

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RIVERSIDE GENERATING COMPANY, L.L.C.)	
)	
v.)	Case No. 2017-00472
)	
KENTUCKY POWER COMPANY)	

REBUTTAL TESTIMONY OF ANTHONY HAMMOND
ON BEHALF OF
RIVERSIDE GENERATING COMPANY, L.L.C.

Filed: June 14, 2018

1 **Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.**

2 A. My name is Anthony Hammond and my business address is 1700 Broadway, 35th
3 Floor, New York, New York 10019. I serve as Vice President of Riverside
4 Generating Company, L.L.C. (“Riverside”).

5 **Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR DUTIES AT**
6 **RIVERSIDE.**

7 A. My responsibilities at Riverside include oversight of the operations and commercial
8 strategy for the Zelda site and the Foothills site including regulatory, environmental
9 compliance, contracts, budgets, revenue, and profit and loss statements.

10 **Q. DID YOU PREVIOUSLY SPONSOR DIRECT TESTIMONY IN THIS**
11 **PROCEEDING?**

12 A. Yes, and it was filed in this docket on March 23, 2018. In my Direct Testimony, I
13 discussed, *inter alia*, the business of Riverside and described in detail the two (2)
14 Riverside generation sites located within the service territory of Kentucky Power
15 Company (“Kentucky Power”). I also explained Riverside’s desire and intention
16 to self-supply power for its generating stations under the Open Access
17 Transmission Tariff (“OATT”) of PJM Interconnection, LLC (“PJM”), consistent
18 with the terms of Kentucky Power’s Tariff N.U.G.

19 **Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY AND RESPONSES**
20 **TO REQUESTS FOR INFORMATION SUBMITTED BY KENTUCKY**
21 **POWER IN THIS MATTER?**

22 A. Yes. It is clear from these filings that Kentucky Power’s position in this case is
23 rooted in flawed analysis and a desire to maintain a lucrative status quo.

1 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

2 A. The primary purpose of my Rebuttal Testimony is to clarify an important issue in
3 the record of this case, and specifically to refute Kentucky Power’s conclusion that
4 “...the Foothills and Zelda facilities are owned or leased by at least two (and
5 perhaps as many as four) separate entities.”¹ Though Kentucky Power has relied
6 heavily on this point in support of its erroneous position in this matter, the facts as
7 detailed herein confirm that Riverside Generating Company, L.L.C. is the sole
8 entity relevant to this proceeding as concerns the application and interpretation of
9 Tariff N.U.G.

10 **Q. PLEASE EXPLAIN IN DETAIL HOW RIVERSIDE CAME TO BE THE**
11 **REAL PARTY IN INTEREST WITH RESPECT TO THE ZELDA SITE**
12 **AND GENERATION FACILITIES.**

13 A. As I have stated previously, Riverside first came into possession of the Zelda site
14 in 2000. Prior to that time, the real estate upon which the Zelda generation facilities
15 were later constructed was owned by Gene and Paulette Wilson (the “Wilsons”).
16 In order for Riverside to secure certain property tax treatment in connection with
17 its planned Zelda generation facilities, and particularly to facilitate the issuance of
18 certain industrial building revenue bonds in favor of Riverside, the Wilsons
19 conveyed the subject real estate to the County of Lawrence, Kentucky (“Lawrence
20 County” or the “County”);² simultaneously, the County leased the real estate back

¹ Kentucky Power’s Response to Commission Staff’s First Request for Information, Item No. 1 (filed herein June 1, 2018).

² The deed by which the Wilsons conveyed the Zelda real property to Lawrence County is of record in Deed Book 247, Page 574, in the Office of the Lawrence County Clerk.

1 to the Wilsons,³ the Wilsons subleased the property to Lawrence County Riverside
2 Trust 2000 (the “Trust”),⁴ and the Trust sub-subleased the property to Riverside.
3 Subsequently, on November 20, 2009, the Trust and Riverside effectuated a merger,
4 leaving Riverside as the surviving entity and successor-in-interest to the various
5 agreements to which the Trust had been a party.⁵ Since then, and currently,
6 Riverside remains in possession and control of the real estate underlying the Zelda
7 generation facilities and is undoubtedly the real party in interest with respect to
8 those facilities.

9 **Q. PLEASE EXPLAIN IN DETAIL HOW RIVERSIDE CAME TO BE THE**
10 **REAL PARTY IN INTEREST WITH RESPECT TO THE FOOTHILLS**
11 **SITE AND GENERATION FACILITIES.**

12 A. Like the sites themselves, the manner in which Riverside came to occupy and
13 operate the Foothills site is similar to—though distinct from—the manner in which
14 Riverside came to occupy and operate the Zelda site. The Foothills site was
15 acquired by Foothills Generating, L.L.C. (“Foothills Generating”) in 2000⁶ and,
16 again in connection with the issuance of bonds by Lawrence County, the property

³ A copy of the lease between the County and the Wilsons is attached hereto and incorporated herein as Exhibit AH-1.

⁴ A copy of the sublease between the Wilsons and the Trust was provided by Riverside in response to Kentucky Power’s First Request for Information, Item No. 8 (filed April 20, 2018).

⁵ Documentation of this merger is attached hereto and incorporated herein collectively as Exhibit AH-2.

⁶ A copy of the deed by which Foothills Generating acquired the subject property was provided by Riverside in response to Kentucky Power’s First Request for Information, Item No. 9 (filed April 20, 2018).

1 was conveyed to the County in 2001 and leased back to Foothills Generating.⁷ In
2 May of 2002, Foothills Generating assigned its lease with the County to Riverside.⁸

3 **Q. DOES RIVERSIDE BELIEVE IT HAS SATISFIED THE SPECIAL TERMS**
4 **AND CONDITIONS OF TARIFF N.U.G. SUCH THAT IT “SHALL TAKE**
5 **SERVICE UNDER THE TERMS AND CONDITIONS CONTAINED**
6 **WITHIN” PJM’S OATT?**

7 A. Yes. Based on the foregoing, it is clear that the interests held exclusively by
8 Riverside in both the Zelda and Foothills sites satisfies any requirement that there
9 be unity of ownership between generation facilities wishing to self-supply power.
10 Indeed, the structure in place with respect to the Zelda and Foothills sites will cause
11 no issue with respect to netting power under PJM’s OATT, and Kentucky Power
12 has no justifiable reason or right to take a contrary position. With that matter
13 resolved, the only remaining argument available to Kentucky Power concerns
14 whether the relevant generating facilities are all on the same site. Riverside has put
15 forth extensive, probative evidence that fully supports the conclusion that the Zelda
16 site and the Foothills site are distinct, including when and how each site was
17 acquired and developed, the fact that each site is uniquely metered and has its own
18 infrastructure and interconnections, and the fact that there is no cross feed/tie-
19 breaker between the sites, no parasitic load, and no need for the respective units to

⁷ The deed by which Foothills Generating conveyed the Foothills real property to Lawrence County is of record in Deed Book 253, Page 311, in the Office of the Lawrence County Clerk. A copy of the lease between the County and Foothills Generating is attached hereto and incorporated herein as Exhibit AH-3.

⁸ A copy of this Assignment and Assumption of Lease is attached hereto and incorporated herein as Exhibit AH-4. Subsequently, in 2009, Foothills Generating assigned to Riverside the Payment in Lieu of Taxes (“PILOT”) Agreement with Lawrence County concerning the Foothills site. A copy of this Assignment and Assumption Agreement is attached hereto and incorporated herein as Exhibit AH-5. The PILOT Agreement concerning the Zelda site has always been between the County and Riverside.

1 operate in unison. Kentucky Power’s opposing assertions fall far short of
2 convincing; in fact, it now appears the company’s argument has mutated from
3 “[the] Zelda and Foothills sites in fact are a single site...”⁹ to “...the record
4 indicates that the subject generating facilities are...either located on adjacent sites
5 or located on a single site...”¹⁰ Quite simply, adjacent sites are not one site.
6 Kentucky Power has failed to provide any reasonable explanation for its refusal to
7 permit Riverside to self-supply power in compliance with Tariff N.U.G.

8 **Q. PLEASE SUMMARIZE AGAIN THE RELIEF SOUGHT BY RIVERSIDE**
9 **IN THIS PROCEEDING.**

10 A. Riverside seeks a determination by this Commission that Kentucky Power must
11 observe and implement the language of its tariff in a fair, just, and reasonable
12 manner. As a result, Riverside should be permitted to self-supply the Zelda and
13 Foothills sites in accordance with Tariff N.U.G. and the PJM OATT. Kentucky
14 Power’s treatment of Riverside by its refusal to appropriately interpret and
15 effectuate the language of its tariff is unreasonable and should be rejected by the
16 Commission.

17 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

18 A. Yes.

⁹ Direct Testimony of Ranie K. Wohnhas on behalf of Kentucky Power, at p. 10 (filed herein May 4, 2018).

¹⁰ Kentucky Power’s Response to Commission Staff’s First Request for Information, Item No. 4 (filed herein June 1, 2018).

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LEASE AGREEMENT

BETWEEN

THE COUNTY OF LAWRENCE, KENTUCKY

AND

GENE A. WILSON AND PAULETTA M. WILSON

\$210,000,000 COUNTY OF LAWRENCE, KENTUCKY
INDUSTRIAL BUILDING REVENUE BONDS,
SERIES 2000A, SERIES 2000B, AND
SERIES 2001A
(RIVERSIDE GENERATING COMPANY, L.L.C. PROJECT)

Dated

as of

March 10, 2000

STITES & HARBISON
BOND COUNSEL

LEASE AGREEMENT

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(This Index is not a part of this Agreement
but rather is for convenience of reference only)

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement") made and entered into as of March 10, 2000, by and between the COUNTY OF LAWRENCE, KENTUCKY, a political subdivision, duly organized and validly existing under the laws of the Commonwealth of Kentucky (the "Issuer"), and GENE A. WILSON AND PAULETTA M. WILSON (collectively, the "Lessee"), under the following circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article 1 hereof):

WITNESSETH:

WHEREAS, pursuant to the provisions of Chapter 103 of the Kentucky Revised Statutes, as supplemented and amended (the "Act"), the Issuer is authorized and empowered to issue its revenue bonds and to enter into lease agreements for the purpose of facilitating the acquisition, construction, improving, equipping and financing of industrial buildings constituting a "project" within the meaning of the Act; and

WHEREAS, the Lessee and the Issuer each has the full right and lawful authority to enter into this Agreement and perform and observe the provisions hereof on their respective parts to be performed and observed; and

WHEREAS, the Issuer proposes to assist in the acquisition, construction, equipping and installation of a manufacturing plant including related easements and rights of way to be located in Lawrence County, Kentucky; all for lease to the Lessee to be used as a power plant and support the cost of acquisition and installation of fixtures therein, including certain equipment (the "Project") which will constitute an industrial building approved by an ordinance of the Issuer on February 24, 2000; and

WHEREAS, the Lessee will sublease the Project to Lawrence County Riverside Trust 2000 (the "Sublessee"), who will subsequently sublease the Project to the Company; and

WHEREAS, the Lessee is desirous of financing the acquisition, construction, equipping and installation of the proposed Project through this Agreement with the Issuer pursuant to the Act and for the purpose of subleasing to the Purchaser; and

WHEREAS, the Project will promote the economic development of the Commonwealth of Kentucky, relieve conditions of unemployment and otherwise contribute to the accomplishment of the purposes of the Act, and to promote and accomplish such purposes the Issuer is willing to and proposes to issue from time to time up to three series of bonds in an aggregate principal amount not to exceed \$210,000,000 (the "Bonds") and to use the proceeds thereof in order to assist in the financing of the acquisition, construction, equipping and installation of the Project and certain incidental costs upon the terms and conditions set forth herein; and

WHEREAS, the Bonds are to be issued pursuant to and secured by a Trust Indenture, dated as of the date hereof (the "Indenture"), by and between the Issuer and Bank One Trust Company, National Association, as trustee (the "Trustee") as supplemented from time to time to reflect the issuance of up to three series of bonds as previously described; and

NOW THEREFORE, for and in consideration of the promises and the mutual covenants and agreements hereinafter contained, the parties hereto covenant and agree, each with the other, as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2 Definitions. As used herein:

"Act" means Sections 103.200 through 103.287 of the Kentucky Revised Statutes, as in force on the date of execution of this Agreement.

"Additional Bonds" means any Additional Bonds as defined in the Indenture.

"Additional Payments" means the amounts required to be paid by the Lessee pursuant to the provisions of Section 4.2 hereof.

"Agreement" means this Lease Agreement as amended as supplemented from time to time.

"Authenticating Agent" means the Authenticating Agent as defined in the Indenture.

"Authorized Lessee Representative" means the person at the time designated to act on behalf of the Lessee by written certificate furnished to the Issuer and the Trustee, containing the specimen signature of that person and signed by the Lessee. That certificate may designate an alternate or alternates. In the event that the person so designated becomes unavailable or unable to act and the Lessee fails to designate a replacement within ten days after such unavailability or inability to act, the Trustee shall appoint an interim Authorized Lessee Representative until such time as the Lessee designates that person.

"Bond Fund" means the Bond Fund created in the Indenture.

"Bond Legislation" means (a) when used with reference to the Bonds, the ordinance providing for their issuance and approving this Agreement, the Indenture, the Purchase

Agreement and related matters; (b) when used with reference to an issue of Additional Bonds, the ordinance providing for the issuance of the Bonds, to the extent applicable, and the legislation providing for the issuance of the Additional Bonds and approving any amendment to this Agreement, any Supplemental Indenture and related matters; and (c) when used with reference to Bonds when Additional Bonds are outstanding, the ordinance providing for the issuance of the Bonds and the legislation providing for the issuance of the then outstanding and the then to be issued Additional Bonds; in each case as amended or supplemented from time to time.

"Bond Service Charges" means, for any period, the principal of and interest on the Bonds for that period whether due at maturity or upon acceleration or redemption.

"Bonds" means the up to three series of bonds to be issued in an aggregate principal amount not to exceed \$210,000,000 and denominated County of Lawrence Industrial Building Revenue Bonds, Series 2000A, Series 2000B, and Series 2001A, as applicable (Riverside Generating Company, L.L.C. Project), issued by the Issuer pursuant to the Bond Legislation and the Indenture.

"Business Day" means any day of the year, other than a Saturday or Sunday, on which banking institutions located in the city or cities in which the principal corporate trust office of the Trustee is located are not required or authorized by law to remain closed or on which the New York Stock Exchange is not closed.

"Commonwealth" means the Commonwealth of Kentucky.

"Company" means Riverside Generating Company, L.L.C., a Delaware limited liability company, and its lawful successors and assigns.

"Completion Date" means the date of completion of the Project evidenced in accordance with the requirements of Section 3.6 hereof.

"Deed" means the Deed and Consideration Certificate, dated as of March 10, 2000, from the Lessee to the Issuer with respect to the Project Site.

"Eligible Investments" means Eligible Investments as defined in the Indenture.

"Event of Default" means any of the events described as an Event of Default in Section 7.1 hereof.

"Facilities" means the Project.

"Force Majeure" means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1 hereof.

"Holder" or "Holder of a Bond" means the Person in whose name a Bond is registered on the Register.

"Indenture" means the Trust Indenture, dated as of the same date as this Agreement, between the Issuer and the Trustee, as amended or supplemented from time to time.

"Installation Period" means the period between the beginning of the acquisition, construction, equipping and installation of the Project or the date on which the Bonds are delivered to the Original Purchaser, whichever is earlier, and the Completion Date.

"Interest Payment Date" means, as to the Bonds, the date set forth as such in the Bond form attached as Exhibit A to the Indenture, and as to Additional Bonds, each date designated as an Interest Payment Date in the Bond form for which provision is made in the Supplemental Indenture or Bond Legislation.

"Interest Rate" means 7% per annum, being the rate borne by the Bonds.

"Issuer" means the County of Lawrence, Kentucky, a political subdivision, duly organized and validly existing under the laws of the Commonwealth.

"Lease Payments" means the amounts required to be paid or otherwise satisfied by the Lessee pursuant to Section 4.1 of this Agreement.

"Lease Term" means the period from the date hereof until the earlier of (i) March 9, 2025 or (ii) prepayment in whole of the Bonds and Additional Payments.

"Legislative Authority" means the Fiscal Court of the Issuer.

"Lessee" means collectively Gene A. Wilson and Pauletta M. Wilson.

"Net Proceeds" when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys' fees and any extraordinary expenses of the Trustee) incurred in the collection of such gross proceeds.

"Notice Address" to the Issuer, the Company and the Trustee shall be addressed as follows:

(a) If to the Issuer, at County of Lawrence, Kentucky, 122 South Main Cross Street; Louisa, Kentucky 41230, Attention: County Judge/Executive.

(b) (i) If to the Lessee: Gene A. Wilson and Pauletta M. Wilson

101 Madison
P.O. Box 702
Louisa, Kentucky 41230

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- (ii) With a copy to: Riverside Generating Company, L.L.C.
1000 Louisiana Street, Suite 5800
Houston, Texas 77022
Attention: Senior Vice President and
General Counsel
- (iii) With a copy to: Credit Lyonnais, New York Branch
1301 Avenue of the Americas
New York, New York 10019-6022
- (iv) With a copy to: Lawrence County Riverside Trust 2000
c/o Wilmington Trust Company, not in its
individual capacity, but solely as Trustee,
Corporate Trust Administration
1100 North Market Street
Rodney Square
North Wilmington, Delaware 19890-0001

(c) If to the Trustee, at Bank One Trust Company, National Association, 1 Bank One Plaza, Suite IL1-0126; Chicago, Illinois 60670-0126, , Attention: Corporate Trust Department.

"Original Purchaser" or "Purchaser" means Lawrence County Riverside Trust 2000, and as to Additional Bonds, the Person or Persons identified as the purchaser or purchasers in the Purchase Agreement.

"Outstanding Bonds," "Bonds outstanding" or "outstanding" as applied to Bonds means, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under this Indenture, except:

1. Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment or redemption, on or prior to that date;
2. Bonds, or the portion thereof, which have been paid or otherwise satisfied and discharged or caused to have been paid or otherwise satisfied and discharged pursuant to the provisions of the Indenture; and
3. Bonds in lieu of which others have been authenticated under Section 3.7 of the Indenture.

"Paying Agent" means the Paying Agent as defined in the Indenture.

"Person" or words importing person means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, limited liability companies, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

"Plans and Specifications" means the plans and specifications describing the Project Facilities as now prepared and as they may be changed as herein provided from time to time.

"Project" or "Project Facilities" means the Project Site and the Lessee's facilities as described in the third recital hereof (and more particularly described in the Plans and Specifications) and as set forth in Exhibit A attached hereto, together with any additions, modifications and substitutions to those facilities, and such equipment as set forth in Exhibit B attached hereto, as each may be amended from time to time to reflect the changes to be funded by the issuance of up to three series of the Bonds as authorized by the Bond Legislation.

"Project Costs" means the costs of the Project specified in Section 3.4 hereof.

"Project Fund" means the Project Fund created in the Indenture.

"Project Site" means the real estate described in Exhibit A hereto.

"Purchase Agreement" means, as to the Bonds, the Bond Purchase Agreement, dated as of March 10, 2000, by and among the Issuer, the Original Purchaser and the Lessee, as amended from time to time to reflect each series of Bonds as authorized by the Bond Legislation, and as to any Additional Bonds, the Bond Purchase Agreement defined in the Bond Legislation providing for the issuance of the Additional Bonds.

"Register" means the books kept and maintained by the Registrar for registration and transfer of Bonds pursuant to Section 3.6 of the Indenture.

"Registrar" means the Registrar as defined in the Indenture.

"Revenues" means (a) the Lease Payments, (b) all other moneys received or to be received by the Issuer or the Trustee in respect of the Lease Payments, including without limitation, all moneys and investments in the Bond Fund, (c) any moneys and investments in the Project Fund, and (d) all income and profit from the investment of the foregoing moneys.

"Trustee" means the Trustee at the time serving as such under the Indenture, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter "Trustee" shall mean the successor Trustee.

"Unassigned Issuer's Rights" means all of the rights of the Issuer to receive Additional Payments under Section 4.2 hereof, to be held harmless and indemnified under Sections 5.4 and 5.5 hereof, to be reimbursed for attorneys' fees and expenses under Section 7.4 hereof, and to give or withhold consent to amendments, changes, modifications, alterations and termination of this Agreement under Section 10.6 hereof.

Section 1.3 Interpretation. Any reference herein to the Issuer, to the Legislative Authority or to any member or official of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the Commonwealth or the Act, or to a section, provision or chapter of the Kentucky Revised Statutes or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee, the Registrar or the Lessee under this Agreement, the Indenture, the Bond Legislation, the Bonds, or any other instrument or document entered into in connection with any of the foregoing; including without limitation, any alteration of the obligation to pay Bond Service Charges in the amount and manner, at the times, and from the sources provided in the Bond Legislation and Indenture except as permitted in the Indenture.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms "hereof," "hereby," "herein," "hereto," "hereunder," "hereinafter," and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of the Bonds. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

Section 1.4 Captions and Headings. The captions and headings in this Agreement are solely for ease of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

ARTICLE 2

REPRESENTATIONS

Section 2.1 Representations of the Issuer. The Issuer, in reliance, in part, upon the opinion of Bond Counsel, makes the following representations and warranties as the basis for the undertaking on its part herein contained.

(a) The Issuer is a political subdivision duly organized and validly existing under the laws of the Commonwealth. Pursuant to the Act, the Issuer has the power to issue the Bonds, to enter into this Agreement and the transactions contemplated hereby, and to carry out its obligations hereunder. The Issuer is not in default under or in violation of the Constitution or any of the laws of the Commonwealth or any charter which authorizes its de jure existence or is relevant to the issuance of the Bonds or the consummation of the transactions contemplated hereby or in connection with such issuance, and has been duly authorized to issue the Bonds and to execute and deliver this Agreement. The Issuer agrees that it will do or cause to be done in a timely manner all things necessary to preserve and keep in full force and effect, and to carry out the terms of, this Agreement and the terms of the Indenture.

(b) The Issuer has determined that the Project constitutes and will constitute an activity permitted to be financed pursuant to the Act and that the financing of the Project is in the public interest and for a public purpose. The Issuer will acquire title to the Project and the Project Site and lease the same to the Lessee pursuant to the Act and this Agreement.

(c) The Issuer has found and determined and hereby finds and determines that it has complied with all requirements of the Act as may be applicable with respect to the issuance of the Bonds (including up to three series of Bonds in an amount not to exceed \$210,000,000) and the execution of this Agreement.

(d) The Issuer agrees to use and apply the net proceeds of the Bonds to assist in the acquisition, construction, equipping and installation of the Project and to lease the Project to the Lessee pursuant to the Agreement to the end that the purposes of the Act may be accomplished.

(e) To accomplish the foregoing, the Issuer agrees to issue the Bonds, in not more than three series of Bonds in an aggregate principal amount not to exceed \$210,000,000 following the execution of this Agreement, on such terms and conditions as are set forth in the Indenture. The net proceeds from the issuance of the Bonds shall be applied, upon direction of the Lessee for application, to the payment or satisfaction of the Project Costs.

(f) No official of the Issuer has any material interest whatsoever in the Lessee or in the transactions contemplated by this Agreement.

(g) Neither the execution and delivery of this Agreement or the Indenture, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement or the Indenture, materially conflict with or result in a material breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Issuer is now a party or by which it is bound or constitute a material default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any material nature upon any of the property or assets of the Issuer under the terms of any instrument or agreement.

Section 2.2 Representations and Covenants of the Lessee. Each of the Lessees represents and covenants that:

(a) He and she have the capacity to enter into and carry out the transactions contemplated by those documents. Execution, delivery and performance do not, and will not, violate any provision of law applicable to either Lessee and do not, and will not, conflict with or result in a default under any agreement or instrument to which either Lessee is a party or by which they are bound for which waivers have not been obtained. This Agreement has been duly executed and delivered by each Lessee and all steps necessary have been taken to constitute this Agreement, the Purchase Agreement and the Deed valid and binding obligations of each Lessee.

(b) The provision of financial assistance to be made available to the Lessee under this Agreement and the commitments therefor made by the Issuer have induced the Lessee to maintain within the boundaries of the Issuer that business of the Lessee to be conducted by use of the Project and such business will create additional jobs and employment opportunities within the Issuer.

(c) The Project will be completed substantially in accordance with the Plans and Specifications and the Project will be operated and maintained in such manner as to conform

with all applicable zoning, planning, building, environmental and other applicable governmental regulations and as to be consistent with the Act.

(d) The Project will be located entirely within the boundaries of Lawrence County, Kentucky.

(e) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Lessee threatened, against or affecting the Lessee in any court or before any governmental authority or arbitration board or tribunal which are reasonably anticipated to materially and adversely affect the transactions contemplated on their part by the Lease or which are reasonably anticipated to adversely affect the validity or enforceability of the Bonds or the Lessee Documents or the ability of the Lessee to perform their obligations under any of the foregoing.

ARTICLE 3

COMPLETION OF THE PROJECT; ISSUANCE OF THE PROJECT BONDS

Section 3.1. Acquisition and Installation. The Lessee (a) has previously, or will, upon the issuance of the Bonds, convey to the Issuer or cause to be conveyed to the Issuer the Project and it has caused and will cause the Project to be acquired and installed as herein provided on the Project Site with due diligence to the completion thereof substantially in accordance with the Plans and Specifications, all as provided herein, (b) shall pay or otherwise satisfy when due all fees, costs and expenses incurred in connection with that acquisition and installation from funds made available therefor in accordance with this Agreement or otherwise, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts, and other demands whatsoever which may be due, owing and payable under the terms of any contract, agreement, obligation, bond or other performance security with respect thereto.

Section 3.2 Plans and Specifications. The Lessee or the Company or its designee on behalf of the Lessee has the Plans and Specifications available for inspection by the Issuer and may revise the Plans and Specifications from time to time provided that no revision shall be made which would change the Project purposes to other than purposes permitted by the Act.

Section 3.3 Issuance of the Bonds; Application of Proceeds. To acquire, construct, equip and install the Project, the Issuer will issue, sell and deliver the Bonds to the Original Purchaser. The Bonds will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature and will be subject to redemption as set forth therein. The Lessee hereby approves the terms and conditions of the Indenture and the Bonds, and of the terms and conditions under which the Bonds will be issued, sold and delivered.

The consideration for the issuance and sale of the Bonds shall be the conveyance of the Project Site to the Issuer and the expenditures made for the acquisition, construction, equipping and installation of the Project and any other moneys necessary for the costs of issuance of the Project. Pending the disbursement pursuant to Section 3.4 hereof, the monetary proceeds, if any, so deposited in the Project Fund, together with any investment earnings thereof, shall constitute a

part of the Revenues assigned by the Issuer to the payment of Bond Service Charges as provided in the Indenture. The consideration for the issuance of additional series of Bonds shall be evidenced by bills of sale and assignments.

At the request of the Lessee, and for the purposes and upon fulfillment of the conditions specified in the Indenture, the Issuer may provide for the issuance, sale and delivery of Additional Bonds and use the proceeds from the sale thereof for any additions to the Project.

Section 3.4 Disbursements from the Project Fund. Subject to the provisions below, disbursements from the Project Fund of moneys if any moneys are obtained in the Project Fund shall be made, by execution and delivery to the Trustee of a disbursement request substantially in the form attached hereto and incorporated herein by reference as Exhibit C, only to reimburse or pay the Lessee, or any Person designated by the Lessee, for the following Project Costs:

- (a) Costs incurred directly or indirectly for or in connection with the acquisition, construction, equipping and installation of the Project, including costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;
- (b) Premiums attributable to any surety bonds and insurance required to be taken out and maintained during the Installation Period with respect to the Project Site and the Project Facilities;
- (c) Taxes, assessments and other governmental charges in respect of the Project that may become due and payable during the Installation Period;
- (d) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project Facilities;
- (e) (i) Financial, legal, accounting, printing and engraving fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of the Bonds, including, without limitation, the fees and expenses of the Trustee and its counsel, and the Issuer and its counsel, and any paying agent properly incurred under the Indenture that may become due and payable during the Installation Period; and (ii) financing costs related to the Sublease and any subleases thereunder.
- (f) Any other costs, expenses, fees and charges properly chargeable to the cost of acquisition and installation of the Project; and/or
- (g) Payment of interest on the Bonds during the Installation Period.

Any disbursement from the Project Fund for the payment of Project Costs shall be made by the Trustee only upon the written order of the Authorized Lessee Representative. Each such written order shall be in substantially the form of the disbursement request attached hereto as Exhibit C. In case any contract provides for the retention of a portion of the contract price, there shall be paid from the Project Fund only the net amount remaining after deduction of any

such portion, and only when that retained amount is due and payable, may it be paid from Project Fund.

Any moneys in the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Project Costs, at the written direction of the Authorized Lessee Representative, promptly shall be:

- (a) used for the purchase of the Bonds in the open market for the purpose of cancellation at prices not exceeding the full market value thereof plus accrued interest thereon to the date of payment therefor;
- (b) paid into the Bond Fund to be applied to the redemption of the Bonds; or
- (c) used to accomplish a combination of the foregoing as is provided in that direction.

Section 3.5 Intentionally Omitted.

Section 3.6 Completion Date. The Lessee shall cause the Issuer and the Trustee to be notified of the Completion Date by a certificate signed by the Authorized Lessee Representative stating:

- (a) The date on which the Project Facilities were substantially completed,
- (b) All other facilities necessary in connection with the Project have been acquired, constructed, equipped and installed,
- (c) The acquisition, construction, equipping and installation of the Project Facilities and those other facilities have been accomplished in such a manner as to conform with all applicable zoning, planning, building, environmental and other similar governmental regulations, and
- (d) Except for items the Lessee is contesting, all costs of that acquisition, construction, equipping and installation then or theretofore due and payable have been paid.

That certificate shall state that it is given without prejudice to any rights against third parties which then exist or subsequently may come into being. The certificate shall be delivered as promptly as practicable after the occurrence of the events and conditions referred to in subsections (a) through (d) of this Section.

Section 3.7 Investment of Fund Moneys. At the oral request (promptly confirmed in writing) or written request of the Authorized Lessee Representative, any moneys held as part of the Bond Fund or the Project Fund shall be invested or reinvested by the Trustee in Eligible Investments in accordance with Section 5.5 of the Indenture.

ARTICLE 4

LEASE OF PROJECT TO LESSEE;
PROVISIONS FOR PAYMENT

Section 4.1 Lease of Project; Lease Payments and Other Amounts Payable.

(a) The Issuer hereby leases the Project to the Lessee and the Lessee hereby leases the Project from the Issuer upon the terms and conditions of this Agreement. The term of this Agreement shall commence on the date of issuance of the Bonds, and shall expire on the date when the Bonds are paid or otherwise satisfied in full as provided in the Indenture, and all other sums payable by or on behalf of the Lessee under this Agreement shall have been paid or otherwise satisfied, except for obligations of the Lessee under Sections 4.2, 5.4 and 5.5 hereof.

(b) The Issuer covenants with the Lessee that so long as the Lessee observes and performs the terms and conditions of this Agreement, the Lessee shall have during the lease term sole and exclusive possession of the Project, and the Lessee shall be entitled to quiet enjoyment of the Project, except that the Issuer does not covenant any greater title or enjoyment than the Lessee has previously conveyed or shall cause to be conveyed to the Issuer.

(c) The Lessee covenants and agrees that upon the sale and delivery by the Issuer of the Bonds, the Lessee will make or cause to be made Lease Payments during the term of the Agreement directly to the Trustee or as otherwise set forth in an agreement pursuant to Section 3.9 of the Indenture for the account of the Issuer, as and for the repayment of the Bond Service Charges on the Bonds on December 31, commencing December 31, 2001:

The Lessee agrees to have paid to the Trustee, the Paying Agent, the Authenticating Agent, the Registrar and any other such fiduciary, the reasonable and necessary fees and expenses of such fiduciary, as and when the same become due, upon submission of a statement therefor.

In the event the Lessee should fail to satisfy the terms of this Section, the item or installment in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid or otherwise satisfied, and the Lessee agrees to satisfy the same.

In the event the Lessee should fail to satisfy any of the Lease Payments required in this Section when due, the failure shall continue as an obligation of the Lessee until the amount in default shall have been fully satisfied.

The Lessee also agrees that it shall satisfy the Lease Payments provided in this Agreement regardless of whether or not the Project is used or useful, existing or non-existing or whether any applicable laws, regulations or standards prevent or prohibit the use of the Project.

So long as no Event of Default has occurred and is subsisting hereunder, Lease Payments shall be used by the Trustee for satisfaction of Bond Service Charges.

Except for such interest of the Lessee as may hereafter arise pursuant to Section 10.2 hereof or Section 5.8 of the Indenture, the Lessee and the Issuer each acknowledges that neither

the Lessee nor the Issuer has any interest in the Bond Fund and any moneys deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Holders.

Section 4.2 Additional Payments. The Lessee shall cause to be paid to the Issuer, as Additional Payments hereunder, any and all costs and expenses incurred or to be paid by the Issuer in connection with the issuance and delivery of the Bonds and Additional Bonds or otherwise related to actions taken by the Issuer under this Agreement or the Indenture.

Section 4.3 Place of Payments. The Lessee shall make all monetary Lease Payments directly to the Trustee at its principal corporate trust office or as otherwise set forth in any agreement entered into in accordance with Section 3.9 of the Indenture. Additional Payments shall be made directly to the person or entity to whom or to which they are due.

Section 4.4 In-Lieu of Payments. The Lessee shall cause to be paid to the Issuer, pursuant to the In-Lieu of Tax Payments Agreement (the "Tax Payments Agreement"), as set forth in Exhibit D attached hereto, In-Lieu of Payments (as defined in the Tax Payments Agreement) in lieu of ad valorem personal and real property taxes on behalf of the Issuer beginning in 2000 in accordance with the schedule included therein.

Section 4.5 Obligations Unconditional. Subject to Section 10.10, the obligations of the Lessee to make Lease Payments and Additional Payments shall be absolute and unconditional, and the Lessee shall make such payments or otherwise satisfy the Lease Payments and Additional Payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the Lessee may have or assert against the Issuer, the Trustee or any other Person.

Section 4.6 Assignment of Agreement and Revenues. To secure the payment of or otherwise satisfy Bond Service Charges, the Issuer shall assign to the Trustee, by the Indenture, its rights under and interest in this Agreement (except for the Unassigned Issuer's Rights) and the Revenues. The Lessee hereby agrees and consents to those assignments.

ARTICLE 5

ADDITIONAL AGREEMENTS AND COVENANTS

Section 5.1 Right of Inspection. Subject to reasonable security and safety regulations and upon two Business Days' notice, the Trustee, and its agents, shall have the right during normal business hours to inspect the Project and the books and records of the Lessee with respect thereto.

Section 5.2 Assignment by Lessee. This Agreement may be assigned, and the Project shall be subleased, by the Lessee, subject to each of the following conditions:

(a) The assignee or sublessee shall assume in writing the obligations of the Lessee hereunder to the extent of the interest assigned.

(b) The Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Issuer and the Trustee a true and complete copy of each such assumption of obligations and assignment or sublease.

Section 5.3 Special Covenants. The Lessee covenants as follows:

(a) The Lessee will promptly cause to be paid, as the same become due, (i) all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any machinery, equipment or other property installed or brought by the Lessee therein or thereon, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and (iii) all assessments and charges lawfully made by any governmental authority for public improvement, as such assessments and charges become due. The Lessee may in good faith contest or litigate any such taxes, assessments and other charges, and, in the event of such contest or litigation, may permit the taxes, assessments or other charges so contested or litigated to remain unpaid during the period of such contest or litigation and any appeal therefrom, if, during such period enforcement of any such contested or litigated item shall be effectively stayed. Further the Lessee may and in its own name apply for any tax exemption from payment in lieu of taxes allowed by the Commonwealth, or any political or taxing subdivision thereof under any existing or future provision of law which grants or may grant any such tax exemption or exemptions from payments in lieu of taxes;

(b) The Lessee acknowledges and agrees that the Issuer shall have no obligation to insure the Project or any part thereof, and no responsibility for any damage or destruction thereof. During the acquisition, construction, installation and equipping of the Project, and throughout the Lease Term, the Lessee shall cause the Project to be insured against such property and personal injury risks as is consistent with its insurance practices in effect from time to time, including self insurance. In lieu of separate insurance policies, such insurance may be in the form of a blanket insurance policy or policies of the Lessee. Insurance policies may be written with deductible amounts and exceptions and exclusions as the Lessee deems necessary in the normal course of its business. The Issuer and the Trustee shall be named as additional insureds under any such insurance policy or policies, as their respective interests may appear. The Net Proceeds of the insurance carried pursuant to the provisions of this Section 5.3(b) shall be paid to the Lessee and applied to the repair or replacement of the Project, the redemption of the Bonds or any portion thereof, or for such other use as the Lessee shall determine; provided, however, that no damage to, or destruction of, the Project shall affect the Lessee's obligation to pay rent hereunder, or entitle the Lessee to reduce or otherwise diminish its rental payments.

The Lessee shall furnish to the Issuer and the Trustee at closing and annually thereafter a certificate of the Authorized Lessee Representative or other evidence satisfactory to the Issuer and the Trustee that it is in compliance with the requirements of this Section 5.3(b) and that such insurance provides coverage of at least \$5,000,000 for third party liability.

All claims made under any insurance policies carried pursuant to the requirement of this Section 5.3(b), regardless of amount, may be adjusted by the Lessee with the insurers.

Section 5.4 Indemnification. In addition to, and not in lieu of, the indemnification provided in Section 5.5 hereof, the Lessee releases the Issuer and the Trustee from, agrees that the Issuer and the Trustee shall not be liable for, and causes to be indemnified the Issuer and the Trustee against, all liabilities, claims, and reasonable out of pocket costs and expenses imposed upon, incurred by or asserted against the Issuer or the Trustee on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the maintenance, operation and use of the Project; (b) any breach or default on the part of the Lessee in the performance of any covenant or agreement of the Lessee under this Agreement, or any related document, or arising from any act or failure to act by the Lessee, or any of its agents, contractors, servants, employees or licensees; (c) the authorization, issuance, sale, trading, redemption or servicing of the Bonds, and the provision of any information or certification furnished in connection therewith concerning the Bonds, the Project or the Lessee including, without limitation, any information furnished by the Lessee for, and included in, or used as a basis for preparation of, any certifications furnished by the Issuer; (d) any failure of compliance with the provisions of the Act; and (e) any claim, action or proceeding brought with respect to the matters set forth in (a), (b), (c) and (d) above.

The Lessee agrees to indemnify the Trustee for and to hold it harmless against all liabilities, claims, and reasonable out of pocket costs and expenses incurred without gross negligence or willful misconduct on the part of the Trustee, on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of this Agreement, the Bonds or the Indenture, including the acceptance and administration of the trusts established under the Indenture or any action taken at the request of or with the consent of the Lessee, including the costs and expenses of the Trustee in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under this Agreement, the Bonds or the Indenture.

The Lessee agrees to have indemnified the Issuer for and to hold it harmless against all liabilities, claims, and reasonable out of pocket costs and expenses incurred on the part of the Issuer on account of any alleged defect in the title of the Project Site, including the costs and expenses of the Issuer in defending itself against any such claim, action or proceeding brought in connection with the alleged defect.

* In case any action or proceeding is brought against the Issuer or the Trustee in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Lessee, and the Lessee upon receipt of that notice shall have the obligation and the right to have assumed the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Lessee from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Lessee. At its own expense, an indemnified party may employ separate counsel and participate in the defense. The Lessee shall not be liable for any settlement made without its consent, which consent shall not be unreasonably withheld.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers and employees of the Issuer and the Trustee, respectively. That indemnification is intended to and shall be enforceable by the Issuer and the Trustee, respectively, to the full extent permitted by law.

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Section 5.5 Environmental Use of Project.

The Lessee shall cause the Project not to be used in any manner so as to violate any applicable law, rule, regulation or ordinance of any governmental body or in such manner as to vitiate insurance upon the Project.

(a) The Lessee agrees to and shall indemnify, hold harmless, and defend the Issuer, its members, officials, agents and employees from and against any and all claims, losses, damages, expenses, causes of action, lawsuits, government regulatory enforcement actions, and liability (individually, a "Claim" collectively, "Claims") asserted against the Issuer arising out of alleged or actual "environmental contamination" (hereinafter defined) arising from the Project.

(b) "Environmental contamination" as used herein shall mean damages to persons or property or violations of state or federal environmental laws or regulations arising out of the Project, the Project facility or the operations of the Project with respect to but not limited to air emissions, water effluent discharges, and waste generation, transportation, storage, disposal, or the handling of hazardous materials.

(c) The Issuer shall promptly notify the Lessee in writing after any Claim is made, brought or asserted, in any event, in writing, against the Issuer, and as to which the Issuer has actual knowledge by receipt of such written notification. The Lessee shall promptly notify the Issuer in writing after any Claim is made, brought or asserted against the Lessee.

(d) The Issuer shall cooperate with the Lessee, including but not limited to, assisting in defense Claims, but solely at the cost of Lessee. In the event the Issuer provides notice to the Lessee under Section 5.5(c), the Lessee shall handle and control the defense of all Claims and the Lessee's decision on litigation and settlement and all other such aspects shall be final; provided, however, no settlement or decision shall impose upon the Issuer by apportionment or otherwise, any loss, damage or liability as a result thereof.

(e) The provisions of this Section 5.5 shall survive the termination of this Lease and shall continue in full force and effect, binding the Lessee to the provisions of this Section 5.5 without regard to the manner of termination of this Lease.

ARTICLE 6

REDEMPTION OF PROJECT BONDS

Section 6.1 Optional Redemption. At any time and from time to time, the Lessee may deliver moneys or evidence of other consideration to the Trustee in addition to Lease Payments or Additional Payments required to be made. Any moneys so delivered shall be held by the Trustee in a special account in the Bond Fund and delivery of those moneys or evidence of other consideration shall not operate to abate or postpone Lease Payments or Additional Payments otherwise becoming due or to alter or suspend any other obligations of the Lessee under this

Agreement. Such optional redemption shall be in accordance with the provisions of Section 4.1(b) of the Indenture.

Section 6.2 Actions by Issuer. At the request of the Lessee or the Trustee, the Issuer shall take all steps required of it under the applicable provisions of the Indenture or the Bonds to effect the redemption of all or a portion of the Bonds pursuant to this Article 6.

ARTICLE 7

EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default. Each of the following shall be an Event of Default:

(a) The Lessee shall fail to pay or otherwise satisfy any Lease Payment when due and such nonpayment or nonsatisfaction shall continue for a period of twenty (20) days after notice from the Trustee of such nonpayment or nonsatisfaction is provided to the Lessee;

(b) The Lessee shall fail to provide satisfaction acceptable to the Holders or fail to deliver to the Trustee, or cause to be delivered on its behalf, the moneys in order to redeem any outstanding Bonds in the manner and upon the date requested in writing by the Trustee when due;

(c) The Lessee shall fail to observe and perform any other agreement, term or condition contained in this Agreement and the continuation of such failure for a period of sixty days after notice thereof shall have been given to the Lessee by the Issuer or the Trustee, or for such longer period as the Issuer and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Lessee institutes or has instituted curative action within the applicable period and diligently pursues that action to completion;

Notwithstanding the foregoing, if, by reason of Force Majeure or other similar circumstance beyond the control of the Lessee, the Lessee is unable to perform or observe any agreement, term or condition hereof (other than the payment or satisfaction of Lease Payments) which would give rise to an Event of Default under subsection (c) hereof, the Lessee shall not be deemed in default during the continuance of such inability. However, the Lessee shall promptly give notice to the Trustee and the Issuer of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within its discretion.

The term Force Majeure shall mean, without limitation, Acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the Commonwealth or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots, epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods, arrests; restraint of government and people; explosions; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation not the fault of the Lessee.

Section 7.2 Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

- (a) The Issuer may accelerate the total of all the Lease Payments;
- (b) If acceleration of the principal amount of the Bonds has been declared pursuant to Section 7.3 of the Indenture, the Trustee shall declare all Lease Payments to be immediately due, whereupon the same shall become immediately due;
- (c) The Issuer or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Lessee pertaining to the Project; or
- (d) The Issuer or the Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement or to enforce the performance and observance of any other obligation or agreement of the Lessee under those instruments.

Notwithstanding the foregoing, the Issuer shall not be obligated to take any steps which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to the Issuer at no cost or expense to the Issuer. Any amounts collected as Lease Payments or applicable to or in satisfaction of Lease Payments and any other amounts which would be applicable to payment or in satisfaction of Bond Service Charges collected pursuant to action taken under this Section shall be paid, if moneys, into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the outstanding Bonds have been paid or otherwise satisfied and discharged in accordance with the provisions of the Indenture, shall be paid or otherwise satisfied as provided in Section 5.8 of the Indenture for transfers of remaining amounts in the Bond Fund.

The provisions of this Section are subject to the further limitation that the rescission by the Trustee of its declaration that all of the Bonds are immediately due also shall constitute an annulment of any corresponding declaration made pursuant to subsection (b) of this Section and a waiver and rescission of the consequences of that declaration and of the Event of Default with respect to which that declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

If an Event of Default shall happen and is continuing, in case there shall be pending proceedings for the bankruptcy or for the reorganization of the Lessee under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Lessee or in the case of any other similar judicial proceedings relative to the Lessee, or to the creditors or property of the Lessee, the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Agreement, irrespective of whether the principal of the Bonds or any amount thereunder shall then be due as therein or herein expressed or by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 7.2 or of Section 7.2 of the

Indenture, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Lessee, its creditors, or its property, and to collect and receive any moneys or other property payable or of its charges and expenses; and any receiver, assignee or trustee in bankruptcy is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including reasonable counsel fees incurred by it up to the date of such distribution.

Section 7.3 No Remedy Exclusive. No remedy conferred upon or reserved to the Issuer or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, the Issuer or the Trustee must notify the Lessee upon the occurrence of an Event of Default.

Section 7.4 Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default should occur and the Issuer or the Trustee should incur expenses, including attorneys' fees, in connection with the enforcement of this Agreement, the Lessee shall have reimbursed the Issuer and the Trustee, as applicable, for the reasonable expenses so incurred upon demand.

Section 7.5 No Waiver. No failure by the Issuer or the Trustee to insist upon the strict performance by the Lessee of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Lessee to observe or comply with any provision hereof.

Section 7.6 Notice of Default. The Lessee shall have delivered to the Trustee promptly upon becoming aware of the occurrence of any Event of Default hereunder a certificate of any Authorized Lessee Representative or the Lessee to such effect setting forth the details thereof and the actions to be taken with respect thereto.

ARTICLE 8

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 8.1 Damage and Destruction. Unless the Lessee shall have exercised its options to prepay the Bonds in whole, terminate the Lease Term and purchase the Project, if prior to payment in full of the Bonds the Project is damaged or destroyed by fire or other casualty, the Lessee shall be obligated to continue to cause to be paid or otherwise satisfied the Lease Payments and shall promptly replace, repair, rebuild or restore the property damaged to substantially the same condition as existed prior to the event causing such damage, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair operating unity of the Project or change its character to such an extent that its ownership by the Issuer would not be permitted under the Act.

Section 8.2 Condemnation. Unless the Lessee shall have exercised its options to prepay the Bonds in whole, terminate the Lease Term and purchase the Project, if the title in and to, or the temporary use of, the Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Lessee shall be obligated to continue to cause to be paid or otherwise satisfied the Lease Payments, and, to the extent the Lessee deems it necessary, shall cause the restoration of the Project to substantially the same condition as it existed prior to the exercise of the said power of eminent domain, or shall acquire and install other machinery, equipment or related property suitable for the Lessee's operations at the Project, title to which machinery, equipment or related property will be conveyed to the Issuer by bill of sale and which will be deemed a part of the Project and available for use and occupancy by the Lessee without additional Lease Payments.

Section 8.3 Proceeds of Insurance and Condemnation Awards. All Net Proceeds of insurance resulting from claims for such losses and all Net Proceeds of any condemnation award shall be paid to the Lessee.

ARTICLE 9

CONVEYANCE OF PROJECT TO LESSEE; GRANTS OF EASEMENTS

Section 9.1 Option to Purchase Unimproved Project Site. The Lessee shall have, and is hereby granted, an option to purchase any unimproved portion of the Project Site at any time, at a purchase price equal to \$1.00 per acre of the portion of the Project Site to be purchased, provided that it furnishes the Issuer and Trustee with the following:

(a) a written notice containing (i) an adequate legal description of that portion of, or interest in, the Project Site with respect to which such option is to be exercised, (ii) a statement that the Lessee intends to exercise its option to purchase such portion of, or interest in, the Project Site on a date stated, which shall not be less than five (5) days nor more than ninety (90) days from the date of such notice, and (iii) proof that the portion of the Project Site to be conveyed is not necessary for the use and occupancy of the Project; and

(b) an amount of money or other consideration equal to the purchase price computed as provided in this Section, together with any other costs incurred by the Issuer associated with such conveyance.

The Issuer agrees that upon receipt of the notice, certificate and money or other consideration required in this Section to be furnished to it by the Lessee, the Issuer will promptly deliver the same to the Trustee for deposit in the Bond Fund, if money, and secure from the Trustee a release from the liens and/or security interests afforded by the Indenture of such portion of, or interest in, the Project Site with respect to which the Lessee shall have exercised the option granted to it in this Section subject to any right and title reserved in and to the Issuer and that thereafter such portion or interest shall not be deemed to be a portion of the Project Site. If the Lessee shall exercise the option granted to it under this Section, the Lessee shall not be entitled to any diminution in or postponement or abatement of the rents payable under this Agreement.

If the Lessee purchases any unimproved part of, or interest in, the Project Site pursuant to this Section, the Lessee and the Issuer agree that all walls presently standing or hereafter erected on or contiguous to the boundary line of the portion of, or interest in, the Project Site so purchased shall be party walls and each party grants the other a 10-foot easement adjacent to any such party wall for the purpose of inspection, maintenance, repair and replacement thereof and the tying-in of new construction.

Section 9.2 Conveyance upon Expiration of Term of Agreement. When the term of this Agreement has expired and the Bondholder certifies to the Issuer that all of the Bonds, including principal and interest and all other obligations incurred and to be incurred by the Issuer in connection with the Project and under the Indenture and this Agreement have been satisfied and Section 9.4 hereof has been satisfied, the Issuer shall promptly, or direct the Trustee promptly to, have transferred, conveyed, released, alienated, assigned and set over to the Lessee all of the Trustee's and the Issuer's title and interest in and to the Project by a good and sufficient deed and such other legal instruments as may be required therefor. The obligations specified in this section shall be and remain prior and superior to the Indenture and may be exercised whether or not the Lessee is in default hereunder provided that such default will not result in nonfulfillment of any condition to this right.

Section 9.3 General Option to Purchase Prior to Expiration of Agreement. The Lessee shall have and may exercise on any date upon which the Bonds may be redeemed pursuant to the Indenture prior to the expiration of the term of this Agreement, the option to purchase the Project under the provisions of this Section upon paying or causing to be paid to the Trustee or otherwise satisfying the purchase price therefor in an amount as provided in Section 9.4 of this Agreement. The Lessee may exercise such option by giving written notice thereof to the Issuer and the Trustee pursuant to Article 10 hereof and by making payments or otherwise providing consideration as provided in this Agreement.

Section 9.4 Purchase Price. The purchase price pursuant to Section 9.2 of this Agreement shall be the sum of One Dollar (\$1.00) plus, in the case of Section 9.3, such additional amount, if any, which, with all other funds available therefor, or other consideration in lieu thereof, will be sufficient to provide for satisfaction of all Bonds in conformity with the Indenture and all other obligations incurred and to be incurred by the Issuer in connection with the Project and under the Indenture and this Agreement. Such satisfaction of the Bonds shall include the Bond Service Charges for all of the Bonds, and any expenses in connection with such satisfaction.

Section 9.5 Date of Settlement. The purchase price of the Project under Section 9.4 of this Agreement shall be paid or otherwise satisfied on a date of settlement and at a place to be mutually agreed upon by the Trustee, the Issuer and the Lessee which shall be on or after the maturity date or the redemption date of the Bonds in whole. The purchase price, if in money, shall be paid to the Trustee on behalf of the Issuer in such coin or currency of the United States of America or in direct United States Government Obligations, or adequate consideration for the purchase price shall otherwise be provided and the Issuer shall contemporaneously convey to the Lessee all of the Issuer's right, title and interest in and to the Project by a good and sufficient deed and such other legal instruments as shall be required therefor. The Lessee shall cause to be borne all costs and expenses in connection with the preparation of the documents of conveyance

and the delivery hereof and all fees, assessments, taxes and charges incurred by the Issuer and payable in connection with the conveyance of title to the Project. Upon conveyance of title and payment therefor as aforesaid, this Agreement shall cease and terminate and all obligations of the Lessee hereunder, except obligations pertaining to Sections 4.2, 5.4 and 5.5 of this Agreement, shall be terminated and extinguished.

In no event, however, shall title to the Project be conveyed to the Lessee until the Bondholder certifies to the Issuer that all of the Bonds, including principal and interest, and all other obligations incurred by the Issuer under the Indenture and this Agreement have been satisfied.

Section 9.6 Easements. Upon the request by or on behalf of the Lessee, the Issuer agrees to grant, modify or release to the Lessee or other parties during the term of this Agreement, such easements with respect to the Project Site, as the Lessee may need or desire in order to conduct its business, or commence construction or improvement on or about the property of the Lessee.

ARTICLE 10

MISCELLANEOUS

Section 10.1 Term of Agreement. This Agreement shall be and remain in full force and effect from the date of delivery of the Bonds to the Original Purchaser until such time as all of the obligations and requirements of Article 9 hereof have been satisfied, except that the obligations of the Lessee set forth in Sections 4.2, 5.4 and 5.5 hereof shall survive any termination of this Agreement.

Section 10.2 Amounts Remaining in Funds. Any amounts in the Bond Fund remaining unclaimed by the Holders of Bonds for seven years after the due date thereof (whether at stated maturity, by redemption or otherwise), at the option of the Lessee, shall be deemed to belong to and shall be paid to the Lessee.

Section 10.3 Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when received by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to the Issuer, the Lessee or the Trustee shall also be given to the others. The Lessee, the Issuer and the Trustee, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 10.4 Extent of Covenants of the Issuer; No Personal Liability. All covenants, obligations (including the obligation to pay or otherwise satisfy Lease Payments), and agreements (collectively hereinafter referred to as the "Covenants") of the Issuer contained in this Agreement or the Indenture shall be effective to the extent authorized and permitted by applicable law. No such Covenant shall be deemed to be a Covenant of any present or future director, officer, agent or employee of the Issuer, the Legislative Authority, the Commonwealth, any agency or political subdivision thereof in other than his official capacity, and neither the

directors of the Legislative Authority nor any official executing the Bonds nor any official, employee or agent of the Issuer, the Commonwealth, any agency or political subdivision thereof shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the Covenants of the Issuer contained in this Agreement or in the Indenture. **THE BONDS AND THE COVENANTS SHALL NOT BE DEEMED TO BE DEBTS OR OBLIGATIONS OF THE ISSUER, THE COMMONWEALTH OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF, INCLUDING BUT NOT LIMITED TO THE LEGISLATIVE AUTHORITY (EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 10.4).**

Section 10.5 Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Issuer, the Lessee and their respective permitted successors and assigns provided that this Agreement may not be assigned by the Issuer except to the Trustee, or as provided by law, pursuant to the Indenture or as otherwise may be necessary to enforce or secure payment or satisfaction of Bond Service Charges. This Agreement may be enforced only by the parties, their assignees and others who may, at law, stand in their respective places. It is understood that the Lessee has an unrestricted right to assign all or any part of its rights and obligations in the Lease, and to sublease the Project, subject to the requirements of Section 5.2 hereof

Section 10.6 Amendments and Supplements. Except as otherwise expressly provided in this Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, this Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of Article 11 of the Indenture, as applicable, and to provide for the lease of additional portions of the Project to the Issuer.

Section 10.7 Execution Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 10.8 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 10.9 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the Commonwealth and for all purposes shall be governed by and construed in accordance with the laws of the Commonwealth.

Section 10.10 Obligations of Lessee Nonrecourse. Notwithstanding any provision herein or in the Indenture to the contrary, the Lessee shall not be personally liable for the payment or performance of any of the Lessee's obligations hereunder, it being understood that the recourse

of the Issuer, the owners of the Bonds and the Trustee and each of their successors and assigns under or in connection with this Lease and the Indenture, as amended or supplemented from time to time, shall be limited to the Lessee's interest in the Project and payments received by Lessee from the Sublessee pursuant to the Sublease (the "Sublease") of even date herewith between the Lessee and the Sublessee, except that no recourse shall be available to (i) the Land Rents (as defined in the Sublease) and (ii) Lessee's purchase option pursuant to Article 9 of this Agreement, and the Issuer, the owner of the Bonds and the Trustee and any of their successors and assigns hereby waive any such liability of Lessee.

Section 10.11 Certificates by Lessor and Lessee. Each party hereto agrees at any time and from time to time during the term of this Lease, within 15 days after written request from the other party, to execute, acknowledge, and deliver to the other party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the Lease Payments and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge of the signer of such certificate, the other party hereto is in default in the performance of any covenant, agreement, or condition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge and containing such other information as may be reasonably requested.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK. SIGNATURES ON FOLLOWING PAGES]

Gene A. Wilson
GENE A. WILSON
Pauletta M. Wilson
PAULETTA M. WILSON

STATE OF KENTUCKY)
) SS:
COUNTY OF LAWRENCE)

I, the undersigned, Notary Public in and for the State and County aforesaid, do hereby certify that on the 10th day of MARCH, 2000, the foregoing instrument (including Exhibits A, B, C and D attached) was produced to me in said County by Gene A. Wilson and Pauletta M. Wilson, and acknowledged by them to be their free act and deed.

Witness my hand this 10th day of MARCH, 2000.

My Commission expires: B. Beque
3-06-01
STATE - AT - LARGE
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Alex P. Herrington, Jr.
Alex P. Herrington, Jr. (Mike)
STITES & HARBISON
1800 Capital Holding Center
400 West Market Street
Louisville, Kentucky 40202-3352
(502) 587-3400

612

EXHIBIT A

PROJECT SITE

EXHIBIT A

613

Certain tracts or parcels of land lying and being on The Big Sandy River near the community of Zelda in Lawrence County, Kentucky and being more particularly described as follows:

Beginning at an iron pin (set), in the existing right of way of The Chesapeake and Ohio Railway Company, said point being 50 feet left of the railway centerline station 882+38, and also being a corner to Joe A. and Ruby Hart; thence leaving the line of Joe A. and Ruby Hart and with the right of way of the Chesapeake and Ohio Railway Company North 09 degrees 18 minutes 30 seconds East, 478.00 feet to an iron pin (set), said point being 50 feet left of the railway centerline station 877+60, and also being a corner to the Gene A. and Pauletta Wilson tract; thence leaving the line of the Joe A. Hart and Patton R. Hart tract and with the right of way of The Chesapeake and Ohio Railway Company, North 09 degrees 18 minutes 30 seconds East, 341.15 feet to a point, said point being 50 feet left of railway centerline station 874+30; thence continuing with the right of way of The Chesapeake and Ohio Railway Company, North 09 degrees 18 minutes 30 seconds East, 80.00 feet to an iron pin (set), said point being 50 feet left of railway centerline station 873+50; thence South 80 degrees 41 minutes 30 seconds East, 70.00 feet to an iron pin (set), said point being 120 feet left of railway centerline station 873+50; thence North 09 degrees 18 minutes 30 seconds East, 36.28 feet to an iron pin (set), said point being 120 feet left of railway centerline station 873+13.72, said point also being a corner to Gene A. and Pauletta Wilson; thence leaving The Chesapeake and Ohio Railway Company right of way and with the line of Gene A. and Pauletta Wilson, North 57 degrees 48 minutes 40 seconds East, 51.58 feet to an iron pin (set); thence continuing with the line of Gene A. and Pauletta Wilson, South 83 degrees 11 minutes 20 seconds East, 135.00 feet to an iron pin (set); thence North 50 degrees 48 minutes 40 seconds East, 122.00 feet to an iron pin (set); thence South 80 degrees 11 minutes 20 seconds East, 91.00 feet to an iron pin (set); thence South 78 degrees 11 minutes 24 seconds East, 450.67 feet to an iron pin (set), on top of the bank of The Big Sandy River; thence down the bank, South 78 degrees 11 minutes 24 seconds East, 138.74 feet to a point at the low water mark of The Big Sandy River; thence leaving the line of Gene A. and Pauletta Wilson and with the low water mark of The Big Sandy River upstream, South 25 degrees 18 minutes 46 seconds West, 272.33 feet to a point; thence continuing with the low water mark of The Big Sandy River upstream, South 23 degrees 08 minutes 03 seconds West, 506.00 feet to a point, said point being a corner to the Joe A. Hart and Patton R. Hart tract; thence continuing with the low water mark of The Big Sandy River upstream South 17 degrees 48 minutes 22 seconds West, 452.49 feet to a point, said point being a corner to Joe A. and Ruby Hart; thence leaving the low water mark of The Big Sandy River and up the bank with the Joe A. and Ruby Hart line North 68 degrees 29 minutes 22 seconds West, 179.39 feet to an iron pin (set), on top of the bank; thence continuing with the line of Joe A. and Ruby Hart North 68 degrees 29 minutes 22 seconds West, 579.07 feet to the point of beginning and containing 21.8809 acres or 953,132.50 square feet as determined by survey.

614

Together with a right of ingress and egress to and from the above described property across the adjacent railroad property to and from U.S. 23 for a farm crossing of unspecified width set forth (retained) in Deed Book W, Page 451, Lawrence County Clerk's Office, said easement being described as follows:

Beginning at a point in the existing common right of way line of the Kentucky Department of Transportation and CSX Transportation, Inc., said point being 80.00 feet right of U.S. Highway 23 centerline station 368+15.82 and 50.00 feet right of CSX Transportation, Inc. track centerline station 877+62.68; thence with the common right of way line of the Kentucky Department of Transportation and CSX Transportation, Inc. North 09 degrees 18 minutes 30 seconds East, a distance of 12.00 feet to a point, said point being 80 feet right of U.S. Highway 23 centerline station 368+27.82 and 50.00 feet right of CSX Transportation, Inc. track centerline station 877+ 50.68; thence leaving the existing right of way of the Kentucky Department of Transportation and crossing the right of way of CSX Transportation, Inc. South 81 degrees 21 minutes 59 seconds East, a distance of 100.01 feet to a point in the existing opposite right of way line of CSX Transportation, Inc., said point being 50.00 feet left of CSX Transportation, Inc. track centerline station 877+49.50 and also being a corner to Gene A. and Pauletta Wilson; thence with the existing right of way line of CSX Transportation, Inc. and the boundary line of Gene A. and Pauletta Wilson South 09 degrees 18 minutes 30 seconds West, 12.00 feet to a point, said point being 50.00 feet left of CSX Transportation, Inc. track centerline station 877+61.50; thence leaving the line of Gene A. and Pauletta Wilson and crossing CSX Transportation, Inc. right of way North 81 degrees 21 minutes 59 seconds West, a distance of 100.01 feet to the point of beginning and containing 1200.12 square feet or 0.0276 acres as determined by survey.

Being retained in that deed to the Ohio and Big Sandy Railroad Company (being the predecessor to CSX Transportation, Inc.) from Stephen Curnutt and Elizabeth Curnutt, his wife (being the predecessor to County of Lawrence, Kentucky) by deed dated September 18, 1890 and of record in Deed Book W, Page 451, Lawrence County Clerk's Office.

Being the same land acquired by County of Lawrence, Kentucky, a political subdivision duly organized and validly existing under the laws of the Commonwealth of Kentucky, by Deed dated MARCH 10, 2000, recorded in Deed Book 247, Page 574, in the Office of the Clerk of Lawrence County, Kentucky.

EXHIBIT B

EQUIPMENT LIST

NONE

616

EXHIBIT C

FORM OF DISBURSEMENT REQUEST

STATEMENT NO. __ REQUESTING DISBURSEMENT
OF FUNDS FROM PROJECT FUND PURSUANT TO SECTION 3.4
OF THE LEASE AGREEMENT DATED AS OF MARCH 10, 2000
BETWEEN THE COUNTY OF LAWRENCE, KENTUCKY AND
GENE A. WILSON AND PAULETTA M. WILSON

Pursuant to Section 3.4 of the Lease Agreement (the "Agreement") between the County of Lawrence, Kentucky (the "Issuer") and Gene A. Wilson and Pauletta M. Wilson (the "Lessee") dated as of March 10, 2000, the undersigned Authorized Lessee Representative hereby requests and authorizes Bank One Trust Company, National Association, as Trustee (the "Trustee") with the prior written acknowledgement of receipt of this Disbursement Request by the Trustee (as depository of the Project Fund created by the Trust Indenture, dated as of March 1, 2000, by and between the Issuer and the Trustee, and defined in the Agreement), to pay (i) to the Lessee or to the person(s) listed on the Disbursement Schedule hereto, and (ii) thereafter to the Lessee out of the moneys deposited in the Project Fund the aggregate sum of \$ _____ and to pay such person(s) or to reimburse the Lessee in full, as indicated in the Disbursement Schedule, attached hereto, for the advances, payments and expenditures made by it in connection with the items listed in the Disbursement Schedule.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

- (a) Each item for which disbursement is requested hereunder is properly payable out of the Project Fund in accordance with the terms and conditions of the Agreement and none of those items has formed the basis for any disbursement heretofore made from said Project Fund.
- (b) Each such item is or was necessary in connection with the acquisition, construction, equipping and installation of the Project, as defined in the Agreement.
- (c) The Lessee has received, or will concurrently with payment receive appropriate waivers of any mechanics' or other liens with respect to each item for which disbursement is requested hereunder.
- (d) This statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warranty, protection and authority to the Trustee for its actions taken pursuant hereto.

- (e) This statement constitutes the approval of the Lessee of each disbursement hereby requested and authorized.

[The remainder of this page is left intentionally blank. Signatures appear on the following page.]

This ____ day of _____, 2000.

Authorized Lessee Representative

Acknowledged Receipt of
Disbursement Request No. ____:

This ____ day of _____, 2000.

BANK ONE TRUST COMPANY, NATIONAL
ASSOCIATION

By: _____

Title: _____

DISBURSEMENT SCHEDULE

STATEMENT NO. _____ REQUESTING AND AUTHORIZING
DISBURSEMENT OF FUNDS FROM PROJECT FUND PURSUANT TO SECTION 3.4 OF
THE LEASE AGREEMENT DATED AS OF MARCH 10, 2000 BETWEEN THE COUNTY
OF LAWRENCE, KENTUCKY AND GENE A. WILSON AND PAULETTA M. WILSON.

PAYEE

AMOUNT

PURPOSE

620

EXHIBIT D

IN-LIEU OF TAX PAYMENTS AGREEMENT

IN-LIEU OF TAX PAYMENTS AGREEMENT

THIS IN-LIEU OF TAX PAYMENTS AGREEMENT (the "In-Lieu of Agreement") made and entered into as of March 10, 2000, by and between the COUNTY OF LAWRENCE, KENTUCKY (the "Issuer"), a political subdivision, duly organized and validly existing under the laws of the Commonwealth of Kentucky, and RIVERSIDE GENERATING COMPANY, L.L.C., a Delaware limited liability company (the "Company").

RECITALS

WHEREAS, the Issuer is assisting the Company in funding the acquisition, construction, installation and equipping of a power plant including related easements and rights of way located in Lawrence County, Kentucky (the "Project") through the issuance from time to time of up to three series of bonds, in the aggregate principal amount not to exceed \$210,000,000 and designated County of Lawrence, Kentucky Industrial Building Revenue Bonds, Series 2000A, Series 2000B and Series 2001A (Riverside Generating Company, L.L.C. Project) (the "Bonds"); and

WHEREAS, in connection with the issuance of the Bonds the Project will be conveyed to the Issuer and leased back to Gene A. Wilson and Pauletta M. Wilson (collectively, the "Lessee"), removing the Project from the Issuer's ad valorem real estate and personal property taxes (the "Taxes"). In turn, the Project will be subleased by the Lessee to Lawrence County Riverside Trust 2000 and sub-subleased to the Company; and

WHEREAS, the Issuer and the Company wish to enter into this In-Lieu of Agreement under which the Company will make payments (the "In-Lieu of Payments") in-lieu of ad valorem real estate and personal property taxes (the "Taxes") in an annual amount of NINETY THOUSAND DOLLARS (\$90,000).

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

1. The Company will make the In-Lieu of Payments to the Issuer continuing annually for so long as the Bonds remain outstanding. The Company agrees to pay the Issuer NINETY THOUSAND DOLLARS (\$90,000) commencing with the tax year of the Issuer beginning on January 1, 2000, and continuing annually for so long as the Bonds remain outstanding.
2. Subject to the Company making In-Lieu of Payments, the Company shall not be liable for any additional Taxes in connection with the Project.
3. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

[The remainder of this page is left intentionally blank.

Signatures appear on the following page.]

IN WITNESS WHEREOF, the Issuer and the Company have caused this
Agreement to be duly executed as of the date hereinbefore written.

RIVERSIDE GENERATING COMPANY,
L.L.C.

By: _____

Title: _____

ATTEST:

By: _____

Title _____

COUNTY OF LAWRENCE, KENTUCKY

By: _____

Title: _____

STATE OF KENTUCKY)
LAWRENCE COUNTY) Sct.

I, GALLIE ISAAC, JR., Clerk of the County and State aforesaid, certify
that the foregoing instrument of writing was on the 10th day of March,
2000 lodged for record, whereupon the same with the foregoing certificate have
been duly recorded in my office.

WITNESS MY HAND, this 10th day of March, 2000 .

GALLIE ISAAC, JR., CLERK

BY: Gloria J. Cassell D. C.

LODGED FOR RECORD ON
THE 10th DAY OF MARCH
2000 AT 4:00 P. M RECORDED
IN Filed BOOK
NO. 247 PAGE 582
TAX \$ _____ FEES \$ _____
TOTAL 88.00
GALLIE ISAAC, JR. CLERK
Lawrence County
BY G J J. d.c.

MAIL TO:
STITES & HARBISON
250 W. MAIN ST., SUITE 2300
LEXINGTON, KENTUCKY 40507
ATTN: Betsy Byrne

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

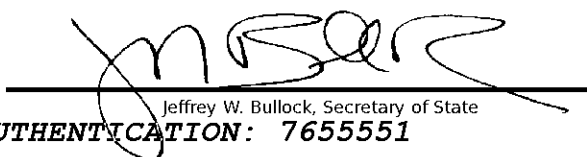
"LAWRENCE COUNTY RIVERSIDE TRUST 2000", A DELAWARE STATUTORY TRUST,

WITH AND INTO "RIVERSIDE GENERATING COMPANY, L.L.C." UNDER THE NAME OF "RIVERSIDE GENERATING COMPANY, L.L.C.", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTIETH DAY OF NOVEMBER, A.D. 2009, AT 3:26 O'CLOCK P.M.

3079353 8100M

091036887




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 7655551

DATE: 11-20-09

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:26 PM 11/20/2009
FILED 03:26 PM 11/20/2009
SRV 091036887 - 3079353 FILE

**STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC STATUTORY TRUST INTO
DOMESTIC LIMITED LIABILITY COMPANY**

Pursuant to Title 12, Section 3815 of the Delaware Statutory Trusts Act and Title 6, Section 18-209 of the Limited Liability Company Act, the undersigned limited liability company executed the following Certificate of Merger:

FIRST: The name of the surviving limited liability company is Riverside Generating Company, L.L.C. and the name of the statutory trust being merged into this surviving limited liability company is Lawrence County Riverside Trust 2000.

SECOND: The Plan and Agreement of Merger has been approved, adopted, certified, executed and acknowledge by the surviving limited liability company and the merging statutory trust.

THIRD: The name of the surviving limited liability company is Riverside Generating Company, L.L.C.

FOURTH: The merger is to become effective on FILING.

FIFTH: The Plan and Agreement of merger is on file at 1000 Louisiana St., Ste. 5800, Houston, Texas 77002, the place of business of the surviving limited liability company.

SIXTH: A copy of the Plan and Agreement of Merger will be furnished by the surviving limited liability company on request, without cost, to any member of any constituent limited liability company or beneficial owner of any constituent statutory trust.

IN WITNESS WHEREOF, said limited liability company has caused this certificate to be signed by an authorized person, the 20th day of November, 2009.

By: Timothy Beverich
Authorized Person

Name: Timothy Beverich
Title: Vice President & General Counsel

**PLAN AND AGREEMENT OF MERGER
OF
LAWRENCE COUNTY RIVERSIDE TRUST 2000
INTO
RIVERSIDE GENERATING COMPANY, L.L.C.**

This Agreement of Merger (this "Agreement") dated as of November ____, 2009, is made and entered into by and between Lawrence County Riverside Trust 2000 and Riverside Generating Company, L.L.C.

WHEREAS, Lawrence County Riverside Trust 2000 is a statutory trust organized and existing under the laws of the State of Delaware and was formed in the State of Delaware effective March 6, 2000 ("**LCRT**");

WHEREAS, Riverside Generating Company, L.L.C. is a limited liability company organized and existing under the laws of the State of Delaware and was formed in the State of Delaware effective August 5, 1999 ("**RGC**"); and

WHEREAS, the sole Member of RGC and the sole Trustee of LCRT (acting at the written direction of the sole beneficial owner of LCRT) have approved this Agreement and the transactions contemplated hereby, and each has determined that the Merger is in the best interests of their respective companies and members and, accordingly, have each agreed to effect the Merger provided for herein upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, pursuant to the provisions of Title 6, Section 18-209 of the Delaware Limited Liability Company Act; and Title 12, Section 3815 of the Delaware Statutory Trust Act, the parties hereto, intending to be legally bound, hereby agree as follows:

FIRST: LCRT shall merge with and into RGC.

SECOND: The merger will be effective upon delivery of a Certificate of Merger to the office of the Secretary of State of Delaware, which shall be prepared, executed and filed by RGC as the surviving entity of the merger.

THIRD: Upon the effective date of the merger, (i) all rights or securities of, or interest in, LCRT shall be automatically cancelled and extinguished; (ii) without any further act or deed, all the estate, property, rights, privileges, franchises, causes of action and every other asset of LCRT shall be vested in RGC, and shall be fully held, enjoyed, managed and controlled by RGC in its name; and (iii) RGC shall assume and be liable for

all the obligations and liabilities of LCRT and be subject to the rights of all creditors thereof.

FOURTH: The Certificate of Formation of the surviving limited liability company shall be its Certificate of Formation. The Limited Liability Company Agreement (“LLC Agreement”) of RGC in effect at the time of the merger shall be the limited liability company agreement of the surviving limited liability company unless and until amended in accordance with its terms and applicable law. The name of the surviving limited liability company shall be Riverside Generating Company, L.L.C.

FIFTH: If at any time the surviving limited liability company shall consider or be advised that any further assignment, conveyance or assurance is necessary or advisable to vest, perfect or confirm of record in the surviving limited liability company the title to any property or right of LCRT, or otherwise to carry out the provisions hereof, the proper representatives of LCRT (including, without limitation, RGC as the sole beneficial owner of LCRT) in place as of the time of merger shall execute and deliver any and all proper deeds, assignments, and assurances and do all things necessary or proper to vest, perfect or convey title to such property or right in the surviving limited liability company, and otherwise to carry out the provisions hereof.

SIXTH: THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. This Agreement embodies the entire agreement and understanding between the parties and supersedes all prior agreements and understandings relating to the subject matter hereof.

[signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Merger to be executed as of November __, 2009.

RIVERSIDE GENERATING COMPANY, L.L.C.

By its sole member:
RIVERSIDE GENERATION, INC.

By: Timothy Beverick
Name: Timothy A. Beverick
Title: Vice President and General Counsel

LAWRENCE COUNTY RIVERSIDE TRUST 2000

By its Trustee:
WILMINGTON TRUST COMPANY, not in its
individual capacity, but solely as Trustee

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Merger to be executed as of November ___, 2009.


RIVERSIDE GENERATING COMPANY, L.L.C.

By its sole member:
RIVERSIDE GENERATION, INC.

By: _____
Name: Timothy A. Beverick
Title: Vice President and General Counsel

LAWRENCE COUNTY RIVERSIDE TRUST 2000

By its Trustee:
WILMINGTON TRUST COMPANY, not in its
individual capacity, but solely as Trustee

By:  _____
Name: Robert P. Hines, Jr.
Title: Assistant Vice President

LEASE AGREEMENT
BETWEEN
THE COUNTY OF LAWRENCE, KENTUCKY
AND
FOOTHILLS GENERATING, L.L.C.
\$160,000,000 COUNTY OF LAWRENCE, KENTUCKY
INDUSTRIAL BUILDING REVENUE BONDS,
SERIES 2001A, SERIES 2001B, AND
SERIES 2002A
(FOOTHILLS GENERATING, L.L.C. PROJECT)

Dated
as of
March 29, 2001

STITES & HARBISON, PLLC
BOND COUNSEL

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement") made and entered into as of March 29, 2001, by and between the COUNTY OF LAWRENCE, KENTUCKY, a political subdivision, duly organized and validly existing under the laws of the Commonwealth of Kentucky (the "Issuer"), and FOOTHILLS GENERATING, L.L.C. (the "Lessee"), under the following circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article 1 hereof):

WITNESSETH:

WHEREAS, pursuant to the provisions of Chapter 103 of the Kentucky Revised Statutes, as supplemented and amended (the "Act"), the Issuer is authorized and empowered to issue its revenue bonds and to enter into lease agreements for the purpose of facilitating the acquisition, construction, improving, equipping and financing of industrial buildings constituting a "project" within the meaning of the Act; and

WHEREAS, the Lessee and the Issuer each has the full right and lawful authority to enter into this Agreement and perform and observe the provisions hereof on their respective parts to be performed and observed; and

WHEREAS, the Issuer proposes to assist in the acquisition, construction, equipping and installation of a manufacturing plant including related easements and rights of way to be located in Lawrence County, Kentucky; all for lease to the Lessee to be used as a power plant and support the cost of acquisition and installation of fixtures therein, including certain equipment (the "Project") which will constitute an industrial building approved by an ordinance of the Issuer on March 19, 2001; and

WHEREAS, the Lessee will sublease the Project to Lawrence County Colped Trust (in such capacity, the "Sublessee"); and

WHEREAS, the Lessee is desirous of financing the acquisition, construction, equipping and installation of the proposed Project through this Agreement with the Issuer pursuant to the Act and for the purpose of subleasing to the Sublessee; and

WHEREAS, the Project will promote the economic development of the Commonwealth of Kentucky, relieve conditions of unemployment and otherwise contribute to the accomplishment of the purposes of the Act, and to promote and accomplish such purposes the Issuer is willing to and proposes to issue from time to time up to three series of bonds in an aggregate principal amount not to exceed \$160,000,000 (the "Bonds") and to use the proceeds thereof in order to assist in the financing of the acquisition, construction, equipping and installation of the Project and certain incidental costs upon the terms and conditions set forth herein; and

WHEREAS, the Bonds are to be issued pursuant to and secured by a Trust Indenture, dated as of the date hereof (the "Indenture"), by and between the Issuer and Bank One Trust

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Company, National Association, as trustee (the "Trustee") as supplemented from time to time to reflect the issuance of up to three series of bonds as previously described; and

NOW THEREFORE, for and in consideration of the promises and the mutual covenants and agreements hereinafter contained, the parties hereto covenant and agree, each with the other, as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Use of Defined Terms In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2 Definitions As used herein:

"Act" means Sections 103.200 through 103.287 of the Kentucky Revised Statutes, as in force on the date of execution of this Agreement.

"Additional Bonds" means any Additional Bonds as defined in the Indenture.

"Additional Payments" means the amounts required to be paid by the Lessee pursuant to the provisions of Section 4.2 hereof.

"Agreement" means this Lease Agreement as amended or supplemented from time to time.

"Authenticating Agent" means the Authenticating Agent as defined in the Indenture.

"Authorized Lessee Representative" means the person at the time designated to act on behalf of the Lessee by written certificate furnished to the Issuer and the Trustee, containing the specimen signature of that person and signed by the Lessee. That certificate may designate an alternate or alternates. In the event that the person so designated becomes unavailable or unable to act and the Lessee fails to designate a replacement within ten days after such unavailability or inability to act, the Trustee shall appoint an interim Authorized Lessee Representative until such time as the Lessee designates that person.

"Bond Fund" means the Bond Fund created in the Indenture.

"Bond Legislation" means (a) when used with reference to the Bonds, the ordinance providing for their issuance and approving this Agreement, the Indenture, the Purchase Agreement and related matters; (b) when used with reference to an issue of Additional Bonds, the ordinance providing for the issuance of the Bonds, to the extent applicable, and the legislation providing for the issuance of the Additional Bonds and approving any amendment to

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this Agreement, any Supplemental Indenture and related matters; and (c) when used with reference to Bonds when Additional Bonds are outstanding, the ordinance providing for the issuance of the Bonds and the legislation providing for the issuance of the then outstanding and the then to be issued Additional Bonds; in each case as amended or supplemented from time to time.

“Bond Service Charges” means, for any period, the principal of and interest on the Bonds for that period whether due at maturity or upon acceleration or redemption.

“Bonds” means the up to three series of bonds to be issued in an aggregate principal amount not to exceed \$160,000,000 and denominated County of Lawrence Industrial Building Revenue Bonds, Series 2001A, Series 2001B, and Series 2002A, as applicable (Foothills Generating, L.L.C. Project), issued by the Issuer pursuant to the Bond Legislation and the Indenture.

“Business Day” means any day of the year, other than a Saturday or Sunday, on which banking institutions located in the city or cities in which the principal corporate trust office of the Trustee is located are not required or authorized by law to remain closed or on which the New York Stock Exchange is not closed.

“Commonwealth” means the Commonwealth of Kentucky.

“Completion Date” means the date of completion of the Project evidenced in accordance with the requirements of Section 3.6 hereof.

“Deed” means the Deed and Consideration Certificate, dated as of March 29, 2001, from the Lessee to the Issuer with respect to the Project Site.

“Eligible Investments” means Eligible Investments as defined in the Indenture.

“Event of Default” means any of the events described as an Event of Default in Section 7.1 hereof.

“Facilities” means the Project.

“Force Majeure” means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1 hereof.

“Holder” or “Holder of a Bond” means the Person in whose name a Bond is registered on the Register.

“Home Office Payment Agreement” means the Home Office Payment Agreement dated as of March __, 2001 by and among the Trustee, Issuer, Purchaser and Lessee.

“Indenture” means the Trust Indenture, dated as of March 1, 2001, between the Issuer and the Trustee, as amended or supplemented from time to time.

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“Installation Period” means the period between the beginning of the acquisition, construction, equipping and installation of the Project or the date on which the Bonds are delivered to the Original Purchaser, whichever is earlier, and the Completion Date.

“Interest Payment Date” means, as to the Bonds, the date set forth as such in the Bond form attached as Exhibit A to the Indenture, and as to Additional Bonds, each date designated as an Interest Payment Date in the Bond form for which provision is made in the Supplemental Indenture or Bond Legislation.

“Interest Rate” means 7% per annum, being the rate borne by the Bonds.

“Issuer” means the County of Lawrence, Kentucky, a political subdivision, duly organized and validly existing under the laws of the Commonwealth.

“Lease Payments” means the amounts required to be paid or otherwise satisfied by the Lessee pursuant to Section 4.1 of this Agreement.

“Lease Term” means the period from the date hereof until the earlier of (i) twenty-five (25) years after the date of issuance of the last series of Bonds or (ii) prepayment in whole of the Bonds and Additional Payments.

“Legislative Authority” means the Fiscal Court of the Issuer.

“Lessee” means Foothills Generating, L.L.C.

“Net Proceeds” when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees and any extraordinary expenses of the Trustee) incurred in the collection of such gross proceeds.

“Notice Address” to the Issuer, the Lessee and the Trustee shall be addressed as follows:

(a) If to the Issuer, at County of Lawrence, Kentucky, 122 South Main Cross Street; Louisa, Kentucky 41230 , Attention: County Judge/Executive.

(b) (i) If to the Lessee: Foothills Generating, L.L.C.
1000 Louisiana Street, Suite 5800
Houston, Texas 77022
Louisa, Kentucky 4123

(ii) With a copy to: Westdeutsche Landesbank
Girozentrale, New York Branch
1211 Avenue of the Americas
New York, New York 10036
Attention: Ben Wagner

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(iii) With a copy to: Lawrence County Colped Trust
c/o First Union Trust Company, National
Association not in its individual capacity,
but solely as Trustee
One Rodney Square
920 King Street, Suite 102
Wilmington, Delaware 19801
Attention: Corporate Trust Administration

(c) If to the Trustee, at Bank One Trust Company, National Association, 1
Bank One Plaza, Suite IL1-0126; Chicago, Illinois 60670-0126, , Attention: Corporate Trust
Department.

“Original Purchaser” or “Purchaser” means Lawrence County Colped Trust, and as to
Additional Bonds, the Person or Persons identified as the purchaser or purchasers in the Purchase
Agreement.

“Outstanding Bonds,” “Bonds outstanding” or “outstanding” as applied to Bonds means,
as of the applicable date, all Bonds which have been authenticated and delivered, or which are
being delivered by the Trustee under this Indenture, except:

1. Bonds cancelled upon surrender, exchange or transfer, or cancelled
because of payment or redemption, on or prior to that date;
2. Bonds, or the portion thereof, which have been paid or otherwise satisfied
and discharged or caused to have been paid or otherwise satisfied and
discharged pursuant to the provisions of the Indenture; and
3. Bonds in lieu of which others have been authenticated under Section 3.7
of the Indenture.

“Paying Agent” means the Paying Agent as defined in the Indenture.

“Person” or words importing person means firms, associations, partnerships (including
without limitation, general and limited partnerships), joint ventures, limited liability companies,
societies, estates, trusts, corporations, public or governmental bodies, other legal entities and
natural persons.

“Plans and Specifications” means the plans and specifications describing the Project
Facilities as now prepared and as they may be changed as herein provided from time to time.

“Project” or “Project Facilities” means the Project Site and the Lessee’s facilities as
described in the third recital hereof (and more particularly described in the Plans and
Specifications) and as set forth in Exhibit A attached hereto, together with any additions,
modifications and substitutions to those facilities, and such equipment as set forth in Exhibit B
attached hereto, as each may be amended from time to time to reflect the changes to be funded
by the issuance of up to three series of the Bonds as authorized by the Bond Legislation.

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“Project Costs” means the costs of the Project specified in Section 3.4 hereof.

“Project Fund” means the Project Fund created in the Indenture.

“Project Site” means the real estate described in Exhibit A hereto.

“Purchase Agreement” means, as to the Bonds, the Bond Purchase Agreement, dated as of March 29, 2001, by and among the Issuer, the Original Purchaser and the Lessee, as amended from time to time to reflect each series of Bonds as authorized by the Bond Legislation, and as to any Additional Bonds, the Bond Purchase Agreement defined in the Bond Legislation providing for the issuance of the Additional Bonds.

“Register” means the books kept and maintained by the Registrar for registration and transfer of Bonds pursuant to Section 3.6 of the Indenture.

“Registrar” means the Registrar as defined in the Indenture.

“Revenues” means (a) the Lease Payments, (b) all other moneys received or to be received by the Issuer or the Trustee in respect of the Lease Payments, including without limitation, all moneys and investments in the Bond Fund, (c) any moneys and investments in the Project Fund, and (d) all income and profit from the investment of the foregoing moneys.

“Tax Payments Agreement” means the In-Lieu of Tax Payments Agreement dated as of March ___, 2001 by and between the Issuer and the Lessee.

“Trustee” means the Trustee at the time serving as such under the Indenture, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “Trustee” shall mean the successor Trustee.

“Unassigned Issuer’s Rights” means all of the rights of the Issuer to receive Additional Payments under Section 4.2 hereof, to be held harmless and indemnified under Sections 5.4 and 5.5 hereof, to be reimbursed for attorneys’ fees and expenses under Section 7.4 hereof, and to give or withhold consent to amendments, changes, modifications, alterations and termination of this Agreement under Section 10.6 hereof.

Section 1.3 Interpretation Any reference herein to the Issuer, to the Legislative Authority or to any member or official of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the Commonwealth or the Act, or to a section, provision or chapter of the Kentucky Revised Statutes or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee, the Registrar or the Lessee under this Agreement, the Indenture, the Bond Legislation, the Bonds, or any other instrument or document

entered into in connection with any of the foregoing; including without limitation, any alteration of the obligation to pay Bond Service Charges in the amount and manner, at the times, and from the sources provided in the Bond Legislation and Indenture except as permitted in the Indenture.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms "hereof," "hereby," "herein," "hereto," "hereunder," "hereinafter," and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of the Bonds. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

Section 1.4 Captions and Headings The captions and headings in this Agreement are solely for ease of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

ARTICLE 2

REPRESENTATIONS

Section 2.1 Representations of the Issuer The Issuer, in reliance, in part, upon the opinion of Bond Counsel, makes the following representations and warranties as the basis for the undertaking on its part herein contained.

(a) The Issuer is a political subdivision duly organized and validly existing under the laws of the Commonwealth. Pursuant to the Act, the Issuer has the power to issue the Bonds, to enter into this Agreement and the transactions contemplated hereby, and to carry out its obligations hereunder. The Issuer is not in default under or in violation of the Constitution or any of the laws of the Commonwealth or any charter which authorizes its de jure existence or is relevant to the issuance of the Bonds or the consummation of the transactions contemplated hereby or in connection with such issuance, and has been duly authorized to issue the Bonds and to execute and deliver this Agreement. The Issuer agrees that it will do or cause to be done in a timely manner all things necessary to preserve and keep in full force and effect, and to carry out the terms of, this Agreement and the terms of the Indenture.

(b) The Issuer has determined that the Project constitutes and will constitute an activity permitted to be financed pursuant to the Act and that the financing of the Project is in the public interest and for a public purpose. The Issuer will acquire title to the Project and the Project Site and lease the same to the Lessee pursuant to the Act and this Agreement.

(c) The Issuer has found and determined and hereby finds and determines that it has complied with all requirements of the Act as may be applicable with respect to the issuance of the Bonds (including up to three series of Bonds in an amount not to exceed \$160,000,000) and the execution of this Agreement.

(d) The Issuer agrees to use and apply the net proceeds of the Bonds to assist in the acquisition, construction, equipping and installation of the Project and to lease the Project to the Lessee pursuant to the Agreement to the end that the purposes of the Act may be accomplished.

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(e) To accomplish the foregoing, the Issuer agrees to issue the Bonds, in not more than three series of Bonds in an aggregate principal amount not to exceed \$160,000,000 following the execution of this Agreement, on such terms and conditions as are set forth in the Indenture. The net proceeds from the issuance of the Bonds shall be applied, upon direction of the Lessee for application, to the payment or satisfaction of the Project Costs.

(f) No official of the Issuer has any material interest whatsoever in the Lessee or in the transactions contemplated by this Agreement.

(g) Neither the execution and delivery of this Agreement or the Indenture, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement or the Indenture, materially conflict with or result in a material breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Issuer is now a party or by which it is bound or constitute a material default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any material nature upon any of the property or assets of the Issuer under the terms of any instrument or agreement.

Section 2.2 Representations and Covenants of the Lessee The Lessee represents and covenants that:

(a) It has the capacity to enter into and carry out the transactions contemplated by this Agreement. Execution, delivery and performance do not, and will not, violate any provision of law applicable to the Lessee and do not, and will not, conflict with or result in a default under any agreement or instrument to which the Lessee is a party or by which it is bound for which waivers have not been obtained. This Agreement has been duly executed and delivered by the Lessee and all steps necessary have been taken to constitute this Agreement, the Purchase Agreement, the Tax Payments Agreement, the Home Office Payment Agreement and the Deed valid and binding obligations of the Lessee.

(b) The provision of financial assistance to be made available to the Lessee under this Agreement and the commitments therefor made by the Issuer have induced the Lessee to maintain within the boundaries of the Issuer that business of the Lessee to be conducted by use of the Project and such business will create additional jobs and employment opportunities within Lawrence County, Kentucky.

(c) The Project will be completed substantially in accordance with the Plans and Specifications and the Project will be operated and maintained in such manner as to conform with all applicable zoning, planning, building, environmental and other applicable governmental regulations and as to be consistent with the Act.

(d) The Project will be located entirely within the boundaries of Lawrence County, Kentucky.

(e) To the best knowledge of the Lessee, there are no actions, suits, proceedings, inquiries or investigations pending, or threatened, against or affecting the Lessee in any court or before any governmental authority or arbitration board or tribunal which are reasonably anticipated to materially and adversely affect the transactions contemplated on its part

by this Agreement or which are reasonably anticipated to adversely affect the validity or enforceability of the Bonds or this Agreement or the ability of the Lessee to perform its obligations under any of the foregoing.

ARTICLE 3

COMPLETION OF THE PROJECT; ISSUANCE OF THE PROJECT BONDS

Section 3.1 Acquisition and Installation The Lessee (a) has previously, or will, upon the issuance of the Bonds, convey to the Issuer or cause to be conveyed to the Issuer the Project and it has caused and will cause the Project to be acquired and installed as herein provided on the Project Site with due diligence to the completion thereof substantially in accordance with the Plans and Specifications, all as provided herein, (b) shall pay or otherwise satisfy when due all fees, costs and expenses incurred in connection with that acquisition and installation from funds made available therefor in accordance with this Agreement or otherwise, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts, and other demands whatsoever which may be due, owing and payable under the terms of any contract, agreement, obligation, bond or other performance security with respect thereto.

Section 3.2 Plans and Specifications The Lessee or its designee on behalf of the Lessee has the Plans and Specifications available for inspection by the Issuer and may revise the Plans and Specifications from time to time provided that no revision shall be made which would change the Project purposes to other than purposes permitted by the Act.

Section 3.3 Issuance of the Bonds; Application of Proceeds To acquire, construct, equip and install the Project, the Issuer will issue, sell and deliver the Bonds to the Original Purchaser. The Bonds will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature and will be subject to redemption as set forth therein. The Lessee hereby approves the terms and conditions of the Indenture and the Bonds, and of the terms and conditions under which the Bonds will be issued, sold and delivered.

The consideration for the issuance and sale of the Bonds shall be the conveyance of the Project Site to the Issuer and the expenditures made for the acquisition, construction, equipping and installation of the Project and any other moneys necessary for the costs of the Project. Pending the disbursement pursuant to Section 3.4 hereof, the monetary proceeds, if any, so deposited in the Project Fund, together with any investment earnings thereof, shall constitute a part of the Revenues assigned by the Issuer to the payment of Bond Service Charges as provided in the Indenture. The consideration for the issuance of additional series of Bonds shall be evidenced by bills of sale and assignments.

At the request of the Lessee, and for the purposes and upon fulfillment of the conditions specified in the Indenture, the Issuer may provide for the issuance, sale and delivery of Additional Bonds and use the proceeds from the sale thereof for any additions to the Project.

Section 3.4 Disbursements from the Project Fund Subject to the provisions below, disbursements from the Project Fund of moneys, if any moneys are obtained in the Project Fund,

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shall be made by execution and delivery to the Trustee of a disbursement request substantially in the form attached hereto and incorporated herein by reference as Exhibit C, only to reimburse or pay the Lessee, or any Person designated by the Lessee, for the following Project Costs:

- (a) Costs incurred directly or indirectly for or in connection with the acquisition, construction, equipping and installation of the Project, including costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;
- (b) Premiums attributable to any surety bonds and insurance required to be taken out and maintained during the Installation Period with respect to the Project Site and the Project Facilities;
- (c) Taxes, assessments and other governmental charges in respect of the Project that may become due and payable during the Installation Period;
- (d) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project Facilities;
- (e) (i) Financial, legal, accounting, printing and engraving fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of the Bonds, including, without limitation, the fees and expenses of the Trustee and its counsel, and the Issuer and its counsel, and any paying agent properly incurred under the Indenture that may become due and payable during the Installation Period; and (ii) financing costs related to the Sublease and any subleases thereunder.
- (f) Any other costs, expenses, fees and charges properly chargeable to the cost of acquisition and installation of the Project; and/or
- (g) Payment of interest on the Bonds during the Installation Period.

Any disbursement from the Project Fund for the payment of Project Costs shall be made by the Trustee only upon the written order of the Authorized Lessee Representative. Each such written order shall be in substantially the form of the disbursement request attached hereto as Exhibit C. In case any contract provides for the retention of a portion of the contract price, there shall be paid from the Project Fund only the net amount remaining after deduction of any such portion, and only when that retained amount is due and payable, may it be paid from the Project Fund.

Any moneys in the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Project Costs, at the written direction of the Authorized Lessee Representative, promptly shall be:

- (a) used for the purchase of the Bonds in the open market for the purpose of cancellation at prices not exceeding the full market value thereof plus accrued interest thereon to the date of payment therefor;

- (b) paid into the Bond Fund to be applied to the redemption of the Bonds; or
- (c) used to accomplish a combination of the foregoing as is provided in that direction.

Section 3.5 Intentionally Omitted.

Section 3.6 Completion Date The Lessee shall cause the Issuer and the Trustee to be notified of the Completion Date by a certificate signed by the Authorized Lessee Representative stating:

- (a) The date on which the Project Facilities were substantially completed,
- (b) All other facilities necessary in connection with the Project have been acquired, constructed, equipped and installed,
- (c) The acquisition, construction, equipping and installation of the Project Facilities and those other facilities have been accomplished in such a manner as to conform with all applicable zoning, planning, building, environmental and other similar governmental regulations, and
- (d) Except for items the Lessee is contesting, all costs of that acquisition, construction, equipping and installation then or theretofore due and payable have been paid.

That certificate shall state that it is given without prejudice to any rights against third parties which then exist or subsequently may come into being. The certificate shall be delivered as promptly as practicable after the occurrence of the events and conditions referred to in subsections (a) through (d) of this Section.

Section 3.7 Investment of Fund Moneys At the oral request (promptly confirmed in writing) or written request of the Authorized Lessee Representative, any moneys held as part of the Bond Fund or the Project Fund shall be invested or reinvested by the Trustee in Eligible Investments in accordance with Section 5.5 of the Indenture.

ARTICLE 4

LEASE OF PROJECT TO LESSEE; PROVISIONS FOR PAYMENT

Section 4.1 Lease of Project; Lease Payments and Other Amounts Payable

(a) The Issuer hereby leases the Project to the Lessee and the Lessee hereby leases the Project from the Issuer upon the terms and conditions of this Agreement. The term of this Agreement shall commence on the date of issuance of the Bonds, and shall expire on the date when the Bonds are paid or otherwise satisfied in full as provided in the Indenture, and all other sums payable by or on behalf of the Lessee under this Agreement shall have been paid or otherwise satisfied, except for obligations of the Lessee under Sections 4.2, 5.4 and 5.5 hereof.

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(b) The Issuer covenants with the Lessee that so long as the Lessee observes and performs the terms and conditions of this Agreement, the Lessee shall have during the lease term sole and exclusive possession of the Project, and the Lessee shall be entitled to quiet enjoyment of the Project, except that the Issuer does not covenant any greater title or enjoyment than the Lessee has previously conveyed or shall cause to be conveyed to the Issuer.

(c) The Lessee covenants and agrees that upon the sale and delivery by the Issuer of the Bonds, the Lessee will make, or cause to be made, Lease Payments during the term of the Agreement directly to the Trustee or as otherwise set forth in an agreement pursuant to Section 3.9 of the Indenture for the account of the Issuer, as and for the repayment of the Bond Service Charges on the Bonds on December 31, commencing December 31, 2002:

The Lessee agrees to have paid to the Trustee, the Paying Agent, the Authenticating Agent, the Registrar and any other such fiduciary, the reasonable and necessary fees and expenses of such fiduciary, as and when the same become due, upon submission of a statement therefor.

In the event the Lessee should fail to satisfy the terms of this Section, the item or installment in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid or otherwise satisfied, and the Lessee agrees to satisfy the same.

In the event the Lessee should fail to satisfy any of the Lease Payments required in this Section when due, the failure shall continue as an obligation of the Lessee until the amount in default shall have been fully satisfied.

The Lessee also agrees that it shall satisfy the Lease Payments provided in this Agreement regardless of whether or not the Project is used or useful, existing or non-existing or whether any applicable laws, regulations or standards prevent or prohibit the use of the Project.

So long as no Event of Default has occurred and is subsisting hereunder, Lease Payments shall be used by the Trustee for satisfaction of Bond Service Charges.

Except for such interest of the Lessee as may hereafter arise pursuant to Section 10.2 hereof or Section 5.8 of the Indenture, the Lessee and the Issuer each acknowledges that neither the Lessee nor the Issuer has any interest in the Bond Fund and any moneys deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Holders.

Section 4.2 Additional Payments The Lessee shall cause to be paid to the Issuer, as Additional Payments hereunder, any and all costs and expenses incurred or to be paid by the Issuer in connection with the issuance and delivery of the Bonds and Additional Bonds or otherwise related to actions taken by the Issuer under this Agreement or the Indenture.

Section 4.3 Place of Payments The Lessee shall make all monetary Lease Payments directly to the Trustee at its principal corporate trust office or as otherwise set forth in any agreement entered into in accordance with Section 3.9 of the Indenture. Additional Payments shall be made directly to the person or entity to whom or to which they are due.

Section 4.4 In-Lieu of Payments The Lessee shall cause to be paid to the Issuer, pursuant to the Tax Payments Agreement In-Lieu of Payments (as defined in the Tax Payments Agreement) in lieu of certain taxes (as set forth in the Tax Payments Agreement) on behalf of the Issuer beginning in 2002 in accordance with the schedule included therein.

Section 4.5 Obligations Unconditional The obligations of the Lessee to make Lease Payments and Additional Payments shall be absolute and unconditional, and the Lessee shall make such payments or otherwise satisfy the Lease Payments and Additional Payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the Lessee may have or assert against the Issuer, the Trustee or any other Person.

Section 4.6 Assignment of Agreement and Revenues To secure the payment of or otherwise satisfy Bond Service Charges, the Issuer shall assign to the Trustee, by the Indenture, its rights under and interest in this Agreement (except for the Unassigned Issuer's Rights) and the Revenues. The Lessee hereby agrees and consents to those assignments.

ARTICLE 5

ADDITIONAL AGREEMENTS AND COVENANTS

Section 5.1 Right of Inspection Subject to reasonable security and safety regulations and upon two Business Days' notice, the Trustee, and its agents, shall have the right during normal business hours to inspect the Project and the books and records of the Lessee with respect thereto.

Section 5.2 Assignment by Lessee This Agreement may be assigned, and the Project shall be subleased, by the Lessee, subject to each of the following conditions:

(a) The assignee or sublessee shall assume in writing the obligations of the Lessee hereunder to the extent of the interest assigned.

(b) The Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Issuer and the Trustee a true and complete copy of each such assumption of obligations and assignment or sublease.

Section 5.3 Special Covenants-Taxes and Insurance The Lessee covenants as follows:

(a) The Lessee will promptly cause to be paid, as the same become due, (i) all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any machinery, equipment or other property installed or brought by the Lessee therein or thereon, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and (iii) all assessments and charges lawfully made by any governmental authority for public improvement, as such assessments and charges become due. The Lessee may in good faith contest or litigate any such taxes, assessments and other charges, and, in the event of such contest or litigation, may permit the taxes, assessments or other charges so contested or litigated to remain unpaid during the period of such contest or litigation and any appeal therefrom, if during such period,

enforcement of any such contested or litigated item shall be effectively stayed. Further the Lessee may and in its own name apply for any tax exemption from payment in lieu of taxes allowed by the Commonwealth, or any political or taxing subdivision thereof under any existing or future provision of law which grants or may grant any such tax exemption or exemptions from payments in lieu of taxes.

(b) The Lessee acknowledges and agrees that the Issuer shall have no obligation to insure the Project or any part thereof, and no responsibility for any damage or destruction thereof. During the acquisition, construction, installation and equipping of the Project, and throughout the Lease Term, the Lessee shall cause the Project to be insured against such property and personal injury risks as is consistent with its insurance practices in effect from time to time, including self insurance. In lieu of separate insurance policies, such insurance may be in the form of a blanket insurance policy or policies of the Lessee. Insurance policies may be written with deductible amounts and exceptions and exclusions as the Lessee deems necessary in the normal course of its business. The Issuer and the Trustee shall be named as additional insureds under any such insurance policy or policies, as their respective interests may appear. The Net Proceeds of the insurance carried pursuant to the provisions of this Section 5.3(b) shall be paid to the Lessee and applied to the repair or replacement of the Project, the redemption of the Bonds or any portion thereof, or for such other use as the Lessee shall determine; provided, however, that no damage to, or destruction of, the Project shall affect the Lessee's obligation to pay rent hereunder, or entitle the Lessee to reduce or otherwise diminish its rental payments.

The Lessee shall furnish to the Issuer and the Trustee at closing and annually thereafter a certificate of the Authorized Lessee Representative or other evidence satisfactory to the Issuer and the Trustee that it is in compliance with the requirements of this Section 5.3(b) and that such insurance provides coverage of at least \$5,000,000 for third party liability.

All claims made under any insurance policies carried pursuant to the requirement of this Section 5.3(b), regardless of amount, may be adjusted by the Lessee with the insurers.

Section 5.4 Indemnification In addition to, and not in lieu of, the indemnification provided in Section 5.5 hereof, the Lessee releases the Issuer and the Trustee from, agrees that the Issuer and the Trustee shall not be liable for, and causes to be indemnified the Issuer and the Trustee against, all liabilities, claims, and reasonable out of pocket costs and expenses imposed upon, incurred by or asserted against the Issuer or the Trustee on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the maintenance, operation and use of the Project; (b) any breach or default on the part of the Lessee in the performance of any covenant or agreement of the Lessee under this Agreement, or any related document, or arising from any act or failure to act by the Lessee, or any of its agents, contractors, servants, employees or licensees; (c) the authorization, issuance, sale, trading, redemption or servicing of the Bonds, and the provision of any information or certification furnished in connection therewith concerning the Bonds, the Project or the Lessee including, without limitation, any information furnished by the Lessee for, and included in, or used as a basis for preparation of, any certifications furnished by the Issuer; (d) any failure of compliance with the provisions of the Act; and (e) any claim, action or proceeding brought with respect to the matters set forth in (a), (b), (c) and (d) above.

The Lessee agrees to indemnify the Trustee for and to hold it harmless against all liabilities, claims, and reasonable out of pocket costs and expenses incurred without negligence or willful misconduct on the part of the Trustee, on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of this Agreement, the Bonds or the Indenture, including the acceptance and administration of the trusts established under the Indenture or any action taken at the request of or with the consent of the Lessee, including the costs and expenses of the Trustee in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under this Agreement, the Bonds or the Indenture.

The Lessee agrees to have indemnified the Issuer for and to hold it harmless against all liabilities, claims, and reasonable out of pocket costs and expenses incurred on the part of the Issuer on account of any alleged defect in the title of the Project Site, including the costs and expenses of the Issuer in defending itself against any such claim, action or proceeding brought in connection with the alleged defect.

In case any action or proceeding is brought against the Issuer or the Trustee in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Lessee, and the Lessee upon receipt of that notice shall have the obligation and the right to have assumed the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Lessee from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Lessee. At its own expense, an indemnified party may employ separate counsel and participate in the defense. The Lessee shall not be liable for any settlement made without its consent, which consent shall not be unreasonably withheld.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers and employees of the Issuer and the Trustee, respectively. That indemnification is intended to and shall be enforceable by the Issuer and the Trustee, respectively, to the full extent permitted by law.

Section 5.5 Environmental Use of Project

The Lessee shall cause the Project not to be used in any manner so as to violate any applicable law, rule, regulation or ordinance of any governmental body or in such manner as to vitiate insurance upon the Project.

(a) The Lessee agrees to and shall indemnify, hold harmless, and defend the Issuer, its members, officials, agents and employees from and against any and all claims, losses, damages, expenses, causes of action, lawsuits, government regulatory enforcement actions, and liability (individually, a "Claim" collectively, "Claims") asserted against the Issuer arising out of alleged or actual "environmental contamination" (hereinafter defined) arising from the Project.

(b) "Environmental contamination" as used herein shall mean damages to persons or property or violations of state or federal environmental laws or regulations arising out of the Project, the Project Facilities or the operations of the Project with respect to but not limited

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to air emissions, water effluent discharges, and waste generation, transportation, storage, disposal, or the handling of hazardous materials.

(c) The Issuer shall promptly notify the Lessee in writing after any Claim is made, brought or asserted, in any event, in writing, against the Issuer, and as to which the Issuer has actual knowledge by receipt of such written notification. The Lessee shall promptly notify the Issuer in writing after any Claim is made, brought or asserted against the Lessee.

(d) The Issuer shall cooperate with the Lessee, including but not limited to, assisting in defense Claims, but solely at the cost of Lessee. In the event the Issuer provides notice to the Lessee under Section 5.5(c), the Lessee shall handle and control the defense of all Claims and the Lessee's decision on litigation and settlement and all other such aspects shall be final; provided, however, no settlement or decision shall impose upon the Issuer, by apportionment or otherwise, any loss, damage or liability as a result thereof.

(e) The provisions of this Section 5.5 shall survive the termination of this Lease and shall continue in full force and effect, binding the Lessee to the provisions of this Section 5.5 without regard to the manner of termination of this Lease.

ARTICLE 6

REDEMPTION OF PROJECT BONDS

Section 6.1 Optional Redemption At any time and from time to time, the Lessee may deliver moneys or evidence of other consideration to the Trustee in addition to Lease Payments or Additional Payments required to be made. Any moneys so delivered shall be held by the Trustee in a special account in the Bond Fund and delivery of those moneys or evidence of other consideration shall not operate to abate or postpone Lease Payments or Additional Payments otherwise becoming due or to alter or suspend any other obligations of the Lessee under this Agreement. Such optional redemption shall be in accordance with the provisions of Section 4.1(b) of the Indenture.

Section 6.2 Actions by Issuer At the request of the Lessee or the Trustee, the Issuer shall take all steps required of it under the applicable provisions of the Indenture or the Bonds to effect the redemption of all or a portion of the Bonds pursuant to this Article 6.

ARTICLE 7

EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default Each of the following shall be an Event of Default:

(a) The Lessee shall fail to pay or otherwise satisfy any Lease Payment when due and such nonpayment or nonsatisfaction shall continue for a period of twenty (20) days after notice from the Trustee of such nonpayment or nonsatisfaction is provided to the Lessee;

(b) The Lessee shall fail to provide satisfaction acceptable to the Holders or fail to deliver to the Trustee, or cause to be delivered on its behalf, the moneys in order to

redeem any outstanding Bonds in the manner and upon the date requested in writing by the Trustee when due;

(c) The Lessee shall fail to observe and perform any other agreement, term or condition contained in this Agreement and the continuation of such failure for a period of sixty days after notice thereof shall have been given to the Lessee by the Issuer or the Trustee, or for such longer period as the Issuer and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Lessee institutes or has instituted curative action within the applicable period and diligently pursues that action to completion;

Notwithstanding the foregoing, if, by reason of Force Majeure or other similar circumstance beyond the control of the Lessee, the Lessee is unable to perform or observe any agreement, term or condition hereof (other than the payment or satisfaction of Lease Payments) which would give rise to an Event of Default under subsection (c) hereof, the Lessee shall not be deemed in default during the continuance of such inability. However, the Lessee shall promptly give notice to the Trustee and the Issuer of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within its discretion.

The term Force Majeure shall mean, without limitation, Acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the Commonwealth or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots, epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods, arrests; restraint of government and people; explosions; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation not the fault of the Lessee.

Section 7.2 Remedies on Default Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

(a) The Trustee, on behalf of the Issuer, may accelerate the total of all the Lease Payments;

(b) If acceleration of the principal amount of the Bonds has been declared pursuant to Section 7.3 of the Indenture, the Trustee shall declare all Lease Payments to be immediately due, whereupon the same shall become immediately due;

(c) The Issuer or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Lessee pertaining to the Project; or

(d) The Issuer or the Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement or to enforce the performance and observance of any other obligation or agreement of the Lessee under those instruments.

Notwithstanding the foregoing, the Issuer shall not be obligated to take any steps which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to the Issuer at no cost or expense to the Issuer. Any amounts collected as Lease Payments or applicable to or in satisfaction of Lease Payments and any other amounts which would be applicable to payment or in satisfaction of Bond Service Charges collected pursuant to action taken under this Section shall be paid, if moneys, into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the outstanding Bonds have been paid or otherwise satisfied and discharged in accordance with the provisions of the Indenture, shall be paid or otherwise satisfied as provided in Section 5.8 of the Indenture for transfers of remaining amounts in the Bond Fund.

The provisions of this Section are subject to the further limitation that the rescission by the Trustee of its declaration that all of the Bonds are immediately due also shall constitute an annulment of any corresponding declaration made pursuant to subsection (b) of this Section and a waiver and rescission of the consequences of that declaration and of the Event of Default with respect to which that declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

If an Event of Default shall happen and is continuing, in case there shall be pending proceedings for the bankruptcy or for the reorganization of the Lessee under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Lessee or in the case of any other similar judicial proceedings relative to the Lessee, or to the creditors or property of the Lessee, the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Agreement, irrespective of whether the principal of the Bonds or any amount thereunder shall then be due as therein or herein expressed or by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 7.2 or of Section 7.2 of the Indenture, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Lessee, its creditors, or its property, and to collect and receive any moneys or other property payable or of its charges and expenses; and any receiver, assignee or trustee in bankruptcy is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including reasonable counsel fees incurred by it up to the date of such distribution.

Section 7.3 No Remedy Exclusive No remedy conferred upon or reserved to the Issuer or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, the Issuer or the Trustee must notify the Lessee upon the occurrence of an Event of Default.

Section 7.4 Agreement to Pay Attorneys' Fees and Expenses If an Event of Default should occur and the Issuer or the Trustee should incur expenses, including attorneys' fees, in connection with the enforcement of this Agreement, the Lessee shall reimburse the Issuer and the Trustee, as applicable, for the reasonable expenses so incurred upon demand.

Section 7.5 No Waiver No failure by the Issuer or the Trustee to insist upon the strict performance by the Lessee of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Lessee to observe or comply with any provision hereof.

Section 7.6 Notice of Default The Lessee shall have delivered to the Trustee promptly upon becoming aware of the occurrence of any Event of Default hereunder a certificate of any Authorized Lessee Representative or the Lessee to such effect setting forth the details thereof and the actions to be taken with respect thereto.

ARTICLE 8

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 8.1 Damage and Destruction Unless the Lessee shall have exercised its options to prepay the Bonds in whole, terminate the Lease Term and purchase the Project, if prior to payment in full of the Bonds the Project is damaged or destroyed by fire or other casualty, the Lessee shall be obligated to continue to cause to be paid or otherwise satisfied the Lease Payments and shall promptly replace, repair, rebuild or restore the property damaged to substantially the same condition as existed prior to the event causing such damage, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair operating unity of the Project or change its character to such an extent that its ownership by the Issuer would not be permitted under the Act.

Section 8.2 Condemnation Unless the Lessee shall have exercised its options to prepay the Bonds in whole, terminate the Lease Term and purchase the Project, if the title in and to, or the temporary use of, the Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Lessee shall be obligated to continue to cause to be paid or otherwise satisfied the Lease Payments, and, to the extent the Lessee deems it necessary, shall cause the restoration of the Project to substantially the same condition as it existed prior to the exercise of the said power of eminent domain, or shall acquire and install other machinery, equipment or related property suitable for the Lessee's operations at the Project, title to which machinery, equipment or related property will be conveyed to the Issuer by bill of sale and which will be deemed a part of the Project and available for use and occupancy by the Lessee without additional Lease Payments.

Section 8.3 Proceeds of Insurance and Condemnation Awards All Net Proceeds of insurance resulting from claims for such losses and all Net Proceeds of any condemnation award shall be paid to the Lessee.

ARTICLE 9

CONVEYANCE OF PROJECT TO LESSEE; GRANTS OF EASEMENTS

Section 9.1 Option to Purchase Unimproved Project Site The Lessee shall have, and is hereby granted, an option to purchase any unimproved portion of the Project Site at any time, at a purchase price equal to \$1.00 per acre of the portion of the Project Site to be purchased, provided that it furnishes the Issuer and Trustee with the following:

(a) a written notice containing (i) an adequate legal description of that portion of, or interest in, the Project Site with respect to which such option is to be exercised, (ii) a statement that the Lessee intends to exercise its option to purchase such portion of, or interest in, the Project Site on a date stated, which shall not be less than five (5) days nor more than ninety (90) days from the date of such notice, and (iii) proof that the portion of the Project Site to be conveyed is not necessary for the use and occupancy of the Project; and

(b) an amount of money or other consideration equal to the purchase price computed as provided in this Section, together with any other costs incurred by the Issuer associated with such conveyance.

The Issuer agrees that upon receipt of the notice, certificate and money or other consideration required in this Section to be furnished to it by the Lessee, the Issuer will promptly deliver the same to the Trustee for deposit in the Bond Fund, if money, and secure from the Trustee a release from the liens and/or security interests afforded by the Indenture of such portion of, or interest in, the Project Site with respect to which the Lessee shall have exercised the option granted to it in this Section subject to any right and title reserved in and to the Issuer and that thereafter such portion or interest shall not be deemed to be a portion of the Project Site. If the Lessee shall exercise the option granted to it under this Section, the Lessee shall not be entitled to any diminution in or postponement or abatement of the rents payable under this Agreement.

If the Lessee purchases any unimproved part of, or interest in, the Project Site pursuant to this Section, the Lessee and the Issuer agree that all walls presently standing or hereafter erected on or contiguous to the boundary line of the portion of, or interest in, the Project Site so purchased shall be party walls and each party grants the other a 10-foot easement adjacent to any such party wall for the purpose of inspection, maintenance, repair and replacement thereof and the tying-in of new construction.

Section 9.2 Conveyance upon Expiration of Term of Agreement When the term of this Agreement has expired and the Bondholder certifies to the Issuer that all of the Bonds, including principal and interest and all other obligations incurred and to be incurred by the Issuer in connection with the Project and under the Indenture and this Agreement have been satisfied and Section 9.4 hereof has been satisfied, the Issuer shall promptly, or direct the Trustee promptly to, have transferred, conveyed, released, alienated, assigned and set over to the Lessee all of the Trustee's and the Issuer's right, title and interest in and to the Project by a good and sufficient deed and such other legal instruments as may be required therefor. The obligations specified in this section shall be and remain prior and superior to the Indenture and may be

exercised whether or not the Lessee is in default hereunder provided that such default will not result in nonfulfillment of any condition to this right.

Section 9.3 General Option to Purchase Prior to Expiration of Agreement The Lessee shall have and may exercise on any date upon which the Bonds may be redeemed pursuant to the Indenture prior to the expiration of the term of this Agreement, the option to purchase the Project under the provisions of this Section upon paying or causing to be paid to the Trustee or otherwise satisfying the purchase price therefor in an amount as provided in Section 9.4 of this Agreement. The Lessee may exercise such option by giving written notice thereof to the Issuer and the Trustee pursuant to Article 10 hereof and by making payments or otherwise providing consideration as provided in this Agreement.

Section 9.4 Purchase Price The purchase price pursuant to Section 9.2 of this Agreement shall be the sum of One Dollar (\$1.00) plus, in the case of Section 9.3, such additional amount, if any, which, with all other funds available therefor, or other consideration in lieu thereof, will be sufficient to provide for satisfaction of all Bonds in conformity with the Indenture and all other obligations incurred and to be incurred by the Issuer in connection with the Project and under the Indenture and this Agreement. Such satisfaction of the Bonds shall include the Bond Service Charges for all of the Bonds, and any expenses in connection with such satisfaction.

Section 9.5 Date of Settlement The purchase price of the Project under Section 9.4 of this Agreement shall be paid or otherwise satisfied on a date of settlement and at a place to be mutually agreed upon by the Trustee, the Issuer and the Lessee which shall be on or after the maturity date or the redemption date of the Bonds in whole. The purchase price, if in money, shall be paid to the Trustee on behalf of the Issuer in such coin or currency of the United States of America or in direct United States Government Obligations, or adequate consideration for the purchase price shall otherwise be provided and the Issuer shall contemporaneously convey to the Lessee all of the Issuer's right, title and interest in and to the Project by a good and sufficient deed and such other legal instruments as shall be required therefor. The Lessee shall cause to be borne all costs and expenses in connection with the preparation of the documents of conveyance and the delivery hereof and all fees, assessments, taxes and charges incurred by the Issuer and payable in connection with the conveyance of title to the Project. Upon conveyance of title and payment therefor as aforesaid, this Agreement shall cease and terminate and all obligations of the Lessee hereunder, except obligations pertaining to Sections 4.2, 5.4 and 5.5 of this Agreement, shall be terminated and extinguished.

In no event, however, shall title to the Project be conveyed to the Lessee until the Bondholder certifies to the Issuer that all of the Bonds, including principal and interest, and all other obligations incurred by the Issuer under the Indenture and this Agreement have been satisfied.

Section 9.6 Easements Upon the request by or on behalf of the Lessee, the Issuer agrees to grant, modify or release to the Lessee or other parties during the term of this Agreement, such easements with respect to the Project Site, as the Lessee may need or desire in order to conduct its business, or commence construction or improvement on or about the property of the Lessee.

ARTICLE 10

MISCELLANEOUS

Section 10.1 Term of Agreement This Agreement shall be and remain in full force and effect from the date of delivery of the Bonds to the Original Purchaser until such time as all of the obligations and requirements of Article 9 hereof have been satisfied, except that the obligations of the Lessee set forth in Sections 4.2, 5.4 and 5.5 hereof shall survive any termination of this Agreement.

Section 10.2 Amounts Remaining in Funds Any amounts in the Bond Fund remaining unclaimed by the Holders of Bonds for seven years after the due date thereof (whether at stated maturity, by redemption or otherwise), at the option of the Lessee, shall be deemed to belong to and shall be paid to the Lessee.

Section 10.3 Notices All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when received by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to the Issuer, the Lessee or the Trustee shall also be given to the others. The Lessee, the Issuer and the Trustee, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 10.4 Extent of Covenants of the Issuer: No Personal Liability All covenants, obligations (including the obligation to pay or otherwise satisfy Lease Payments), and agreements (collectively hereinafter referred to as the "Covenants") of the Issuer contained in this Agreement or the Indenture shall be effective to the extent authorized and permitted by applicable law. No such Covenant shall be deemed to be a Covenant of any present or future director, official, agent or employee of the Issuer, the Legislative Authority, the Commonwealth, any agency or political subdivision thereof in other than his official capacity, and neither the members of the Legislative Authority nor any official executing the Bonds nor any official, employee or agent of the Issuer, the Commonwealth of Kentucky, any agency or political subdivision thereof shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the Covenants of the Issuer contained in this Agreement or in the Indenture. **THE BONDS AND THE COVENANTS SHALL NOT BE DEEMED TO BE DEBTS OR OBLIGATIONS OF THE ISSUER, THE COMMONWEALTH OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF, INCLUDING BUT NOT LIMITED TO THE LEGISLATIVE AUTHORITY (EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 10.4).**

Section 10.5 Binding Effect This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Issuer, the Lessee and their respective permitted successors and assigns provided that this Agreement may not be assigned by the Issuer except to the Trustee, or as provided by law, pursuant to the Indenture or as otherwise may be necessary to enforce or secure payment or satisfaction of Bond Service Charges. This Agreement may be enforced only by the parties, their assignees and others who may, at law, stand in their respective places. It is understood that the Lessee has an unrestricted right to assign all or any part of its

rights and obligations in the Lease, and to sublease the Project, subject to the requirements of Section 5.2 hereof

Section 10.6 Amendments and Supplements Except as otherwise expressly provided in this Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, this Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of Article 11 of the Indenture, as applicable, and to provide for the lease of additional portions of the Project to the Issuer.

Section 10.7 Execution Counterparts This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 10.8 Severability If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 10.9 Governing Law This Agreement shall be deemed to be a contract made under the laws of the Commonwealth and for all purposes shall be governed by and construed in accordance with the laws of the Commonwealth.

Section 10.10 Certificates by Lessor and Lessee Each party hereto agrees at any time and from time to time during the term of this Agreement, within 15 days after written request from the other party, to execute, acknowledge, and deliver to the other party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the Lease Payments and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge of the signer of such certificate, the other party hereto is in default in the performance of any covenant, agreement, or condition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge and containing such other information as may be reasonably requested.

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FOOTHILLS GENERATING, L.L.C.

By: Ben C. Trammell
Name: Ben C. Trammell, Jr
Title: Vice President

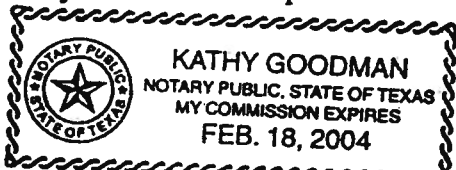
CSA
RAC

STATE OF Texas)
) SS:
COUNTY OF Harris)

I, the undersigned, Notary Public in and for the State - and County aforesaid, do hereby certify that on the 21st day of March, 2001, the foregoing instrument (including Exhibits A, B and C attached) was produced to me in said County by Ben C. Trammell Jr personally known to me to be the Vice President of Foothills Generating, L.L.C. and acknowledged by him/her to be his/her free act and deed as such _____ of such limited liability company.

Witness my hand this 21st day of March, 2001.

My Commission expires:



Kathy Goodman

NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Tyler B. Ross
Tyler B. Ross
STITES & HARBISON, PLLC
1800 Capital Holding Center
400 West Market Street
Louisville, Kentucky 40202-3352
(502) 587-3400

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EXHIBIT A
PROJECT SITE

TRACT I

LOCATED on the East side of CSXT railroad, on the West side of Big Sandy River at Catalpa in Lawrence County, Kentucky.

Unless stated otherwise, any monument referred to herein as a "pipe and cap" is a set ¾" X 18" steel pipe, schedule 40, with an orange cap, bearing the marking, "KY LS 1893". All bearings are based on Kentucky State Plane Coordinate System.

BEGINNING at a pipe and cap on the right of way of CSXT railroad, said right of way lines are located 50 feet from the center of the main line track (most Westerly track) and situated approximately 2020 feet South from the concrete box culvert extending beneath the railroad and carrying waters from the Mill Branch watershed and 50 feet East of CSXT station no. 491 + 88. Said point is also the Southwest corner of the Joe A. & Ruby Hart Property (D.B. 185, Pg. 260), also being a point on the most Northerly line of Tract 1 of the John Durney Farm Division of 1872. The Beginning point is witnessed by a 14-inch elm tree located 5.45 feet at a bearing of S 05 W and by a 10-inch elm tree located 16.30 feet at a bearing of S 26 E. Thence leaving the right of way of the railroad and running across the field with the Hart Property and the most Northerly line of Tract 1 of the John Durney Farm Division

S66-44-51 E, 540.71 feet to a pipe and cap at the crest of the river bank, witnessed by a 30-inch walnut tree located 115.01 feet at a bearing of N 68-47-06 W and a 6-inch elm tree located 27.83 feet at a bearing of S 11 W.

S 66-44-51 E, 65.97 feet to an unmonumented point on the slope of the river bank, the Northeast corner of Tract 1 of the John Durney Farm Division. Thence leaving the Hart Property and running in a direction up the river, along the slope of the river bank

S17-45-09 W, 495.00 feet to an unmonumented point on the slope of the bank and being the Southeast corner of Tract 1 and Northeast corner of Tract 2 of the John Durney Farm Division and a corner of the Joseph E. Carter, Jr., et.ux. and the Earl W. Kinner, Jr. Property (D.B. 236, Pg. 270 and Affidavit of Descent Bk. 229, Pg. 748). Thence running with the Carter/Kinner property up the river bank

N66-44-51 W, 70.15 feet to a pipe and cap at the crest of the river bank

N66-44-51 W, 461.71 feet to a pipe and cap on the right of way of CSXT railroad, 50 feet East of CSXT station no. 496 + 96. Thence leaving the Carter/Kinner property and running with the railroad right of way

N 09-19-04 E, 507.66 feet to the **BEGINNING**, containing 6.439 acres, more or less, according to a survey conducted under the supervision of H. L. Baldrige, PLS 1893, with Nesbitt Engineering, Inc., on July 19, 2000; and

TRACT II

LOCATED on the East side of CSXT railroad, on the West side of Big Sandy River at Catalpa in Lawrence County, Kentucky.

Unless stated otherwise, any monument referred to herein as a "pipe and cap" is a set ¾" X 18" steel pipe, schedule 40, with an orange cap, bearing the marking, "KY LS 1893". All bearings are based on Kentucky State Plane Coordinate System.

BEGINNING at a pipe and cap on the right of way of CSXT railroad, said right of way lines are located 50 feet from the center of the main line track (the most westerly track) and situated approximately 1080 feet South from the concrete box culvert extending beneath the railroad and carrying waters from the Mill Branch watershed and 50 feet East of CSXT station no. 4811 + 70. Said point is also the the Northwest corner of the Joe A. & Ruby Hart Property (D.B. 185, Pg. 260), and the Southwest corner of the Joe A. Hart and Patton R. Hart Property (D.B. 221, Pg. 594, Riverside Generating Company, L.L.C., Lessee). Thence leaving the right of way of the CSXT railroad and running across the field with the two Harp Properties mentioned above S 68-29-22 E, 585.75 feet to a ½" steel re-bar (found) at the crest of the river bank S 68-29-22 E, 179.39 feet to an unmonumented point at the low water of Big Sandy River. Thence leaving the Joe A. and Patton R. Hart Property and running in a direction up the river S 19-05-46 W, 936.55 feet to an unmonumented point on the slope of the river bank, the Northeast corner of Tract 1 of the John Durney Farm Division of 1872 and a corner of the Earl W. Kinner, Jr., Linda Sue Kinner and Clara Webb Kinner Property (Affidavit of Descent Bk. 229, pg 748). Thence running up the river bank slope N 66-44-51 W, 65.97 feet to a pipe and cap at the crest of the river bank, witnessed by a blazed, 30-inch walnut tree located 115.01 feet at a bearing of N 68-47-06 W in the bottom and a blazed, 6-inch elm tree located 27.83 feet at a bearing of S 11 West, on the river bank. N 66-44-51 W, 540.71 feet to a pipe and cap at the CSXT railroad right of way, 50 feet East of CSXT railroad station no. 491 + 88 and witnessed by a 14-inch elm tree located 5.45 feet at a bearing of S 05 W and a 10-inch elm tree located 16.30 feet at a bearing of S 26 E. Thence leaving the Kinner Property and running with the right of way of the railroad.

N 09-19-04 E, 938.45 feet to the **BEGINNING**, containing 14.561 acres, more or less, according to a survey conducted under the supervision of H. L. Baldridge, PLS 1893, with Nesbitt Engineering, Inc., on July 19, 2000.

Being the same property conveyed to The County of Lawrence, Kentucky, by Deed dated March 29, 2001, of record in Deed Book 253, Page 311, Lawrence County Clerk's Office.

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EXHIBIT B
EQUIPMENT LIST

NONE

EXHIBIT C
FORM OF DISBURSEMENT REQUEST

STATEMENT NO. __ REQUESTING DISBURSEMENT
OF FUNDS FROM PROJECT FUND PURSUANT TO SECTION 3.4
OF THE LEASE AGREEMENT DATED AS OF MARCH 29, 2001
BETWEEN THE COUNTY OF LAWRENCE, KENTUCKY AND
FOOTHILLS GENERATING, L.L.C.

Pursuant to Section 3.4 of the Lease Agreement (the "Agreement") between the County of Lawrence, Kentucky (the "Issuer") and Foothills Generating, L.L.C. (the "Lessee") dated as of March 29, 2001, the undersigned Authorized Lessee Representative hereby requests and authorizes Bank One Trust Company, National Association, as Trustee (the "Trustee") with the prior written acknowledgement of receipt of this Disbursement Request by the Trustee (as depository of the Project Fund created by the Master Trust Indenture, dated as of March 1, 2001, by and between the Issuer and the Trustee, and defined in the Agreement), to pay (i) to the Lessee or to the person(s) listed on the Disbursement Schedule hereto, and (ii) thereafter to the Lessee out of the moneys deposited in the Project Fund the aggregate sum of \$ _____ and to pay such person(s) or to reimburse the Lessee in full, as indicated in the Disbursement Schedule, attached hereto, for the advances, payments and expenditures made by it in connection with the items listed in the Disbursement Schedule.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

- (a) Each item for which disbursement is requested hereunder is properly payable out of the Project Fund in accordance with the terms and conditions of the Agreement and none of those items has formed the basis for any disbursement heretofore made from said Project Fund.
- (b) Each such item is or was necessary in connection with the acquisition, construction, equipping and installation of the Project, as defined in the Agreement.
- (c) The Lessee has received, or will concurrently with payment receive appropriate waivers of any mechanics' or other liens with respect to each item for which disbursement is requested hereunder.
- (d) This statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warranty, protection and authority to the Trustee for its actions taken pursuant hereto.
- (e) This statement constitutes the approval of the Lessee of each disbursement hereby requested and authorized.

[The remainder of this page is left intentionally blank. Signatures appear on the following page.]

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This ____ day of _____, 2001.

Authorized Lessee Representative

Acknowledged Receipt of
Disbursement Request No. ____:

This ____ day of _____, 2001.

BANK ONE TRUST COMPANY, NATIONAL
ASSOCIATION

By: _____
Name: _____
Title: _____

DISBURSEMENT SCHEDULE

STATEMENT NO. _____ REQUESTING AND AUTHORIZING
DISBURSEMENT OF FUNDS FROM PROJECT FUND PURSUANT TO SECTION 3.4 OF
THE LEASE AGREEMENT DATED AS OF MARCH 29, 2001 BETWEEN THE COUNTY
OF LAWRENCE, KENTUCKY AND FOOTHILLS GENERATING, L.L.C.

<u>PAYEE</u>	<u>AMOUNT</u>	<u>PURPOSE</u>
--------------	---------------	----------------

STATE OF KENTUCKY, COUNTY OF LAWRENCE, SCT.
I, GALLIE ISAAC, JR. DO HEREBY CERTIFY THAT
THE FOREGOING INSTRUMENT OF WRITING WAS
LODGED FOR RECORD ON THE 29 DAY
OF March 2001 AT 10:50AM.
AND RECORDED IN Deed BOOK # 253
PAGE # 317 TAX \$ _____ FEES 76.00
TOTAL \$ 76.00 GALLIE ISAAC, JR. CLERK
BY: Sandra Gobe _____ D.C.

ASSIGNMENT AND ASSUMPTION OF LEASE
(County Bond Lease)

This ASSIGNMENT AND ASSUMPTION OF LEASE ("Assignment") is dated as of May 31, 2002 (the "Effective Date"), by FOOTHILLS GENERATING, L.L.C., a Delaware limited liability company ("Assignor"), 1000 Louisiana Street, Suite 5800, Houston, Texas 77002 and RIVERSIDE GENERATING COMPANY, L.L.C., a Delaware limited liability company ("Assignee"), 1000 Louisiana Street, Suite 5800, Houston, Texas 77002.

WITNESSETH:

A. The County of Lawrence, Kentucky (the "Issuer") has agreed to issue from time to time up to three series of bonds in an aggregate principal amount not to exceed \$160,000,000 (of which the Issuer has issued two series in an aggregate amount of \$101,453,677) and denominated County of Lawrence, Kentucky Industrial Building Revenue Bonds, Series 2001A, Series 2001B and Series 2002A (as applicable) (Foothills Generating, L.L.C. Project) (the "Bonds") to (i) assist in financing the acquisition, construction, equipping and installation of a power generation facility located on the real estate described on Exhibit A attached hereto and incorporated herein by reference (the "Project Site") in Lawrence County, Kentucky (hereinafter, collectively the "Project") with the proceeds thereof and (ii) lease the Project to the Assignor.

B. In connection with the issuance of the Bonds, on March 29, 2001 (i) Assignor conveyed the Project Site to Issuer pursuant to that certain General Warranty Deed dated as of March 29, 2001 and recorded in Deed Book 253, Page 311 in the Office of the Clerk of Lawrence County, Kentucky; and (ii) Assignor and the Issuer entered into that certain Lease Agreement (the "Original Lease"), as recorded on March 29, 2001 in Deed Book 253, Page 317, in the Office of the Clerk of Lawrence County, Kentucky, pursuant to which the Issuer leased the Project to Assignor and Assignor promised to pay or otherwise satisfy specified rents and other payments sufficient to pay or otherwise satisfy the principal of and the interest on the Bonds and to pay certain administrative expenses in connection with the Bonds, all as set forth in the Original Lease.

C. The Bonds, the Original Lease, the First Amendment (as hereinafter defined) and any other agreement or instrument governing, evidencing, securing or otherwise executed in connection with the issuance of the Bonds shall sometimes be hereinafter collectively referred to as the "Bond Documents" and any capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Bond Documents.

D. In March 2001, the Issuer issued its County of Lawrence, Kentucky Industrial Building Revenue Bonds, Series 2001A (Foothills Generating, L.L.C. Project) in the amount of \$915,000.

E. In December 2001, the Issuer issued its County of Lawrence, Kentucky Industrial Building Revenue Bonds, Series 2001B (Foothills Generating, L.L.C. Project) in the amount of \$100,538,677 (the "Series 2001B Bonds").

F. Issuer and Assignor entered into that certain First Amendment to Lease Agreement (the "First Amendment") dated as of December 27, 2001 and recorded in Deed Book 57, Page 131 in the Office of the Clerk of Lawrence County, Kentucky, which First Amendment amended the terms of the Original Lease in order to indicate the Issuer's intent to issue the Series 2001B Bonds and to amend certain exhibits to the Original Lease to reflect the description of changes to the Project as financed through the issuance of the Series 2001B Bonds.

G. The Original Lease, together with the First Amendment and any other amendments or modifications thereto, shall hereinafter be sometimes collectively referred to as the "Lease."

H. The Issuer has agreed to issue during 2002 one remaining series of the Bonds denominated "County Of Lawrence, Kentucky Industrial Building Revenue Bonds, Series 2002A (as applicable) (Foothills Generating, L.L.C. Project)," which, as of the date hereof, have not yet been issued.

I. Assignor wishes to assign all of its right, title and interest as "Lessee" under the Lease to Assignee and the Assignee wishes to assume all of the obligations under the Lease pursuant to the terms and conditions set forth herein. Pursuant to Section 5.2 of the Original Lease, such assignment is permitted without the consent of the Issuer provided the assignment is executed and delivered to the Issuer according to the terms and conditions of Section 5.2 of the Original Lease.

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

1. Assignment. Assignor hereby assigns all of its right, title and interest in and to the Lease to the Assignee.
2. Assumption. Assignee expressly accepts the assignment set forth above and hereby assumes all of the rights, liabilities and obligations of Assignor under the Lease, including, without limitation, the obligation to satisfy specified rents and other payments which will be sufficient to pay or otherwise satisfy the principal of and the interest on the Bonds and to pay certain administrative expenses in connection with the Bonds, all as set forth in the Lease, and to otherwise comply with all of the terms and provisions of the Lease.
3. Release. Upon the Effective Date, Assignor shall be released from any and all of its obligations under the Lease.
4. Binding Effect: Purposes. This Assignment shall inure to the benefit of and shall be binding upon Assignor, Assignee and their respective successors and permitted assigns.
5. Counterpart Execution. This Assignment may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

6. Governing Law. This Assignment shall be interpreted and construed under the laws of the Commonwealth of Kentucky.

7. No Changes. This Agreement shall not be amended or otherwise modified without the prior written consent of the parties hereto.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Assumption of Lease to be executed effective as of the 31st day of May, 2002.

ASSIGNOR: Foothills Generating, L.L.C., a Delaware limited liability company

By: *Pryor E. Lindsey*

Name: Pryor E. Lindsey

cm
pa

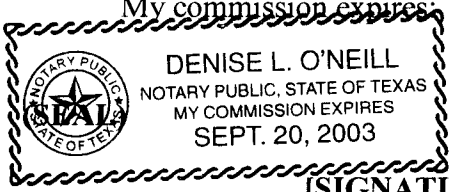
Title: Assistant Treasurer

STATE OF TEXAS)
) SS:
COUNTY OF HARRIS)

The foregoing Assignment and Assumption of Lease was acknowledged before me this 30th day of May, 2002, by Pryor E. Lindsey as Assistant Treasurer of Foothills Generating, L.L.C., a Delaware limited liability company, on behalf of the limited liability company.

My commission expires:

Sept 20, 2003



Denise L. O'Neill
NOTARY PUBLIC

[SIGNATURES CONTINUED ON NEXT PAGE]

Exhibit A

TRACT I

LOCATED on the East side of CSXT railroad, on the West side of Big Sandy River at Catalpa in Lawrence County, Kentucky.

Unless stated otherwise, any monument referred to herein as a “pipe and cap” is a set ¾” X 18” steel pipe, schedule 40, with an orange cap, bearing the marking, “KY LS 1893”. All bearings are based on Kentucky State Plane Coordinate System.

BEGINNING at a pipe and cap on the right of way of CSXT railroad, said right of way lines are located 50 feet from the center of the main line track (most Westerly track) and situated approximately 2020 feet South from the concrete box culvert extending beneath the railroad and carrying waters from the Mill Branch watershed and 50 feet East of CSXT station no. 491 + 88. Said point is also the Southwest corner of the Joe A. & Ruby Hart Property (D.B. 185, Pg. 260), also being a point on the most Northerly line of Tract 1 of the John Durney Farm Division of 1872. The Beginning point is witnessed by a 14-inch elm tree located 5.45 feet at a bearing of S 05 W and by a 10-inch elm tree located 16.30 feet at a bearing of S 26 E. Thence leaving the right of way of the railroad and running across the field with the Hart Property and the most Northerly line of Tract 1 of the John Durney Farm Division

S66-44-51 E, 540.71 feet to a pipe and cap at the crest of the river bank, witnessed by a 30-inch walnut tree located 115.01 feet at a bearing of N 68-47-06 W and a 6-inch elm tree located 27.83 feet at a bearing of S 11 W.

S 66-44-51 E, 65.97 feet to an unmonumented point on the slope of the river bank, the Northeast corner of Tract 1 of the John Durney Farm Division. Thence leaving the Hart Property and running in a direction up the river, along the slope of the river bank

S17-45-09 W, 495.00 feet to an unmonumented point on the slope of the bank and being the Southeast corner of Tract 1 and Northeast corner of Tract 2 of the John Durney Farm Division and a corner of the Joseph E. Carter, Jr., et.ux. and the Earl W. Kinner, Jr. Property (D.B. 236, Pg. 270 and Affidavit of Descent Bk. 229, Pg. 748). Thence running with the Carter/Kinner property up the river bank

N66-44-51 W, 70.15 feet to a pipe and cap at the crest of the river bank

N66-44-51 W, 461.71 feet to a pipe and cap on the right of way of CSXT railroad, 50 feet East of CSXT station no. 496 + 96. Thence leaving the Carter/Kinner property and running with the railroad right of way

N 09-19-04 E, 507.66 feet to the **BEGINNING, containing 6.439 acres**, more or less, according to a survey conducted under the supervision of H. L. Baldrige, PLS 1893, with Nesbitt Engineering, Inc., on July 19, 2000.

TRACT II

LOCATED on the East side of CSXT railroad, on the West side of Big Sandy River at Catalpa in Lawrence County, Kentucky.

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Said point is also the the Northwest corner of the Joe A. & Ruby Hart Property (D.B. 185, Pg. 260), and the Southwest corner of the Joe A. Hart and Patton R. Hart Property (D.B. 221, Pg. 594, Riverside Generating Company, L.L.C., Lessee). Thence leaving the right of way of the CSXT railroad and running across the field with the two Harp Properties mentioned above
S 68-29-22 E, 585.75 feet to a ½” steel re-bar (found) at the crest of the river bank

S 68-29-22 E, 179.39 feet to an unmonumented point at the low water of Big Sandy River. Thence leaving the Joe A. and Patton R. Hart Property and running in a direction up the river

S 19-05-46 W, 936.55 feet to an unmonumented point on the slope of the river bank, the Northeast corner of Tract 1 of the John Durney Farm Division of 1872 and a corner of the Earl W. Kinner, Jr., Linda Sue Kinner and Clara Webb Kinner Property (Affidavit of Descent Bk. 229, pg 748). Thence running up the river bank slope

N 66-44-51 W, 65.97 feet to a pipe and cap at the crest of the river bank, witnessed by a blazed, 30-inch walnut tree located 115.01 feet at a bearing of N 68-47-06 W in the bottom and a blazed, 6-inch elm tree located 27.83 feet at a bearing of S 11 West, on the river bank.

N 66-44-51 W, 540.71 feet to a pipe and cap at the CSXT railroad right of way, 50 feet East of CSXT railroad station no. 491 + 88 and witnessed by a 14-inch elm tree located 5.45 feet at a bearing of S 05 W and a 10-inch elm tree located 16.30 feet at a bearing of S 26 E. Thence leaving the Kinner Property and running with the right of way of the railroad.

N 09-19-04 E, 938.45 feet to the **BEGINNING, containing 14.561 acres**, more or less, according to a survey conducted under the supervision of H. L. Baldrige, PLS 1893, with Nesbitt Engineering, Inc., on July 19, 2000.

BEING the same property acquired by the County of Lawrence, Kentucky, by Deed dated March 29, 2001, recorded in Deed Book 253, Page 311 in the Office of the Clerk of Lawrence County, Kentucky.

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Assignment") is made and entered into effective as of November 19, 2009 ("Effective Date") by and between Foothills Generating, L.L.C. ("Assignor") and Riverside Generating Company, L.L.C., ("Assignee").

WITNESSETH:

WHEREAS, Assignor is the developer of a power generation project located in Lawrence County, Kentucky ("Project");

WHEREAS, in conjunction with the financing and construction of the ("Project") Assignor entered into that certain In Lieu of Tax Payments Agreement by and between Assignor and County of Lawrence, Kentucky dated March 29, 2001 ("PILOT") pursuant to which Assignor is obligated to make certain payments in-lieu of real and personal property taxes which were or could have been levied upon the Project.

WHEREAS, pursuant to the terms of this Assignment, Assignor desires to assign the PILOT to the Assignee and Assignee desires to take assignment of the PILOT and assume Assignor's rights and obligations thereunder.

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

1. Assignment. Assignor hereby sells, transfers and assigns to Assignee all of Assignor's right, title and interest in, to and under the PILOT, or that arise by, through or as a result of the PILOT, effective as of the Effective Date which assignment is made without any representation or warranty of any type or kind whatsoever.

2. Assumption. Assignee expressly accepts the assignment set forth above and hereby assumes all of Assignor's liabilities, obligations and contractual commitments with respect to the PILOT, or that arise by, through or as a result of the PILOT, relating to periods from and after the Effective Date. Assignee acknowledges and agrees that Assignor is relieved from all liability under or related to the PILOT for events occurring on and after the Effective Date. Assignor retains all liabilities, obligations and contractual commitments with respect to the PILOT, or that arose by, through or as a result of the PILOT, relating to periods prior to the Effective Date.

3. Binding Effect: Purposes. This Assignment shall inure to the benefit of and shall be binding upon Assignor, Assignee and their respective successors and assigns.

4. Counterpart Execution. This Assignment may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

5. Governing Law. This Assignment shall be interpreted and construed under the laws of the Commonwealth of Kentucky, without reference to any conflict of laws rules that might choose the law of another jurisdiction.

6. No Changes. This Assignment shall not be amended or otherwise modified by a written document executed by both of the parties hereto.

WITNESS, Assignor and Assignee have caused this Assignment and Assumption Agreement to be executed effective as of the Effective Date.

Assignor

FOOTHILLS GENERATING, L.L.C.

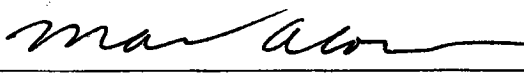
By:  TAB

Name: Mario Alonso

Title: Vice President, Strategic Planning and
Corporate Business Development

Assignee

RIVERSIDE GENERATING COMPANY, L.L.C.

By:  TAB

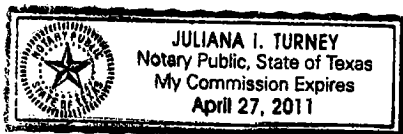
Name: Mario Alonso

Title: Vice President, Strategic Planning and
Corporate Business Development

ACKNOWLEDGEMENTS

STATE OF TEXAS)
) SS
COUNTY OF HARRIS)

I, the undersigned Notary Public in and for the State and County aforesaid, do hereby certify that on the 19 day of November 2009, the foregoing instrument was produced to me in said County by Mario Alonso as Vice President of Foothills Generating, L.L.C., a Delaware limited liability company, for and on behalf of Foothills Generating, L.L.C., and acknowledged by him/her for and on behalf of the Foothills Generating, L.L.C. to be the free act and deed of said Foothills Generating, L.L.C.

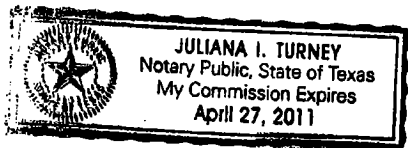


By: Juliana I. Turney
Notary Public

[Seal]

STATE OF TEXAS)
) SS
COUNTY OF HARRIS)

I, the undersigned Notary Public in and for the State and County aforesaid, do hereby certify that on the 19 day of November 2009, the foregoing instrument was produced to me in said County by Mario Alonso as Vice President of Riverside Generating Company, L.L.C., a Delaware limited liability company, for and on behalf of Riverside Generating Company, L.L.C., and acknowledged by him/her for and on behalf of the Riverside Generating Company, L.L.C. to be the free act and deed of said Riverside Generating Company, L.L.C.



By: Juliana I. Turney
Notary Public

[Seal]

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RIVERSIDE GENERATING COMPANY, L.L.C.)
)
v.) Case No. 2017-00472
)
KENTUCKY POWER COMPANY)

VERIFICATION OF ANTHONY HAMMOND

STATE OF New York)
)
COUNTY OF New York)

Anthony Hammond, Vice President of Riverside Generating Company, L.L.C., being duly sworn, states that he has supervised the preparation of his Rebuttal Testimony in the above-styled matter, that he would respond in the same manner to the questions if so asked upon taking the stand, and that his testimony is true and accurate to the best of his knowledge, information, and belief formed after a reasonable inquiry.



Anthony Hammond

The foregoing Verification was signed, acknowledged and sworn to before me this 13th day of June, 2018, by Anthony Hammond.



NOTARY PUBLIC, Notary # 01LL6314810
Commission expiration: 11/17/18

KATHERINE LLUBERES
Notary Public, State of New York
No. 01LL6314810
Qualified in Queens County
Commission Expires November 17, 2018