; THENCE
North 08 Degrees 59 Minutes 03 Seconds East, 63.48 feet to a point; THENCE
North 12 Degrees 10 Minutes 52 Seconds East, 57.23 feet to a point; THENCE
North 17 Degrees 08 Minutes 51 Seconds East, 43.18 feet to a point; THENCE
North 21 Degrees 31 Minutes 45 Seconds East, 64.79 feet to a point; THENCE
North 25 Degrees 32 Minutes 54 Seconds East, 65.84 feet to a point; THENCE
North 30 Degrees 13 Minutes 37 Seconds East, 61.68 feet to a point; THENCE
North 35 Degrees 30 Minutes 31 Seconds East, 45.73 feet to a point; THENCE
North 40 Degrees 28 Minutes 42 Seconds East, 68.24 feet to a point; THENCE
North 45 Degrees 16 Minutes 44 Seconds East, 69.75 feet to a point; THENCE
North 49 Degrees 10 Minutes 06 Seconds East, 49.49 feet to a point; THENCE
North 52 Degrees 54 Minutes 20 Seconds East, 36.43 feet to a point; THENCE
North 57 Degrees 06 Minutes 43 Seconds East, 54.28 feet to a point; THENCE
North 62 Degrees 03 Minutes 57 Seconds East, 55.72 feet to a point; THENCE
North 65 Degrees 50 Minutes 35 Seconds East, 67.01 feet to a point; THENCE
North 69 Degrees 18 Minutes 23 Seconds East, 49.54 feet to a point; THENCE
North 72 Degrees 49 Minutes 58 Seconds East, 36.96 feet to a point; THENCE
North 77 Degrees 33 Minutes 35 Seconds East, 54.84 feet to a point; THENCE
North 84 Degrees 23 Minutes 42 Seconds East, 54.79 feet to a point; THENCE
North 89 Degrees 19 Minutes 12 Seconds East, 62.20 feet to a point; THENCE
South 87 Degrees 39 Minutes 16 Seconds East, 93.19 feet to a point; THENCE
South 83 Degrees 33 Minutes 14 Seconds East, 93.06 feet to a point; THENCE
South 81 Degrees 29 Minutes 39 Seconds East, 318.70 feet to a point; THENCE
North 70 Degrees 22 Minutes 09 Seconds East, 900.97 feet to a point; THENCE
South 77 Degrees 19 Minutes 31 Seconds East, 335.87 feet to a point in the northwest property
corner of Peabody Coal, Deed Book 265, Page 418; THENCE with the west property line of
Peabody Coal Company the following courses:

South 56 Degrees 14 Minutes 49 Seconds East, 379.49 feet to a point; THENCE
South 37 Degrees 57 Minutes 54 Seconds East, 263.04 feet to a point; THENCE
South 12 Degrees 25 Minutes 21 Seconds East, 174.28 feet to a point; THENCE
South 05 Degrees 12 Minutes 21 Seconds West, 313.38 feet to a point; THENCE
South 08 Degrees 21 Minutes 32 Seconds West, 493.65 feet to a point; THENCE
South 13 Degrees 50 Minutes 47 Seconds West, 315.70 feet to a point; THENCE
North 81 Degrees 30 Minutes 59 Seconds West, 51.99 feet to a point; THENCE
South 08 Degrees 28 Minutes 25 Seconds West, 2025.00 feet to a point to the POINT-OF
BEGINNING and CONTAINING 216.95 acres (more or less).

AREA NO. 7

An area located near Matanzas, Ohio County, Kentucky and described as follows:

EXH. D-5

COMMENCING at a concrete monument with a brass plate (found P-60) located in the north right of way of Kentucky Highway No. 85 and in the southwest property corner of Peabody Coal Company (Deed Book 265, Page 418), THENCE with the north margin of Kentucky Highway No. 85 right of way, North 81 degrees 31 minutes 38 seconds West, 2849.52 feet to a point in said road right of way, THENCE leaving the said highway right of way and with the west Lease Line of Area 1 with the following courses:

North 45 degrees 20 minutes 09 seconds East, 146.91 feet to a point; THENCE
North 6 degrees 22 minutes 18 seconds East, 3.76 feet to a point; THENCE
North 6 degrees 22 minutes 10 seconds East, 22.32 feet to a point; THENCE
North 4 degrees 11 minutes 48 seconds East, 16.21 feet to a point; THENCE
North 2 degrees 05 minutes 05 seconds East, 16.41 feet to a point; THENCE
North 2 degrees 07 minutes 12 seconds East, 12.57 feet to a point; THENCE
North 2 degrees 07 minutes 00 seconds East, 12.56 feet to a point; THENCE
North 2 degrees 05 minutes 41 seconds East, 11.34 feet to the true POINT OF BEGINNING;
THENCE with the South Lease Line of Area 7 with the following courses:

North 72 degrees 27 minutes 58 seconds West, 37.35 feet to a point; THENCE
North 61 degrees 28 minutes 14 seconds West, 137.20 feet to a point; THENCE
North 62 degrees 16 minutes 31 seconds West, 77.42 feet to a point; THENCE
North 65 degrees 58 minutes 41 seconds West, 77.95 feet to a point; THENCE
North 74 degrees 26 minutes 20 seconds West, 69.17 feet to a point; THENCE
North 82 degrees 53 minutes 41 seconds West, 72.74 feet to a point; THENCE
North 88 degrees 23 minutes 49 seconds West, 111.99 feet to a point; THENCE
North 88 degrees 17 minutes 39 seconds West, 75.21 feet to a point; THENCE
North 80 degrees 41 minutes 31 seconds West, 85.66 feet to a point; THENCE
North 74 degrees 43 minutes 12 seconds West, 188.66 feet to a point; THENCE
North 78 degrees 05 minutes 54 seconds West, 126.76 feet to a point; THENCE
North 80 degrees 30 minutes 48 seconds West, 104.10 feet to a point; THENCE
North 83 degrees 44 minutes 04 seconds West, 106.48 feet to a point; THENCE
North 84 degrees 42 minutes 26 seconds West, 130.24 feet to a point; THENCE
North 85 degrees 25 minutes 13 seconds West, 132.99 feet to a point; THENCE
North 87 degrees 21 minutes 26 seconds West, 122.38 feet to a point; THENCE
North 88 degrees 03 minutes 31 seconds West, 110.96 feet to a point; THENCE
North 84 degrees 03 minutes 57 seconds West, 113.41 feet to a point; THENCE
North 81 degrees 06 minutes 48 seconds West, 175.56 feet to a point; THENCE
North 83 degrees 01 minutes 36 seconds West, 83.63 feet to a point; THENCE
North 89 degrees 14 minutes 07 seconds West, 70.74 feet to a point; THENCE
South 85 degrees 44 minutes 14 seconds West, 67.05 feet to a point; THENCE
South 83 degrees 13 minutes 59 seconds West, 109.49 feet to a point; THENCE
South 84 degrees 35 minutes 57 seconds West, 75.45 feet to a point; THENCE
South 89 degrees 37 minutes 52 seconds West, 70.82 feet to a point; THENCE
North 87 degrees 19 minutes 12 seconds West, 176.49 feet to a point; THENCE
South 87 degrees 55 minutes 22 seconds West, 54.27 feet to a point; THENCE
South 79 degrees 54 minutes 34 seconds West, 44.99 feet to a point; THENCE
South 67 degrees 01 minutes 49 seconds West, 47.68 feet to a point; THENCE
South 46 degrees 23 minutes 52 seconds West, 57.68 feet to a point; THENCE

South 34 degrees 48 minutes 00 seconds West, 53.58 feet to a point; THENCE
South 40 degrees 08 minutes 26 seconds West, 69.71 feet to a point; THENCE
South 51 degrees 50 minutes 23 seconds West, 82.79 feet to a point; THENCE
South 63 degrees 53 minutes 37 seconds West, 80.24 feet to a point; THENCE
South 80 degrees 50 minutes 58 seconds West, 76.29 feet to a point; THENCE
North 73 degrees 58 minutes 47 seconds West, 72.01 feet to a point; THENCE
North 60 degrees 14 minutes 56 seconds West, 69.20 feet to a point; THENCE
North 54 degrees 32 minutes 53 seconds West, 59.69 feet to a point; THENCE
North 37 degrees 01 minutes 34 seconds West, 62.64 feet to a point; THENCE
North 29 degrees 21 minutes 30 seconds West, 65.17 feet to a point; THENCE
North 28 degrees 22 minutes 39 seconds West, 577.79 feet to a point; THENCE
North 29 degrees 46 minutes 13 seconds West, 105.31 feet to a point; THENCE
North 30 degrees 06 minutes 23 seconds West, 87.89 feet to a point; THENCE
North 33 degrees 20 minutes 35 seconds West, 102.13 feet to a point; THENCE
North 37 degrees 49 minutes 39 seconds West, 132.35 feet to a point; THENCE
North 42 degrees 26 minutes 05 seconds West, 128.30 feet to a point; THENCE
North 48 degrees 38 minutes 25 seconds West, 134.42 feet to a point; THENCE
North 53 degrees 59 minutes 01 seconds West, 123.20 feet to a point; THENCE
North 58 degrees 25 minutes 40 seconds West, 109.74 feet to a point; THENCE
North 63 degrees 27 minutes 22 seconds West, 129.81 feet to a point; THENCE
North 68 degrees 05 minutes 38 seconds West, 125.05 feet to a point; THENCE
North 73 degrees 31 minutes 58 seconds West, 115.25 feet to a point; THENCE
North 77 degrees 39 minutes 26 seconds West, 93.92 feet to a point; THENCE
North 81 degrees 17 minutes 26 seconds West, 87.03 feet to a point; THENCE
North 84 degrees 08 minutes 38 seconds West, 110.59 feet to a point; THENCE
North 85 degrees 45 minutes 31 seconds West, 242.87 feet to a point; THENCE
South 47 degrees 25 minutes 24 seconds West, 7.29 feet to a point; THENCE
South 00 degrees 36 minutes 55 seconds East, 30.54 feet to a point; THENCE
South 07 degrees 05 minutes 20 seconds East, 72.60 feet to a point; THENCE
South 05 degrees 33 minutes 13 seconds East, 87.45 feet to a point; THENCE
South 02 degrees 47 minutes 40 seconds East, 761.61 feet to a point; THENCE
South 00 degrees 23 minutes 03 seconds East, 118.72 feet to a point; THENCE
South 02 degrees 27 minutes 41 seconds West, 81.71 feet to a point; THENCE
South 04 degrees 55 minutes 31 seconds West, 86.62 feet to a point; THENCE
South 05 degrees 34 minutes 14 seconds West, 104.50 feet to a point; THENCE
South 04 degrees 30 minutes 26 seconds West, 80.27 feet to a point; THENCE
South 02 degrees 06 minutes 54 seconds West, 50.70 feet to a point; THENCE
South 00 degrees 33 minutes 40 seconds West, 49.94 feet to a point; THENCE
South 02 degrees 50 minutes 54 seconds East, 57.31 feet to a point; THENCE
South 04 degrees 08 minutes 50 seconds East, 57.95 feet to a point; THENCE
South 05 degrees 47 minutes 47 seconds East, 48.61 feet to a point; THENCE
South 02 degrees 43 minutes 59 seconds East, 50.16 feet to a point; THENCE
South 00 degrees 03 minutes 00 seconds West, 51.66 feet to a point; THENCE
South 01 degrees 53 minutes 57 seconds West, 26.43 feet to a point; THENCE
South 33 degrees 39 minutes 25 seconds East, 18.78 feet to a point; THENCE
South 22 degrees 32 minutes 01 seconds East, 27.91 feet to a point; THENCE

South 64 degrees 10 minutes 14 seconds West, 60.57 feet to a point; THENCE
North 17 degrees 59 minutes 58 seconds West, 16.27 feet to a point; THENCE
North 31 degrees 58 minutes 07 seconds West, 34.89 feet to a point; THENCE
North 42 degrees 44 minutes 05 seconds West, 35.01 feet to a point; THENCE
North 52 degrees 01 minutes 33 seconds West, 34.97 feet to a point; THENCE
North 57 degrees 10 minutes 33 seconds West, 34.94 feet to a point; THENCE
North 63 degrees 41 minutes 53 seconds West, 80.07 feet to a point in the southwest margin of
Lease Area 10; THENCE with the southwest margin of Lease Area 10 North 06 degrees 39
minutes 35 seconds West, 66.22 feet to a point in the north Lease Line of Area 7; THENCE with
the north lease line with the following courses:
South 66 degrees 20 minutes 42 seconds East, 109.15 feet to a point; THENCE
South 58 degrees 47 minutes 12 seconds East, 35.03 feet to a point; THENCE
South 55 degrees 08 minutes 00 seconds East, 34.97 feet to a point; THENCE
South 48 degrees 39 minutes 40 seconds East, 34.96 feet to a point; THENCE
South 41 degrees 33 minutes 33 seconds East, 12.15 feet to a point; THENCE
North 00 degrees 03 minutes 05 seconds East, 46.92 feet to a point; THENCE
North 02 degrees 44 minutes 03 seconds West, 48.89 feet to a point; THENCE
North 05 degrees 47 minutes 51 seconds West, 48.30 feet to a point; THENCE
North 04 degrees 08 minutes 48 seconds West, 58.59 feet to a point; THENCE
North 02 degrees 50 minutes 50 seconds West, 58.34 feet to a point; THENCE
North 00 degrees 33 minutes 37 seconds East, 51.02 feet to a point; THENCE
North 02 degrees 06 minutes 54 seconds East, 51.56 feet to a point; THENCE
North 04 degrees 30 minutes 30 seconds East, 80.64 feet to a point; THENCE
North 02 degrees 50 minutes 11 seconds East, 104.95 feet to a point; THENCE
North 04 degrees 55 minutes 30 seconds East, 85.98 feet to a point; THENCE
North 02 degrees 27 minutes 45 seconds East, 80.32 feet to a point; THENCE
North 00 degrees 23 minutes 02 seconds West, 117.35 feet to a point; THENCE
North 02 degrees 47 minutes 40 seconds West, 760.25 feet to a point; THENCE
North 05 degrees 33 minutes 16 seconds West, 86.32 feet to a point; THENCE
North 07 degrees 05 minutes 20 seconds West, 74.21 feet to a point; THENCE
North 00 degrees 36 minutes 51 seconds East, 32.56 feet to a point; THENCE
North 24 degrees 01 minutes 26 seconds East, 27.81 feet to a point; THENCE
North 70 degrees 50 minutes 05 seconds East, 27.81 feet to a point; THENCE
South 85 degrees 45 minutes 31 seconds East, 243.29 feet to a point; THENCE
South 84 degrees 08 minutes 37 seconds East, 111.76 feet to a point; THENCE
South 81 degrees 17 minutes 29 seconds East, 88.73 feet to a point; THENCE
South 77 degrees 39 minutes 26 seconds East, 95.95 feet to a point; THENCE
South 73 degrees 31 minutes 58 seconds East, 117.75 feet to a point; THENCE
South 68 degrees 05 minutes 37 seconds East, 127.70 feet to a point; THENCE
South 63 degrees 27 minutes 25 seconds East, 132.35 feet to a point; THENCE
South 58 degrees 25 minutes 37 seconds East, 112.22 feet to a point; THENCE
South 53 degrees 59 minutes 02 seconds East, 125.77 feet to a point; THENCE
South 48 degrees 38 minutes 25 seconds East, 137.44 feet to a point; THENCE
South 42 degrees 26 minutes 05 seconds East, 131.14 feet to a point; THENCE
South 37 degrees 49 minutes 40 seconds East, 134.73 feet to a point; THENCE
South 33 degrees 20 minutes 35 seconds East, 104.15 feet to a point; THENCE

South 30 degrees 06 minutes 24 seconds East, 88.82 feet to a point; THENCE
South 29 degrees 46 minutes 20 seconds East, 105.76 feet to a point; THENCE
South 28 degrees 22 minutes 39 seconds East, 577.90 feet to a point; THENCE
South 29 degrees 21 minutes 28 seconds East, 62.90 feet to a point; THENCE
South 37 degrees 01 minutes 36 seconds East, 56.01 feet to a point; THENCE
South 54 degrees 32 minutes 51 seconds East, 53.57 feet to a point; THENCE
South 60 degrees 14 minutes 56 seconds East, 64.09 feet to a point; THENCE
South 73 degrees 58 minutes 50 seconds East, 61.70 feet to a point; THENCE
North 80 degrees 50 minutes 57 seconds East, 65.12 feet to a point; THENCE
North 63 degrees 53 minutes 40 seconds East, 72.60 feet to a point; THENCE
North 51 degrees 50 minutes 21 seconds East, 76.55 feet to a point; THENCE
North 40 degrees 08 minutes 26 seconds East, 65.23 feet to a point; THENCE
North 34 degrees 47 minutes 56 seconds East, 55.23 feet to a point; THENCE
North 46 degrees 23 minutes 58 seconds East, 66.19 feet to a point; THENCE
North 67 degrees 01 minutes 42 seconds East, 56.53 feet to a point; THENCE
North 79 degrees 54 minutes 41 seconds East, 50.48 feet to a point; THENCE
North 87 degrees 55 minutes 27 seconds East, 57.61 feet to a point; THENCE
South 87 degrees 19 minutes 16 seconds East, 176.93 feet to a point; THENCE
North 89 degrees 37 minutes 59 seconds East, 68.70 feet to a point; THENCE
North 84 degrees 35 minutes 58 seconds East, 73.77 feet to a point; THENCE
North 83 degrees 13 minutes 57 seconds East, 109.78 feet to a point; THENCE
North 85 degrees 44 minutes 16 seconds East, 69.02 feet to a point; THENCE
South 89 degrees 14 minutes 11 seconds East, 73.68 feet to a point; THENCE
South 83 degrees 01 minutes 36 seconds East, 85.76 feet to a point; THENCE
South 81 degrees 06 minutes 48 seconds East, 175.28 feet to a point; THENCE
South 84 degrees 03 minutes 54 seconds East, 111.59 feet to a point; THENCE
South 88 degrees 03 minutes 32 seconds East, 110.09 feet to a point; THENCE
South 87 degrees 21 minutes 29 seconds East, 123.07 feet to a point; THENCE
South 85 degrees 25 minutes 12 seconds East, 133.68 feet to a point; THENCE
South 84 degrees 42 minutes 27 seconds East, 130.68 feet to a point; THENCE
South 83 degrees 44 minutes 03 seconds East, 107.58 feet to a point; THENCE
South 80 degrees 30 minutes 43 seconds East, 105.58 feet to a point; THENCE
South 78 degrees 05 minutes 55 seconds East, 128.28 feet to a point; THENCE
South 74 degrees 43 minutes 13 seconds East, 187.98 feet to a point; THENCE
South 80 degrees 41 minutes 33 seconds East, 82.10 feet to a point; THENCE
South 88 degrees 17 minutes 38 seconds East, 73.19 feet to a point; THENCE
South 88 degrees 23 minutes 48 seconds East, 113.40 feet to a point; THENCE
South 82 degrees 53 minutes 42 seconds East, 76.40 feet to a point; THENCE
South 74 degrees 26 minutes 22 seconds East, 73.61 feet to a point; THENCE
South 65 degrees 58 minutes 36 seconds East, 81.14 feet to a point; THENCE
South 62 degrees 16 minutes 32 seconds East, 78.60 feet to a point; THENCE
South 61 degrees 28 minutes 15 seconds East, 134.52 feet to a point; THENCE
South 72 degrees 27 minutes 54 seconds East, 26.17 feet to a point in the west Lease Line of
Area 1; THENCE with the west Lease Line of Area 1, South 02 degrees 05 minutes 37 seconds
West, 31.12 feet to the POINT OF BEGINNING and CONTAINING 5.75 Acres (more or less).

AREA NO. 8

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found S-1) THENCE South 11 degrees 09 minutes 20 seconds East, 1062.89 feet to the true POINT OF BEGINNING; THENCE South 04 degrees 42 minutes 54 seconds East, 170.26 feet to a point; THENCE South 88 degrees 58 minutes 16 seconds West, 418.58 feet to a point; THENCE North 06 degrees 01 minutes 46 seconds West, 148.35 feet to a point; THENCE North 85 degrees 57 minutes 36 seconds East, 421.14 feet to the POINT OF BEGINNING and CONTAINING 1.53 Acres (more or less).

A PORTION OF AREA NO. 9

An area located near Matanzas, Ohio County, Kentucky and described as follows:

COMMENCING at a concrete monument with a brass plate (found P-22) THENCE South 22 degrees 20 minutes 26 seconds East, 227.33 feet to a point in the north right of way of Kentucky Highway No. 85 the true POINT OF BEGINNING, THENCE leaving said highway right of way North 03 degrees 50 minutes 38 seconds West, 1920.92 feet to a point; THENCE South 86 degrees 48 minutes 20 seconds West, 443.01 feet to a point; THENCE North 03 degrees 43 minutes 40 seconds West, 202.05 feet to a point; THENCE North 84 degrees 10 minutes 02 seconds East, 509.25 feet to a point; THENCE South 04 degrees 49 minutes 24 seconds East, 225.58 feet to a point; THENCE South 86 degrees 48 minutes 25 seconds West, 20.23 feet to a point; THENCE South 03 degrees 50 minutes 38 seconds East, 1922.24 feet to a point in the north right of way line of Kentucky Highway No. 85; THENCE with the north right of way line of Kentucky Highway No. 85 with the following courses:

South 85 degrees 28 minutes 50 seconds West, 19.12 feet to a point; THENCE South 89 degrees 35 minutes 55 seconds West, 29.70 feet to a point; THENCE North 78 degrees 57 minutes 17 seconds West, 1.27 feet to the POINT OF BEGINNING and CONTAINING 4.71 Acres (more or less).

SOURCE OF TITLE FOR EASEMENT SITE

The same real property in which an interest was conveyed to the Facility Lessor by the Head Lease Agreement (FBR-1), of even date herewith, and recorded in Miscellaneous Book ____, Page ____ in the office of the County Clerk in which this instrument is being recorded.

SCHEDULE 1

**FBR-1
BASIC RENT AND EQUITY PORTION OF BASIC RENT**

<u>Rent Payment Date</u>	<u>Basic Rent</u>	<u>Equity Portion of Basic Rent</u>
Apr 18 2000	0.00	0.00
Jul 18 2000	14,806.28	0.00
Jan 4 2001	2,966,190.46	0.00
Jan 4 2002	6,583,796.46	0.00
Jan 4 2003	6,583,796.46	0.00
Jan 4 2004	6,583,796.46	0.00
Jan 4 2005	6,583,796.46	0.00
Jan 4 2006	7,261,039.54	0.00
Jan 4 2007	8,092,181.13	0.00
Jan 4 2008	8,092,181.13	0.00
Jan 4 2009	16,057,376.99	0.00
Jan 4 2010	6,583,796.46	0.00
Jan 4 2011	6,583,796.46	0.00
Jan 4 2012	8,046,862.34	0.00
Jan 4 2013	8,046,862.34	0.00
Jan 4 2014	8,046,862.34	0.00
Jan 4 2015	8,046,862.34	0.00
Jan 4 2016	8,046,862.34	0.00
Jan 4 2017	8,046,862.34	0.00
Jan 4 2018	8,046,862.34	0.00
Jan 4 2019	8,046,862.34	0.00
Jan 4 2020	8,046,862.34	0.00
Jan 4 2021	8,046,862.34	0.00
Jan 4 2022	8,046,862.34	0.00
Jan 4 2023	8,046,862.34	0.00
Jan 4 2024	8,046,862.34	0.00
Jan 4 2025	6,860,970.86	0.00
Jan 4 2026	55,446.41	0.00
Jan 4 2027	59,562.12	0.00

SCHEDULE 1-A

FBR-1
ALLOCATION OF BASIC RENT

<u>Allocation Year</u>	<u>Allocated Basic Rent</u>	<u>Cash Rent</u>	<u>Cash Rent Date</u>
2000	2,980,996.73	14,806.28	18-Jul-00
		2,966,190.46	4-Jan-01
2001	6,583,796.46	6,583,796.46	4-Jan-02
2002	6,583,796.46	6,583,796.46	4-Jan-03
2003	6,583,796.46	6,583,796.46	4-Jan-04
2004	6,583,796.46	6,583,796.46	4-Jan-05
2005	6,583,796.46	6,583,796.46	4-Jan-06
2006	6,583,796.46	677,243.07	4-Jan-06
		5,906,553.39	4-Jan-07
2007	6,583,796.46	2,185,627.74	4-Jan-07
		4,398,168.73	4-Jan-08
2008	6,583,796.46	3,694,012.40	4-Jan-08
		2,889,784.06	4-Jan-09
2009	6,583,796.46	6,583,796.46	4-Jan-09
2010	6,583,796.46	6,583,796.46	4-Jan-09
2011	6,583,796.46	6,583,796.46	4-Jan-10
2012	6,583,796.46	6,583,796.46	4-Jan-11
2013	8,046,862.34	8,046,862.34	4-Jan-12
2014	8,046,862.34	8,046,862.34	4-Jan-13
2015	8,046,862.34	8,046,862.34	4-Jan-14
2016	8,046,862.34	8,046,862.34	4-Jan-15
2017	8,046,862.34	8,046,862.34	4-Jan-16
2018	8,046,862.34	8,046,862.34	4-Jan-17
2019	8,046,862.34	8,046,862.34	4-Jan-18
2020	8,046,862.34	8,046,862.34	4-Jan-19
2021	8,046,862.34	8,046,862.34	4-Jan-20
2022	8,046,862.34	8,046,862.34	4-Jan-21
2023	8,046,862.34	8,046,862.34	4-Jan-22
2024	8,046,862.34	8,046,862.34	4-Jan-23
2025	8,046,862.34	8,046,862.34	4-Jan-24
2026	6,921,114.43	6,860,970.86	4-Jan-25
		55,446.41	4-Jan-26
		4,697.15	4-Jan-27
2027	54,864.97	54,864.97	4-Jan-27

FBR-1
TERMINATION VALUES AND EQUITY PORTION OF TERMINATION VALUES

<u>Termination Date</u>	<u>Gross Termination Value</u>	<u>Prorata Rent + Prepaid/Deferred Rent Balance</u>	<u>Termination Value</u>	<u>Debt Portion of Termination Value</u>	<u>Equity Portion of Termination Value</u>
Apr 18 2000	125,194,079.03	0.00	125,194,079.03	100,111,916.11	25,082,162.92
May 18 2000	128,858,188.60	0.00	128,858,188.60	100,736,115.48	28,122,073.12
Jun 18 2000	129,745,562.44	0.00	129,745,562.44	101,360,314.86	28,385,247.58
Jul 18 2000	130,628,258.70	0.00	130,628,258.70	101,984,514.23	28,643,744.47
Aug 4 2000	130,935,020.93	277,806.90	131,212,827.83	102,308,792.08	28,904,035.75
Sep 4 2000	131,284,252.11	826,456.60	132,110,708.71	102,944,574.81	29,166,133.90
Oct 4 2000	131,628,798.23	1,375,106.31	133,003,904.54	103,580,357.55	29,423,546.99
Nov 4 2000	131,975,131.23	1,923,756.02	133,898,887.25	104,216,140.28	29,682,746.97
Dec 4 2000	132,323,263.51	2,472,405.72	134,795,669.23	104,851,923.02	29,943,746.21
Jan 4 2001	132,666,703.11	3,021,055.43	135,687,758.54	105,487,705.75	30,200,052.79
Feb 4 2001	133,015,362.44	603,514.68	133,618,877.12	103,160,738.56	30,458,138.56
Mar 4 2001	133,365,813.30	1,152,164.38	134,517,977.68	103,799,961.82	30,718,015.86
Apr 4 2001	133,718,068.16	1,700,814.09	135,418,882.25	104,439,185.09	30,979,697.16
May 4 2001	134,062,876.35	2,249,463.79	136,312,340.14	105,078,408.35	31,233,931.79
Jun 4 2001	134,409,449.36	2,798,113.50	137,207,562.86	105,717,631.61	31,489,931.25
Jul 4 2001	134,748,536.27	3,346,763.20	138,095,299.47	106,356,854.87	31,738,444.60
Aug 4 2001	135,089,348.27	3,895,412.91	138,984,761.18	106,996,078.14	31,988,683.04
Sep 4 2001	135,431,897.35	4,444,062.61	139,875,959.96	107,635,301.40	32,240,658.56
Oct 4 2001	135,766,932.40	4,992,712.32	140,759,644.72	108,274,524.66	32,485,120.06
Nov 4 2001	136,103,664.41	5,541,362.02	141,645,026.43	108,913,747.92	32,731,278.51
Dec 4 2001	136,442,105.18	6,090,011.73	142,532,116.91	109,552,971.19	32,979,145.72
Jan 4 2002	136,773,003.40	6,638,661.43	143,411,664.83	110,192,194.45	33,219,470.38
Feb 4 2002	137,112,346.60	603,514.68	137,715,861.28	104,254,397.98	33,461,463.30
Mar 4 2002	137,453,369.64	1,152,164.38	138,605,534.02	104,900,397.97	33,705,136.05
Apr 4 2002	137,796,084.17	1,700,814.09	139,496,898.26	105,546,397.97	33,950,500.29
May 4 2002	138,131,770.46	2,249,463.79	140,381,234.25	106,192,397.96	34,188,836.29
Jun 4 2002	138,469,111.20	2,798,113.50	141,267,224.70	106,838,397.95	34,428,826.75
Jul 4 2002	138,799,386.40	3,346,763.20	142,146,149.60	107,484,397.94	34,661,751.66
Aug 4 2002	139,131,278.49	3,895,412.91	143,026,691.40	108,130,397.94	34,896,293.46
Sep 4 2002	139,464,798.69	4,444,062.61	143,908,861.30	108,776,397.93	35,132,463.37
Oct 4 2002	139,791,226.82	4,992,712.32	144,783,939.14	109,422,397.92	35,361,541.22
Nov 4 2002	140,119,245.14	5,541,362.02	145,660,607.16	110,068,397.92	35,592,209.24
Dec 4 2002	140,448,864.68	6,090,011.73	146,538,876.41	110,714,397.91	35,824,478.50
Jan 4 2003	140,771,365.08	6,638,661.43	147,410,026.51	111,360,397.90	36,049,628.61
Feb 4 2003	141,102,712.16	603,514.68	141,706,226.84	105,429,885.20	36,276,341.64
Mar 4 2003	141,435,633.01	1,152,164.38	142,587,797.39	106,083,168.96	36,504,628.43
Apr 4 2003	141,770,138.55	1,700,814.09	143,470,952.64	106,736,452.72	36,734,499.92
May 4 2003	142,097,988.48	2,249,463.79	144,347,452.27	107,389,736.48	36,957,715.79
Jun 4 2003	142,427,387.91	2,798,113.50	145,225,501.41	108,043,020.24	37,182,481.17
Jul 4 2003	142,750,096.28	3,346,763.20	146,096,859.48	108,696,304.00	37,400,555.48
Aug 4 2003	143,074,318.45	3,895,412.91	146,969,731.36	109,349,587.76	37,620,143.60
Sep 4 2003	143,400,064.93	4,444,062.61	147,844,127.54	110,002,871.52	37,841,256.02
Oct 4 2003	143,719,095.00	4,992,712.32	148,711,807.32	110,656,155.28	38,055,652.04
Nov 4 2003	144,039,613.33	5,541,362.02	149,580,975.35	111,309,439.04	38,271,536.31
Dec 4 2003	144,361,630.26	6,090,011.73	150,451,641.99	111,962,722.80	38,488,919.19
Jan 4 2004	144,676,904.90	6,638,661.43	151,315,566.33	112,616,006.56	38,699,559.77
Feb 4 2004	145,001,470.47	603,514.68	145,604,985.15	106,693,322.60	38,911,662.55
Mar 4 2004	145,327,508.38	1,152,164.38	146,479,672.76	107,354,435.10	39,125,237.66
Apr 4 2004	145,655,028.87	1,700,814.09	147,355,842.96	108,015,547.60	39,340,295.36
May 4 2004	145,976,222.84	2,249,463.79	148,225,686.63	108,676,660.10	39,549,026.53
Jun 4 2004	146,298,865.76	2,798,113.50	149,096,979.26	109,337,772.60	39,759,206.66
Jul 4 2004	146,615,148.31	3,346,763.20	149,961,911.51	109,998,885.10	39,963,026.41
Aug 4 2004	146,932,845.70	3,895,412.91	150,828,258.61	110,659,997.60	40,168,261.01
Sep 4 2004	147,251,967.77	4,444,062.61	151,696,030.38	111,321,110.10	40,374,920.28
Oct 4 2004	147,564,705.03	4,992,712.32	152,557,417.35	111,982,222.60	40,575,194.75
Nov 4 2004	147,878,832.53	5,541,362.02	153,420,194.55	112,643,335.10	40,776,859.45
Dec 4 2004	148,194,359.92	6,090,011.73	154,284,371.65	113,304,447.60	40,979,924.05

FBR-I
TERMINATION VALUES AND EQUITY PORTION OF TERMINATION VALUES

Termination Date	Gross Termination Value	Prorata Rent + Prepaid/Deferred Rent Balance	Termination Value	Debt Portion of Termination Value	Equity Portion of Termination Value
Jan 4 2005	147,808,840.54	6,638,661.43	154,447,501.97	113,965,560.10	40,481,941.87
Feb 4 2005	148,127,737.77	603,514.68	148,731,252.45	108,051,290.62	40,679,961.83
Mar 4 2005	148,448,009.58	1,152,164.38	149,600,173.96	108,720,817.61	40,879,356.35
Apr 4 2005	148,769,665.52	1,700,814.09	150,470,479.61	109,390,344.60	41,080,135.01
May 4 2005	149,085,282.22	2,249,463.79	151,334,746.01	110,059,871.58	41,274,874.43
Jun 4 2005	149,402,250.74	2,798,113.50	152,200,364.24	110,729,398.57	41,470,965.67
Jul 4 2005	149,713,147.47	3,346,763.20	153,059,910.67	111,398,925.56	41,660,985.11
Aug 4 2005	150,025,363.25	3,895,412.91	153,920,776.16	112,068,452.55	41,852,323.61
Sep 4 2005	150,338,907.25	4,444,062.61	154,782,969.86	112,737,979.54	42,044,990.32
Oct 4 2005	150,646,355.68	4,992,712.32	155,639,068.00	113,407,506.52	42,231,561.48
Nov 4 2005	150,955,099.23	5,541,362.02	156,496,461.25	114,077,033.51	42,419,427.74
Dec 4 2005	151,265,146.89	6,090,011.73	157,355,158.62	114,746,560.50	42,608,598.12
Jan 4 2006	150,874,436.72	6,638,661.43	157,513,098.15	115,416,087.49	42,097,010.66
Feb 4 2006	151,184,456.67	-73,728.40	151,110,728.27	108,829,396.38	42,281,331.89
Mar 4 2006	151,495,756.11	474,921.31	151,970,677.42	109,503,744.80	42,466,932.62
Apr 4 2006	151,808,343.94	1,023,571.02	152,831,914.96	110,178,093.23	42,653,821.73
May 4 2006	152,115,186.26	1,572,220.72	153,687,406.98	110,852,441.66	42,834,965.32
Jun 4 2006	152,423,286.01	2,120,870.43	154,544,156.44	111,526,790.09	43,017,366.35
Jul 4 2006	152,725,609.11	2,669,520.13	155,395,129.24	112,201,138.51	43,193,990.73
Aug 4 2006	153,029,158.28	3,218,169.84	156,247,328.12	112,875,486.94	43,371,841.18
Sep 4 2006	153,333,942.03	3,766,819.54	157,100,761.57	113,549,835.37	43,550,926.20
Oct 4 2006	153,632,926.10	4,315,469.25	157,948,395.35	114,224,183.80	43,724,211.55
Nov 4 2006	153,933,113.06	4,864,118.95	158,797,232.01	114,898,532.22	43,898,699.79
Dec 4 2006	154,234,511.26	5,412,768.66	159,647,279.92	115,572,880.65	44,074,399.27
Jan 4 2007	154,530,086.28	5,961,418.36	160,491,504.64	116,247,229.08	44,244,275.56
Feb 4 2007	154,826,840.53	-1,582,113.06	153,244,727.47	108,829,396.38	44,415,331.09
Mar 4 2007	155,124,782.19	-1,033,463.36	154,091,318.83	109,503,744.80	44,587,574.03
Apr 4 2007	155,423,919.50	-484,813.65	154,939,105.85	110,178,093.23	44,761,012.62
May 4 2007	155,717,628.63	63,836.06	155,781,464.69	110,852,441.66	44,929,023.03
Jun 4 2007	156,012,504.04	612,485.76	156,624,989.80	111,526,790.09	45,098,199.71
Jul 4 2007	156,301,921.68	1,161,135.47	157,463,057.15	112,201,138.51	45,261,918.64
Aug 4 2007	156,592,475.81	1,709,785.17	158,302,260.98	112,875,486.94	45,426,774.04
Sep 4 2007	156,884,174.30	2,258,434.88	159,142,609.18	113,549,835.37	45,592,773.81
Oct 4 2007	157,170,392.99	2,807,084.58	159,977,477.57	114,224,183.80	45,753,293.77
Nov 4 2007	157,457,725.94	3,355,734.29	160,813,460.23	114,898,532.22	45,914,928.01
Dec 4 2007	157,746,180.91	3,904,383.99	161,650,564.90	115,572,880.65	46,077,684.25
Jan 4 2008	158,029,133.55	4,453,033.70	162,482,167.25	116,247,229.08	46,234,938.17
Feb 4 2008	158,313,177.79	-3,090,497.73	155,222,680.06	108,829,396.38	46,393,283.68
Mar 4 2008	158,598,321.22	-2,541,848.02	156,056,473.20	109,503,744.80	46,552,728.40
Apr 4 2008	158,884,571.45	-1,993,198.31	156,891,373.14	110,178,093.23	46,713,279.91
May 4 2008	159,165,371.66	-1,444,548.61	157,720,823.05	110,852,441.66	46,868,381.39
Jun 4 2008	159,447,248.54	-895,898.90	158,551,349.64	111,526,790.09	47,024,559.55
Jul 4 2008	159,723,645.03	-347,249.20	159,376,395.83	112,201,138.51	47,175,257.32
Aug 4 2008	160,001,087.61	201,400.51	160,202,488.12	112,875,486.94	47,327,001.18
Sep 4 2008	160,279,583.55	750,050.21	161,029,633.76	113,549,835.37	47,479,798.39
Oct 4 2008	160,552,575.64	1,298,699.92	161,851,275.56	114,224,183.80	47,627,091.76
Nov 4 2008	160,826,590.19	1,847,349.62	162,673,939.81	114,898,532.22	47,775,407.59
Dec 4 2008	161,101,634.30	2,395,999.33	163,497,633.63	115,572,880.65	47,924,752.98
Jan 4 2009	161,371,150.59	2,944,649.03	164,315,799.62	116,247,229.08	48,068,570.54
Feb 4 2009	161,592,002.09	-12,564,078.25	149,027,923.84	100,814,537.39	48,213,386.45
Mar 4 2009	161,813,858.86	-12,015,428.55	149,798,430.31	101,439,222.70	48,359,207.61
Apr 4 2009	162,036,727.88	-11,466,778.84	150,569,949.04	102,063,908.01	48,506,041.03
May 4 2009	162,254,603.89	-10,918,129.14	151,336,474.75	102,688,593.31	48,647,881.44
Jun 4 2009	162,473,464.51	-10,369,479.43	152,103,985.08	103,313,278.62	48,790,706.46
Jul 4 2009	162,687,304.32	-9,820,829.73	152,866,474.59	103,937,963.92	48,928,510.67
Aug 4 2009	162,902,100.71	-9,272,180.02	153,629,920.69	104,562,649.23	49,067,271.46
Sep 4 2009	163,117,860.33	-8,723,530.31	154,394,330.02	105,187,334.53	49,206,995.49

FBR-I
TERMINATION VALUES AND EQUITY PORTION OF TERMINATION VALUES

Termination Date	Gross Termination Value	Prorata Rent + Prepaid/Deferred Rent Balance	Termination Value	Debt Portion of Termination Value	Equity Portion of Termination Value
Oct 4 2009	163,328,577.61	-8,174,880.61	155,153,697.00	105,812,019.84	49,341,677.16
Nov 4 2009	163,540,229.80	-7,626,230.90	155,913,998.90	106,436,705.15	49,477,293.75
Dec 4 2009	163,752,823.40	-7,077,581.20	156,675,242.20	107,061,390.45	49,613,851.75
Jan 4 2010	163,960,352.67	-6,528,931.49	157,431,421.18	107,686,075.76	49,745,345.42
Feb 4 2010	164,174,483.73	-12,564,078.25	151,610,405.48	101,732,653.60	49,877,751.88
Mar 4 2010	164,389,533.90	-12,015,428.55	152,374,105.35	102,363,027.90	50,011,077.45
Apr 4 2010	164,605,509.58	-11,466,778.84	153,138,730.74	102,993,402.20	50,145,328.54
May 4 2010	164,816,346.30	-10,918,129.14	153,898,217.16	103,623,776.51	50,274,440.65
Jun 4 2010	165,028,079.27	-10,369,479.43	154,658,599.84	104,254,150.81	50,404,449.03
Jul 4 2010	165,234,643.83	-9,820,829.73	155,413,814.10	104,884,525.12	50,529,288.98
Aug 4 2010	165,442,074.99	-9,272,180.02	156,169,894.97	105,514,899.42	50,654,995.55
Sep 4 2010	165,650,378.76	-8,723,530.31	156,926,848.45	106,145,273.72	50,781,574.73
Oct 4 2010	165,853,490.31	-8,174,880.61	157,678,609.70	106,775,648.03	50,902,961.67
Nov 4 2010	166,057,444.50	-7,626,230.90	158,431,213.60	107,406,022.33	51,025,191.27
Dec 4 2010	166,262,247.16	-7,077,581.20	159,184,665.96	108,036,396.63	51,148,269.33
Jan 4 2011	166,461,833.30	-6,528,931.49	159,932,901.81	108,666,770.94	51,266,130.87
Feb 4 2011	166,668,352.24	-12,564,078.25	154,104,273.99	102,719,463.43	51,384,810.56
Mar 4 2011	166,875,695.03	-12,015,428.55	154,860,266.48	103,355,952.38	51,504,314.10
Apr 4 2011	167,083,867.36	-11,466,778.84	155,617,088.52	103,992,441.34	51,624,647.18
May 4 2011	167,286,735.59	-10,918,129.14	156,368,606.45	104,628,930.29	51,739,676.16
Jun 4 2011	167,490,402.32	-10,369,479.43	157,120,922.89	105,265,419.24	51,855,503.65
Jul 4 2011	167,688,733.67	-9,820,829.73	157,867,903.94	105,901,908.20	51,965,995.74
Aug 4 2011	167,887,832.02	-9,272,180.02	158,615,652.00	106,538,397.15	52,077,254.85
Sep 4 2011	168,087,702.69	-8,723,530.31	159,364,172.38	107,174,886.10	52,189,286.28
Oct 4 2011	168,282,211.64	-8,174,880.61	160,107,331.03	107,811,375.06	52,295,955.97
Nov 4 2011	168,477,461.05	-7,626,230.90	160,851,230.15	108,447,864.01	52,403,366.14
Dec 4 2011	168,673,456.07	-7,077,581.20	161,595,874.87	109,084,352.96	52,511,521.91
Jan 4 2012	168,864,062.45	-6,528,931.49	162,335,130.96	109,720,841.92	52,614,289.04
Feb 4 2012	169,052,832.12	-14,027,144.13	155,025,687.99	102,307,918.44	52,717,769.55
Mar 4 2012	169,242,320.12	-13,478,494.43	155,763,825.69	102,941,857.30	52,821,968.39
Apr 4 2012	169,432,531.43	-12,929,844.72	156,502,686.71	103,575,796.17	52,926,890.54
May 4 2012	169,617,359.45	-12,381,195.02	157,236,164.43	104,209,735.03	53,026,429.40
Jun 4 2012	169,802,878.43	-11,832,545.31	157,970,333.12	104,843,673.89	53,126,659.23
Jul 4 2012	169,982,981.55	-11,283,895.61	158,699,085.94	105,477,612.76	53,221,473.18
Aug 4 2012	170,163,742.84	-10,735,245.90	159,428,496.94	106,111,551.62	53,316,945.32
Sep 4 2012	170,345,166.86	-10,186,596.20	160,158,570.66	106,745,490.49	53,413,080.17
Oct 4 2012	170,521,146.59	-9,637,946.49	160,883,200.10	107,379,429.35	53,503,770.75
Nov 4 2012	170,697,755.86	-9,089,296.78	161,608,459.08	108,013,368.21	53,595,090.87
Dec 4 2012	170,874,999.05	-8,540,647.08	162,334,351.97	108,647,307.08	53,687,044.89
Jan 4 2013	171,034,576.71	-7,979,805.16	163,054,771.55	109,281,245.94	53,773,525.61
Feb 4 2013	171,082,283.86	-15,356,095.64	155,726,188.22	101,865,581.57	53,860,606.65
Mar 4 2013	171,130,595.50	-14,685,523.78	156,445,071.72	102,496,779.55	53,948,292.17
Apr 4 2013	171,179,515.82	-14,014,951.92	157,164,563.90	103,127,977.53	54,036,586.37
May 4 2013	171,224,335.31	-13,344,380.06	157,879,955.25	103,759,175.50	54,120,779.75
Jun 4 2013	171,269,739.25	-12,673,808.19	158,595,931.06	104,390,373.48	54,205,557.58
Jul 4 2013	171,311,017.94	-12,003,236.33	159,307,781.61	105,021,571.45	54,286,210.16
Aug 4 2013	171,352,856.49	-11,332,664.47	160,020,192.02	105,652,769.43	54,367,422.59
Sep 4 2013	171,395,258.80	-10,662,092.61	160,733,166.19	106,283,967.41	54,449,198.78
Oct 4 2013	171,433,515.02	-9,991,520.74	161,441,994.28	106,915,165.38	54,526,828.90
Nov 4 2013	171,472,310.13	-9,320,948.88	162,151,361.25	107,546,363.36	54,604,997.89
Dec 4 2013	171,511,647.87	-8,650,377.02	162,861,270.85	108,177,561.33	54,683,709.52
Jan 4 2014	171,546,818.25	-7,979,805.16	163,567,013.09	108,808,759.31	54,758,253.78
Feb 4 2014	171,579,560.13	-15,356,095.64	156,223,464.49	101,390,148.98	54,833,315.51
Mar 4 2014	171,612,823.06	-14,685,523.78	156,927,299.28	102,018,401.00	54,908,898.28
Apr 4 2014	171,646,610.67	-14,014,951.92	157,631,658.75	102,646,653.01	54,985,005.74
May 4 2014	171,676,245.86	-13,344,380.06	158,331,865.80	103,274,905.02	55,056,960.78
Jun 4 2014	171,706,380.54	-12,673,808.19	159,032,572.35	103,903,157.04	55,129,415.31

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TERMINATION VALUES AND EQUITY PORTION OF TERMINATION VALUES

<u>Termination Date</u>	<u>Gross Termination Value</u>	<u>Prorata Rent + Prepaid/Deferred Rent Balance</u>	<u>Termination Value</u>	<u>Debt Portion of Termination Value</u>	<u>Equity Portion of Termination Value</u>
Jul 4 2014	171,732,337.45	-12,003,236.33	159,729,101.12	104,531,409.05	55,197,692.07
Aug 4 2014	171,758,768.32	-11,332,664.47	160,426,103.85	105,159,661.07	55,266,442.78
Sep 4 2014	171,785,676.43	-10,662,092.61	161,123,583.82	105,787,913.08	55,335,670.74
Oct 4 2014	171,808,384.37	-9,991,520.74	161,816,863.63	106,416,165.10	55,400,698.53
Nov 4 2014	171,831,543.71	-9,320,948.88	162,510,594.83	107,044,417.11	55,466,177.72
Dec 4 2014	171,855,157.59	-8,650,377.02	163,204,780.57	107,672,669.13	55,532,111.44
Jan 4 2015	171,874,548.43	-7,979,805.16	163,894,743.27	108,300,921.14	55,593,822.13
Feb 4 2015	171,891,201.27	-15,356,095.64	156,535,105.63	100,879,144.43	55,655,961.20
Mar 4 2015	171,908,285.45	-14,685,523.78	157,222,761.67	101,504,230.07	55,718,531.60
Apr 4 2015	171,925,803.98	-14,014,951.92	157,910,852.06	102,129,315.70	55,781,536.36
May 4 2015	171,939,115.34	-13,344,380.06	158,594,735.28	102,754,401.34	55,840,333.94
Jun 4 2015	171,952,834.85	-12,673,808.19	159,279,026.66	103,379,486.97	55,899,539.69
Jul 4 2015	171,962,320.82	-12,003,236.33	159,959,084.49	104,004,572.61	55,954,511.88
Aug 4 2015	171,972,188.39	-11,332,664.47	160,639,523.92	104,629,658.25	56,009,865.67
Sep 4 2015	171,982,440.20	-10,662,092.61	161,320,347.59	105,254,743.88	56,065,603.71
Oct 4 2015	171,988,434.40	-9,991,520.74	161,996,913.66	105,879,829.52	56,117,084.14
Nov 4 2015	171,994,785.96	-9,320,948.88	162,673,837.08	106,504,915.15	56,168,921.93
Dec 4 2015	172,001,497.36	-8,650,377.02	163,351,120.34	107,130,000.79	56,221,119.55
Jan 4 2016	172,003,926.57	-7,979,805.16	164,024,121.41	107,755,086.42	56,269,034.99
Feb 4 2016	172,003,285.11	-15,356,095.64	156,647,189.47	100,329,906.43	56,317,283.04
Mar 4 2016	172,002,978.56	-14,685,523.78	157,317,454.78	100,951,588.77	56,365,866.01
Apr 4 2016	172,003,009.27	-14,014,951.92	157,988,057.35	101,573,271.12	56,414,786.23
May 4 2016	171,998,773.88	-13,344,380.06	158,654,393.82	102,194,953.47	56,459,440.35
Jun 4 2016	171,994,848.46	-12,673,808.19	159,321,040.27	102,816,635.82	56,504,404.45
Jul 4 2016	171,986,629.50	-12,003,236.33	159,983,393.17	103,438,318.16	56,545,075.01
Aug 4 2016	171,978,692.85	-11,332,664.47	160,646,028.38	104,060,000.51	56,586,027.87
Sep 4 2016	171,971,040.49	-10,662,092.61	161,308,947.88	104,681,682.86	56,627,265.02
Oct 4 2016	171,959,068.70	-9,991,520.74	161,967,547.96	105,303,365.21	56,664,182.75
Nov 4 2016	171,947,353.18	-9,320,948.88	162,626,404.30	105,925,047.55	56,701,356.75
Dec 4 2016	171,935,895.72	-8,650,377.02	163,285,518.70	106,546,729.90	56,738,788.80
Jan 4 2017	171,920,092.41	-7,979,805.16	163,940,287.25	107,168,412.25	56,771,875.00
Feb 4 2017	171,900,860.86	-15,356,095.64	156,544,765.22	99,739,574.33	56,805,190.89
Mar 4 2017	171,881,860.57	-14,685,523.78	157,196,336.79	100,357,598.75	56,838,738.04
Apr 4 2017	171,863,093.16	-14,014,951.92	157,848,141.24	100,975,623.18	56,872,518.06
May 4 2017	171,839,995.55	-13,344,380.06	158,495,615.49	101,593,647.60	56,901,967.89
Jun 4 2017	171,817,102.37	-12,673,808.19	159,143,294.18	102,211,672.03	56,931,622.15
Jul 4 2017	171,789,850.36	-12,003,236.33	159,786,614.03	102,829,696.45	56,956,917.58
Aug 4 2017	171,762,773.94	-11,332,664.47	160,430,109.47	103,447,720.88	56,982,388.59
Sep 4 2017	171,735,874.33	-10,662,092.61	161,073,781.72	104,065,745.30	57,008,036.42
Oct 4 2017	171,704,588.08	-9,991,520.74	161,713,067.34	104,683,769.73	57,029,297.61
Nov 4 2017	171,673,449.41	-9,320,948.88	162,352,500.53	105,301,794.15	57,050,706.38
Dec 4 2017	171,642,459.36	-8,650,377.02	162,992,082.34	105,919,818.58	57,072,263.76
Jan 4 2018	171,607,054.26	-7,979,805.16	163,627,249.10	106,537,843.00	57,089,406.10
Feb 4 2018	171,567,836.56	-15,356,095.64	156,211,740.92	99,105,073.47	57,106,667.45
Mar 4 2018	171,528,738.67	-14,685,523.78	156,843,214.89	99,719,166.29	57,124,048.60
Apr 4 2018	171,489,761.45	-14,014,951.92	157,474,809.53	100,333,259.10	57,141,550.43
May 4 2018	171,446,385.08	-13,344,380.06	158,102,005.02	100,947,351.92	57,154,653.10
Jun 4 2018	171,403,099.68	-12,673,808.19	158,729,291.49	101,561,444.73	57,167,846.76
Jul 4 2018	171,355,385.24	-12,003,236.33	159,352,148.91	102,175,537.55	57,176,611.36
Aug 4 2018	171,307,731.63	-11,332,664.47	159,975,067.16	102,789,630.37	57,185,436.79
Sep 4 2018	171,260,139.29	-10,662,092.61	160,598,046.68	103,403,723.18	57,194,323.50
Oct 4 2018	171,208,088.02	-9,991,520.74	161,216,567.28	104,017,816.00	57,198,751.28
Nov 4 2018	171,156,067.48	-9,320,948.88	161,835,118.60	104,631,908.81	57,203,209.79
Dec 4 2018	171,104,077.90	-8,650,377.02	162,453,700.88	105,246,001.63	57,207,699.25
Jan 4 2019	171,047,598.85	-7,979,805.16	163,067,793.69	105,860,094.44	57,207,699.25
Feb 4 2019	170,986,894.03	-15,356,095.64	155,630,798.39	98,423,099.14	57,207,699.25
Mar 4 2019	170,926,189.21	-14,685,523.78	156,240,665.43	99,032,966.18	57,207,699.25

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TERMINATION VALUES AND EQUITY PORTION OF TERMINATION VALUES

<u>Termination Date</u>	<u>Gross Termination Value</u>	<u>Prorata Rent + Prepaid/Deferred Rent Balance</u>	<u>Termination Value</u>	<u>Debt Portion of Termination Value</u>	<u>Equity Portion of Termination Value</u>
Apr 4 2019	170,865,484.39	-14,014,951.92	156,850,532.47	99,642,833.23	57,207,699.24
May 4 2019	170,804,779.57	-13,344,380.06	157,460,399.51	100,252,700.27	57,207,699.24
Jun 4 2019	170,744,074.75	-12,673,808.19	158,070,266.56	100,862,567.31	57,207,699.25
Jul 4 2019	170,683,369.93	-12,003,236.33	158,680,133.60	101,472,434.36	57,207,699.24
Aug 4 2019	170,622,665.11	-11,332,664.47	159,290,000.64	102,082,301.40	57,207,699.24
Sep 4 2019	170,561,960.29	-10,662,092.61	159,899,867.68	102,692,168.44	57,207,699.24
Oct 4 2019	170,501,255.47	-9,991,520.74	160,509,734.73	103,302,035.48	57,207,699.25
Nov 4 2019	170,440,550.66	-9,320,948.88	161,119,601.78	103,911,902.53	57,207,699.25
Dec 4 2019	170,379,845.84	-8,650,377.02	161,729,468.82	104,521,769.57	57,207,699.25
Jan 4 2020	170,319,141.02	-7,979,805.16	162,339,335.86	105,131,636.61	57,207,699.25
Feb 4 2020	170,258,436.20	-7,309,233.30	162,948,203.90	105,741,503.65	57,207,699.25
Mar 4 2020	170,197,731.38	-6,638,661.44	163,557,070.94	106,351,370.69	57,207,699.25
Apr 4 2020	170,137,026.56	-5,968,089.58	164,166,937.98	106,961,237.73	57,207,699.24
May 4 2020	170,076,321.74	-5,297,517.72	164,776,805.02	107,571,104.77	57,207,699.24
Jun 4 2020	169,992,907.19	-4,626,945.86	165,386,670.47	108,180,971.81	57,207,699.25
Jul 4 2020	169,927,660.42	-3,956,374.00	166,000,030.42	108,790,838.85	57,207,699.24
Aug 4 2020	169,862,413.66	-3,285,802.14	166,616,611.52	109,400,705.89	57,207,699.25
Sep 4 2020	169,797,166.89	-2,615,230.28	167,236,937.17	110,010,572.93	57,207,699.24
Oct 4 2020	169,731,920.13	-1,944,658.42	167,861,265.55	110,620,440.00	57,207,699.25
Nov 4 2020	169,666,673.36	-1,274,086.56	168,489,551.92	111,230,307.07	57,207,699.25
Dec 4 2020	169,601,426.60	-6,650,377.02	160,951,049.58	103,743,350.33	57,207,699.25
Jan 4 2021	169,536,179.83	-7,979,805.16	161,556,374.67	104,348,675.43	57,207,699.24
Feb 4 2021	169,466,051.29	-15,356,095.64	154,109,955.65	96,902,256.40	57,207,699.25
Mar 4 2021	169,395,922.75	-14,685,523.78	154,710,398.97	97,502,699.72	57,207,699.25
Apr 4 2021	169,325,794.21	-14,014,951.92	155,310,842.29	98,103,143.05	57,207,699.24
May 4 2021	169,255,665.67	-13,344,380.06	155,911,285.61	98,703,586.37	57,207,699.24
Jun 4 2021	169,185,537.13	-12,673,808.19	156,511,728.94	99,304,029.69	57,207,699.25
Jul 4 2021	169,115,408.59	-12,003,236.33	157,112,172.26	99,904,473.01	57,207,699.25
Aug 4 2021	169,045,280.05	-11,332,664.47	157,712,615.58	100,504,916.33	57,207,699.25
Sep 4 2021	168,975,151.51	-10,662,092.61	158,313,058.90	101,105,359.65	57,207,699.25
Oct 4 2021	168,905,022.96	-9,991,520.74	158,913,502.22	101,705,802.97	57,207,699.25
Nov 4 2021	168,834,894.42	-9,320,948.88	159,513,945.54	102,306,246.30	57,207,699.24
Dec 4 2021	168,764,765.88	-8,650,377.02	160,114,388.86	102,906,689.62	57,207,699.24
Jan 4 2022	168,694,637.34	-7,979,805.16	160,714,832.18	103,507,132.94	57,207,699.24
Feb 4 2022	168,619,261.77	-15,356,095.64	153,263,166.13	96,055,466.88	57,207,699.25
Mar 4 2022	168,543,886.20	-14,685,523.78	153,858,362.42	96,650,663.17	57,207,699.25
Apr 4 2022	168,468,510.63	-14,014,951.92	154,453,558.71	97,245,859.46	57,207,699.25
May 4 2022	168,393,135.06	-13,344,380.06	155,048,755.00	97,841,055.76	57,207,699.24
Jun 4 2022	168,317,759.49	-12,673,808.19	155,643,951.30	98,436,252.05	57,207,699.25
Jul 4 2022	168,242,383.91	-12,003,236.33	156,239,147.58	99,031,448.34	57,207,699.24
Aug 4 2022	168,167,008.34	-11,332,664.47	156,834,343.87	99,626,644.63	57,207,699.24
Sep 4 2022	168,091,632.77	-10,662,092.61	157,429,540.16	100,221,840.92	57,207,699.24
Oct 4 2022	168,016,257.20	-9,991,520.74	158,024,736.46	100,817,037.21	57,207,699.25
Nov 4 2022	167,940,881.63	-9,320,948.88	158,619,932.75	101,412,233.50	57,207,699.25
Dec 4 2022	167,865,506.06	-8,650,377.02	159,215,129.04	102,007,429.79	57,207,699.25
Jan 4 2023	167,790,130.49	-7,979,805.16	159,810,325.33	102,602,626.08	57,207,699.25
Feb 4 2023	167,709,115.30	-15,356,095.64	152,353,019.66	95,145,320.41	57,207,699.25
Mar 4 2023	167,628,100.11	-14,685,523.78	152,942,576.33	95,734,877.09	57,207,699.24
Apr 4 2023	167,547,084.93	-14,014,951.92	153,532,133.01	96,324,433.76	57,207,699.25
May 4 2023	167,466,069.74	-13,344,380.06	154,121,689.68	96,913,990.44	57,207,699.24
Jun 4 2023	167,385,054.56	-12,673,808.19	154,711,246.37	97,503,547.12	57,207,699.25
Jul 4 2023	167,304,039.37	-12,003,236.33	155,300,803.04	98,093,103.79	57,207,699.25
Aug 4 2023	167,223,024.18	-11,332,664.47	155,890,359.71	98,682,660.47	57,207,699.24
Sep 4 2023	167,142,009.00	-10,662,092.61	156,479,916.39	99,272,217.14	57,207,699.25
Oct 4 2023	167,060,993.81	-9,991,520.74	157,069,473.07	99,861,773.82	57,207,699.25
Nov 4 2023	166,979,978.63	-9,320,948.88	157,659,029.75	100,451,330.50	57,207,699.25
Dec 4 2023	166,898,963.44	-8,650,377.02	158,248,586.42	101,040,887.17	57,207,699.25

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TERMINATION VALUES AND EQUITY PORTION OF TERMINATION VALUES**

<u>Termination Date</u>	<u>Gross Termination Value</u>	<u>Prorata Rent + Prepaid/Deferred Rent Balance</u>	<u>Termination Value</u>	<u>Debt Portion of Termination Value</u>	<u>Equity Portion of Termination Value</u>
Apr 4 2019	170,865,484.39	-14,014,951.92	156,850,532.47	99,642,833.23	57,207,699.24
May 4 2019	170,804,779.57	-13,344,380.06	157,460,399.51	100,252,700.27	57,207,699.24
Jun 4 2019	170,744,074.75	-12,673,808.19	158,070,266.56	100,862,567.31	57,207,699.25
Jul 4 2019	170,683,369.93	-12,003,236.33	158,680,133.60	101,472,434.36	57,207,699.24
Aug 4 2019	170,622,665.11	-11,332,664.47	159,290,000.64	102,082,301.40	57,207,699.24
Sep 4 2019	170,561,960.29	-10,662,092.61	159,899,867.68	102,692,168.44	57,207,699.24
Oct 4 2019	170,501,255.47	-9,991,520.74	160,509,734.73	103,302,035.48	57,207,699.25
Nov 4 2019	170,440,550.66	-9,320,948.88	161,119,601.78	103,911,902.53	57,207,699.25
Dec 4 2019	170,379,845.84	-8,650,377.02	161,729,468.82	104,521,769.57	57,207,699.25
Jan 4 2020	170,319,141.02	-7,979,805.16	162,339,335.86	105,131,636.61	57,207,699.25
Feb 4 2020	170,253,894.25	-15,356,095.64	154,897,798.61	97,690,099.36	57,207,699.25
Mar 4 2020	170,188,647.49	-14,685,523.78	155,503,123.71	98,295,424.46	57,207,699.25
Apr 4 2020	170,123,400.72	-14,014,951.92	156,108,448.80	98,900,749.56	57,207,699.24
May 4 2020	170,058,153.95	-13,344,380.06	156,713,773.89	99,506,074.65	57,207,699.24
Jun 4 2020	169,992,907.19	-12,673,808.19	157,319,099.00	100,111,399.75	57,207,699.25
Jul 4 2020	169,927,660.42	-12,003,236.33	157,924,424.09	100,716,724.85	57,207,699.24
Aug 4 2020	169,862,413.66	-11,332,664.47	158,529,749.19	101,322,049.94	57,207,699.25
Sep 4 2020	169,797,166.89	-10,662,092.61	159,135,074.28	101,927,375.04	57,207,699.24
Oct 4 2020	169,731,920.13	-9,991,520.74	159,740,399.39	102,532,700.14	57,207,699.25
Nov 4 2020	169,666,673.36	-9,320,948.88	160,345,724.48	103,138,025.23	57,207,699.25
Dec 4 2020	169,601,426.60	-8,650,377.02	160,951,049.58	103,743,350.33	57,207,699.25
Jan 4 2021	169,536,179.83	-7,979,805.16	161,556,374.67	104,348,675.43	57,207,699.24
Feb 4 2021	169,466,051.29	-15,356,095.64	154,109,955.65	96,902,256.40	57,207,699.25
Mar 4 2021	169,395,922.75	-14,685,523.78	154,710,398.97	97,502,699.72	57,207,699.25
Apr 4 2021	169,325,794.21	-14,014,951.92	155,310,842.29	98,103,143.05	57,207,699.24
May 4 2021	169,255,665.67	-13,344,380.06	155,911,285.61	98,703,586.37	57,207,699.24
Jun 4 2021	169,185,537.13	-12,673,808.19	156,511,728.94	99,304,029.69	57,207,699.25
Jul 4 2021	169,115,408.59	-12,003,236.33	157,112,172.26	99,904,473.01	57,207,699.25
Aug 4 2021	169,045,280.05	-11,332,664.47	157,712,615.58	100,504,916.33	57,207,699.25
Sep 4 2021	168,975,151.51	-10,662,092.61	158,313,058.90	101,105,359.65	57,207,699.25
Oct 4 2021	168,905,022.96	-9,991,520.74	158,913,502.22	101,705,802.97	57,207,699.25
Nov 4 2021	168,834,894.42	-9,320,948.88	159,513,945.54	102,306,246.30	57,207,699.24
Dec 4 2021	168,764,765.88	-8,650,377.02	160,114,388.86	102,906,689.62	57,207,699.24
Jan 4 2022	168,694,637.34	-7,979,805.16	160,714,832.18	103,507,132.94	57,207,699.24
Feb 4 2022	168,619,261.77	-15,356,095.64	153,263,166.13	96,055,466.88	57,207,699.25
Mar 4 2022	168,543,886.20	-14,685,523.78	153,858,362.42	96,650,663.17	57,207,699.25
Apr 4 2022	168,468,510.63	-14,014,951.92	154,453,558.71	97,245,859.46	57,207,699.25
May 4 2022	168,393,135.06	-13,344,380.06	155,048,755.00	97,841,055.76	57,207,699.24
Jun 4 2022	168,317,759.49	-12,673,808.19	155,643,951.30	98,436,252.05	57,207,699.25
Jul 4 2022	168,242,383.91	-12,003,236.33	156,239,147.58	99,031,448.34	57,207,699.24
Aug 4 2022	168,167,008.34	-11,332,664.47	156,834,343.87	99,626,644.63	57,207,699.24
Sep 4 2022	168,091,632.77	-10,662,092.61	157,429,540.16	100,221,840.92	57,207,699.24
Oct 4 2022	168,016,257.20	-9,991,520.74	158,024,736.46	100,817,037.21	57,207,699.25
Nov 4 2022	167,940,881.63	-9,320,948.88	158,619,932.75	101,412,233.50	57,207,699.25
Dec 4 2022	167,865,506.06	-8,650,377.02	159,215,129.04	102,007,429.79	57,207,699.25
Jan 4 2023	167,790,130.49	-7,979,805.16	159,810,325.33	102,602,626.08	57,207,699.25
Feb 4 2023	167,709,115.30	-15,356,095.64	152,353,019.66	95,145,320.41	57,207,699.25
Mar 4 2023	167,628,100.11	-14,685,523.78	152,942,576.33	95,734,877.09	57,207,699.24
Apr 4 2023	167,547,084.93	-14,014,951.92	153,532,133.01	96,324,433.76	57,207,699.25
May 4 2023	167,466,069.74	-13,344,380.06	154,121,689.68	96,913,990.44	57,207,699.24
Jun 4 2023	167,385,054.56	-12,673,808.19	154,711,246.37	97,503,547.12	57,207,699.25
Jul 4 2023	167,304,039.37	-12,003,236.33	155,300,803.04	98,093,103.79	57,207,699.25
Aug 4 2023	167,223,024.18	-11,332,664.47	155,890,359.71	98,682,660.47	57,207,699.24
Sep 4 2023	167,142,009.00	-10,662,092.61	156,479,916.39	99,272,217.14	57,207,699.25
Oct 4 2023	167,060,993.81	-9,991,520.74	157,069,473.07	99,861,773.82	57,207,699.25
Nov 4 2023	166,979,978.63	-9,320,948.88	157,659,029.75	100,451,330.50	57,207,699.25
Dec 4 2023	166,898,963.44	-8,650,377.02	158,248,586.42	101,040,887.17	57,207,699.25

FBR-1
TERMINATION VALUES AND EQUITY PORTION OF TERMINATION VALUES

<u>Termination Date</u>	<u>Gross Termination Value</u>	<u>Prorata Rent + Prepaid/Deferred Rent Balance</u>	<u>Termination Value</u>	<u>Debt Portion of Termination Value</u>	<u>Equity Portion of Termination Value</u>
Jan 4 2024	166,817,948.25	-7,979,805.16	158,838,143.09	101,630,443.85	57,207,699.24
Feb 4 2024	166,730,871.50	-15,356,095.64	151,374,775.86	94,167,076.61	57,207,699.25
Mar 4 2024	166,643,794.74	-14,685,523.78	151,958,270.96	94,750,571.71	57,207,699.25
Apr 4 2024	166,556,717.98	-14,014,951.92	152,541,766.06	95,334,066.82	57,207,699.24
May 4 2024	166,469,641.22	-13,344,380.06	153,125,261.16	95,917,561.92	57,207,699.24
Jun 4 2024	166,382,564.47	-12,673,808.19	153,708,756.28	96,501,057.03	57,207,699.25
Jul 4 2024	166,295,487.71	-12,003,236.33	154,292,251.38	97,084,552.13	57,207,699.25
Aug 4 2024	166,208,410.95	-11,332,664.47	154,875,746.48	97,668,047.24	57,207,699.24
Sep 4 2024	166,121,334.19	-10,662,092.61	155,459,241.58	98,251,542.34	57,207,699.24
Oct 4 2024	166,034,257.44	-9,991,520.74	156,042,736.70	98,835,037.45	57,207,699.25
Nov 4 2024	165,947,180.68	-9,320,948.88	156,626,231.80	99,418,532.55	57,207,699.25
Dec 4 2024	165,860,103.92	-8,650,377.02	157,209,726.90	100,002,027.66	57,207,699.24
Jan 4 2025	165,773,027.16	-7,979,805.16	157,793,222.00	100,585,522.76	57,207,699.24
Feb 4 2025	165,686,829.36	-14,170,204.16	151,516,625.20	94,308,925.95	57,207,699.25
Mar 4 2025	165,600,631.55	-13,499,632.30	152,100,999.25	94,893,300.01	57,207,699.24
Apr 4 2025	165,514,433.75	-12,829,060.44	152,685,373.31	95,477,674.07	57,207,699.24
May 4 2025	165,428,235.95	-12,158,488.57	153,269,747.38	96,062,048.13	57,207,699.25
Jun 4 2025	165,342,038.14	-11,487,916.71	153,854,121.43	96,646,422.18	57,207,699.25
Jul 4 2025	165,255,840.34	-10,817,344.85	154,438,495.49	97,230,796.24	57,207,699.25
Aug 4 2025	165,169,642.53	-10,146,772.99	155,022,869.54	97,815,170.30	57,207,699.24
Sep 4 2025	165,083,444.73	-9,476,201.13	155,607,243.60	98,399,544.35	57,207,699.25
Oct 4 2025	164,997,246.92	-8,805,629.26	156,191,617.66	98,983,918.41	57,207,699.25
Nov 4 2025	164,911,049.12	-8,135,057.40	156,775,991.72	99,568,292.47	57,207,699.25
Dec 4 2025	164,824,851.31	-7,464,485.54	157,360,365.77	100,152,666.53	57,207,699.24
Jan 4 2026	164,738,653.51	-6,793,913.68	157,944,739.83	100,737,040.58	57,207,699.25
Feb 4 2026	164,652,455.71	-6,123,341.82	158,528,111.89	101,321,414.64	57,207,699.25
Mar 4 2026	164,566,257.91	-5,452,770.00	159,111,487.91	101,905,788.70	57,207,699.25
Apr 4 2026	164,480,060.11	-4,782,198.18	159,694,862.23	102,490,162.76	57,207,699.24
May 4 2026	164,393,862.31	-4,111,626.36	160,278,236.55	103,074,536.82	57,207,699.25
Jun 4 2026	164,307,664.51	-3,441,054.54	160,861,611.01	103,658,910.88	57,207,699.25
Jul 4 2026	164,221,466.71	-2,770,482.72	161,445,985.47	104,243,284.94	57,207,699.25
Aug 4 2026	164,135,268.91	-2,100,000.90	162,030,360.01	104,827,659.00	57,207,699.25
Sep 4 2026	164,049,071.11	-1,429,429.08	162,614,734.55	105,412,033.06	57,207,699.24
Oct 4 2026	163,962,873.31	-758,857.26	163,200,017.05	105,996,407.12	57,207,699.24
Nov 4 2026	163,876,675.51	-93,285.44	163,785,391.59	106,580,781.18	57,207,699.24
Dec 4 2026	163,790,477.71	59,286.38	164,370,766.13	107,165,155.24	57,207,699.24
Jan 4 2027	163,704,279.91	0.00	164,956,140.67	107,749,529.30	55,818,424.25
Feb 4 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25
Mar 4 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25
Apr 4 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25
Apr 15 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25
May 15 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25 *
Jun 15 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25 *
Jul 15 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25 *
Aug 15 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25 *
Sep 15 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25 *
Oct 15 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25 *
Nov 15 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25 *
Dec 15 2027	55,818,424.25	0.00	55,818,424.25	0.00	55,818,424.25 *

* Equity Portion of Termination Values from and after 15 April 2027 shall be reduced by the amount of the installment of the purchase option price paid on each of the 15th of April, June, September and December 2027.

TERMS AND CONDITIONS OF SERVICE CONTRACT

The Service Contract shall contain the following terms and conditions:

(1) Terms for the delivery to the Service Purchaser of and payment by the Service Purchaser for electricity to be produced by the Facility in accordance with the Power Load Profile applicable thereto.

(2) The term of the Service Contract shall commence on the Expiration Date and end not later than the Service Contract Expiration Date.

(3) The Capacity Charges, Fixed Energy Charges and Energy Charges (collectively, the "Service Fees") shall be paid by the Service Purchaser if and to the extent, but only if and to the extent, the Owner Trust makes power available to the Service Purchaser in accordance with the schedule of services set forth in the Service Contract and if such share is not available for any reason, including Uncontrollable Forces, such obligations shall be reduced on a basis to be negotiated with the Service Purchaser.

(4) If the Service Purchaser chooses not to use all of its share of Required Capacity, then the Service Purchaser shall nevertheless be required to pay the Capacity Charges and the Fixed Energy Charges, but the Energy Charges will be lowered to reflect such reduced usage.

(5) The Owner Trust shall be permitted to produce and sell Energy to third parties up to an amount of its Entitlement Share of Available Capacity (x) to the extent that such Energy is not required to be made available to the Service Purchaser and (y) to the extent that the Service Purchaser chooses not to take all of the Energy available to it.

(6) The Service Purchaser shall be permitted to cancel the Service Contract for the "consistent failure" of the Owner Trust to meet its obligations under the Service Contract (it being understood that "consistent failure" shall be deemed to mean the failure by the Owner Trust to make available on average at least 75% of the capacity required to be made available to the Service Purchaser under the relevant Service Contract for a period of 1 year).

(7) The Owner Trust shall be allowed to increase the Capacity Charges, Fixed Energy Charges and/or Energy Charges payable by the Service Purchaser to reflect increases in the price of fuel, the cost of modifications or any other items customarily the subject of a capacity charge and/or energy charge escalator in the utility industry.

(8) The Service Purchaser must provide Service Contract Credit Support if the credit rating of its unsecured long-term debt obligations (or such obligations of any Person that guarantees the obligations of the Service Purchaser under the Service Contract) falls below AA- by S&P or Aa3 by Moody's.

(9) In the event that the Service Purchaser defaults under the Service Contract, the Owner Trust shall have the right to terminate the Service Contract and collect a Liquidated Damage Amount, which shall be an amount from time to time during the term of the Service Contract necessary to allow the Owner Trust to repay the Replacement Lender in full and allow the Owner Participant to recover its unrecovered investment at its Net Economic Return.

(10) Other terms and conditions as may be necessary to ensure that such Service Contract qualifies as a service contract under Section 7701(e)(1) of the Code.

(11) Such Service Contract shall otherwise contain commercially reasonable and customary terms.

SCHEDULE 3-B

FBR-1
CAPACITY CHARGES

<u>Payment Date</u>	<u>Arrears Capacity Charge</u>	<u>Equity Portion of Capacity Charge</u>
Jan 4 2028	20,489,372.97	4,692,206.97
Jan 4 2029	20,489,372.97	7,189,937.42
Jan 4 2030	20,489,372.97	5,453,418.47
Jan 4 2031	20,489,372.97	6,643,947.00
Jan 4 2032	20,489,372.97	6,842,968.29
Jan 4 2033	20,489,372.97	7,051,510.76
Jan 4 2034	20,489,372.97	8,437,197.28
Jan 4 2035	20,489,372.97	7,450,172.22
Jan 4 2036	20,489,372.97	6,403,510.41
Jan 4 2037	20,489,372.97	4,129,948.15
Jan 4 2038	20,489,372.97	2,626,050.37
Jan 4 2039	20,489,372.97	9,931,189.36
Dec 4 2039	18,781,925.22	18,781,925.22

FBR-1
LIQUIDATED DAMAGE AMOUNTS FOR SERVICE CONTRACT

<u>Termination Date</u>	<u>Liquidated Damage Amount</u>	<u>Debt Portion of Liquidated Damage Amount</u>	<u>Equity Portion of Liquidated Damage Amount</u>
Oct 4 2030	166,054,033.33	92,446,986.84	73,607,046.49
Nov 4 2030	166,867,302.62	93,007,285.26	73,860,017.36
Dec 4 2030	167,682,548.82	93,567,583.69	74,114,965.14
Jan 4 2031	168,514,193.16	94,127,882.11	74,386,311.05
Feb 4 2031	148,733,052.80	80,797,100.54	67,935,952.26
Mar 4 2031	149,442,798.25	81,311,744.94	68,131,053.32
Apr 4 2031	150,154,068.37	81,826,389.33	68,327,679.04
May 4 2031	150,881,857.59	82,341,033.73	68,540,823.86
Jun 4 2031	151,611,312.49	82,855,678.13	68,755,634.36
Jul 4 2031	152,357,428.59	83,370,322.52	68,987,106.07
Aug 4 2031	153,105,353.59	83,884,966.92	69,220,386.67
Sep 4 2031	153,855,101.61	84,399,611.31	69,455,490.30
Oct 4 2031	154,621,669.44	84,914,255.71	69,707,413.73
Nov 4 2031	155,390,205.98	85,428,900.11	69,961,305.87
Dec 4 2031	156,160,726.63	85,943,544.50	70,217,182.13
Jan 4 2032	156,948,229.41	86,458,188.90	70,490,040.51
Feb 4 2032	137,118,330.40	73,278,538.46	63,839,791.94
Mar 4 2032	137,779,310.42	73,745,292.70	64,034,017.72
Apr 4 2032	138,441,808.26	74,212,046.94	64,229,761.33
May 4 2032	139,121,422.64	74,678,801.18	64,442,621.46
Jun 4 2032	139,802,700.47	75,145,555.42	64,657,145.05
Jul 4 2032	140,501,241.58	75,612,309.65	64,888,931.93
Aug 4 2032	141,201,594.05	76,079,063.89	65,122,530.16
Sep 4 2032	141,903,772.04	76,545,818.13	65,357,953.90
Oct 4 2032	142,623,376.64	77,012,572.37	65,610,804.27
Nov 4 2032	143,344,957.21	77,479,326.61	65,865,630.60
Dec 4 2032	144,068,529.18	77,946,080.85	66,122,448.33
Jan 4 2033	144,809,694.96	78,412,835.09	66,396,859.87
Feb 4 2033	124,928,616.74	65,391,489.85	59,537,126.89
Mar 4 2033	125,538,410.19	65,808,006.83	59,730,403.37
Apr 4 2033	126,149,714.05	66,224,523.80	59,925,190.25
May 4 2033	126,778,760.90	66,641,040.78	60,137,720.12
Jun 4 2033	127,409,468.62	67,057,557.75	60,351,910.87
Jul 4 2033	128,058,070.96	67,474,074.72	60,583,996.24
Aug 4 2033	128,708,487.00	67,890,591.70	60,817,895.30
Sep 4 2033	129,360,730.90	68,307,108.67	61,053,622.23
Oct 4 2033	130,031,037.73	68,723,625.65	61,307,412.09
Nov 4 2033	130,703,327.87	69,140,142.62	61,563,185.25
Dec 4 2033	131,377,616.81	69,556,659.59	61,820,957.21
Jan 4 2034	132,070,140.95	69,973,176.57	62,096,964.38
Feb 4 2034	112,128,792.20	58,292,298.91	53,836,493.29
Mar 4 2034	112,678,197.49	58,663,596.95	54,014,600.54
Apr 4 2034	113,228,994.64	59,034,894.99	54,194,099.65
May 4 2034	113,797,986.68	59,406,193.03	54,391,793.65
Jun 4 2034	114,368,523.65	59,777,491.07	54,591,032.59

FBR-1
LIQUIDATED DAMAGE AMOUNTS FOR SERVICE CONTRACT

<u>Termination Date</u>	<u>Liquidated Damage Amount</u>	<u>Debt Portion of Liquidated Damage Amount</u>	<u>Equity Portion of Liquidated Damage Amount</u>
Jul 4 2034	114,957,409.77	60,148,789.11	54,808,620.67
Aug 4 2034	115,547,996.29	60,520,087.15	55,027,909.14
Sep 4 2034	116,140,296.49	60,891,385.18	55,248,911.31
Oct 4 2034	116,751,115.91	61,262,683.22	55,488,432.69
Nov 4 2034	117,363,807.14	61,633,981.26	55,729,825.88
Dec 4 2034	117,978,384.80	62,005,279.30	55,973,105.49
Jan 4 2035	118,611,655.76	62,376,577.34	56,235,078.42
Feb 4 2035	98,613,005.15	49,653,649.97	48,959,355.18
Mar 4 2035	99,105,090.79	49,969,923.36	49,135,167.43
Apr 4 2035	99,598,550.36	50,286,196.75	49,312,353.61
May 4 2035	100,110,880.33	50,602,470.14	49,508,410.19
Jun 4 2035	100,624,742.43	50,918,743.53	49,705,998.91
Jul 4 2035	101,157,634.38	51,235,016.91	49,922,617.47
Aug 4 2035	101,692,219.15	51,551,290.30	50,140,928.85
Sep 4 2035	102,228,509.97	51,867,563.69	50,360,946.28
Oct 4 2035	102,784,005.90	52,183,837.08	50,600,168.82
Nov 4 2035	103,341,371.30	52,500,110.46	50,841,260.84
Dec 4 2035	103,900,620.78	52,816,383.85	51,084,236.93
Jan 4 2036	104,479,254.79	53,132,657.24	51,346,597.55
Feb 4 2036	84,427,611.63	39,297,101.09	45,130,510.54
Mar 4 2036	84,866,806.12	39,547,407.51	45,319,398.61
Apr 4 2036	85,307,476.72	39,797,713.93	45,509,762.79
May 4 2036	85,767,952.31	40,048,020.35	45,719,931.96
Jun 4 2036	86,230,070.32	40,298,326.77	45,931,743.56
Jul 4 2036	86,712,160.93	40,548,633.19	46,163,527.75
Aug 4 2036	87,196,062.88	40,798,939.60	46,397,123.27
Sep 4 2036	87,681,790.31	41,049,246.02	46,632,544.29
Oct 4 2036	88,187,674.85	41,299,552.44	46,888,122.41
Nov 4 2036	88,695,556.66	41,549,858.86	47,145,697.80
Dec 4 2036	89,205,451.37	41,800,165.28	47,405,286.09
Jan 4 2037	89,735,692.03	42,050,471.70	47,685,220.33
Feb 4 2037	69,643,478.22	25,855,737.31	43,787,740.91
Mar 4 2037	70,042,454.07	26,020,427.76	44,022,026.32
Apr 4 2037	70,443,260.81	26,185,118.20	44,258,142.61
May 4 2037	70,865,308.81	26,349,808.64	44,515,500.16
Jun 4 2037	71,289,368.00	26,514,499.09	44,774,868.91
Jul 4 2037	71,734,850.16	26,679,189.53	45,055,660.63
Aug 4 2037	72,182,526.65	26,843,879.98	45,338,646.67
Sep 4 2037	72,632,414.60	27,008,570.42	45,623,844.18
Oct 4 2037	73,103,927.38	27,173,260.86	45,930,666.51
Nov 4 2037	73,577,837.89	27,337,951.31	46,239,886.59
Dec 4 2037	74,054,164.89	27,502,641.75	46,551,523.14
Jan 4 2038	74,552,323.33	27,667,332.19	46,884,991.14
Feb 4 2038	54,430,299.93	9,866,857.42	44,563,442.51
Mar 4 2038	54,800,029.11	9,929,705.26	44,870,323.86

FBR-1
LIQUIDATED DAMAGE AMOUNTS FOR SERVICE CONTRACT

<u>Termination Date</u>	<u>Liquidated Damage Amount</u>	<u>Debt Portion of Liquidated Damage Amount</u>	<u>Equity Portion of Liquidated Damage Amount</u>
Apr 4 2038	55,172,156.50	9,992,553.09	45,179,603.41
May 4 2038	55,567,380.84	10,055,400.93	45,511,979.91
Jun 4 2038	55,965,202.63	10,118,248.76	45,846,953.86
Jul 4 2038	56,386,322.16	10,181,096.60	46,205,225.56
Aug 4 2038	56,810,241.51	10,243,944.43	46,566,297.07
Sep 4 2038	57,236,982.54	10,306,792.27	46,930,190.27
Oct 4 2038	57,687,247.31	10,369,640.11	47,317,607.21
Nov 4 2038	58,140,539.66	10,432,487.94	47,708,051.72
Dec 4 2038	58,596,883.24	10,495,335.78	48,101,547.46
Jan 4 2039	59,076,981.90	10,558,183.61	48,518,798.29
Feb 4 2039	38,888,720.73	0.00	38,888,720.73
Mar 4 2039	39,192,185.64	0.00	39,192,185.64
Apr 4 2039	39,498,022.05	0.00	39,498,022.05
May 4 2039	39,851,401.02	0.00	39,851,401.02
Jun 4 2039	40,207,541.55	0.00	40,207,541.55
Jul 4 2039	40,611,617.74	0.00	40,611,617.74
Aug 4 2039	41,018,851.68	0.00	41,018,851.68
Sep 4 2039	41,429,268.06	0.00	41,429,268.06
Oct 4 2039	41,888,044.25	0.00	41,888,044.25
Nov 4 2039	42,350,405.67	0.00	42,350,405.67
Dec 4 2039	42,816,380.33	0.00	42,816,380.33

**SURETY BOND
(FBR-1)**

Ambac Assurance Corporation
One State Street Plaza
New York, New York 10004
Telephone: (212) 668-0340

Effective Date: April 18, 2000

Policy No.: SF0326BE

Ambac Assurance Corporation (together with its successors and permitted assigns, "Ambac"), in consideration of the payment of the premium due on the date hereof, receipt of which is hereby acknowledged, and subject to the terms of this Surety Bond (FBR-1) (this "Surety Bond"), hereby unconditionally and irrevocably guarantees to FBR-1 OP Statutory Trust (together with its successors and assigns, the "Beneficiary"), the due and punctual payment by Ambac Credit Products, LLC (together with its successors and permitted assigns "ACP") or any entity substituted for ACP pursuant to paragraph 5(a)(i)(A) of the Credit Swap Transaction Confirmation referred to below (ACP or such entity, together with ACP's and such entity's successors or permitted assigns, as the case may be, the "Swap Counterparty") of any and all amounts (exclusive of the Lender A Amount and Lender B Amount (as defined in the Swap Agreement) specified as payable by the Swap Counterparty to the Beneficiary under the terms of the ISDA Master Agreement (Multicurrency-Cross Border), the Schedule to such ISDA Master Agreement, and the Credit Swap Transaction Confirmation relating to such ISDA Master Agreement, in each case dated April 18, 2000 (collectively, as amended and modified, the "Swap Agreement") by and between the Swap Counterparty and the Beneficiary, including any unpaid interest specified as payable pursuant to the Swap Agreement (collectively, the "Covered Obligations"). The amount payable with respect to the Covered Obligations hereunder for any particular date shall not exceed the Surety Bond Coverage (as herein defined) as of the date of the Demand for Payment (as hereinafter defined), plus interest as set forth in paragraph 1 hereof. Capitalized terms used herein but not defined herein shall have the meanings given such terms in the Swap Agreement and in Appendix A to the Participation Agreement, as such agreement is defined in the Swap Agreement. The "General Provisions" set forth in such Appendix A shall also apply to this Surety Bond.

1. Upon receipt by Ambac of a demand for payment in the form attached hereto as Attachment 1, with all blank spaces for variable information therein completed, and duly executed by the Beneficiary (a "Demand for Payment"), Ambac will pay in immediately available funds to the Beneficiary, on the Surety Bond Payment, the amount set forth in the Demand for Payment, to the account at the place of payment as set forth in such Demand for Payment (the "Claimed Amount"). Ambac shall pay interest, on demand, at the higher of the Equity Rate (as defined in the Swap Agreement) or the Overdue Rate on any Claimed Amount and (to the extent permitted by law) on accrued but unpaid interest thereon hereunder, from and after the date such amounts are due and payable hereunder through the date such amounts are paid in full.

2. A Demand for Payment hereunder may be personally delivered or made by telecopy of the executed Demand for Payment at the "Address for Notice" to Ambac set forth in paragraph 8 hereof. Any Demand for Payment so received by Ambac after 2:00 p.m. New York City time on any Business Day or on any day that is not a Business Day shall be deemed to have been received by Ambac prior to 2:00 p.m. New York City time on the next succeeding Business Day. As used herein, the term "Business Day" shall mean any day other than a Saturday, a Sunday or any day on which banking institutions in New York, New York are authorized or required by law to be closed. If a Demand for Payment made hereunder is not, in any instance, effected in accordance with the terms and conditions of this Surety Bond, Ambac shall give notice to the Beneficiary, as promptly as reasonably practicable, that such Demand for Payment was not effected in accordance with the terms and conditions of this Surety Bond and briefly state the reason(s) therefor. Upon being notified that such Demand for Payment was not effected in accordance with the terms and conditions of this Surety Bond, the Beneficiary may attempt to correct any such nonconforming Demand for Payment and to deliver a conforming Demand for Payment.

3. Each Claimed Amount payable by Ambac under this Surety Bond shall be limited to the Surety Bond Coverage as of the date of the Demand for Payment plus interest amounts payable as set forth in paragraph 1 hereof.

4. Any service of process on Ambac may be made to Ambac at the office of the General Counsel of Ambac at Ambac's "Address for Notice" set forth in paragraph 8 hereof, and such service of process shall be valid and binding as to Ambac. The General Counsel's office will act as agent for the acceptance of service of process on Ambac.

5. This Surety Bond is irrevocable and noncancelable for any reason. Subject to paragraph 6 below, this Surety Bond and the obligations of Ambac hereunder shall terminate on the earlier of (i) twenty (20) days after the Termination Date (as defined in the Swap Agreement) so long as Ambac is not in default with respect to its obligations hereunder and (ii) receipt by Ambac of written notice from the Beneficiary stating that Ambac is released from its obligations under this Surety Bond.

6. Notwithstanding any other provisions hereof, if the payment of any amount in respect of the Covered Obligations (including the payment of any amount in respect of (i) the Equity Portion of Termination Value, (ii) any payment of the Equity Portion of Basic Rent to the extent an amount equal thereto is included in the Covered Obligations and (iii) any sale of the Swap Counterparty's obligations under the Swap Agreement and Ambac's obligations hereunder pursuant to the paragraph captioned "Term Out Options" in Section 3(a) of the Swap Agreement but only, in the case of this subclause (ii), if such obligations have been reassigned to the Beneficiary) is voided or avoided (an "Avoidance Event") under any Insolvency Proceedings involving the Swap Counterparty, the Facility Lessee or any other Person, and, as a result of such Avoidance Event, the Beneficiary (or any permitted assignee or distributee thereof or any other Person) is required to return or turn over such voided or avoided payment, or any portion of such voided or avoided payment to the Swap Counterparty or any other Person (an "Avoided Payment"), Ambac will pay the amount of the Avoided Payment out of the funds of Ambac when due to be paid pursuant to the Order (as defined below), but in any event no earlier than the second Business Day following receipt by Ambac of (i) a certified copy of an order of a court or

other body exercising jurisdiction in such Insolvency Proceeding to the effect that the Beneficiary (or such assignee or distributee or other Person, as the case may be) is required to return or pay over such Avoided Payment because such payments were voided or avoided as a preferential or fraudulent transfer or conveyance or otherwise rescinded, reduced or required to be restored by the Beneficiary (or such assignee or distributee or other Person) (the "Order"), (ii) a certificate by or on behalf of the Beneficiary (or such assignee or distributee or other Person) that the Order has been entered and is not subject to any stay, (iii) an assignment, in form and substance reasonably satisfactory to Ambac, duly executed and delivered by the Beneficiary (and, if applicable, such assignee or distributee or other Person), irrevocably assigning to Ambac all rights and claims of the Beneficiary (and, if applicable, or such assignee or distributee) relating to or arising under the Swap Agreement and the other Operative Documents against the estate of the Swap Counterparty or other Person, as applicable or otherwise with respect to such Avoided Payment and (iv) a Demand for Payment in respect of such Avoided Payments appropriately completed and executed by the Beneficiary. Such payment shall be disbursed to the receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order, and not to the Beneficiary (or such assignee or distributee or other Person) directly, unless and only to the extent the Beneficiary (or such assignee or distributee or other Person) has made a payment of the Avoided Payment to the court or such receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order, in which case Ambac will pay the Beneficiary (or such assignee or distributee or other Person), subject to the delivery of (a) the items referred to in clauses (i), (ii), (iii) and (iv) above to Ambac and (b) evidence satisfactory to Ambac that payment has been made to such court or receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order. "Insolvency Proceeding" means the commencement, after the date hereof, of any voluntary or involuntary bankruptcy, insolvency, readjustment of debt, reorganization, marshalling of assets and liabilities or similar proceedings by or against the Swap Counterparty or any other Person, or the commencement, after the date hereof, of any voluntary or involuntary proceedings by or against the Swap Counterparty or any other Person for the winding up or the liquidation of its affairs, or the consent after the date hereof to the appointment of a trustee, conservator, receiver or liquidator in any voluntary or involuntary bankruptcy, insolvency, readjustment of debt, reorganization, marshalling of assets and liabilities or proceedings similar to the foregoing relating to the Swap Counterparty or any other Person.

Notwithstanding the foregoing, in no event shall Ambac be obligated to make any payment in respect of any Avoided Payment, which payment, when added to all prior payments (other than payments of interest that are not Avoided Payments) made under this Surety Bond would exceed the Surety Bond Coverage as of the date on which such payment otherwise would be made (after taking into account all prior payments made under this Surety Bond), plus interest amounts payable pursuant to paragraph 1 hereof.

The premium on this Surety Bond is not refundable for any reason, including payment and performance by any Person under the Operative Documents or the termination of the Swap Agreement or any of the other Operative Documents.

7. As used herein, the following capitalized terms shall have the following meanings: the term "Surety Bond Coverage" for any date on which a Demand for Payment shall be made under this Surety Bond means the amount set forth in Column A of Schedule A attached hereto with respect to the Reference Date (as defined in paragraph 2(a) of the Credit Swap

Transaction Confirmation constituting a part of the Swap Agreement), plus any unpaid interest specified as payable under the Swap Agreement, which in each case remains unpaid as of the date on which such Demand for Payment is made, but exclusive of interest amounts payable pursuant to paragraph I hereof; and the term "Surety Bond Payment Date" means, with respect to any Demand for Payment, the Business Day on which a Demand for Payment is received by Ambac.

8. All notices, requests and other communications provided for herein shall be given or made in writing (including, without limitation, by telecopy) delivered to the intended recipient at the "Address for Notices" specified below or, as to Ambac or the Beneficiary, at such other address as shall be designated by such Person in a notice to each other such Person. All such communications shall be deemed to have been duly given when transmitted by telecopier, telex, telegram or when personally delivered or, in the case of a mailed notice or a notice delivered by overnight delivery service, upon receipt, in each case given or addressed as aforesaid. Each "Address for Notice" is as follows:

Ambac

Ambac Assurance Corporation
One State Street Plaza
New York, New York 10004
Attention: General Counsel
Telecopier No.: (212) 344-5297
Confirmation No.: (212) 668-0430

Beneficiary

FBR-1 OP Statutory Trust
c/o State Street Bank and Trust Company of Connecticut, National Association
Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103
Telecopier No.: (860) 244-1897
Telephone No.: (860) 244-1842
Attention: Corporate Trust Administration

9. Notwithstanding any other provisions herein or any Applicable Law to the contrary, Ambac's obligations under this Surety Bond (a) are absolute and unconditional, (b) constitute a guaranty of payment and not a guaranty of collection, (c) constitute a continuing guaranty of all present and future Covered Obligations and all amendments, modifications, supplements, renewals of or extensions to the Covered Obligations, whether such amendments, modifications, supplements, renewals of or extensions are evidenced by new or additional instruments, documents or agreements, and (d) are irrevocable. The obligations of Ambac to make any payment hereunder constitute separate and independent obligations of Ambac and give rise to separate and independent causes of action against Ambac. Ambac specifically agrees that it shall not be necessary, and that Ambac shall not be entitled to require, before or as a condition

of enforcing the liability of Ambac under this Surety Bond or requiring payment or performance of the Covered Obligations by Ambac hereunder, or at anytime thereafter, that any Person: (i) file suit or proceed to obtain or assert a claim for personal judgment against the Swap Counterparty or any other Person that may be liable for any Covered Obligation, (ii) make any effort to obtain payment or performance of any Covered Obligation from the Swap Counterparty or any other Person that may be liable for such Covered Obligation, (iii) foreclose against or seek to realize upon any security now or hereafter existing for such Covered Obligation, (iv) exercise or assert any other right or remedy to which such Person is or may be entitled in connection with any Covered Obligation or any security or other guaranty therefor, or (v) assert or file any claim against the assets of the Swap Counterparty or any other Person liable for any Covered Obligation.

10. THE OBLIGATIONS OF AMBAC UNDER THIS SURETY BOND SHALL NOT BE REDUCED, LIMITED OR TERMINATED, NOR SHALL AMBAC BE DISCHARGED FROM ANY THEREOF, FOR ANY REASON WHATSOEVER (other than the indefeasible payment of the Covered Obligations), including (and whether or not the same shall have occurred or failed to occur once or more than once and whether or not Ambac shall have received notice thereof):

(a) (i) any increase of, (ii) any extension of the time of payment or performance of, (iii) any other amendment or modification of any of the other terms and provisions of, (iv) any release, composition or settlement (whether by way of acceptance of a plan of reorganization or otherwise) of, (v) any subordination (whether present or future or contractual or otherwise) of, or (vi) any discharge, disallowance, reduction, invalidity, illegality, voidness or other unenforceability of, the Covered Obligations; provided, however, in each case that Ambac's obligations to make payments hereunder shall in no event be greater than the Surety Bond Coverage plus interest amounts payable pursuant to paragraph 1 hereof;

(b) (i) any failure to obtain or any release of, (ii) any failure to protect or preserve, (iii) any release, compromise, settlement or extension of the time of payment of any obligations constituting, (iv) any failure to perfect or maintain the perfection or priority of any Lien upon, (v) any subordination (whether present or future, contractual or otherwise) of, or (vi) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of, any Lien or intended Lien upon, any collateral now or hereafter securing the Covered Obligations;

(c) any invalidity or unenforceability of the Swap Agreement or any other Operative Document for any reason whatsoever;

(d) any exercise of, or any election not or failure to exercise, delay in the exercise of, waiver of, or forbearance or other indulgence with respect to, any right, remedy or power available to the Beneficiary, including (i) any election not or failure to exercise any right of set-off, recoupment or counterclaim, (ii) any acceptance of partial payments on the Covered Obligations, and (iii) any election of remedies effected by the Beneficiary, whether or not such election affects the right to obtain a deficiency judgment;

(e) receipt by the Beneficiary or the Owner Participant (and holding thereby) of additional security or guaranties for the Covered Obligations or any part thereof;

(f) any bankruptcy, insolvency, reorganization, arrangement, adjustment, composition, dissolution, liquidation or the like with respect to, or in any manner affecting, the Swap Counterparty, Ambac or any other Person, or any obligation of the Swap Counterparty or any other Person under any Operative Document, or any application of any provision of the Bankruptcy Code that purports to limit the Swap Counterparty's or any other Person's obligations under the Operative Documents, or any application of any provision (including but not limited to Section 365(c)(2)) of the Bankruptcy Code that purports to render any Operative Document unenforceable or reduce any amount payable thereunder;

(g) the rejection or limitation in any Insolvency Proceeding of the Swap Counterparty, Ambac or any other Person of this Surety Bond, the Swap Agreement, any Operative Document, or any other document relating to this Surety Bond or the Swap Agreement or other agreement or instrument referred to herein (nothing herein being a concession that any obligation hereunder or thereunder is property classifiable as an executory obligation);

(h) any limitation of the remedies of the Beneficiary or the Owner Participant under the Swap Agreement or the other Operative Documents, or any limitation of the liability of the Swap Counterparty under the Swap Agreement, which may now or hereafter be imposed by any Applicable Law or any Insolvency Proceeding;

(i) any merger or consolidation of Ambac into or with any other Person, or any transfer, conveyance, sale, lease or other disposition of any or all of the assets of the Swap Counterparty or Ambac to any other Person, or any consent by the Beneficiary or the Owner Participant to any such merger, consolidation, transfer of assets or any other restructuring or termination of the corporate existence of the Swap Counterparty, Ambac or any other Person;

(j) any debt of the Swap Counterparty to any Person, including Ambac;

(k) any claim, set-off, deduction or defense Ambac may have against any of the Swap Counterparty, the Beneficiary, the Owner Participant or the other parties to the Operative Documents, whether hereunder or under the Swap Agreement or the other Operative Documents or independent of or unrelated to the transactions contemplated by the Swap Agreement or the other Operative Documents;

(l) any failure by the Beneficiary to perform its obligations under the Swap Agreement (other than its obligation to deliver a conforming Credit Event Notice as and when required under the Swap Agreement), except the failure to satisfy the requirements of clause (ii)(b) of the paragraph captioned "Actions to be taken on the Settlement Date" in Section 3 of the Swap Agreement, in the event the Beneficiary or the Owner Participant is subject to Insolvency Proceedings (as defined in the Swap Agreement) at the time a Demand for Payment is made hereunder, provided however, that in the event the Swap Counterparty is subject to Insolvency Proceedings (as defined in the Swap Agreement) at the time a Demand for Payment is made hereunder in which the Swap Agreement has been rejected or has not been assumed under Section 365 of the Bankruptcy Code, the preceding exception shall not apply; or

(m) ANY OTHER ACT OR FAILURE TO ACT OR ANY OTHER EVENT OR CIRCUMSTANCE THAT (i) VARIES THE RISK OF AMBAC UNDER THIS SURETY

BOND OR (ii) BUT FOR THE PROVISIONS HEREOF, WOULD, AS A MATTER OF STATUTE OR RULE OF LAW OR EQUITY, OPERATE TO REDUCE, LIMIT OR TERMINATE THE OBLIGATIONS OF AMBAC THEREUNDER OR DISCHARGE AMBAC FROM ANY THEREOF.

11. (a) Ambac waives any defense to, and any set-off, counterclaim and claim of recoupment against, the Covered Obligations that may at any time be available to Ambac, the Swap Counterparty or any other Person.

(b) Ambac agrees, and the Beneficiary by acceptance of this Surety Bond and by submission of any Demand for Payment hereunder agrees, that concurrently upon the payment in full by Ambac of the Deficiency, as defined in such Demand for Payment (up to but not in excess of the Surety Bond Coverage), together with any interest thereon due hereunder, Ambac shall be and is hereby subrogated, but only to the extent of the Claimed Amount and only to the extent that the Claimed Amount is actually paid by Ambac to or on behalf of the Beneficiary pursuant to this Surety Bond, to all of the rights and remedies of the Beneficiary with respect to the Covered Obligations giving rise to such Claimed Amount under the Swap Agreement.

(c) Ambac hereby irrevocably and absolutely waives (i) notice of acceptance of and intention to rely on this Surety Bond, (ii) notice of the incurrence, incidence or renewal of any of the Covered Obligations, (iii) notice of any of the matters referred to in paragraph 10 hereof, and (iv) all other notices that may be required by Applicable Law or otherwise to preserve any rights against Ambac under this Surety Bond, including any notice of default, demand, dishonor, presentment or protest. Ambac assumes the responsibility for being and keeping informed of the financial condition of the Swap Counterparty and of all other circumstances bearing upon the risk of nonpayment of the Covered Obligations which diligent inquiry would reveal, and agrees that the Beneficiary and the Owner Participant shall have no duty beyond its obligations, if any, in the Operative Documents to advise Ambac of information known to it regarding such condition or any such circumstances. It is not and shall not be necessary for the Beneficiary or the Owner Participant to inquire into the powers of the Swap Counterparty or any of its agents acting or purporting to act on behalf thereof, and any Covered Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

(d) Without limiting the requirement that Ambac receive a completed Demand for Payment duly executed by the Beneficiary, Ambac waives any requirement, and any right to require, that any right or power be exercised or any action be taken against the Swap Counterparty or any collateral for the Covered Obligations, and Ambac waives the right to have the property of the Swap Counterparty first applied to the discharge of the Covered Obligations. The Beneficiary may at its election exercise any right or remedy it may have against the Swap Counterparty or any collateral now or hereafter held by such Person, including, without limitation, the right to foreclose upon any such collateral by judicial or nonjudicial sale, without affecting or impairing in any way the liability of Ambac hereunder. Ambac hereby irrevocably and absolutely waives: (i) any defense arising by reason of any disability or other defense of the Swap Counterparty or by reason of the cessation from any cause whatsoever of the liability, either in whole or in part, of the Swap Counterparty to the Beneficiary for the Covered

Obligations, (ii) any defense based on the discharge of the Swap Counterparty by operation of law, notwithstanding any intervention or omission by the Beneficiary or the Owner Participant, (iii) any defense based on or arising out of the absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy of Ambac against the Swap Counterparty or any such collateral, whether resulting from such election by the Beneficiary or otherwise; and (iv) any legal or equitable discharge or defense for any circumstance whatsoever.

(e) Ambac hereby irrevocably and absolutely waives all rights, benefits or defenses under any Applicable Laws which: (i) reduce the obligation of a surety upon the acceptance by a creditor of anything in partial satisfaction of an obligation, (ii) exonerate the surety if by an act of the creditor, without the consent of the surety, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, are in any way suspended or impaired, (iii) exonerate the surety to the extent that the creditor does not proceed against the principal, or pursue any other remedy in the creditor's power which the surety cannot pursue, and which would lighten the surety's burden, and (iv) reduce the guaranteed obligation in proportion to the principal obligation.

(f) AMBAC HEREBY IRREVOCABLY AND ABSOLUTELY WAIVES ALL OTHER RIGHTS, BENEFITS AND DEFENSES UNDER APPLICABLE LAW THAT WOULD, BUT FOR THIS SUBPARAGRAPH (f), BE AVAILABLE TO AMBAC AS A DEFENSE AGAINST OR A REDUCTION OR LIMITATION OF ITS OBLIGATIONS UNDER THIS SURETY BOND.

12. Ambac agrees to pay on demand all fees and out of pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel and the Owner Participant's counsel) in any way relating to the enforcement or protection of the rights of the Beneficiary hereunder; provided, that Ambac shall not be liable for any expenses of the Beneficiary or the Owner Participant if no payment under this Surety Bond is due.

13. Each of the rights and remedies of the Beneficiary under this Surety Bond shall be in addition to all of its other rights and remedies under Applicable Law, and nothing in this Surety Bond shall be construed as limiting any such rights or remedies.

14. Any term, covenant, agreement or condition of this Surety Bond may be amended, and any right under this Surety Bond may be waived, if, but only if, such amendment or waiver is in writing and is signed by the Beneficiary and, in the case of an amendment, by Ambac. No election not to exercise, failure to exercise or delay in exercising any right, nor any course of dealing or performance, shall operate as a waiver of any right of the Beneficiary under the Surety Bond or Applicable Law, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right of the Beneficiary under this Surety Bond or Applicable Law.

15. (a) Ambac may not assign any of its rights or obligations under this Surety Bond without the prior written consent of the Beneficiary, and (b) no assignment of any such obligation shall release Ambac therefrom unless the Beneficiary shall have consented to such

release in a writing specifically referring to the obligation from which Ambac is to be released; provided, however, that Ambac may procure any other surety to reinsure the Surety Bond.

16. THIS SURETY BOND AND ANY BREACH OR DISPUTE WITH RESPECT TO THIS SURETY BOND, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF EXCEPT NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1401.

17. Any provision of this Surety Bond 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 or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by Applicable Law, Ambac hereby irrevocably and absolutely waives any provision of Applicable Law that renders any provision of this Surety Bond prohibited or unenforceable in any respect.

18. All of the provisions of this Surety Bond shall be binding upon Ambac and its successors and assigns and shall inure to the benefit of, and may be enforced by, the Beneficiary and its successors and permitted assigns under the provisions of the Operative Documents.

19. This Surety Bond may be assigned and transferred by the Beneficiary to any successor or permitted assigns under the provisions of the Operative Documents of the Beneficiary upon delivery to Ambac of a certificate of an authorized officer of the transferor Beneficiary and the transferee Beneficiary notifying Ambac of such transfer.

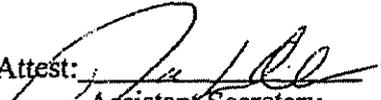
20. Nothing in paragraph 10(k), or in paragraph 11(a) or in paragraph 11(d) or 11(f) of this Surety Bond shall be deemed to prejudice Ambac's right, if any, to assert any claim it may have to seek recovery from the Beneficiary, any distributee or other recipient of assets of the Beneficiary, or the Owner Participant, as the case may be, of amounts paid under this Surety Bond (a "Recovery Claim") solely (i) to the extent the Recovery Claim is based upon an improper or incorrect determination by the Beneficiary (or, if applicable, the Owner Participant) that there exists a basis for the delivery thereof as expressly set forth in paragraphs (a), (b) or (c) of the Demand for Payment or (a "Misdraw") and (ii) to the extent such claim is asserted in a separate action unrelated to any action for enforcement of this Surety Bond or the Covered Obligations or for payment of the Claimed Amount; provided, however, that Ambac shall have no right to assert a Recovery Claim to the extent such claim arises out of or is based upon, or such Covered Obligation is not due as a result of, (x) sovereign immunity, bankruptcy, insolvency, reorganization or liquidation, (y) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of the Covered Obligations, the Operative Documents or any other obligation contained in the Operative Documents or (z) any reason specified in paragraph 10 (other than a Misdraw, subject however to the conditions outlined in subclauses (i) and (ii) above); and provided, further, that (A) nothing in this paragraph 20 shall permit Ambac to set-off or otherwise withhold the amount of any such claim from, or otherwise raise any defense to, its obligation to pay the Claimed Amount in accordance with the terms of this Surety Bond and (B) nothing in this Surety Bond shall limit or constitute a waiver of any claim, setoff,

deduction or defense that Ambac may have against the Beneficiary (or, if applicable, the Owner Participant) based on fraud by the Beneficiary or fraudulent direction of the Beneficiary by the Owner Participant, in the making of a Demand for Payment under this Surety Bond. For the avoidance of doubt, the Deficiency (as defined in Attachment 1 hereto) shall be payable notwithstanding the existence of a circumstance described in clauses (x), (y) or (z) of the preceding sentence (such circumstances, "Excluded Circumstances"), without prejudice to Ambac's rights under this paragraph 20.

21. Nothing in this Surety Bond, or in any other document or agreement, expressed or implied, shall give to any Person, other than the parties hereto and their successors and permitted assigns hereunder, and other than Persons entitled to payment in respect of an Avoided Payment as expressly provided in Section 6 hereof, any benefit or any legal or equitable right, remedy, or claim under this Surety Bond.

22. The insurance provided by this Policy is not covered by the New York Property/Casualty Insurance Security Fund (New York Insurance Code, Article 76).

IN WITNESS WHEREOF, Ambac has caused this Surety Bond to be executed and attested on its behalf this 18th day of April, 2000.

Attest: 
Assistant Secretary

SPECIMEN

AMBAC ASSURANCE CORPORATION

By: 
~~_____~~ First Vice President

FBR - 1
SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
18-Apr-00	25,082,162.92
18-May-00	28,122,073.12
18-Jun-00	28,385,247.58
18-Jul-00	28,643,744.47
4-Aug-00	28,904,035.75
4-Sep-00	29,166,133.90
4-Oct-00	29,423,546.99
4-Nov-00	29,682,746.97
4-Dec-00	29,943,746.21
4-Jan-01	30,200,052.79
4-Feb-01	30,458,138.56
4-Mar-01	30,718,015.86
4-Apr-01	30,979,697.16
4-May-01	31,233,931.79
4-Jun-01	31,489,931.25
4-Jul-01	31,738,444.60
4-Aug-01	31,988,683.04
4-Sep-01	32,240,658.56
4-Oct-01	32,485,120.06
4-Nov-01	32,731,278.51
4-Dec-01	32,979,145.72
4-Jan-02	33,219,470.38
4-Feb-02	33,461,463.30
4-Mar-02	33,705,136.05
4-Apr-02	33,950,500.29
4-May-02	34,188,836.29
4-Jun-02	34,428,826.75
4-Jul-02	34,661,751.66
4-Aug-02	34,896,293.46
4-Sep-02	35,132,463.37
4-Oct-02	35,361,541.22
4-Nov-02	35,592,209.24
4-Dec-02	35,824,478.50
4-Jan-03	36,049,628.61
4-Feb-03	36,276,341.64
4-Mar-03	36,504,628.43
4-Apr-03	36,734,499.92
4-May-03	36,957,715.79
4-Jun-03	37,182,481.17
4-Jul-03	37,400,555.48
4-Aug-03	37,620,143.60
4-Sep-03	37,841,256.02
4-Oct-03	38,055,652.04
4-Nov-03	38,271,536.31
4-Dec-03	38,488,919.19
4-Jan-04	38,699,559.77

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Feb-04	38,911,662.55
4-Mar-04	39,125,237.66
4-Apr-04	39,340,295.36
4-May-04	39,549,026.53
4-Jun-04	39,759,206.66
4-Jul-04	39,963,026.41
4-Aug-04	40,168,261.01
4-Sep-04	40,374,920.28
4-Oct-04	40,575,194.75
4-Nov-04	40,776,859.45
4-Dec-04	40,979,924.05
4-Jan-05	40,481,941.87
4-Feb-05	40,679,961.83
4-Mar-05	40,879,356.35
4-Apr-05	41,080,135.01
4-May-05	41,274,874.43
4-Jun-05	41,470,965.67
4-Jul-05	41,660,985.11
4-Aug-05	41,852,323.61
4-Sep-05	42,044,990.32
4-Oct-05	42,231,561.48
4-Nov-05	42,419,427.74
4-Dec-05	42,608,598.12
4-Jan-06	42,097,010.66
4-Feb-06	42,281,331.89
4-Mar-06	42,466,932.62
4-Apr-06	42,653,821.73
4-May-06	42,834,965.32
4-Jun-06	43,017,366.35
4-Jul-06	43,193,990.73
4-Aug-06	43,371,841.18
4-Sep-06	43,550,926.20
4-Oct-06	43,724,211.55
4-Nov-06	43,898,699.79
4-Dec-06	44,074,399.27
4-Jan-07	44,244,275.56
4-Feb-07	44,415,331.09
4-Mar-07	44,587,574.03
4-Apr-07	44,761,012.62
4-May-07	44,929,023.03
4-Jun-07	45,098,199.71
4-Jul-07	45,261,918.64
4-Aug-07	45,426,774.04
4-Sep-07	45,592,773.81
4-Oct-07	45,753,293.77
4-Nov-07	45,914,928.01

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Dec-07	46,077,684.25
4-Jan-08	46,234,938.17
4-Feb-08	46,393,283.68
4-Mar-08	46,552,728.40
4-Apr-08	46,713,279.91
4-May-08	46,868,381.39
4-Jun-08	47,024,559.55
4-Jul-08	47,175,257.32
4-Aug-08	47,327,001.18
4-Sep-08	47,479,798.39
4-Oct-08	47,627,091.76
4-Nov-08	47,775,407.59
4-Dec-08	47,924,752.98
4-Jan-09	48,068,570.54
4-Feb-09	48,213,386.45
4-Mar-09	48,359,207.61
4-Apr-09	48,506,041.03
4-May-09	48,647,881.44
4-Jun-09	48,790,706.46
4-Jul-09	48,928,510.67
4-Aug-09	49,067,271.46
4-Sep-09	49,206,995.49
4-Oct-09	49,341,677.16
4-Nov-09	49,477,293.75
4-Dec-09	49,613,851.75
4-Jan-10	49,745,345.42
4-Feb-10	49,877,751.88
4-Mar-10	50,011,077.45
4-Apr-10	50,145,328.54
4-May-10	50,274,440.65
4-Jun-10	50,404,449.03
4-Jul-10	50,529,288.98
4-Aug-10	50,654,995.55
4-Sep-10	50,781,574.73
4-Oct-10	50,902,961.67
4-Nov-10	51,025,191.27
4-Dec-10	51,148,269.33
4-Jan-11	51,266,130.87
4-Feb-11	51,384,810.56
4-Mar-11	51,504,314.10
4-Apr-11	51,624,647.18
4-May-11	51,739,676.16
4-Jun-11	51,855,503.65
4-Jul-11	51,965,995.74
4-Aug-11	52,077,254.85
4-Sep-11	52,189,286.28

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Oct-11	52,295,955.97
4-Nov-11	52,403,366.14
4-Dec-11	52,511,521.91
4-Jan-12	52,614,289.04
4-Feb-12	52,717,769.55
4-Mar-12	52,821,968.39
4-Apr-12	52,926,890.54
4-May-12	53,026,429.40
4-Jun-12	53,126,659.23
4-Jul-12	53,221,473.18
4-Aug-12	53,316,945.32
4-Sep-12	53,413,080.17
4-Oct-12	53,503,770.75
4-Nov-12	53,595,090.87
4-Dec-12	53,687,044.89
4-Jan-13	53,773,525.61
4-Feb-13	53,860,606.65
4-Mar-13	53,948,292.17
4-Apr-13	54,036,586.37
4-May-13	54,120,779.75
4-Jun-13	54,205,557.58
4-Jul-13	54,286,210.16
4-Aug-13	54,367,422.59
4-Sep-13	54,449,198.78
4-Oct-13	54,526,828.90
4-Nov-13	54,604,997.89
4-Dec-13	54,683,709.52
4-Jan-14	54,758,253.78
4-Feb-14	54,833,315.51
4-Mar-14	54,908,898.28
4-Apr-14	54,985,005.74
4-May-14	55,056,960.78
4-Jun-14	55,129,415.31
4-Jul-14	55,197,692.07
4-Aug-14	55,266,442.78
4-Sep-14	55,335,670.74
4-Oct-14	55,400,698.53
4-Nov-14	55,466,177.72
4-Dec-14	55,532,111.44
4-Jan-15	55,593,822.13
4-Feb-15	55,655,961.20
4-Mar-15	55,718,531.60
4-Apr-15	55,781,536.36
4-May-15	55,840,333.94
4-Jun-15	55,899,539.69
4-Jul-15	55,954,511.88

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Aug-15	56,009,865.67
4-Sep-15	56,065,603.71
4-Oct-15	56,117,084.14
4-Nov-15	56,168,921.93
4-Dec-15	56,221,119.55
4-Jan-16	56,269,034.99
4-Feb-16	56,317,283.04
4-Mar-16	56,365,866.01
4-Apr-16	56,414,786.23
4-May-16	56,459,440.35
4-Jun-16	56,504,404.45
4-Jul-16	56,545,075.01
4-Aug-16	56,586,027.87
4-Sep-16	56,627,265.02
4-Oct-16	56,664,182.75
4-Nov-16	56,701,356.75
4-Dec-16	56,738,788.80
4-Jan-17	56,771,875.00
4-Feb-17	56,805,190.89
4-Mar-17	56,838,738.04
4-Apr-17	56,872,518.06
4-May-17	56,901,967.89
4-Jun-17	56,931,622.15
4-Jul-17	56,956,917.58
4-Aug-17	56,982,388.59
4-Sep-17	57,008,036.42
4-Oct-17	57,029,297.61
4-Nov-17	57,050,706.38
4-Dec-17	57,072,263.76
4-Jan-18	57,089,406.10
4-Feb-18	57,106,667.45
4-Mar-18	57,124,048.60
4-Apr-18	57,141,550.43
4-May-18	57,154,653.10
4-Jun-18	57,167,846.76
4-Jul-18	57,176,611.36
4-Aug-18	57,185,436.79
4-Sep-18	57,194,323.50
4-Oct-18	57,198,751.28
4-Nov-18	57,203,209.79
4-Dec-18	57,207,699.25
4-Jan-19	57,207,699.25
4-Feb-19	57,207,699.25
4-Mar-19	57,207,699.25
4-Apr-19	57,207,699.24
4-May-19	57,207,699.24

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Jun-19	57,207,699.25
4-Jul-19	57,207,699.24
4-Aug-19	57,207,699.24
4-Sep-19	57,207,699.24
4-Oct-19	57,207,699.25
4-Nov-19	57,207,699.25
4-Dec-19	57,207,699.25
4-Jan-20	57,207,699.25
4-Feb-20	57,207,699.25
4-Mar-20	57,207,699.25
4-Apr-20	57,207,699.24
4-May-20	57,207,699.24
4-Jun-20	57,207,699.25
4-Jul-20	57,207,699.24
4-Aug-20	57,207,699.25
4-Sep-20	57,207,699.24
4-Oct-20	57,207,699.25
4-Nov-20	57,207,699.25
4-Dec-20	57,207,699.25
4-Jan-21	57,207,699.24
4-Feb-21	57,207,699.25
4-Mar-21	57,207,699.25
4-Apr-21	57,207,699.24
4-May-21	57,207,699.24
4-Jun-21	57,207,699.25
4-Jul-21	57,207,699.25
4-Aug-21	57,207,699.25
4-Sep-21	57,207,699.25
4-Oct-21	57,207,699.25
4-Nov-21	57,207,699.24
4-Dec-21	57,207,699.24
4-Jan-22	57,207,699.24
4-Feb-22	57,207,699.25
4-Mar-22	57,207,699.25
4-Apr-22	57,207,699.25
4-May-22	57,207,699.24
4-Jun-22	57,207,699.25
4-Jul-22	57,207,699.24
4-Aug-22	57,207,699.24
4-Sep-22	57,207,699.24
4-Oct-22	57,207,699.25
4-Nov-22	57,207,699.25
4-Dec-22	57,207,699.25
4-Jan-23	57,207,699.25
4-Feb-23	57,207,699.25
4-Mar-23	57,207,699.24

FBR - 1
SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Apr-23	57,207,699.25
4-May-23	57,207,699.24
4-Jun-23	57,207,699.25
4-Jul-23	57,207,699.25
4-Aug-23	57,207,699.24
4-Sep-23	57,207,699.25
4-Oct-23	57,207,699.25
4-Nov-23	57,207,699.25
4-Dec-23	57,207,699.25
4-Jan-24	57,207,699.24
4-Feb-24	57,207,699.25
4-Mar-24	57,207,699.25
4-Apr-24	57,207,699.24
4-May-24	57,207,699.24
4-Jun-24	57,207,699.25
4-Jul-24	57,207,699.25
4-Aug-24	57,207,699.24
4-Sep-24	57,207,699.24
4-Oct-24	57,207,699.25
4-Nov-24	57,207,699.25
4-Dec-24	57,207,699.24
4-Jan-25	57,207,699.24
4-Feb-25	57,207,699.25
4-Mar-25	57,207,699.24
4-Apr-25	57,207,699.24
4-May-25	57,207,699.25
4-Jun-25	57,207,699.25
4-Jul-25	57,207,699.25
4-Aug-25	57,207,699.24
4-Sep-25	57,207,699.25
4-Oct-25	57,207,699.25
4-Nov-25	57,207,699.25
4-Dec-25	57,207,699.24
4-Jan-26	57,207,699.25
4-Feb-26	57,207,699.25
4-Mar-26	57,207,699.25
4-Apr-26	57,207,699.24
4-May-26	57,207,699.25
4-Jun-26	57,207,699.25
4-Jul-26	57,207,699.25
4-Aug-26	57,207,699.25
4-Sep-26	57,207,699.24
4-Oct-26	57,207,699.24
4-Nov-26	57,207,699.24
4-Dec-26	57,207,699.24
4-Jan-27	55,818,424.25

FBR - 1
SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Feb-27	55,818,424.25
4-Mar-27	55,818,424.25
4-Apr-27	55,818,424.25
15-Apr-27	55,818,424.25
15-May-27	55,818,424.25 *
15-Jun-27	55,818,424.25 *
15-Jul-27	55,818,424.25 *
15-Aug-27	55,818,424.25 *
15-Sep-27	55,818,424.25 *
15-Oct-27	55,818,424.25 *
15-Nov-27	55,818,424.25 *
15-Dec-27	55,818,424.25 *

* Amount in Column A from and after 15 April 2027 shall be reduced by amount of any reduction of the Party A Fixed Amount effected under the Qualifying Swap by virtue of payments in respect of the Fixed Purchase Option Price paid on each of the 15th of April, June, September and December 2027.

Attachment 1

Surety Bond (FBR-1) No. SF0326BE

DEMAND FOR PAYMENT

[Date]

Ambac Assurance Corporation
One State Street Plaza
New York, New York 10004
Attention: General Counsel

Reference is made to the Surety Bond (FBR-1) No. SF0326BE (the "Surety Bond") issued by Ambac Assurance Corporation ("Ambac"). The terms which are capitalized herein and not otherwise defined have the meanings specified in the Surety Bond unless the context otherwise requires.

The Beneficiary hereby certifies and agrees that [INDICATE WHICH ALTERNATIVE IS APPLICABLE TO THIS DEMAND FOR PAYMENT]:

[ALT. A – SWAP PAYMENT DEFICIENCY] [YES][NO]:

(a) Payment by the Swap Counterparty to the Beneficiary in an amount equal to \$_____ (the "Amount Due") either (i)(A) was due on or prior to the date hereof pursuant to the Swap Agreement (without regard to any defenses arising as a result of (x) sovereign immunity, bankruptcy, insolvency, reorganization or liquidation, (y) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of the Covered Obligations, the Operative Documents or any other obligation contained in the Operative Documents or (z) any reason specified in paragraph 10 of the Surety Bond (collectively, the "Excluded Circumstances")), (B) any notice or demand, or other action, expressly required by the provisions of the Swap Agreement to be given, made or taken to the Swap Counterparty as a condition to the Amount Due becoming due pursuant to the Swap Agreement was given, made or taken and (C) payment in full of the Amount Due has not been made, or (ii) if an Insolvency Proceeding with respect to the Swap Counterparty or any other Person is pending, is due under the terms of the Swap Agreement or the other Operative Documents or could be or could have been demanded under the Swap Agreement or the other Operative Documents but for the pendency of such Insolvency Proceeding or the existence of an Excluded Circumstance.

(b) \$_____ has been paid to the Beneficiary by the Swap Counterparty with respect to the Amount Due, which amount is \$_____ less than the Amount Due (the "Deficiency").

(c) The Beneficiary has not been paid any of the Deficiency by Ambac or any of the other Ambac Parties.

(d) The Beneficiary hereby requests that payment of the following amount be made under the Surety Bond: \$_____, being the amount of the Deficiency.

(e) The Deficiency shall be paid to the following account of the Beneficiary by bank wire transfer of federal or other immediately available funds in accordance with the terms of the Policy:

Account Name: _____
Bank: _____
Account No.: _____
ABA No.: _____

[ALT. B – AVOIDANCE EVENT] [YES][NO]

(a) An Avoidance Event has occurred, and, as a result of such Avoidance Event, the Beneficiary, or _____ [identify Person], which is its assignee, its distributee or another Person described in Section 6 of the Surety Bond [indicate which], has returned, or is required to return, an Avoided Amount.

(b) The Avoided Amount returned, or required to be returned, is in the amount of \$_____ (the "Avoided Payment"). Enclosed with this Demand for Payment are the items required by Section 6 of the Surety Bond to be delivered to Ambac in connection with the Avoided Payment.

(c) The Beneficiary has not heretofore made a conforming demand under the Policy for the Avoided Payment or any portion thereof, or the Beneficiary has made a Demand for Payment under the Policy for all or a portion of the Avoided Payment but neither the Beneficiary, nor its assignee, its distributee or such other Person has been paid all or any portion of the Avoided Payment by Ambac or any of the other Ambac Parties.

(d) The Beneficiary hereby requests that payment of the following amount be made under the Surety Bond: \$_____, being the amount of the Avoided Payment.

(e) The Avoided Payment shall be paid: [STRIKE ONE OF THE FOLLOWING CLAUSES (i) and (ii)]

(i) in accordance with the Order of the court or other body exercising jurisdiction which has been submitted with this Demand for Payment; or

(ii) to the account listed below by bank wire transfer of federal or other immediately available funds in accordance with the terms of the Surety Bond (the Beneficiary, its assignee or its distributee, or another Person pursuant to Section 6 of the Surety Bond, having paid such amount in accordance with such Order, evidence of such payment being submitted herewith):

Account Name: _____
Bank: _____
Account No.: _____
ABA No.: _____

[THE FOLLOWING IS APPLICABLE TO ALL DEMANDS FOR PAYMENT]

It is expressly understood and agreed that (a) this Demand for Payment is executed and delivered by the Trust Company, not individually or personally but solely as OP Trustee under the OP Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (b) each of the certifications, statements and agreements herein made on the part of the OP Trustee is made and intended not as personal certifications, statements and agreements by the Trust Company, but is made and intended for the purpose of binding only the OP Trust, (c) nothing herein contained shall be construed as creating any liability on the Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by Ambac or by any Person claiming by, through or under Ambac and (d) under no circumstances shall the Trust Company be personally liable for the payment or indebtedness or expenses of the OP Trust or be liable for the breach or failure of any obligation, certification, statement or agreement made or undertaken by the OP Trust under this Demand for Payment.

THE FOLLOWING STATEMENT IS MANDATED BY NEW YORK STATE INSURANCE REGULATIONS (11 NYCRR PART 86):

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.

FBR-1 OP STATUTORY TRUST, as Beneficiary

By: State Street Bank and Trust Company of
Connecticut, National Association, not in
its individual capacity but solely as
OP Trustee,

By: _____
Title:

(Multicurrency—Cross Border)

ISDA®

International Swap Dealers Association, Inc.

MASTER AGREEMENT

(In Relation to FBR-1 Statutory Trust)

dated April 18, 2000

AMBAC CREDIT PRODUCTS, LLC

and

BIG RIVERS ELECTRIC
CORPORATION

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

1. Interpretation

(a) *Definitions.* The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.

(b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purposes of the relevant Transaction.

(c) *Single Agreement.* All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) *General Conditions.*

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) *Change of Account.* Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) *Netting.* If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) *Deduction or Withholding for Tax.*

(i) *Gross-Up.* All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(li) *Liability. If:—*

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X.

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) *Default Interest; Other Amounts.* Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) *Basic Representations.*

(i) *Status.* It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) *Powers.* It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) *No Violation or Conflict.* Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) *Consents.* All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) *Obligations Binding.* Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) *Absence of Certain Events.* No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) *Absence of Litigation.* There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) *Accuracy of Specified Information.* All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) *Payer Tax Representation.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) *Payee Tax Representations.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) *Furnish Specified Information.* It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) *Maintain Authorisations.* It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) *Comply with Laws.* It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) *Tax Agreement.* It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) *Payment of Stamp Tax.* Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated.

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) *Events of Default.* The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) *Failure to Pay or Deliver.* Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) *Breach of Agreement.* Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) *Credit Support Default.*

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) *Misrepresentation.* A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) *Default under Specified Transaction.* The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) *Cross Default.* If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) *Bankruptcy*. The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) *Merger Without Assumption*. The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) *Termination Events*. The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) *Illegality.* Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) *Tax Event.* Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) *Tax Event Upon Merger.* The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) *Credit Event Upon Merger.* If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) *Additional Termination Event.* If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) *Event of Default and Illegality.* If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) *Right to Terminate Following Event of Default.* If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) *Right to Terminate Following Termination Event.*

(i) *Notice.* If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) *Transfer to Avoid Termination Event.* If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) *Two Affected Parties.* If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) *Right to Terminate. If:—*

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party.

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) *Effect of Designation.*

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) *Calculations.*

(i) *Statement.* On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) *Payment Date.* An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) *Payments on Early Termination.* If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) *Events of Default.* If the Early Termination Date results from an Event of Default:—

(1) *First Method and Market Quotation.* If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) *First Method and Loss.* If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) *Separate Indemnities.* To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

(a) *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) *Amendments.* No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) *Survival of Obligations.* Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) *Remedies Cumulative.* Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) *Counterparts and Confirmations.*

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) *No Waiver of Rights.* A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) *Headings.* The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received.

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Addresses.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) *Governing Law.* This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) *Jurisdiction.* With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) *Service of Process.* Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) *Waiver of Immunities.* Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

"Additional Termination Event" has the meaning specified in Section 5(b).

"Affected Party" has the meaning specified in Section 5(b).

"Affected Transactions" means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"Affiliate" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Applicable Rate" means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

"Burdened Party" has the meaning specified in Section 5(b).

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

"Defaulting Party" has the meaning specified in Section 6(a).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iv).

"Event of Default" has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

"Illegality" has the meaning specified in Section 5(b).

"Indemnifiable Tax" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **"lawful"** and **"unlawful"** will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"Loss" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"Non-default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

"Non-defaulting Party" has the meaning specified in Section 6(a).

"Office" means a branch or office of a party, which may be such party's head or home office.

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Reference Market-makers" means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

"Relevant Jurisdiction" means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

"Scheduled Payment Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Set-off" means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

"Settlement Amount" means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

"Specified Entity" has the meaning specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Tax Event" has the meaning specified in Section 5(b).

"Tax Event Upon Merger" has the meaning specified in Section 5(b).

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Currency" has the meaning specified in the Schedule.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

"Termination Event" means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

"Unpaid Amounts" owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

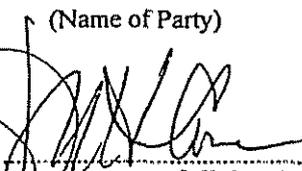
value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

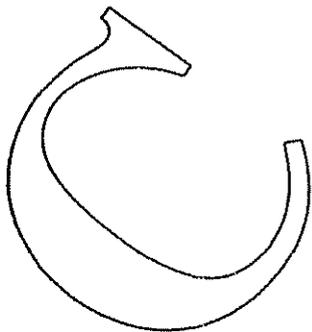
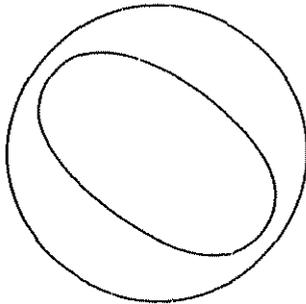
IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

AMBAC CREDIT PRODUCTS, LLC
(Name of Party)

By: 
Name: _____
Title: **DAVID J. WEISSMAN**
Date: **FIRST VICE PRESIDENT**

BIG RIVERS ELECTRIC CORPORATION
(Name of Party)

By: 
Name: _____
Title: **Michael H. Core**
Date: **President & CEO**
Big Rivers Electric Corporation



SCHEDULE

to the

ISDA Master Agreement

(Multicurrency-Cross Border)

(in relation to FBR-1 Statutory Trust)

dated April 18, 2000

between

**AMBAC CREDIT PRODUCTS,
LLC**

("Party A")

and

**BIG RIVERS ELECTRIC
CORPORATION**

("Party B")

Part 1

Termination Provisions

In this Agreement: -

- (a) **"Specified Entity"**: Not Applicable
- (b) **"Termination Currency"** means United States Dollars.

Part 2

Tax Representations

- (a) **Payer Representations.** For the purpose of Section 3(e) of this Agreement, Party B will make the following representation:-

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representation made by the other party

pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement, and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement, and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, provided that it shall not be a breach of this representation where such reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) **Payee Representations.** For the purpose of Section 3(f) of this Agreement, Party B makes the following representation: Not applicable.

Part 3

Documents to be delivered

For the purpose of Section 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents as applicable:-

(a) Tax forms, documents or certificates to be delivered are:-

Party required to deliver documents	Form/Document/Certificate	Date by which to be delivered
Party A	None required	Not applicable
Party B	None required	Not applicable

(b) Other documents to be delivered are:

<u>Party required to deliver document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>	<u>Covered by Section 3(d) Representation</u>
Party A/Party B	Certificate evidencing the authority of the party entering into this Agreement or a Confirmation, as the case may be; may be satisfied by document delivered under Participation Agreement.	On Closing Date	Yes
Party A/Party B	Opinions of counsel delivered under Participation Agreement on Closing Date regarding enforceability of this Agreement as against Party A/Party B.	On Closing Date	No

Part 4

Miscellaneous

(a) **Addresses for Notices:** For the purpose of Section 12(a) of this Agreement:-

Address for notices or communications to Party A:-

Address: One New York Plaza
New York, New York 10004

Attention: Managing Director, Financial Institutions, Specialized Finance
Facsimile No: (212) 208-3113 Telephone No: (212) 668-0340

Address for notices or communications to Party B:-

Address: 201 Third Street
Henderson, Kentucky 42420

Attention: President and Chief Executive Officer

Facsimile No: (270) 827-2558 Telephone No: (270) 827-2561

(b) **Process Agent.** For the purpose of Section 13(c) of this Agreement:-

Party A appoints as its Process Agent: Not Applicable

Party B appoints as its Process Agent: Not Applicable

(c) **Offices.** The provisions of Section 10(a) will apply to this Agreement.

(d) **Multibranch Party.** For the purpose of Section 10 of this Agreement:-

Party A is not a Multibranch Party.

Party B is not a Multibranch Party.

(e) **Credit Support Document.** Details of any Credit Support Document:-

Party A:- Not applicable.

Party B:- Not Applicable

(f) **Credit Support Provider.**

Credit Support Provider means in relation to Party A, not applicable.

Credit Support Provider means in relation to Party B, not applicable.

(g) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York without reference to choice of law provisions, except New York General Obligations Law 5-1401.

(h) **Netting of Payments.** Section 2(c) of this Agreement will not apply.

(i) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement.

Part 5

Other Provisions

This Agreement is hereby amended, modified and supplemented as set forth in this Part 5 below:

(a) Amendment to the Introductory Paragraph of this Agreement. The first paragraph is deleted in its entirety and replaced with the following paragraph:

“Ambac Credit Products, LLC and Big Rivers Electric Corporation have entered into the Transaction referred to in Section 1(c) and said Transaction is governed by this Master Agreement, which includes the schedule (the ‘Schedule’) and the Confirmation (as defined in Section 1(c)) that has been exchanged between the parties confirming the Transaction.”

(b) Amendment to Section 1 of this Agreement. Sections 1(a), 1(b) and 1(c) of this Agreement are hereby deleted in their entirety and replaced with the following:

“(a) Definitions. This Agreement and the Transaction between the parties are subject to the definitions contained in the preprinted ISDA Master Agreement (Multicurrency-Cross Border) entered into by the parties (the “ISDA Master Definitions”) and will be governed by the provisions set forth in such definitions. In addition, capitalized terms (the “PA Definitions”) used herein are used in this Agreement with the meanings set forth in, or by reference in, the Participation Agreement (FBR-1), dated as of April 1, 2000 (as amended, modified or supplemented from time to time, the “Participation Agreement”) among Big Rivers Electric Corporation, ~~Big Rivers Real Estate, Inc.~~, AME Investments, LLC, CoBank, ACB, State Street Bank and Trust Company of Connecticut, National Association, FBR-1 OP Statutory Trust, acting through State Street Bank and Trust Company of Connecticut, National Association, as OP Trustee under the OP Trust Agreement and not in its individual capacity except to the extent provided in the Participation Agreement, and FBR-1 Statutory Trust, acting through State Street Bank and Trust Company of Connecticut, National Association, as Trustee under the Trust Agreement and not in its individual capacity except to the extent provided in the Participation Agreement. Any inconsistency among such definitions shall be resolved in following order of priority: *first*, the PA Definitions shall govern and *second*, the ISDA Master Definitions shall govern. The provisions of the ISDA Master Definitions and the PA Definitions are incorporated by reference in and shall be deemed a part of this Agreement.

(b) Inconsistency. In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of the Confirmation and this Master Agreement (including the Schedule), the Confirmation will prevail.

(c) Single Confirmation. Party A and Party B each agree and acknowledge that the only Transaction that is or will be governed by this Agreement is the Transaction evidenced by the Credit Swap Transaction Confirmation dated the date hereof between Party A and Party B (the “Confirmation”).

(d) No Set-Off. Party A and Party B each agree and acknowledge that all payments under this Agreement will be made without set-off or counterclaim in

respect of any amount which may be owed to such party (or any Affiliate of such party) by the other party (or any Affiliate of such party).

(e) Acknowledgements. Party B acknowledges and agrees that (i) Party A is acting solely in the capacity of an arm's-length contractual counterparty with respect to this Agreement and the Transaction hereunder, (ii) Party A is not acting as a financial advisor or fiduciary of Party B (or in any similar capacity) with respect to this Agreement and the Transaction hereunder and (iii) any advice given by Party A under or in connection with this Agreement or the Transaction is and will be merely incidental to the provision of Party A's services hereunder and does not and will not serve as a primary basis of any investment decision by Party B. Party B represents to Party A that its decision to enter into the Transaction has been based solely on the independent evaluation of Party B and its representatives."

(c) Amendments to Section 2 of this Agreement.

(1) Section 2(a)(i) is amended by deleting the word "each" which appears before the word "Confirmation" and replacing it with the word "the".

(2) Section 2(a)(ii) is amended by deleting the word "relevant" in each place that it appears prior to the word "Confirmation".

(3) Section 2(a)(iii) is amended by deleting the entire clause and replacing it with the following: "(iii) [Reserved]".

(4) Section 2(e) is amended by (A) deleting (i) the phrase "Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction," in both places where such phrase appears therein, (ii) the phrase "and subject to Section 6(c)" in the third line thereof, and (iii) the word "relevant" in the last line thereof and (B) inserting the words "the rate specified in the Confirmation or, if no rate is specified in the Confirmation, at" after the word "at" in the sixth line thereof.

(d) Amendments to Section 3 of this Agreement.

(1) Section 3(b) is hereby deleted in its entirety and replaced with "(b) [Reserved]".

(2) The Payer and Payee Tax Representations referenced in Sections 3(e) and 3(f) are set forth in Part 2 of the Schedule.

(3) Section 3 of the Agreement is hereby amended by adding at the end thereof the following subsection (g):

“(g) *Eligible Swap Participant.* It is an “eligible swap participant” within the meaning of Part 35.1(b)(2) of the General Regulations under the Commodity Exchange Act.”

(e) Deletion of Sections 5 and 6 of this Agreement. Sections 5 and 6 are deleted in their entirety and replaced with “5 [Reserved]” and “6 [Reserved]”, respectively.

(f) Amendments to Section 7 of this Agreement. Section 7 is amended by (1) deleting the phrase “Subject to Section 6(b)(ii),” in the first line thereof, (2) adding the words “assigned or” before the word “transferred” in the second line thereof and (3) deleting paragraphs (a) and (b) and replacing them with the following paragraphs (a) and (b):

(a) Party A shall be entitled to assign and transfer its obligations under this Agreement at any time and from time to time (and such transferee shall, without more, become obligated hereunder).

(b) This Agreement may be assigned and transferred by Party B only (i) in accordance with the provisions of the Operative Documents (including, without limitation, Section 7.2 and Section 13.7 of the Participation Agreement) and (ii) if (A) the transferee has succeeded to Party B’s rights and obligations under the Facility Lease and (B) Party A shall have received evidence reasonably satisfactory to it that the transferee has assumed and agreed to be bound by all of Party B’s obligations hereunder and that this Agreement is enforceable against the transferee in accordance with its terms.

(g) Amendments to Section 8 of this Agreement. Section 8 is amended by (1) deleting all words appearing after (and including) the word “except” in the second sentence of paragraph (a) thereof, and (2) deleting paragraphs (b), (c) and (d) thereof.

(h) Amendments to Section 9 of this Agreement.

(1) Section 9(c) is amended by (i) deleting the phrase “Without prejudice to Sections 2(a)(iii) and 6(c)(ii),” in the first line thereof and replacing such phrase with the phrase “Except to the extent expressly provided in this Agreement”, (ii) adding the word “not” between the words “will” and “survive” in the second line thereof and (iii) changing the word “any” before the word “Transaction” and replacing it with the word “the”.

(2) Section 9(e) is amended by changing the title thereof to “Counterparts” and by deleting clause (ii) thereof in its entirety.

(3) Section 9(g) is amended by adding the following parenthetical after the word “Agreement” in the second line thereof “(including the column headings contained on the left side of the pages of the Confirmation).”

(4) Section 9 of the Agreement is further amended by adding at the end thereof the following subsection (h):

(h) The parties hereto intend that this Agreement shall be a swap agreement as defined in Section 101 (53B)(C) of the U.S. Bankruptcy Code.

(i) Amendment to Section 11 of this Agreement. Section 11 is amended by deleting the phrase "or by reason of the early termination of any Transaction" therefrom.

(j) Amendment to Section 12 of this Agreement. Section 12(a) is amended by deleting clause (v) thereof in its entirety.

(k) Amendments to Section 14 of this Agreement.

(1) Section 14 is amended by deleting each of the following defined terms therefrom:

Additional Termination Event	Reference Market-makers
Affected Party	Scheduled Payment Date
Affected Transactions	Set-off
Applicable Rate	Settlement Amount
Burdened Party	Specified Indebtedness
Credit Event Upon Merger	Specified Transaction
Early Termination Date	Tax Event
Event of Default	Tax Event Upon Merger
Illegality	Terminated Transactions
Loss	Termination Currency Equivalent
Market Quotation	Termination Event
Non-default Rate	Termination Rate
Non-defaulting Party	Unpaid Amounts
Potential Event of Default	

(2) Section 14 is further amended by deleting each of the defined terms listed below therefrom and replacing them with the corresponding defined term set forth below:

(a) "Affiliate" has the meaning ascribed to "Affiliate" in Appendix A to the Participation Agreement.

(b) "Default Rate" has the meaning ascribed to the term "Overdue Rate" in Appendix A to the Participation Agreement.

(c) "Defaulting Party" means a party that has failed to meet any obligation to make payment or to make delivery on or after the Physical Settlement Date as required by this Agreement.

(d) "Local Business Day" has the meaning ascribed to the term "Business Day" in Appendix A to the Participation Agreement.

(l) Party B agrees that, to the extent that, under the Operative Documents to which Party B is a party, rights are granted to Party A or the consent of Party A is required, Party B will accord to Party A such granted rights and rights of consent and will, to the extent, at the times and for the time periods set forth in the Operative Documents, permit Party A to exercise all such rights.

(m) Party B shall neither propose nor agree nor consent to any amendment, modification or supplement to any of the Operative Documents to which it is a party, or as to which it has the right to grant or withhold its consent to any amendment, modification or supplement, which in any such case could reasonably be expected to increase the likelihood that Party A or any Affiliate of Party A will be called upon to make a payment or increase the amount of any such payment under any Operative Document to which it is a party, without the prior written consent of Party A; provided, however, that no consent of Party A shall be required for any ministerial amendment undertaken for the purpose of evidencing a permitted sublease or assignment pursuant to and in accordance with Section 18 of the Facility Lease.

(n) Party B hereby agrees to reimburse Party A immediately and unconditionally upon demand for all costs, fees and expenses (including fees, charges and expenses of counsel) incurred by Party A in connection with the enforcement by Party A of Party B's obligations under this Agreement, together with interest thereon from and including the date incurred to the date of payment at the Default Rate.

(o) Party B hereby confirms its agreement to indemnify Party A pursuant to, and subject to the terms and conditions of, the General Indemnity contained in Section 9.1 of the Participation Agreement and pursuant to, and subject to the terms and conditions of, the General Tax Indemnity contained in Section 9.2 of the Participation Agreement.

(p) Party B shall be jointly and severally liable for each and every obligation, covenant, agreement and undertaking of Big Rivers Subsidiary set forth in the Operative Documents, whether or not so specified as a joint and several obligation or as an obligation of both the Big Rivers Subsidiary and Party B.

(q) Party B will timely fulfill in accordance with its terms any and all obligations undertaken by it under each Operative Document to which it is a party unless otherwise waived by Party A or an Affiliate of Party A in accordance with the terms thereof, with the same effect as if set forth specifically herein for the benefit of Party A, and hereby makes such covenants to Party A, *mutatis mutandis*, with the same effect as if set forth herein.

(r) Party B agrees that it will, as a condition to closing, provide to Party A (i) the certificate or certificates referred to in Section 4.11 of the Participation Agreement in form reasonably satisfactory to Party A and (ii) the letter referred to in Section 4.14 of the Participation Agreement to be received by each Lender.

(s) Party B will provide Party A with copies of all notices required to be provided by it pursuant to the Operative Documents to any of the parties thereto relating to (i) any Event of Default or event which with the giving of notice or passage of time or both would constitute such an event, or any Event of Loss or (ii) any material breach of any representation, warranty or covenant by it hereunder or by it or the Big Rivers Subsidiary under any of the Operative Documents.

(t) Party B hereby agrees that, until the termination of this Agreement, without limiting the provisions of the preceding paragraph (t), Party B shall provide to Party A (i) the notices, reports and other communications provided or to be provided to any Person pursuant to Sections 7.3, 7.4, 7.8, 7.9, 7.18, 9.1 and 9.2 of the Participation Agreement concurrently with delivery to the other recipients thereof; (ii) written notice of any written assertion by any party to the Operative Documents that any indemnity payment or Supplemental Rent in an amount in excess of \$100,000 is owed by Party B pursuant to any of the Operative Documents, promptly and in any case within 30 days of any such assertion; (iii) a copy of any notices, notifications, reports, certificates and financial statements or similar information delivered by it to another party to the Operative Documents or received by it from another party to the Operative Documents promptly after delivery or receipt of any such item, and (iv) upon reasonable notice from time to time, and upon request at any time that an Event of Default has occurred and is continuing, the opportunity to meet during normal business hours with senior officers at the offices of Party B and to discuss the business and financial condition of Party B.

(u) Party B will name Party A as an "Additional Insured" in each policy of insurance carried in accordance with Section 11 of the Facility Lease, and fulfill all other obligations with respect to such insurance as if Party A were listed as an "Additional Insured" and named with the other parties in such section.

(v) Party B hereby acknowledges and consents to the creation of each and every interest in the Facility, the Site and any portion thereof contemplated by the Operative Documents to exist on or after the date hereof.

(w) Party B agrees that the performances to be rendered by it pursuant to this Agreement are of a special, unique, and unusual character, the loss of which performances cannot reasonably or adequately be compensated in damages in an action at law, that a breach of any of the covenants contained herein will result in irreparable damage and harm to Party A, that Party A has no *adequate remedy at law in respect of any such breach* and, as a consequence, agree that the covenants contained herein shall be specifically enforceable against Party B, and Party B hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants.

(x) Party B hereby expressly waives (a) demand for payment, notice of dishonor, nonpayment or nonperformance on any and all forms of the obligations hereunder; (b) all of its right to assert against Party A or any Party A Affiliate any claim against any Person for indemnification in any proceeding relating to this Agreement; (c) notice of acceptance of this Agreement and notice of any liability to which it may apply; (d) all other notices and demands of

any kind and description relating to the obligations hereunder now or hereafter provided for by any agreement, statute, law, rule or regulation; and (e) any and all defenses pertaining to the obligations hereunder except for the defense of discharge by payment. Party B shall not be exonerated with respect to its liabilities hereunder by any act or thing except irrevocable payment of the obligations hereunder, it being the purpose and intent of the Agreement that the obligations hereunder constitute the direct and primary obligations of Party B and that the covenants, agreements and all obligations of Party B hereunder be absolute, unconditional and irrevocable.

(y) Party B hereby irrevocably agrees that (to the maximum extent permitted by law), to the extent that it now has or may hereafter acquire any right of immunity as against Party A or its successors and assigns, whether characterized as sovereign immunity or otherwise, from legal proceedings, whether in the United States of America, or elsewhere, arising out of the Agreement or the subject matter hereof or any of the transactions contemplated hereby, including immunity from service of process or immunity from jurisdiction or judgment of any court or tribunal, Party B hereby expressly and irrevocably waives and agrees not to assert any such immunity and such waiver shall be irrevocable and not subject to withdrawal in any jurisdiction.

(z) Party B hereby covenants that, at its own cost, expense and liability, it will cause such financing statements and fixture filings (and continuation statements with respect thereto) as may be necessary and such other documents as Party A shall reasonably request to be recorded or filed at such places and times in such manner, and will take all such other actions or cause such actions to be taken, as may be necessary in order to establish, preserve, protect and perfect the right, title and interests of the Facility Lessor as set forth in Section 7.9 of the Participation Agreement.

(aa) Party B hereby agrees that it will obtain the permission of Party A as a precondition to assigning, selling or otherwise transferring the Facility or the Site or the Easement Sites to any Person in the same circumstances in which it is required, pursuant to the terms of Section 7.10 of the Participation Agreement, to obtain the permission of each Lender and the Owner Participant as a precondition to any such action.

(bb) Party B hereby grants to Party A: (i) the same rights accorded to the Series A Lender in Section 10.3(f)(4) and Section 10.3(f)(5) of the Facility Lease with respect to recordings, filings and opinions in connection with the Rebuilding Closing Date, as defined in Section 10.3(f) of the Facility Lease, (ii) the same rights accorded to the Series A Lender in Section 10.3(f) with respect to paying or reimbursing any costs or expenses (including reasonable legal fees and expenses) incurred in connection with the transactions contemplated by Section 10.3, (iii) the same rights accorded to the Series A Lender in Section 11.3 of the Facility Lease with respect to insurance, (iv) the same rights accorded to the Series A Lender in Section 11.4 of the Facility Lease with respect to insurance-related letters, certificates and other documents, (v) the same rights and immunities granted to the Series A Lender in Section 12 of the Facility Lease with respect to inspection rights and (vi) the same indemnification rights granted to the Series A Lender in Section 18.2(a)(xvi) of the Facility Lease.

CREDIT SWAP TRANSACTION CONFIRMATION
IN RELATION TO FBR-1 STATUTORY TRUST

Date: April 18, 2000

To: Big Rivers Electric Corporation
201 Third Street
Henderson, Kentucky 42420

From: Ambac Credit Products, LLC
One State Street Plaza
New York, New York 10004

Subject: Credit Swap Transaction

The purpose of this communication is to confirm the terms and conditions of the Transaction entered into on the Trade Date referred to below (the "Transaction"), between Ambac Credit Products, LLC (together with its successors and permitted assigns, "Party A") and Big Rivers Electric Corporation (together with its successors and permitted assigns, "Party B").

This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement dated April 18, 2000 (as amended by and including the Schedule thereto and as the same may be further amended, modified or supplemented from time to time, the "ISDA Master Agreement") between Party A and Party B. All provisions contained in the ISDA Master Agreement shall govern this Confirmation except as expressly modified herein.

Capitalized terms referenced in Part 5(b) of the Schedule to the ISDA Master Agreement (and the rules of construction and priorities contained therein), including terms referenced therein as being defined in the Participation Agreement, are hereby incorporated by reference herein, and said terms are used herein with the defined meanings referenced in said Part 5(b). Capitalized terms used herein which are not referenced in or pursuant to Part 5(b) of such Schedule shall have the meanings set forth herein.

This Confirmation and the Transaction to which it relates have been entered into by Party A and Party B in consideration of the mutual promises of the parties herein and the execution and delivery by the parties thereto of the Participation Agreement and the other Operative Documents (as defined in the Participation Agreement) and their entry into the transactions contemplated thereby (the "Overall Transaction").

The terms of the Transaction to which this Confirmation relates are as follows:

1. General Terms:

Type of Transaction:	Not applicable
Trade Date Defined:	The term " <u>Trade Date</u> " means the Closing Date.

Effective Date Defined: The term "Effective Date" means the Closing Date.

Specified Currency Defined: US Dollars (\$)

Business Day Defined: The term "Business Day" has the meaning specified in the Participation Agreement.

Termination Date Defined: Subject to the paragraph captioned "Reinstatement of Party B Payment Obligations" contained in Section 3 hereof, the term "Termination Date" means the earliest to occur of any of the following:

(i) the Scheduled Termination Date;

(ii) the Party B Payment Date (or, if it is decided that Party B shall make in installments payments due in respect of the Installment Payment Amount, the date on which Party B shall have completed its obligation to pay the Installment Payment Amount), if, in the case of this clause (ii), (A) each of the "Conditions to Payment of Party B Fixed Amount" specified in Section 2(a) have been satisfied or waived and (B) all Required Amounts have been paid to Party A;

(iii) the Party B Payment Date if, in the case of this clause (iii), Party A has exercised the Alternative Settlement Option referred to in the paragraph captioned "Alternative Settlement" in Section 3 below and Party B has paid the Net Amount Due (as such term is defined in said paragraph) in full to Party A; and

(iv) receipt by Party B of written notice from Party A stating that Party B is released from its obligations under the ISDA Master Agreement and this Confirmation.

On the Termination Date, this Agreement shall be of no further force or effect and the obligations of Party A to Party B and the obligations of Party B to Party A shall terminate. Notwithstanding the foregoing, the obligations of Party A pursuant to the

paragraph captioned "Actions to be taken on Physical Settlement Date" in Section 3 shall not terminate until performance of such obligations in full.

Required Amounts Defined:

The term "Required Amounts" means all amounts (i) payable to Party A hereunder in accordance with the terms hereof in respect of (a) the Party B Fixed Amount, (b) the Capitalized Interest Amount, if any, and (c) interest on the unpaid amount thereof (and on any overdue interest) at the rate applicable thereto and for the periods provided for in the paragraph captioned "Term Out Option" in Section 3, provided, that if the Term Out Option shall not be applicable, then at the Party B Overdue Rate.

Scheduled Termination Date Defined:

The term "Scheduled Termination Date" means, so long as no Event of Default under the Facility Lease has occurred and is continuing, the later of (a) a date 90 days after the Expiration Date or (b) if the Purchase Option has been exercised by the Facility Lessee pursuant to Section 15 of the Facility Lease, a date 30 days after the last payment of the Purchase Option Price is due under the Facility Lease.

Calculation Agent Defined:

The term "Calculation Agent" means Party A.

Calculation Agent City Defined:

New York, New York

2(a). Party B Fixed Payment:

Party B Payment Date Defined:

The term "Party B Payment Date" means the Physical Settlement Date (as defined in Section 3 below).

Conditions to Payment of Party B Fixed Amount:

Notwithstanding any other provision of this Confirmation (other than as set forth in the Paragraph captioned "Reinstatement of Party B Payment Obligations" contained in Section 3 hereof), the obligation of Party B to make any payment to Party A on or after the Physical Settlement Date is subject to satisfaction (or waiver by Party B) of the following conditions

precedent: (i) either (x) Party A has executed and delivered a Credit Event Notice to Party B or (y) a Credit Event has occurred and Party A has been stayed or prevented by Applicable Law from delivering such a notice, in which case such notice shall be deemed to have been delivered on the date such Credit Event Notice was executed by Party A, and (ii) the requirements set forth in clause (ii), if applicable, of the paragraph captioned "Actions to be taken on Physical Settlement Date" in Section 3 below by Party A have been satisfied or waived.

Party B Fixed Amount Defined: The term "Party B Fixed Amount" means an amount equal to

(A) the excess (if any) of (i) the amount set forth in Column B1 of Schedule I to this Confirmation opposite the date set forth in Column A of such schedule corresponding to the Reference Date, over (ii) the sum of all amounts (other than due but unpaid interest on past due amounts or overdue interest) paid by Party B, in each case on or subsequent to the Reference Date but prior to the Physical Settlement Date, either (a) to Party A or other Affiliates of Ambac Assurance Corporation in respect of the Equity Portion of Termination Value or (b) to the Trustee or the OP Trustee in respect of either the Equity Portion of Termination Value or the Equity Portion of Purchase Option Price, plus

(B) the excess, if any, of (i) the sum of (a) the amount set forth in Column B2 of Schedule I to this Confirmation opposite the date set forth in Column A of such schedule corresponding to the Reference Date, plus (b) the Series A Lender's interest, if any, in any due but unpaid Basic Rent due before the Reference Date, plus (c) interest at the Overdue Rate with respect to the amounts referred to in the preceding clauses (a) and (b) from the Reference Date to the Physical Settlement Date, over (ii) the amount of any reduction with respect to the foregoing to which Party B is entitled by

reason of amounts previously paid by Party B which were applied to the Series A Loan, plus

(C) the excess, if any of (i) the sum of (a) the greater of (1) the amount set forth in Column B3 of Schedule I to this Confirmation opposite the date set forth in Column A of such schedule corresponding to the Reference Date (the "Scheduled B3 Amount") and (2) the fair market value of the Government Securities as of the Physical Settlement Date (but in no event more than the sum of the Scheduled B3 Amount and the Make Whole Amount, if any), plus (b) the Series B Lender's interest, if any, in any due but unpaid Basic Rent due before the Reference Date, plus (c) interest at the Overdue Rate with respect to the amounts referred to in the preceding clauses (a) and (b) from the Reference Date to the Physical Settlement Date, over (ii) the amount of any reduction with respect to the foregoing to which Party B is entitled by reason of amounts previously paid by Party B which were applied to the Series B Loan.

The amount to be paid on the Physical Settlement Date as the Party B Fixed Amount shall be determined by the Calculation Agent based upon Schedule I to this Confirmation and the certification of Party A in the Credit Event Notice with respect to the amounts referred to in clause (A)(ii), (B)(ii) and (C)(ii) of this paragraph. If the Alternative Settlement Option is utilized, the amount to be paid on the Physical Settlement Date by Party B shall be determined as provided in the paragraph captioned "Alternative Settlement" in Section 3 below. In the event that Section 11.1(d) of the Participation Agreement becomes applicable, Party A and Party B agree that Schedule I shall be adjusted as provided in such Section 11.1(d).

Reference Date Defined:

"Reference Date" shall mean the date (a) specified in, or determined pursuant to, a notice delivered by the Facility Lessor, the OP Trust or the Agent, as the case may be, to the

Facility Lessee, as the Termination Date (as defined in the Facility Lease), or (b) if delivery of such notice is legally precluded due to a Credit Event described in clause (h) or (i) of the definition of "Credit Event" herein, the date that such Person would be entitled to specify in, or that would be determined pursuant to, such a notice or (c) if such date cannot be so determined due to such preclusion, or for any other reason is not so determined, the Notification Date; provided, that if the date so determined would not be a date set forth in Column A of Schedule I to this Confirmation, then the Reference Date shall be the next succeeding date set forth in said Column A. In the event that the Facility Lessor, OP Trust and the Agent are entitled to, and do, specify inconsistent dates in accordance with the foregoing, the date specified by the Facility Lessor and OP Trust shall be determinative of the Reference Date with respect to the Column B1 Amount and the date specified by the Agent shall be determinative of the Reference Date with respect to the Column B2 Amount and the Column B3 Amount.

Notification Date Defined:

The term "Notification Date" means the date on which Party A delivers a Credit Event Notice to Party B (or the date on which Party A is stayed or prevented by Applicable Law from doing so, in which case such notice shall be deemed to have been delivered on the date such Credit Event Notice was executed by Party A).

Credit Event Notice Defined:

The term "Credit Event Notice" means an irrevocable written notice by Party A to Party B and the Calculation Agent substantially in the form of Exhibit A hereto (i) stating that a Credit Event has occurred and (ii) certifying (to the best of its knowledge with respect to amounts paid to any non-Affiliate of Party A), the amount and source of all amounts referred to in clauses (A)(ii), (B)(ii) and (C)(ii) of the definition of "Party B Fixed Amount", (iii) stating whether Party A has exercised the Alternative Settlement Option and, if so,

providing a statement of the Deliverable Obligations FMV (as calculated under the "Alternative Settlement" paragraph in Section 3 below) and (in its capacity as Calculation Agent) the Net Amount Due and (iv) if the Alternative Settlement Option is not applicable, confirming to Party B that Party A either (a) is the holder of the Deliverable Obligations or (b) has determined that Party A has sufficient contractual or other rights to permit Party A to obtain the interest in the Deliverable Obligations that Party A will be required to deliver to Party B under this Agreement (upon full performance hereunder by Party B) not later than the date such delivery will be so required hereunder. A Credit Event Notice may be delivered between 9:00 a.m. and 4:00 p.m., Calculation Agent City time, on a Business Day. If the Credit Event Notice is delivered after 4:00 p.m., Calculation Agent City time, on a Business Day, then that notice will be deemed delivered on the next following Business Day.

Credit Event Defined:

The term "Credit Event" means that any one or more of the following events or circumstances has occurred and is continuing on the Notification Date:

(a) Big Rivers shall fail to make any payment due under the Operative Documents and all applicable grace periods shall have expired; or

(b) any representation or warranty made by Big Rivers in any Operative Document (other than the Tax Indemnity Agreement) shall be untrue, inaccurate or misleading in any material respect both when made and at the time in question and any cure permitted by the Operative Documents shall not have been timely effected; or

(c) Big Rivers shall have failed to perform or observe any covenant, obligation or agreement to be performed or observed by it under any Operative Document (other than the Tax Indemnity Agreement) in any material respect

(other than any covenant, obligation or agreement referred to in clauses (a), (b), (c), (f), (g), (h), (j), (k), (l), (m), (n), (r) or (s) of Section 16 of the Facility Lease) and any cure permitted by the Operative Documents shall not have been timely effected, subject to such exceptions, in respect of Section 7.1 and 8.1 of the Facility Lease, as are provided under Section 16(e) of the Facility Lease; or

(d) Big Rivers shall fail to observe or perform its obligation to maintain the insurance required by Section 11 or its obligations under Section 5 of the Facility Lease; or

(e) the Expiration Date (or the date that is the Business Day next following the Expiration Date, if applicable, pursuant to Section 15.4(b) or Section 15.4(c) of the Facility Lease) shall have occurred and none of the following events shall have occurred on or prior to such date: (i) Big Rivers shall have made or shall cause to have been made all payments required in connection with its exercise of the Purchase Option pursuant to Section 15.1 of the Facility Lease; or (ii) consistent with the Return Option provisions of Section 15.3 of the Facility Lease, Big Rivers shall have delivered the Undivided Interest in accordance with the terms of the Facility Lease and shall have made the payments required to be made by it pursuant to Section 15.3 thereof; or (iii) Big Rivers shall have elected or shall have been deemed to have elected the Service Contract Option and shall have fully complied with the requirements of Section 12A of the Participation Agreement and Section 15.2 of the Facility Lease and the transactions contemplated by such sections shall have been consummated; or (iv) the circumstances described in Section 15.4(b) or (c) of the Facility Lease shall have occurred and Big Rivers shall have exercised the Purchase Option and paid all amounts required in connection therewith pursuant to Section 15.1 of the Facility Lease plus the amounts required to be paid by it in the proviso to

Section 15.4(b) or (c) of the Facility Lease; or

(f) Big Rivers shall have failed to observe or perform its obligations set forth in Section 7.1, 7.2, 7.5, 7.6, 7.7 or 7.21 of the Participation Agreement; or

(g) if (x) RUS as a First Mortgage Mortgagee under the First Mortgage shall have declared the principal and interest on any notes and bonds issued thereunder to be immediately due and payable, or (y) any other First Mortgage Mortgagee under the First Mortgage shall have made the declaration described in clause (x) and shall not have withdrawn such declaration within 30 days thereafter or (z) any mortgagee (including the RUS) under the First Mortgage shall have given notice of intent to, or taken action to, commence foreclosure or any other dispossessory remedy under the First Mortgage or under Applicable Law; or

(h) Big Rivers shall (i) commence a voluntary case or other proceeding seeking relief under Title 11 of the United States Code or liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or apply for or consent to the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) consent to, or fail to controvert in a timely manner, any such relief or the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, (iii) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or (iv) fail to pay its debts generally as they become due or admit in writing its inability to do so or take any corporate steps with respect to the foregoing; or

(i) an involuntary case or other proceeding shall be commenced against Big Rivers seeking (i) liquidation, reorganization or other

relief with respect to it or its debts under Title 11 of the United States Code or any bankruptcy, insolvency or other similar law now or hereafter in effect, or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official with respect to it or any substantial part of its property or (iii) the winding-up or liquidation of Big Rivers; and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days; or

(j) Big Rivers shall have failed to observe or perform its obligations set forth in Section 7.9 of the Participation Agreement and Big Rivers shall not cure such failure within 5 days after Big Rivers has Actual Knowledge or after notice from the Facility Lessor, Party B, the Owner Participant or a Lender; or

(k) Big Rivers shall have failed to perform its obligations in connection with its right to sublease or assign as set forth in Section 18 of the Facility Lease; or

(l) an LG&E Entity shall have commenced an action to foreclose or commenced any other dispossessing remedy under the LEM Mortgage or the LG&E Subordinated Mortgage; or

(m) WKEC shall have terminated the WKEC Lease in consequence of a default by Big Rivers thereunder; or

(n) LEM shall have terminated the LEM Power Purchase Agreement in consequence of a default thereunder by Big Rivers; or

(o) [Provision Deleted];

(p) the Ground Lease or the Head Lease shall have been terminated, revoked or rendered unenforceable for any reason or Big Rivers or any Person acting on behalf of Big Rivers shall seek to repudiate or disaffirm the validity or enforceability of the Ground Lease, the Head

Lease or any of the rights of Big Rivers thereunder, other than by reason of a default of the Head Lessee thereunder; or

(q) Big Rivers shall have failed to observe or perform its obligations set forth in Section 7.10 of the Participation Agreement; or

(r) an "Event of Default" shall have occurred and be continuing under the Facility Lease (FBR-2), dated as of April 1, 2000 between FBR-2 Statutory Trust and Big Rivers; or

(s) the exercise of rights or remedies is commenced to dispossess the Facility Lessee;

and if the existence of such Credit Event is conditioned on notice having been given to Big Rivers under any Operative Document either (i) such notice has been given or (ii) such notice has been stayed or giving such notice otherwise has been prevented by Applicable Law.

2(b). Party B Supplemental Payments:

Party B Supplemental
Payment Date Defined:

The term "Party B Supplemental Payment Date" means the first Business Day after which either of the following occurs:

(i)(a) the Payment Agreement is replaced as collateral for Party B's obligations under this Agreement in circumstances in which Party A's obligation under the Qualifying Swap is not dependent upon the Payment Undertaker's performance under the Payment Agreement, and (b) the replacement collateral, replacement financial guarantee insurance policy or replacement surety bond constitutes the obligation of an entity other than Ambac or an Affiliate of Ambac; or

(ii)(a) the Government Securities are replaced as collateral for Party B's obligations under this Agreement in circumstances in which Party A's obligation under the Qualifying Swap is not dependent upon the Government

Securities Issuer's performance under the Government Securities, (b) the replacement for the Government Securities is an obligation other than that of Ambac or an Affiliate thereof, and (c) the replacement collateral or financial guarantee insurance policy or surety bond constitutes the obligation of an entity other than Ambac or an Ambac Affiliate.

Party B Supplemental
Payment Amount Defined:

The term "Party B Supplemental Payment Amount" means an amount, to be paid by Party B to Party A on the Party B Supplemental Payment Date, equal to the sum of (a) an amount necessary to preserve the originally anticipated rate of return on capital of Party A, calculated in good faith and in keeping with reasonable commercial practice by Party A, taking into account the credit quality of the obligor under any collateral provided to Party A in connection with the replacement of one or both of the Payment Agreement and the Government Securities, and (b) a one-time fee of thirty (30) basis points on the maximum accreted value or the maximum amount drawable or payable under the item or items of replacement collateral (including any financial guarantee insurance policy or surety bond), calculated in good faith and in keeping with reasonable commercial practice by Party A; provided, however, that, if this Agreement does not reflect exposure of Party A to the credit of the issuer of the replacement for the Payment Agreement or the Government Securities, the Party B Supplemental Payment Amount shall consist of only the amount described in clause (b) above.

2(c). Party A Fixed Payment:

Party A Payment Date Defined: The term "Party A Payment Date" means the Closing Date.

Party A Payment Amount Defined: The term "Party A Payment Amount" means \$342,433.

Actions to be taken on the Party A Payment Date: On the Party A Payment Date, Party A shall pay the Party A Payment Amount in full to

Party B.

3. Settlement Terms:

Physical Settlement Date
Defined:

The term "Physical Settlement Date" means the third Business Day following the Notification Date.

Actions to be taken on
Physical Settlement Date:

Unless Party A exercises the Alternative Settlement Option (in which case the provisions of the paragraph captioned "Alternative Settlement" below in this Section 3 shall apply), and subject to the paragraphs captioned "Term Out Option" and "Actions to be Taken Upon Payment in Full of Installment Payment Amount" contained in this Section 3, on the Physical Settlement Date (i) Party B shall pay to Party A the Party B Fixed Amount by wire transfer, to the account set forth in the Credit Event Notice, on or before 1:00 p.m., New York City time; provided, however, that (x) with respect to the amount determined in accordance with clause (A) of the definition of Party B Fixed Amount, Party B will have no obligation to make payment pursuant to this clause (i) to the extent of any Underlying Contract Credit Event in respect of the amount determined in accordance with such clause (A), (y) with respect to the amount determined in accordance with clause (B) of the definition of Party B Fixed Amount, Party B will have no obligation to make payment pursuant to this clause (i) to the extent of any Underlying Contract Credit Event in respect of the amount determined in accordance with such clause (B), and (z) with respect to the amount determined in accordance with clause (C) of the definition of Party B Fixed Amount, Party B will have no obligation to make payment pursuant to this clause (i) to the extent of any Underlying Contract Credit Event in respect of the amount determined in accordance with such clause (C), (ii) Party A shall take each of the actions referred to in clause (a) below, and (iii) at the option of Party A, Party B shall take each of the actions referred to in clause (b) below:

(a) After the Party B Fixed Amount has been paid or provided for to Party A's satisfaction, Party A shall convey (or, if applicable, cause to be conveyed) all of Party A's right, title and interest in, to and under the Deliverable Obligations to Party B by executing an assignment agreement in the form of Exhibit B hereto and shall, if requested by Party B, execute and deliver to Party B, at Party B's expense, such other documentation and instruments of conveyance as may be necessary or (in the reasonable opinion of Party B) desirable to give effect to such assignment;

(b) At the option of Party A, in the event that Party B is subject to proceedings seeking (i) liquidation, reorganization or other relief with respect to it or its debts under Title 11 of the United States Code or any bankruptcy, insolvency or similar law now or hereafter in effect, or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official with respect to it or any substantial part of its property, or (iii) the winding up or liquidation of Party B, Party B shall deliver to Party A an appropriate order made by the bankruptcy court (or other appropriate Governmental Entity) approving the Transaction and the performance by Party B of its obligations hereunder.

The term "Underlying Contract Credit Event" means (a) with respect to the amount determined in accordance with clause (A) of the definition of Party B Fixed Amount, a failure of the Funding Agreement Issuer to pay in full when due its obligations under the Funding Agreement and the failure of Ambac to pay in full when due its obligations under the Funding Agreement FGIP, (b) with respect to the amount determined in accordance with clause (B) of the definition of Party B Fixed Amount, a failure of AME Asset Funding, LLC to pay in full when due its obligations under the Payment Agreement and the failure

of Ambac to pay in full when due its obligations under the Payment Agreement FGIP and (c) with respect the amount determined in accordance with clause (C) of the definition of Party B Fixed Amount, a failure of the Government Securities Issuer to pay in full when due its obligations under the Government Securities.

**Deliverable Obligations
Defined:**

The term "Deliverable Obligations" means all right, title and interest in, to and under the Trust Estate, and all rights and obligations of the transferor of such interest under each of the Operative Documents and any other documents executed and delivered in connection therewith, including, if applicable, all rights and obligations therein and thereunder of any predecessor of Party A, as transferor of such interests in the Trust Estate; provided, however, that the term "Deliverable Obligations" shall not include any of the following rights and obligations of the transferor (and its Affiliates) of such interests in the Trust Estate, all of which rights and obligations shall be retained by such transferor and, if applicable, its Affiliates: (i) if Party A is such transferor, all rights and obligations of Party A and its Affiliates under (A) this Confirmation and the ISDA Master Agreement in respect of the Transaction, and (B) the Payment Agreement and the Payment Agreement Pledge Agreement (as assigned to the Lenders pursuant to the Leasehold Mortgage), the Funding Agreement (as pledged under the Funding Agreement Pledge) and the Government Securities (as pledged under the Government Securities Pledge Agreement) and (ii) all Excluded Obligations and Excluded Rights, where the term "Excluded Obligations" means all obligations of the transferor of such interests in the Trust Estate or, if applicable, any predecessor thereof, under the Operative Documents that accrue, or that are attributable to acts, omissions or events occurring, on or prior to the Physical Settlement Date; and the term "Excluded Rights" means all rights of the

transferor of such interests in the Trust Estate or, if applicable, any predecessor thereof, under Section 9 of the Participation Agreement, such portion of the Equity Portion of Basic Rent as may be due but unpaid prior to the Reference Date and interest at the Overdue Rate with respect thereto, and all rights under the Tax Indemnity Agreement to make claims, and to receive payments with respect to any such claims not yet made, that have accrued in respect of the period ending on, or that are attributable to acts, omissions, facts or events existing or occurring on or prior to, the Physical Settlement Date.

Application of Certain Amounts: Unless Party A has exercised the Alternative Settlement Option (in which case this sentence shall not apply), if, at any time after the Notification Date, either (x) Party A receives any payments or other consideration in respect of the Deliverable Obligations or otherwise in respect of the Equity Portion of Termination Value not reflected as a credit in the determination of the amount to be paid as the Party B Fixed Amount on the Physical Settlement Date, or (y) Party B makes any payment to the Trustee or the OP Trustee in respect of the Equity Portion of Termination Value not reflected in the determination of the amount to be paid as the Party B Fixed Amount on the Physical Settlement Date, Party A hereby agrees, in the case of payments or other consideration within the preceding subclauses (x) or (y) ("Other Party B Payments"), to apply such Other Party B Payments, when received in the case of subclause (x) and when paid by Party B in the case of subclause (y), in reduction of the Party B Fixed Amount (or the Installment Payment Amount, if applicable) then outstanding. With respect to either subclause (x) or (y), Party A shall pay to Party B any funds resulting from such Other Party B Payments that are held on the date the Deliverable Obligations are transferred to Party B hereunder by Party A, net of any Required Amounts then due but

unpaid hereunder by Party B. The obligations of Party A under the next preceding sentence shall survive the Termination Date.

Alternative Settlement:

At the option (the "Alternative Settlement Option") of Party A (which option, however, may be exercised by Party A only after the occurrence of a Credit Event described in any of subparagraphs (a), (c), (g), (l), (m), or (n), of the paragraph captioned "Credit Event Defined" in Section 2(a)), Party A may set-off and net (i) the fair market value (as determined by a nationally recognized independent appraisal firm, such independent appraisal firm to be in the business of appraising assets comparable to the assets constituting the Deliverable Obligations (the "Independent Appraiser"), reasonably and in good faith, based on the actual condition of the Deliverable Obligations (to the extent reasonably determinable by such firm at such time) and taking into account all Liens on the Facility (other than Party A Lessor's Liens)) as at the Notification Date (the "Deliverable Obligations FMV") against (ii) the Party B Fixed Amount as at the Notification Date, and may receive payment from Party B of the amount determined pursuant to such set-off or netting in accordance with the terms hereof; provided, however, that Party A will not deliver a Credit Event Notice which exercises the Alternative Settlement Option for a period of at least 45 days after Party A gives written notice to the OP Trust and Party B of its intention to exercise the Alternative Settlement Option; and provided, further, that Party A shall not exercise the Alternative Settlement Option prior to the settlement of the Qualifying Swap if the event permitting settlement of this Agreement is solely the consequence of a downgrade in the claims paying ability of Ambac and the failure of Big Rivers to effect a replacement of the Qualifying Swap or of Party A thereunder. The term "Party A Lessor's Lien" means Facility Lessor's Lien, substituting, however, for all purposes of the definition of Facility Lessor's Liens, Party A

for "the Owner Trust" or "the Trust Company" in such definition.

Within 3 Business Days after Party A gives notice to the OP Trust and Party B of its intention to exercise the Alternative Settlement Option, Party B shall notify Party A in writing as to whether, upon the occurrence of any Party B Insolvency Proceeding occurring thereafter, Party B intends to assume or reject the Facility Lease (a "Statement of Intended Assumption or Rejection"), which Statement of Intended Assumption or Rejection shall be binding on Party B and its successors and assigns. Whether Party B states in its Statement of Intended Assumption or Rejection that it intends to assume the Facility Lease or reject the Facility Lease, the Independent Appraiser shall determine both (a) the Deliverable Obligations FMV assuming the assumption and continuing performance of the Facility Lease by Party B (the "Assumption Deliverable Obligations FMV") and (b) the Deliverable Obligations FMV assuming the rejection of the Facility Lease by Party B, the application of section 502(b)(6) of the Bankruptcy Code and the resulting limitation on the claim against Party B arising out of such rejection, and all other bankruptcy-related risks attendant to such rejection (the "Rejection Deliverable Obligations FMV"). The Deliverable Obligations FMV shall correspond to the Assumption Deliverable Obligations FMV if Party B, in its Statement of Intended Assumption or Rejection, states that it intends to assume and continue to perform under the Facility Lease, and the Rejection Deliverable Obligations FMV if Party B, in its Statement of Intended Assumption or Rejection, states either that it intends to reject the Facility Lease or that it is unwilling or unable at such time to commit to the assumption and continued performance of the Facility Lease.

If Party B states in its Statement of Intended Assumption or Rejection that it intends to assume the Facility Lease and subsequently the

Facility Lease is rejected in bankruptcy by Party B or a trustee or other party acting on behalf of Party B, then, notwithstanding that the Alternative Settlement Option was previously effected based on the Assumption Deliverable Obligations FMV, Party A shall have, and shall be entitled to assert, a claim against the bankruptcy estate of Party B for the amount by which (a) the Assumption Deliverable Obligations FMV exceeds (b) the Rejection Deliverable Obligations FMV, in each case as stated by the Independent Appraiser, together with interest thereon from the Physical Settlement Date to the date of the Party B Insolvency Proceeding, at the Party B Overdue Rate.

“Party B Insolvency Proceeding” means the commencement of any bankruptcy, insolvency, readjustment of debt, reorganization, marshaling of assets and liabilities or similar proceedings by or against Party B, or the consent after the date hereof to the appointment of a trustee, conservator, receiver or liquidator in any bankruptcy, insolvency, readjustment of debt, reorganization, marshaling of assets and liabilities or similar proceedings relating to Party B; provided, however, that an involuntary case or other proceeding shall constitute a “Party B Insolvency Proceeding” only if such involuntary case or other proceeding shall have remained undismissed and unstayed for a period of 60 days.

If Party A exercises the Alternative Settlement Option, (i) Party A shall so specify in the Credit Event Notice and shall include in the Credit Event Notice a statement as to the Deliverable Obligations FMV (as determined in accordance with the preceding paragraphs) and (ii) the provisions of the paragraph captioned “Actions to be taken on Physical Settlement Date” in this Section 3 shall not apply.

If the Party B Fixed Amount exceeds the

Deliverable Obligations FMV, Party B shall pay to Party A, on the Physical Settlement Date, an amount equal to such excess (the "Net Amount Due"). Upon receipt by Party A of the Net Amount Due, if any, Party A shall place such amount in escrow in a custodial account to be established pursuant to the Intercreditor Agreement for application pursuant to such agreement, any remainder to be paid on the termination of such escrow as provided for in such agreement.

If Party A exercises the Alternative Settlement Option, Party A shall have no obligation (whether on the Physical Settlement Date or otherwise) to convey (or cause to be conveyed) to Party B all or any portion of its right, title and interest in, to and under the Deliverable Obligations, and all rights under or in respect of the Deliverable Obligations shall be retained by Party A.

Term Out Option:

On the Physical Settlement Date, Party B shall pay to Party A the Party B Fixed Amount in accordance with the paragraph in this Section 3 captioned "Actions to be taken on Physical Settlement Date"; provided, however, that with respect to the amount determined in accordance with clause (A) of the definition of Party B Fixed Amount, Party B may elect to pay, as calculated by the Calculation Agent, (i) on the Physical Settlement Date, an amount equal to the greater of (a) the amount payable as of the Physical Settlement Date as set forth in Schedule II to this Confirmation and (b) the amount equal to the "Market Termination Amount" (as defined in the Funding Agreement) payable by the Funding Agreement Issuer under the Funding Agreement on the Physical Settlement Date determined as if such date were an "Early Termination Date" (as defined in the Funding Agreement) and (ii) in installments, an amount equal to the amount determined in accordance with clause (A) of the definition of Party B Fixed Amount minus the amount payable under clause (i) of this sentence (the

"Installment Payment Amount"), but only if (a) no voluntary or involuntary bankruptcy of Party B has occurred and is continuing, (b) no other mortgagee under the First Mortgage has accelerated its loans or is exercising remedies against the assets subject thereto, (c) the OP Trust has exercised the settlement under the Qualifying Swap, Party A under the Qualifying Swap is entitled to pay Party B under the Qualifying Swap in installments, and such obligation has not been accelerated and (d) all amounts in respect of the Party B Fixed Amount, other than the Installment Payment Amount, required to be paid by Party B on the Physical Settlement Date have been so paid or such payment has been provided for to the reasonable satisfaction of Party A. If any of the foregoing (a), (b) and (c) cease to be true or if Party B fails to make any installment payment with respect to the Installment Payment Amount when due as provided below, all amounts due but unpaid in respect of the Party B Fixed Amount and any other Required Amounts hereunder, and under the Ambac Credit Products Secured Note, shall be immediately due and payable to the payee (or other holder, if applicable) of the Ambac Credit Products Secured Note.

If Party A has not exercised the Alternative Settlement Option, and Party B elects to pay the Installment Payment Amount in installments and is entitled to do so, then Party B shall, in addition to paying the Installment Payment Amount, compensate Party A for the costs incurred by Party A as a result of being precluded from effecting delivery of the Deliverable Obligations to Party B on the Physical Settlement Date, as follows:

- (1) If the Physical Settlement Date occurs on or prior to December 31, 2006, Party B will pay the Installment Payment Amount (and any Capitalized Interest Amount), together with interest thereon at the Term Out Rate, to Party A in sixteen (16)

payments on the dates (each, a "Payment Date") hereinafter provided, the amount of each such payment to be calculated as provided below, commencing on the day that is three calendar months after the Physical Settlement Date (or, if such day is not a Business Day, on the first Business Day thereafter), and the remainder of such payments to occur on the last day of each of the fifteen (15) subsequent periods of three calendar months (or, if any such day is not a Business Day, on the first Business Day thereafter); and

- (2) If the Physical Settlement Date occurs after December 31, 2006, Party B will pay the Installment Payment Amount (and any Capitalized Interest Amount), together with interest thereon at the Term Out Rate, to Party A in twelve (12) payments on the Payment Dates hereinafter provided, the amount of each such payment to be calculated as provided below, commencing on the day that is three calendar months after the Physical Settlement Date (or, if such day is not a Business Day, on the first Business Day thereafter), and the remainder of such payments to occur on the last day of each of the eleven (11) subsequent periods of three calendar months (or, if any such day is not a Business Day, on the first Business Day thereafter).

The amount payable by Party B on each Payment Date under paragraph (1) or (2) above, as applicable, shall be calculated on the related Calculation Date, assuming a level payment mortgage amortization schedule, providing for quarterly payments of "principal" and interest in arrears at the Term Out Rate with respect to such Calculation Date, sufficient to fully amortize the Party B Principal Amount (to be treated as "principal" for purposes of such calculation) by the final Payment Date in the remaining number of

Payment Dates.

The "Calculation Date" means, with respect to the first Payment Date, the Physical Settlement Date, and with respect to each Payment Date thereafter, the preceding Payment Date.

The "Capitalized Interest Amount" means, with respect to any Calculation Date, the excess, if any, of (i) the cumulative amount in respect of interest at the Qualifying Swap Rate that Party A under the Qualifying Swap has paid to Party B under the Qualifying Swap (and/or, if applicable, to a purchaser of the right to payment of the Unpaid Qualifying Swap Amount, in accordance with the terms appearing under the caption "Sale of Obligations of Party A and the Party A Credit Support Provider" in Section 3(c) thereof), after giving effect to all payments made by Party A under the Qualifying Swap in reduction of the "Installment Payment Amount" (for purposes of this definition, as such term is used in the Qualifying Swap) (and accrued and unpaid interest thereon) through and including such Calculation Date, over (ii) the cumulative amount in respect of interest at the Term Out Rate that Party B has paid to Party A hereunder, after giving effect to all payments made by Party B hereunder in reduction of the Party B Principal Amount (and accrued and unpaid interest thereon) through and including such Calculation Date.

The "Party A Rate" means, with respect to any Calculation Date, the rate per annum equal to the sum of (i) the rate per annum on the United States Treasury 30-year Bond, as published in *The Wall Street Journal* (or, if unavailable, the financial section of another nationally-circulated newspaper) on such Calculation Date and (ii) 800 basis points.

The "Party A Shortfall Amount" means, with respect to any Calculation Date, the excess, if any, of (i) the Party B Principal Amount, over

(ii) the Unpaid Qualifying Swap Amount.

The "Party B Principal Amount" means, with respect to any Calculation Date, the amount equal to the sum of (i) the amount of the Installment Payment Amount Party B remains obligated to pay to Party A under this Agreement and (ii) the Capitalized Interest Amount, if any, after giving effect to all payments made by Party B (including, without limitation, any Other Party B Payments) in reduction of such Installment Payment Amount (and accrued and unpaid interest thereon) through and including such Calculation Date.

The "Term Out Rate" means, with respect to any Calculation Date, the rate per annum which is the sum of (i) the rate per annum equal to the product of (a) a fraction, the numerator of which shall equal the Unpaid Qualifying Swap Amount, and the denominator of which shall equal the Party B Principal Amount, and (b) the Qualifying Swap Rate, and (ii) the rate per annum equal to the product of (a) a fraction, the numerator of which shall equal the Party A Shortfall Amount, and the denominator of which shall equal the Party B Principal Amount, and (b) the Party A Rate.

The "Qualifying Swap Rate" means, with respect to any Calculation Date, the rate per annum equal to either (i) 12.85% or (ii) commencing with the Calculation Date, if any, next succeeding the date on which the right to receive payment of the Unpaid Qualifying Swap Amount is sold under the Qualifying Swap to a purchaser of such right to payment, in accordance with the terms appearing under the caption "Sale of Obligations of Party A and the Party A Credit Support Provider" in Section 3(c) thereof, the rate per annum actually payable to such purchaser in respect of the Unpaid Qualifying Swap Amount.

The "Unpaid Qualifying Swap Amount"

means, with respect to any Calculation Date, the amount of the "Installment Payment Amount" (for purposes of this definition, as such term is used in the Qualifying Swap) Party A under the Qualifying Swap remains obligated to pay to Party B under the Qualifying Swap (or, if applicable, to a purchaser of such right to payment, in accordance with the terms appearing under the caption "Sale of Obligations of Party A and the Party A Credit Support Provider" in Section 3(c) thereof), after giving effect to all payments made by Party A under the Qualifying Swap in reduction of such Installment Payment Amount through and including such Calculation Date.

Interest on any amount due and payable by Party B on any Payment Date but not timely paid (including overdue interest) shall accrue and be payable by Party B at the greater of (i) the Overdue Rate and (ii) the Term Out Rate otherwise in effect at such time as provided for above.

Party B Overdue Rate:

If Party B has not elected, or at any time in accordance with the terms hereof is not entitled, to pay or continue to pay the Installment Payment Amount in installments, then interest on the unpaid portion of the Party B Fixed Amount and any other Required Amounts due and owing by Party B hereunder shall accrue and be payable by Party B at the Party B Overdue Rate. The "Party B Overdue Rate" means the Term Out Rate, except that, solely for purposes of this definition, in calculating the Term Out Rate, the term "Installment Payment Amount" appearing in the definition of Party B Principal Amount shall be replaced by the term "Party B Fixed Amount".

**Actions to be Taken Upon
Payment in Full of
Installment Payment Amount:**

Upon payment in full by Party B of the Installment Payment Amount, if applicable, (i) Party A shall take each of the actions referred to in clause (a) below, and (ii) at the option of Party A, Party B shall take each of the actions referred to in clause (b) below:

(a) After the Installment Payment Amount has been provided for to Party A's satisfaction or paid to Party A, Party A shall convey (or, if applicable, cause to be conveyed) all of Party A's right, title and interest in, to and under the Deliverable Obligations to Party B by executing an assignment agreement in the form of Exhibit B hereto and shall, if requested by Party B, execute and deliver to Party B, at Party B's expense, such other documentation and instruments of conveyance as may be necessary or (in the reasonable opinion of Party B) desirable to give effect to such assignment;

(b) At the option of Party A, in the event that Party B is subject to proceedings seeking (i) liquidation, reorganization or other relief with respect to it or its debts under Title 11 of the United States Code or any bankruptcy, insolvency or similar law now or hereafter in effect, or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official with respect to it or any substantial part of its property, or (iii) the winding up or liquidation of Party B, Party B shall deliver to Party A an appropriate order made by the bankruptcy court (or other appropriate Governmental Entity) approving the Transaction and the performance by Party B of its obligations hereunder.

**Additional Rights
and Remedies of Party A:**

In addition to, and not in limitation of, any and all other right, title and interest of Party A in, to and under the Deliverable Obligations, in order to secure the full payment of the Party B Fixed Amount (or the Installment Payment Amount, if applicable), together with all other Required Amounts, as and when due in accordance with the terms of this Agreement, Party B hereby mortgages, pledges and assigns to Party A a continuing lien on and security interest in any and all right, title and interest of Party B in, to and under the Deliverable Obligations that may arise pursuant to this Agreement and all Proceeds (as defined in

Section 9-306 of the Uniform Commercial Code as from time to time in effect in the State of New York (the "Code") (the "Collateral").

At any time and from time to time, upon the written request of Party A, and at the sole expense of Party B, Party B will promptly and duly execute and deliver such further instruments and documents and take such further action as Party A may reasonably request for the purpose of obtaining or preserving the full benefits of the lien and security interest created hereby and of the rights and powers granted herein, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code in effect in any jurisdiction with respect to the liens and security interest created hereby.

If Party B shall fail to pay any portion of the Party B Fixed Amount (or the Installment Payment Amount, if applicable) or any other Required Amounts, as and when due in accordance with the terms of this Agreement, and such failure shall be continuing, Party A shall have all of the rights and remedies of a secured creditor under the Code, such other rights and remedies which it may have at law and in equity, and all other rights and remedies granted under this Agreement, which shall include, without limitation, the rights to: (a) in its name or in the name of Party B or otherwise, demand, sue for, collect, or receive, any money or property at any time payable or receivable on account of or in exchange for, or make any compromise or settlement with respect to, any of the Collateral, and extend the time of payment for, otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of, Party B; (b) sell at a commercially reasonable price all or any portion of the Collateral at any broker's board or at a public or private sale, with ten Business Days' prior notice to Party B, at such place(s) and at such

time(s) and upon such terms, whether for cash or on credit; and in such manner as Party A may determine without assumption of any credit risk. Party A shall have the right upon any public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral sold, at a commercially reasonable price, free of any right or equity of redemption in Party B, which right or equity is hereby waived or released. Party B shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay all Required Amounts due and owing under this Agreement and the fees and disbursements of any attorneys employed by Party A to collect such deficiency.

**Reinstatement of Party B
Payment Obligations:**

Notwithstanding the occurrence of the Termination Date hereunder, if the payment of any amount by which the Party B Fixed Amount was reduced pursuant to the operation of clause (A)(ii), (B)(ii) or (C)(ii) of the definition thereof or any amount paid by Party B hereunder to Party A or to any Affiliate of Party A is voided or avoided (an "Avoidance Event") under any applicable Insolvency Proceedings, and, as a result of such Avoidance Event, Party A (or any Affiliate of Party A referred to in said clause (ii)) or any Person having received amounts which otherwise effectively reduced the Party B Fixed Amount is required to return such voided or avoided payment or any portion of such voided or avoided payment (an "Avoided Payment"), Party B will pay the amount of the Avoided Payment out of funds of Party B when due pursuant to the Order referred to below, but in any event no earlier than the second Business Day following receipt by Party B of (i) a certified copy of an order of a court or other body exercising jurisdiction in such Insolvency Proceeding to the effect that Party A (or such Affiliate) or such other Person is required to return such Avoided Payment because such payments were avoided as a preferential or fraudulent transfer or

conveyance or otherwise rescinded or required to be restored by Party A (or such Affiliate) or such other Person (the "Order"), (ii) a certificate by or on behalf of Party A (or such Affiliate) or such other Person (as may have been provided to Party A) that the Order has been entered and is not subject to any stay, (iii) an assignment, in form and substance satisfactory to Party B, duly executed and delivered by Party A (or such Affiliate) or such other Person (as may have been provided to Party A), irrevocably assigning to Party B all rights and claims relating to or arising under the Operative Documents against the estate of Party B (or any other Person who paid such Avoided Payment) or otherwise with respect to such Avoided Payment and (iv) a notice requesting payment thereof duly executed by Party A (or such Affiliate) or such other Person (as may have been provided to Party A). Such payment shall be disbursed to the receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order (the "Order Party"), and not to Party A directly, unless Party A (or such Affiliate) has made a payment of the Avoided Payment to the court or the Order Party, in which case Party B will pay Party A or such Affiliate of Party A, subject to the delivery of (a) the items referred to in clauses (i), (ii), (iii) and (iv) above to Party B and (b) evidence satisfactory to Party B that payment has been made to the Order Party. "Insolvency Proceeding" means the commencement, after the date hereof, of any bankruptcy, insolvency, readjustment of debt, reorganization, marshaling of assets and liabilities or similar proceedings by or against any Person, or the commencement, after the date hereof, of any proceedings by or against any Person for the winding up or the liquidation of its affairs, or the consent after the date hereof to the appointment of a trustee, conservator, receiver or liquidator in any bankruptcy, insolvency, readjustment of debt, reorganization, marshaling of assets and liabilities or similar proceedings relating to any

Person who has paid the Avoided Payment; provided, however, that an involuntary case or other proceeding shall constitute an "Insolvency Proceeding" only if such involuntary case or other proceeding shall have remained undismissed and unstayed for a period of 60 days.

4. Notice and Account Details:

Telephone, Telex and/or
Facsimile Numbers and
Contract Details for Notices:

Party A:
Telephone: (212) 668-0340
Telecopier: (212) 208-3113

Party B:
Telephone: (270) 827-2561
Telecopier: (270) 827-2558

Account Details of Party A:
Account Details of Party B:

To be provided in the Credit Event Notice.
To be advised in writing by Party B.

5. Other Terms:

(a) Additional Representations and Agreements.

(i) Additional Agreements:

- (A) Except to the extent expressly provided herein, each party represents that, in connection with this Transaction, the other party has not made any representation whatsoever to it with respect to the value of the Trust Estate or of the Deliverable Obligations on which it is relying or is entitled to rely in connection with this Transaction.
- (B) Each of the parties hereby represents and warrants that it is entering into the Transaction for either investment, financial intermediation, hedging or other commercial purposes. Each of the parties hereby acknowledges and agrees that the parties will be obligated to comply with the applicable Settlement Terms of this Transaction, irrespective of the existence or amount of the parties' credit exposure to each other.
- (C) Party A shall not have any obligation or liability to any Person with respect to any loss, cost or expense (including, without limitation, out-of-pocket expenses and attorney's fees and disbursements) incurred in connection with or as a result of replacement of the ISDA Master Agreement, this Confirmation or the Qualifying Swap and/or the Party A Credit Support Document

under the Qualifying Swap, in each case pursuant to the provisions of any Operative Document, or the circumstances giving rise thereto.

- (D) Notwithstanding any other provisions of this Agreement, if any stamp tax is payable in connection with the conveyance and delivery of the relevant Deliverable Obligations, payment of such stamp tax shall be made by Party B.
 - (E) Nothing contained in the ISDA Master Agreement shall impose on Party A or Ambac any obligation or responsibility to Big Rivers or the Series B Lender to ensure or pursue collection of any amounts under the Government Securities from the Government Securities Issuer.
 - (F) The ISDA Master Agreement, Section 21 and Section 37.7 of the Intercreditor Agreement, Appendix A to and Section 11.1(d) of the Participation Agreement represent the entire understanding and agreement of the parties hereto with respect to the matters herein and supersede any prior understanding with respect to such matters, written or oral.
- (ii) Concerning the Calculation Agent:
- (A) The Calculation Agent is not acting as a fiduciary for or as an advisor to either party in respect of its duties as Calculation Agent under this Agreement. Whenever the Calculation Agent is required to act hereunder, it will do so in good faith, and its determinations and calculations will be conclusive and binding on the parties hereto in the absence of manifest error.
- (iii) Party A Additional Covenant in respect of the Operative Documents:
- (A) Unless Party A exercises its Alternative Settlement Option (in which case this clause (A) shall not apply from and after the date of such exercise), Party A covenants and agrees that, without the prior written consent of Party B, it will not (i) amend, modify or supplement any of the Operative Documents to which it is a party, or consent or agree to any such amendment, modification or supplement, if such amendment, modification or supplement reasonably could be expected to have a material adverse effect on any of the rights and obligations of Party B hereunder, (ii) except as contemplated hereby or as permitted in accordance with Section 5.1 of the Participation Agreement, sell, assign, transfer, encumber or otherwise dispose of, in whole or in part, any of the Deliverable Obligations at any time after the date on which Party A obtains title to the Deliverable Obligations, or (iii) at any

time after the date on which Party A becomes a party to the Trust Agreement, amend, modify or supplement, or consent or agree to any amendment, modification or supplement of, the Trust Agreement in any manner that would materially adversely affect the interests thereunder of Party B as a prospective transferee of the Deliverable Obligations.

(iv) Party B Additional Covenants:

(A) Party B covenants and agrees that, prior to payment in full of all amounts payable to Party A hereunder, it will not, without the prior written consent of Party A, (i) amend or modify either the amount or the scheduled payment date of any portion of the Basic Rent under the Facility Lease, (ii) except to the extent required in connection with a transaction permitted under the following clause (iii), amend, modify or supplement any of the Operative Documents, or consent or agree to any such amendment, modification or supplement, if such amendment, modification or supplement reasonably could be expected to have a material adverse effect on any of the rights and obligations of Party A hereunder or (iii) except as contemplated hereby or as permitted by the other Operative Documents, including Section 18 of the Facility Lease, sell, assign, transfer, encumber or otherwise dispose of, in whole or in part, any of its present or future interest in the Deliverable Obligations. In addition, Party B covenants and agrees for the benefit of Party A and Ambac that, so long as any obligations are outstanding in respect of the Loan Certificates, Party B will not authorize or permit the Big Rivers Subsidiary to agree to or suffer any amendment, modification or supplement of the Government Securities Pledge Agreement that would alter the provisions of Section 4 thereof regarding payment of amounts due under the Government Securities to the Government Securities Account identified therein without the prior written consent of Party A and Ambac in their respective sole discretion.

(B) Party B further covenants and agrees for the benefit of Party A and Ambac that Party B will not enter into any arrangement or understanding by which Party B shall assume or become liable for (whether on a primary or a contingent basis) the obligations of any Person in respect of principal and interest due at any time under the Series B Loan Certificate without the prior written consent of Party A and Ambac in their respective sole discretion.

(v) Additional Representations:

(A) Party B hereby acknowledges and agrees that each of the representations and warranties provided by it in Section 3 of the

Participation Agreement, and in any certificate delivered by it on the Closing Date in connection with the Participation Agreement, is true and correct in all material respects as of the Effective Date and shall run to the benefit of Party A.

(b) Waiver of Defenses.

Party B's obligations under the ISDA Master Agreement are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Facility Lease or any other Operative Document or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any guarantee of or security for any payment obligations of Big Rivers under the Operative Documents (the "Big Rivers Obligations"), and, to the fullest extent permitted by Applicable Law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of Party B hereunder. Party B's obligations under the ISDA Master Agreement shall not be subject to any abatement, reduction, limitation, impairment, termination, setoff, defense, counterclaim or recoupment whatsoever or any right to any thereof except as expressly set forth in this Agreement, and shall not be released or discharged except by payment and performance in full. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following (with or without notice to Party B) shall not alter or impair Party B's liabilities and obligations hereunder, which shall remain absolute and unconditional as described above:

- (i) any lien or security interest granted to, or in favor of, Party A or the Trustee as security for any Big Rivers Obligation shall fail to be perfected;
- (ii) the bankruptcy or insolvency of Party A or Party B or any reorganization, arrangement, compromise, composition or plan affecting Party A or Party B shall occur; or
- (iii) the ISDA Master Agreement, this Confirmation, any documents relating to the ISDA Master Agreement and this Confirmation between Party A and Party B, any Operative Document or any other agreement or instrument referred to herein or therein shall be rejected or limited in any bankruptcy, insolvency or similar proceeding (nothing herein being a concession that any obligation hereunder or thereunder is properly classifiable as an executory obligation).

Party B hereby expressly waives diligence, presentment, protest and any requirement that Party A or any other Person exhaust any right, power or remedy or proceed against Party B or any other Person under the Facility Lease or any other Operative Document or any other agreement or instrument referred to herein or therein, or against any other Person under any guarantee of, or security for, any of the Big Rivers Obligations.

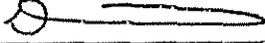
For purposes of this Agreement, except to the extent expressly set forth herein or in the other Operative Documents, neither Party A nor Party B shall have any obligation or duty to take any action or refrain from taking any action whatsoever under the Operative Documents or with respect to the transactions contemplated therein and either may take any action or omit to take any action with respect to the Operative Documents and the transactions contemplated therein free of any requirement to notify or obtain any consent from the other party hereto with respect thereto. Under no circumstances will any act or omission referred to in the preceding sentence affect Party A's or Party B's obligations pursuant to the terms and conditions hereof.

- (c) Interpretation. Each reference to the singular shall include the plural and vice versa.
- (d) Governing Law. The ISDA Master Agreement, this Confirmation and the Transaction shall be governed by and construed in accordance with the laws of the State of New York without reference to choice of law provisions (except New York General Obligations Law Sections 5-1401 and 5-1402).
- (e) Invalidity. If any provision of this Confirmation shall be invalid, illegal or unenforceable under Applicable Law of any jurisdiction, the validity, legality and enforceability of such provision in any other jurisdiction, and of the remaining provisions hereof in any jurisdiction, shall not be affected or impaired thereby or affect the validity, or enforceability of such provision in any other jurisdiction. To the extent permitted by Applicable Law, the parties hereby waive any provision of Applicable Law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect.

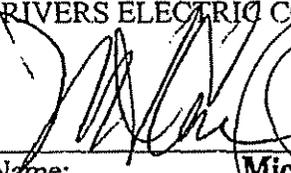
Please confirm that the foregoing correctly sets forth the terms of our agreement with respect to the Transaction by signing in the space provided below and sending a copy of the executed Confirmation by telecopier to Party A at (212) 208-3113.

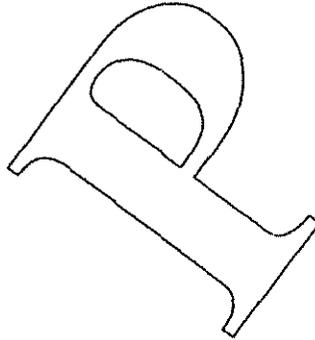
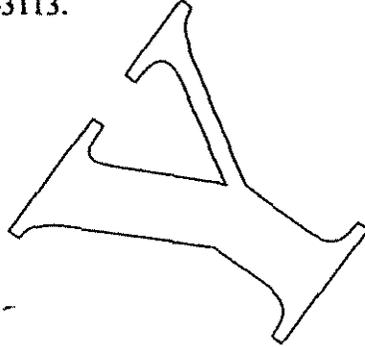
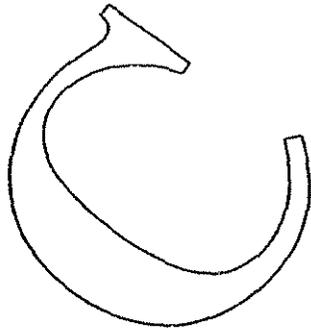
Yours sincerely,

AMBAC CREDIT PRODUCTS, LLC

By: 
Name: _____
Title: DAVID J. WEISSMAN
FIRST VICE PRESIDENT

Confirmed as of the date
first above written:

BIG RIVERS ELECTRIC CORPORATION
By: 
Name: _____
Title: Michael H. Core
President & CEO
Big Rivers Electric Corporation



**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Apr 18 2000	25,082,162.92	90,100,724.50	10,011,191.61
May 18 2000	28,122,073.12	90,658,062.05	10,078,053.43
Jun 18 2000	28,385,247.58	91,215,399.60	10,144,915.25
Jul 18 2000	28,643,744.47	91,772,737.16	10,211,777.07
Aug 4 2000	28,904,035.75	92,075,499.90	10,233,292.17
Sep 4 2000	29,166,133.90	92,643,180.05	10,301,394.76
Oct 4 2000	29,423,546.99	93,210,860.20	10,369,497.34
Nov 4 2000	29,682,746.97	93,778,540.35	10,437,599.93
Dec 4 2000	29,943,746.21	94,346,220.50	10,505,702.52
Jan 4 2001	30,200,052.79	94,913,900.65	10,573,805.10
Feb 4 2001	30,458,138.56	92,840,115.91	10,320,622.65
Mar 4 2001	30,718,015.86	93,410,868.05	10,389,093.77
Apr 4 2001	30,979,697.16	93,981,620.19	10,457,564.89
May 4 2001	31,233,931.79	94,552,372.33	10,526,036.02
Jun 4 2001	31,489,931.25	95,123,124.47	10,594,507.14
Jul 4 2001	31,738,444.60	95,693,876.62	10,662,978.26
Aug 4 2001	31,988,683.04	96,264,628.76	10,731,449.38
Sep 4 2001	32,240,658.56	96,835,380.90	10,799,920.50
Oct 4 2001	32,485,120.06	97,406,133.04	10,868,391.62
Nov 4 2001	32,731,278.51	97,976,885.18	10,936,862.74
Dec 4 2001	32,979,145.72	98,547,637.32	11,005,333.86
Jan 4 2002	33,219,470.38	99,118,389.46	11,073,804.99
Feb 4 2002	33,461,463.30	93,824,361.16	10,430,036.82
Mar 4 2002	33,705,136.05	94,401,164.14	10,499,233.84
Apr 4 2002	33,950,500.29	94,977,967.11	10,568,430.85
May 4 2002	34,188,836.29	95,554,770.09	10,637,627.87
Jun 4 2002	34,428,826.75	96,131,573.06	10,706,824.89
Jul 4 2002	34,661,751.66	96,708,376.04	10,776,021.91
Aug 4 2002	34,896,293.46	97,285,179.01	10,845,218.93
Sep 4 2002	35,132,463.37	97,861,981.99	10,914,415.95
Oct 4 2002	35,361,541.22	98,438,784.96	10,983,612.96
Nov 4 2002	35,592,209.24	99,015,587.93	11,052,809.98
Dec 4 2002	35,824,478.50	99,592,390.91	11,122,007.00
Jan 4 2003	36,049,628.61	100,169,193.88	11,191,204.02
Feb 4 2003	36,276,341.64	94,882,247.83	10,547,637.37
Mar 4 2003	36,504,628.43	95,465,554.36	10,617,614.60
Apr 4 2003	36,734,499.92	96,048,860.89	10,687,591.83
May 4 2003	36,957,715.79	96,632,167.43	10,757,569.05
Jun 4 2003	37,182,481.17	97,215,473.96	10,827,546.28
Jul 4 2003	37,400,555.48	97,798,780.49	10,897,523.51
Aug 4 2003	37,620,143.60	98,382,087.03	10,967,500.74

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Sep 4 2003	37,841,256.02	98,965,393.56	11,037,477.96
Oct 4 2003	38,055,652.04	99,548,700.09	11,107,455.19
Nov 4 2003	38,271,536.31	100,132,006.62	11,177,432.42
Dec 4 2003	38,488,919.19	100,715,313.16	11,247,409.65
Jan 4 2004	38,699,559.77	101,298,619.69	11,317,386.87
Feb 4 2004	38,911,662.55	96,019,285.78	10,674,036.82
Mar 4 2004	39,125,237.66	96,609,582.47	10,744,852.63
Apr 4 2004	39,340,295.36	97,199,879.15	10,815,668.44
May 4 2004	39,549,026.53	97,790,175.84	10,886,484.26
Jun 4 2004	39,759,206.66	98,380,472.53	10,957,300.07
Jul 4 2004	39,963,026.41	98,970,769.22	11,028,115.88
Aug 4 2004	40,168,261.01	99,561,065.91	11,098,931.69
Sep 4 2004	40,374,920.28	100,151,362.60	11,169,747.50
Oct 4 2004	40,575,194.75	100,741,659.28	11,240,563.32
Nov 4 2004	40,776,859.45	101,331,955.97	11,311,379.13
Dec 4 2004	40,979,924.05	101,922,252.66	11,382,194.94
Jan 4 2005	40,481,941.87	102,512,549.35	11,453,010.75
Feb 4 2005	40,679,961.83	97,241,397.12	10,809,893.50
Mar 4 2005	40,879,356.35	97,839,206.97	10,881,610.64
Apr 4 2005	41,080,135.01	98,437,016.82	10,953,327.78
May 4 2005	41,274,874.43	99,034,826.67	11,025,044.92
Jun 4 2005	41,470,965.67	99,632,636.51	11,096,762.06
Jul 4 2005	41,660,985.11	100,230,446.36	11,168,479.20
Aug 4 2005	41,852,323.61	100,828,256.21	11,240,196.34
Sep 4 2005	42,044,990.32	101,426,066.06	11,311,913.48
Oct 4 2005	42,231,561.48	102,023,875.91	11,383,630.61
Nov 4 2005	42,419,427.74	102,621,685.76	11,455,347.75
Dec 4 2005	42,608,598.12	103,219,495.61	11,527,064.89
Jan 4 2006	42,097,010.66	103,817,305.45	11,598,782.03
Feb 4 2006	42,281,331.89	97,941,657.99	10,887,738.39
Mar 4 2006	42,466,932.62	98,543,772.82	10,959,971.98
Apr 4 2006	42,653,821.73	99,145,887.66	11,032,205.57
May 4 2006	42,834,965.32	99,748,002.49	11,104,439.17
Jun 4 2006	43,017,366.35	100,350,117.33	11,176,672.76
Jul 4 2006	43,193,990.73	100,952,232.16	11,248,906.35
Aug 4 2006	43,371,841.18	101,554,347.00	11,321,139.95
Sep 4 2006	43,550,926.20	102,156,461.83	11,393,373.54
Oct 4 2006	43,724,211.55	102,758,576.66	11,465,607.13
Nov 4 2006	43,898,699.79	103,360,691.50	11,537,840.72
Dec 4 2006	44,074,399.27	103,962,806.33	11,610,074.32
Jan 4 2007	44,244,275.56	104,564,921.17	11,682,307.91

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Feb 4 2007	44,415,331.09	97,941,657.99	10,887,738.39
Mar 4 2007	44,587,574.03	98,543,772.82	10,959,971.98
Apr 4 2007	44,761,012.62	99,145,887.66	11,032,205.57
May 4 2007	44,929,023.03	99,748,002.49	11,104,439.17
Jun 4 2007	45,098,199.71	100,350,117.33	11,176,672.76
Jul 4 2007	45,261,918.64	100,952,232.16	11,248,906.35
Aug 4 2007	45,426,774.04	101,554,347.00	11,321,139.95
Sep 4 2007	45,592,773.81	102,156,461.83	11,393,373.54
Oct 4 2007	45,753,293.77	102,758,576.66	11,465,607.13
Nov 4 2007	45,914,928.01	103,360,691.50	11,537,840.72
Dec 4 2007	46,077,684.25	103,962,806.33	11,610,074.32
Jan 4 2008	46,234,938.17	104,564,921.17	11,682,307.91
Feb 4 2008	46,393,283.68	97,941,657.99	10,887,738.39
Mar 4 2008	46,552,728.40	98,543,772.82	10,959,971.98
Apr 4 2008	46,713,279.91	99,145,887.66	11,032,205.57
May 4 2008	46,868,381.39	99,748,002.49	11,104,439.17
Jun 4 2008	47,024,559.55	100,350,117.33	11,176,672.76
Jul 4 2008	47,175,257.32	100,952,232.16	11,248,906.35
Aug 4 2008	47,327,001.18	101,554,347.00	11,321,139.95
Sep 4 2008	47,479,798.39	102,156,461.83	11,393,373.54
Oct 4 2008	47,627,091.76	102,758,576.66	11,465,607.13
Nov 4 2008	47,775,407.59	103,360,691.50	11,537,840.72
Dec 4 2008	47,924,752.98	103,962,806.33	11,610,074.32
Jan 4 2009	48,068,570.54	104,564,921.17	11,682,307.91
Feb 4 2009	48,213,386.45	90,728,638.31	10,085,899.08
Mar 4 2009	48,359,207.61	91,286,409.75	10,152,812.95
Apr 4 2009	48,506,041.03	91,844,181.18	10,219,726.82
May 4 2009	48,647,881.44	92,401,952.62	10,286,640.70
Jun 4 2009	48,790,706.46	92,959,724.05	10,353,554.57
Jul 4 2009	48,928,510.67	93,517,495.48	10,420,468.44
Aug 4 2009	49,067,271.46	94,075,266.92	10,487,382.31
Sep 4 2009	49,206,995.49	94,633,038.35	10,554,296.18
Oct 4 2009	49,341,677.16	95,190,809.79	10,621,210.05
Nov 4 2009	49,477,293.75	95,748,581.22	10,688,123.93
Dec 4 2009	49,613,851.75	96,306,352.65	10,755,037.80
Jan 4 2010	49,745,345.42	96,864,124.09	10,821,951.67
Feb 4 2010	49,877,751.88	91,554,902.41	10,177,751.18
Mar 4 2010	50,011,077.45	92,117,753.46	10,245,274.44
Apr 4 2010	50,145,328.54	92,680,604.51	10,312,797.69
May 4 2010	50,274,440.65	93,243,455.56	10,380,320.95
Jun 4 2010	50,404,449.03	93,806,306.61	10,447,844.20

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Jul 4 2010	50,529,288.98	94,369,157.66	10,515,367.46
Aug 4 2010	50,654,995.55	94,932,008.70	10,582,890.72
Sep 4 2010	50,781,574.73	95,494,859.75	10,650,413.97
Oct 4 2010	50,902,961.67	96,057,710.80	10,717,937.23
Nov 4 2010	51,025,191.27	96,620,561.85	10,785,460.48
Dec 4 2010	51,148,269.33	97,183,412.90	10,852,983.74
Jan 4 2011	51,266,130.87	97,746,263.95	10,920,506.99
Feb 4 2011	51,384,810.56	92,442,987.75	10,276,475.68
Mar 4 2011	51,504,314.10	93,011,298.47	10,344,653.91
Apr 4 2011	51,624,647.18	93,579,609.19	10,412,832.15
May 4 2011	51,739,676.16	94,147,919.91	10,481,010.38
Jun 4 2011	51,855,503.65	94,716,230.63	10,549,188.61
Jul 4 2011	51,965,995.74	95,284,541.35	10,617,366.84
Aug 4 2011	52,077,254.85	95,852,852.07	10,685,545.08
Sep 4 2011	52,189,286.28	96,421,162.79	10,753,723.31
Oct 4 2011	52,295,955.97	96,989,473.52	10,821,901.54
Nov 4 2011	52,403,366.14	97,557,784.24	10,890,079.77
Dec 4 2011	52,511,521.91	98,126,094.96	10,958,258.01
Jan 4 2012	52,614,289.04	98,694,405.68	11,026,436.24
Feb 4 2012	52,717,769.55	92,072,615.40	10,235,303.03
Mar 4 2012	52,821,968.39	92,638,649.19	10,303,208.11
Apr 4 2012	52,926,890.54	93,204,682.98	10,371,113.19
May 4 2012	53,026,429.40	93,770,716.76	10,439,018.27
Jun 4 2012	53,126,659.23	94,336,750.55	10,506,923.34
Jul 4 2012	53,221,473.18	94,902,784.34	10,574,828.42
Aug 4 2012	53,316,945.32	95,468,818.13	10,642,733.50
Sep 4 2012	53,413,080.17	96,034,851.91	10,710,638.57
Oct 4 2012	53,503,770.75	96,600,885.70	10,778,543.65
Nov 4 2012	53,595,090.87	97,166,919.49	10,846,448.73
Dec 4 2012	53,687,044.89	97,732,953.27	10,914,353.80
Jan 4 2013	53,773,525.61	98,298,987.06	10,982,258.88
Feb 4 2013	53,860,606.65	91,674,531.73	10,191,049.84
Mar 4 2013	53,948,292.17	92,238,118.22	10,258,661.33
Apr 4 2013	54,036,586.37	92,801,704.71	10,326,272.81
May 4 2013	54,120,779.75	93,365,291.21	10,393,884.29
Jun 4 2013	54,205,557.58	93,928,877.70	10,461,495.78
Jul 4 2013	54,286,210.16	94,492,464.19	10,529,107.26
Aug 4 2013	54,367,422.59	95,056,050.68	10,596,718.75
Sep 4 2013	54,449,198.78	95,619,637.18	10,664,330.23
Oct 4 2013	54,526,828.90	96,183,223.67	10,731,941.71
Nov 4 2013	54,604,997.89	96,746,810.16	10,799,553.20

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Dec 4 2013	54,683,709.52	97,310,396.65	10,867,164.68
Jan 4 2014	54,758,253.78	97,873,983.15	10,934,776.16
Feb 4 2014	54,833,315.51	91,246,663.36	10,143,485.62
Mar 4 2014	54,908,898.28	91,807,619.45	10,210,781.54
Apr 4 2014	54,985,005.74	92,368,575.54	10,278,077.47
May 4 2014	55,056,960.78	92,929,531.63	10,345,373.39
Jun 4 2014	55,129,415.31	93,490,487.72	10,412,669.32
Jul 4 2014	55,197,692.07	94,051,443.81	10,479,965.24
Aug 4 2014	55,266,442.78	94,612,399.91	10,547,261.16
Sep 4 2014	55,335,670.74	95,173,356.00	10,614,557.09
Oct 4 2014	55,400,698.53	95,734,312.09	10,681,853.01
Nov 4 2014	55,466,177.72	96,295,268.18	10,749,148.93
Dec 4 2014	55,532,111.44	96,856,224.27	10,816,444.86
Jan 4 2015	55,593,822.13	97,417,180.36	10,883,740.78
Feb 4 2015	55,655,961.20	90,786,781.80	10,092,362.63
Mar 4 2015	55,718,531.60	91,344,910.68	10,159,319.39
Apr 4 2015	55,781,536.36	91,903,039.56	10,226,276.14
May 4 2015	55,840,333.94	92,461,168.45	10,293,232.89
Jun 4 2015	55,899,539.69	93,019,297.33	10,360,189.65
Jul 4 2015	55,954,511.88	93,577,426.21	10,427,146.40
Aug 4 2015	56,009,865.67	94,135,555.09	10,494,103.15
Sep 4 2015	56,065,603.71	94,693,683.97	10,561,059.91
Oct 4 2015	56,117,084.14	95,251,812.86	10,628,016.66
Nov 4 2015	56,168,921.93	95,809,941.74	10,694,973.41
Dec 4 2015	56,221,119.55	96,368,070.62	10,761,930.17
Jan 4 2016	56,269,034.99	96,926,199.50	10,828,886.92
Feb 4 2016	56,317,283.04	90,292,491.81	10,037,414.61
Mar 4 2016	56,365,866.01	90,847,581.95	10,104,006.82
Apr 4 2016	56,414,786.23	91,402,672.09	10,170,599.03
May 4 2016	56,459,440.35	91,957,762.24	10,237,191.23
Jun 4 2016	56,504,404.45	92,512,852.38	10,303,783.44
Jul 4 2016	56,545,075.01	93,067,942.52	10,370,375.65
Aug 4 2016	56,586,027.87	93,623,032.66	10,436,967.85
Sep 4 2016	56,627,265.02	94,178,122.80	10,503,560.06
Oct 4 2016	56,664,182.75	94,733,212.94	10,570,152.27
Nov 4 2016	56,701,356.75	95,288,303.08	10,636,744.47
Dec 4 2016	56,738,788.80	95,843,393.22	10,703,336.68
Jan 4 2017	56,771,875.00	96,398,483.36	10,769,928.88
Feb 4 2017	56,805,190.89	89,761,218.95	9,978,355.37
Mar 4 2017	56,838,738.04	90,313,043.00	10,044,555.76
Apr 4 2017	56,872,518.06	90,864,867.04	10,110,756.14

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
May 4 2017	56,901,967.89	91,416,691.08	10,176,956.53
Jun 4 2017	56,931,622.15	91,968,515.12	10,243,156.91
Jul 4 2017	56,956,917.58	92,520,339.16	10,309,357.29
Aug 4 2017	56,982,388.59	93,072,163.20	10,375,557.68
Sep 4 2017	57,008,036.42	93,623,987.24	10,441,758.06
Oct 4 2017	57,029,297.61	94,175,811.28	10,507,958.45
Nov 4 2017	57,050,706.38	94,727,635.32	10,574,158.83
Dec 4 2017	57,072,263.76	95,279,459.36	10,640,359.21
Jan 4 2018	57,089,406.10	95,831,283.40	10,706,559.60
Feb 4 2018	57,106,667.45	89,190,196.16	9,914,877.31
Mar 4 2018	57,124,048.60	89,738,509.73	9,980,656.56
Apr 4 2018	57,141,550.43	90,286,823.30	10,046,435.80
May 4 2018	57,154,653.10	90,835,136.87	10,112,215.05
Jun 4 2018	57,167,846.76	91,383,450.44	10,177,994.29
Jul 4 2018	57,176,611.36	91,931,764.01	10,243,773.54
Aug 4 2018	57,185,436.79	92,480,077.58	10,309,552.78
Sep 4 2018	57,194,323.50	93,028,391.16	10,375,332.03
Oct 4 2018	57,198,751.28	93,576,704.73	10,441,111.27
Nov 4 2018	57,203,209.79	94,125,018.30	10,506,890.52
Dec 4 2018	57,207,699.25	94,673,331.87	10,572,669.76
Jan 4 2019	57,207,699.25	95,221,645.44	10,638,449.01
Feb 4 2019	57,207,699.25	88,576,449.34	9,846,649.81
Mar 4 2019	57,207,699.25	89,120,989.78	9,911,976.40
Apr 4 2019	57,207,699.24	89,665,530.23	9,977,303.00
May 4 2019	57,207,699.24	90,210,070.67	10,042,629.60
Jun 4 2019	57,207,699.25	90,754,611.12	10,107,956.19
Jul 4 2019	57,207,699.24	91,299,151.57	10,173,282.79
Aug 4 2019	57,207,699.24	91,843,692.01	10,238,609.39
Sep 4 2019	57,207,699.24	92,388,232.46	10,303,935.98
Oct 4 2019	57,207,699.25	92,932,772.90	10,369,262.58
Nov 4 2019	57,207,699.25	93,477,313.35	10,434,589.18
Dec 4 2019	57,207,699.25	94,021,853.80	10,499,915.77
Jan 4 2020	57,207,699.25	94,566,394.24	10,565,242.37
Feb 4 2020	57,207,699.25	87,916,781.86	9,773,317.51
Mar 4 2020	57,207,699.25	88,457,266.87	9,838,157.59
Apr 4 2020	57,207,699.24	88,997,751.89	9,902,997.67
May 4 2020	57,207,699.24	89,538,236.90	9,967,837.75
Jun 4 2020	57,207,699.25	90,078,721.92	10,032,677.83
Jul 4 2020	57,207,699.24	90,619,206.93	10,097,517.91
Aug 4 2020	57,207,699.25	91,159,691.95	10,162,357.99
Sep 4 2020	57,207,699.24	91,700,176.97	10,227,198.07

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Oct 4 2020	57,207,699.25	92,240,661.98	10,292,038.16
Nov 4 2020	57,207,699.25	92,781,147.00	10,356,878.24
Dec 4 2020	57,207,699.25	93,321,632.01	10,421,718.32
Jan 4 2021	57,207,699.24	93,862,117.03	10,486,558.40
Feb 4 2021	57,207,699.25	87,207,757.93	9,694,498.47
Mar 4 2021	57,207,699.25	87,743,884.09	9,758,815.64
Apr 4 2021	57,207,699.24	88,280,010.25	9,823,132.80
May 4 2021	57,207,699.24	88,816,136.40	9,887,449.96
Jun 4 2021	57,207,699.25	89,352,262.56	9,951,767.13
Jul 4 2021	57,207,699.25	89,888,388.72	10,016,084.29
Aug 4 2021	57,207,699.25	90,424,514.87	10,080,401.46
Sep 4 2021	57,207,699.25	90,960,641.03	10,144,718.62
Oct 4 2021	57,207,699.25	91,496,767.19	10,209,035.79
Nov 4 2021	57,207,699.24	92,032,893.35	10,273,352.95
Dec 4 2021	57,207,699.24	92,569,019.50	10,337,670.11
Jan 4 2022	57,207,699.24	93,105,145.66	10,401,987.28
Feb 4 2022	57,207,699.25	86,445,684.70	9,609,782.18
Mar 4 2022	57,207,699.25	86,977,125.87	9,673,537.30
Apr 4 2022	57,207,699.25	87,508,567.04	9,737,292.43
May 4 2022	57,207,699.24	88,040,008.21	9,801,047.55
Jun 4 2022	57,207,699.25	88,571,449.37	9,864,802.67
Jul 4 2022	57,207,699.24	89,102,890.54	9,928,557.79
Aug 4 2022	57,207,699.24	89,634,331.71	9,992,312.92
Sep 4 2022	57,207,699.24	90,165,772.88	10,056,068.04
Oct 4 2022	57,207,699.25	90,697,214.05	10,119,823.16
Nov 4 2022	57,207,699.25	91,228,655.21	10,183,578.28
Dec 4 2022	57,207,699.25	91,760,096.38	10,247,333.41
Jan 4 2023	57,207,699.25	92,291,537.55	10,311,088.53
Feb 4 2023	57,207,699.25	85,626,593.01	9,518,727.40
Mar 4 2023	57,207,699.24	86,152,998.66	9,581,878.43
Apr 4 2023	57,207,699.25	86,679,404.30	9,645,029.46
May 4 2023	57,207,699.24	87,205,809.95	9,708,180.49
Jun 4 2023	57,207,699.25	87,732,215.60	9,771,331.52
Jul 4 2023	57,207,699.25	88,258,621.25	9,834,482.55
Aug 4 2023	57,207,699.24	88,785,026.89	9,897,633.58
Sep 4 2023	57,207,699.25	89,311,432.54	9,960,784.60
Oct 4 2023	57,207,699.25	89,837,838.19	10,023,935.63
Nov 4 2023	57,207,699.25	90,364,243.84	10,087,086.66
Dec 4 2023	57,207,699.25	90,890,649.48	10,150,237.69
Jan 4 2024	57,207,699.24	91,417,055.13	10,213,388.72
Feb 4 2024	57,207,699.25	84,746,216.72	9,420,859.89

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Mar 4 2024	57,207,699.25	85,267,210.09	9,483,361.62
Apr 4 2024	57,207,699.24	85,788,203.46	9,545,863.36
May 4 2024	57,207,699.24	86,309,196.83	9,608,365.10
Jun 4 2024	57,207,699.25	86,830,190.19	9,670,866.83
Jul 4 2024	57,207,699.25	87,351,183.56	9,733,368.57
Aug 4 2024	57,207,699.24	87,872,176.93	9,795,870.31
Sep 4 2024	57,207,699.24	88,393,170.30	9,858,372.04
Oct 4 2024	57,207,699.25	88,914,163.66	9,920,873.78
Nov 4 2024	57,207,699.25	89,435,157.03	9,983,375.52
Dec 4 2024	57,207,699.24	89,956,150.40	10,045,877.25
Jan 4 2025	57,207,699.24	90,477,143.77	10,108,378.99
Feb 4 2025	57,207,699.25	84,873,874.88	9,435,051.08
Mar 4 2025	57,207,699.24	85,395,653.05	9,497,646.96
Apr 4 2025	57,207,699.24	85,917,431.22	9,560,242.85
May 4 2025	57,207,699.25	86,439,209.39	9,622,838.74
Jun 4 2025	57,207,699.25	86,960,987.56	9,685,434.62
Jul 4 2025	57,207,699.25	87,482,765.73	9,748,030.51
Aug 4 2025	57,207,699.24	88,004,543.90	9,810,626.40
Sep 4 2025	57,207,699.25	88,526,322.07	9,873,222.28
Oct 4 2025	57,207,699.25	89,048,100.24	9,935,818.17
Nov 4 2025	57,207,699.25	89,569,878.41	9,998,414.06
Dec 4 2025	57,207,699.24	90,091,656.58	10,061,009.94
Jan 4 2026	57,207,699.25	90,613,434.75	10,123,605.83
Feb 4 2026	57,207,699.25	91,173,943.79	10,185,401.71
Mar 4 2026	57,207,699.25	91,734,452.82	10,247,197.59
Apr 4 2026	57,207,699.24	92,294,961.85	10,308,993.47
May 4 2026	57,207,699.25	92,855,470.89	10,370,789.35
Jun 4 2026	57,207,699.25	93,415,979.92	10,432,585.23
Jul 4 2026	57,207,699.25	93,976,488.95	10,494,381.11
Aug 4 2026	57,207,699.25	94,536,997.99	10,556,177.00
Sep 4 2026	57,207,699.24	95,097,507.02	10,617,972.88
Oct 4 2026	57,207,699.24	95,658,016.05	10,679,768.76
Nov 4 2026	57,207,699.24	96,218,525.09	10,741,564.64
Dec 4 2026	57,207,699.24	96,779,034.12	10,803,360.52
Jan 4 2027	55,818,424.25	97,339,543.16	10,865,156.40
Feb 4 2027	55,818,424.25	0.00	0.00
Mar 4 2027	55,818,424.25	0.00	0.00
Apr 4 2027	55,818,424.25	0.00	0.00
Apr 15 2027	55,818,424.25	0.00	0.00
May 15 2027	55,818,424.25 *	0.00	0.00
Jun 15 2027	55,818,424.25 *	0.00	0.00

Big Rivers Swap

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Jul 15 2027	55,818,424.25 *	0.00	0.00
Aug 15 2027	55,818,424.25 *	0.00	0.00
Sep 15 2027	55,818,424.25 *	0.00	0.00
Oct 15 2027	55,818,424.25 *	0.00	0.00
Nov 15 2027	55,818,424.25 *	0.00	0.00
Dec 15 2027	55,818,424.25 *	0.00	0.00

* Amount in Column B1 from and after 15 April 2027 shall be reduced by the amount of any reduction of the Party B Fixed Amount effected hereunder by virtue of payments in respect of the Fixed Purchase Option Price paid on each of the 15th of April, June, September and December 2027.

SCHEDULE II TO CREDIT SWAP
TRANSACTION CONFIRMATION

FBR - 1
SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Apr 19 2000	3,792,351.73
May 18 2000	3,823,204.89
Jun 18 2000	3,855,121.95
Jul 18 2000	3,887,039.01
Aug 4 2000	3,904,061.45
Sep 4 2000	3,935,978.51
Oct 4 2000	3,967,895.57
Nov 4 2000	3,999,812.63
Dec 4 2000	4,031,729.69
Jan 4 2001	4,063,646.75
Feb 4 2001	4,097,847.08
Mar 4 2001	4,132,047.40
Apr 4 2001	4,166,247.73
May 4 2001	4,200,448.05
Jun 4 2001	4,234,648.38
Jul 4 2001	4,268,848.70
Aug 4 2001	4,304,776.04
Sep 4 2001	4,340,703.38
Oct 4 2001	4,376,630.72
Nov 4 2001	4,412,558.05
Dec 4 2001	4,448,485.39
Jan 4 2002	4,484,412.73
Feb 4 2002	4,522,154.29
Mar 4 2002	4,559,895.85
Apr 4 2002	4,597,637.41
May 4 2002	4,635,378.98
Jun 4 2002	4,673,120.54
Jul 4 2002	4,710,862.10
Aug 4 2002	4,750,509.49
Sep 4 2002	4,790,156.89
Oct 4 2002	4,829,804.29
Nov 4 2002	4,869,451.68
Dec 4 2002	4,909,099.08
Jan 4 2003	4,948,746.48
Feb 4 2003	4,990,395.95
Mar 4 2003	5,032,045.42
Apr 4 2003	5,073,694.89
May 4 2003	5,115,344.36
Jun 4 2003	5,156,993.83
Jul 4 2003	5,198,643.30
Aug 4 2003	5,242,395.95
Sep 4 2003	5,286,148.59

FBR - 1
SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Oct 4 2003	5,329,901.23
Nov 4 2003	5,373,653.88
Dec 4 2003	5,417,406.52
Jan 4 2004	5,461,159.17
Feb 4 2004	5,507,121.19
Mar 4 2004	5,553,083.21
Apr 4 2004	5,599,045.23
May 4 2004	5,645,007.25
Jun 4 2004	5,690,969.27
Jul 4 2004	5,736,931.29
Aug 4 2004	5,785,214.26
Sep 4 2004	5,833,497.22
Oct 4 2004	5,881,780.19
Nov 4 2004	5,930,063.15
Dec 4 2004	5,978,346.12
Jan 4 2005	6,026,629.08
Feb 4 2005	6,077,350.19
Mar 4 2005	6,128,071.30
Apr 4 2005	6,178,792.41
May 4 2005	6,229,513.52
Jun 4 2005	6,280,234.63
Jul 4 2005	6,330,955.74
Aug 4 2005	6,384,238.11
Sep 4 2005	6,437,520.49
Oct 4 2005	6,490,802.86
Nov 4 2005	6,544,085.23
Dec 4 2005	6,597,367.61
Jan 4 2006	6,650,649.98
Feb 4 2006	6,706,622.95
Mar 4 2006	6,762,595.92
Apr 4 2006	6,818,568.90
May 4 2006	6,874,541.87
Jun 4 2006	6,930,514.84
Jul 4 2006	6,986,487.82
Aug 4 2006	7,045,287.26
Sep 4 2006	7,104,086.70
Oct 4 2006	7,162,886.14
Nov 4 2006	7,221,685.58
Dec 4 2006	7,280,485.02
Jan 4 2007	7,339,284.46
Feb 4 2007	7,401,053.09
Mar 4 2007	7,462,821.73

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SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Apr 4 2007	7,524,590.36
May 4 2007	7,586,359.00
Jun 4 2007	7,648,127.63
Jul 4 2007	7,709,896.27
Aug 4 2007	7,774,784.03
Sep 4 2007	7,839,671.80
Oct 4 2007	7,904,559.56
Nov 4 2007	7,969,447.33
Dec 4 2007	8,034,335.09
Jan 4 2008	8,099,222.86
Feb 4 2008	8,167,387.26
Mar 4 2008	8,235,551.66
Apr 4 2008	8,303,716.06
May 4 2008	8,371,880.47
Jun 4 2008	8,440,044.87
Jul 4 2008	8,508,209.27
Aug 4 2008	8,579,815.77
Sep 4 2008	8,651,422.27
Oct 4 2008	8,723,028.77
Nov 4 2008	8,794,635.27
Dec 4 2008	8,866,241.77
Jan 4 2009	8,937,848.27
Feb 4 2009	9,013,070.68
Mar 4 2009	9,088,293.10
Apr 4 2009	9,163,515.51
May 4 2009	9,238,737.92
Jun 4 2009	9,313,960.34
Jul 4 2009	9,389,182.75
Aug 4 2009	9,468,203.67
Sep 4 2009	9,547,224.59
Oct 4 2009	9,626,245.51
Nov 4 2009	9,705,266.42
Dec 4 2009	9,784,287.34
Jan 4 2010	9,863,308.26
Feb 4 2010	9,946,319.50
Mar 4 2010	10,029,330.74
Apr 4 2010	10,112,341.98
May 4 2010	10,195,353.21
Jun 4 2010	10,278,364.45
Jul 4 2010	10,361,375.69
Aug 4 2010	10,448,578.74
Sep 4 2010	10,535,781.80

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SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Oct 4 2010	10,622,984.86
Nov 4 2010	10,710,187.91
Dec 4 2010	10,797,390.97
Jan 4 2011	10,884,594.02
Feb 4 2011	10,976,200.57
Mar 4 2011	11,067,807.12
Apr 4 2011	11,159,413.67
May 4 2011	11,251,020.21
Jun 4 2011	11,342,626.76
Jul 4 2011	11,434,233.31
Aug 4 2011	11,530,465.71
Sep 4 2011	11,626,698.12
Oct 4 2011	11,722,930.52
Nov 4 2011	11,819,162.92
Dec 4 2011	11,915,395.33
Jan 4 2012	12,011,627.73
Feb 4 2012	12,112,719.58
Mar 4 2012	12,213,811.43
Apr 4 2012	12,314,903.28
May 4 2012	12,415,995.13
Jun 4 2012	12,517,086.98
Jul 4 2012	12,618,178.83
Aug 4 2012	12,724,375.52
Sep 4 2012	12,830,572.21
Oct 4 2012	12,936,768.89
Nov 4 2012	13,042,965.58
Dec 4 2012	13,149,162.26
Jan 4 2013	13,255,358.95
Feb 4 2013	13,366,918.24
Mar 4 2013	13,478,477.54
Apr 4 2013	13,590,036.84
May 4 2013	13,701,596.14
Jun 4 2013	13,813,155.44
Jul 4 2013	13,924,714.74
Aug 4 2013	14,041,907.45
Sep 4 2013	14,159,100.15
Oct 4 2013	14,276,292.86
Nov 4 2013	14,393,485.57
Dec 4 2013	14,510,678.28
Jan 4 2014	14,627,870.99
Feb 4 2014	14,750,981.57
Mar 4 2014	14,874,092.16

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SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Apr 4 2014	14,997,202.75
May 4 2014	15,120,313.34
Jun 4 2014	15,243,423.92
Jul 4 2014	15,366,534.51
Aug 4 2014	15,495,861.81
Sep 4 2014	15,625,189.12
Oct 4 2014	15,754,516.42
Nov 4 2014	15,883,843.72
Dec 4 2014	16,013,171.02
Jan 4 2015	16,142,498.33
Feb 4 2015	16,278,356.27
Mar 4 2015	16,414,214.21
Apr 4 2015	16,550,072.15
May 4 2015	16,685,930.10
Jun 4 2015	16,821,788.04
Jul 4 2015	16,957,645.98
Aug 4 2015	17,100,364.34
Sep 4 2015	17,243,082.70
Oct 4 2015	17,385,801.06
Nov 4 2015	17,528,519.42
Dec 4 2015	17,671,237.78
Jan 4 2016	17,813,956.14
Feb 4 2016	17,963,881.35
Mar 4 2016	18,113,806.56
Apr 4 2016	18,263,731.77
May 4 2016	18,413,656.98
Jun 4 2016	18,563,582.18
Jul 4 2016	18,713,507.39
Aug 4 2016	18,871,003.37
Sep 4 2016	19,028,499.35
Oct 4 2016	19,185,995.34
Nov 4 2016	19,343,491.32
Dec 4 2016	19,500,987.30
Jan 4 2017	19,658,483.28
Feb 4 2017	19,823,932.33
Mar 4 2017	19,989,381.39
Apr 4 2017	20,154,830.44
May 4 2017	20,320,279.50
Jun 4 2017	20,485,728.55
Jul 4 2017	20,651,177.61
Aug 4 2017	20,824,981.34
Sep 4 2017	20,998,785.08

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SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Oct 4 2017	21,172,588.81
Nov 4 2017	21,346,392.55
Dec 4 2017	21,520,196.28
Jan 4 2018	21,694,000.02
Feb 4 2018	21,876,580.32
Mar 4 2018	22,059,160.62
Apr 4 2018	22,241,740.92
May 4 2018	22,424,321.22
Jun 4 2018	22,606,901.52
Jul 4 2018	22,789,481.82
Aug 4 2018	22,981,281.88
Sep 4 2018	23,173,081.94
Oct 4 2018	23,364,882.00
Nov 4 2018	23,556,682.05
Dec 4 2018	23,748,482.11
Jan 4 2019	23,940,282.17
Feb 4 2019	24,141,767.55
Mar 4 2019	24,343,252.94
Apr 4 2019	24,544,738.32
May 4 2019	24,746,223.70
Jun 4 2019	24,947,709.09
Jul 4 2019	25,149,194.47
Aug 4 2019	25,360,854.26
Sep 4 2019	25,572,514.05
Oct 4 2019	25,784,173.84
Nov 4 2019	25,995,833.64
Dec 4 2019	26,207,493.43
Jan 4 2020	26,419,153.22
Feb 4 2020	26,641,501.19
Mar 4 2020	26,863,849.16
Apr 4 2020	27,086,197.14
May 4 2020	27,308,545.11
Jun 4 2020	27,530,893.09
Jul 4 2020	27,753,241.06
Aug 4 2020	27,986,816.94
Sep 4 2020	28,220,392.82
Oct 4 2020	28,453,968.69
Nov 4 2020	28,687,544.57
Dec 4 2020	28,921,120.45
Jan 4 2021	29,154,696.33
Feb 4 2021	29,400,067.09
Mar 4 2021	29,645,437.85

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SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Apr 4 2021	29,890,808.60
May 4 2021	30,136,179.36
Jun 4 2021	30,381,550.12
Jul 4 2021	30,626,920.88
Aug 4 2021	30,884,682.12
Sep 4 2021	31,142,443.37
Oct 4 2021	31,400,204.61
Nov 4 2021	31,657,965.86
Dec 4 2021	31,915,727.10
Jan 4 2022	32,173,488.34
Feb 4 2022	32,444,265.76
Mar 4 2022	32,715,043.17
Apr 4 2022	32,985,820.58
May 4 2022	33,256,597.99
Jun 4 2022	33,527,375.41
Jul 4 2022	33,798,152.82
Aug 4 2022	34,082,603.68
Sep 4 2022	34,367,054.54
Oct 4 2022	34,651,505.39
Nov 4 2022	34,935,956.25
Dec 4 2022	35,220,407.11
Jan 4 2023	35,504,857.97
Feb 4 2023	35,803,672.74
Mar 4 2023	36,102,487.51
Apr 4 2023	36,401,302.28
May 4 2023	36,700,117.05
Jun 4 2023	36,998,931.83
Jul 4 2023	37,297,746.60
Aug 4 2023	37,611,650.62
Sep 4 2023	37,925,554.64
Oct 4 2023	38,239,458.66
Nov 4 2023	38,553,362.67
Dec 4 2023	38,867,266.69
Jan 4 2024	39,181,170.71
Feb 4 2024	39,510,925.94
Mar 4 2024	39,840,681.17
Apr 4 2024	40,170,436.40
May 4 2024	40,500,191.63
Jun 4 2024	40,829,946.86
Jul 4 2024	41,159,702.09
Aug 4 2024	41,506,108.97
Sep 4 2024	41,852,515.84

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SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Oct 4 2024	42,198,922.72
Nov 4 2024	42,545,329.60
Dec 4 2024	42,891,736.47
Jan 4 2025	43,238,143.35
Feb 4 2025	43,602,042.74
Mar 4 2025	43,965,942.12
Apr 4 2025	44,329,841.50
May 4 2025	44,693,740.89
Jun 4 2025	45,057,640.27
Jul 4 2025	45,421,539.65
Aug 4 2025	45,803,814.86
Sep 4 2025	46,186,090.07
Oct 4 2025	46,568,365.28
Nov 4 2025	46,950,640.49
Dec 4 2025	47,332,915.70
Jan 4 2026	47,715,190.91
Feb 4 2026	48,116,769.86
Mar 4 2026	48,518,348.82
Apr 4 2026	48,919,927.78
May 4 2026	49,321,506.74
Jun 4 2026	49,723,085.70
Jul 4 2026	50,124,664.65
Aug 4 2026	50,546,522.14
Sep 4 2026	50,968,379.63
Oct 4 2026	51,390,237.12
Nov 4 2026	51,812,094.61
Dec 4 2026	52,233,952.10
Jan 4 2027	52,655,809.59
Feb 4 2027	53,098,969.61
Mar 4 2027	53,542,129.63
Apr 4 2027	53,992,749.08
Apr 15 2027	54,147,781.67
May 15 2027	40,522,127.38
Jun 15 2027	40,838,759.40
Jul 4 2027	27,033,642.22
Jul 15 2027	27,117,066.08
Aug 15 2027	27,344,585.69
Sep 15 2027	27,572,105.31
Oct 15 2027	13,729,868.18
Nov 15 2027	13,842,237.12
Dec 15 2027	13,954,606.06

EXHIBIT A TO
CONFIRMATION

[Form of Credit Event Notice]

Big Rivers Electric Corporation
[Address]

[or its successor or assign
as Party B under the Swap
Document referenced below]

Ladies & Gentlemen:

Reference is made to the Master Agreement, the related Schedule and the Credit Swap Transaction Confirmation in Relation to FBR-1 Statutory Trust, each dated April 18, 2000 (such Master Agreement, Schedule and Confirmation, collectively, the "Master Agreement") between Ambac Credit Products, LLC (together with its successors and permitted assigns, "Party A") and Big Rivers Electric Corporation (together with its successors and permitted assigns, "Party B"); capitalized terms used herein without definition have the respective meanings ascribed thereto in the Master Agreement.

Party A hereby notifies Party B, and certifies to Party B, that a Credit Event has occurred under the Master Agreement, or that the OP Trust has certified to Party A that a Credit Event under the Master Agreement has occurred, and Party A hereby further certifies to Party B that, to the best of its knowledge, as of the date hereof, (i) the amount referred to clause (A)(ii)(a) of the definition of "Party B Fixed Amount" is \$[_____], and the source thereof is [_____], (ii) the amount referred to clause (A)(ii)(b) of the definition of "Party B Fixed Amount" is \$[_____] and the source thereof is [_____], (iii) the amount referred to clause (B)(ii) of the definition of "Party B Fixed Amount" is \$[_____] and the source thereof is [_____], and (iv) the amount referred to clause (C)(ii) of the definition of "Party B Fixed Amount" is \$[_____] and the source thereof is [_____].

[Check I or II below, as appropriate]

____ I. [Party A hereby notifies Party B that Party A has exercised the Alternative Settlement Option, and states that (i) the Deliverable Obligations FMV is \$_____ and (ii) the Net Amount Due is \$_____.]

____ II. [Party A confirms to Party B that Party A either (i) is the holder of the Deliverable Obligations as of the date hereof or (ii) has determined that Party A has sufficient contractual or other rights to permit Party A to obtain the interest in the Deliverable Obligations that Party A will be required to deliver to Party B under the Master Agreement (upon full performance thereunder by Party B) not later than the date such delivery will be so required thereunder.]

The account details of Party A are as follows: [_____].

This Credit Event Notice shall be governed by and construed in accordance with the laws of the State of New York without reference to choice of law provisions (except New York General Obligations Law Sections 5-1401 and 5-1402).

Very truly yours,

AMBAC CREDIT PRODUCTS, LLC

By: _____

EXHIBIT B TO
CONFIRMATION

[Form of Assignment Agreement]

THIS ASSIGNMENT AGREEMENT, dated as of _____, _____
between Ambac Credit Products, LLC (the "Transferor") and Big Rivers Electric Corporation
(the "Transferee").

WITNESSETH:

WHEREAS, the Transferor and the Transferee are parties to the Master Agreement, the related Schedule and the Credit Swap Transaction Confirmation in Relation to FBR-1 Statutory Trust, each dated April 18, 2000 (collectively, the "Master Agreement");

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

I. Assignment. Effective as of the date hereof, the Transferor hereby irrevocably sells, assigns, transfers, conveys and sets over to the Transferee all its right, title and interest in, to and under the Deliverable Obligations (as defined in the Master Agreement), which Deliverable Obligations include the following: [specify].

II. Representations and Warranties of the Transferor. The Transferor represents and warrants that (i) it has whatever title to the Deliverable Obligations it has received from the OP Trust, (ii) the Deliverable Obligations are or will be free and clear of all Party A Lessor's Liens (as defined in the Master Agreement) attributable to the Transferor, (iii) the Trust Estate relating to the Deliverable Obligations is or will be free and clear of all Party A Lessor's Liens (as defined in the Master Agreement) attributable to the Transferor, (iv) it is conveying hereby all of its right, title and interest in, to and under the Deliverable Obligations (including, without limitation, any rights it may have under the Qualifying Swap) and (v) either the Deliverable Obligations are free and clear of the lien of the Leasehold Mortgage or the Lenders have been paid the amount required under the Leasehold Mortgage to allow the discharge of the lien of the Leasehold Mortgage pursuant to Section 8.01 thereof.

III. Assumption. The Transferee hereby assumes all of such Deliverable Obligations and confirms that it shall be bound by all the terms thereof as if it were named as the Transferor as of [_____].

IV. Further Assurances. The Transferor and Transferee shall, at any time and from time to time, upon the request of the Transferee or Transferor, promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Transferee or Transferor may reasonably request to obtain the full benefits of this Assignment and of the rights and powers herein granted.

V. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without reference to choice of law provisions (except New York General Obligations Law Sections 5-1401 and 5-1402).

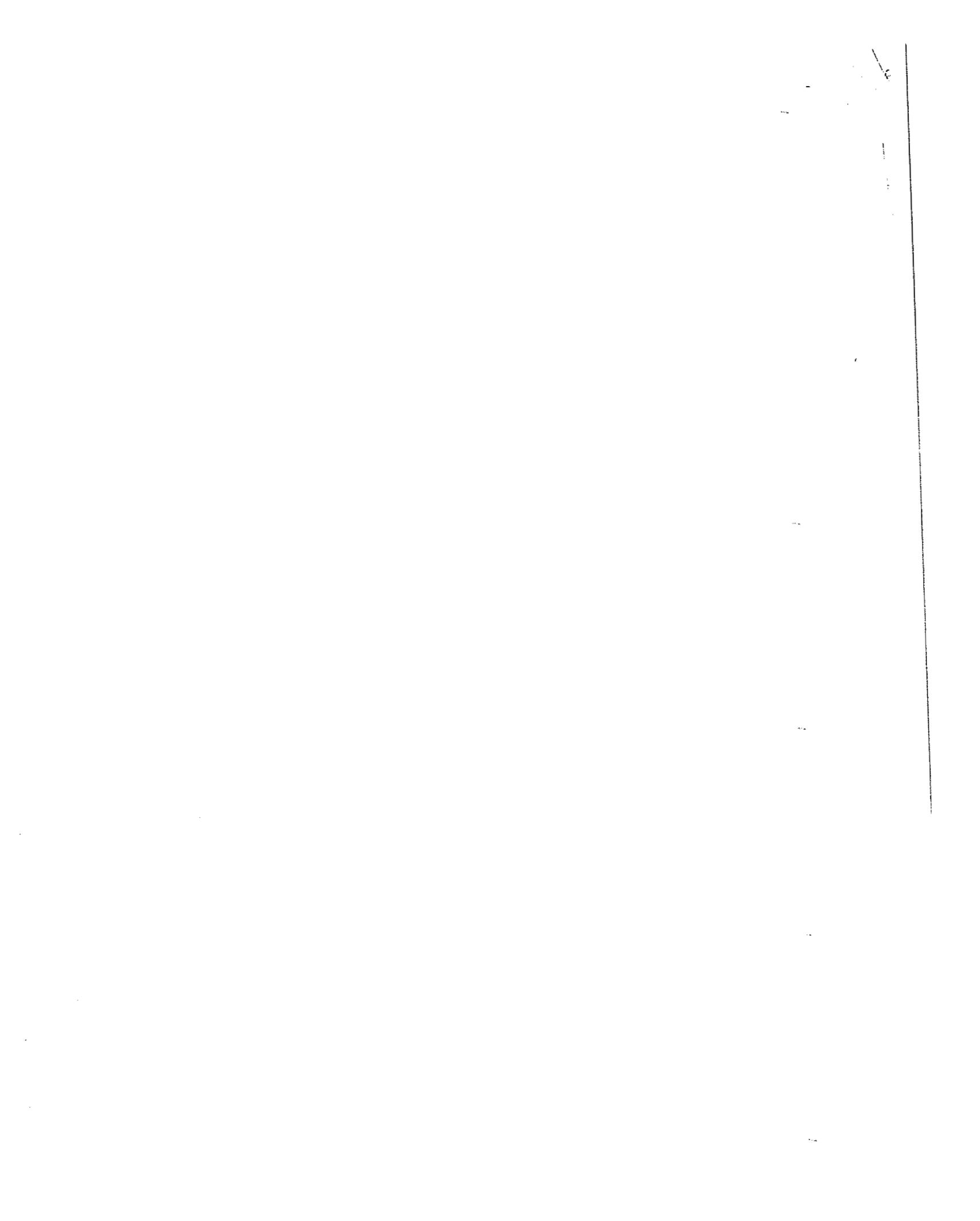
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered on the date first above written.

BIG RIVERS ELECTRIC CORPORATION,
Transferee

By: _____
Name:
Title:

AMBAC CREDIT PRODUCTS, LLC,
Transferor

By: _____
Name:
Title:



COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S)
APPLICATION FOR APPROVAL OF A LEVERAGED) CASE NO. 99-450
LEASE OF THREE GENERATING UNITS)

O R D E R

On November 8, 1999, Big Rivers Electric Corporation ("Big Rivers") filed an application seeking authority, if needed, to implement a sale and leaseback transaction ("lease transaction") involving certain generating facilities owned by Big Rivers.¹ The application requested the Commission to disclaim jurisdiction over the lease transaction and the documents to be issued in connection with the lease transaction. In the alternative, Big Rivers sought Commission approval of the lease transaction and the documents considered to be "evidences of indebtedness," including amendments to the documents approved by the Commission in 1998 in conjunction with the LG&E Energy

¹ Specifically, Big Rivers proposed to consummate a leveraged lease of its ownership interest in the D. B. Wilson Unit No. 1 ("Wilson Unit"), the Robert D. Green Units No. 1 and 2 ("Green Units"), and the common facilities owned by Big Rivers that are located at the Green Units site. The Wilson Unit, Green Units, and the common facilities at the Green Units site are referenced as the "Facilities."

Corp. lease transaction ("LEC transaction").² Additionally, Big Rivers requests permission to deviate from the filing requirements of 807 KAR 5:001, Section 11, to the extent its application was not in compliance with that regulation. Finally, due to the complexity and timing of the lease transaction, Big Rivers requests that the Commission expedite its review of the proposed lease transaction and grant the requested approvals no later than November 24, 1999.

The Attorney General, Southwire Company, and Alcan Aluminum Corporation were granted intervention in this proceeding. An informal conference was held at the Commission's offices on October 21, 1999 to provide additional explanations about the proposed transaction.

The Wilson Unit is located in Ohio County, Kentucky, and was placed into commercial operation in November 1986. The Green Units are located in Webster County, Kentucky, and were placed into commercial operation in December 1979 and January 1981. The units are coal-fired steam electric generating stations that are equipped with sulfur dioxide scrubbers. The combined net rated capability of the units is 874 MW.

² Case No. 97-204, The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction, final Order dated April 30, 1998, and Case No. 98-267, The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson, final Order dated July 14, 1998. Under the terms of the LEC transaction, Big Rivers leases its generating assets to subsidiaries or affiliates of LG&E Energy Corp. Big Rivers has been operating under the terms of that agreement since July 15, 1998, the closing date of the LEC transaction.

Big Rivers states in the application that the purpose of the proposed lease transaction is to simultaneously sell and lease back certain ownership rights, and use the net cash benefit from the lease transaction to pay down approximately \$70 million of its debt. The proposed lease transaction will consist of up to six sales and leasebacks involving two equity investors and separate undivided interests in Big Rivers' ownership interest in the Facilities.

The form of the lease transaction will be a long-term lease ("Head Lease") of an undivided interest in the Facilities from Big Rivers to the trustee³ of a trust estate created for the benefit of the equity investor. The trustee will also lease from Big Rivers an undivided interest in the sites the Facilities are located on for a term identical to that of the Head Lease ("Ground Lease"). A Participation Agreement will set forth the terms of the closing conditions, the payment of transaction costs, certain covenants and indemnification of the parties, and other general matters relating to the lease transaction.

The Head Lease will be considered a sale of the undivided interest in the Facilities for federal income tax purposes because the term of the Head Lease extends beyond the entire expected economic useful life of the Facilities. The trustee will pay all the rent under the Head Lease on the closing date. The trustee will finance the rent

³ Exhibit 3 of the application identifies the trustee as the State Street Bank and Trust Company of Connecticut, N.A.

payment with a combination of equity from the equity investor and the proceeds of non-recourse loans to the trustee.⁴

The trustee will lease the trust's undivided interest in the Facilities back to Big Rivers under a shorter-term lease ("Facilities Lease") for a term that extends beyond the expiration of the LEC transaction.⁵ The Facilities Lease will be a conventional "triple net" lease, under which Big Rivers will have the obligation to maintain and insure the Facilities and will incur the risk of loss with respect to the Facilities. The trustee will also lease the Facilities' sites back to Big Rivers for the term of the Facilities Lease ("Ground Sublease").

The Facilities Lease will be subject to the terms of the LEC transaction. The lease transaction documents will provide that at the end of the term of the LEC transaction, or its early termination, Big Rivers will be responsible for the operation and maintenance of the Facilities through the end of the Facilities Lease term. At the end of the Facilities Lease, Big Rivers will have the option to either purchase the remaining leasehold interest of the trust under the Head Lease or operate the Facilities on behalf

⁴ These non-recourse loans will be secured by the trustee's interest in the Facilities under the Head Lease, the Facilities Lease, the Ground Lease and Sublease, Big Rivers' payment of rent, certain investment instruments purchased by Big Rivers and assigned to the trustee, and the trustee's interest in the Big Rivers Mortgage.

⁵ The term of the Facilities Lease for the Wilson Unit will be approximately 27 years and for the Green Units approximately 25 years.

of the trust and locate an unrelated, third party to purchase power generated from the Facilities.⁶

Big Rivers will economically defease its periodic rent obligations under the Facilities Lease by using a portion of the rent payment received under the Head Lease on the closing date to purchase investment instruments⁷ from affiliates of Ambac Assurance Corporation ("Ambac") and another institution. The payments under these investment instruments in the aggregate will be equal in timing and amount to Big Rivers' basic rent obligation under the Facilities Lease.⁸ In addition, these investments will provide for payment of an amount sufficient to fund Big Rivers' right to purchase the trustee's interest in the Facilities at the end of the Facilities Lease term.

Big Rivers will have the option to purchase the equity investor's interest in the trust if either the lease transaction becomes illegal with respect to Big Rivers and cannot be restructured in a manner acceptable to the parties or burdensome indemnities become due by Big Rivers. Big Rivers will pay the trustee a purchase price for the trustee's interest under the Head Lease equal to a specified amount ("Termination

⁶ Under the purchase option, Big Rivers would pay a fixed purchase price plus unpaid rent. The fixed purchase option price will be economically defeased. Under the continued operations option, the terms and conditions for the operation of the Facilities and the associated power purchase agreement will be governed by two additional documents, an Operating and Support Agreement and a Service Contract.

⁷ The investment instruments will take the form of guaranteed investment contracts, prepaid swap agreements, or interest bearing deposits.

⁸ In its application, Big Rivers states that the acquisition of the investment instruments will be made by a wholly owned, limited purpose corporate subsidiary of Big Rivers created for this transaction in order to limit the impact of certain state and local taxes. Big Rivers will use a portion of the rent payment under the Head Lease as a capital infusion to the new subsidiary, in order for the subsidiary to acquire these investment instruments.

Value"). In addition, involuntary termination of the Facilities Lease can occur in the event of loss or an event of default.⁹ Generally, a termination of the Facilities Lease due to an event of loss will require that Big Rivers purchase the equity investor's interest in the trust by payment of an amount equal to the Termination Value plus all unpaid rent. Following an event of default under the Facilities Lease, the equity investor will be entitled to put its beneficial interest in the trust under the Head Lease to an Ambac subsidiary for the full amount of Termination Value. Under the terms of an arrangement called a Lessor Swap, the obligations of the Ambac subsidiary will be guaranteed by Ambac pursuant to a surety bond. The Ambac subsidiary would then be entitled to put this beneficial interest in the trust to Big Rivers for the full amount of the Termination Value or an alternate cash settlement procedure. Under the terms of an arrangement called the Big Rivers Swap, Ambac will guarantee Big Rivers' obligations pursuant to a financial guarantee insurance policy.

Big Rivers will issue a promissory note to the trustee to evidence its obligation to pay the Termination Value under the Facilities Lease and to the Ambac subsidiary to pay the Termination Value under the Big Rivers Swap. Big Rivers will also grant to the trustee, the equity investor, the Ambac subsidiary, and the lenders, a mortgage and security agreement in Big Rivers' ownership interest in all of its property that is subject to the Big Rivers Mortgage to secure the performance of its obligations to pay certain contractual, tort, and other indemnities under the lease transaction. This mortgage and

⁹ An event of loss refers to either the physical destruction of the assets without rebuilding, condemnation by eminent domain, or public utility regulation of the equity investor by reason of the lease transaction. An event of default refers to performance defaults by various parties to the lease transaction agreements or the downgrading of Ambac. See the Response to the Commission's November 16, 1999 Order, Item 14.

security agreement will be subject and subordinate to the Big Rivers Mortgage, the Head Lease, the Facilities Lease, the Ground Lease and Sublease, the LEC transaction, and Big Rivers' arrangements with the city of Henderson, Kentucky ("Henderson").

The lease transaction will not affect the operation and maintenance of the Facilities by Western Kentucky Energy Corp. ("WKEC") pursuant to the LEC transaction. The affiliates of LG&E Energy Corp. associated with the LEC transaction ("LG&E Parties") have raised 11 specific concerns about the proposed lease transaction. Based on the information provided and statements made by Big Rivers, the LG&E Parties have stated that they have no objection to Big Rivers proceeding with the development of the proposed lease transaction.¹⁰

The LG&E Parties required as a condition to consenting to the proposed lease transaction that the parties to the transaction agree to subordinate their interest under the Head Lease to the interests of the LG&E Parties under the LEC transaction. In consideration for the subordination of interest, and in order for the equity investor and the associated lenders to enjoy the full economic benefit of the investments and loans, Big Rivers will partially assign the Power Purchase Agreement between Big Rivers and LG&E Energy Marketing, Inc. to the trustee. Big Rivers will also assign the right to receive a portion of the rent paid by WKEC under the lease of the Facilities in the LEC transaction to the trustee. The trustee will reassign these interests back to Big Rivers in

¹⁰ The LG&E Parties have reserved the right to withhold their final approval of the transaction until such time as the transaction documentation has been finalized and the concerns of the LG&E Parties have been satisfactorily addressed. See Response to the Commission's November 16, 1999 Order, Item 9.

the lease transaction for the term of the Facilities Lease and the trustee will have no rights or obligations under this assignment unless the Facilities Lease is terminated under specific circumstances.

The common facilities located at the Green Units' site are used jointly in the operation of the Green Units and the Station Two Facility owned by Henderson. The proposed lease transaction will not affect the continued access to these common facilities by Henderson or the LG&E Energy Corp. affiliate that operates the Station Two Facility under the LEC transaction. No consents or approvals will be required from Henderson for the proposed transaction.

Based on current information, Big Rivers has estimated that as a result of the lease transaction, it will receive approximately \$913 million. Payments to establish the debt and equity defeasance instruments are estimated to cost approximately \$825 million. Enhancement fees and expenses for legal, advisory, appraisal, and miscellaneous services are estimated to cost approximately \$18 million.¹¹ This results in a net cash benefit of \$70 million.¹² The final amount of the net cash benefit will vary based upon the interest rate obtained on the closing date for the defeasance deposits and changes in other assumptions.

Big Rivers' accumulated net operating losses will be used to offset federal income taxes that would be recognized on the net gain realized by Big Rivers as a

¹¹ The estimated proceeds and associated costs are shown in the Response to the Commission's November 16, 1999 Order, Item 14.

¹² Big Rivers has indicated that it will record the net cash benefit in Account No. 253 – Other Deferred Credits, and amortize the amount on a straight-line basis over the expected lease term of 27 years. See Response to the Commission's November 16, 1999 Order, Item 3.

result of the transaction. The total amount of the net cash benefit will be paid to the Rural Utilities Service ("RUS") and applied to the RUS New Note as a condition of receiving RUS consent to the lease transaction. The RUS New Note debt service schedule will be recalculated to reflect the lower principal balance.¹³ Big Rivers anticipates that this recalculation will reduce its annual debt service by approximately \$5 million. The Big Rivers' board of directors has deferred a decision on the use of the savings until the transaction is completed and the annual debt service savings can be accurately determined.

Big Rivers is seeking a written determination from the Kentucky Revenue Cabinet ("Revenue Cabinet") concerning certain state tax issues. As of the filing of its application, Big Rivers had not received this determination. In addition, Big Rivers' member cooperatives must approve the lease transaction. The proposed lease transaction will be submitted to the member cooperatives between November 8 and 20, 1999.

Big Rivers included with its application a motion requesting the Commission to disclaim jurisdiction over the proposed leveraged lease transaction. The motion states that the transaction is not a financing subject to Commission jurisdiction because no securities or evidences of indebtedness will be issued. Big Rivers asserts that, although it will execute two notes, an amendment to its existing mortgage, and a new subordinated mortgage, such documents only secure its performance under the

¹³ In its application, Big Rivers indicated it anticipated that RUS would also allow Big Rivers to receive a reduction in debt service costs that RUS would realize by using the net cash benefit it received to prepay high interest notes to the Federal Financing Bank on the underlying RUS debt. However, no written verification of this benefit has been received by Big Rivers.

leveraged lease and do not evidence current new or refinanced debt or securities. Alternatively, Big Rivers claims that the transaction falls within the exemption to the Commission's financing authority under KRS 278.300(10) because the financing is subject to the control of an agency of the federal government, the RUS.

The Commission finds no merit in this motion. Even though the purpose of the two new notes is to secure Big Rivers' performance of certain contractual obligations, the notes are evidences of indebtedness that require prior Commission approval under KRS 278.300(1). Furthermore, the mortgage amendment and new subordinated mortgage to be executed by Big Rivers must also be approved since they are modifications to documents previously reviewed and approved by the Commission.

Although the Commission has previously disclaimed jurisdiction over financings that are subject to the control of a federal agency, such as RUS, the leverage lease proposed here is not under the control of RUS. The terms and conditions of the transaction are not being established by RUS, but by private banks and non-governmental investors. The participation of RUS has been limited to granting requisite approval of the transaction and lien accommodations, activities that do not rise to the level of control that exists when RUS is the lender for the transaction.

In addition, the proposed transaction will require modifications to many of the documents previously approved by the Commission in conjunction with Big Rivers' 1998 lease of its generating assets to a subsidiary of LG&E Energy Corp.¹⁴ As such, these modifications to previously approved documents will need Commission approval.

¹⁴ Case No. 98-267, final Order dated July 14, 1998.

Big Rivers also included a motion for expedited consideration, stating that the Commission will need to approve the transaction by November 24, 1999 for a closing to be held by the end of the year. If the transaction does not close by the end of 1999, the benefits to Big Rivers and its members will be reduced by an estimated \$6-\$8 million. While this potential reduction in benefits amounts to only approximately 10 percent of the total estimated benefits, the absolute amount is very significant, particularly in light of Big Rivers' financial condition and its debt service requirements.

Based on the significant benefit reduction if a decision is not issued by November 24, 1999, the Commission has given this application a high priority status to ensure that a final decision is issued by that date. The Commission notes that at the suggestion of its Staff, an informal conference was held at our offices on October 21, 1999 to allow Big Rivers an opportunity to explain the details of the transaction to Staff and intervenors. The application was then filed on November 8, 1999, giving the Commission and intervenors only 16 days to investigate a highly complex and detailed financial transaction.

While Big Rivers maintains that its application could not have been filed earlier because the transaction was "susceptible to change" and "in flux,"¹⁵ the record demonstrates that on September 1, 1999, Big Rivers provided the Revenue Cabinet with a very detailed, written description of the proposed transaction.¹⁶ Had such a description been provided to the Commission at that time, our investigation would have been greatly facilitated and our attention would not have had to be diverted from other

¹⁵ Response to the Commission's November 16, 1999 Order, Item 7.

¹⁶ Id., Item 6.

pending cases. The Commission admonishes Big Rivers that such dilatory conduct will not be tolerated in the future. Big Rivers is put on notice that time-sensitive applications must be filed as early as possible, not weeks after the major parameters of the transaction are known with reasonable certainty.

The Commission has concerns about Big Rivers' potential financial exposure due to an early termination of the Facilities Lease. Based on the documents and responses in this record, it appears that adequate provisions have been made concerning the potential exposure from an early termination due to an event of loss or event of default. Big Rivers has acknowledged that an early termination at its direction would result in a financial exposure of as much as \$218 million.¹⁷

An example of an early termination initiated voluntarily by Big Rivers would be the situation where under the defeased lease transaction, burdensome indemnities become due by Big Rivers. Such a situation implies that Big Rivers' financial condition has deteriorated and it may not possess the financial resources to pay the Termination Value. However, Big Rivers has stated that it could only exercise this option if it possessed sufficient financial resources to pay the Termination Value. Big Rivers notes that the RUS has been kept apprised of all aspects of the proposed lease transaction, and the RUS is well aware that the potential early termination exposure exceeds the upfront net proceeds to be paid to the RUS. Big Rivers has concluded that it would be extremely unlikely RUS would acquiesce to the proposed lease transaction if it perceived there to be a significant possibility of an early termination of the Facilities

¹⁷ Id., Item 4.

Lease.¹⁸ Given Big Rivers' statements and assurances of the RUS's understanding of the potential exposure, the Commission finds this potential exposure to be reasonably addressed.

The Commission, after consideration of the evidence of record and being otherwise sufficiently advised, finds that Big Rivers should be authorized to proceed with the proposed transaction. Based on the description of the proposed transaction, the primary benefit of the proposed lease transaction is the \$70 million net cash benefit and the estimated \$5 million reduction in Big Rivers' debt service obligations to the RUS. The reduction in debt service obligations results from both an additional interest rate reduction and a restructured debt service schedule. The RUS has given verbal assurances in face-to-face meetings with Big Rivers as recently as November 16, 1999 that both the interest rate reduction and the restructured debt service schedule will be reflected in the appropriate documents.¹⁹ The Commission advises Big Rivers that the Commission's approval of the lease transaction is predicated upon the inclusion of both an interest rate reduction and a debt service schedule restructuring.

IT IS THEREFORE ORDERED that:

1. The motion for a disclaimer of jurisdiction over the proposed lease transaction is denied.
2. Big Rivers is authorized to execute a lease of its Wilson and Green Units, along with the associated common facilities at the Green Units' site, pursuant to a sale and leaseback transaction as described in the application.

¹⁸ Id., Item 5.

¹⁹ Id., Item 3(d).

3. Big Rivers shall agree only to such terms, conditions, and prices that are consistent with said parameters as set out in the application.

4. Within 10 days of the date of this Order, Big Rivers shall file with the Commission copies of a letter from its lease counsel that the proposed lease transaction is in compliance with the applicable sections of the Internal Revenue Service Code and any guidelines, rules, or regulations promulgated by the Internal Revenue Service concerning such lease transactions.

5. Big Rivers shall file with the Commission copies of the Revenue Cabinet determination concerning Kentucky tax issues within 10 days of its receipt. If the Revenue Cabinet determination causes Big Rivers to abandon the proposed transaction, notice of that decision should be included with the filing.

6. Big Rivers shall file with the Commission copies of the final approvals of the lease transaction from its member cooperatives, the LG&E Parties, and the RUS within 10 days of their receipt. Any conditions included in the final approvals that were not a part of the record in this proceeding shall be identified and the effect of the conditions summarized.

7. Big Rivers shall, within 30 days of the completion of the sale and leaseback transaction, file two copies of all transaction documentation with the Commission. In addition, Big Rivers shall include an executive summary of the terms and conditions of the finalized transaction. The summary shall note and explain any terms and conditions that are different from those described in the application.

8. Big Rivers shall, in the first monthly financial report filed with the Commission after the booking of the benefits from the sale and leaseback transaction,

include notes to its respective financial statements explaining the determination of the benefits recognized from the transaction. This shall include the disclosure of the final transaction price, the gross up-front benefit amount received by Big Rivers, the total expenses to achieve the transaction, the total amount applied to the RUS New Note, and an explanation of any debt service revisions provided by the RUS.

Done at Frankfort, Kentucky, this 24th day of November, 1999.

By the Commission

ATTEST:

Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S)
APPLICATION FOR APPROVAL OF A LEVERAGED) CASE NO. 99-450
LEASE OF THREE GENERATING UNITS)

O R D E R

On November 24, 1999, the Commission authorized Big Rivers Electric Corporation ("Big Rivers") to execute a lease of its D. B. Wilson Unit No. 1 ("Wilson Unit") and its Robert D. Green Units No. 1 and 2 ("Green Units"), along with the associated common facilities at the Green Units' site, pursuant to a sale and leaseback transaction ("lease transaction") as described in Big Rivers' November 8, 1999 application. As the final terms and conditions of the lease transaction had not been finalized, Big Rivers was authorized to agree only to such terms, conditions, and prices that were consistent with the parameters set out in its application. In addition, Big Rivers was advised that the Commission's approval of the lease transaction was predicated upon the inclusion of both an interest rate reduction and a debt service schedule reduction from the Rural Utilities Service ("RUS").¹

On January 24, 2000, Big Rivers filed a motion to reopen this docket for the purpose of reauthorizing the proposed lease transaction, due to the fact that certain assumptions and representations have changed since the Commission's November 24, 1999 Order. Big Rivers also requested that the Commission find that no further

¹ November 24, 1999 Order at 13.

approvals are required for the equity participants or the owner trust to participate in the lease transaction, provided that this finding did not constitute any approval under KRS Chapter 278 that may be required if either group assumed responsibility for the operation of one or more of the generating units. Finally, Big Rivers requested expedited consideration of the motion, noting that the optimum date for it to close the lease transaction was March 1, 2000, which would require Commission approval by January 28, 2000.

Exhibit A to Big Rivers' January 24, 2000 motion includes a description of the specific changes in the term sheet for the lease transaction. The most significant change is related to the reduction of Big Rivers' debt service obligations to the RUS. In its original application, Big Rivers stated that the RUS had agreed to reduce the interest rate on Big Rivers' debt and restructure the debt service in recognition of the total net cash benefit being paid to RUS and applied to the New RUS Note. However, the RUS has informed Big Rivers that because of changes in its debt due to the bankruptcy restructuring, the benefit of an interest rate reduction is not available.² In addition, RUS is requiring as a precondition to its approval of the lease transaction that it be paid at least \$70 million at the closing of the lease transaction, which will be reflected as a permanent reduction in like amount in the principal of the New RUS Note.

Because of the changes in the lease transaction terms, applicable interest rates, and the passage of time, Big Rivers currently estimates that the net cash benefit is

² "Because there is no longer a connection between BREC's direct obligations to RUS and RUS's guarantee of BREC's pre-bankruptcy obligations to FFB, there is no additional benefit to pass on to BREC in the form of an interest rate reduction on its indebtedness to RUS." See January 24, 2000 Motion to Reopen, Exhibit B.

\$68.1 million.³ As this estimate is below the RUS-required minimum of \$70 million, Big Rivers has indicated that it would make up the difference out of available cash or by the application of prepayments already made to RUS. In addition, Big Rivers now anticipates that its annual debt service will be reduced by \$4.0 million.⁴

The Commission, after consideration of the evidence of record and being otherwise sufficiently advised, finds that Big Rivers should be authorized to proceed with the proposed lease transaction as revised. The early payment of \$70 million on the New RUS Note and the associated \$4 million annual reduction in Big Rivers' debt service obligation to the RUS are very significant benefits. The numerous changes to the terms and conditions of the proposed lease transaction do not appear to have increased Big Rivers' potential financial exposure.

The Commission further finds that the leasing of the Wilson and Green Units to the Owner Trust, with an immediate lease back to Big Rivers, does not constitute a change in control of a utility or of the units themselves. Thus, no additional approvals are needed under KRS 278.020(4) or (5). As acknowledged by Big Rivers, this finding does not constitute an approval under KRS Chapter 278, or obviate the need for such approval, if the equity participants, the Owner Trust, or any lender as assignee of the

³ In its November 8, 1999 application, Big Rivers had initially estimated that the net cash benefit would be \$70 million, but indicated it could be as high as \$77 million. See January 24, 2000 Motion to Reopen at 4-5.

⁴ Big Rivers had originally estimated the savings from the debt payment and interest rate reduction was approximately \$5.2 million. Of that total estimate, the interest rate reduction was worth approximately \$1.2 million annually over the balance of the term of the New RUS Note. The current estimate of \$4 million annually assumes a payment to RUS of \$70 million. See January 24, 2000 Motion to Reopen at 4.

Owner Trust, assumes present responsibility for the operation of one or more of the generating units.

IT IS THEREFORE ORDERED that:

1. Big Rivers is authorized to execute the proposed lease transaction, as originally authorized in the November 24, 1999 Order, subject to the changes in assumptions, representations, and term sheet as described in the January 24, 2000 motion to reopen.

2. Big Rivers shall agree only to such terms, conditions, and prices that are consistent with said parameters as set out in the application, as revised by the motion to reopen.

3. No further approvals are required under KRS Chapter 278 for the equity participants, the Owner Trust, or any lender as assignee of the Owner Trust to participate in the proposed lease transaction, as revised by the motion to reopen.

4. Within 10 days of the date of this Order, Big Rivers shall file with the Commission copies of a letter from its lease counsel providing positive assurance that the proposed lease transaction, as revised by the motion to reopen, is in compliance with the applicable sections of the Internal Revenue Service Code and any guidelines, rules, or regulations promulgated by the Internal Revenue Service concerning such lease transactions.

5. Big Rivers shall file with the Commission copies of any rulings or decisions concerning the applicability of the Kentucky real estate transfer tax under KRS 142.050 to the proposed lease transaction, as revised by the motion to reopen. If such ruling or

decision causes Big Rivers to abandon the proposed transaction, notice of that decision should be included with the filing.

6. Ordering Paragraph Nos. 6 through 8 of the November 24, 1999 Order shall remain in full force and effect as if separately ordered herein.

Done at Frankfort, Kentucky, this 28th day of January, 2000.

By the Commission

ATTEST:

Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BIG RIVERS ELECTRIC)	
CORPORATION, LG&E ENERGY MARKETING)	
INC., WESTERN KENTUCKY ENERGY CORP.,)	CASE NO.
WKE STATION TWO INC., AND WKE CORP. FOR)	2000-118
APPROVAL OF AMENDMENTS TO)	
TRANSACTIONS DOCUMENTS)	

O R D E R

On March 10, 2000, Big Rivers Electric Corporation ("Big Rivers") and the LG&E Parties¹ filed an application seeking expedited approval of proposed amendments to agreements between Big Rivers and the LG&E Parties that were originally approved by the Commission in Case Nos. 97-204² and 98-267.³ The proposed amendments have been consolidated into a document referred to as a "Letter Agreement." The changes contained in the Letter Agreement resolve numerous technical issues about the relationship between Big Rivers and WKEC under the lease transaction approved in

¹ The LG&E Parties are wholly-owned subsidiaries of LG&E Energy Corp. The subsidiaries that are co-applicants with Big Rivers are Western Kentucky Energy Corp. ("WKEC"), WKE Station Two Inc., LG&E Energy Marketing Inc. ("LEM"), and WKE Corp.

² Case No. 97-204, The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction, final Order dated June 11, 1998.

³ Case No. 98-267, The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson, final Order dated July 14, 1998.

Case Nos. 97-204 and 98-267 ("LG&E Transaction"). These issues were either unresolved at the closing date of the LG&E Transaction or have arisen during the ordinary course of business since the closing date.

Big Rivers' board of directors has approved the Letter Agreement, as have the LG&E Parties. Big Rivers is seeking the approvals from the other parties to the LG&E Transaction. The LG&E Parties are requiring the Commission's approval of the Letter Agreement before Big Rivers can close the proposed leveraged sale and leaseback ("leaseback transaction") of certain Big Rivers' generating assets.⁴ Big Rivers has also indicated that other parties to the leaseback transaction want to know what changes will occur to the LG&E Transaction documents before the closing of the leaseback transaction. The leaseback transaction is scheduled to close on March 29, 2000.

The following summarizes the changes contained in the Letter Agreement:⁵

- 1) Section I -- Deals with issues of capital budgeting, inclusion of certain capital projects and improvements, clarification of the parties rights and obligations with such capital projects and improvements, and dispute resolution. Establishes capitalization guidelines based on Federal Energy Regulatory Commission ("FERC") requirements, rather than the Rural Utilities Service ("RUS") requirements. Defines accounting practices as generally accepted

⁴ See Case No. 99-450, Big Rivers Electric Corporation's Application for Approval of a Leveraged Lease of Three Generating Units, final Orders dated November 24, 1999 and January 28, 2000. The leaseback transaction involves the sale and leaseback of Big Rivers' D. B. Wilson Unit No. 1 and its Robert D. Green Units No. 1 and 2, along with associated common facilities at the Green Units' site.

⁵ A detailed summary of all changes and the LG&E Transaction documents affected are contained in the Response to the Commission's March 17, 2000 Order, Items 1, 6, and 10.

accounting principles applied by companies required to report their accounts in accordance with the FERC Uniform System of Accounts ("USoA") rather than the RUS USoA.

- 2) Section II -- Establishes that generally the Letter Agreement does not apply to incremental capital costs, Henderson incremental capital costs, major capital costs, and Henderson capital costs. The Operative Documents currently in effect will continue to apply to these costs. Establishes the useful life for these types of costs and that no consideration will be given to these costs when determining the LG&E Parties' Residual Value Payment ("RVP").⁶
- 3) Section III -- Establishes that the RVP for capital assets and Station Two improvements will be \$125 million, if the LG&E Parties spend their share of the capital budget limits in the aggregate during the lease term. Defines the circumstances under which the \$125 million RVP can be increased or decreased. Establishes that the RVP calculation contained in the Letter Agreement generally will not apply if the lease terminates prior to December 31, 2023. Provides for an additional residual value payment for incremental capital costs, Henderson incremental capital costs, major capital repairs, and Henderson major capital repairs, determined in accordance with existing LG&E Transaction document terms.
- 4) Section IV -- Deals with issues associated with Big Rivers' scheduling of power from the Southeastern Power Administration ("SEPA"). Affirms that LEM will continue to act as Big Rivers' agent with SEPA.

⁶ The RVP is an end of lease term liability of Big Rivers to the LG&E Parties.

- 5) Section V – Addresses timing of payment issue for certain transmission services.
- 6) Section VI – Provides for the sale by Big Rivers of its central laboratory building, print shop, and telecommunications building to WKEC for \$325,000.
- 7) Section VII – Corrects a reference in an LG&E Transaction document.
- 8) Section VIII – Resolves a dispute over a contract issue relating to transferred employees and costs being billed by Big Rivers to WKEC. Big Rivers will refund \$268,464 to WKEC under the terms of this resolution.
- 9) Section IX – Provides that the LG&E Parties will include the equity participants in the leaseback transaction as additional insureds on insurance policies maintained by the LG&E Parties, and assurances that such policies are in place.

In its March 10, 2000 application, Big Rivers requested the Commission's approval on Sections I through V, VII, and IX of the Letter Agreement. In its responses to the Commission's March 17, 2000 Order, Big Rivers indicated that, if the Commission believes that approvals are also necessary for Sections VI and VIII of the Letter Agreement, Big Rivers seeks those approvals as well.⁷

In its Orders in Case Nos. 97-204 and 98-267, the Commission approved all the documents associated with the LG&E Transaction. The modifications, revisions, and clarifications contained in the Letter Agreement impact various LG&E Transaction documents in some manner. Consequently, the Commission finds that it should address all the sections contained in the Letter Agreement. In addition, by addressing

⁷ Response to the Commission's March 17, 2000 Order, Item 1.

all the sections of the Letter Agreement at this time, no party to the Letter Agreement or the leaseback transaction will be in doubt concerning the Commission's decision.

The Commission finds that the provisions contained in the Letter Agreement are reasonable and resolve outstanding issues associated with the LG&E Transaction. Resolution of these issues provides Big Rivers and the LG&E Parties with a degree of certainty that was not present in the LG&E Transaction documents previously. The immediate financial impact to Big Rivers is minimal, while the quantification of the RVP amount defines for Big Rivers what its obligations will be at the end of the LG&E Transaction. Therefore, the Commission approves the Letter Agreement in total.

The Commission is concerned about the continuing delays Big Rivers is experiencing with the closing of the leaseback transaction. When Big Rivers originally filed its November 1999 application for the approval of the leaseback transaction, it had estimated that the net cash benefit could be as high as \$77 million, with an annual reduction to its debt service of \$5.2 million. Due to changes in the leaseback transaction terms, applicable interest rates, and the passage of time, when Big Rivers requested the reauthorization of the leaseback transaction in January 2000, the net cash benefit estimate had dropped to \$68.1 million, and the annual reduction in debt service reduced to \$4.0 million.⁸ Big Rivers now estimates the annual reduction in its debt service from the leaseback transaction to be \$3.45 million, with the annual debt service reduction continuing to shrink for each additional month of delay in closing.⁹

⁸ See Case No. 99-450, January 28, 2000 Order, at 2-3.

⁹ Response to the Commission's March 17, 2000 Order, Item 4(d), and Application at 10. This update by Big Rivers did not include a revised estimate of the net cash benefit.

The Commission understands that the leaseback transaction is a very complex and complicated undertaking by Big Rivers. However, because the transaction benefits continue to diminish as the closing is delayed, and the RUS is still insisting on a \$70 million up-front debt payment,¹⁰ Big Rivers should evaluate the feasibility of continuing to pursue the leaseback transaction if it does not close by March 31, 2000. Therefore, the Commission will require Big Rivers to file a status report that will indicate whether Big Rivers is continuing to pursue the leaseback transaction and, if so, the current estimated net cash benefit, the current estimated reduction to its annual debt service, an explanation of any changes to the transaction, and the target date for closing the transaction. This status report will be due by the fifth day of each month, beginning on April 5, 2000, and will continue monthly until the transaction is closed, or Big Rivers determines it will no longer pursue it. The other reporting requirements ordered in Case No. 99-450 will remain in effect.

IT IS THEREFORE ORDERED that:

1. The amendments to the LG&E Transaction between Big Rivers and the LG&E Parties, as described in the Letter Agreement, are approved, and Big Rivers is authorized to execute those amendments, as described in the application.
2. The request of the LG&E Parties to deviate from any filing requirements associated with this application is granted.
3. Big Rivers shall, within 10 days of the execution of the Letter Agreement, file copies of the final executed Letter Agreement with the Commission.

¹⁰ See Case No. 99-450, January 28, 2000 Order, at 2.

4. Big Rivers shall, in the first monthly financial report filed with the Commission after the booking of the transactions described in Sections VI and VIII of the Letter Agreement, include notes to its respective financial statements explaining the effects of those transactions and the corresponding accounting entries.

5. Big Rivers shall file a monthly status report indicating whether Big Rivers is continuing to pursue the leaseback transaction approved by the Commission in Case No. 99-450. The status report shall provide the current estimated net cash benefit of the leaseback transaction, the current estimated reduction to annual debt service, an explanation of any changes to the transaction, and the target date for closing the transaction, if Big Rivers elects to continue to pursue the transaction. The first status report shall be filed with the Commission no later than April 5, 2000, and shall be filed by the fifth day of each subsequent month, until the leaseback transaction is closed or abandoned by Big Rivers.

Done at Frankfort, Kentucky, this 29th day of March, 2000.

By the Commission

ATTEST:



Executive Director