FORM 10-K

Annual report pursuant to section 13 and 15(d)

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EME HOMER CITY GENERATION LP

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2001

Commission File Number 333-92047-03

EME Homer City Generation L.P.

(Exact name of registrant as specified in its charter)

Pennsylvania (State or other jurisdiction of incorporation or organization)	**33-0826938** (I.R.S. Employer Identification No.)
1750 Power Plant Road **Homer City, Pennsylvania** (Address of principal executive offices)	**15748** (Zip Code)

Registrant's telephone number, including area code: **(724) 479-9011**

Securities registered pursuant to Section 12(b) of the Act:

None	**Not Applicable**
(Title of Class)	(Name of each exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act:
8.137% Senior Secured Bonds due 2019
8.734% Senior Secured Bonds due 2026
(Title of Class)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K ☐.

Aggregate market value of the registrant's common equity held by non-affiliates of the registrant as of March 28, 2002: $0. Number of shares outstanding of the registrant's Common Stock as of March 28, 2002: Not applicable.

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PART I

ITEM 1. BUSINESS

The Company

We were formed on October 31, 1998 as a Pennsylvania limited partnership with Chestnut Ridge Energy Company as a limited partner with a 99 percent interest and Mission Energy Westside Inc. as a general partner with a 1 percent interest. Both Chestnut Ridge Energy and Mission Energy Westside are wholly-owned subsidiaries of Edison Mission Holdings Co., a wholly-owned subsidiary of Edison Mission Energy, which is an indirect wholly-owned subsidiary of Edison International. We were formed for the purpose of acquiring, owning and operating three coal-fired electric generating units and related facilities located near Pittsburgh, Pennsylvania with an aggregate capacity of

1,884 megawatts, or MW, which we collectively refer to as the facilities, for the purpose of producing electric energy. Although we were formed on October 31, 1998, we had no significant activity prior to the acquisition of the facilities.

On December 7, 2001, we completed a sale-leaseback of our facilities to third-party lessors for an aggregate purchase price of $1.591 billion, made up of $782 million in cash and the assumption of the obligations under our 8.137% Senior Secured Bonds due 2019 and 8.734% Senior Secured Bonds due 2026, which we refer to collectively as the senior secured bonds (the fair value of which was $809.3 million). Our transaction has been accounted for as a lease financing for accounting purposes. We registered pass-through bonds with the Securities and Exchange Commission and the holders of the senior secured bonds agreed to exchange the senior secured bonds for the pass-through bonds, in order to consummate the transaction. In connection with the transaction, we have been released from our guarantee on the senior secured bonds, but we remain indirectly liable to make payments on the pass-through bonds, through our semi-annual lease payments. Also, in connection with the transaction, the partnership agreement was amended to, among other things, change our ownership interests to 99.9 percent for Chestnut Ridge Energy and 0.1 percent for Mission Energy Westside. For more information on the sale-leaseback transaction, see "Notes to Financial Statements−Note 3. Sale-Leaseback Transaction."

Edison Mission Energy is our indirect parent company. Edison Mission Energy's ultimate parent company is Edison International, which also owns Southern California Edison, one of the largest electric utilities in the United States. Each of these companies is registered with the Securities and Exchange Commission and has financial statements that are filed in accordance with rules enacted by the Securities and Exchange Commission. For more information regarding each of these companies, see their respective Form 10-K for the year ended December 31, 2001.

The address of our principal executive offices is 1750 Power Plant Road, Homer City, Pennsylvania, 15748-8009 and our telephone number is (724) 479-9011.

Forward-Looking Statements

This annual report includes forward-looking statements. We have based these forward-looking statements on our current expectations and projections about future events based upon our knowledge of facts as of the date of this annual report and our assumptions about future events. These forward-looking statements are subject to various risks and uncertainties that may be outside our control, including, among other things:

- governmental, statutory, regulatory or administrative changes or initiatives affecting us, our facilities or the United States electricity industry generally;
- supply, demand and price for electric capacity and energy in the markets served by our generating units;

- competition from other power plants, including new plants that may be developed in the future;
- operating risks, including equipment failure, dispatch levels, availability, heat rate and output; and
- the cost, availability and pricing of fuel and fuel transportation services for our facilities.

We use words like "believe," "expect," "anticipate," "intend," "may," "will," "should," "estimate," "projected" and similar expressions to help identify forward-looking statements in this annual report. For additional factors that could affect the validity of our forward-looking statements, you should read "Management's Discussion and Analysis of Results of Operations and Financial Condition" contained in Part II, Item 7 and the "Notes to Financial Statements" contained in Part II, Item 8. The information contained in this report is subject to change without notice. Readers should review future reports filed by us with the Securities and Exchange Commission. In light of these and other risks, uncertainties and assumptions, actual events or results may be very different from those expressed or implied in the forward-looking

statements in this annual report or may not occur. We have no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

Description of Business

Industry Overview

The United States electric industry, including companies engaged in providing generation, transmission, distribution and ancillary services, has undergone significant change over the last several years, leading to significant deregulation and increased competition. The Federal Energy Regulatory Commission, under Order No. 888 and Order No. 889, which are referred to as the Open Access Rules, requires the owners and operators of electric transmission facilities to make those facilities available for transmission on a non-discriminatory basis to all wholesale generators, sellers and buyers of electricity. In addition to this wholesale transmission, or wheeling, throughout the United States, there has been a number of proposals at the state level to allow retail customers to choose their electricity suppliers, with incumbent utilities required to deliver that electricity over their transmission and distribution systems. Numerous electric utilities nationwide have divested all or a portion of their electricity generation business as legislative and regulatory developments have driven the industry to disaggregate. We, through Edison Mission Energy and its other subsidiaries, are among a group of companies actively pursuing opportunities created by the deregulating domestic electric markets to operate as competitive electric generation and wholesale supply companies in a deregulated marketplace.

Power Markets

PJM. The Pennsylvania - New Jersey - Maryland Power Pool, or PJM, is the largest centrally dispatched electric control area in North America and the third largest in the world, consisting of over 540 generating units with a total installed capacity of 57,000 MW. PJM serves 8.7% of the United States population and covers portions of Pennsylvania, New Jersey, Maryland, Delaware, the District of Columbia and Virginia. PJM was restructured in April 1997 as a competitive, non-discriminatory market in response to the Open Access Rules and includes bid-based energy and capacity markets. The independent system operator for the PJM operates the spot energy market and determines the market-clearing price for each hour based on bids submitted by participating generators which indicate the minimum prices a bidder is willing to accept to be dispatched at various incremental generation levels. PJM conducts both day-ahead and real-time energy markets. A transmission charge based on the location of the energy purchaser is added to the energy price if the transmission system becomes constrained and generators with higher bids are dispatched prior to those with lower bids. To ensure that sufficient capacity is available in the market to meet reliability standards, PJM has a day-ahead

installed capacity market and monthly installed capacity markets extending twelve months in the future. Each installed capacity market has a single market-clearing price for each day during which the market is in operation.

NYISO. The New York Independent System Operator, or NYISO, includes 35,627 MW of installed capacity and serves over 99% of New York State's electric power requirements. The NYISO was established in 1999 as a competitive, non-discriminatory market in response to the Open Access Rules and includes bid-based electricity and transmission usage markets. The market-clearing price for NYISO's day-ahead and real-time energy markets is set by supplier generation bids and customer demand bids.

We can transmit 1,884 MW from our generating units into NYISO through two 345 kilovolts, or kV, high voltage transmission lines and can transmit 1,884 MW into PJM through two 230 kV lines. We do not incur any access or wheeling charges for any energy delivered into PJM. A 13-mile 230 kV line from our generating units also provides an indirect interconnection to the East Central Area Reliability Council, one of the largest regional electricity markets in the United States.

Facility Overview

We believe we are among the lowest cost generating facilities in the Northeast region of the United States. In 2001, our units had fuel expenses and operating and maintenance costs of approximately $18.32/MWh, and, in our belief, are among the first coal-fired units to be

called upon for the dispatch of electric power within both PJM and NYISO. Our facilities are located on a 2,413-acre site approximately 45 miles northeast of Pittsburgh within Indiana County, Pennsylvania. Our facilities consist of the generating units, a coal cleaning facility, water supply provided by a reservoir known as the Two Lick Dam and associated support facilities. Our generating units benefit from direct transmission access to both PJM and NYISO through four high voltage lines which interconnect through a switchyard located on the site.

Our units are coal-fired boiler and steam generating units. Units 1 and 2, which are essentially identical to one another, were constructed as positive pressure units, which utilize boilers with internal air pressure slightly higher than atmospheric pressure, and were placed into commercial operation in 1969. Units 1 and 2 were converted to balanced draft units, which utilize boilers with internal air pressure balanced at approximately atmospheric pressure, in 1976 and 1977, respectively. Unit 1 has an installed capacity of 620 MW, and Unit 2 has an installed capacity of 614 MW. The steam turbines and generators for Units 1 and 2 were manufactured by Westinghouse Electric Corporation, and the boilers for these units were manufactured by Foster Wheeler Energy Corporation. The Unit 1 and 2 boilers have been retrofitted with Foster Wheeler dual air register and internal flame staging low nitrogen oxide burners to meet Phase I nitrogen oxide Clean Air Act standards. See "Management's Discussion and Analysis of Results of Operations and Financial Condition−Environmental Matters and Regulations−Federal−United States of America−Clean Air Act." In addition, both boilers have supplemental over-fired air systems to further reduce nitrogen oxide emissions to satisfy Pennsylvania Title I (ozone) requirements.

Unit 3 commenced commercial operation in 1977 and has an installed capacity of 650 MW. The steam turbine and generator for Unit 3 were manufactured by General Electric Corporation, and the Unit 3 boiler was manufactured by Babcock & Wilcox. The boiler for Unit 3 was originally constructed with Babcock & Wilcox low nitrogen oxide burners which satisfied Phase I nitrogen oxide Clean Air Act standards, and a supplemental over-fired air system was installed in 1995 at Unit 3 to further reduce nitrogen oxide emissions. In 2001, a wet scrubber flue gas desulfurization system and a selective catalytic reduction system was installed on Unit 3. These improvements are expected to enable our generating unit to comply with Phase II of Title IV of the Clean Air Act regarding sulfur oxide emissions, the Pennsylvania nitrogen oxide allowance regulations and Pennsylvania's response to the

Environmental Protection Agency's State Implementation Plan Call regarding nitrogen oxide emissions. On February 10, 2002, the ductwork and bypass associated with the selective catalytic reduction system collapsed. For further discussion of this event, see "Management's Discussion and Analysis of Results of Operations and Financial Condition−Recent Developments."

Emission allowances were acquired by us as part of the acquisition of the facilities. Emission allowances are required by our facilities in order to be certified by the local environmental authorities and are required to be maintained throughout the period of operation of the facilities. We purchase additional emission allowances when necessary to meet environmental regulations. We also use forward sales and purchases, together with options, to achieve our objective of stabilizing and enhancing the operations from our facilities.

Sales Strategy

We sell capacity, energy and voltage support from our units into PJM's and NYISO's centralized power markets. We believe that our units comprise the second largest coal-fired facility within PJM and the largest coal-fired facility servicing NYISO. We may also enter into bilateral contracts for the sale of capacity and energy to power marketers and load serving entities within PJM, NYISO and surrounding markets.

Marketing and Trading. We have entered into a contract with a marketing affiliate for the sale of energy and capacity produced by our units, which enables this marketing affiliate to engage in forward sales and hedging transactions to manage our electricity price exposure. The terms of the documents relating to the sale-leaseback do not permit us to take speculative futures positions. Our marketing affiliate is required to make sales only to entities which have an investment grade rating or whose obligations are guaranteed by an entity with an investment grade rating.

The marketing organization of our marketing affiliate is divided into front-, middle- and back-office segments, with some duties segregated for control purposes. The risk management personnel have a high level of knowledge of utility operations, fuels procurement,

energy marketing and futures and options trading. The marketing affiliate has systems in place that monitor real-time spot and forward pricing, performs option valuations and has a wholesale power-scheduling group that operates on a 24-hour basis. We pay the marketing affiliate fees of $0.02/MWh plus emission allowance fees. The net fees earned by the marketing affiliate were $0.9 million, $1.5 million and $0.2 million for the years ended December 31, 2001, 2000 and 1999, respectively.

Fuel Supply

Units 1 and 2. Units 1 and 2 typically consume approximately 4,200,000 tons of mid-range sulfur coal per year. Approximately 90% to 95% of this coal is obtained under contracts with local suppliers within approximately 100 miles of our facilities, and the remainder is purchased in the spot market. All of this coal is delivered to the site by truck.

The coal purchased for consumption by Units 1 and 2 is cleaned in our coal cleaning facility, which has the capacity to clean up to 5,000,000 tons of coal per year. Our coal cleaning facility utilizes heavy media cyclones, froth flotation and spiral separators to reduce the ash and sulfur content of the raw coal to meet both combustion and environmental requirements. Our coal cleaning facility is operated by Homer City Coal Processing Corporation under a coal cleaning agreement, dated August 8, 1990, which is scheduled to expire on August 31, 2002. Under the terms of the agreement, we are obligated to reimburse Homer City Coal Processing Corp. for the actual costs incurred in the operations and maintenance of the coal cleaning plant, a fixed general and administrative service fee of $260,000 per year, and an operating fee that ranges from $.20 to $.35 per ton depending on the level of tonnage.

Unit 3. Unit 3 typically consumes approximately 1,600,000 tons of compliance coal per year. We purchase approximately 75% of this coal from one supplier and that coal is blended at a coal blending facility owned by the supplier on our site. We obtain the remainder of the coal needed for Unit 3 in the spot market. All coal purchased for Unit 3 is delivered to the site by truck. A wet scrubber flue gas desulfurization system for Unit 3 was installed in 2001, which enables this unit to be able to burn less expensive, higher sulfur coal, while still meeting environmental standards for emission control.

Our contractual commitments for the purchase of coal, subject to adjustment, are currently estimated to aggregate $472 million over the duration of the existing contracts, summarized as follows: $160 million in 2002; $99 million in 2003; $90 million in 2004; $67 million in 2005; $40 million in 2006; and $16 million thereafter.

Environmental Capital Improvements

We have contracted with a division of ABB Flakt, now Alstom Power, to make environmental capital improvements to our generating units. The contractor was retained to construct a limestone-based, wet scrubber flue gas desulfurization system at Unit 3 and a selective catalytic reduction system at each of the three units. These improvements are expected to enable our generating units to comply with Phase II of Title IV of the Clean Air Act regarding sulfur oxide emissions, the Pennsylvania nitrogen oxide allowance regulations and Pennsylvania's response to the Environmental Protection Agency's State Implementation Plan Call regarding nitrogen oxide emissions. These improvements are estimated to cost approximately $270 million, which includes a fixed price, turnkey engineering, procurement and construction contract, project management costs and other project costs. The wet scrubber flue gas desulfurization system on Unit 3 has been installed and is undergoing acceptance testing. The selective catalytic reduction system on Unit 3 was installed but went out of service on February 10, 2002 due to a collapse of ductwork. See "Management's Discussion and Analysis of Results of Operations and Financial Condition−Recent Developments" for further discussion of this event. The selective catalytic reduction system on Units 1 and 2 are scheduled to be installed in 2002. We expect to spend approximately $17.8 million during 2002 on the remaining capital expenditures related to these improvements.

Operating Performance

Our generating units have historically had high equivalent availability, which is the ratio, expressed as a percentage, of the amount of production that each unit was able to produce during a given time period divided by the amount of production that each unit would have

produced if it operated at its full capacity during that given time period. Our generating units have also historically had efficient heat rates and low costs. The following charts indicate selected historical operating data for our generating units.

	Equivalent Availability Factor (%)	Net Heat Rate (Btu/kWh)	Fuel and O&M Costs ($/MWh)
Units 1, 2 and 3−1,884 MW			
2001	87.39	9,880	18.32
2000	80.22	9,928	19.51
1999*	86.81	9,962	17.90
1998*	89.79	9,793	17.12
1997*	85.83	9,804	18.17
5-Year Average	86.01	9,873	18.20

* Data provided by prior owner of the facilities.

Operation and Maintenance

Our operating and maintenance plan, as well as several planned overhauls of major equipment and controls, are consistent with our goal of extending the remaining life of the units for an additional 39 years from the date we acquired them. We utilize a state-of-the-art computerized maintenance system to plan and schedule all maintenance activities. We also employ a preventative maintenance program complemented by new predictive maintenance technologies such as ferrography, thermography, vibration analysis and acoustic analysis. Reliability-centered maintenance techniques are currently being developed for critical systems to better define condition-monitoring parameters and redefine maintenance strategies.

Our employees provide engineering, maintenance, operation and facility management services to Edison Mission Energy's affiliates and will receive functional direction from, and are held to the operating standards and guidelines of, Edison Mission Energy's operation and maintenance organization.

Transmission and Interconnection

Existing transmission lines leaving our generating units are interconnected with both PJM and NYISO. We are able to transmit into PJM full plant output of up to 1,884 MW through a 126-mile 345 kV line and 19-mile and 15-mile 230 kV lines owned by Pennsylvania Electric Company, which we refer to as Penelec. We have the ability to transmit into NYISO full plant output of up to 1,884 MW through 175-mile and 207-mile 345 kV lines owned by New York State Electric & Gas Corporation, which we refer to as NYSEG. In addition, a 13-mile 230 kV line from our generating units provides an indirect interconnection to the East Central Area reliability market.

The points of interconnection with our units include:

(1) the 230 kV circuit from the Unit 1 main power transformer,

(2) the 345 kV circuit from the Unit 2 main power transformer,

(3) the 345 kV circuit from the Unit 3 main power transformer,

(4) the 345/230/23 kV north and south autotransformers, and

(5) substation services No. 1 and No. 2.

The ownership of the transmission and distribution assets for our facilities, including the site switchyard, substation and support equipment, remained with Penelec and NYSEG following our acquisition of the facilities. These companies have agreed to provide us with all services necessary to interconnect our generating units with their transmission systems, other than services provided under existing tariffs, under an interconnection agreement, as described below.

Our general partner, Mission Energy Westside, has entered into an interconnection agreement with NYSEG and Penelec to provide interconnection services necessary to interconnect the Homer City Station with NYSEG and Penelec's transmission systems. Unless terminated earlier in accordance with its terms, the interconnection agreement will terminate on a date mutually agreed to by Mission Energy Westside, NYSEG and Penelec. This date will not exceed the retirement date of the Homer City units. NYSEG and Penelec have agreed to extend such interconnection services (but not the expiration of the agreement) to modifications, additions, upgrades or repowering of the Homer City units. Mission Energy Westside is required to compensate NYSEG and Penelec for all reasonable costs associated with any modifications, additions or replacements made to NYSEG or Penelec's interconnection facilities or transmission systems in connection with any modification, addition, upgrade or repowering to the Homer City units.

Water Supply and Other Support Facilities

Our generating units receive their water supply from Two Lick Creek. The water supply to Two Lick Creek is regulated by releases from Two Lick Dam, which is located approximately eight miles upstream from our generating units and is owned, operated and maintained by us in accordance with a dam safety permit and a drought management plan and related consent order and agreement with the Pennsylvania Department of Environmental Protection. These facilities were not sold to third parties as part of the sale-leaseback transaction. Each of our generating units has a natural draft-cooling tower. A portion of the waste heat in the water leaving the units' condensers is diverted from these towers to a 14-acre polyethylene roofed greenhouse complex located adjacent to our units. After the water passes through this greenhouse complex, it is returned to the basin of the cooling towers for reuse.

Other support facilities located on the site include an ash disposal area, a coal refuse disposal area, coal receiving and storage facilities and water treatment and pumping facilities.

Insurance

We maintain insurance coverages consistent with those normally carried by companies engaged in similar businesses and owning similar properties. The insurance program includes all-risk real and personal property insurance, including coverage for losses from boiler and machinery breakdowns, and the perils of earthquake and flood, subject to certain sublimits. The property insurance program currently covers losses up to $1.25 billion. Under the terms of the facility leases, we are required to provide property insurance, if commercially available at reasonable prices, for the termination value amounts included in the facility leases. In the current market environment, insurance for the full termination value may not be available at reasonable prices, but we will continue to monitor developments in the property insurance marketplace.

We also carry general liability insurance covering liabilities to third parties for bodily injury or property damage resulting from operations, automobile liability insurance and excess liability insurance. Limits and deductibles in respect of these insurance policies are comparable to those carried by other electric generating facilities of similar size.

Seasonality

Due to warmer weather during the summer months, electric revenues are usually higher during the third quarter of each year.

Tax Sharing Agreements

We are included in the consolidated federal income tax and combined state franchise tax returns of Edison International. We calculate our income tax provision on a separate company basis under a tax sharing arrangement with Edison Mission Energy, which in turn has a tax sharing agreement with Mission Energy Holdings Company, which in turn has a tax sharing agreement with The Mission Group, which in turn has an agreement with Edison International. Tax benefits generated by us and used in the Edison International consolidated tax return are recognized by us without regard to separate company limitations.

Competition

Federal

The Energy Policy Act of 1992 laid the groundwork for a competitive wholesale market for electricity. Among other things, the Energy Policy Act expanded the Federal Energy Regulatory Commission's authority to order electric utilities to transmit, or wheel, third-party electricity over their transmission lines, thus allowing qualifying facilities under the Public Utility Regulatory Policies Act of

1978, power marketers and those qualifying as exempt wholesale generators under the Public Utility Holding Company Act of 1935 to more effectively compete in the wholesale market.

In April 1996, the Federal Energy Regulatory Commission issued the Open Access Rules, which require utilities to offer eligible wholesale transmission customers non-discriminatory open access on utility transmission lines on a comparable basis to the utilities' own use of the lines. In addition, the Open Access Rules directed the regional power pools that control the major electric transmission networks to file uniform, non-discriminatory open access tariffs. On March 4, 1997, the Federal Energy Regulatory Commission issued Order No. 888-A, reaffirming its basic determinations in Order No. 888, promoting wholesale competition through open access non-discriminatory transmission services by public utilities.

In December 1999, the Federal Energy Regulatory Commission issued Order No. 2000, which required all transmission-owning utilities to file by December 15, 2000, a statement of their plans with respect to placing their transmission assets under a Regional Transmission Organization, or RTO, meeting certain criteria set forth in the Order. Although Order No. 2000 did not mandate that a utility join an RTO, it set forth various incentives for voluntary action by utilities to take such action and required them to explain in detail their reasons for deviating from the objectives set forth in the Order. RTOs meeting the Commission's criteria in Order No. 2000 were required to be operationally independent of the transmission-owning utilities whose assets they controlled and to possess other essential attributes, such as regional scope and configuration, the authority to receive and rule upon requests for service, a separate tariff governing all transactions of the RTO, a market monitoring capability, and other features. In subsequent orders, the Commission has progressively tightened its policies in favor of RTO formation, by such means as an explicit proposal that approvals of market-based rate authority for affiliates of utilities owning transmission should be tied to such utilities' placing their transmission assets in an RTO meeting the criteria of Order No. 2000. These and other regulatory initiatives by the Federal Energy Regulatory Commission are continuing to unfold at the present time, and it is not possible to predict how far or how fast they will go. However, the direction of regulatory policy at such Commission at the present time appears generally positive for continued progress toward competitive wholesale electricity markets.

Over the past few years, Congress has considered various pieces of legislation to restructure the electric industry which would require, among other things, customer choice, repeal of the Public Utility Holding Company Act and of the Public Utility Regulatory Policies Act. In January 2001, President Bush appointed a Cabinet level task force, headed by Vice President Cheney, to examine long-term energy policy. The task force was prompted in part by the California power crisis and its potential effect on neighboring states and other parts of the U.S. economy. The task force is charged with exploring ways to develop new sources of energy. It is unclear at this time, however, to what extent,

if any, legislative or regulatory actions may result from this task force. Congress may also conduct hearings on the issue of long-term energy security.

State

The Energy Policy Act did not preempt state authority to regulate retail electric service. Historically, in most states, competition for retail customers is limited by statutes or regulations granting existing electric utilities exclusive retail franchises and service territories. Since the passage of the Energy Policy Act, the advisability of retail competition has been the subject of intense debate in federal and state legislative and regulatory forums. Many states have taken steps to facilitate retail competition as a means to stimulate competitive generation rates. Retail competition commenced in New York in 1998. Retail competition in Pennsylvania commenced on January 1, 1999.

Regulatory Matters

General

Federal laws and regulations govern, among other things, transactions by and with purchasers of power, including utility companies, the operations of a project and the ownership of a project. Under limited circumstances where exclusive federal jurisdiction is not applicable or specific exemptions or waivers from state or federal laws or regulations are otherwise unavailable, federal and/or state utility regulatory commissions may have broad jurisdiction over non-utility owned electric power plants. Energy-producing projects are also subject to federal, state and local laws and regulations that govern the geographical location, zoning land use and operation of a project. Federal, state and local environmental requirements generally require that a wide variety of permits and other approvals be obtained before the commencement of construction or operation of an energy-producing facility and that the facility then operate in compliance with these permits and approvals.

While we believe the requisite approvals for our existing facilities have been obtained and that our business is operated in substantial compliance with applicable laws, we remain subject to a varied and complex body of laws and regulations that both public officials and private parties may seek to enforce. Regulatory compliance for the construction of new facilities is a costly and time-consuming process. Intricate and changing environmental and other regulatory requirements may necessitate substantial expenditures and may create a significant risk of expensive delays or significant loss of value in a project if the project is unable to function as planned due to changing requirements or local opposition.

State Energy Regulation

State public utility commissions have broad jurisdiction over non-qualifying facility independent power projects, including exempt wholesale generators, which are considered public utilities in many states. This jurisdiction often includes the issuance of certificates of public convenience and necessity and/or other certifications to construct, own and operate a facility, as well as the regulation of organizational, accounting, financial and other corporate matters on an ongoing basis. Qualifying facilities may also be required to obtain these certificates of public convenience and necessity in some states.

Some states that have restructured their electric industries require generators to register to provide electric service to customers. Many states are currently undergoing significant changes in their electric statutory and regulatory frameworks that result from restructuring the electric industries that may affect generators in those states. Although the Federal Energy Regulatory Commission generally has exclusive jurisdiction over the rates charged by a non-qualifying facility independent power project to its wholesale customers, a state's public utility commission has the ability, in practice, to influence the establishment of these rates by asserting jurisdiction over the purchasing utility's ability to pass-through the resulting cost of purchased power to its retail customers. A state's public utility commission also has the authority to determine avoided costs for qualifying facilities and regulate the retail rates charged by qualifying facilities. In addition, states may assert jurisdiction over the siting and construction of independent power projects and, among other things, the issuance of securities, related party transactions and the sale or other transfer of assets by these facilities. The actual scope of jurisdiction over independent power projects by state public utility commissions varies from state to state.

In addition, state public utility commissions may seek to modify, suspend or terminate a qualifying facility's power sales contract under specified circumstances. This could occur if the state public utility commission were to determine that the pricing mechanism of the power sales contract is unfairly high in light of the current prevailing market cost of power for the utility purchasing the power. In this instance, the state public utility commission could attempt to alter the terms of the power sales contract to reflect more accurately market conditions for the prevailing cost of power. While we believe that these attempts are not common and that the state public utility commission may not have any

jurisdiction to modify the terms of the wholesale power sales, we cannot assure you that the power sales contracts of our operations will not be subject to adverse regulatory actions.

Pennsylvania. Under the Pennsylvania Public Utility Law, the Pennsylvania Public Utility Commission regulates all "public utilities" operating in Pennsylvania. A "public utility" under this law includes any entity that owns or operates equipment or facilities for the production, generation, transmission or distribution of gas, electricity or steam for the production of light, heat or power to the public for consumption. The Pennsylvania Public Utility Law does not specifically address the utility status of entities selling electricity at wholesale within Pennsylvania. Because of our status as such an entity that sells electricity exclusively in the wholesale market and does not hold itself out to the public generally as a supplier of utility service, we are not likely to be regulated as a public utility under the Pennsylvania Public Utility Law. If, however, we were deemed to be a Pennsylvania public utility, the Pennsylvania Public Utility Commission could retroactively apply several provisions of the Pennsylvania Public Utility Law to us. One of those provisions requires every public utility to obtain a certificate of public convenience and necessity from the Pennsylvania Public Utility Commission prior to rendering service as a public utility. If the Pennsylvania Public Utility Commission were to require us to obtain a certificate of public convenience and necessity, we might be required to discontinue operation of our units pending application for, and receipt of, this certificate. Another provision requires every public utility to obtain Pennsylvania Public Utility Commission approval before it issues or guarantees securities. If we were found to be a public utility, our failure to have obtained this approval could call into question the validity of our obligations under the documents entered into in connection with the sale-leaseback. In addition, we would be subject to other laws and regulations, other than rate regulation, applicable to Pennsylvania public utilities. Our rates, however, would remain subject to the jurisdiction of the Federal Energy Regulatory Commission.

New York. Under the New York Public Service Law, the New York Public Service Commission regulates all public utility companies or utility companies operating in New York. A public utility company or utility company under the New York Public Service Law includes, among other things, any entity engaged in the production, transmission or distribution of electricity to the public for light, heat or power purposes. We, as an exempt wholesale generator, will not provide electricity directly to the public and plan to sell only to power marketers and energy service companies. Although the New York Public Service Law is silent with respect to the utility status of electric corporations selling electricity wholesale within New York, we will not likely be subject to regulation as a New York public utility. If, however, we were deemed to be a public utility under the New York Public Service Law, the New York Public Service Commission could retroactively apply specified provisions of the statute to us. We would also be subject to other laws and regulations, other than rate regulation, applicable to New York public utility companies. Our rates, however, would remain subject to the jurisdiction of the Federal Energy Regulatory Commission.

U.S. Federal Energy Regulation

Overview

The Federal Energy Regulatory Commission has ratemaking jurisdiction and other authority with respect to interstate sales and transmission of electric energy under the Federal Power Act and with respect to certain interstate sales, transportation and storage of natural gas under the Natural Gas Act of 1938. The Securities and Exchange Commission has regulatory powers with respect to upstream owners of electric and natural gas utilities under the Public Utility Holding Company Act of 1935. The enactment of the Public Utility Regulatory Policies Act of 1978 and the adoption of regulations thereunder by the Federal Energy Regulatory Commission provided incentives for the development of cogeneration facilities and small power production facilities utilizing alternative or renewable fuels by establishing certain exemptions from the Federal Power Act and the Public Utility Holding Company Act for the owners of qualifying facilities. The passage of the Energy Policy Act in 1992 further

encouraged independent power production by providing additional exemptions from the Public Utility Holding Company Act for exempt wholesale generators and foreign utility companies.

An *"exempt wholesale generator"* under the Public Utility Holding Company Act is an entity determined by the Federal Energy Regulatory Commission to be exclusively engaged, directly or indirectly, in the business of owning and/or operating specified eligible facilities and selling electric energy at wholesale or, if located in a foreign country, at wholesale or retail.

The Federal Power Act. The Federal Power Act grants the Federal Energy Regulatory Commission exclusive ratemaking jurisdiction over wholesale sales of electricity in interstate commerce, including ongoing as well as initial rate jurisdiction. This jurisdiction allows the Federal Energy Regulatory Commission to revoke or modify previously approved rates. These rates may be based on a cost-of-service approach or, in geographic and product markets determined by the Federal Energy Regulatory Commission to be workably competitive, may be market based. As noted, most qualifying facilities are exempt from the ratemaking and several other provisions of the Federal Power Act. Exempt wholesale generators and other non-qualifying facility independent power projects are subject to the Federal Power Act and to Federal Energy Regulatory Commission's ratemaking jurisdiction thereunder, but the Federal Energy Regulatory Commission typically grants exempt wholesale generators the authority to charge market-based rates as long as the absence of market power is shown. In addition, the Federal Power Act grants the Federal Energy Regulatory Commission jurisdiction over the sale or transfer of jurisdictional facilities, including wholesale power sales contracts, and in some cases jurisdiction over the issuance of securities or the assumption of specified liabilities and some interlocking directorates. In granting authority to make sales at market-based rates, the Federal Energy Regulatory Commission typically also grants blanket approval for the issuance of securities and partial waiver of the restrictions on interlocking directorates.

We are subject to the Federal Energy Regulatory Commission ratemaking regulation under the Federal Power Act. In addition, the Federal Energy Regulatory Commission's order, as is customary with market-based rate schedules, reserved the right to revoke our market-based rate authority on a prospective basis if it is subsequently determined that we or any of our affiliates possess excessive market power. If the Federal Energy Regulatory Commission were to revoke our market-based rate authority, it would be necessary for us to file, and obtain Federal Energy Regulatory Commission acceptance of, our rate schedule as a cost-of-service rate schedule. In addition, the loss of market-based rate authority would subject us to the accounting, record keeping and reporting requirements that are imposed on utilities with cost-based rate schedules.

The Public Utility Holding Company Act. Unless exempt or found not to be a holding company by the Securities and Exchange Commission, a company that falls within the definition of a holding company must register with the Securities and Exchange Commission and become subject to Securities and Exchange Commission regulation as a registered holding company under the Public Utility Holding Company Act. "*Holding company*" is defined in Section 2(a)(7) of the Public Utility Holding Company Act to include, among other things, any company that owns 10% or more of the voting securities of an electric utility company. "*Electric utility company*" is defined in Section 2(a)(3) of the Public Utility Holding Company Act to include any company that owns facilities used for generation, transmission or distribution of electric energy for resale. Exempt wholesale generators and foreign utility companies are not deemed to be electric utility companies, and qualifying facilities are not considered facilities used for the generation, transmission or distribution of electric energy for resale. Securities and Exchange Commission precedent also indicates that it does not consider "paper facilities," such as contracts and tariffs used to make power sales, to be facilities used for the generation, transmission or distribution of electric energy for resale, and power marketing activities will not, therefore, result in an entity's being deemed to be an electric utility company.

A registered holding company is required to limit its utility operations to a single integrated utility system and to divest any other operations not functionally related to the operation of that utility system. In addition, a registered holding company will require Securities and

Exchange Commission approval for the issuance of securities, other major financial or business transactions, such as mergers, and transactions between and among the holding company and holding company subsidiaries.

Because it owns Southern California Edison Company, an electric utility company, Edison International, our indirect parent company, is a holding company. Edison International is, however, exempt from registration pursuant to Section 3(a)(1) of the Public Utility Holding Company Act because the public utility operations of the holding company system are predominantly intrastate in character. Consequently, we are not a subsidiary of a registered holding company so long as Edison International continues to be exempt from registration pursuant to Section 3(a)(1) or another of the exemptions enumerated in Section 3(a). Nor are we a holding company under the Public Utility Holding Company Act because our interests in power generation facilities are as an exempt wholesale generator. Loss of exempt wholesale generator status could result in our becoming a holding company subject to registration and regulation under the Public Utility Holding Company Act and could trigger defaults under the covenants in our agreements. Becoming a holding company could, on a retroactive basis, lead to, among other things, fines and penalties and could cause certain agreements and other contracts to be voidable.

However, under the Energy Policy Act, a company engaged exclusively in the business of owning and/or operating a facility used for the generation of electric energy exclusively for sale at wholesale may be exempted from regulation under the Public Utility Holding Company Act as an exempt wholesale generator. On March 12, 1999, the General Counsel of the Federal Energy Regulatory Commission issued a letter determining that, based on the facts stated in our application, we are an exempt wholesale generator.

If there occurs a "material change" in facts that might affect our continued eligibility for exempt wholesale generator status, within 60 days of this material change we must:

file a written explanation of why the material change does not affect its exempt wholesale generator status,

file a new application for exempt wholesale generator status, or

notify the Federal Energy Regulatory Commission that it no longer wishes to maintain exempt wholesale generator status.

If we were to lose our exempt wholesale generator status, we and our affiliates could be subject to regulation under the Public Utility Holding Company Act, that would be difficult to comply with, absent a restructuring.

Transmission of Wholesale Power

Generally, projects that sell power to wholesale purchasers other than the local utility to which the project is interconnected require the transmission of electricity over power lines owned by others, also known as wheeling. The prices and other terms and conditions of transmission contracts are regulated by the Federal Energy Regulatory Commission when the entity providing the wheeling service is a jurisdictional public utility under the Federal Power Act. Until 1992, the Federal Energy Regulatory Commission's ability to compel wheeling was very limited, and the availability of voluntary wheeling service could be a significant factor in determining whether a site was viable for project development.

The Federal Energy Regulatory Commission's authority under the Federal Power Act to require electric utilities to provide transmission service on a case-by-case basis to qualifying facilities, exempt wholesale generators, and other power generators was expanded substantially by the Energy Policy Act.

Furthermore, in 1996 the Federal Energy Regulatory Commission issued a rulemaking order, Order 888, in which the Federal Energy Regulatory Commission asserted the power, under its authority to eliminate undue discrimination in transmission, to compel all jurisdictional

public utilities under the Federal Power Act to file open access transmission tariffs consistent with a pro forma tariff drafted by the Federal Energy Regulatory Commission. The Federal Energy Regulatory Commission subsequently issued Orders 888-A, 888-B and 888-C to clarify the terms that jurisdictional transmitting utilities are required to include in their open access transmission tariffs. The Federal Energy Regulatory Commission also issued Order 889, which required those transmitting utilities to abide by specified standards of conduct when using their own transmission systems to make wholesale sales of power, and to post specified transmission information, including information about transmission requests and availability, on a publicly available computer bulletin board.

In issuing Order No. 888 *et al*., the Federal Energy Regulatory Commission determined that the open-access rules set forth in the Order would apply to transmission with respect to wholesale sales and also with respect to retail transactions where the transmission component had been unbundled from the retail sale by state regulatory action or voluntarily by the utility making the retail sale. The Commission declined to assert jurisdiction over retail transmission that remained bundled into the retail sale. Subsequent court appeals of Order No. 888 have been brought by parties challenging the Order on the basis that the Commission had no authority to regulate the transmission of unbundled retail sales and by those challenging the Commission's failure to include the transmission of bundled retail sales in the order. On June 30, 2000, the U.S. Court of Appeals for the District of Columbia Circuit upheld the decision by the Federal Energy Regulatory Commission in both respects, finding that the Commission did have jurisdiction to regulate transmission of unbundled retail transactions, and that it was not required to assert jurisdiction over transmission embedded in bundled retail sales. In an opinion issued on March 4, 2002, the Supreme Court affirmed.

In the meantime, while Order No. 888 was pending judicial review, it became apparent to the Federal Energy Regulatory Commission that the Order was not having the desired effects of eliminating discriminatory behavior by transmission owning utilities and in promoting the development of competitive wholesale electricity markets. Accordingly, in an effort to remedy the shortcomings it perceived, the Commission on December 20, 1999, issued Order No. 2000, which required all transmission-owning utilities to file by December 15, 2000, a statement of their plans with respect to placing their transmission assets under a RTO meeting certain criteria set forth in the Order. Although Order No. 2000 did not mandate that a utility join an RTO, it set forth various incentives for voluntary action by utilities to take such action and required them to explain in detail their reasons for deviating from the objectives set forth in the Order. RTOs meeting the Commission's criteria in Order No. 2000 were required to be operationally independent of the transmission-owning utilities whose assets they controlled and to possess other essential attributes, such as regional scope and configuration, the authority to receive and rule upon requests for service, a separate tariff governing all transactions of the RTO, a market monitoring capability, and other features. In subsequent orders, the Commission has progressively tightened its policies in favor of RTO formation, by such means as an explicit proposal that approvals of market-based rate authority for affiliates of utilities owning transmission should be tied to such utilities' placing their transmission assets in an RTO meeting the criteria of Order No. 2000. These and other regulatory initiatives by the Federal Energy Regulatory Commission are continuing to unfold at the present time, and it is not possible to predict how far or how fast they will go. However, the direction of regulatory policy at such Commission at the present time appears generally positive for continued progress toward competitive wholesale electricity markets.

Retail Competition

In response to pressure from retail electric customers, particularly large industrial users, the state commissions or state legislatures of most states are considering, or have considered, whether to open

the retail electric power market to competition. Retail competition is possible when a customer's local utility agrees, or is required, to unbundle its distribution service, for example, the delivery of electric power through its local distribution lines, from its transmission and generation service, for example, the provision of electric power from the utility's generating facilities or wholesale power purchases. Several state commissions and legislatures have issued orders or passed legislation requiring utilities to offer unbundled retail distribution service, which is called retail wheeling, and phasing in retail wheeling over the next several years.

The competitive pricing environment that will result from retail competition may cause utilities to experience revenue shortfalls and deteriorating creditworthiness. However, we expect that most, if not all, state plans will insure that utilities receive sufficient revenues, through a distribution surcharge if necessary, to pay their obligations under existing long-term power purchase contracts with qualifying facilities and exempt wholesale generators. On the other hand, qualifying facilities and exempt wholesale generators may be subject to pressure to lower their contract prices in an effort to reduce the stranded investment costs of their utility customers.

Environmental Matters

We are subject to environmental regulation by federal, state and local authorities in the United States. We believe that we are in substantial compliance with environmental regulatory requirements and that maintaining compliance with current requirements will not materially affect our financial position or results of operation. However, possible future developments, such as the promulgation of more stringent environmental laws and regulations, and future proceedings that may be taken by environmental authorities, could affect the costs and the manner in which we conduct our business and could cause us to make substantial additional capital expenditures. There is no assurance that we would be able to recover these increased costs from our customers or that our financial position and results of operations would not be materially adversely affected.

Typically, environmental laws require a lengthy and complex process for obtaining licenses, permits and approvals prior to construction and operation of a project. Meeting all the necessary requirements can delay or sometimes prevent the completion of a proposed project as well as require extensive modifications to existing projects, which may involve significant capital expenditures. As a result of the sale-leaseback, a number of permits we hold have been transferred or will be transferred to the owner lessors. In addition, some permits are now held or will be held jointly with the owner lessors. We have no reason to believe that the transfer will negatively affect our business or results of operations.

For more information on environmental regulation, see "Management's Discussion and Analysis of Results of Operations and Financial Condition−Environmental Matters and Regulations."

Employees

At December 31, 2001, we employed 257 employees, approximately 191 of whom are covered by a collective bargaining agreement. Our skilled and disciplined workforce is well prepared to operate within a competitive and deregulated environment. We believe that our staffing levels are comparable with benchmark standards for facilities of a similar size and type. The majority of the technical staff at our facilities was retained after completing the acquisition, thus providing us with a knowledgeable and experienced base of employees.

Our workforce is employed under a collective bargaining agreement that was restructured in 1994. The collective bargaining agreement provides us with a measure of labor cost certainty through mid 2003. The collective bargaining agreement enables us to manage our workforce and to establish flexible work rules going forward. We plan to cross train employees to perform different functions, thus minimizing the use of more expensive or less efficient subcontractors.

ITEM 2. PROPERTIES

We own a fee interest in the 2,413-acre site on which our generating units, Two Lick Dam and the other facilities are located. The site is approximately 45 miles northeast of Pittsburgh, Pennsylvania in Indiana County. As a result of the sale-leaseback transaction on December 7, 2001, we leased the property on which the generating units are located to the owner lessors through site leases and each owner lessor in turn subleased its undivided ground interest in the property back to us through site subleases. The term of the site leases is 45 years from the date of the sale-leaseback, with specified renewal options. The term of the site subleases is 33.67 years, the term of the sale-leaseback financing, and is renewable upon renewal of our facility leases. As long as the facility leases and the site subleases are in effect, the rents payable under

the site leases and under the site subleases will be automatically offset against each other so that no amounts will be payable by us or the owner lessors with respect to these agreements. We also lease portions of the site to other third parties. Those leases are described below.

We lease the surface of an approximately 14-acre parcel to Tanoma Coal Sales upon which the coal blending facility is located. In lieu of rental payments, Tanoma blends the first 30,000 tons of coal per month in the coal blending facility at no charge. We also lease an office building located on the site to Tanoma, which Tanoma uses for administrative activities associated with the coal blending facility. Each of the Tanoma leases expires on December 31, 2002.

We have granted Mountain V Oil & Gas Inc. the right to operate and produce gas from existing wells located on the site, provided that gas is found in paying quantities. We receive 16% of the market value of the gas at the wellhead as royalties and also receive gas of 250,000 cubic feet at no charge from each well per annum. Mountain V currently purchases such gas from us at the market value at the wellhead.

ITEM 3. LEGAL PROCEEDINGS

No material legal proceedings are presently pending against us.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

All the partners' equity is, as of the date hereof, owned by Mission Energy Westside Inc. and Chestnut Ridge Energy Co. There is no market for our partnership interests.

Dividends will be paid when declared by our general partner. We paid cash dividends to our partners totaling $138 million in 2001 and none in 2000.

ITEM 6. SELECTED FINANCIAL DATA

The following table includes a summary of our financial data for the years ended December 31, 2001, 2000 and 1999, respectively. We were formed on October 31, 1998 and had no significant activity during 1998. On March 18, 1999, we acquired the facilities for a purchase price of approximately $1.8 billion. Accordingly, the 1999 summary financial data relates to the activities from March 18, 1999 through December 31, 1999. The summary financial data were derived from our audited financial statements and are qualified in their entirety by the more detailed information and financial statements, including notes to these financial statements, included or incorporated by reference in this annual report.

	Years Ended December 31,		
	2001	2000	1999
	(in thousands)		
INCOME STATEMENT DATA			
Operating revenues	$ 494,008	$ 421,369	$ 325,752

Operating expenses	304,443	288,547	218,688
Operating income	189,565	132,822	107,064
Interest and other income (loss)	(412)	2,269	1,040
Interest expense	(139,038)	(138,654)	(103,814)
Income (loss) before income taxes and extraordinary item	50,115	(3,563)	4,290
Provision (benefit) for income taxes before extraordinary item	21,847	(391)	2,239
Income (loss) before extraordinary item	28,268	(3,172)	2,051
Extraordinary gain (loss) on early extinguishment of debt, net of tax of $4,393 and ($2,082)	5,701	–	(2,865)
Net income (loss)	$ 33,969	$ (3,172)	$ (814)

	December 31,		
	2001	2000	1999
	(in thousands)		
BALANCE SHEET DATA			
Assets	$ 2,336,648	$ 2,156,559	$ 2,021,858
Current liabilities	114,074	81,811	74,701
Long-term debt to affiliates	605,591	1,801,167	1,700,819
Lease financing	1,498,697	–	–
Other long-term obligations	25,502	76,766	46,351
Partners' equity	92,784	196,815	199,987

	Years Ended December 31,		
	2001	2000	1999
	(in thousands)		
CASH FLOW DATA			
Cash provided by (used in) operating activities	$ (17,211)	$ 17,000	$ 84,597
Cash provided by (used in) financing activities	(531,735)	99,242	1,883,473
Cash provided by (used in) investing activities	568,331	(141,580)	(1,923,616)

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS AND FINANCIAL CONDITION

The following discussion contains forward-looking statements that reflect EME Homer City Generation L.P.'s current expectations and projections about future events based on our knowledge of present facts and circumstances and our assumptions about future events. In this annual report, the words "expects," "believes," "anticipates," "estimates," "intends," "plans" and variations of these words and similar expressions are intended to identify forward-looking statements. These statements necessarily involve risks and uncertainties that could cause actual results to differ materially from those anticipated. The information contained in this discussion is subject to change without notice. Unless otherwise indicated, the information presented in this section is with respect to EME Homer City Generation L.P.

General

We were formed on October 31, 1998 as a Pennsylvania limited partnership among Chestnut Ridge Energy Company, as a limited partner with a 99 percent interest, and Mission Energy Westside Inc., as a general partner with a 1 percent interest. Both Chestnut Ridge Energy and Mission Energy Westside are wholly-owned subsidiaries of Edison Mission Holdings Co., a wholly-owned subsidiary of Edison Mission Energy, which is an indirect wholly-owned subsidiary of Edison International. We were formed for the purpose of acquiring, owning and operating three coal-fired electric generating units and related facilities (the "Homer City facilities") located near Pittsburgh, Pennsylvania for the purpose of producing electric energy. Although we were formed on October 31, 1998, we had no significant activity prior to the acquisition of the Homer City facilities.

On March 18, 1999, we completed the acquisition of 100% of the ownership interests in the Homer City facilities from GPU Inc. and New York State Electric & Gas Corporation, and assumed certain liabilities of the former owners. The acquisition was financed through capital contributions by Chestnut Ridge Energy and Mission Energy Westside of approximately $273 million, and a loan of approximately $1.7 billion from Edison Mission Finance Co., a wholly-owned subsidiary of Edison Mission Holdings. The acquisition has been accounted for utilizing the purchase method. The purchase price was allocated to the assets acquired and liabilities assumed based upon their respective fair market values.

On December 7, 2001, we completed a sale-leaseback of the Homer City facilities to third-party lessors for an aggregate purchase price of $1.591 billion, made up of $782 million in cash and assumption of debt (the fair value of which was $809.3 million). This transaction has been accounted for as a lease financing for accounting purposes. See "Notes to Financial Statements–Note 3, Sale-Leaseback Transaction." In connection with the sale-leaseback transaction, our partnership agreement was amended to, among other things, change the ownership interests in us to 99.9 percent for Chestnut Ridge Energy and 0.1 percent for Mission Energy Westside.

We derive revenue from the sale of energy and capacity into the Pennsylvania-New Jersey-Maryland Power Pool, or PJM, and the New York Independent System Operator, or NYISO, and from bilateral contracts with power marketers and load serving entities within PJM, NYISO and the surrounding markets. We have entered into a contract with a marketing affiliate for the sale of energy and capacity from the Homer City facilities, which enables this marketing affiliate to engage in forward sales and hedging. Under this contract, we pay the marketing affiliate fees of $0.02/MWh plus emission allowance fees.

Results of Operations

As indicated above, we acquired the Homer City facilities on March 18, 1999 and, accordingly, the 1999 results of operations includes only nine-and-a-half months of activity.

Operating Revenues

Operating revenues increased $72.6 million in 2001 compared to 2000, and increased $95.6 million in 2000 compared to 1999. The 2001 increase was attributable to increased production and higher energy prices. The 2000 increase resulted primarily from having a full year of operation at the facilities compared to only nine-and-a-half months of activity in 1999. Energy and capacity sales were made through contracts with our marketing affiliate.

We generated 12,922, 11,796 and 9,823 GWhr of electricity during 2001, 2000 and 1999, respectively, and had an availability factor of 87.4%, 80.2% and 86.8% during these periods. The availability factor is determined by the number of megawatt hours we are available to generate electricity divided by the number of hours in the period. We are not available during periods of planned and unplanned maintenance. We generally refer to unplanned maintenance as a forced outage. We had a forced outage rate of 4.5%, 6.1% and 6.3% during 2001, 2000 and 1999, respectively. The availability factor increased in 2001 from 2000 due to lower forced outages and planned maintenance. The availability factor decreased in 2000 from 1999 primarily due to higher planned outages that were needed to complete our environmental improvements.

The weighted average price for energy was $33.07/MWh, $31.63/MWh and $29.82/MWh during 2001, 2000 and 1999, respectively. The 2001 and 2000 increases were due to higher PJM market prices and higher prices obtained through forward energy contracts. See "−Market Risk Exposures−Commodity Price Risk" for further discussion of PJM market prices.

Due to higher electric demand resulting from warmer weather during the summer months, electric revenues generated from the Homer City facilities are substantially higher during the third quarter.

Loss from price risk management activities decreased $0.1 million in 2001 compared to 2000, and increased $0.5 million in 2000 compared to 1999. As a result of the implementation of SFAS No. 133, a small portion of our forward power purchase and sales contracts were recorded as derivatives at fair value. The changes in fair value are recognized as income (loss) from price risk management.

Operating Expenses

Operating expenses increased $15.9 million in 2001 compared to 2000, and increased $69.9 million in 2000 compared to 1999. Operating expenses consisted of expenses for fuel, plant operations, depreciation and amortization, and administrative and general expenses. The change in the components of operating expenses is discussed below.

Fuel costs increased $4.7 million in 2001 compared to 2000, and increased $39.3 million in 2000 compared to 1999. The 2001 increase is due to increased production offset by lower average fuel prices. The 2000 increase resulted primarily from having only nine-and-a-half months of activity in 1999. The average price of delivered coal per ton was $27.02, $28.95 and $31.12 during 2001, 2000 and 1999, respectively. The decrease in the average price of delivered coal per ton is due to the changes in the type of coal being used in operations. The Homer City facilities benefit from access by truck to significant native coal reserves located within the western Pennsylvania portion of the North Appalachian region. Up to 95% of the coal used by Units 1 and 2 at the facilities is supplied under existing contracts with regional mines that are located within 100 miles of the facilities, while the remainder is purchased on the spot market. The coal for the units that is purchased from local mines is cleaned by the coal-cleaning facility to reduce sulfur and ash content.

Plant operations costs increased $3.0 million in 2001 compared to 2000, and increased $24.3 million in 2000 compared to 1999. Plant operations costs include labor and overhead, contract services, parts and supplies and other administrative costs. The 2001 increase is primarily due to increased property insurance costs from higher premiums. The 2000 increase resulted from having only nine-and-a-half months of activity in 1999, and higher maintenance expenses during planned outages. Planned maintenance expense varies based on a number of factors, including timing of our maintenance on major pieces of equipment, including the boiler and turbine on each unit, which is generally planned for three-year and six-year cycles. Our major maintenance expenditures are expected to be similar during the next several years.

Depreciation and amortization increased $4.5 million in 2001 compared to 2000, and increased $10.1 million in 2000 compared to 1999. Prior to the completion of the sale-leaseback transaction on December 7, 2001, depreciation and amortization expense primarily related to the acquisition of the Homer City facilities, which were being depreciated over 39 years from the date of acquisition. As a result of the sale-leaseback, future depreciation and amortization of our leasehold interest and emission credits will be based on the minimum term of the leases, which is 33.67 years.

Administrative and general expenses were $1.8 million, $(1.9) million and $1.9 million during 2001, 2000 and 1999, respectively. Administrative and general expenses primarily include the accrual for Pennsylvania state capital tax and reflect a reduction in our accrual in 2000.

Other Income (Expense)

Interest expense was $139.0 million, $138.7 million and $103.8 million during 2001, 2000 and 1999, respectively. Interest expense has historically been due to the indebtedness incurred to acquire the Homer City facilities. As a result of the sale-leaseback, future interest expense

will primarily be from the lease financing, plus outstanding borrowings on our subordinated revolving loan agreement with Edison Mission Finance.

Interest and other income was $0.4 million, $3.0 million and $1.0 million during 2001, 2000 and 1999, respectively. Interest and other income primarily relates to interest earned on cash and cash equivalents.

Provision (Benefit) for Income Taxes

We had effective tax provision (benefit) rates before extraordinary item of 43.6%, (11.0%) and 52.2% in 2001, 2000 and 1999, respectively. During 2000 and 1999, our partners were responsible for Pennsylvania state income taxes. Effective January 1, 2001, our status in Pennsylvania changed to a corporation due to changes in Pennsylvania tax regulations, which means that we are now subject to Pennsylvania state income taxes. As a result, we provided for $6 million in Pennsylvania state income taxes during 2001. Our effective tax provision (benefit) rate varies from the federal statutory rate of 35% due to state income taxes.

Extraordinary Gain (Loss)

As a result of the sale-leaseback transaction on December 7, 2001, we recorded an extraordinary gain in 2001 of $5.7 million, net of income tax of $4.4 million, attributable to the extinguishment of debt that was assumed in the transaction. The early repayment of a $800 million term loan in May 1999 resulted in an extraordinary loss of $2.9 million in 1999, net of income tax benefit of $2.1 million, attributable to the write-off of unamortized debt issue costs.

Related Party Transactions

We have entered into energy and emission allowance sales agreements with a marketing affiliate for the sale of energy and capacity at a price equal to (i) the price which a third-party purchaser of the capacity or energy has agreed to pay less (ii) $.02 per MWh of capacity and energy plus an emission allowance fee. Payment is due and payable within thirty days from billing which is rendered on a monthly basis. For the years ended December 31, 2001 and 2000, the amount due from the marketing affiliate was $22.7 million and $69.7 million, respectively. The net fees earned by the marketing affiliate were $0.9 million, $1.5 million and $0.2 million for the years ended December 31, 2001, 2000 and 1999, respectively.

During 2001, we entered into an option for installed capacity, and five transactions, including the exercise of the aforementioned option, for installed capacity with our marketing affiliate. Each transaction was at fair market value for such installed capacity at the time. Payments for the option and the five transactions amounted to approximately $29.5 million.

We entered into several transactions in 2001 through our marketing affiliate for the purchase of SO(2) allowances from another affiliate of Edison Mission Energy. All transactions were completed at market price on the date of the transaction. Total consideration paid was $10.2 million.

We entered into agreements with Edison Mission Energy Services, Inc., an affiliate, to provide fuel and transportation services related to coal and fuel oil. Under the terms of these agreements, we pay a service fee of $.06 for each ton of coal delivered and $.05 for each barrel of fuel oil delivered, plus the actual cost of the commodities. The amount billable under this agreement for each of the three years ended December 31, 2001, 2000 and 1999 was $0.3 million.

We have obtained financing from an affiliate in connection with our acquisition of the Homer City facilities. For further discussion, see "Contractual Obligations, Commitments and Contingencies−Long-Term Debt to Affiliate."

Certain administrative services such as payroll, employee benefit programs, insurance and information technology are shared among all affiliates of Edison International and the costs of these corporate support services are allocated to all affiliates. The cost of services provided

by Edison International and Edison Mission Energy, including those related to us, are allocated based on one of the following formulas: percentage of the time worked, equity in investment and advances, number of employees, or multi-factor (operating revenues, operating expenses, total assets and total employees). We participate in a common payroll and benefit program with all Edison International employees. In addition, we are billed for any direct labor and out-of-pocket expenses for services directly requested for the benefit of the partnership. We believe the allocation methodologies are reasonable. We made reimbursements for the cost of these programs and other services totaling $26.8 million, $30.0 million and $18.1 million for the years ended December 31, 2001, 2000 and 1999, respectively.

We participate in the insurance program of Edison International, including property, general liability, workers compensation and various other specialty policies. Our insurance premiums are generally based on our share of risk related to each policy. In connection with the property insurance program, a portion of the risk is reinsured by a captive insurance subsidiary of Edison International. Under these reinsurance policies, we are entitled to receive a premium refund to the extent that our loss experience is less than estimated.

We have also recorded a receivable from Edison Mission Energy of $58.5 million and $59.4 million at December 31, 2001 and 2000, respectively, related to the tax due under the tax sharing agreement. See "−Note 2. Summary of Significant Accounting Policies−Income Taxes" for further discussion of the tax sharing agreement.

Historically, we have not been charged for an allocation of the Chicago Office of Edison Mission Energy's Americas Region since our inception in late 1999 due to our principal focus on power plants in Illinois. The Chicago Office has technical and managerial responsibility for our operations. However, we may be charged in the future for a share of these costs. If these costs were allocated to us, they would be recorded as a non-cash charge against our operations as an in-kind contribution of services through our parent. Accordingly, there would be no cash impact of an allocation of such costs on our operations. We do not believe that we would incur a material amount of additional costs to operate our Homer City plant on the basis of an unaffiliated relationship with Edison Mission Energy.

Liquidity and Capital Resources

At December 31, 2001, we had cash and cash equivalents of $38.5 million compared to $19.1 million at December 31, 2000. Net working capital at December 31, 2001 was $87.7 million compared to $107.6 million at December 31, 2000.

Net cash provided by operating activities decreased $34.2 million in 2001 compared to 2000 and decreased $67.6 million in 2000 compared to 1999. The 2001 change is primarily due to the recognition of a taxable gain, payment of a swap deposit with a bank and payment of affiliate interest, offset by the timing of working capital requirements. The 2000 change is due to the timing of working capital requirements.

Net cash used in financing activities totaled $531.7 million in 2001, compared to net cash provided by financing activities of $99.2 million and $1.9 billion in 2000 and 1999, respectively. In 2001, the sale-leaseback transaction enabled us to pay down long-term debt and pay dividends to our partners. In 2000, net cash provided by financing activities was primarily due to borrowings of long-term debt. In 1999, net cash provided by financing activities was primarily due to borrowings entered into in order to acquire the Homer City facilities.

Net cash provided by investing activities totaled $568.3 million in 2001, compared to net cash used in investing activities of $141.6 million and $1.9 billion in 2000 and 1999, respectively. In 2001, net cash provided by investing activities was due to proceeds received from the sale-leaseback transaction, partially offset by a deposit to a restricted cash account to support the lease, and capital expenditures. In 2000, net cash used in investing activities was due to capital expenditures. In 1999, net cash used in investing activities was due to the purchase of the Homer City facilities and capital expenditures.

Capital expenditures were $83.2 million, $141.6 million and $105.0 million for the years ended December 31, 2001, 2000 and 1999, respectively, primarily related to the addition of a flue gas desulfurization system on Unit 3 and the selective catalytic reduction systems on all three units. These capital expenditures will produce environmental improvements and are expected to enhance the economics of our units by reducing fuel costs, including reducing the need for purchases of nitrogen oxide and sulfur dioxide emission allowances. The installation of

these improvements is scheduled to be completed in 2002. See "Recent Developments" for discussion of an outage related to a collapse of ductwork on Unit No. 3. We expect to spend approximately $27 million in 2002 on capital expenditures to the Homer City facilities, including environmental expenditures disclosed under "−Environmental Matters and Regulations."

Under the participation agreements entered into as part of the sale-leaseback transaction, our ability to enter into specified transactions and to engage in specified business activities, including financing and investment activities, is subject to significant restrictions. These restrictions could affect, and in some cases significantly limit or prohibit, our ability to, among other things, merge, consolidate or sell our assets, create liens on our properties or assets, enter into non-permitted trading activities, enter into transactions with our affiliates, incur indebtedness, create, incur, assume or suffer to exist guarantees or contingent obligations, make restricted payments to our partners, make capital expenditures, own subsidiaries, liquidate or dissolve, engage in non-permitted business activities,

sublease our leasehold interests in the facilities or make improvements to the facilities. Accordingly, our liquidity is substantially based on our ability to generate cash flow from operations. If we are unable to generate cash flow from operations necessary to meet our obligations, we will have limited ability to obtain additional capital, unless our partners provide additional funding, although they are under no legal obligation to do so.

Our bank accounts are largely under the control of a collateral agent that operates in accordance with a security deposit agreement executed as part of the sale-leaseback transaction. Accordingly, our access to most of the cash in our bank accounts is limited to specific uses set forth in this agreement. The rent payments that we owe under the sale-leaseback are comprised of two components, a senior rent portion and an equity rent portion. The senior rent is used mainly for debt service to the holders of the senior secured bonds, while the equity rent is paid to the owner lessors. If we do not meet specified cash flow coverage ratios while the lease debt is outstanding, we will not pay the equity portion of the rent to the owner lessors. Accordingly, this provision does not permit the lessor to terminate the lease in the event of non-payment of the equity portion of the rent while the lease debt is outstanding.

Contractual Obligations, Commitments and Contingencies

The following table summarizes the majority of our contractual obligations and commercial commitments as of December 31, 2001.

	2002	2003	2004	2005	2006	Thereafter	Total
				(in millions)			
Contractual Obligations							
Long-term debt to affiliate	$ −	$ −	$ −	$ −	$ −	$ 605.6	$ 605.6
Lease financing	175.0	174.0	142.1	151.9	151.6	2,583.3	3,377.9
Operating lease obligations	0.4	0.4	0.3	0.2	−	−	1.3
Fuel supply contracts	160.4	98.5	90.4	66.8	39.8	16.5	472.4
Total Contractual Cash Obligations	$ 335.8	$ 272.9	$ 232.8	$ 218.9	$ 191.4	$ 3,205.4	$ 4,457.2
Commercial Commitments							
Environmental improvements	$ 17.8	$ −	$ −	$ −	$ −	$ −	$ 17.8

Long-Term Debt to Affiliate

As part of the purchase of the Homer City facilities, we obtained loans from Edison Mission Finance. A portion of the borrowings outstanding was repaid with the proceeds from the sale-leaseback. Under the terms of our loan with Edison Mission Finance, the principal

amount is due in 2014, with no scheduled repayment prior to its maturity. This loan is subordinated to our lease rent obligations with interest and principal payments subject to limitations based on our ability to make distributions under the lease.

Lease Financing

On December 7, 2001, we completed a sale-leaseback of our facilities to third-party lessors for an aggregate purchase price of $1.591 billion, made up of $782 million in cash and assumption of debt (the fair value of which was $809.3 million). Under the terms of the 33.67-year leases, we are obligated to make semi-annual lease payments on each April 1 and October 1. The gain recognized on the sale of the facilities has been deferred and is being amortized over the term of the leases.

Fuel Supply Contracts

We have entered into several fuel purchase agreements with various third-party suppliers for the purchase of bituminous steam coal and fuel oil. These contracts call for the purchase of a minimum quantity over the term of the contracts, which extend from one to six years from December 31, 2001, with an option at our discretion to purchase additional amounts as stated in the agreements.

Environmental Improvements

We have contracted with a division of ABB Flakt, now Alstom Power, to make environmental capital improvements to our generating units. The contractor was retained to construct a limestone-based, wet scrubber flue gas desulfurization system at Unit 3 and a selective catalytic reduction system at each of the three units. These improvements are expected to enable our generating units to comply with Phase II of Title IV of the Clean Air Act regarding sulfur oxide emissions, the Pennsylvania nitrogen oxide allowance regulations and Pennsylvania's response to the Environmental Protection Agency's State Implementation Plan Call regarding nitrogen oxide emissions. These improvements are estimated to cost approximately $270 million, which include a fixed price, turnkey engineering, procurement and construction contract, project management costs and other project costs. The wet scrubber flue gas desulfurization system on Unit 3 has been installed and is undergoing acceptance testing. The selective catalytic reduction system on Unit 3 was installed but went out of service on February 10, 2002 due to a collapse of ductwork. See "−Recent Developments" for further discussion of this event. The selective catalytic reduction system on Units 1 and 2 are scheduled to be installed in 2002. We expect to spend approximately $17.8 million during 2002 on the remaining capital expenditures related to these improvements.

Contingencies

Our general partner, Mission Energy Westside, has entered into an interconnection agreement with NYSEG and Penelec to provide interconnection services necessary to interconnect the Homer City Station with NYSEG and Penelec's transmission systems. Unless terminated earlier in accordance with its terms, the interconnection agreement will terminate on a date mutually agreed to by Mission Energy Westside, NYSEG and Penelec. This date will not exceed the retirement date of the Homer City units. NYSEG and Penelec have agreed to extend such interconnection services (but not the expiration of the agreement) to modifications, additions, upgrades or repowering of the Homer City units. Mission Energy Westside is required to compensate NYSEG and Penelec for all reasonable costs associated with any modifications, additions or replacements made to NYSEG or Penelec's interconnection facilities or transmission systems in connection with any modification, addition, upgrade or repowering to the Homer City units.

In connection with the sale-leaseback transaction, we have entered into a swap agreement with a bank in order to more effectively match our cash flow, which is higher during the summer months when energy prices are higher. Under the terms of this swap, we made an initial deposit of $37 million with the bank in December 2001. Beginning in April 2002 through April 2014, the bank will make a swap payment to us in April of each year and we will make a swap payment to the bank in October of each year. The amount of payments are designed to reverse the semi-annual payments due under the lease such that we effectively have lower cash obligations in April and higher cash obligations in October. The implicit interest rate included in the swap is LIBOR during periods that we have a net deposit with the bank, and LIBOR plus 5% during periods that we have a net loan with the bank.

Market Risk Exposures

Our primary market risk exposures arise from changes in electricity and fuel prices. We manage these risks in part by using derivative financial instruments in accordance with established policies and procedures.

Commodity Price Risk

Our revenues and results of operations are dependent upon prevailing market prices for energy, capacity and ancillary services in the PJM, NYISO and other competitive markets. The following table depicts the average market prices per megawatt hour in PJM during the past three years:

	24-Hour PJM Prices*		
	2001	2000	1999
January	$ 36.66	$ 23.15	$ 19.92
February	29.53	23.84	16.51
March	35.05	21.97	19.60
April	34.58	23.79	21.43
May	28.64	28.41	22.55
June	26.61	23.06	36.93
July	30.21	23.53	90.10
August	43.99	29.01	28.87
September	22.44	25.12	21.54
October	21.95	29.20	19.80
November	19.58	30.68	16.48
December	19.66	44.63	18.07
Yearly Average	$ 29.07	$ 27.20	$ 27.65

* Prices are calculated using historical hourly prices provided on the PJM-ISO web-site.

As shown on the above table, the average market prices during the last three months of 2001 are below the average market prices during the last three months of 2000. In addition, the forecasted calendar year market prices in PJM beginning January 2, 2002 through March 12, 2002 range from approximately $23 to $28. Among the factors that may influence future market prices for energy, capacity and ancillary services in PJM and NYISO are:

prevailing market prices for fuel oil, coal and natural gas and associated transportation costs;

the extent of additional supplies of capacity, energy and ancillary services from current competitors or new market entrants, including the development of new generation facilities;

transmission congestion in PJM and/or NYISO;

the extended operation of nuclear generating plants in PJM and NYISO beyond their presently expected dates of decommissioning;

weather conditions prevailing in PJM and NYISO from time to time; and

the rate of growth in electricity usage as a result of factors such as regional economic conditions and the implementation of conservation programs.

Our ability to make payments of lease rent on the facility leases is dependent on revenues generated by the facilities, which depend on their performance level and on market conditions for the sale of capacity and energy. These market conditions are beyond our control.

Our risk management policy allows for the use of derivative financial instruments through our marketing affiliate to limit financial exposure to energy prices for non-trading purposes. Use of these instruments exposes us to commodity price risk, which includes potential losses that can arise from a change in the market value of a particular commodity. Commodity price risk exposures are actively monitored to ensure compliance with our risk management policies. Policies are in place which limit the amount of total net exposure we may enter into at any point in time. Procedures and systems are in place that allow for monitoring of all commitments and positions with daily reporting to senior management. Our marketing affiliate performs a series of "value at risk" analyses in our daily business to measure, monitor and control our overall market risk exposure. The use of value at risk analysis allows us to aggregate overall risk, compare risk on a consistent basis and identify the different elements of risk. Value at risk measures the worst expected loss over a given time interval, under normal market conditions, at a given confidence level. Given the inherent limitations of value at risk analysis and reliance upon a single risk measurement tool, our marketing affiliate supplements this approach with the use of stress testing and worst-case scenario analysis, as well as stop loss limits and counterparty credit exposure monitoring.

The following table summarizes the fair values for outstanding financial instruments used for price risk management activities by instrument type:

	December 31,	
	2001	2000
Commodity price:		
Forwards	$ 35,881	$ (117,803)
Options	–	1,811
Swaps	–	(892)

The fair value of forward commodity contracts at December 31, 2001 was an asset compared to a liability at December 31, 2000. The substantial change in fair value of the outstanding contracts at the end of each of these periods is primarily due to the following:

Market prices for power, primarily for the summer of 2001, were higher than the rates set forth in the forward contracts outstanding at December 31, 2000.

Market prices for power, primarily for the summer of 2002, were lower than the rates set forth in the forward contracts outstanding at December 31, 2001.

A 10% increase in electricity forward prices would result in a $12.9 million decrease in the fair market value of energy contracts at December 31, 2001 entered into by our marketing affiliate. A 10% decrease in electricity forward prices would result in a $12.9 million increase in the fair market value of energy contracts at December 31, 2001 entered into by our marketing affiliate.

Interest Rate Risk

We have mitigated the risk of interest rate fluctuations by obtaining fixed rate financing on our outstanding long-term debt with our affiliate. We do not believe that interest rate fluctuations will have a materially adverse effect on our financial position or results of operations.

Risks Related to Our Business

Our ability to make payments of lease rent under the facility leases is dependent on the market conditions for the sale of capacity and energy.

Our ability to make payments of lease rent on the facility leases is dependent on revenues generated by the facilities, which depend on their performance level and on market conditions for the sale of capacity and energy. These market conditions are beyond our control.

General operating risks may decrease or eliminate the revenues generated by the facilities or increase their operating costs.

The operation of power generation facilities involves many operating risks, including:

- performance below expected levels of output or efficiency;
- interruptions in fuel supply;
- disruptions in the transmission of electricity;
- breakdown or failure of equipment or processes;
- imposition of new regulatory requirements;
- violation of permit requirements; and
- operator error or catastrophic events like fires, earthquakes, explosions, floods or other similar occurrences affecting power generation facilities.

Although we employ experienced operating personnel to operate the facilities and will maintain insurance, including business interruption insurance, to mitigate the effects of the operating risks described above, we cannot assure you that the occurrence of one or more of the events listed above would not significantly decrease or eliminate revenues generated by the facilities or significantly increase the costs of operating them. A decrease or elimination in revenues generated by the facilities or an increase in the costs of operating them could decrease or eliminate funds available to make lease rent payments.

The revenues generated by the operation of the facilities are subject to market demand for energy, capacity and ancillary services, which is beyond our control.

We derive revenue from the sale of energy and capacity into the Pennsylvania-New Jersey-Maryland power market, which we refer to as PJM, and the New York Independent System Operator, which we refer to as NYISO, and from bilateral contracts with power marketers and load serving entities within PJM, NYISO and the surrounding markets. Participants in PJM and NYISO are not guaranteed any specified rate of return on their capital investments through recovery of mandated rates payable by purchasers of electricity. Therefore, with the exception of nominal revenue, our revenues and results of operations are dependent upon prevailing market prices for energy, capacity and ancillary services in the PJM, NYISO and other competitive markets.

Among the factors that influence the market prices for energy, capacity and ancillary services in PJM and NYISO are:

- prevailing market prices for fuel oil, coal and natural gas and associated transportation costs;
- the extent of additional supplies of capacity, energy and ancillary services from current competitors or new market entrants, including the development of new generation facilities that may be able to produce electricity less expensively;
- transmission congestion in PJM and/or NYISO;
- the extended operation of nuclear generating plants in PJM and NYISO beyond their presently expected dates of decommissioning;
- weather conditions prevailing in PJM and NYISO from time to time; and
- the possibility of a reduction in the projected rate of growth in electricity usage as a result of factors like regional economic conditions and the implementation of conservation programs.

All of the factors listed above are beyond our control.

Our business is subject to substantial regulations and permitting requirements, and our revenues may decrease or our operating costs may increase because of our inability to comply with existing regulations or requirements or changes in applicable regulations or requirements.

Our business is subject to extensive energy and environmental regulation by federal, state and local authorities. We are required to comply with numerous laws and regulations and to obtain numerous governmental permits in the operation or ownership of the facilities, as the case may be. We cannot assure you that existing regulations will not be revised or reinterpreted, that new laws and regulations will not be adopted or become applicable to us or the facilities or that future changes in laws and regulations will not have a detrimental effect on our business.

We believe that we have obtained all material energy-related federal, state and local approvals currently required to operate the facilities. Although not currently required, additional regulatory approvals may be required in the future due to a change in laws and regulations, a change in our customers or for other reasons. We cannot assure you that we will be able to obtain all required regulatory approvals that we do not yet have or that we may require in the future, or that we will be able to obtain any necessary modifications to existing regulatory approvals

or maintain all required regulatory approvals. If there is a delay in obtaining any required regulatory approvals or if we fail to obtain and comply with any required regulatory approvals, the operation of the facilities or the sale of electricity to third parties could be prevented or subject to additional costs.

We are required to comply with numerous statutes, regulations and ordinances relating to the safety and health of employees and the public, the protection of the environment and land use. We believe that we have obtained all material environmental and land use permits and approvals currently required to operate the facilities. The environmental, land use and health and safety statutes, regulations and ordinances are constantly changing. We may incur significant additional costs to comply with new requirements. If we fail to comply with existing or new requirements, we could be subject to civil or criminal liability and the imposition of clean-up liens or penalties. In acquiring the facilities, we assumed, subject to some limited exceptions, all on-site liabilities associated with the environmental condition of the facilities, regardless of when the liabilities arose and whether known or unknown, and generally agreed to indemnify the former owners of the facilities for these liabilities. We cannot assure you that we will at all times be in compliance with all applicable environmental laws and regulations or that steps to bring the facilities into compliance would not materially and adversely affect our ability to make payments of lease rent under the facility leases.

One of our strategies for compliance with federal regulations regarding emissions of sulfur dioxide and federal and state regulations regarding emissions of nitrogen oxide is the construction of the environmental capital improvements to the units. A delay in the completion of these improvements or the failure of the improvements to perform to their technical specifications could adversely affect our compliance strategy and require us to purchase emissions allowances or reduce the expected levels of operation of the units. Although our contract for the construction of these environmental capital improvements contains customary performance and completion guarantees, we cannot assure you that the improvements will be completed when anticipated or whether those systems will perform at the expected levels.

Restrictions in the participation agreements and facility leases will limit or prohibit us from entering into some transactions that we otherwise might enter into.

Under the participation agreements entered into as part of the sale-leaseback transaction, our ability to enter into specified transactions and to engage in specified business activities, including financing and investment activities, is subject to significant restrictions. These restrictions could affect, and in some cases significantly limit or prohibit, our ability to, among other things, merge, consolidate or sell our assets, create liens on our properties or assets, enter into non-permitted trading activities, enter into transactions with our affiliates, incur indebtedness, create, incur, assume or suffer to exist

guarantees or contingent obligations, make restricted payments to our partners, make capital expenditures, own subsidiaries, liquidate or dissolve, engage in non-permitted business activities, sublease our leasehold interests in the facilities or make improvements to the facilities. Accordingly, our liquidity is substantially based on our ability to generate cash flow from operations. If we are unable to generate cash flow from operations necessary to meet our obligations, we will have limited ability to obtain additional capital, unless our partners provide funding, which they are under no legal obligation to do so.

In connection with the sale-leaseback transaction, we entered into a designated account representative agreement with the owner lessors which provides that, for as long as the facility leases are in effect, we will be irrevocably appointed as the designated account representatives on file with the Environmental Protection Agency or the Department of Environmental Protection, as the case may be, entitled to buy, sell and otherwise dispose of emission allowances without any payments or consideration to the owner lessors. The agreement provides that upon termination of a facility lease, the applicable owner lessor will have the right to appoint itself or any other person as our successor designated account representative for purposes of any future emission allowances not then owned by us. If a facility lease were to terminate before its expiration, this event would also terminate the account representative agreement, and we would be required to write-off any unamortized emission allowances that we would no longer control.

The insurance coverage for the facilities may not be adequate.

We are required to have insurance for the facilities, including all-risk property damage insurance, commercial general public liability insurance, boiler and machinery coverage and business interruption insurance. We cannot assure you that the insurance coverage for the facilities will be available in the future on commercially reasonable terms. We also cannot assure you that the insurance proceeds received for any loss of the facilities or any damage to the facilities will be sufficient to permit us to make any payments of rent under the facility leases.

Off-Balance Sheet Transactions

We have no significant off-balance sheet transactions.

Environmental Matters and Regulations

We are subject to environmental regulation by federal, state and local authorities in the United States. We believe that we are in substantial compliance with environmental regulatory requirements and that maintaining compliance with current requirements will not materially affect our financial position or results of operation. However, possible future developments, such as the promulgation of more stringent environmental laws and regulations, and future proceedings that may be initiated by environmental authorities, could affect the costs and the manner in which we conduct our business and could cause us to make substantial additional capital expenditures. There is no assurance that we would be able to recover these increased costs from our customers or that our financial position and results of operations would not be materially adversely affected.

Typically, environmental laws require a lengthy and complex process for obtaining licenses, permits and approvals prior to construction and operation of a project. Meeting all the necessary requirements can delay or sometimes prevent the completion of a proposed project as well as require extensive modifications to existing projects, which may involve significant capital expenditures.

State

Water Quality. Our coal-cleaning plant National Pollutant Discharge Elimination System (NPDES) permit issued in 1995 has been administratively extended in accordance with 25 PA Code

Section 92.9(b) until a new permit is issued by the Pennsylvania Department of Environmental Protection (PADEP) Bureau of Water Management. Modeling results indicate that PADEP may impose more stringent discharge limits for some contaminants at the time of renewal of these permits, which may require upgrade of our facilities' wastewater treatment systems with such approaches as reverse osmosis, ozonation, dechlorination and/or recycling of water.

We conduct ground water monitoring in a number of areas throughout the site, including active and former ash disposal sites, wastewater and runoff settling and drainage ponds and a coal refuse disposal site. On September 27, 2001, the PADEP responded to an Assessment Report by stating that no further groundwater assessment or abatement is required for the industrial waste treatment ponds. To date, PADEP has not requested that any additional remediation actions be performed at the site. Our facilities have a drinking water treatment system designed to meet applicable potable water standards. Recent tests indicate that our facilities' drinking water supply meets these standards.

Helvetia Discharges. Our generating units were originally constructed as a mine-mouth generating station, where coal produced from two adjacent deep mines was delivered directly to the units by coal conveyors. The two adjacent deep mines were owned by Helen Mining Company, a subsidiary of the Quaker State Corporation, and Helvetia, a subsidiary of the Rochester and Pittsburgh Coal Company. Both Helen Mining and Helvetia developed mine refuse sites, water treatment facilities and other mine related facilities on the site. The Helen Mining mine was closed in the early 1990s, and the mine surface operations and maintenance shop areas were restored before Helen Mining left the site. Helen Mining has continuing mine water and refuse site leachate treatment obligations and remains obligated to perform any cleanup required with respect to its refuse site. Helvetia's on-site mine was closed in 1995. As a result of the cessation of its on-site mining activities, Helvetia has continuing mine discharge and refuse site leachate discharge treatment obligations that it performs using water treatment facilities owned by Helvetia and located on the site. Bonds posted by Helvetia may not be sufficient to fund Helvetia's obligations in the event of Helvetia's failure to comply with its mine-related permits at the site. Current annual operating costs for Helvetia's treatment

systems are estimated to be approximately $1 million. Should Helvetia default on its treatment obligations, the government may attempt to require us to fund these commitments.

Penn Hill No. 2 and Dixon Run No. 3 Discharges. In connection with our purchase of the Homer City facilities, we acquired the Two Lick Creek Dam and Reservoir. Acid mine drainage discharges from the Penn Hill No. 2 and Dixon Run No. 3 inactive deep mines were collected and partially treated on the reservoir property by Stanford Mining Company before being pumped off the property for additional treatment at the nearby Chestnut Ridge Treatment Plant. The mining company subsequently filed for bankruptcy, however, it operated the collection and treatment system until May 1999, when it ceased to do so claiming its assets were allegedly depleted.

PADEP initially advised us that we were potentially liable for treating the two discharges solely because of our ownership of the property from which the discharges emanated. Without any admission of our liability, we voluntarily entered into a letter agreement to fund the operation of the collection and treatment system for an interim period until the agency completed its investigation of potentially liable parties and alternatives for permanent treatment of the discharges were evaluated. After examining property records, PADEP concluded that we are only responsible for treating the Dixon Run No. 3 discharge. The agency completed its investigation of other potentially responsible parties, particularly mining companies that previously operated the two mines, and has notified us that they plan no further action.

A draft consent decree agreement that addresses remedial responsibilities for the two discharges has been prepared by PADEP. Under its terms, we are responsible for designing and implementing a permanent system to collect and treat the Dixon Run No. 3 discharge. We will continue our funding of the existing collection and treatment system until the Dixon Run No. 3 treatment system becomes

operational. The state has provided funding to the Blacklick Creek Watershed Association to develop and operate a collection and treatment system for the Penn Hill No. 2 discharge. The Watershed Association has completed construction and the Penn Hill No. 2 system is in operation.

The current cost of operating the collection and treatment system is approximately $15,000 per month. We expect that the costs of operation will be reduced by 30% to 40% as a result of the completion of the Penn Hill No. 2 system. We are evaluating options for permanent treatment of the Dixon Run No. 3 discharge, including a passive system involving wetlands treatment. The total cost of a passive treatment system is estimated to be $1 million, but its operational costs are considerably less than those of a conventional chemical treatment system.

Federal−United States of America

Clean Air Act. We expect that compliance with the Clean Air Act and the regulations and revised State Implementation Plans developed as a consequence of the Act will result in increased capital expenditures and operating expenses. For example, we expect to spend approximately $17.8 million in 2002 to complete installation of the upgrades to the environmental controls at our facilities to reduce sulfur dioxide and nitrogen oxide emissions.

Mercury MACT Determination. On December 20, 2000, the Environmental Protection Agency issued a regulatory finding that it is "necessary and appropriate" to regulate emissions of mercury and other hazardous air pollutants from coal-fired power plants. The agency has added coal-fired power plants to the list of source categories under Section 112(c) of the Clean Air Act for which "maximum available control technology" standards will be developed. Eventually, unless overturned or reconsidered, the Environmental Protection Agency will issue technology-based standards that will apply to every coal-fired unit owned by us or our affiliates in the United States. This section of the Clean Air Act provides only for technology-based standards, and does not permit market trading options. Until the standards are actually promulgated, the potential cost of these control technologies cannot be estimated, and we cannot evaluate the potential impact on the operations of our facilities.

National Ambient Air Quality Standards. A new ambient air quality standard was adopted by the Environmental Protection Agency in July 1997 to address emissions of fine particulate matter. It is widely understood that attainment of the fine particulate matter standard may require reductions in nitrogen oxides and sulfur dioxides, although, under the time schedule announced by the Environmental Protection

Agency when the new standard was adopted, non-attainment areas were not to have been designated until 2002 and control measures to meet the standard were not to have been identified until 2005. In May 1999, the United States Court of Appeals for the District of Columbia Circuit held that Section 109(b)(1) of the Clean Air Act, the section of the Clean Air Act requiring the promulgation of national ambient air quality standards, as interpreted by the Environmental Protection Agency, was an unconstitutional delegation of legislative power. The Court of Appeals remanded both the fine particulate matter standard and the revised ozone standard to allow the Environmental Protection Agency to determine whether it could articulate a constitutional application of Section 109(b)(1). On February 27, 2001, the Supreme Court, in *Whitman v. American Trucking Associations, Inc*., reversed the Circuit Court's judgment on this issue and remanded the case back to the Court of Appeals to dispose of any other preserved challenges to the particulate matter and ozone standards. Accordingly, as the final application of the revised particulate matter ambient air quality standard is potentially subject to further judicial proceedings, the impact of this standard on our facilities is uncertain at this time.

We believe that our facilities are in material compliance with applicable state and federal air quality requirements. Further reductions in emissions may be required for the achievement and maintenance of National Ambient Air Quality Standards for ozone and fine particulate matter and with respect to the implementation of regulations designed to reduce regional haze.

Clean Water Act–§ 316(b) Rulemakings. The Environmental Protection Agency proposed rules establishing standards for the location, design, construction and capacity of cooling water intake structures at new facilities, including steam electric power plants. Under the terms of a consent decree entered into by the U.S. District Court for the Southern District of New York in *Riverkeeper, Inc. v. Whitman,* regulations for new facilities were adopted by November 9, 2001. Pursuant to the consent decree, the agency proposed similar regulations for existing facilities on February 28, 2002, and is required to finalize those regulations by August 28, 2003. Until the final standards are promulgated, we cannot determine their impact on our facilities or estimate the potential cost of compliance.

Comprehensive Environmental Response, Compensation, and Liability Act. Under various federal, state and local environmental laws and regulations, a current or previous owner or operator of any facility, including an electric generating facility, may be required to investigate and remediate releases or threatened releases of hazardous or toxic substances or petroleum products located at that facility, and may be held liable to a governmental entity or to third parties for property damage, personal injury and investigation and remediation costs incurred by these parties in connection with these releases or threatened releases. Many of these laws, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, impose liability without regard to whether the owner knew of or caused the presence of the hazardous substances, and courts have interpreted liability under these laws to be strict and joint and several. The cost of investigation, remediation or removal of these substances may be substantial. In connection with the ownership and operation of our facilities, we may be liable for these costs.

In addition, persons who arrange for the disposal or treatment of hazardous or toxic substances at a disposal or treatment facility may be liable for the costs of removal or remediation of a release or threatened release of hazardous or toxic substances at that disposal or treatment facility, whether or not that facility is owned or operated by that person. Some environmental laws and regulations create a lien on a contaminated site in favor of the government for damages and costs it incurs in connection with the contamination. The owner of a contaminated site and persons who arrange for the disposal of hazardous substances at that site also may be subject to common law claims by third parties based on damages and costs resulting from environmental contamination emanating from that site. In connection with the ownership and operation of our facilities, we may be liable for these costs.

Several federal, state and local laws, regulations and ordinances also govern the removal, encapsulation or disturbance of asbestos-containing materials when these materials are in poor condition or in the event of construction, remodeling, renovation or demolition of a building. Those laws and regulations may impose liability for release of asbestos-containing materials and may provide for the ability of third parties to seek recovery from owners or operators of these properties for personal injury associated with asbestos-containing materials. In connection with the ownership and operation of our facilities, we may be liable for these costs.

Enforcement Issues. On November 3, 1999, the United States Department of Justice filed suit against a number of electric utilities for alleged violations of the Clean Air Act's New Source Review, or NSR, requirements related to modifications of air emissions sources at electric generating stations located in the southern and midwestern regions of the United States. Several states have joined these lawsuits. In addition, the United States Environmental Protection Agency has also issued administrative notices of violation alleging similar violations at additional power plants owned by some of the same utilities named as defendants in the Department of Justice lawsuit, as well as other utilities, and also issued an administrative order to the Tennessee Valley Authority for similar violations at certain of its power plants. The Environmental Protection Agency has also issued requests for information pursuant to the Clean Air Act to numerous other electric utilities, including the prior owners of the Homer City plant, seeking to determine whether these utilities also engaged in activities that may have been in violation of the Clean Air Act's NSR requirements.

To date, one utility, the Tampa Electric Company, has reached a formal agreement with the United States to resolve alleged new source review violations. Two other utilities, the Virginia Electric & Power Company and Cinergy Corp., have reached agreements in principle with the Environmental Protection Agency, although these agreements may be revisited to be consistent with anticipated NSR policy changes. In each case, the settling party has agreed to incur over $1 billion in expenditures over several years for the installation of additional pollution controls, the retirement or repowering of coal-fired generating units, supplemental environmental projects and civil penalties. These agreements provide for a phased approach to achieving required emission reductions over the next 10 to 15 years. The settling utilities have also agreed to pay civil penalties ranging from $3.5 million to $8.5 million.

In May 2001, President Bush issued a directive for a 90-day review of NSR "interpretation and implementation" by the Administrator of the Environmental Protection Agency and the Secretary of the U.S. Department of Energy. The results of the review have been postponed with release likely sometime during the first half of 2002. President Bush also directed the Attorney General to review ongoing NSR legal actions to "ensure" they are "consistent with the Clean Air Act and its regulations." The Department of Justice review was released in January 2002 and concluded "EPA has a reasonable basis for arguing that the enforcement actions are consistent with both the Clean Air Act and the Administrative Procedure Act." Both actions were recommendations detailed within the Bush administration's "National Energy Policy Task Force Report."

Prior to our purchase of the Homer City plant, the Environmental Protection Agency requested information from the prior owners of the plant concerning physical changes at the plant. We have been in informal voluntary discussions with the Environmental Protection Agency relating to these facilities, which may result in the payment of civil fines. We cannot assure you that we will reach a satisfactory agreement or that these facilities will not be subject to proceedings in the future. Depending on the outcome of the proceedings, we could be required to invest in additional pollution control requirements, over and above the upgrades we are planning to install, and could be subject to fines and penalties. We cannot estimate the outcome of these discussions or the potential costs of investing in additional pollution control requirements, fines or penalties at this time.

United Nations Framework Convention on Climate Change. Since the adoption of the United Nations Framework Convention on Climate Change in 1992, there has been worldwide attention with respect to greenhouse gas emissions. In December 1997, the Clinton administration participated in the Kyoto, Japan negotiations, where the basis of a Climate Change treaty was formulated. Under the treaty, known as the Kyoto Protocol, the United States would be required, by 2008-2012, to reduce its greenhouse gas emissions by 7% from 1990 levels.

The Kyoto Protocol has yet to be submitted to the U.S. Senate for ratification. In March 2001, the Bush administration announced that the United States would not ratify the Kyoto Protocol, but would instead offer an alternative. Various bills have been, or are expected to be, introduced in Congress to address some of these implementing guidelines and other aspects of climate change. Apart from the Kyoto Protocol, we may be impacted by future federal or state legislation relating to controlling greenhouse gas emissions.

Notwithstanding the Bush administration position, environment ministers from around the world have reached a compromise agreement on the mechanics and rules of the Kyoto Protocol. The compromise agreement is believed to clear the way for countries to begin the treaty ratification process.

If we do become subject to limitations on emissions of carbon dioxide from our fossil fuel-fired electric generating plants, these requirements could have a significant economic impact on our operations.

Critical Accounting Policies

The accounting policies described below are viewed by management as "critical" because their correct application requires the use of material estimates and have a material impact on our financial results and position.

Derivative Instruments and Hedging Activities

We engage in price risk management activities for non-trading purposes. Derivative financial instruments are mainly utilized by us to manage exposure from changes in electricity prices. Effective January 1, 2001, we adopted Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities." This Statement establishes accounting and reporting standards requiring that derivative instruments be recorded in the balance sheet as either assets or liabilities measured at their fair value unless they meet an exception. SFAS No. 133 requires that changes in the derivative's fair value be recognized currently in earnings unless specific hedge accounting criteria are met. For derivatives that qualify for hedge accounting, depending on the nature of the hedge, changes in fair value are either offset by changes in the fair value of the hedged assets, liabilities or firm commitments through earnings, or recognized in other comprehensive income until the hedged item is recognized in earnings. The ineffective portion of a derivative's change in fair value is immediately recognized in earnings.

Management's judgment is required to determine if transactions meet the definition of a derivative and if they do, whether the normal sales and purchases exception apply or whether individual transactions qualify for hedge accounting treatment. Our power sales and fuel supply agreements generally do not meet the definition of a derivative as they are not readily convertible to cash or qualify as normal purchases and sales under SFAS No. 133 and are, therefore, recorded at an accrual basis.

Impairment

We follow Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." This Statement establishes accounting and reporting standards for the impairment or disposal of long-lived assets. SFAS No. 144 supersedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of" but retains the requirements to recognize an impairment loss only if the carrying amount of a long-lived asset is not recoverable from its undiscounted cash flows and to measure an impairment loss as the difference between the carrying amount and fair value of the asset less cost to sell, whether reported in continuing operations or in discontinued operations.

Factors we consider important, which could trigger an impairment, include operating losses from a project, projected future operating losses, or significant negative industry or economic trends. The determination of whether an impairment has occurred is based on an estimate of undiscounted cash flows attributable to the assets, as compared to the carrying value of the assets. If an impairment has occurred, the amount of the impairment loss recognized would be determined by estimating the fair value of the assets and recording a loss if the fair value was less than the book value. We also record an impairment if we make a decision, which generally occurs if we reach an agreement to sell an asset, to dispose of an asset and the fair value is less than our book value.

For additional information regarding our accounting policies, see "EME Homer City Generation L.P. Notes to Financial Statements−Note 2."

New Accounting Standards

In October 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." The Statement establishes accounting and reporting standards for the impairment or disposal of long-lived assets. The Statement supersedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of" but retains SFAS No. 121 requirements to recognize an impairment loss only if the carrying amount of a long-lived asset is not recoverable from its undiscounted cash flows and to measure an impairment loss as the difference between the carrying amount and fair value of the asset less cost to sell, whether reported in continuing operations or in discontinued operations. In addition, SFAS No. 144 broadens the reporting of discontinued operations to include a component of an entity that has been disposed of or is classified as held for sale. The standard, effective on January 1, 2002, was adopted by us in the fourth quarter of 2001 and had no impact on our financial statements.

In August 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 143, "Accounting for Asset Retirement Obligations," which will be effective on January 1, 2003. The Statement requires entities to record the fair value of a liability for an asset retirement obligation in the period in which it is incurred. When the liability is initially recorded, the entity capitalizes a cost by increasing the carrying amount of the related long-lived asset. Over time, the liability is increased to its present value each period, and the capitalized cost is depreciated over the useful life of the related asset. Upon settlement of the liability, an entity either settles the obligation for its recorded amount or incurs a gain or loss upon settlement. We are studying the effects of the new standard.

Recent Developments

On February 10, 2002, the ductwork and bypass associated with the selective catalytic reduction system of one of the units, known as Unit 3, collapsed. No fire occurred and no injuries were reported as a result of the event.

We have now completed a preliminary investigation of the event and currently project that Unit 3 will return to service in mid-April 2002. We also believe that the costs to repair the damage to Unit 3 will be covered by insurance and by contractual obligations of the contractor who installed the selective catalytic reduction system. Further, for events of this kind, we maintain business interruption insurance that provides for lost revenues, net of costs, for outage periods beyond sixty days. A more in-depth analysis of the root causes of the event is required to determine the extent to which insurers and/or the contractor will cover the resulting costs of property damage and repair. This investigation continues.

The selective catalytic reduction system for Unit 3, which reduces emissions of nitrogen oxides from the boiler flue gas during the summer season, had been undergoing performance tests following its recent construction and installation. At the time of the collapse, the unit was operating with the selective catalytic reduction system bypassed. When returned to service, the unit will initially operate in this bypass mode. Reconnection of the selective catalytic reduction system will be implemented at a later date in accordance with an outage plan to be developed.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Information responding to Item 7A is filed with this report under Item 7. "Management's Discussion and Analysis of Results of Operations and Financial Condition."

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To the General Partner of EME Homer City Generation L.P.:

We have audited the accompanying balance sheets of EME Homer City Generation L.P. (a Pennsylvania limited partnership) as of December 31, 2001 and 2000, and the related statements of income (loss), comprehensive income (loss), partners' equity and cash flows for each of the three years in the period ended December 31, 2001. These financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of EME Homer City Generation L.P. as of December 31, 2001 and 2000, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2001 in conformity with accounting principles generally accepted in the United States.

Arthur Andersen LLP

Orange County, California
March 25, 2002

EME HOMER CITY GENERATION L.P.

BALANCE SHEETS

(In thousands)

	December 31, 2001	December 31, 2000
Assets		
Current Assets		
Cash and cash equivalents	$ 38,501	$ 19,116
Due from affiliates	76,047	128,927
Fuel inventory	24,751	14,993
Spare parts inventory	22,725	23,582
Deposits	36,992	–
Assets under price risk management	14	–
Other current assets	2,701	2,758
Total current assets	201,731	189,376
Property, Plant and Equipment	2,042,531	2,040,165
Less accumulated depreciation and amortization	38,131	84,273
Net property, plant and equipment	2,004,400	1,955,892
Deferred financing charges, net	–	11,291
Restricted cash	130,517	–
Total Assets	$ 2,336,648	$ 2,156,559
Liabilities and Partners' Equity		
Current Liabilities		
Accounts payable	$ 2,976	$ 16,479
Accrued liabilities	20,296	32,195
Interest payable	8,016	–
Interest payable to affiliates	4,166	32,668
Current portion of lease financing	78,620	–
Other current liabilities	–	469
Total current liabilities	114,074	81,811
Long-term debt to affiliate	605,591	1,801,167
Lease financing, net of current portion	1,498,697	–
Deferred taxes	6,606	59,141
Benefit plans and other	18,896	17,625

Total Liabilities	2,243,864	1,959,744
Commitments and Contingencies (Notes 3, 9 and 10)		
Partners' Equity	92,784	196,815
Total Liabilities and Partners' Equity	$ 2,336,648	$ 2,156,559

The accompanying notes are an integral part of these financial statements.

EME HOMER CITY GENERATION L.P.

STATEMENTS OF INCOME (LOSS)

(In thousands)

	Years Ended December 31,		
	2001	**2000**	**1999**
Operating Revenues from Marketing Affiliate			
Capacity revenues	$ 66,961	$ 48,736	$ 32,841
Energy revenues	427,361	373,084	292,911
Loss from price risk management	(314)	(451)	–
Total operating revenues	494,008	421,369	325,752
Operating Expenses			
Fuel	168,814	164,112	124,763
Plant operations	82,076	79,077	54,801
Depreciation and amortization	51,765	47,287	37,195
Administrative and general	1,788	(1,929)	1,929
Total operating expenses	304,443	288,547	218,688
Income from operations	189,565	132,822	107,064
Other Income (Expense)			
Interest and other income	449	3,029	1,040
Loss on disposal of assets	(861)	(760)	–
Interest expense	(139,038)	(138,654)	(103,814)
Total other expense	(139,450)	(136,385)	(102,774)
Income (loss) before income taxes and extraordinary item	50,115	(3,563)	4,290
Provision (benefit) for income taxes before extraordinary item	21,847	(391)	2,239
Income (Loss) Before Extraordinary Item	28,268	(3,172)	2,051

Extraordinary gain (loss) on early extinguishment of debt, net of tax of $4,393 and ($2,082)	5,701	–	(2,865)
Net Income (Loss)	$ 33,969	$ (3,172)	$ (814)

The accompanying notes are an integral part of these financial statements.

EME HOMER CITY GENERATION L.P.

STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

(In thousands)

	Years Ended December 31,		
	2001	**2000**	**1999**
Net Income (Loss)	$ 33,969	$ (3,172)	$ (814)
Other comprehensive expense, net of tax:			
Unrealized gains (losses) on derivatives qualified as cash flow hedges:			
Cumulative effect of change in accounting for derivatives, net of income tax benefit of $58,234	(86,730)	–	–
Other unrealized holding gains arising during period, net of income tax expense of $46,647	69,473	–	–
Reclassification adjustment for losses included in net income, net of income tax benefit of $11,587	17,257	–	–
Comprehensive Income (Loss)	$ 33,969	$ (3,172)	$ (814)

The accompanying notes are an integral part of these financial statements.

EME HOMER CITY GENERATION L.P.

STATEMENTS OF PARTNERS' EQUITY

(In thousands)

	Chestnut Ridge Energy Company	**Mission Energy Westside Inc.**	**Total Partners' Equity**
Balance at January 1, 1999	$ –	$ –	$ –
Net loss	(807)	(7)	(814)
Cash contribution	270,576	2,733	273,309
Cash distributions	(71,782)	(726)	(72,508)

Balance at December 31, 1999	197,987	2,000	199,987
Net loss	(3,141)	(31)	(3,172)
Balance at December 31, 2000	194,846	1,969	196,815
Net income	33,623	346	33,969
Cash distributions	(136,600)	(1,400)	(138,000)
Unrealized gains (losses) on derivatives qualified as cash flow hedges:			
Cumulative effect of change in accounting for derivatives, net of income tax benefit of $58,234	(85,863)	(867)	(86,730)
Other unrealized holding gains arising during period, net of income tax expense of $46,647	68,778	695	69,473
Reclassification adjustment for losses included in net income, net of income tax benefit of $11,587	17,085	172	17,257
Balance at December 31, 2001	$ 91,869	$ 915	$ 92,784

The accompanying notes are an integral part of these financial statements.

EME HOMER CITY GENERATION L.P.

STATEMENTS OF CASH FLOWS

(In thousands)

	Years Ended December 31,		
	2001	**2000**	**1999**
Cash Flows From Operating Activities			
Net income (loss)	$ 33,969	$ (3,172)	$ (814)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Extraordinary (gain) loss on early extinguishment of debt, net of tax	(5,701)	–	2,865
Depreciation and amortization	52,467	48,869	38,630
Deferred tax provision	(52,535)	30,415	28,726
Loss on asset disposal	861	760	–
(Increase) decrease in due from affiliates	48,487	(71,635)	(55,211)
(Increase) decrease in inventory	(12,122)	6,110	(3,264)
Increase in other assets	(36,935)	(1,457)	(1,300)
Increase (decrease) in accounts payable	(13,503)	14,690	1,789
Increase (decrease) in accrued liabilities	(11,899)	(6,069)	37,488
Increase (decrease) in interest payable	(20,486)	(1,980)	34,648
Increase in other liabilities	200	469	1,040

Increase in net assets under price risk management	(14)	–	–
Net cash provided by (used in) operating activities	(17,211)	17,000	84,597
Cash Flows From Financing Activities			
Capital contribution from partners	–	–	273,309
Borrowings on long-term obligations	113,507	105,010	2,500,819
Repayments on debt obligations	(479,083)	(4,662)	(800,000)
Repayments of lease financing	(14,000)	–	–
Financing costs	(14,159)	(1,106)	(18,147)
Cash dividends to partners	(138,000)	–	(72,508)
Net cash provided by (used in) financing activities	(531,735)	99,242	1,883,473
Cash Flows From Investing Activities			
Purchase of facilities	–	–	(1,818,631)
Proceeds from sale-leaseback of facilities	782,000	–	–
Capital expenditures	(83,152)	(141,580)	(104,985)
Restricted cash	(130,517)	–	–
Net cash provided by (used in) investing activities	568,331	(141,580)	(1,923,616)
Net increase (decrease) in cash	19,385	(25,338)	44,454
Cash and cash equivalents, beginning of year	19,116	44,454	–
Cash and cash equivalents, end of year	$ 38,501	$ 19,116	$ 44,454

The accompanying notes are an integral part of these financial statements.

EME HOMER CITY GENERATION L.P.

NOTES TO FINANCIAL STATEMENTS

(Dollars in thousands)

Note 1. General

EME Homer City Generation L.P. was formed on October 31, 1998 as a Pennsylvania limited partnership, among Chestnut Ridge Energy Company, as a limited partner with a 99 percent interest, and Mission Energy Westside Inc., as a general partner with a 1 percent interest. Both Chestnut Ridge Energy and Mission Energy Westside are wholly-owned subsidiaries of Edison Mission Holdings Co., a wholly-owned subsidiary of Edison Mission Energy, which is an indirect wholly-owned subsidiary of Edison International. The partnership was formed for the purpose of acquiring, owning and operating three coal-fired electric generating units, and related facilities (the "Homer City facilities") located near Pittsburgh, Pennsylvania for the purpose of producing electric energy. Although the partnership was formed on October 31, 1998, it had no significant activity prior to the acquisition of the Homer City facilities.

On March 18, 1999, the partnership completed its acquisition of 100% of the ownership interests in the Homer City facilities from GPU Inc. and New York State Electric & Gas Corporation, and assumed certain liabilities of the former owners. The acquisition was financed

through capital contributions by Chestnut Ridge Energy and Mission Energy Westside of approximately $273 million, and a loan of approximately $1.7 billion from Edison Mission Finance Co., a wholly-owned subsidiary of Edison Mission Holdings. The accompanying financial statements reflect the operations of the Homer City facilities commencing from the date of acquisition. The acquisition has been accounted for utilizing the purchase method. The purchase price was allocated to the assets acquired and liabilities assumed based upon their respective fair market values.

On December 7, 2001, the partnership completed a sale-leaseback of the Homer City facilities to third-party lessors for an aggregate purchase price of $1.591 billion, made up of $782 million in cash and assumption of debt (the fair value of which was $809.3 million). This transaction has been accounted for as a lease financing for accounting purposes. See "−Note 3. Sale-Leaseback Transaction." In connection with the sale-leaseback transaction, the partnership agreement was amended to change, among other things, the ownership interests in us to 99.9 percent for Chestnut Ridge Energy and 0.1 percent for Mission Energy Westside.

The Homer City facilities consist of three coal-fired steam turbine units, one coal preparation facility, an 1,800-acre dam site and associated support facilities. Units 1 and 2 are essentially identical steam turbine generators with net summer capacities of 620 MW and 614 MW, respectively. Units 1 and 2 began commercial operation in 1969. Unit 3 is also a steam turbine generator with a net summer capacity of 650 MW. Unit 3 began commercial operations in 1977.

The partnership derives revenue from the sale of energy and capacity into the Pennsylvania-New Jersey-Maryland Power Pool, or PJM, and the New York Independent System Operator, or NYISO, and from bilateral contracts between its marketing affiliate and power marketers and load serving entities within PJM, NYISO and the surrounding markets. The partnership has entered into a contract with a marketing affiliate for the sale of energy and capacity produced by the Homer City facilities, which enables such marketing affiliate to engage in forward sales and hedging transactions to manage electricity price exposure. The marketing affiliate has systems in place that monitor real-time spot and forward pricing and perform options valuations. Under this contract, the partnership pays the marketing affiliate fees for these marketing services.

Reclassifications

Certain amounts in the prior years have been reclassified to conform to the current year's presentation.

Note 2. Summary of Significant Accounting Policies

Use of Estimates in Financial Statements

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

The partnership considers cash and cash equivalents to include cash and short-term investments with original maturities of three months or less.

Inventory

Inventory consists of spare parts, coal and fuel oil and is stated at the lower of weighted average cost or market.

Property, Plant and Equipment

Property, plant and equipment are stated at cost. Depreciation and amortization is computed on a straight-line basis over the following estimated useful lives:

Leasehold improvements	33.67 years
Plant and equipment under lease financing	33.67 years
Emission allowances	33.67 years
Equipment, furniture and fixtures	4 to 10 years

As part of the acquisition of the Homer City facilities, the partnership acquired emission allowances under the Environmental Protection Agency's Acid Rain Program. Although the emission allowances granted under this program are freely transferable, the partnership intends to use substantially all of the emission allowances in the normal course of its business to generate electricity. Accordingly, the partnership has classified emission allowances expected to be used to generate power as part of property, plant and equipment. Acquired emission allowances were amortized over the estimated lives of the Homer City units on a straight-line basis until completion of the sale-leaseback transaction described in Note 3. Effective December 7, 2001, the completion date of the sale-leaseback transaction, the partnership changed the period of amortization of emission allowances from 39 years to 33.67 years, the term of the leases.

Impairment of Long-Lived Assets

The partnership periodically evaluates the potential impairment of its long-lived assets based on a review of estimated future cash flows expected to be generated. If the carrying amount of the asset exceeds the amount of the expected future cash flows, undiscounted and without interest charges, then an impairment loss for our long-lived assets is recognized in accordance with Statement of Financial Accounting Standards No. 144 "Accounting for the Impairment or Disposal of Long-Lived Assets."

Repairs and Maintenance

Certain major pieces of the partnership's equipment require repairs and maintenance on a periodic basis. These costs, including major maintenance costs, are expensed as incurred.

Deferred Costs

Deferred costs at December 31, 2001 and 2000 consisted of the following:

	2001	2000
Deferred financing costs	$ –	$ 13,672
Accumulated amortization	–	(2,381)
Net deferred financing costs	$ –	$ 11,291

Deferred financing costs consist of legal and other costs incurred by the partnership to obtain long-term financing. See "–Note 5. Long-Term Debt." These costs were amortized as interest expense over the life of the related long-term debt using the effective interest method. As a result of the assumption of the partnership's debt by the buyers in the sale-leaseback transaction on December 7, 2001, these costs were included in determining the gain on early extinguishment of debt.

Capitalized Interest

Interest incurred on funds borrowed by us to finance project construction is capitalized. Capitalization of interest is discontinued when the projects are completed and deemed operational. Such capitalized interest is included in property, plant and equipment. The partnership capitalized $10.5 million, $10.3 million and $1.8 million for the years ended December 31, 2001, 2000 and 1999, respectively.

Revenue Recognition

Revenues and related costs are recorded as electricity is generated or as services are provided.

Derivative Instruments and Hedging Activities

Effective January 1, 2001, the partnership adopted Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities." The Statement establishes accounting and reporting standards requiring that derivative instruments be recorded in the balance sheet as either assets or liabilities measured at their fair value unless they meet an exception. The

Statement requires that changes in the derivative's fair value be recognized currently in earnings unless specific hedge accounting criteria are met. For derivatives that qualify for hedge accounting, depending on the nature of the hedge, changes in fair value are either offset by changes in the fair value of the hedged assets, liabilities or firm commitments through earnings, or recognized in other comprehensive income until the hedged item is recognized in earnings. The ineffective portion of a derivative's change in fair value is immediately recognized in earnings.

Effective January 1, 2001, the partnership recorded all derivatives at fair value unless the derivatives qualified for the normal sales and purchases exception. The partnership does not believe that its physical coal contracts are readily convertible to cash as defined under SFAS No. 133 and, therefore, are not derivatives. The partnership did not use this exception for its forward sales contracts due to the net settlement procedures used by its marketing affiliate with counterparties for the period between January 1, 2001 through June 30, 2001. Forward sales contracts qualified for treatment under SFAS No. 133 as cash flow hedges with appropriate adjustments made to other comprehensive income for the period between January 1, 2001 through June 30, 2001. The cumulative effect on prior periods' net income resulting from this change in accounting for derivatives in accordance with SFAS No. 133 was not material. The partnership recorded a $69.3 million, after tax, unrealized holding loss upon adoption of this change in accounting principle reflected in partners' equity in the balance sheet.

Effective July 1, 2001, the Derivative Implementation Group of the Financial Accounting Standards Board modified the normal sales and purchases exception to include electricity contracts, which include terms that require physical delivery by the seller in quantities that are expected to be sold in the normal course of business. Accordingly, the partnership qualified to use the normal sales and purchases exception for its forward sales contracts commencing July 1, 2001. Based on this accounting guidance, on July 1, 2001, the partnership eliminated the value of its forward sale contracts from its balance sheet. The cumulative effect of this change in accounting is reflected as a $17.4 million decrease in other comprehensive income.

The partnership has entered into a contract with a marketing affiliate for the sale of energy and capacity produced by the partnership, which enables such marketing affiliate to engage in forward sales and hedging transactions to manage the partnership's electricity price exposure. Net gains or losses on hedges by the marketing affiliate that are physically settled are recognized in the same manner as the hedged item.

Income Taxes

The partnership has made an election to be taxed as a corporation for federal and California state tax purposes and, as such, will be included in the consolidated federal income tax and combined California state franchise tax returns of Edison International. The partnership calculates its income tax provision on a separate company basis under a tax sharing arrangement with an affiliate of Edison International, which in turn has an agreement with Edison International. Tax benefits generated by the partnership for federal and California state tax purposes are recognized by the partnership without regard to separate company limitations.

The partnership accounts for income taxes using the asset-and-liabilities method, wherein deferred tax assets and liabilities are recognized for future tax consequences of temporary differences between the carrying amounts and the tax bases of assets and liabilities using enacted rates.

Effective January 1, 2001, the partnership is being treated as a corporation for Pennsylvania state income tax purposes, and accordingly has reflected the Pennsylvania state tax provision in the financial statements. Prior to 2001, the partnership was treated as a partnership for Pennsylvania state income tax purposes, and the income or loss of the partnership was included in the Pennsylvania state income tax returns of the individual partners. Accordingly, no recognition has been given to Pennsylvania state income taxes in the financial statements for those years.

New Accounting Standards

In October 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." The Statement establishes accounting and reporting standards for the impairment or disposal of long-lived assets. The Statement supersedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of" but retains SFAS No. 121 requirements to recognize an impairment loss only if the carrying amount of a long-lived asset is not recoverable from its undiscounted cash flows and to measure an impairment loss as the difference between the carrying amount and fair value of the asset less cost to sell, whether reported in continuing operations or in discontinued operations. In addition, SFAS No. 144 broadens the reporting of discontinued operations to include a component of an entity that has been disposed of or is classified as held for sale. The standard, effective on January 1, 2002, was adopted by the partnership in the fourth quarter of 2001 and had no impact on its financial statements.

In August 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 143, "Accounting for Asset Retirement Obligations," which will be effective on January 1, 2003. The Statement requires entities to record the fair value of a liability for an asset retirement obligation in the period in which it is incurred. When the liability is initially recorded, the entity capitalizes a cost by increasing the carrying amount of the related long-lived asset. Over time, the liability is increased to its present value each period, and the capitalized cost is depreciated over the useful life of the related asset. Upon settlement of the liability, an entity either settles the obligation for its recorded amount or incurs a gain or loss upon settlement. The partnership is studying the effects of the new standard.

Note 3. Sale-Leaseback Transaction

On December 7, 2001, the partnership completed the sale-leaseback of its Homer City facilities to third-party lessors for an aggregate purchase price of $1.591 billion, comprised of $782 million in cash and assumption of debt (the fair value of which was $809.3 million). In connection with the sale-leaseback, the partnership used $432 million to repay affiliate interest and debt, paid $73 million to our affiliate for taxes due resulting from the sale, paid $138 million of dividends to its partners, and deposited $139 million in a restricted cash account. The leases the partnership entered into as part of this transaction are referred to as facility leases. The transaction has been accounted for as a lease financing for accounting purposes, which means that the partnership reflects the Homer City facility as

an asset on its balance sheet, although the partnership has no legal ownership, and records the net present value of the future minimum lease payments as lease debt. Under the terms of the 33.67 year leases, the partnership is obligated to make semi-annual lease payments on each April 1 and October 1. The gain on the sale of the Homer City facilities has been deferred and is being amortized over the term of the lease.

The partnership's bank accounts are largely under the control of a collateral agent that operates in accordance with a security deposit agreement executed as part of the sale-leaseback transaction. Accordingly, the partnership's access to most of the cash in the partnership's

bank accounts is limited to specific uses set forth in this agreement. The rent payments that the partnership owes under the sale-leaseback are comprised of two components, a senior rent portion and an equity rent portion. The senior rent is used mainly for debt service to the holders of the senior secured bonds, while the equity rent is paid to the owner lessors. If the partnership does not meet specified cash flow coverage ratios while the lease debt is outstanding, it will not pay the equity portion of the rent to the owner lessors. Accordingly, this provision does not permit the lessor to terminate the lease in the event of non-payment of the equity portion of the rent while the lease debt is outstanding.

In order to pay the equity portion of the rent, the partnership is required to meet a projected senior rent service coverage ratio of 1.7 to 1.0 for periods after December 31, 2001 subject to reduction to 1.3 to 1.0 under circumstances specified in the participation agreements. The senior rent coverage ratio is determined by dividing net cash flow as defined in the participation agreements by the senior rent due in that period. If all accrued rent, including both the senior portion and the equity portion of the rent, has been paid and all other required conditions have been met, amounts remaining in the distribution account will be available for distribution to the partners in the partnership, subject to the restrictions on distributions described below.

A restricted cash account was funded at closing of the sale-leaseback transaction in the amount of $139 million. To pay for the initial rent payment, $8 million was subsequently released. The amount in the account will be available for payments due on the equity portion of lease rent, unless there is a default in the payment of the senior portion of lease rent, in which case the amount will be available to pay such senior portion of the lease rent. The release of funds from this restricted cash account will not be subject to any conditions except that no event of default shall have occurred or be continuing.

The following table summarizes our future commitments under the facility leases at December 31, 2001.

Years Ending December 31,		
2002	$	175,000
2003		173,957
2004		142,149
2005		151,895
2006		151,615
Thereafter		2,583,278
Total future commitments	$	3,377,894
Amount representing interest		(1,800,577)
Net Commitments	$	1,577,317

The payments due under the facility leases are generally higher in April and lower in October of each year. In order to more effectively match the partnership's cash flow, which is higher during the summer months when energy prices are higher, the partnership has entered into a swap agreement with a bank. Under the terms of this swap, the partnership made an initial deposit of $37 million with the bank in December 2001. Beginning in April 2002 through April 2014, the bank will make a swap payment to the partnership in April of each year and the partnership will make a swap payment to the bank in October of each year. The amount of payments are designed to reverse the semi-annual payments due under the lease such that the partnership effectively has lower cash obligations in April and higher cash obligations in October. The implicit interest rate included in the swap is LIBOR during periods that the partnership has a net deposit with the bank, and LIBOR plus 5% during periods that the partnership has a net loan with the bank.

Under the participation agreements entered into as part of the sale-leaseback transaction, the partnership's ability to enter into specified transactions and to engage in specified business activities, including financing and investment activities, is subject to significant restrictions. These restrictions could affect, and in some cases significantly limit or prohibit, the partnership's ability to, among other things, merge,

consolidate or sell its assets, create liens on its properties or assets, enter into non-permitted trading activities, enter into transactions with its affiliates, incur indebtedness, create, incur, assume or suffer to exist guarantees or contingent obligations, make restricted payments to its partners, make capital expenditures, own subsidiaries, liquidate or dissolve, engage in non-permitted business activities, sublease the partnership's leasehold interests in the facilities or make improvements to the facilities. Accordingly, the partnership's liquidity is substantially based on its ability to generate cash flow from operations. If the partnership is unable to generate cash flow from operations, it will have limited ability to obtain additional capital unless its partners provide additional funding, although they are under no legal obligation to do so.

Note 4. Property, Plant and Equipment

At December 31, 2001 and 2000, property, plant and equipment consisted of the following:

	2001	2000
Land	$ 4,250	$ 4,250
Power plant facilities and equipment	–	1,367,422
Power plant and equipment under lease financing	1,591,318	–
Leasehold improvements	661	–
Emission allowances	438,068	438,068
Construction in progress	–	223,207
Equipment, furniture and fixtures	8,234	7,218
	2,042,531	2,040,165
Accumulated depreciation and amortization	(38,131)	(84,273)
Property, plant and equipment, net	$ 2,004,400	$ 1,955,892

As a result of the sale-leaseback transaction on December 7, 2001, a majority of the power plant facilities and equipment were classified as power plant and equipment under lease financing. The partnership recorded amortization expense related to the leased facilities of $3.1 million for the year ended December 31, 2001. Accumulated amortization related to the leased facilities was $3.1 million at December 31, 2001.

Note 5. Long-Term Debt

In order to initially effect the acquisition in 1999, Edison Mission Holdings entered into an $800 million initial financing (the "Acquisition Facility"), a $250 million construction loan (the "Environmental Capital Improvements Facility") that would be drawn as needed, and a $50 million line of credit (the "Working Capital Facility"). Amounts borrowed under the Acquisition Facility, the Environmental Capital Improvements Facility and the Working Capital Facility bear interest at variable Eurodollar rates or Base rates, at the option of the partnership. The financing received by Edison Mission Holdings under the Acquisition Facility as well as the Environmental Capital Improvements Facility due 2004 were loaned to Edison Mission Finance under a subordinated loan agreement (the "Finance Subordinated Loan"). Edison Mission Finance then loaned the same amounts to the partnership under a subordinated loan agreement (the "Subordinated Loan"). Interest rates and other charges as well as maturity dates associated with the Subordinated Loan mirrored the associated debt at Edison Mission Holdings.

On May 27, 1999, the Acquisition Facility was replaced with $300 million aggregate principal amount of 8.137% senior secured bonds due 2019 and $530 million aggregate principal amount of 8.734% senior secured bonds due 2026 (collectively, the "Senior Secured Bonds"). Proceeds from the Senior Secured Bonds were loaned by Edison Mission Holdings to Edison Mission Finance and subsequently from Edison

Mission Finance to the partnership, under the Subordinated Loan. These proceeds were then used by the partnership to repay $800 million under the Subordinated Loan and make a $30 million distribution to Chestnut Ridge Energy and Mission Energy Westside.

The remaining cost of the acquisition in 1999, as well as initial operating cash, totaling $1.1 billion, was funded through an equity contribution from Edison Mission Energy to Edison Mission Holdings. Edison Mission Holdings subsequently contributed approximately the same amount to Edison Mission Finance, which subsequently loaned the amount to the partnership under a subordinated revolving loan agreement (the "Revolver"). The Revolver bears interest at a fixed rate of 8.0% on outstanding amounts and terminates on March 18, 2014. The partnership owed approximately $606 million and $789 million under the Revolver at December 31, 2001 and 2000, respectively.

In December 2001, the partnership settled the Subordinated Loan with Edison Mission Finance through the assumption of the Senior Secured Bonds by the third-party lessors as part of the purchase price of the facilities and the release of the partnership's guaranty of such debt. The partnership used $432 million from the proceeds of the sale-leaseback of the Homer City facilities (see Note 3. Sale-Leaseback Transaction) to repay a portion of the interest and principal on the Revolver. Accordingly, the remaining intercompany loans at December 31, 2001 are under the Revolver. The partnership is restricted under the participation agreements entered into as a part of the sale-leaseback transaction from making any payments under this facility unless specified conditions are met.

The partnership incurred interest costs related to its affiliate debt of $140.8 million, $147.4 million and $104.2 million for the years ended December 31, 2001, 2000 and 1999, respectively.

Note 6. Price Risk Management Activities

The partnership's risk management policy allows for the use of derivative financial instruments through its marketing affiliate to limit financial exposure to energy prices for non-trading purposes. Use of these instruments exposes the partnership to commodity price risk, which includes potential losses that can arise from a change in the market value of a particular commodity. Commodity price risk exposures are actively monitored to ensure compliance with the partnership's risk management policies. Policies are in place which limit the amount of total net exposure the partnership may enter into at any point in time. Procedures and systems are in place that allow for monitoring of all commitments and positions with daily reporting to senior management. The partnership's marketing affiliate performs a series of "value at risk" analyses in its daily business to measure, monitor and control the partnership's overall market risk exposure. The use of value at risk analysis allows the partnership to aggregate overall risk, compare risk on a consistent basis and identify the different elements of risk. Value at risk measures the worst expected loss over a given time interval, under normal market conditions, at a given confidence level. Given the inherent limitations of value at risk analysis and reliance upon a single risk measurement tool, the partnership's marketing affiliate supplements this approach with the use of stress testing and worst-case scenario analysis, as well as stop loss limits and counterparty credit exposure monitoring.

The following table summarizes the fair values for outstanding financial instruments used for price risk management activities by instrument type:

	December 31,	
	2001	2000
Commodity price:		
Forwards	$ 35,881	$ (117,803)
Options	–	1,811
Swaps	–	(892)

Note 7. Income Taxes

Income tax expense includes the current tax liability from operations and the change in deferred income taxes during the year. The components of the net accumulated deferred income tax liability were:

	Years Ended December 31,	
	2001	2000
Deferred tax assets		
State tax deduction	$ 2,594	$ 1,583
	$ 2,594	$ 1,583
Deferred tax liabilities		
Basis differences	$ 9,001	$ 60,525
Other	199	199
	9,200	60,724
Deferred tax liability, net	$ 6,606	$ 59,141

The provision (benefit) for income taxes before extraordinary item is comprised of the following:

	Years Ended December 31,		
	2001	2000	1999
Current			
Federal	$ 61,269	$ (27,605)	$ (24,227)
State	13,113	(3,201)	(2,260)
Total current	74,382	(30,806)	(26,487)
Deferred			
Federal	(46,511)	25,897	25,521
State	(6,024)	4,518	3,205
Total deferred	(52,535)	30,415	28,726
Provision (benefit) for income taxes	$ 21,847	$ (391)	$ 2,239

Income tax provision (benefit) is included in the statement of income as follows:

	Years Ended December 31,		
	2001	2000	1999
Income (loss) before extraordinary item	$ 21,847	$ (391)	$ 2,239
Extraordinary gain (loss)	4,393	–	(2,082)
Total	$ 26,240	$ (391)	$ 157

The components of the deferred tax provision, which arise from timing differences between financial and tax reporting, are presented below:

	Years Ended December 31,		
	2001	2000	1999
Basis differences	$ (51,524)	$ 31,790	$ 28,735
State tax deduction	(1,011)	(1,375)	(208)
Other	–	–	199
Total deferred provision	$ (52,535)	$ 30,415	$ 28,726

Variations from the 35% federal statutory rate are as follows:

	Years Ended December 31,		
	2001	2000	1999
Expected provision (benefit) for federal income taxes	$ 17,540	$ (1,247)	$ 1,501
Increase in taxes from:			
State tax–net of federal benefit	4,307	856	738
Total provision (benefit) for income taxes	$ 21,847	$ (391)	$ 2,239
Effective tax rate	43.6%	11.0%	52.2%

Note 8. Employee Benefits Plans

Employees of the partnership are eligible for various benefit plans of Edison International.

Pension Plans

The partnership maintains a pension plan specifically for the benefit of its union employees. The partnership's non-union employees participate in the Edison International pension plan. Both plans are noncontributory, defined benefit pension plans and cover employees who fulfill minimum service requirements. There are no prior service costs for the plans.

Information on plan assets and benefits obligations is shown below:

	Years Ended December 31,			
	Union Plan		Non-Union Plan	
	2001	2000	2001	2000
Change in Benefit Obligation				
Benefit obligation at beginning of year	$ 9,537	$ 6,783	$ 1,416	$ 865
Service cost	849	719	263	291
Interest cost	685	578	111	78
Actuarial loss	371	1,457	112	182
Benefits paid	(1)	–	–	–

Benefit obligation at end of year	$ 11,441	$ 9,537	$ 1,902	$ 1,416
Change in Plan Assets				
Fair value of plan assets at beginning of year	$ 2,098	$ 104	$ –	$ –
Actual return on plan assets	(71)	(126)	–	–
Employer contributions	2,012	2,120	–	–
Benefits paid	(1)	–	–	–
Fair value of plan assets at end of year	$ 4,038	$ 2,098	$ –	$ –
Funded status	$ (7,403)	$ (7,439)	$ (1,902)	$ (1,416)
Unrecognized net loss	2,359	1,652	177	78
Pension liability	$ (5,044)	$ (5,787)	$ (1,725)	$ (1,338)
Discount rate	7.00%	7.25%	7.00%	7.25%
Rate of compensation increase	5.00%	5.00%	5.00%	5.00%
Expected return on plan assets	8.50%	7.50%	8.50%	8.50%

Components of pension expense were:

	Years Ended December 31,					
	Union Plan			Non-Union Plan		
	2001	2000	1999	2001	2000	1999
Service cost	$ 849	$ 719	$ 459	$ 263	$ 291	$ 135
Interest cost	685	578	321	111	78	40
Expected return on plan assets	(266)	(64)	(6)	–	–	–
Net amortization and deferral	–	–	–	13	–	–
Net pension expense	$ 1,268	$ 1,233	$ 774	$ 387	$ 369	$ 175

Postretirement Benefits Other Than Pensions

A portion of the partnership's non-union employees retiring at or after age 55 with at least ten years of service are eligible for postretirement health care, dental, life insurance and other benefits paid in part by the partnership. Eligibility depends on a number of factors, including the employee's hire date. Employees in union-represented positions are covered by a collective bargaining agreement which is due to expire May 14, 2003. Under this agreement, a portion of these employees that retire prior to May 14, 2002 are covered under the postretirement benefit plans of GPU Inc., their employer prior to the partnership's acquisition of the facilities in 1999. The partnership has accounted for postretirement benefit obligations on the basis of a substantive plan under Statement of Financial Accounting Standards No. 106, "Employers' Accounting for Postretirement Benefits Other Than Pension" (SFAS No. 106). A substantive plan means that the partnership is assuming for accounting purposes that it will provide postretirement benefits to union-represented employees following the conclusion of negotiations to replace the current benefits agreement, even though the partnership has no legal obligation to do so. If the partnership adopts a postretirement benefit plan for union-represented employees substantially the same as provided under the current GPU Inc. plan, the partnership would record an adjustment to its prior service costs, if applicable, and amortize the impact over the estimated

remaining service of covered employees. If no postretirement benefits are provided, the partnership would treat this as a plan termination under SFAS No. 106 and record a gain during 2003. At the present time, the partnership cannot predict the outcome of any negotiations related to this benefit plan.

Information on plan assets and benefit obligations is shown below:

	Years Ended December 31,			
	Union Plan		Non-Union Plan	
	2001	2000	2001	2000
Change in Benefit Obligation				
Benefit obligation at beginning of year	$ 8,619	$ 7,518	$ 1,803	$ 1,376
Service cost	404	358	84	77
Interest cost	593	555	122	115
Actuarial (gain) loss	(127)	188	(58)	235
Benefits paid	–	–	–	–
Benefit obligation at end of year	$ 9,489	$ 8,619	$ 1,951	$ 1,803
Change in Plan Assets				
Fair value of plan assets at beginning of year	$ –	$ –	$ –	$ –
Employer contributions	–	–	–	–
Benefits paid	–	–	–	–
Fair value of plan assets at end of year	$ –	$ –	$ –	$ –
Funded status	$ (9,489)	$ (8,619)	$ (1,951)	$ (1,803)
Unrecognized net gain	(555)	(457)	(186)	(139)
Recorded liability	$ (10,044)	$ (9,076)	$ (2,137)	$ (1,942)
Discount rate	7.25%	7.50%	7.25%	7.50%

The components of postretirement benefits other than pension expense were:

	Years Ended December 31,					
	Union Plan			Non-Union Plan		
	2001	2000	1999	2001	2000	1999
Service cost	$ 404	$ 358	$ 310	$ 84	$ 77	$ 70
Interest cost	593	555	401	122	115	95
Net amortization and deferral	(29)	(48)	–	(11)	(15)	–
Total expense	$ 968	$ 865	$ 711	$ 195	$ 177	$ 165

For the non-union plan, the assumed rate of future increases in the per-capita cost of health care benefits is 10.5% for 2002, gradually decreasing to 5% for 2008 and beyond. Increasing the health care cost trend rate by one percentage point would increase the accumulated obligation as of December 31, 2001, by $462,000 and annual aggregate service and interest costs by $50,000. Decreasing the health care cost trend rate by one percentage point would decrease the accumulated obligation as of December 31, 2001, by $363,000 and annual aggregate service and interest costs by $38,000.

For the union plan, the assumed rate of future increases in the per-capita cost of health care benefits is 10.5% for 2002, gradually decreasing to 5% for 2008 and beyond. Increasing the health care

cost trend rate by one percentage point would increase the accumulated obligation as of December 31, 2001, by $1,782,000 and annual aggregate service and interest costs by $219,000. Decreasing the health care cost trend rate by one percentage point would decrease the accumulated obligation as of December 31, 2001, by $1,469,000 and annual aggregate service and interest costs by $180,000.

Employee Stock Plans

A 401(k) plan is maintained to supplement eligible employees' retirement income. The partnership matches 100 percent of non-union employee contributions up to 6 percent of such employees' annual compensation. The partnership also matches 65 percent of contributions made by union employees, up to 2.6 percent of annual compensation. Employer contributions vest 20 percent per year. Contribution expense for the years ended December 31, 2001, 2000 and 1999 was $440,000, $406,000 and $352,000, respectively.

Note 9. Commitments and Contingencies

Ash Disposal Site

Pennsylvania Department of Environmental Protection, or PADEP, regulations governing ash disposal sites require, among other things, groundwater assessments of landfills if existing groundwater monitoring indicates the possibility of degradation. The assessments could lead to the installation of additional monitoring wells and if degradation of the groundwater were discovered, the partnership would be required to develop abatement plans, which may include the lining of unlined sites. To date, the Facilities' ash disposal site has not shown any signs that would require abatement. Management does not believe that the costs of maintaining and abandoning the Ash Disposal Site will have a material impact on the partnership's results of operations or financial position.

Environmental Matters

Prior to the partnership's purchase of the Homer City plant, the Environmental Protection Agency requested information from the prior owners of the plant concerning physical changes at the plant. The partnership has been in informal voluntary discussions with the Environmental Protection Agency relating to these facilities, which may result in the payment of civil fines. The partnership cannot assure you that it will reach a satisfactory agreement or that these facilities will not be subject to proceedings in the future. Depending on the outcome of the proceedings, the partnership could be required to invest in additional pollution control requirements, over and above the upgrades it is planning to install, and could be subject to fines and penalties. The partnership cannot estimate the outcome of these discussions or the potential costs of investing in additional pollution control requirements, fines or penalties at this time.

Penn Hill No. 2 and Dixon Run No. 3 Discharges

In connection with the purchase of the Homer City facilities, the partnership acquired the Two Lick Creek Dam and Reservoir. Acid mine drainage discharges from the Penn Hill No. 2 and Dixon Run No. 3 inactive deep mines were collected and partially treated on the reservoir property by Stanford Mining Company before being pumped off the property for additional treatment at the nearby

Chestnut Ridge Treatment Plant. The mining company subsequently filed for bankruptcy. However, it operated the collection and treatment system until May 1999, when it ceased to do so claiming its assets were allegedly depleted.

PADEP initially advised the partnership that it was potentially liable for treating the two discharges solely because of its ownership of the property from which the discharges emanated. Without any admission of its liability, the partnership voluntarily entered into a letter agreement to fund the operation of the collection and treatment system for an interim period until the agency completed its investigation of potentially liable parties and alternatives for permanent treatment of the discharges were evaluated. After examining property records, PADEP concluded that the partnership is only responsible for treating the Dixon Run No. 3 discharge. The agency completed its investigation of other potentially responsible parties, particularly mining companies that previously operated the two mines, and has notified the partnership that they plan no further action.

A draft consent decree agreement that addresses remedial responsibilities for the two discharges has been prepared by PADEP. Under its terms, the partnership is responsible for designing and implementing a permanent system to collect and treat the Dixon Run No. 3 discharge. The partnership will continue its funding of the existing collection and treatment system until the Dixon Run No. 3 treatment system becomes operational. The state has provided funding to the Blacklick Creek Watershed Association to develop and operate a collection and treatment system for the Penn Hill No. 2 discharge. The Watershed Association has completed construction and the Penn Hill No. 2 system is in operation.

The current cost of operating the collection and treatment system is approximately $15,000 per month. The partnership expects that the costs of operation will be reduced by 30% to 40% as a result of the completion of the Penn Hill No. 2 system. The partnership is evaluating options for permanent treatment of the Dixon Run No. 3 discharge, including a passive system involving wetlands treatment. The total cost of a passive treatment system is estimated to be $1 million, but its operational costs are considerably less than those of a conventional chemical treatment system.

Helvetia Discharges. The partnership's generating units were originally constructed as a mine-mouth generating station, where coal produced from two adjacent deep mines was delivered directly to the units by coal conveyors. The two adjacent deep mines were owned by Helen Mining Company, a subsidiary of the Quaker State Corporation, and Helvetia, a subsidiary of the Rochester and Pittsburgh Coal Company. Both Helen Mining and Helvetia developed mine refuse sites, water treatment facilities and other mine related facilities on the site. The Helen Mining mine was closed in the early 1990s, and the mine surface operations and maintenance shop areas were restored before Helen Mining left the site. Helen Mining has continuing mine water and refuse site leachate treatment obligations and remains obligated to perform any cleanup required with respect to its refuse site. Helvetia's on-site mine was closed in 1995. As a result of the cessation of its on-site mining activities, Helvetia has continuing mine discharge and refuse site leachate discharge treatment obligations that it performs using water treatment facilities owned by Helvetia and located on the site. Bonds posted by Helvetia may not be sufficient to fund Helvetia's obligations in the event of Helvetia's failure to comply with its mine-related permits at the site. Current annual operating costs for Helvetia's treatment systems are estimated to be approximately $1 million. Should Helvetia default on its treatment obligations, the government may attempt to require the partnership to fund these commitments.

Fuel Commitments

The partnership has entered into several fuel purchase agreements with various third-party suppliers for the purchase of bituminous steam coal and fuel oil. These contracts call for the purchase of a minimum quantity over the term of the contracts, which extend from one to six years from December 31, 2001, with an option at the partnership's discretion to purchase additional amounts as stated in the agreements. At December 31, 2001, based on the contract provisions that consist of fixed prices, subject to adjustment clauses in certain cases, these minimum commitments are currently estimated to aggregate $472 million over the duration of the contracts summarized as follows: 2002–$160 million; 2003–$99 million; 2004–$90 million; 2005–$67 million; 2006–$40 million; and thereafter–$16 million.

Plant Improvements

The partnership has contracted with a division of ABB Flakt, now Alstom Power, to make environmental capital improvements to our generating units. The contractor was retained to construct a limestone-based, wet scrubber flue gas desulfurization system at Unit 3 and a selective catalytic reduction system at each of the three units. These improvements are expected to enable the partnership's generating units to comply with Phase II of Title IV of the Clean Air Act regarding sulfur oxide emissions, the Pennsylvania nitrogen oxide allowance regulations and Pennsylvania's response to the Environmental Protection Agency's State Implementation Plan Call regarding nitrogen oxide emissions. These improvements are estimated to cost approximately $270 million, which includes a fixed price, turnkey engineering, procurement and construction contract, project management costs and other project costs. The wet scrubber flue gas desulfurization system on Unit 3 has been installed and is undergoing acceptance testing. The selective catalytic reduction system on Unit 3 was installed but went out of service on February 10, 2002 due to a collapse of ductwork. See "−Note 14. Subsequent Event" for further discussion of this event. The selective catalytic reduction system on Units 1 and 2 are scheduled to be installed in 2002. The partnership expects to spend approximately $17.8 million during 2002 on the remaining capital expenditures related to these improvements.

Coal Cleaning Agreement

The partnership has entered into a Coal Cleaning Agreement with Homer City Coal Processing Corp. to operate and maintain a coal cleaning plant owned by the partnership. Under the terms of the agreement, which is scheduled to expire on August 31, 2002, the partnership is obligated to reimburse Homer City Coal Processing Corp. for the actual costs incurred in the operations and maintenance of the coal cleaning plant, a fixed general and administrative service fee of $260,000 per year, and an operating fee that ranges from $.20 to $.35 per ton depending on the level of tonnage.

Interconnection Agreement

Our general partner, Mission Energy Westside, has entered into an interconnection agreement with New York State Electric & Gas Corporation, or NYSEG, and Pennsylvania Electric Company, or Penelec, to provide interconnection services necessary to interconnect the Homer City Station with NYSEG and Penelec's transmission systems. Unless terminated earlier in accordance with its terms, the interconnection agreement will terminate on a date mutually agreed to by Mission Energy Westside,

NYSEG and Penelec. This date will not exceed the retirement date of the Homer City units. NYSEG and Penelec have agreed to extend such interconnection services (but not the expiration of the agreement) to modifications, additions, upgrades or repowering of the Homer City units. Mission Energy Westside is required to compensate NYSEG and Penelec for all reasonable costs associated with any modifications, additions or replacements made to NYSEG or Penelec's interconnection facilities or transmission systems in connection with any modification, addition, upgrade or repowering to the Homer City units.

Insurance

The partnership maintains insurance coverages consistent with those normally carried by companies engaged in similar businesses and owning similar properties. The insurance program includes all-risk real and personal property insurance, including coverage for losses from boiler and machinery breakdowns, and the perils of earthquake and flood, subject to certain sublimits. The property insurance program currently covers losses up to $1.25 billion. Under the terms of the facility leases, the partnership is required to provide property insurance, if commercially available at reasonable prices, for the termination value amounts included in the facility leases. In the current market environment, insurance for the full termination value may not be available at reasonable prices, but the partnership will continue to monitor developments in the property insurance marketplace.

The partnership also carries general liability insurance covering liabilities to third parties for bodily injury or property damage resulting from operations, automobile liability insurance and excess liability insurance. Limits and deductibles in respect of these insurance policies are comparable to those carried by other electric generating facilities of similar size.

Collective Bargaining Agreement

The partnership employed 257 employees in Pennsylvania, 191 of whom are covered by a collective bargaining agreement, at December 31, 2001. The collective bargaining agreement, which also includes a benefit agreement, is due to expire on May 14, 2003.

Note 10. Operating Lease Commitments

The partnership had several operating leases in place relating mainly to flue gas conditioning equipment and trucks. At December 31, 2001, the future operating lease commitments were as follows:

Years Ending December 31,	
2002	$ 411
2003	362
2004	310
2005	173
2006	38
Total future commitments	$ 1,294

Operating lease expense amounted to $626,000, $711,000 and $891,000 in 2001, 2000 and 1999, respectively.

Note 11. Related Party Transactions

The partnership has entered into energy and emission allowance sales agreements with a marketing affiliate for the sale of energy and capacity at a price equal to (i) the price which a third-party purchaser of the capacity or energy has agreed to pay less (ii) $.02 per MWh of capacity and energy plus an emission allowance fee. Payment is due and payable within thirty days from billing which is rendered on a monthly basis. For the years ended December 31, 2001 and 2000, the amount due from the marketing affiliate was $22.7 million and $69.7 million, respectively. The net fees earned by the marketing affiliate were $0.9 million, $1.5 million and $0.2 million for the years ended December 31, 2001, 2000 and 1999, respectively.

During 2001, the partnership entered into an option for installed capacity, and five transactions, including the exercise of the aforementioned option, for installed capacity with its marketing affiliate. Each transaction was at fair market value for such installed capacity at the time. Payments for the option and the five transactions amounted to approximately $29.5 million.

The partnership entered into several transactions in 2001 through its marketing affiliate for the purchase of SO(2) allowances from another affiliate of Edison Mission Energy. All transactions were completed at market price on the date of the transaction. Total consideration paid was $10.2 million.

The partnership entered into agreements with Edison Mission Energy Services, Inc., an affiliate, to provide fuel and transportation services related to coal and fuel oil. Under the terms of these agreements, the partnership pays a service fee of $.06 for each ton of coal delivered and $.05 for each barrel of fuel oil delivered, plus the actual cost of the commodities. The amount billable under this agreement for each of the three years ended December 31, 2001, 2000 and 1999 was $0.3 million.

The partnership has obtained financing from an affiliate in connection with its acquisition of the Homer City facilities. See "−Note 5. Long-Term Debt" for details of financing with the partnership's affiliates.

Certain administrative services such as payroll, employee benefit programs, insurance and information technology are shared among all affiliates of Edison International and the costs of these corporate support services are allocated to all affiliates. The cost of services provided

by Edison International and Edison Mission Energy, including those related to the partnership, are allocated based on one of the following formulas: percentage of the time worked, equity in investment and advances, number of employees, or multi-factor (operating revenues, operating expenses, total assets and total employees). The partnership participates in a common payroll and benefit program with all Edison International employees. In addition, the partnership is billed for any direct labor and out-of-pocket expenses for services directly requested for the benefit of the partnership. The partnership believes the allocation methodologies are reasonable. The partnership made reimbursements for the cost of these programs and other services totaling $26.8 million, $30.0 million and $18.1 million for the years ended December 31, 2001, 2000 and 1999, respectively.

The partnership participates in the insurance program of Edison International, including property, general liability, workers compensation and various other specialty policies. The partnership's insurance premiums are generally based on its share of risk related to each policy. In connection with the property insurance program, a portion of the risk is reinsured by a captive insurance subsidiary of Edison International. Under these reinsurance policies, the partnership is entitled to receive a premium refund to the extent that its loss experience is less than estimated.

The partnership has also recorded a receivable from Edison Mission Energy of $58.5 million and $59.4 million at December 31, 2001 and 2000, respectively, related to the tax due under the tax sharing agreement. See "−Note 2. Summary of Significant Accounting Policies−Income Taxes" for further discussion of the tax sharing agreement.

Historically, the partnership has not been charged for an allocation of the Chicago Office of Edison Mission Energy's Americas Region since its inception in late 1999 due to its principal focus on power plants in Illinois. The Chicago Office has technical and managerial responsibility for the partnership's operations. However, the partnership may be charged in the future for a share of these costs. If these costs were allocated to the partnership, they would be recorded as a non-cash charge against the partnership's operations as an in-kind contribution of services through its parent. Accordingly, there would be no cash impact of an allocation of such costs on the partnership's operations. The partnership does not believe that it would incur a material amount of additional costs to operate its Homer City plant on the basis of an unaffiliated relationship with Edison Mission Energy.

Note 12. Supplemental Statements of Cash Flows Information

	Years Ended December 31,		
	2001	2000	1999
Cash paid:			
Interest	$ 169,287	$ 149,335	$ 70,144
Income taxes (receipts)	$ –	$ –	$ –
Details of facility acquisition			
Fair value of assets acquired	$ –	$ –	$ 1,835,207
Liabilities assumed	–	–	(16,576)
Net cash paid for acquisition	$ –	$ –	$ 1,818,631
Non-cash investing and financing activities:			
Relief of long-term debt	$ 830,000	$ –	$ –
Lease financing obligation	$ 1,591,318	$ –	$ –

Note 13. Quarterly Financial Data (unaudited)

2001	First	Second	Third(i)	Fourth	Total
Operating revenues	$ 128,517	$ 105,695	$ 153,985	$ 105,811	$ 494,008
Operating income	54,810	33,008	74,404	27,343	189,565
Provision (benefit) for income taxes	7,541	(642)	15,872	(924)	21,847
Extraordinary gain, net of tax of $4,393	–	–	–	5,701	5,701
Net income (loss)	11,513	(1,588)	24,850	(806)	33,969

2000	First	Second	Third(i)	Fourth	Total
Operating revenues	$ 97,616	$ 103,012	$ 131,049	$ 89,692	$ 421,369
Operating income	28,849	27,656	57,311	19,006	132,822
Provision (benefit) for income taxes	(2,208)	(2,106)	8,964	(5,041)	(391)
Net income (loss)	(3,417)	(5,317)	13,573	(8,011)	(3,172)

(i) Reflects our seasonal pattern, in which the majority of earnings are recorded in the third quarter of each year.

Note 14. Subsequent Event

On February 10, 2002, the ductwork and bypass associated with the selective catalytic reduction system of one of the units, known as Unit 3, collapsed. No fire occurred and no injuries were reported as a result of the event.

We have now completed a preliminary investigation of the event and currently project that Unit 3 will return to service in mid-April 2002. We also believe that the costs to repair the damage to Unit 3 will be covered by insurance and by contractual obligations of the contractor who installed the selective catalytic reduction system. Further, for events of this kind, we maintain business interruption insurance that provides for lost revenues, net of costs, for outage periods beyond sixty days. A more in-depth analysis of the root causes of the event is required to determine the extent to which insurers and/or the contractor will cover the resulting costs of property damage and repair. This investigation continues.

The selective catalytic reduction system for Unit 3, which reduces emissions of nitrogen oxides from the boiler flue gas during the summer season, had been undergoing performance tests following its recent construction and installation. At the time of the collapse, the unit was operating with the selective catalytic reduction system bypassed. When returned to service, the unit will initially operate in this bypass mode. Reconnection of the selective catalytic reduction system will be implemented at a later date in accordance with an outage plan to be developed.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

All powers to control and manage our business and affairs are exclusively vested in our general partner, Mission Energy Westside Inc., a California corporation and wholly-owned subsidiary of Edison Mission Holdings Co., which in turn is a wholly-owned subsidiary of Edison Mission Energy. The members of Mission Energy Westside's current board of directors are elected by, and serve until their successors are elected by, Edison Mission Holdings. All officers are elected from time to time by Mission Energy Westside's board of directors and hold office at its discretion. Mission Energy Westside's board of directors currently contains five members. The board of directors of Mission Energy Westside may elect to appoint additional directors from time to time.

Listed below are the current directors and the executive officers of Mission Energy Westside and their ages and positions as of March 22, 2002.

Name	Age	Position	Position Held Continuously Since
Georgia R. Nelson	52	Director, President	January 2000
John K. Deshong	48	Director, Vice President	August 2000
Ronald L. Litzinger	42	Director, Vice President	January 2000
Kevin M. Smith	44	Director, Treasurer and Vice President	April 1998
Dean A. Christiansen	42	Director	December 2001
Raymond W. Vickers	59	Director	March 1999
Paul C. Gracey, Jr.	42	Vice President and General Counsel	June 2000

Set forth below are the principal occupations and business activities of the directors and executive officers of Mission Energy Westside for the past five years, in addition to their positions indicated above.

Ms. Nelson has been General Manager, Americas Region of Edison Mission Energy since January 2002. Ms. Nelson has been Senior Vice President of Edison Mission Energy since January 1996 and has been President of Midwest Generation EME, LLC since May 1999. From January 1996 until June 1999, Ms. Nelson was Senior Vice President, Worldwide Operations. Ms. Nelson was Division President of Edison Mission Energy's Americas region from January 1996 to January 1998.

Mr. Deshong has been Vice President, Tax of Edison Mission Energy since June 2000. From November 1998 until June 2000, Mr. Deshong was Regional Vice President−Tax of Edison Mission Energy's Americas Region. Mr. Deshong has served as Director, Tax Planning & Special Projects to Edison Mission Energy from April 1997 to November 1998. Prior to joining Edison Mission Energy, Mr. Deshong was Director of Tax at United States Enrichment Corporation from December 1995 to April 1997.

Mr. Litzinger has been Senior Vice President and Chief Technical Officer of Edison Mission Energy since January 2002. From June 1999 to January 2002, Mr. Litzinger was Senior Vice President, Worldwide Operations, of Edison Mission Energy. Mr. Litzinger served as Vice President−O&M Business Development from December 1998 to May 1999. Mr. Litzinger has been with Edison Mission Energy since November 1995, serving as both Regional Vice President, O&M Business Development and Manager, O&M Business Development until December 1998.

Mr. Smith has been Senior Vice President and Chief Financial Officer of Edison Mission Energy since May 1999 and was Regional Vice President−Finance of Edison Mission Energy's Americas Region from March 1998 until September 1999. Mr. Smith served as Treasurer of Edison Mission Energy from September 1992 to February 2000 and was elected to Vice President in 1994.

Mr. Christiansen has been Director of Edison Mission Energy since January 2001 and serves as Edison Mission Energy's independent director. Mr. Christiansen has been President of Lord Securities since October 2000 and has been President of Acacia Capital since May 1990. Mr. Christiansen has been Director of Capital Markets Engineering & Trading, New York since August 1999 and has been Director of Structural Concepts Corporation of Muskegon, Michigan since May 1995.

Mr. Vickers has been Senior Vice President and General Counsel of Edison Mission Energy since March 1999. Prior to joining Edison Mission Energy, Mr. Vickers was a partner with the law firm of Skadden, Arps, Slate, Meagher & Flom since 1989.

Mr. Gracey has been Vice President of Edison Mission Energy since May 1998, and has been Vice President and General Counsel of Midwest Generation EME, LLC since June 2000. From July 1996 until May 2000, Mr. Gracey was Regional Vice President−Legal of Edison Mission Energy's European Region. From August 1993 until May 2000, Mr. Gracey was the Director and General Counsel of Edison Mission Energy's European Region. Mr. Gracey has been a lawyer with Edison Mission Energy since 1992.

ITEM 11. EXECUTIVE COMPENSATION

The officers of Mission Energy Westside receive no compensation from us for their services as officers.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Certain Beneficial Owners

Set forth below is certain information regarding each person who is known by us to be a beneficial owner.

Title of Class	Name and Address of Beneficial Owner	Amount and Nature of Beneficial Owner	Percent of Class
Partnership interests	Mission Energy Westside Inc. 18101 Von Karman Avenue Suite 1700 Irvine, CA 92612	General partner with exclusive voting and investment power	0.1%

Changes in Control

Our indirect parent, Edison Mission Holdings, has pledged the shares of the capital stock of our general partner, Mission Energy Westside Inc., as collateral for our performance under our sale-leaseback obligation. Upon termination of the facility leases, the owner lessors may foreclose on this pledge and could own Mission Energy Westside and be able to exercise all the powers of general partner.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

In July 1999, Edison Mission Energy, our indirect parent, made an interest-free loan to Georgia R. Nelson, Director and President of Mission Energy Westside Inc., in the amount of $179,800 in exchange for a note executed by Ms. Nelson and payable 365 days following the conclusion of her assignment in Chicago, Illinois.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a)(1) **List of Financial Statements**

See Index to Financial Statements at Item 8 of this report.

(2) **List of Financial Statement Schedules**

Schedules have been omitted since the required information is not present in amounts sufficient to require submission of the schedule, or because the required information is included in the financial statements or notes thereto referenced in (a)(1) above.

(b) **Reports on Form 8-K**

EME Homer City Generation L.P. filed the following reports on Form 8-K and Form 8-K/A during the quarter ended December 31, 2001.

Date of Report	Dated Filed	Item(s) Reported
November 21, 2001	November 21, 2001	5,7
December 5, 2001	December 5, 2001	5,7
December 5, 2001	December 5, 2001	5

(c) **Exhibits**

Exhibit No.	Description
3.1	EME Homer City Generation L.P. Agreement of Limited Partnership incorporated by reference to Exhibit 3.13 to Edison Mission Holding Co.'s registration statement on Form S-4 filed with the Securities and Exchange Commission on December 3, 1999 (File No. 333-92047).
3.2	Amended and Restated Agreement of Limited Partnership of EME Homer City Generation L.P., dated as of December 7, 2001.*
4.1	Indenture, dated as of May 27, 1999, between Edison Mission Holdings Co. and United States Trust Company of New York, as Trustee, incorporated by reference to Exhibit 4.1 to Edison Mission Holdings Co.'s registration statement on Form S-4 filed with the Securities and Exchange Commission on December 3, 1999 (File No. 333-92047).
4.1.1	First Amended and Restated Indenture, dated as of December 7, 2001 among Homer City Funding LLC and The Bank of New York, as successor trustee to United States Trust Company of New York.*
4.1.2	Form of 8.137% Senior Secured Bond due 2019 (included in Exhibit 4.1.1). *
4.1.3	Form of 8.734% Senior Secured Bond due 2026 (included in Exhibit 4.1.1). *
4.1.4	Assumption Agreement, dated as of December 7, 2001, among EME Homer City Generation, L.P., Homer City OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC, Homer City OL8 LLC, Homer City Funding LLC and The Bank of New York as successor to United States Trust Company of New York.*
4.2	Indenture of Trust and Security Agreement, dated as of December 7, 2001, between Homer City OL1 LLC, The Bank of New York, as Lease Indenture Trustee and Security Agent.*

4.2.1	Schedule identifying substantially identical agreements to Indenture of Trust and Security Agreement constituting Exhibit 4.2 hereto.*
4.2.2	Form of Initial Lessor Note (included in Exhibit 4.2).*

4.3	Facility Lease Agreement, dated as of December 7, 2001, between Homer City OL1 LLC and EME Homer City Generation L.P.*
4.3.1	Schedule identifying substantially identical agreements to Facility Lease Agreement constituting Exhibit 4.3 hereto.*
4.4	Participation Agreement, dated as of December 7, 2001, among EME Homer City Generation L.P., Homer City OL1 LLC, as Facility Lessor and Ground Lessee, Wells Fargo Bank Northwest National Association, General Electric Capital Corporation, The Bank of New York as the Security Agent, The Bank of New York as Lease Indenture Trustee, Homer City Funding LLC and The Bank of New York as Bondholder Trustee.*
4.4.1	Schedule identifying substantially identical agreements to Participation Agreement constituting Exhibit 4.4 hereto.*
4.5	Owner Lessor Subordination Agreement, dated as of December 7, 2001, by and among Homer City OL1 LLC as the Owner Lessor, General Electric Capital Corporation as the Owner Participant and The Bank of New York, as the Lease Indenture Trustee.*
4.5.1	Schedule identifying substantially identical agreements to Owner Lessor Subordination Agreement constituting Exhibit 4.5 hereto.*
4.6	Lease Subordination Agreement, dated as of December 7, 2001, by and among Homer City OL1 LLC, as the Owner Lessor, GE Capital Corporation as the Owner Participant, EME Homer City Generation L.P. as Facility Lessee and The Bank of New York as Security Agent.*
4.6.1	Schedule identifying substantially identical agreements to Lease Subordination Agreement constituting Exhibit 4.6 hereto.*
4.7	Pledge and Collateral Agreement made by Edison Mission Holdings Co. in favor of The Bank of New York, as successor to United States Trust Company of New York, as Collateral Agent, dated as of December 7, 2001.*
4.8	Assumption and Release Agreement, dated as of December 7, 2001, among Edison Mission Holdings Co., Edison Mission Finance Co., EME Homer City Generation L.P. and The Bank of New York (as successor in interest to United States Trust Company of New York), as Bondholder Trustee and Collateral Agent.*
4.9	Open-End Mortgage, Security Agreement and Assignment of Rents, dated as of December 7, 2001, among Homer City OLI LLC, as the Owner Lessor to The Bank of New York, as Security Agent and Mortgagee.*
10.1	Exchange and Registration Rights Agreement, dated as of May 27, 1999, by and among the Initial Purchasers named therein, the Guarantors named therein and Edison Mission Holdings Co., incorporated by reference to Exhibit 10.1 to Edison Mission Holding Co.'s registration statement on Form S-4 to the Securities and Exchange Commission on December 3, 1999 (File No. 333-92047).

10.12	Transition Power Purchase Agreement, dated August 1, 1998, between New York State Electric & Gas Corporation and Mission Energy Westside Inc., incorporated by reference to Exhibit 10.52 to Edison Mission Energy's Form 10-K for the year ended December 31, 1998.
10.13	Transition Power Purchase Agreement, dated August 1, 1998, between Pennsylvania Electric Company and Mission Energy Westside Inc., incorporated by reference to Exhibit 10.53 to Edison Mission Energy's Form 10-K for the year ended December 31, 1998.
10.14	Guarantee, dated August 1, 1998, between Edison Mission Energy, Pennsylvania Electric Company, NGE Generation, Inc. and New York State Electric & Gas Corporation, incorporated by reference to Exhibit 10.54 to Edison Mission Energy's Form 10-K for the year ended December 31, 1998.
10.15	Credit Agreement, dated March 18, 1999, among Edison Mission Holdings Co. and Certain Commercial Lending Institutions, and Citicorp USA, Inc., incorporated by reference to Exhibit 10.55 to Edison Mission Energy's Form 8-K dated March 18, 1999.
10.16	Guarantee and Collateral Agreement made by Edison Mission Holdings Co., Edison Mission Finance Co., Homer City Property Holdings, Inc., Chestnut Ridge Energy Co., Mission Energy Westside Inc., EME Homer City Generation L.P. and Edison Mission Energy in favor of United States Trust Company of New York, dated as of March 18, 1999, incorporated by reference to Exhibit 10.56 to Edison Mission Energy's Form 8-K dated March 18, 1999.
10.16.1	Amendment No. 1 to the Guarantee and Collateral Agreement, dated May 27, 1999, between Edison Mission Holdings Co., Edison Mission Finance Co., Homer City Property Holdings, Inc., Chestnut Ridge Energy Company, Mission Energy Westside Inc., EME Homer City Generation L.P. and Edison Mission Energy in favor of United States Trust Company of New York, incorporated by reference to Exhibit 10.56.1 to Amendment No. 1 of Edison Mission Holdings Co.'s registration statement on Form S-4 filed with the Securities and Exchange Commission on February 8, 2000 (File No. 333-92047).
10.16.2	Open-End Mortgage, Security Agreement and Assignment of Lease and Rents, dated March 18, 1999, from EME Homer City Generation L.P. to United States Trust Company of New York, incorporated by reference to Exhibit 10.56.2 to Amendment No. 1 of Edison Mission Holdings Co.'s registration statement on Form S-4 filed with the Securities and Exchange Commission on February 8, 2000 (File No. 333-92047).
10.16.3	Amendment No. 1 to the Open-End Mortgage, Security Agreement and Assignment of Leases and Rents, dated May 27, 1999, from EME Homer City Generation L.P. to United States Trust Company of New York, incorporated by reference to Exhibit 10.56.3 to Amendment No. 1 of Edison Mission Holdings Co.'s registration statement on Form S-4 filed with the Securities and Exchange Commission on February 8, 2000 (File No. 333-92047).
10.16.4	Amended and Restated Guarantee and Collateral Agreement, dated as of December 7, 2001, made by EME Homer City Generation L.P. in favor of The Bank of New York as successor to United States Trust Company of New York, as Collateral Agent.*

10.17	Collateral Agency and Intercreditor Agreement among Edison Mission Holdings Co., Edison Mission Finance Co., Homer City Property Holdings, Inc., Chestnut Ridge Energy Co., Mission Energy Westside Inc., EME Homer City Generation L.P., The Secured Parties' Representative, Citicorp USA, Inc., as Administrative Agent and United States Trust Company of New York, as Collateral Agent, dated as of March 18, 1999, incorporated by reference to Exhibit 10.57 to Edison Mission Energy's Form 8-K dated March 18, 1999.
10.18	Security Deposit Agreement among Edison Mission Holdings Co., Edison Mission Finance Co., Homer City Property Holdings, Inc., Chestnut Ridge Energy Co., Mission Energy Westside Inc., EME Homer City Generation L.P. and United State Trust Company of New York, as Collateral Agent, dated as of March 18, 1999, incorporated by reference to Exhibit 10.58 to Edison Mission Energy's Form 8-K dated March 18, 1999.
10.18.1	Amendment No. 1 to the Security Deposit Agreement, dated May 27, 1999, between Edison Mission Holdings Co., Edison Mission Finance Co., Homer City Property Holdings, Inc., Chestnut Ridge Energy Company, Mission Energy Westside Inc., EME Homer City Generation L.P. and United States Trust Company of New York, as Collateral Agent, incorporated by reference to Exhibit 10.58.1 to Amendment No. 1 of Edison Mission Holdings Co.'s registration statement on Form S-4 filed with the Securities and Exchange Commission on February 8, 2000 (File No. 333-92047).
10.18.2	Amended and Restated Security Deposit Agreement, dated as of December 7, 2001, among EME Homer City Generation L.P. and The Bank of New York as Collateral Agent.*
10.19	Credit Support Guarantee, dated as of March 18, 1999, made by Edison Mission Energy in favor of United States Trust Company of New York, incorporated by reference to Exhibit 10.59 to Edison Mission Energy's Form 8-K dated March 18, 1999.
10.19.1	Amendment No. 1 to the Credit Support Guarantee, dated May 27, 1999, made by Edison Mission Energy in favor of United States Trust Company of New York, incorporated by reference to Exhibit 10.59.1 to Amendment No. 1 of Edison Mission Holdings Co.'s registration statement on Form S-4 filed with the Securities and Exchange Commission on February 8, 2000 (File No. 333-92047).
10.20	Debt Service Reserve Guarantee, dated as of March 18, 1999, made by Edison Mission Energy in favor of United States Trust Company of New York on behalf of the various financial institutions (Lenders) as are or may become parties to the Credit Agreement, dated as of March 18, 1999, among Edison Mission Holdings Co., the Lenders and Citicorp USA, Inc., incorporated by reference to Exhibit 10.60 to Edison Mission Energy's Form 8-K dated March 18, 1999.
10.20.1	Amendment No. 1 to the Debt Service Reserve Guarantee, dated May 27, 1999, made by Edison Mission Energy in favor of United States Trust Company of New York, incorporated by reference to Exhibit 10.60.1 to Amendment No. 1 of Edison Mission Holdings Co.'s registration statement on Form S-4 filed with the Securities and Exchange Commission on February 8, 2000 (File No. 333-92047).
10.20.2	Amendment No. 2 to the Debt Service Reserve Guarantee, dated as of March 18, 2001, made

by Edison Mission Energy in favor of United States Trust Company of New York, incorporated by reference to Exhibit 10.60.2 to Edison Mission Energy's Form 10-Q for the quarter ended June 30, 2001.

10.20.3	Bond Debt Service Reserve Guarantee, dated May 27, 1999, made by Edison Mission Energy in favor of United States Trust Company of New York, incorporated by reference to Exhibit 10.60.2 to Amendment No. 1 of Edison Mission Holdings Co.'s registration statement on Form S-4 filed with the Securities and Exchange Commission on February 8, 2000 (File No. 333-92047).
10.21	Credit Agreement, dated March 18, 1999, among Edison Mission Energy and Certain Commercial Lending Institutions, and Citicorp USA Inc., incorporated by reference to Exhibit 10.61 to Edison Mission Energy's Form 8-K dated March 18, 1999.
10.21.1	Amendment One to Credit Agreement, dated as of August 17, 2000, by and among Edison Mission Energy, Certain Commercial Lending Institutions, and Citicorp USA, Inc., as Administrative Agent, incorporated by reference to Exhibit 10.61.1 to Edison Mission Energy's Form 10-K for the year ended December 31, 2000.
10.22	Asset Purchase Agreement, dated August 1, 1998, between Pennsylvania Electric Company, NGE Generation, Inc., New York State Electric & Gas Corporation and Mission Energy Westside, Inc., incorporated by reference to Exhibit 2.4 to Edison Mission Energy's Form 10-K for the year ended December 31, 1998.
10.23	Intercompany Loan Subordination Agreement, dated March 18, 1999, among Edison Mission Holdings Co., Edison Mission Finance Co., Homer City Property Holdings, Inc., Chestnut Ridge Energy Co., Mission Energy Westside Inc., EME Homer City Generation L.P. and United States Trust Company of New York, incorporated by reference to Exhibit 10.60.3 to Amendment No. 2 of Edison Mission Holdings Co.'s registration statement on Form S-4 filed with the Securities and Exchange Commission on February 29, 2000 (File No. 333-92047).
10.23.1	Amended and Restated Intercompany Loan Subordination Agreement, dated as of December 7, 2001, among Edison Mission Holdings Co., Edison Mission Finance Co., Homer City Property Holdings, Inc., Chestnut Ridge Energy Co., Mission Energy Westside, Inc., EME Homer City Generation L.P. and The Bank of New York, as successor to United States Trust Company of New York.*
10.27	Designated Account Representative Agreement Relating to the NOx Allowance Program, entered into as of December 7, 2001, by and between EME Homer City Generation L.P., Homer City OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC and Homer City OL8 LLC.*
10.28	Designated Account Representative Agreement Relating to the Acid Rain Program, entered into as of December 7, 2001, by and between EME Homer City Generation L.P., Homer City

	OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC and Homer City OL8 LLC.*
10.29	Assignment Agreement, dated December 7, 2001, between The Bank of New York, EME Homer City Generation L.P., Edison Mission Marketing & Trading, Inc. and Edison Mission Energy Fuel Services, Inc.*
10.30	Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated December 7, 2001, by and among Homer City OL1 LLC, Westdeutsche Landesbank Girozentrale, New York Branch, Credit Suisse First Boston, New York Branch and Westdeutsche Landesbank Girozentrale, New York Branch.*

10.30.1	Schedule identifying substantially identical agreements to the Debt Service Reserve Letter of Credit and Reimbursement Agreement constituting Exhibit 10.30 hereto.*
10.31	Sub-Assignment Agreement, dated as of December 7, 2001, between The Bank of New York, EME Homer City Generation L.P., Edison Mission Marketing & Trading, Inc., and Edison Mission Energy Fuel Services, Inc.*
21	List of Subsidiaries of EME Homer City Generation L.P.*
99	Letter from EME Homer City Generation L.P. Regarding Assurance Letter from Arthur Andersen LLP.*

* Filed herewith.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

EME Homer City Generation L.P.
(Registrant)

By: /s/ GEORGIA R. NELSON
Georgia R. Nelson, President and Director

Date: March 28, 2002

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date

Principal Executive Officer:

/s/ GEORGIA R. NELSON Georgia R. Nelson	President and Director	March 28, 2002

Principal Financial and Accounting Officer:

/s/ KEVIN M. SMITH Kevin M. Smith	Vice President, Treasurer and Director	March 28, 2002

Majority of Board of Directors:

/s/ JOHN K. DESHONG John K. Deshong	Vice President and Director	March 28, 2002
/s/ RONALD L. LITZINGER Ronald L. Litzinger	Vice President and Director	March 28, 2002
/s/ RAYMOND W. VICKERS Raymond W. Vickers	Director	March 28, 2002

QuickLinks

Exhibit 3.2

EXECUTION COPY

AMENDED AND RESTATED

AGREEMENT OF

LIMITED PARTNERSHIP

OF

EME HOMER CITY GENERATION L.P.

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EME HOMER CITY GENERATION L.P.

AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

THIS AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP, is dated as of December 7, 2001, and is entered into by and among MISSION ENERGY WESTSIDE, INC., a California corporation ("Mission"), as general partner, and CHESTNUT RIDGE ENERGY COMPANY, a California corporation ("Chestnut Ridge"), as a limited partner.

WHEREAS, the parties hereto entered into an Agreement of Limited Partnership dated as of October 26, 1998; and

WHEREAS, the parties now wish to amend and restate such Agreement;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1.
DEFINITIONS

The following definitions shall for all purposes, unless otherwise clearly indicated to the contrary, apply to the terms used in this Agreement.

"ACT" means the Pennsylvania Revised Uniform Limited Partnership Act, 15 Pa.C.S.A. ch.85, as amended from time to time (or any corresponding provisions of succeeding law).

"ADJUSTED CAPITAL ACCOUNT" means, with respect to an Interest Holder, an account the balance (which may be a deficit balance) in which is equal to the balance in such Interest Holder's Capital Account as of the end of the relevant Allocation Year, after giving effect to the following adjustments: (i) credit to such Capital Account any amounts which such Interest Holder is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore to the Partnership pursuant to Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and (ii) debit to such Capital Account such Interest Holder's share of items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"ADJUSTED CAPITAL ACCOUNT DEFICIT" means, with respect to an Interest Holder, the deficit balance, if any, in such Interest Holder's Adjusted Capital Account.

"AFFILIATE" means, with respect to any Person (i) any other Person who bears a relationship to the first Person described in either Code Section 267(b) (substituting, however, "10 percent" for "50 percent" everywhere in Code Section 267) or Code Section 707(b) (substituting, however, "10 percent" for "50 percent" everywhere in Code Section 707), and (ii) any officer, director, general partner, or trustee of any Person described in clauses (i) or (ii) of this sentence.

"AGENT" has the meaning specified in Section 2.4.1.

"AGREED VALUE" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Agreed Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset;

(ii) The Agreed Values of all Partnership assets shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account) as of the following times: (a) the acquisition of an additional interest in the Partnership by any new or existing Interest

Holder in exchange for more than a DE MINIMIS Capital Contribution; (b) the distribution by the Partnership to an Interest Holder of more than a DE MINIMIS amount of Partnership property as consideration for an interest in the Partnership; (c) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); and (d) at such other times as the General Partner shall reasonably determine necessary or advisable in order to comply with Regulations Sections 1.704-1(b) and 1.704-2; provided that the adjustments described in clauses (a) and (b) of this paragraph shall be made only if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Interest Holders in the Partnership;

(iii) The Agreed Value of any Partnership asset distributed to any Interest Holder shall be the gross fair market value (taking Code Section 7701(g) into account) of such asset on the date of distribution; and

(iv) The Agreed Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 732(d), Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining capital accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Agreed Values shall not be adjusted pursuant to this clause (iv) to the extent that an adjustment pursuant to clause (ii) hereof is made in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv).

The Agreed Value of any interest in another partnership held by the Partnership shall be determined as provided above, except that (a) at any time at which such Agreed Value is determined pursuant to clause (i), (ii) or (iii) above, it shall be increased by the Partnership's share of the liabilities of such other partnership under Code Section 752 at such time and (b) Agreed Value shall be increased or decreased to reflect subsequent increases or decreases in the Partnership's share of such liabilities or increases in the Partnership's individual liabilities by reason of its assumption of liabilities of such other partnership or decreases in the Partnership's individual liabilities by reason of such other partnership's assumption thereof to the same extent and at the same time that it would be so increased or decreased if it were actually the federal income tax basis of the Partnership's interest in such other partnership.

If the Agreed Value of an asset has been determined or adjusted pursuant to this definition of Agreed Value, such Agreed Value shall thereafter be adjusted by Depreciation with respect to such asset taken into account in computing Profits and Losses.

Determinations of gross fair market value for purposes of this definition of Agreed Value shall be made as follows: (a) in situations described in paragraphs (i), (ii)(a), (ii)(b) and (iii) above by agreement between the General Partner and the Interest Holder making the contribution or receiving the distribution as the case may be, provided, however that if the General Partner (or any Affiliate of the General Partner) is the contributor or the distributee such determination shall require agreement between the contributor or the distributor and a Majority Interest; and (b) in other situations by agreement between the General Partner and a Majority Interest. In a case in which agreement cannot be reached as required in the foregoing provisions of this paragraph, gross fair market value shall be determined by a mutually acceptable independent appraiser, whose fees shall be divided equally between the Partnership on behalf of the General Partner and the contributor or distributee.

"AGREEMENT" means this Amended and Restated Agreement of Limited Partnership.

"ALLOCATION YEAR" means (i) the period commencing on the date of inception of the Partnership and ending on the next following December 31, (ii) any subsequent twelve (12) month period commencing on January 1 and ending on December 31, or (iii) any portion of the period

described in clauses (i) or (ii) for which the Partnership is required to allocate Profits, Losses and other items of Partnership income, gain, loss or deduction pursuant to Article 6.

"CAPITAL ACCOUNTS" mean the capital accounts maintained with respect to Partnership Interests pursuant to Article 4.

"CAPITAL CONTRIBUTIONS" means with respect to any Partner the amount of money and the initial Agreed Value of any property (other than money) contributed to the Partnership with respect to the interest in the Partnership held by such Partner.

"CERTIFICATE" means the certificate of limited partnership for the Partnership required to be filed pursuant to Section 8511 of the Act.

"CODE" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

"DEPRECIATION" means, for each Allocation Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Allocation Year, except that if the Agreed Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Allocation Year,

Depreciation shall be determined in accordance with Regulations Section 1.704-1(b)(2)(iv)(g)(3) or Regulations Section 1.704-3(d)(2), whichever is applicable.

"DISSOLUTION EVENT" has the meaning assigned to that term in Section 12.1.

"EFFECTIVE DATE" means [ ].

"FACILITY LEASES" means each of those eight Facility Lease Agreements dated on or about the date of this Agreement by and among the Partnership and each of Homer City OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC, Homer City OL8 LLC, each a Delaware limited liability company.

"FEDERAL BANKRUPTCY CODE" means the United States Bankruptcy Code of 1978, as amended from time to time, 11 U.S.C. § 101 *et seq.*

"FISCAL YEAR" means (i) the period commencing on the date of inception of the Partnership and ending on the next following December 31, (ii) any subsequent twelve-month period commencing on January 1 and ending on December 31 and (iii) the period commencing on the immediately preceding January 1 and ending on the date on which all Partnership property has been distributed to the Interest Holders pursuant to Section 12.2 hereof.

"GENERAL PARTNER" means Mission or its successor in interest or any other Person admitted to the Partnership pursuant to this Agreement in the capacity of a general partner.

"GP INTEREST" means an interest in the Partnership issued pursuant to this Agreement to a Person in its capacity as the General Partner.

"INTEREST HOLDER" means any Person who is entitled to receive distributions and allocations with respect to a Partnership Interest.

"LIMITED PARTNER" means, as the case may be, Chestnut Ridge or any other Person admitted to the Partnership pursuant to this Agreement in the capacity of a limited partner.

"LIQUIDATOR" has the meaning specified in Section 12.2.

"LP INTEREST" means an interest in the Partnership issued pursuant to this Agreement to a Person its capacity as a Limited Partner.

"MAJORITY INTEREST" means Limited Partners whose aggregate Percentage Interests total more than one-half of the aggregate Percentage Interests of the Limited Partners.

"NONDEDUCTIBLE EXPENDITURE" has the meaning specified under the definition of Profits below.

"NONRECOURSE DEDUCTIONS" has the meaning set forth in regulations Section 1.704-2(b)(1). The amount and items of Nonrecourse Deductions shall be determined in accordance with Regulations Sections 1.704-2(c) and 1.704-2(j)(1).

"PARTICIPATION AGREEMENTS" means those eight Participation Agreements dated on or about the date of this Agreement by and among the Partnership, each of Homer City OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC, and Homer City OL8 LLC, each a Delaware limited liability company; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager under each Participation Agreement; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company; The Bank of New York, both in its individual capacity and solely as Lease Indenture Trustee under each Participation Agreement; The Bank of New York, both in its individual capacity and solely as Security Agent under each Participation Agreement; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee under each Participation Agreement.

"PARTNER" means the General Partner or a Limited Partner.

"PARTNER NONRECOURSE DEBT MINIMUM GAIN" has the meaning set forth in Regulations Section 1.704-2(i).

"PARTNER NONRECOURSE DEBT" has the meaning set forth in Regulations Section 1.704-2(b)(4).

"PARTNER NONRECOURSE DEDUCTIONS" has the meaning set forth in Regulations Section 1.704-2(i).

"PARTNERSHIP" means EME Homer City Generation L.P., a Pennsylvania limited partnership.

"PARTNERSHIP INTEREST" means a GP Interest or an LP Interest.

"PARTNERSHIP MINIMUM GAIN" has the meaning set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

"PERCENTAGE INTEREST" means, with respect to any Interest Holder, the Interest Holder's interest, expressed as a percentage, in certain Profits, Losses (and items thereof) and distributions of the Partnership as set out in this Agreement and as may be amended from time to time to reflect the transfer of Partnership Interests or the issuance of additional Partnership Interests.

"PERMITTED TRANSFER" is defined in Section 10.2.2.

"PERSON" means an individual, a corporation, a partnership, a trust, an unincorporated organization, an association, or any other entity.

"PLEDGE AND COLLATERAL AGREEMENT" means that certain Pledge and Collateral Agreement dated on or about the date of this Agreement made by Edison Mission Holdings Co., in favor of The Bank of New York (as successor to United States Trust Company of New York), as Collateral Agent.

"PROFITS" and "LOSSES" means, for each Allocation Year, an amount equal to the Partnership's taxable income or loss for such Allocation Year, determined in accordance with Code

Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(ii) Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(b) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) ("Nondeductible Expenditures"), and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(iii) If the Agreed Value of any Partnership asset is adjusted pursuant to clause (ii) or clause (iii) of the definition of Agreed Value hereunder, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(iv) Gain or loss resulting from any disposition of Partnership property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Agreed Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Agreed Value;

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Allocation Year;

(vi) To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704-(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of an Interest Holder's interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and

(vii) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 6.4 or Section 6.5 hereof shall not be taken into account in computing Profits or Losses.

"REGULATIONS" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"TRANSFER" means, as a noun, any voluntary or involuntary transfer, sale, pledge, hypothecation, or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge, hypothecate, or otherwise dispose of.

ARTICLE 2.
FORMATION OF PARTNERSHIP; PURPOSE

2.1. FORMATION; AMENDMENT. The General Partner and the Limited Partner have formed the Partnership as a limited partnership pursuant to the provisions of the Act, and now wish to amend and restate the partnership agreement of the Partnership in its entirety as of the date hereof. The General Partner and the Limited Partner have entered into this Amended and Restated Agreement to set forth the rights and obligations of the Partners and certain matters related thereto. Except as

expressly provided herein to the contrary, the rights and obligations of the Partners and the administration, dissolution, and termination of the Partnership shall be governed by the Act.

2.2. NAME. The name of the Partnership shall be, and the business of the Partnership shall be conducted under the name of, "EME Homer City Generation L.P."; provided, however, that (a) the Partnership's business may be conducted under any other name or names deemed advisable by the General Partner, (b) the General Partner in its sole discretion may change the name of the Partnership at any time and from time to time, and (c) the name of the Partnership and any name under which the Partnership conducts business shall include "L.P." or

"Limited Partnership" (or similar words or letters) where necessary for purposes of maintaining the limited liability status of the Limited Partners or otherwise complying with the laws of any jurisdiction that so requires.

2.3. REGISTERED OFFICE, REGISTERED AGENT AND PLACES OF BUSINESS. The registered office of the Partnership in the Commonwealth of Pennsylvania is CT Corporation, 1635 Market Street, Philadelphia, Pennsylvania 19103. The General Partner may change the registered office of the Partnership in the Commonwealth of Pennsylvania upon giving notice of such change to the other Partners. The Partnership may establish other offices at such places as the General Partner deems advisable.

2.4. POWER OF ATTORNEY.

2.4.1. The Limited Partners hereby constitute and appoint the General Partner or, if a Liquidator shall have been selected pursuant to Section 12.2, the Liquidator, with full power of substitution, as their true and lawful agent and attorney-in-fact ("Agent"), with full power and authority in such Partners' name, place, and stead to:

2.4.1.1. execute, swear to, acknowledge, deliver, file, and record in the appropriate public offices (A) all certificates, documents, and other instruments (including, without limitation, this Agreement and the Certificate and any amendments or restatements thereof) that the Agent deems appropriate or necessary to form or qualify, or continue the existence or qualification of, the Partnership as a limited partnership (or a partnership in which the Limited Partners have limited liability) under the laws of any state or jurisdiction; (B) all certificates, documents, and other instruments that the Agent deems appropriate or necessary to reflect any amendments, changes, or modifications of this Agreement in accordance with its terms; (C) all conveyances and other documents or instruments that the Agent deems appropriate or necessary to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement; and (D) all certificates, documents, and other instruments relating to the admission, substitution or withdrawal of any Partner pursuant to Article 10 or 11 and other events described in Article 10 or 11; and

2.4.1.2. execute, swear to, acknowledge, and file all ballots, consents, approvals, waivers, certificates, documents, and other instruments that the Agent deems appropriate or necessary in order to make, evidence, give, confirm, or ratify any vote, consent, approval, agreement, or other action that is made or given by the Partners hereunder, is deemed to be made or given by the Partners hereunder, is consistent with the terms of this Agreement, or is deemed by the Agent to be appropriate or necessary to effectuate the terms or intent of this Agreement or the purposes of the Partnership; provided, however, that, if any vote or approval of the Limited Partners is specifically required for an action by any provision of this Agreement, the Agent may exercise the power of attorney made in this Section 2.4.1.2 to take such action only after such vote or approval is obtained.

2.4.2. The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, and it shall survive and not be affected by the subsequent termination, incapacity, or bankruptcy of any Limited Partner and the transfer of all or any portion of a

Limited Partner's Partnership Interest and shall extend to a Limited Partner's transferees and assigns. The Limited Partners hereby agree to be bound by any representations made by the Agent acting in good faith pursuant to such power of attorney; and the Limited Partners hereby waive any and all defenses that may be available to contest, negate, or disaffirm the action of the Agent taken in good faith pursuant to such power of attorney. The Limited Partners shall execute and deliver to the Agent, within fifteen days after receipt of the Agent's request therefor, such further designations, powers of attorney, and other instruments as the Agent deems appropriate or necessary to effectuate the terms or intent of this Agreement or the purposes of the Partnership.

2.5. TERM. The term of the Partnership commenced upon the filing of the Certificate with the Pennsylvania Secretary of State and shall continue until the close of Partnership business on December 31, 2048 or such later date on which the Partnership no longer has any right to the use or possession of the Facility, unless the Partnership is earlier terminated in accordance with the provisions of Section 12.10.

2.6. CERTIFICATE OF LIMITED PARTNERSHIP. The General Partner shall file an amendment to the Certificate for the Partnership with the Secretary of State of the Commonwealth of Pennsylvania as required by the Act. The Certificate, and any further amendment to the Certificate, shall address only the matters set forth in Section 8511(a)(1), (2), (3) and (4) of the Act. The General Partner shall deliver to each Limited Partner a copy of the Certificate and any further certificate of amendment thereto. The General Partner shall cause to be filed such other certificates or documents as may be required for the operation, and qualification of a limited partnership in Pennsylvania and any other state in which the Partnership may elect to do business. The General Partner shall thereafter file any necessary certificates of amendment to the Certificate and such other certificates and documents and do all things requisite to the maintenance of the Partnership as a limited partnership (or as a partnership in which the Limited Partners have limited liability) under the laws of Pennsylvania and any other state in which the Partnership may elect to do business.

2.7. PURPOSE. The purpose and business of the Partnership shall be to engage in acquiring, leasing, owning, and/or operating the Homer City Electric Generation Station located near Indiana, Pennsylvania, and certain facilities and other assets associated therewith and ancillary thereto, to enter into financing arrangements in respect thereof and to engage in all other lawful business activities in connection therewith, including those activities contemplated by the Participation Agreements.

ARTICLE 3.
CAPITAL CONTRIBUTIONS; PERCENTAGE INTERESTS

3.1. GENERAL PARTNER. Mission has, in its capacity as the General Partner, contributed to the Partnership such amount and, as of the Effective Date, shall own the Percentage Interest, set forth opposite its name in SCHEDULE A hereto.

3.2. LIMITED PARTNERS. At the request of the General Partner, Chestnut Ridge, in its capacity as a Limited Partner, has contributed to the Partnership such amount and, as of the Effective Date shall own the Percentage Interest, set forth opposite its name in SCHEDULE A hereto.

3.3. NO INTEREST. No interest shall be paid by the Partnership on any Capital Contributions or on the amount in any Partner's Capital Account.

3.4. LOANS FROM PARTNERS. Loans or other similar advances by a Partner to or for the account of the Partnership shall not be considered Capital Contributions. Any such loans or other similar advances shall be made subject to such terms and conditions acceptable to the lending Partner as the General Partner determines to be in the best interests of the Partnership.

3.5. ADDITIONAL CONTRIBUTIONS. Except as provided in this Section 3.5 or as required pursuant to an agreement relating to the purchase by any person other than Mission or Chestnut Ridge

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of a Partnership Interest in the Partnership, no Partner shall be entitled to make additional capital contributions to the Partnership, except upon the approval of the General Partner; PROVIDED that each Partner shall be given the opportunity for 30 days after written notice from the General Partner to make such Partner's PRO RATA share of additional contributions. If such rights of contribution are exercised by some but not all of the partners, the General Partner shall so notify all of the Partners. Thereafter, the Partners that elected to exercise such rights of contribution shall have the further right to make additional contributions up to the amount of the contribution shortfall on a PRO RATA basis, or as they may otherwise agree, within 10 days of receipt of such second notice, and the respective Partnership Interests of all the Partners shall be adjusted to reflect such unequal additional contributions. Nothing in this Section 3.5 shall require the General Partner to give the initial written notice requesting additional Capital contributions.

ARTICLE 4.
CAPITAL ACCOUNTS

The Partnership shall maintain for each Interest Holder a single Capital Account with respect to the Interest Holder's Partnership Interest in accordance with the regulations issued pursuant to Section 704 of the Code. The Capital Account of each Interest Holder shall be maintained for such Person in accordance with the following provisions:

(a) To each Person's Capital Account there shall be credited such Person's Capital Contributions, and such Person's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 6.4 or Section 6.5 or Section 6.6.5 hereof, and the amount of any Partnership liabilities which are assumed by such Person or which are secured by any Partnership property distributed to such Person.

(b) To each Person's Capital Account there shall be debited the amount of cash and the Agreed Value of any Partnership property distributed to such Person pursuant to any provision of this Agreement, such Person's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant the Section 6.4 or Section 6.5 or Section 6.6.5 hereof, and the amount of any liabilities of such Person which are assumed by the Partnership or which are secured by any property contributed by such Person to the Partnership.

(c) In the event that all or a portion of a Partnership Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the transferred interest.

(d) In determining the amount of any liability for purposes of paragraphs (a) and (b) of this definition, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Partnership by the maker of the note shall not be included in the Capital Account of any Interest Holder until the Partnership makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2, and shall be interpreted and applied in a manner consistent with such Regulations. To the extent that such Regulations require that adjustments other than those set out above or in Section 6.4.6 be made to the Capital Accounts of the Partners, such adjustments shall be made, but without duplication of any such required adjustments that are effected through the definitions of "Profits" and "Losses" or Section 6.4.6 or Section 6.6.6.

ARTICLE 5.
DISTRIBUTIONS

5.1. IN GENERAL. The General Partner shall determine from time to time whether the Partnership has funds in excess of those reasonably needed by the business of the Partnership (including reasonable reserves for operating expenses, for debt service, for repairs, for capital expenditures, improvements, and additions, and for contingencies). Such determination shall be made as of the end of each calendar year and the excess funds so determined with respect to a calendar year, if any, shall be distributed to the Partners within 60 days after the end of such calendar year. The General Partner may also determine in its sole discretion to make additional distributions of excess Partnership funds to the Partners. Any such annual or additional distributions shall be made to the Interest Holders in proportion to their respective Percentage Interests. Notwithstanding anything in this Section 5.1 to the contrary, however, the Partnership shall not under any circumstances make any such distributions from any accounts (including accounts that may accrue emission allowances or proceeds from the sales of the same) established pursuant to the financing arrangements entered into by the Partnership with third parties, other than in accordance with the applicable security agreements or other financing documents governing such accounts or restricting such distributions.

5.1. LIQUIDATING DISTRIBUTIONS. Notwithstanding Section 5.1 to the contrary, following the dissolution of the Partnership, distributions to the Partners shall be made in accordance with the provisions of Article 12.

ARTICLE 6.
ALLOCATIONS OF PROFITS AND LOSSES

6.1. PROFITS. After giving effect to the special allocations set forth in Sections 6.4 and 6.5 hereof, Profits for any Allocation Year shall be allocated among the Interest Holders in proportion to their respective Percentage Interests.

6.2. LOSSES. After giving effect to the special allocations set forth in Sections 6.4 and 6.5 hereof, and subject to the provisions of Section 6.3 below, Losses for any Allocation Year shall be allocated among the Interest Holders in proportion to their respective Percentage Interests.

6.3. LIMITATIONS ON ALLOCATIONS OF LOSSES. The Losses allocated to any Interest Holder pursuant to Section 6.2 hereof for any Allocation Year shall not exceed the maximum amount of Losses that can be so allocated without causing such Interest Holder to have (or to suffer an increase to) an Adjusted Capital Account Deficit at the end of the Allocation Year. Any Losses otherwise allocable to an Interest Holder but for the limitation set forth in this Section 6.3 shall be reallocated among Interest Holders, if any, having positive balances in their Adjusted Capital Accounts in accordance with the provisions of Section 6.2, subject, however, to the limitation of the preceding sentence and a consequent reallocation pursuant to this sentence. Any Losses which may be allocated to no Interest Holder under Section 6.2 due to such limitation shall be allocated among the Interest Holders in the proportions required by Regulations Section 1.704-1(b)(3).

6.4. SPECIAL ALLOCATIONS. The following special allocations shall be made in the following order:

6.4.1. MINIMUM GAIN CHARGEBACK. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Article 6, if there is a net decrease in Partnership Minimum Gain during any Allocation Year, each Interest Holder shall be specially allocated items of Partnership income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Interest Holder's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Interest Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 6.4.1 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

6.4.2. PARTNER MINIMUM GAIN CHARGEBACK. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Article 6, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Allocation Year, each Interest Holder who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Partnership income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Interest Holder's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Interest Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 6.4.2 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

6.4.3. QUALIFIED INCOME OFFSET. If any Interest Holder unexpectedly receives any adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Partnership income and gain shall be specially allocated to such Interest Holder in an amount and manner sufficient to eliminate, to the extent required by the

Regulations, any resulting Adjusted Capital Account Deficit of such Interest Holder as quickly as possible; provided, however, that an allocation pursuant to this Section 6.4.3 shall be made if and only to the extent that such Interest Holder would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 6 have been tentatively made as if this Section 6.4.3 were not in this Agreement.

6.4.4. NONRECOURSE DEDUCTIONS. Nonrecourse Deductions for any Allocation Year shall be allocated among the Interest Holders in proportion to their respective Percentage Interests.

6.4.5. PARTNER NONRECOURSE DEDUCTIONS. Partner Nonrecourse Deductions for any Allocation Year shall be allocated to the Interest Holder who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

6.4.6. CERTAIN 754 ADJUSTMENTS. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 743(b), Code Section 732(d) or Code Section 734(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) to be taken into account in determining Capital Accounts as the result of a distribution to an Interest Holder in complete liquidation of its interest in the Partnership, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Interest Holders in accordance with their interests in the Partnership as determined under Regulations Section 1.704-1(b)(3) in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Interest Holder to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

6.5. CURATIVE ALLOCATIONS. The allocations set forth in Sections 6.4.1 through 6.4.6, inclusive, and 6.6.5 hereof (the "REGULATORY ALLOCATIONS") are intended to comply with certain requirements of the Regulations and Internal Revenue Service advance ruling requirements. It is the intent of the parties to this Agreement that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of income, gain, loss or deduction pursuant to this Section 6.5. Therefore, notwithstanding any other

provision of this Article 6 (other than the Regulatory Allocations and the following sentence), the General Partner shall make such offsetting special allocations of Partnership income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Interest Holder's Capital Account balance is, to the extent possible, equal to the Capital Account balance which such Interest Holder would have had if the Regulatory Allocations were not part of this Agreement and all Partnership items were allocated pursuant to Sections 6.1 and 6.2 hereof. In exercising its discretion under this Section 6.5, the General Partner shall take into account Regulatory Allocations under Sections 6.4.1 and 6.4.2 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 6.4.4 and 6.4.5.

6.6. OTHER ALLOCATION RULES.

6.6.1. ALLOCATIONS WHEN INTERESTS CHANGE. For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly, or other basis, as determined by the General Partner using any permissible method under Code Section 706 and the Regulations thereunder; provided, however, that any adjustments to the Agreed Value of a Partnership asset treated as gain or loss under paragraph (iii) of the definition of "Profits" and "Losses" or under Section 6.6.6.3 hereof shall be allocated only to those persons who were Interest Holders immediately before the event giving rise to such adjustment.

6.6.2. ALLOCATION OF PARTICULAR ITEMS. Except as otherwise provided in this Agreement, all items of Partnership income, gain, loss, deduction and any other allocations not otherwise provided for shall be divided among the Interest Holders in the same proportions as they share Profits or Losses, as the case may be, for the year.

6.6.3. TAX REPORTING. The Interest Holders are aware of the income tax consequences of the allocations made by this Article 6 and hereby agree to be bound by the provisions of this Article 6 in reporting their shares of Partnership income and loss for income tax purposes.

6.6.4. PROFIT SHARES. Solely for purposes of determining an Interest Holder's proportionate share of the Partnership's "excess nonrecourse liabilities," as defined in Regulations Section 1.752-3(a), the Interest Holders' interests in Partnership profits shall be deemed to be in proportion to their respective shares of Profits set forth in Section 6.1.

6.6.5. MINIMUM ALLOCATIONS TO GENERAL PARTNER. Notwithstanding the preceding provisions of this Article 6, other than Sections 6.3. and 6.4, the General Partner shall be allocated not less than [one percent] of each item of income, gain, deduction or loss of the Partnership for each Allocation Year.

6.6.6. BOOK ITEMS USED IN SPECIAL ALLOCATIONS. For purposes of determining the Partnership's items of income, gain, loss or deduction for any Allocation Year available to be allocated pursuant to Sections 6.4, 6.5 and 6.6.5 hereof, the following rules shall be applied:

6.6.6.1. Any income of the Partnership that is exempt from federal income tax shall be taken into account as an item of income;

6.6.6.2. Any Nondeductible Expenditure of the Partnership shall be taken into account as an item of deduction;

6.6.6.3. In the event the Agreed Value of any Partnership asset is adjusted pursuant to paragraph (ii) or paragraph (iii) under the definition herein of "Agreed Value," the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset;

6.6.6.4. Gain or loss resulting from any disposition of Partnership property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by

reference to the Agreed Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Agreed Value;

6.6.6.5. In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing the Partnership's taxable income or loss there shall be taken into account Depreciation for such Allocation Year; and

6.6.6.6. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704-(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of an Interest Holder's interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset.

6.7. TAX ALLOCATIONS; CODE SECTION 704(c).

6.7.1. GENERALLY. An Interest Holder's allocable share of the Partnership's items of income (including income exempt from tax), gain, deduction, loss and Nondeductible Expenditure for tax purposes shall be determined under the foregoing provisions of this Article 6 except as provided in this Section 6.7.

6.7.2. CONTRIBUTED PROPERTY. In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Interest Holders so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Agreed Value, determined in accordance with the definition of Agreed Value hereunder.

6.7.3. ADJUSTMENTS TO AGREED VALUE. If the Agreed Value of any Partnership asset is adjusted pursuant to the definition of Agreed Value hereunder, subsequent allocations of income, gain, loss and deduction with respect to such asset for tax purposes shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Agreed Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

6.7.4. ELECTIONS. Any elections or other decisions relating to allocations pursuant to this Section 6.7 shall be made by the General Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 6.7 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Interest Holder's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

ARTICLE 7.
TAX MATTERS

7.1. PREPARATION OF TAX RETURNS. The General Partner shall arrange for the preparation and timely filing of all returns of Partnership income, gains, losses, deductions, credits, and other items necessary for federal, state and local income tax purposes and shall use reasonable best efforts to furnish to the Interest Holders within ninety days after the close of each taxable year of the Partnership the tax information reasonably required for federal, state and local income tax reporting purposes. The classification, realization, and recognition of income, gains, losses, deductions, credits, and other items shall be on the accrual method of accounting for federal income tax purposes, unless the General Partner shall elect otherwise in its sole discretion in accordance with applicable law. The General Partner shall not change the method of accounting initially elected by the Partnership (except if required to do so by law) without the prior written consent of a Majority Interest.

7.2. TAX ELECTIONS.

Except as provided in Section 7.1, the General Partner shall, in its sole discretion, determine whether to make any election available under the Code or any other applicable taxing statute; provided, however, (i) that the General Partner shall not make an election to adjust the basis of property pursuant to Code Sections 754, 734(b) and 743(b), or comparable provisions of state or local law, without the prior written consent of a Majority Interest and shall make such election if requested to do so by a Majority Interest, and (ii) the General Partner shall not extend the statute of limitations for assessment of tax deficiencies against the Interest Holders with respect to adjustments to the Partnership's federal, state or local tax returns unless the Limited Partners unanimously vote for such extension.

7.3. TAX CONTROVERSIES. The General Partner is designated as the Tax Matters Partner (as defined in section 6231 of the Code) and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each of the Interest Holders agrees to cooperate with the General Partner and to do or refrain from doing any and all things reasonably required by the General Partner to conduct such proceedings.

ARTICLE 8.
BUSINESS MANAGEMENT AND OPERATION; INDEMNIFICATION

8.1. POWERS OF GENERAL PARTNER. Except as otherwise expressly provided in this Agreement, all powers to control and manage the business and affairs of the Partnership shall be exclusively vested in the General Partner, and no Limited Partner shall have any right or power to control or manage the business and affairs of the Partnership.

Except as otherwise expressly provided in this Agreement, and in addition to the powers now or hereafter granted a general partner of a limited partnership under applicable law, or which are granted to the General Partner under any other provisions of this Agreement, the General Partner is hereby authorized and empowered, in the name of and on behalf of the Partnership, to do and perform any and all acts and things that it deems appropriate or necessary in the conduct of the business and affairs of the Partnership, including, without limitation, the following (but subject to the restrictions set forth in the following), but only in furtherance of the purposes of the Partnership and for the benefit of the Partnership:

8.1.1. To lend money and, without recourse to the Partners: to borrow money, to assume, guarantee, or otherwise become liable for indebtedness and other liabilities, to pledge its interest in the Partnership in support of such obligations of the Partnership, and to issue evidences of indebtedness and, in connection therewith, to authorize confession of judgment against the Partnership;

8.1.2. To buy, lease (as lessor or lessee), sell, pledge, mortgage or encumber (without personal recourse to the Partners), or otherwise acquire or dispose of any or all of the assets of the Partnership, including without limitation sales and dispositions of emission credits provided such disposition is undertaken in accordance with the provisions of the Participation Agreements;

8.1.3. To invest the assets of the Partnership;

8.1.4. To purchase and sell products, services, and supplies;

8.1.5. To make tax, regulatory, and other filings with, and to render periodic and other reports to, governmental agencies or bodies having jurisdiction over the assets or business of the Partnership;

8.1.6. To open, maintain, and close bank accounts and to draw checks and other orders for the payment of money, provided that funds maintained in accounts established pursuant to the Participation Agreements and related sale-leaseback transaction documents shall be applied solely in accordance with the applicable provisions of any security deposit agreement or similar agreement governing the same;

8.1.7. To negotiate, execute, and perform any contracts, conveyances, or other instruments;

8.1.8. To distribute cash and other property of the Partnership in accordance with the provisions of this Agreement;

8.1.9. To utilize the services of employees of the General Partner and of any other Persons and to select and dismiss employees (if any) and outside attorneys, accountants, consultants, and contractors;

8.1.10. To maintain insurance for the benefit of the Partnership and the Partners;

8.1.11. To form, participate in, or contribute or loan cash or property to limited or general partnerships, joint ventures, corporations, or similar arrangements in which, in all cases the Partnership shall have an ownership interest;

8.1.12. To expand the business activities in which the Partnership is engaged or engage in new business activities by acquisition or internal development;

8.1.13. To conduct litigation and incur legal expenses and otherwise deal with or settle claims or disputes; and

8.1.14. To purchase or otherwise acquire Partnership Interests from, or sell or otherwise or dispose of Partnership Interests to, Persons other than the Partnership;

in each case at such times and upon such terms and conditions as the General Partner deems appropriate or necessary, and subject to any express restrictions contained elsewhere in this Agreement;

8.2. DUTIES OF GENERAL PARTNER. The General Partner shall manage the business and affairs of the Partnership in the manner that the General Partner deems appropriate or necessary. Without limiting the generality of the foregoing, the General Partner's duties shall include the following:

8.2.1. To take possession of the assets of the Partnership;

8.2.2. To staff and operate the business of the Partnership;

8.2.3. To perform or cause to be performed financial, accounting, logistical, and other administrative functions for the Partnership;

8.2.4. To render such reports and make such periodic and other filings as may be required under applicable federal, state, and local laws, rules, and regulations;

8.2.5. To provide or cause to be provided purchasing, procurement, repair, and other services for the Partnership; and

8.2.6. To conduct the business of the Partnership in accordance with this Agreement, the Participation Agreements and related sale-leaseback transaction documents, and all applicable laws, rules, and regulations;

in each case in such a manner as the General Partner deems appropriate or necessary, and provided moreover that the General Partner shall not be deemed to be in violation of this Article 8.2 or any of its other duties or obligations hereunder as a result of its compliance with Sections or 8.1.2 and 8.1.6. hereof.

8.3. PROHIBITED ACTIONS AND ACTIONS REQUIRING LIMITED PARTNER APPROVAL. Notwithstanding any other provisions of this Agreement to the contrary the General Partner shall not take any of the following actions without the prior consent of all of the Partners:

8.3.1. Change the nature of the Partnership business or the purpose of the Partnership set forth in Section 2.7;

8.3.2. Amend the provisions contained in Articles 5 or 6;

8.3.3. Amend the provisions of this Section 8.3 or the definitions of the defined terms used herein;

8.3.4. Terminate or dissolve the Partnership (except for terminations or dissolutions by reason of the circumstances described in Article 12) or file a petition with a bankruptcy court pursuant to the Federal Bankruptcy Code (except for filings described in Article 12);

8.3.5. Take any action or cause the Partnership to take action that could cause the Partnership not to be recognized as a partnership for federal income tax purposes; or

8.3.6. Admit to the Partnership any additional or successor Partners or recognize the validity of any attempted transfer of an interest in the Partnership except in accordance with the provisions of Article 10.

The foregoing rights granted to each Partner in this Section 8.3 shall include only the right to grant or withhold consent to any of the foregoing actions that are initiated or proposed by the General Partner and each Partner shall have no right to require the General Partner to take any such action. If any consent of any Partner with respect to any course of action to be taken or not taken by the Partnership is requested, such consent shall not be unreasonably denied or withheld; and if such Partner shall not respond within fifteen (15) days after receipt of such request, such Partner shall be deemed to have given its consent pursuant to such request, and the other Partners (i) shall be entitled to take or refrain from taking any action in reliance thereon, and (ii) shall have no liability to such Partner as a result of such action or inaction.

8.4. REIMBURSEMENT OF THE GENERAL PARTNER. The General Partner shall be promptly reimbursed from the assets of the Partnership for all reasonable and proper expenses incurred on behalf of the Partnership.

8.5. PARTNERSHIP FUNDS. The funds of the Partnership shall be deposited in such account or accounts as shall be designated by the General Partner and shall not be commingled with the funds of the General Partner. All withdrawals from or charges against such accounts shall be made by the General Partner or by its agents.

8.6. OUTSIDE ACTIVITIES.

8.6.1. The General Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, and in particular may be a creditor of the Partnership, for its own account and for the account of others, without having or incurring any obligation to offer any interest in such businesses or activities to the Partnership or any Partner. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement or the Partnership relationship created hereby in any such business interests.

8.6.2. The General Partner may lend to the Partnership funds needed by the Partnership on such terms and for such periods of time as the General Partner may determine; provided, however, that the General Partner may not charge the Partnership an effective rate of interest (including points or other financing charges or fees) greater than the effective rate of interest (including points or other financing charges or fees) that would be charged to the Partnership by unrelated lenders on loans with comparable terms. The Partnership shall reimburse the General Partner for

any costs reasonably incurred by the General Partner in connection with the borrowing of funds obtained by the General Partner and loaned to the Partnership.

8.7. LIMITED LIABILITY; INDEMNIFICATION.

The General Partner will not be liable to the Partnership or the Limited Partners for any act or omission by the General Partner pursuant to the authority granted to it by this Agreement, except by reason of willful misconduct, recklessness, or any act in breach of this Agreement. The General Partner will indemnify and save harmless the Partnership and the Limited Partners from any loss or liability arising out of its willful misconduct, recklessness, or breach of this Agreement. In determining whether the General Partner's acts hereunder constitute willful misconduct or recklessness, the Partners hereby agree that it shall not constitute willful misconduct or recklessness for the General Partner to comply with the provisions of those certain sale-leaseback transaction documents entered into on or about the date hereof and contemplated by the Participation Agreements (and specifically the return conditions set forth in Section 5 of the Facility Leases related thereto) and any other related documents to which the Partnership is a party. Further, in discharging its duties to the Partnership hereunder, the General Partner shall, to the fullest extent permitted by Pennsylvania law, be entitled to consider, to the extent it deems it appropriate in determining the best interests of the Partnership, the effects of any action it might take, upon creditors of the Partnership. The foregoing sentence shall continue to be in effect even though the General Partner is, or is an Affiliate of, a creditor of the Partnership, so long as any such determination does not constitute willful misconduct or recklessness.

The Partnership will indemnify and save harmless the General Partner from any loss or liability incurred by the General Partner by reason of any act performed by the General Partner on behalf of the Partnership or in furtherance of the Partnership's interest other than by reason of the General Partner's willful misconduct, recklessness or breach of this Agreement, to the broadest extent permitted under Section 8510 of the

Act or any similar successor statute. In the event the General Partner is found personally liable for any debts of the Partnership and is required to and does satisfy a Partnership liability out of its personal assets, the General Partner will have a right of reimbursement out of the assets of the Partnership (the "Right of Reimbursement"). The Right of Reimbursement will accrue to the General Partner 30 days after written notice thereof is given to each of the other Partners. Upon such accrual of the Right of Reimbursement, the General Partner will be reimbursed out of the assets of the Partnership in the following order of priority, but only to the extent necessary to satisfy such Right of Reimbursement: (i) out of the amounts then available for distribution to Interest Holders pursuant to Section 5.1 or Section 12.2; (ii) out of funds obtained by the Partnership from unsecured borrowings by the Partnership without recourse to any Partner; (iii) out of funds obtained by the Partnership from sale or refinancing of the assets of the Partnership; and (iv) out of funds obtained by the Partnership in any other manner; provided, however, that before any such sale or refinancing is consummated, the General Partner will have endeavored to obtain funds in the form of loans to the Partnership from the Limited Partners in an amount sufficient to reimburse the General Partner; and, provided further, that in the event the General Partner is to be reimbursed out of the proceeds of a proposed sale or refinancing of the assets of the Partnership, the General Partner will give 90 days prior written notice of any such proposed sale or refinancing to each of the other Partners. If sufficient funds described in clauses (i) or (ii) of the preceding sentence are obtained and used by the Partnership to reimburse the General Partner prior to the expiration of such 90-day period, such proposed sale or refinancing will not be consummated unless all of the Partners consent thereto. To the extent not reimbursed as provided above, the General Partner will have no right of contribution from the Limited Partners.

8.8. BOOKS, RECORDS, AND ACCOUNTING.

8.8.1. The General Partner shall keep or cause to be kept books and records with respect to the Partnership's business, which books and records shall at all times be kept at the principal office

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of the Partnership. The books of the Partnership shall be maintained, for financial reporting purposes, under an accounting method that is consistent with the accounting method selected under Section 7.1 for federal income tax purposes.

8.8.2. The Partnership shall also keep at its principal office the following items:

(i) a current list of the full name and last known business address or home address of each Partner;

(ii) a copy of the Certificate and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(iii) copies of the Partnership's federal, state, and local income tax returns and reports, if any, for all Fiscal Years since inception of the Partnership; and

(iv) copies of the then effective Partnership Agreement and of any financial statements of the Partnership for the three most recent years.

8.9. FISCAL YEAR; TAXABLE YEAR. The fiscal year of the Partnership for financial accounting purposes and the taxable year of the Partnership for income tax purposes shall be the Fiscal Year, unless the General Partner shall determine otherwise in its sole discretion in accordance with applicable law.

ARTICLE 9.
LIMITED PARTNER RIGHTS AND OBLIGATIONS

9.1. LIMITATION OF LIABILITY. No Limited Partner shall have liability for the debts, obligations, or liabilities of the Partnership.

9.2. MANAGEMENT OF BUSINESS. A Limited Partner shall not, in its capacity as a Limited Partner, take part in the operation, management, or control (within the meaning of the Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership.

9.3. OUTSIDE ACTIVITIES. A Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership. Neither the Partnership nor any of the other Partners shall have any rights by virtue of this Agreement or the Partnership relationship created hereby in any business ventures of any Limited Partner.

9.4. RETURN OF CAPITAL. A Limited Partner shall not be entitled to the withdrawal or return of its Capital Contributions, except to the extent provided for in this Agreement.

9.5. RIGHTS OF LIMITED PARTNERS. In addition to other rights provided by this Agreement or by applicable law, a Limited Partner shall have the right, upon reasonable demand, during ordinary business hours, and at the Limited Partner's own expense:

(a) to inspect and copy any of the Partnership's records maintained pursuant to Section 8.8.2;

(b) to obtain from the General Partner annual financial information regarding the state of the business and financial condition of the Partnership; and

(c) promptly after becoming available, to receive a copy of the Partnership's federal, state, and local income tax returns for each year

9.6. ABILITY TO REMOVE GENERAL PARTNER.

9.6.1. No Limited Partner may remove the General Partner except as otherwise provided under the Laws of the State of Pennsylvania with regard to judicial dissolution.

ARTICLE 10.
TRANSFERS OF INTERESTS

10.1. GENERAL PARTNER.

10.1.1 VOLUNTARY TRANSFERS AND WITHDRAWALS. The General Partner shall not voluntarily resign or dissolve, or withdraw, transfer, sell, assign or pledge all or any part of its GP Interest without the prior written consent of all of the Limited Partners, which may be withheld in their discretion. A resignation or removal of the General Partner shall become effective only upon the approval by the Majority Interest of a successor general partner and such successor general partner's acceptance of appointment as provided in this Section. It shall be understood and agreed that the pledge of the General Partner's stock under the Pledge and Collateral Agreement and any transfer of such stock as a result of the exercise of remedies pursuant to such Pledge and Collateral Agreement shall not be deemed to violate this Section.

The withdrawing, transferring, selling or assigning General Partner who has received the prior written consent of the Limited Partners to the withdrawal, transfer, sale or assignment of all of its GP Interest, shall cease to be the General Partner upon (i) the withdrawal, transfer, sale or assignment of all of its GP Interest and (ii) the filing, in accordance with the provisions of the Act, of an appropriate certificate of amendment to the Certificate. The General Partner who withdraws, transfers, sells or assigns any portion, but less than all, of its GP Interest with the consent of the Limited Partners, shall continue to be the General Partner of the Partnership. If the General Partner does resign or dissolve, or withdraw, transfer, sell or assign all or any part of its GP Interest without the prior written consent of the Limited Partners, the remaining Partners may proceed in accordance with the provisions of Section 12.1 hereof to continue the business of the Partnership.

If the General Partner shall request the Limited Partners' consent to a sale of all (but not less than all) of its GP Interest pursuant to a bona fide written offer to purchase such interest on a date (the "Proposed Purchase Date") that follows such request by not less than 90 days and the Limited Partners shall withhold such consent, and if the General Partner shall furnish to the Partnership an opinion of counsel, which counsel and opinion shall be satisfactory to the Limited Partners, that such sale will not cause the Partnership to terminate for federal income tax purposes or to be classified as an association taxable as a corporation for federal income tax purposes, then the General Partner shall (except in connection with the dissolution of the Partnership) have the option to require, subject to the proviso below, that the Limited Partners (ratably in proportion to their respective Percentage Interests) or another willing Person designated by a Majority Interest purchase the GP Interest for an amount equal to the purchase price set out in such written offer, and payable on the same terms contained in such written offer; provided, however, that the Limited Partners (or such other purchaser designated by a Majority Interest) may elect instead to purchase the GP Interest on the last day of the calendar month that includes the Proposed Purchase Date for a cash purchase price (payable, if the Limited Partners are the purchasers, ratably by the Limited Partners in proportion to their respective Percentage Interests) equal to the positive balance, if any, in the Capital Account of the General Partner as determined by closing the books of the Partnership on the last day of such calendar month and payable within 30 days after the end of such calendar month.

10.1.2. INVOLUNTARY TRANSFERS. The successor in interest to the General Partner by reason of the dissolution, liquidation or other termination of the General Partner shall have the rights of an assignee to receive only (i) the allocations of Profits, Losses and other items of Partnership income, gain, deduction, loss and credit, (ii) and the distributions of money or other property to which the General Partner would have been entitled under the provisions of this Agreement. If, following such dissolution, liquidation or other termination of the General Partner,

the Partnership has been continued pursuant to Section 12.1, and all of the remaining Partners consent thereto (which consent may be withheld for any reason), an appropriate amendment to this Agreement is executed and an appropriate amendment to the Certificate is executed and filed, and the successor in interest to the General Partner agrees to be bound by all of the obligations of the General Partner hereunder, such successor in interest may be admitted to the Partnership as a substitute General Partner.

10.1.3. PROHIBITED TRANSFERS. Any purported Transfer of a GP Interest in the Partnership that is not authorized pursuant to this Agreement shall be null and void and of no effect whatever.

10.2. LIMITED PARTNERS.

10.2.1. IN GENERAL. Except as hereinafter provided, no Limited Partner may Transfer all or any part of its LP Interest.

10.2.2. PERMITTED TRANSFERS. Subject to the conditions and restrictions set forth in Section 10.2.3 hereof and so long as no filing by the Limited Partner under the Federal Bankruptcy Code has occurred, a Limited Partner may at any time Transfer all or any portion of its interest in the Partnership (a) to any Limited Partner, or (b) subject to the prior written consent of the General Partner, which may be withheld in its discretion, to any Purchaser (any such Transfer being referred to in this Agreement as a "Permitted Transfer").

10.2.3. CONDITIONS TO PERMITTED TRANSFERS. A Transfer shall not be treated as a Permitted Transfer under Section 10.2.2 hereof unless and until the following conditions are satisfied (except to the extent that a General Partner shall waive any or all of such conditions):

10.2.3.1. The transferor and transferee shall execute and deliver to the Partnership such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Partnership to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this Section 10. In any case not described in the preceding sentence, the Transfer shall be confirmed by presentation to the Partnership of legal evidence of such

Transfer, in form and substance satisfactory to counsel to the Partnership. In all cases, the Partnership shall be reimbursed by the transferor and/or transferee for all costs and expenses that it reasonably incurs in connection with such Transfer.

10.2.3.2. The transferor shall furnish to the Partnership an opinion of counsel, which counsel and opinion shall be satisfactory to the Partnership, that the Transfer will not cause the Partnership to terminate for federal income tax purposes.

10.2.3.3. The transferor and transferee shall furnish the Partnership with the transferee's taxpayer identification number, sufficient information to determine the transferee's initial tax basis in the interests transferred, and any other information reasonably necessary to permit the Partnership to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Partnership shall not be required to make any distribution otherwise provided for in this Agreement with respect to any transferred interests until it has received such information.

10.2.3.4. The transferor shall provide an opinion of counsel, which opinion and counsel shall be satisfactory to the Partnership, to the effect that such Transfer is exempt from all applicable registration requirements and that such Transfer will not violate any applicable laws regulating the Transfer of securities.

10.2.4. PROHIBITED TRANSFERS. Any purported Transfer of an LP Interest that is not a Permitted Transfer shall be null and void and of no effect whatever.

ARTICLE 11.
ADDITIONAL PARTNERS

The General Partner may admit additional or substitute Partners to the Partnership only in accordance with the Act and only with the prior consent of each Partner, which consent may be withheld for any reason. Upon such an admission of any substitute or additional Partner, the General Partner shall cause to be properly prepared, filed and executed: (i) pursuant to the Act any amendment of the Certificate that is required by the Act by reason of such admission and (ii) any amendment to any registration, certificate or other document required by any State by reason of such admission.

ARTICLE 12.
DISSOLUTION AND LIQUIDATION

12.1. DISSOLUTION. The Partnership shall be dissolved, and its affairs shall be wound up, upon the first to occur of any of the following events (each a "Dissolution Event"):

12.1.1. the expiration of its term as provided in Section 2.5;

12.1.2. the withdrawal or bankruptcy of the General Partner or any other event that results in a General Partner ceasing to be a general partner in the Partnership under the Act, provided that any such event shall not constitute a Dissolution Event if the Partnership is continued pursuant to this Section 12.1;

12.1.3. a written election by all Partners;

12.1.4. the sale of all or substantially all of the properties of the Partnership (other than pursuant to a sale-leaseback transaction as contemplated by the Participation Agreements); or

12.1.5. the occurrence of any other event that makes it unlawful, impossible or impractical to carry on the business of the Partnership;

provided, however, that upon the occurrence of any event set forth in Section 12.1.2, the Partnership shall not be dissolved or required to be wound up if within one hundred eighty (180) days after such event a Majority Interest of the remaining Partners agree in writing to continue the business of the Partnership and to the appointment, effective as of the date of such event, of a successor General Partner.

For purposes of this Section 12.1, bankruptcy of the General Partner shall be deemed to have occurred when the General Partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudged bankrupt or insolvent; (iv) files an application or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition or application filed against it in any proceeding of a type referred to in clause (ii) or (iv); or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the General Partner or of all or any substantial part of its properties. In addition, for purposes of this Section 12.1, bankruptcy of the General Partner shall be deemed to have occurred if within 120 days after the commencement of any proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation the proceeding has not been dismissed or if within 90 days after the appointment without its consent or acquiescence of a trustee, receiver or liquidator of the General Partner or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

12.2. LIQUIDATION. Upon dissolution of the Partnership, the then General Partner, or in the event the General Partner has withdrawn from the Partnership or become bankrupt (as defined in Section 12.1), a liquidator or liquidating committee approved by a Majority Interest, shall be the

liquidator of the Partnership (the "Liquidator"). The Liquidator shall be entitled to receive such compensation for its services as may be approved by a Majority Interest. The Liquidator shall not resign at any time without fifteen days' prior written notice and, if other than the General Partner, may be removed at any time, with or without cause, by notice of removal approved by a Majority Interest. Upon dissolution, resignation, or removal of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers, and obligations of the original Liquidator) shall, within thirty days thereafter, be approved by a Majority Interest. Except as expressly provided in this Article 12, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or approval of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent appropriate or necessary in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding-up and liquidation of the Partnership as provided for herein. The Liquidator shall liquidate the assets of the Partnership and apply and distribute the proceeds of such liquidation in the following order and priority, to the maximum extent permitted by law:

12.2.1. First, to pay the costs and expenses of the winding up, liquidation and termination of the Partnership;

12.2.2. Then, to creditors of the Partnership (including Interest Holders to the extent permitted by law) in satisfaction of the Company's known debts and liabilities (whether by payment or the making of provision for the known amount thereof);

12.2.3. Then, to establish reserves adequate to meet any and all contingent or unforeseen liabilities or obligations of the Partnership, provided that at the expiration of such period of time as the Liquidator may deem advisable, the balance of such reserves remaining after the payment of such contingencies or liabilities shall be distributed as hereinafter provided;

12.2.4. Then, to the Interest Holders, in proportion to, and to the extent of, the positive balances in their respective Capital Accounts adjusted pursuant to Article 6 to reflect (i) their respective distributive shares of the income, gain, loss, and deduction of

the Partnership for the taxable year of the Partnership in which the distribution in liquidation occurs up through and including the date of distribution and (ii) all distributions made to the Interest Holders during such taxable year up to but not including such date.

12.2.5. The balance, if any, to the Partners in proportion to their respective Partnership Interests.

12.3. DISTRIBUTION IN KIND. Notwithstanding the provisions of Section 12.2 requiring the liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if on dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners, the Liquidator may, in its sole discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership and may, in its sole discretion, distribute to the Partners, as tenants in common, in lieu of cash, and as their interests may appear in accordance with the provisions of Section 12.2.2, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation; provided, however, that the Liquidator must comply with the liquidating distribution timing requirements of Section 12.7 hereof. Any distributions in kind shall be subject to such conditions relating to the disposition and management thereof as the Liquidator deems reasonable and equitable. By way of clarification, for purposes of determining the Interest Holders' respective shares of income, gain, loss, and deduction of the Partnership for the taxable year of the Partnership in which the distribution in liquidation occurs and of adjusting the Capital Accounts of the Interest Holders therefor in accordance with Section 12.2.2 and Article 6, the definitions herein of "Agreed

Value" and "Profits" and "Losses" require that Partnership assets to be distributed in kind shall be considered to have been first sold at their fair market values (taking Code Section 7701(g) into account) and the Profits or Losses deemed realized therefrom shall be allocated among the Interest Holders as if an actual sale had occurred, and the Capital Accounts of the Interest Holders shall be adjusted to reflect such allocation in accordance with Article 6. The fair market value of any property distributed in kind shall be the value determined by an appraiser selected by a Majority Interest unless the Partners agree as to such fair market value.

12.4. CANCELLATION OF CERTIFICATE OF LIMITED PARTNERSHIP. Upon the completion of the distribution of Partnership property pursuant to Sections 12.2 and 12.3, the Partnership shall be terminated, and the Liquidator (or the Limited Partners if necessary) shall cause the cancellation of the Certificate and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the Commonwealth of Pennsylvania and shall take such other actions as may be necessary to terminate the Partnership.

12.5. NO GENERAL PARTNER LIABILITY FOR RETURN OF CAPITAL. No General Partner shall be personally liable for the return of the Capital Contributions of the Limited Partners, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

12.6. WAIVER OF PARTITION. Each Partner hereby waives any rights to partition of the Partnership's property.

12.7 COMPLIANCE WITH TIMING REQUIREMENTS OF REGULATIONS. In the event that the Partnership is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(G), then (a) distributions shall be made pursuant to Section 12.2 to the Interest Holders who have positive Capital Accounts in compliance with the timing requirements of Regulations Section 1.704-1(b)(2)(ii)(B)(2); provided, however, that the Liquidator may exercise the discretion set forth in Section 12.2.2. If any Interest Holder has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), such Interest Holder shall have no obligation to make any contribution to the capital of the Partnership with respect to such deficit, and such deficit shall not be considered a debt owed to the Partnership or to any other Person for any purpose whatsoever.

12.8. NON-DISSOLVING CODE SECTION 708(B) TERMINATIONS. Notwithstanding any other provision of this Section 12, in the event that the Partnership is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) but no Dissolution Event has occurred, the Partnership's assets shall not be liquidated, the Partnership's liabilities shall not be paid or discharged, and the Partnership's affairs shall not be wound up.

12.9. ALLOCATIONS DURING THE PERIOD OF LIQUIDATION. Until the date on which all of the assets of the Partnership have been distributed to the Interest Holders pursuant to Section 12.2 hereof, the Interest Holders shall continue to share Profits, Losses and other items of Partnership income, gain, deduction and loss as provided in Article 6 hereof.

12.10. VOLUNTARY BANKRUPTCY FILINGS The General Partner shall not file a voluntary case for the protection of the Partnership under a chapter of the Federal Bankruptcy Code except in accordance with the organic documents of the General Partner, which provide for the unanimous vote of the General Partner's board of directors to take such action. Further, no such action shall be taken unless the Partnership is insolvent in the good faith judgment of the General Partner, after receiving the written opinion of an independent nationally recognized appraisal firm experienced in evaluating companies like the Partnership, to the effect that the Partnership is "insolvent" as defined under Section 101(32) of the Federal Bankruptcy Code. Specifically, the General Partner shall not be acting recklessly or committing willful misconduct if it considers the interests of the Partnership's creditors in accordance with Pennsylvania law in determining whether it is in the best interests of the Partnership to file for voluntary bankruptcy protection.

ARTICLE 13.
AMENDMENT OF AGREEMENT

Amendments to this Agreement may be proposed by any Partner. A proposed amendment shall be effective only when approved in writing by the General Partner and a Majority Interest unless the consent of all Partners is unambiguously required by the Act.

ARTICLE 14.
GENERAL PROVISIONS

14.1. PERSONAL PROPERTY. The Partnership Interest of any Partner shall be personal property for all purposes.

14.2. ADDRESSES AND NOTICES. Any notice, demand, request, payment, or report required or permitted to be given or made to a Limited Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class mail or by other means of written communication to such Partner at such Partner's address as shown on the signature page or pages hereof or to such other address as such Partner may specify for the purpose by notice to the General Partner given in accordance with this Section 14.2. Any notice to the Partnership or the General Partner shall be deemed given if received in writing by the General Partner at the General Partner's address as shown on the signature page or pages hereof or to such other address as the General Partner may specify for the purpose by notice to each Limited Partner in accordance with this Section 14.2.

14.3. HEADINGS. All article or section headings in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any of the provisions hereof

14.4. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto (including the additional Persons that become Partners as provided herein) and their heirs, executors, administrators, successors, legal representatives, and assigns.

14.5. INTEGRATION. This Agreement constitutes the entire Agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

14.6. WAIVER. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any other covenant, duty, agreement, or condition.

14.7. COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which together shall constitute one agreement binding on the parties hereto including the additional Persons that become Interest Holders as provided herein.

14.8. SEVERABILITY. If any provision of this Agreement is or becomes invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions hereof, or of such provision in other respects, shall not be affected thereby.

14.9. APPLICABLE LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without reference to principles of choice of law or choice of forum.

* * *

IN WITNESS WHEREOF, this Amended and Restated Agreement of Limited Partnership of EME Homer City Generation L.P. has been duly executed and entered into by the General Partner and the Limited Partner on the date first above written.

GENERAL PARTNER

MISSION ENERGY WESTSIDE
18101 Von Karman Avenue, Suite 1700
Irvine, California 92612

By: /s/ John P. Finneran, Jr.
Name: John P. Finneran, Jr.
Its: Vice President

LIMITED PARTNER

CHESTNUT RIDGE ENERGY COMPANY
18101 Von Karman Avenue, Suite 1700
Irvine, California 92612

By: /s/ John P. Finneran, Jr.
Name: John P. Finneran, Jr.
Its: Vice President

SCHEDULE A

INITIAL CAPITAL CONTRIBUTION/PERCENTAGE INTEREST

NAME	INTEREST	CAPITAL CONTRIBUTION	PERCENTAGE INTEREST
Mission	G.P.	[ ]	0.1%
Chestnut Ridge	L.P.	[ ]	99.9%

QuickLinks

Exhibit 3.2

Exhibit 4.1.1

Execution Copy

HOMER CITY FUNDING LLC

$300,000,000 8.137% SENIOR SECURED BONDS DUE 2019

$530,000,000 8.734% SENIOR SECURED BONDS DUE 2026

FIRST AMENDED AND RESTATED INDENTURE

Dated as of December 7, 2001

THE BANK OF NEW YORK,
as successor Trustee

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FIRST AMENDED AND RESTATED INDENTURE dated as of December 7, 2001 among Homer City Funding LLC, a Delaware limited liability company (the "*Company*") and The Bank of New York, as successor trustee to United States Trust Company of New York (the "*Trustee*").

WHEREAS, Edison Mission Holdings Co. ("*Holdings*") heretofore executed and delivered an Indenture, dated as of May 27, 1999, between Holdings and the United States Trust Company of New York (as amended from time to time, the "*Initial Indenture*") pursuant to which Holdings issued the 8.137% Senior Secured Bonds due 2019 and the 8.734% Senior Secured Bonds due 2026 (collectively, the "*Initial Bonds*");

WHEREAS, Holdings subsequently exchanged in the Exchange Offer the Initial Bonds for a like amount of substantially similar 8.137% Senior Secured Bonds due 2019 (the "*New Series A Bonds*") and 8.734% Senior Secured Bonds due 2026 (the "*New Series B Bonds*" and, together with the New Series A Bonds, the "*New Bonds*") which had been registered under the Securities Act of 1933;

WHEREAS, Section 9.2 of the Initial Indenture provides that (i) Holdings and the Trustee may amend or supplement the Initial Indenture and the New Bonds may be amended or supplemented and (ii) compliance with any provision of the Initial Indenture or the New Bonds may be waived, with the consent of the Holders of a majority in principal amount of the then outstanding New Bonds voting as a single class, subject to certain exceptions (none of which is applicable to the Proposals (as defined below));

WHEREAS, pursuant to its Consent Solicitation Statement, dated November [ ], 2001, as may be amended and supplemented prior to the expiration of the Consent Solicitation described therein (the "*Consent Solicitation Statement*"), Holdings solicited consents of the holders of all New Bonds then outstanding to certain amendments of and waivers to the Initial Indenture and the New Bonds (as described in the Consent Solicitation Statement, the "*Proposals*");

WHEREAS, the Holders of a majority in principal amount of the then outstanding New Bonds voting as a single class have duly consented to the Proposals and to the exchange of all New Bonds for the Bonds issued hereunder;

WHEREAS, pursuant to this Indenture, each New Bond shall be exchanged for a Bond of like denomination;

WHEREAS, Holdings has heretofore delivered or is delivering contemporaneously herewith to the Trustee (i) a copy of a Board Resolution of Holdings relating to this Indenture, (ii) evidence of the consent of a majority in principal amount of the then outstanding New Bonds as set forth in the immediately preceding paragraph and (iii) such other documentation as may be required by the Trustee under Section 7.2, 9.6 and 10.4 of the Initial Indenture;

WHEREAS, all conditions necessary to authorize the execution and delivery of this Indenture and to make this Indenture valid and binding have been complied with or have been done or performed;

WHEREAS, subject to the terms and conditions of this Indenture, the parties hereto desire to amend and restate the Initial Indenture in its entirety as provided herein;

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

The Company and the Trustee agree as follows for the benefit of the parties and for the equal and ratable benefit of the Holders of the Bonds:

GRANTING CLAUSE

As collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all Obligations on the Bonds from time to time outstanding hereunder, and all other amounts owing or obligations hereunder by the Company to the Bondholders under this Indenture (the "*Company Secured Obligations*"), the Company hereby pledges and grants to the Trustee for the benefit of the Bondholders a pledge of and a first priority continuing security interest in, all of the Company's right, title and interest in, to and under the following property, whether now owned by the Company or hereafter acquired and whether now existing or hereafter coming into existence (all being collectively referred to herein as the "*Collateral*"):

(a) all lessor notes issued under each Lease Indenture (the "*Pledged Notes*"), the certificates representing the Pledged Notes, and all cash dividends, stock dividends, cash, instruments, chattel paper, warrants, options and other rights, property or proceeds and products from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Notes now or hereafter owned by the Company;

(b) all other claims of any kind or nature, and any instruments, certificates, chattel paper or other writings evidencing such claims, whether in contract or tort and whether arising by operation of law, consensual agreement or otherwise, at any time acquired by the Company in respect of any or all of the Pledged Notes;

(c) all books and records relating to any of the foregoing;

(d) all interests in substitution for or in addition to any of the foregoing, any certificates representing or evidencing such interests, and all cash, securities, distributions and other property at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing; and

(e) all proceeds of and to any of the property described in the preceding clauses of this Section.

PROVIDED, HOWEVER, subject to the terms and conditions hereof, the Company does hereby irrevocably constitute and appoint the Trustee as its true and lawful attorney (which appointment is coupled with an interest) with full power to ask, require, demand and receive any and all moneys and claims for moneys due and to become due under or arising out of this Indenture and all other property which now or hereafter constitutes part of the Collateral and, to endorse any checks or other instruments or orders in connection herewith and to file any claims or to take any action or to institute any proceedings which the Trustee may deem to be necessary or advisable, and to take any action with respect to and exercise any rights or remedies of the Company under the Pledged Notes, the Lease Indenture and the other Collateral. In addition, the Company hereby assigns to the Trustee, for the benefit of the Holders, its rights to receive any and all payments on and in respect of the Pledged Notes and the Lease Indentures, for as long as the estate created by this Indenture remains in existence. The Company hereby agrees that all amounts to be paid to it under the Pledged Notes and the Lease Indentures shall be paid to or deposited with the Trustee for the benefit of the Holders directly. Further, the Company agrees that promptly upon receipt thereof, it will transfer to the Trustee for the benefit of the Holders, any and all moneys received by it on the Pledged Notes or under the Lease Indentures.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Company shall remain liable under this Indenture to perform all of the obligations assumed by it hereunder, all in accordance with and pursuant to the terms and provisions hereof, and the Holders of the Bonds shall have no obligation or liability under any term or provision hereof by reason of or arising out of the

assignment hereunder, nor shall the Holders of the Bonds be required or obligated in any manner, except as herein expressly provided, to perform or fulfill any obligations of the Company under or pursuant to this Indenture to make any payment, or to make any inquiry as to the nature or sufficiency

of any payment received by it, or present or file any claim or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Company agrees that at any time and from time to time, upon the written request of the Trustee (acting on the instruction of any Holder of the Bonds) or any Holder of the Bonds, the Company will promptly and duly execute and deliver or cause to be duly executed and delivered any and all such further instruments and documents necessary to obtain the full benefits of the assignment hereunder and of the rights and powers herein granted; *provided, however*, that the Company shall have no obligation to execute or deliver or to cause to be executed or delivered any further instruments or documents that would give the Holders of the Bonds greater rights and powers than the rights and powers of the Company which have been granted herein or intended to be granted herein.

The Company does hereby warrant and represent that it has not assigned, pledged or granted a lien or security interest in, to or under, and hereby covenants that, so long as this Indenture shall remain in effect and the lien hereof shall not have been released, it will not assign, pledge or grant a lien or security interest in any of its estate, right, title or interest in, to or under, the Collateral to anyone other than the Trustee for the benefit of the Holders of the Bonds. The Company hereby further covenants that with respect to its estate, right, title and interest in, to or under the Collateral, it will not, except as provided in this Indenture (i) accept any payment from the Lease Indenture Trustee or enter into any agreement amending, modifying or supplementing this Indenture, execute any waiver or modification of, or consent under, the terms of this Indenture or revoke or terminate this Indenture, (ii) settle or compromise any claim arising under this Indenture, or (iii) submit or consent to the submission of any dispute, difference or other matter arising under or in respect of this Indenture to arbitration hereunder.

Except as provided herein, the Company hereby ratifies and confirms its obligations under this Indenture and does hereby agree that it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of this Indenture or the assignment (subject to the previous paragraph) hereunder.

The Trustee, for itself and its successors and permitted assigns, hereby agrees that it shall hold the Collateral, in trust for the benefit and security of the Holders of the Bonds outstanding, without any priority of any one Bond over any other except as herein otherwise expressly provided.

Accordingly, the Company agrees that all Bonds are to be issued and delivered and that all property subject or to become subject hereto is to be held subject to the further covenants, conditions, uses and trusts hereinafter set forth, and the Company, for itself and its successors and permitted assigns, hereby covenants and agrees with the Trustee, for the benefit and security of the Holders of the Bonds from time to time to protect the security of this Indenture, and the Trustee agrees to accept the trusts and duties hereinafter set forth, as follows:

ARTICLE 1.
DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.1 DEFINITIONS

"*Acceptable Credit Provider*" means a U.S. or U.S. branch of a foreign bank or trust company that (i) has a combined capital and surplus of at least $1 billion whose long term unsecured debt is rated "A2" or higher by Moody's or "A" or higher by S&P and (ii) is exempt from SEC registration under 3(a)(2) of the Securities Act.

"*Affiliate*" of any particular Person, shall mean any other Person which, directly or indirectly, controls, is controlled by or is under common control with such Person. A Person shall be deemed to

be "controlled by" any other Person if such other Person possesses, directly or indirectly, power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"*Agent*" means any Registrar, Paying Agent, co-registrar, authenticating agent or securities custodian.

"*Applicable Procedures*" means, with respect to any transfer or exchange of or for beneficial interests in any Global Bond, the rules and procedures of the Depositary, Euroclear and Cedel that apply to such transfer or exchange.

"*Bankruptcy Law*" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

"*Beneficial Owner*" means any person who holds a beneficial ownership interest in a Bond.

"*Board Resolution*" means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person or the general partner, in the case of a limited partnership, of such Person (or, if such Person is a partnership, one of its general partners) to have been duly adopted by the member(s) of such Person (if such Person is a limited liability company), board of directors of such Person or the general partner, in the case of a limited partnership, of such Person (or, if such Person is a partnership, one of its general partners) and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"*Bonds*" means the Series A Bonds and Series B Bonds issued by the Company pursuant to this Indenture.

"*Business Day*" means a day other than a Saturday, Sunday or other day on which commercial banking institutions are authorized or required by law, regulation or executive order to be closed in New York, New York, Wilmington, Delaware, or the cities and states in which the offices of the Trustee or Paying Agent are located.

"*Capital Lease Obligation*" means, as to any Person, all monetary obligations of such Person under any leasing or similar arrangement which, in accordance with GAAP, would be classified as capitalized leases, and, for purposes of the Indenture, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"*Capital Stock*" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, and any and all equivalent ownership interests in a Person (other than a corporation).

"*Cash Equivalents*" means, at any time: (i) any evidence of Indebtedness, maturing not more than one year after such time, issued or guaranteed by the United States Government or an agency thereof; (ii) other investments in securities or bank instruments rated at least "A" by S&P and "A2" by Moody's or "A-1" by S&P and "P-1" by Moody's and with maturities of less than 366 days; or (iii) other securities as to which the Company has demonstrated, to the satisfaction of the Trustee, adequate liquidity through secondary markets or deposit agreements.

"*Cedel*" means Cedelbank and its successors and assigns.

"*Closing Date*" means the date of issuance and delivery of the Initial Bonds.

"*Collateral Agent*" has the meaning set forth in the Security Deposit Agreement.

"*Collateral*" has the meaning set forth in the Granting Clause.

"*Commission*" means the United States Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

"*Company*" has the meaning set forth in the preamble to this Indenture.

"Consent Date" has the meaning set forth in the Consent Solicitation Statement.

"*Consent Payment*" has the meaning set forth in the Consent Solicitation Statement.

"*Consent Payment Account*" has the meaning set forth in the Consent Solicitation Statement.

"*Consent Solicitation Statement*" has the meaning set forth in the preamble hereto.

"*Corporate Trust Office of the Trustee*" shall be at the address of the Trustee specified in Section 10.2 hereof or such other address as to which the Trustee may give notice to the Company.

"*Custodian*" means the Trustee, as custodian with respect to the Bonds in global form, or any successor entity thereto.

"*Debt Service Reserve Accounts*" means the Debt Service Reserve Accounts established by the Collateral Agent for the benefit of the Holders pursuant to each Lease Indenture.

"*Default*" means an event or condition that, with the giving of notice or the lapse of time, or both, would become an Event of Default.

"*Definitive Bond*" means a certificated Bond registered in the name of the Holder thereof and issued in accordance with Section 2 hereof, in the form of Exhibit A-1 hereto except that such Bond shall not bear the Global Bond Legend and shall not have the "Schedule of Exchanges of Interests in the Global Bond" attached thereto.

"*Depositary*" means, with respect to the Bonds issuable or issued in whole or in part in global form, the Person specified in Section 2.3 hereof as the Depositary with respect to the Bonds, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"*Duff & Phelps*" means Duff & Phelps Credit Rating Co. and its successors and assigns.

"*Equity Interests*" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"*Euroclear*" means Morgan Guaranty Trust Company of New York, Brussels office, as operator of the Euroclear system.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended and the rules and regulations of the Commission promulgated thereunder.

"*Exchange Offer*" has the meaning set forth in the Registration Rights Agreement.

"*Exchange Offer Registration Statement*" has the meaning set forth in the Registration Rights Agreement.

"*Expiration Date*" has the meaning set forth in the Consent Solicitation Statement.

"*Facilities*" means the Homer City Electric Generating Station and certain facilities and other assets associated therewith and ancillary thereto.

"*Facility Lease*" means each Facility Lease between Homer City, as Facility Lessee and each respective Owner Lessor, dated as of December 7, 2001 entered into pursuant to each Participation Agreement listed in Schedule 1.

"*Facility Lessee*" means Homer City.

"*GAAP*" means generally accepted accounting principles as in effect in the United States from time to time consistently applied.

"*Global Bonds*" means, individually and collectively, each of the Restricted Global Bonds and the Unrestricted Global Bonds, in the form of Exhibit A hereto issued in accordance with Section 2.1, 2.6(b)(iv), 2.6(d)(ii) or 2.6(f) hereof.

"*Global Bond Legend*" means the legend set forth in Section 2.6(g)(ii), which is required to be placed on all Global Bonds issued under this Indenture.

"*Government Securities*" means direct obligations of, or obligations guaranteed by, the United States of America, and the payment for which the United States pledges its full faith and credit.

"*Governmental Authority*" means any nation or government or any political subdivision thereof, any state, province or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"*Hedging Obligations*" means, with respect to any Person, the net payment Obligations of such Person under (i) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements and (ii) other agreements or arrangements in the ordinary course of business and pursuant to past practices designed to protect such Person against fluctuations in commodity prices, interest rates or currency exchange rates.

"*Holder*" or "*Bondholder"* means a Person in whose name a Bond is registered.

"*Homer City*" means EME Homer City Generation L.P., a Pennsylvania limited partnership.

"*Indebtedness*" of any Person means, without duplication: (i) all indebtedness of such Person for borrowed money; (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services (other than trade payables and accrued liabilities arising in the ordinary course of business); (iv) all reimbursement obligations with respect to surety bonds, letters of credit (to the extent not collateralized with cash or Cash Equivalents), bankers' acceptances and similar instruments (in each case, whether or not matured); (v) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (vi) all Capital Lease Obligations; (vii) all Interest Rate Hedging Obligations; (viii) all indebtedness referred to in clauses (i) through (vii) above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; and (ix) all contingent liabilities.

"*Indenture*" means this First Amended and Restated Indenture as amended and restated, dated as of December 7, 2001, between the Company and the Trustee.

"*Independent Engineer*" means Stone and Webster Management Consultants, Inc. or another nationally recognized independent engineering and consulting firm which, as Independent Engineer, will independently review the technical aspects of the project, analyze the contractual structure and create financial projections for the benefit of the Holders.

"*Indirect Participant*" means a Person who holds a beneficial interest in a Global Bond through a Participant.

"*Initial Bonds*" has the meaning specified in the preamble hereto.

"*Initial Indenture*" has the meaning specified in the preamble hereto.

"*Initial Purchaser*" has the meaning set forth in the Registration Rights Agreement.

"*Interest Rate Hedging Obligations*" means, as to any Person, the net payment Obligations of all interest rate swaps, caps or collar agreements or similar arrangements entered into by such Person in order to protect against fluctuations in interest rates or the exchange of nominal interest obligations, either generally or under specific contingencies, and, in any event, not for speculative purposes.

"*Lease Indenture*" means each Indenture of Trust and Security Agreement among an Owner Lessor, as Issuer, The Bank of New York, as Security Agent and The Bank of New York, as Lease Indenture Trustee, dated December 7, 2001 entered into pursuant to each Participation Agreement.

"*Lease Indenture Event of Default*" means a default under any of the Lease Indentures.

"Lease Indenture Trustee" has the meaning set forth in the Lease Indenture.

"*Letter of Transmittal*" means the letter of transmittal to be prepared by the Company and sent to all Holders of the Bonds for use by such Holders in connection with the Exchange Offer.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in any asset and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction).

"*Make-Whole Premium*" means, with respect to any Bond to be redeemed on any Redemption Date, an amount calculated by the Company as of such date equal to the excess, if any, of (i) the net present value of the then remaining scheduled installments of principal and payments of interest (but excluding that portion of any scheduled installment of principal or payment of interest that is actually due and paid on the Redemption Date) in respect of such Bond calculated using a discount factor equal to the sum of the Treasury Yield plus 50 basis points, over (ii) the unpaid principal amount of such Bond. Such Yield Maintenance Premium shall be determined in accordance with the following provisions:

(a) the average life of the remaining scheduled installments of principal in respect of such Bond (the "Remaining Average Life") shall be calculated as of such Redemption Date; and

(b) the "Treasury Yield" shall be calculated for the United States Treasury security having an average life equal to the Remaining Average Life and trading in the secondary market at the price closest to par (the "Primary Issue"); *provided, however*, that, if no United States Treasury security has an average life equal to the Remaining Average Life, the yields (the "Other Yields") for maturities of the two United States Treasury securities having average lives most closely corresponding to such Remaining Average Life and trading in the secondary market at the price closest to par shall be calculated, and the yield to maturity for the

Primary Issue shall be the yield interpolated or extrapolated from such Other Yields on a straight-line basis, rounding in each of such relevant periods to the nearest month.

"*Moody's*" means Moody's Investors Service, Inc., a division of Moody's Corporation, and its successors and assigns.

"*New Bonds*" has the meaning set forth in the preamble to this Indenture.

"*New Series A Bonds*" has the meaning set forth in the preamble to this Indenture.

"*New Series B Bonds*" has the meaning set forth in the preamble to this Indenture.

"*Non-U.S. Person*" means a Person who is not a U.S. Person.

"*Obligations*" means any principal, premium, if any, interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company whether or not a

claim for post-filing interest is allowed in such proceeding), penalties, fees, charges, expenses, indemnifications, reimbursement obligations, damages, guarantees and other liabilities or amounts payable under the documentation governing any Indebtedness or in respect thereof.

"*Offering*" means the offering of the Initial Bonds by the Company.

"*Officer*" means, with respect to any Person, any Chairman of the Board, President, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Senior Vice President, Vice President, Treasurer or Secretary of such Person.

"*Officer's Certificate*" means a certificate signed by an Officer of the Company.

"*Owner Lessor*" means each of Homer City OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC and Homer City OL8 LLC.

"*144A Global Bond*" means one or more global notes in the form of Exhibit A-1 hereto bearing the Global Bond Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in an aggregate denomination equal to the outstanding principal amount of the Bonds sold in reliance on Rule 144A.

"*Opinion of Counsel*" means a written opinion of counsel for any Person either expressly referred to in the Indenture or otherwise reasonably satisfactory to the Trustee which may include, without limitation, counsel for the Company, whether or not such counsel is an employee of the Company.

"*Participant*" means, with respect to the Depositary, Euroclear or Cedel, a Person who has an account with the Depositary, Euroclear or Cedel, respectively (and, with respect to The Depository Trust Company, shall include Euroclear and Cedel).

"*Person*" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

"*Power Market Consultant*" means PHB Hagler Bailly, Inc. or another nationally recognized power market consulting firm which, as Power Market Consultant, will perform a market study of certain markets relating to the Facilities and develop independent electricity price forecasts for the benefit of the Holders.

"*Private Placement Legend*" means the legend set forth in Section 2.6(g)(i) to be placed on all Bonds issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

"*Proposals*" has the meaning set forth in the preamble hereto.

"*Prudent Industry Practice*" means any of the practices, methods, standards and acts (including but not limited to the practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices generally conform to applicable law and governmental approvals.

"*QIB*" means a "qualified institutional buyer" as defined in Rule 144A.

"*Rating Agencies*" means each of Moody's, S&P and Duff & Phelps.

"*Recovery Event*" means any settlement of or payment of $5,000,000 or more in respect of (i) any property or casualty insurance claim relating to the Facility or (ii) any seizure, condemnation, confiscation or taking of, or requisition of title or use of, the Facility or any part thereof by any Governmental Authority.

"*Redemption Date*" means a date set forth for redemption of Bonds pursuant to the Indenture.

"*Redemption Price*" means the price to be paid by the Company for the Bonds that are redeemed pursuant to the Indenture.

"*Registration Rights Agreement*" means the Exchange and Registration Rights Agreement, dated as of May 27, 1999, by and among Homer City, Edison Mission Holdings Co., Edison Mission Finance Co., Homer City Property Holdings Inc., Chestnut Ridge Energy Co., Mission Energy Westside Inc. and the other parties named on the signature pages thereof, as such agreement may be amended, modified or supplemented from time to time.

"*Regulation S*" means Regulation S promulgated under the Securities Act.

"*Regulation S Global Bond*" means a Regulation S Temporary Global Bond or Regulation S Permanent Global Bond, as appropriate.

"*Regulation S Permanent Global Bond*" means a permanent Global Bond in the form of Exhibit A-1 hereto bearing the Global Bond Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in an aggregate denomination equal to the outstanding principal amount of the Regulation S Temporary Global Bond upon expiration of the Restricted Period.

"*Regulation S Temporary Global Bond*" means a temporary Global Bond in the form of Exhibit A-2 hereto bearing the Global Bond Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in an aggregate denomination equal to the outstanding principal amount of the Bonds initially sold in reliance on Rule 903 of Regulation S.

"*Reinvestment Notice*" means a notice executed by an Authorized Officer of Homer City to the Collateral Agent and the Trustee relating to a Recovery Event (i) setting forth in reasonable detail the nature of the proposed restoration or replacement relating to such Recovery Event

and the estimated cost and time to complete such restoration or replacement and (ii) stating that (a) no Default or Event of Default has occurred and is continuing, (b) such restoration or replacement is technologically and economically feasible, (c) the net cash proceeds of such Recovery Event, together with other resources available to the Facility Lessee, are sufficient to pay the estimated cost of completing such restoration or replacement and (d) the Facility Lessee has sufficient resources (through business interruption insurance or otherwise) to pay all principal, interest and other fixed charges projected to become due and payable with respect to the Bonds prior to the completion of such restoration or replacement.

"*Responsible Officer*," when used with respect to the Trustee, means any officer within the Corporate Trust Office of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"*Restricted Global Bond*" means a Global Bond bearing the Private Placement Legend.

"*Restricted Period*" means the 40-day restricted period as defined in Regulation S.

"*Rule 144*" means Rule 144 promulgated under the Securities Act.

"*Rule 144A*" means Rule 144A promulgated under the Securities Act.

"*Rule 903*" means Rule 903 promulgated under the Securities Act.

"*Rule 904*" means Rule 904 promulgated under the Securities Act.

"*S&P*" means Standard & Poor's Rating Services.

"*Sale-Leaseback Transaction*" means the lease financing involving the assets of Homer City as described in the Consent Solicitation Statement.

"*Security Agent*" has the meaning set forth in the Lease Indenture.

"*Security Deposit Agreement*" means the Amended Security Deposit Agreement, dated as of December 7, 2001, as amended, by and among Homer City and the Collateral Agent.

"*Security Documents*" has the meaning set forth in the Security Deposit Agreement.

"*Securities Act*" means the Securities Act of 1933, as amended.

"*Senior Debt*" has the meaning set forth in the Security Deposit Agreement.

"*Series A Bonds*" means the Series A Bonds issued by the Company pursuant to this Indenture.

"*Series B Bonds*" means the Series B Bonds issued by the Company pursuant to this Indenture.

"*Shelf Registration Statement*" means the Shelf Registration Statement as defined in the Registration Rights Agreement.

"*Stated Maturity*" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which such payment of interest or principal was scheduled to be paid in the credit agreement or other original documentation governing such

Indebtedness, and shall not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"*Subsidiary*" means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which more than 50% of the outstanding capital stock, partnership interests or other equity interests having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) or to control the management of such partnership, limited liability company or other entity is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person.

"*TIA*" means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb) as in effect on the date on which this Indenture is qualified under the TIA.

"*Trustee*" means The Bank of New York, as successor trustee for the benefit of the Holders under the Indenture, together with its successors and assigns.

"*Unrestricted Definitive Bond*" means one or more Definitive Bonds that do not bear and are not required to bear the Private Placement Legend.

"*Unrestricted Global Bond*" means a permanent Global Bond in the form of Exhibit A-1 attached hereto that bears the Global Bond Legend and that has the "Schedule of Exchanges of Interests in the Global Bond" attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary, representing a series of Bonds that do not bear the Private Placement Legend.

"*U.S. Person*" means a U.S. person as defined in Rule 902(o) under the Securities Act.

SECTION 1.2 OTHER DEFINITIONS

Term	Defined in Section
"*Authentication Order*"	2.2
"*Company Secured Obligations*"	Granting Clause
"*Covenant Defeasance*"	8.3
"*DTC*"	2.3
"*Effective Date*"	10.14
"*Event of Default*"	6.1
"*Holdings*"	preamble
"*Legal Defeasance*"	8.2
"*Paying Agent*"	2.3
"*Permitted Indebtedness*"	4.6
"*Permitted Liens*"	4.9
"*Pledged Note*"	Granting Clause
"*Registrar*"	2.3

SECTION 1.3 INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

"*indenture securities*" means the Bonds;

"indenture security holder" means a Holder of a Bond;

"*indenture to be qualified*" means this Indenture;

"*indenture trustee*" or "*institutional trustee*" means the Trustee; and

"*Obligor*" on the indenture securities means the Company and any successor obligor upon the indenture securities.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by Commission rule under the TIA have the meanings so assigned to them.

SECTION 1.4 RULES OF CONSTRUCTION

Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) or is not exclusive;

(4) words in the singular include the plural, and in the plural include the singular;

(5) provisions apply to successive events and transactions; and

(6) references to sections of or rules under the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the Commission from time to time.

SECTION 1.5 ONE CLASS OF SECURITIES

The Series A Bonds and Series B Bonds shall vote and consent together on all matters as one class and none of the Series A Bonds and Series B Bonds shall have the right to vote or consent as a separate class on any matter.

ARTICLE 2.
THE BONDS

SECTION 2.1 FORM AND DATING

(a) *General.*

The Bonds and the Trustee's certificate of authentication shall be substantially in the form of Exhibits A-1 and A-2 hereto. The Bonds may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Bond shall be dated the date of its authentication. The Bonds shall be in denominations of $100,000 and integral multiples of $1,000 in excess thereof.

The terms and provisions contained in the Bonds shall constitute, and are hereby expressly made, a part of this Indenture and the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However,

to the extent any provision of any Bond conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) *Global Bonds.*

Bonds issued in global form shall be substantially in the form of Exhibits A-1 or A-2 attached hereto (including the Global Bond Legend thereon and the "*Schedule of Exchanges of Interests in the Global Bond*" attached thereto). Bonds issued in definitive form shall be substantially in the form of Exhibit A-l attached hereto (but without the Global Bond Legend thereon and without the "Schedule of Exchanges of interests in the Global Bond" attached thereto). Each Global Bond shall represent such of the outstanding Bonds as shall be specified therein and each shall provide that it shall represent the aggregate principal amount of outstanding Bonds from time to time endorsed thereon and that the aggregate principal amount of outstanding Bonds represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Bond to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Bonds represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with written instructions given by the Holder thereof as required by Section 2.6 hereof.

(c) *Temporary Global Bonds*

Bonds offered and sold in reliance on Regulation S shall be issued initially in the form of a Regulation S Temporary Global Bond, which shall be deposited on behalf of the purchasers of the Bonds represented thereby with the Trustee, at its New York office, as custodian for the Depositary, and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Cedel, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Restricted Period shall be terminated upon the receipt by the Trustee of (i) a written certificate from the Depositary, together with copies of certificates from Euroclear and Cedel certifying that they have received certification of Non-United States beneficial ownership of 100% of the aggregate principal amount of a Regulation S Temporary Global Bond (except to the extent of any beneficial owners thereof who acquired an interest therein during the Restricted Period pursuant to another exemption from registration under the Securities Act and who will take delivery of a beneficial ownership interest in a 144A Global Bond bearing a Private Placement Legend, all as contemplated by Section 2.6(a)(ii) hereof), and (ii) an Officer's Certificate from the Company. Following the termination of the Restricted Period, beneficial interests in a Regulation S Temporary Global Bond shall be exchanged for beneficial interests in Regulation S Permanent Global Bonds pursuant to the Applicable Procedures. Simultaneously with the authentication of Regulation S Permanent Global Bonds, the Trustee shall cancel the Regulation S Temporary Global Bond. The aggregate principal amount of a Regulation S Temporary Global Bond and the Regulation S Permanent Global Bonds may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

(d) *Euroclear and Cedel Procedures Applicable.*

The provisions of the "*Operating Procedures of the Euroclear System*" and "*Terms and Conditions Governing Use of Euroclear*" and the "*General Terms and Conditions of Cedelbank*" and "*Customer Handbook*" of Cedel shall be applicable to transfers of beneficial interests in a Regulation S Temporary Global Bond and the Regulation S Global Bonds that are held by Participants through Euroclear or Cedel.

SECTION 2.2 EXECUTION AND AUTHENTICATION

Upon surrender of, and in exchange for New Bonds, two Officers of the Company shall sign the Bonds for the Company by manual or facsimile signature and the Bonds shall be delivered to the Trustee as custodian for the Depositary. The Company's seals, if any, shall be reproduced on the Bonds and may be in facsimile form.

If an Officer of the Company whose signature is on a Bond no longer holds that office at the time a Bond is authenticated, the Bond shall nevertheless be valid.

A Bond shall not be valid until authenticated by the manual signature of the Trustee. The signature shall be conclusive evidence that the Bond has been authenticated under this indenture.

The Trustee shall, upon a written order of the Company signed by two Officers of the Company (an "*Authentication Order*"), authenticate Series A Bonds for original issue up to the aggregate principal amount of $300,000,000 and Series B Bonds for original issue up to the aggregate principal amount of $530,000,000. The aggregate principal amount of Series A Bonds or Series B Bonds outstanding at any time may not exceed such amounts except as provided in Section 2.7 hereof.

The Trustee may (at the expense of the Company) appoint an authenticating agent acceptable to the Company to authenticate Bonds. An authenticating agent may authenticate Bonds whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Company and has the same protections under Article 7 herein.

SECTION 2.3 REGISTRAR AND PAYING AGENT

The Company shall maintain an office or agency where Bonds may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where Bonds may be presented for payment ("*Paying Agent*"). The Registrar shall keep a register of the Bonds and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "*Registrar*" includes any co-registrar and the term "*Paying Agent*" includes any additional paying agent. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain a Registrar or Paying Agent, the Trustee shall act as such. The Company may act as Paying Agent or Registrar.

The Company initially appoints The Depository Trust Company ("*DTC*") to act as Depositary with respect to the Global Bonds.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Bonds.

SECTION 2.4 PAYING AGENT TO HOLD MONEY IN TRUST

(a) The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal of, premium, if any, or interest on the Bonds, and will notify the Trustee in writing of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company) shall have no further liability for the money. If the Company acts as Paying Agent, it shall segregate and hold as separate trust funds for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee shall serve as Paying Agent for the Bonds.

(b) Prior to the Effective Date of this Indenture, the Company shall cause to be deposited with the Paying Agent and the Paying Agent shall hold in trust all amounts accrued and unpaid on the New Bonds from the Payment Date immediate prior to the Effective Date up to the

Effective Date. The Paying Agent shall pay such amounts together with all other funds received for such purpose to the Holders on the Payment Date following the Effective Date of this Indenture.

SECTION 2.5 HOLDER LISTS

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Bonds and the Company shall otherwise comply with TIA § 312(a).

SECTION 2.6 TRANSFER AND EXCHANGE

(a) *Transfer and Exchange of Global Bonds.*

A Global Bond may not be transferred as a whole except by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Bonds will be exchanged by the Company for Definitive Bonds if (i) the Company delivers to the Trustee written notice from the Depositary that it is unwilling or unable to continue to act as Depositary or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Company within 120 days after the date of such notice from the Depositary or (ii) the Company in its sole discretion determines that the Global Bonds (in whole but not in part) should be exchanged for Definitive Bonds and delivers a written notice to such effect to the Trustee; *provided* that in no event shall a Regulation S Temporary Global Bond be exchanged by the Company for Definitive Bonds prior to (x) the expiration of the Restricted Period and (y) the receipt by the Registrar of any certificates required pursuant to Rule 903(c)(3)(ii)(B) under the Securities Act. Upon the occurrence of either of the preceding events in (i) or (ii) above, Definitive Bonds shall be issued in such names as the Depositary shall instruct the Trustee in writing. Global Bonds also may be exchanged or replaced, in whole or in part, as provided in Sections 2.7 and 2.10 hereof. Every Bond authenticated and delivered in exchange for, or in lieu of, a Global Bond or any portion thereof, pursuant to this Section 2.6 or Section 2.7 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Bond. A Global Bond may not be exchanged for another Bond other than as provided in this Section 2.6(a), however, beneficial interests in a Global Bond may be transferred and exchanged as provided in Section 2.6(b), (c) or (f) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Bonds.*

The transfer and exchange of beneficial interests in the Global Bonds shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Bonds shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Bonds also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) *Transfer of Beneficial Interests in the Same Global Bond*. Beneficial interests in any Restricted Global Bond may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Bond in accordance with the transfer

restrictions set forth in the Private Placement Legend; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Temporary Regulation S Global Bond may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Beneficial interests in any Unrestricted Global Bond may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global

Bond. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.6(b)(i).

(ii) *All Other Transfers and Exchanges of Beneficial Interests in Global Bonds*. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.6(b)(i) above, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Bond in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Bond in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Bond shall be registered to effect the transfer or exchange referred to in (1) above; *provided* that in no event shall Definitive Bonds be issued upon the transfer or exchange of beneficial interests in a Regulation S Temporary Global Bond prior to (x) the expiration of the Restricted Period and (y) the receipt by the Registrar of any certificates required pursuant to Rule 903 under the Securities Act. Upon consummation of an Exchange Offer by the Company in accordance with Section 2.6(f) hereof, the requirements of this Section 2.6(b)(ii) shall be deemed to have been satisfied upon receipt by the Registrar of the instructions contained in the Letter of Transmittal delivered by the Holder of such beneficial interests in the Restricted Global Bonds. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Bonds contained in this Indenture and the Bonds or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Bond(s) pursuant to Section 2.6(h) hereof.

(iii) *Transfer of Beneficial interests to Another Restricted Global Bond*. A beneficial interest in any Restricted Global Bond may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Bond if the transfer complies with the requirements of Section 2.6(b)(ii) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Bond, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof; and

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Temporary Global Bond or the Regulation S Permanent Global Bond, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof.

(iv) *Transfer and Exchange of Beneficial interests in a Restricted Global Bond for Beneficial Interests in the Unrestricted Global Bond*. A beneficial interest in any Restricted Global Bond may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Bond or transferred to a Person who takes delivery thereof in the form of a beneficial interest

in an Unrestricted Global Bond if the exchange or transfer complies with the requirements of Section 2.6(b)(ii) above and:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of the beneficial interest to be exchanged, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the New Bonds or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by an Initial Purchaser pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Bond proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Bond, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (i)(a) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Bond proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Bond, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (B) or (D) above at a time when an Unrestricted Global Bond has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.2 hereof, the Trustee shall authenticate one or more Unrestricted Global Bonds in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (B) or (D) above.

Beneficial interests in an Unrestricted Global Bond cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Bond.

(c) *Transfer or Exchange of Beneficial Interests for Definitive Bonds.*

(i) *Beneficial Interests in Restricted Global Bonds to Restricted Definitive Bonds*. If any holder of a beneficial interest in a Restricted Global Bond proposes to exchange such beneficial interest for a Restricted Definitive Bond or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Bond, then, upon receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Bond proposes to exchange such beneficial interest for a Restricted Definitive Bond, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Company or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof;

(F) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof; or

(G) if such beneficial interest is being transferred to an institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144 or Rule 904 thereunder, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(d) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Bond to be reduced accordingly pursuant to Section 2.6(h) hereof, and the Company shall execute and the Trustee shall upon receipt of an Authentication Order authenticate and deliver to the Person designated in the instructions a Definitive Bond in the appropriate principal amount. Any Definitive Bond issued in exchange for a beneficial interest in a Restricted Global Bond pursuant to this Section 2.6(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the applicable Participant or Indirect Participant. The Trustee shall (at the expense of the Company) deliver such Definitive Bonds to the Persons in whose names such Bonds are so registered. Any Definitive Bond issued in exchange for a beneficial interest in a Restricted Global Bond pursuant to this Section 2.6(c)(i) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) Notwithstanding Sections 2.6(c)(i)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Bond may not be exchanged for a Definitive Bond or transferred to a Person who takes delivery thereof in the form of a Definitive Bond prior to (x) the expiration of the Restricted Period and (y) the receipt by the Registrar of any certificates required pursuant to Rule 903(c)(3)(ii)(B) under the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(iii) *Beneficial Interests in Restricted Global Bonds to Unrestricted Definitive Bonds*. A holder of a beneficial interest in a Restricted Global Bond may exchange such beneficial

interest for an Unrestricted Definitive Bond or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Bond only if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of such beneficial interest, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the New Bonds or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by an Initial Purchaser pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Bond proposes to exchange such beneficial interest for a Definitive Bond that does not bear the Private Placement Legend, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Bond proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a Definitive Bond that does not bear the Private Placement Legend, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof, and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iv) *Beneficial Interests in Unrestricted Global Bonds to Unrestricted Definitive Bonds*. If any holder of a beneficial interest in an Unrestricted Global Bond proposes to exchange such beneficial interest for a Definitive Bond or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Bond, then, upon satisfaction of the conditions set forth in Section 2.6(b)(ii) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Bond to be reduced accordingly pursuant to Section 2.6(h) hereof, and the Company shall execute and the Trustee shall upon receipt of an Authentication Order authenticate and (at the expense of the Company) deliver to the Person designated in the instructions a Definitive Bond in the appropriate principal amount. Any Definitive Bond issued in exchange for a beneficial interest pursuant to this Section 2.6(c)(iv) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the applicable Participant or Indirect Participant. The Trustee shall (at the expense of the Company) deliver such Definitive Bonds to the Persons in whose names such Bonds are so registered. Any Definitive Bond issued in exchange for a beneficial interest pursuant to this Section 2.6(c)(iv) shall not bear the Private Placement Legend.

(d) *Transfer and Exchange of Definitive Bonds for Beneficial Interests*.

(i) *Restricted Definitive Bonds to Beneficial Interests in Restricted Global Bonds*. If any Holder of a Restricted Definitive Bond proposes to exchange such Bond for a beneficial interest in a Restricted Global Bond or to transfer such Restricted Definitive Bond to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Bond, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Bond proposes to exchange such Bond for a beneficial interest in a Restricted Global Bond, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Bond is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Bond is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Bond is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Bond is being transferred to the Company or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such Restricted Definitive Bond is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof, the Trustee shall cancel the Restricted Definitive Bond, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Bond, in the case of clause (B) above, the 144A Global Bond, and in the case of clause (C) above, the Regulation S Global Bond.

(ii) *Restricted Definitive Bonds to Beneficial Interests in Unrestricted Global Bonds*. A Holder of a Restricted Definitive Bond may exchange such Bond for a beneficial interest in an Unrestricted Global Bond or transfer such Restricted Definitive Bond to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Bond only if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange or the transferee, in the case of a transfer, certifies in the Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the New Bonds or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by an Initial Purchaser pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the Holder of such Restricted Definitive Bond proposes to exchange such Bond for a beneficial interest in the Unrestricted Global Bond, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (l)(c) thereof; or

(2) if the Holder of such Restricted Definitive Bond proposes to transfer such Bond to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Bond, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained

herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.6(d)(ii), the Trustee shall cancel the Definitive Bonds and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Bond.

(iii) *Unrestricted Definitive Bonds to Beneficial Interests in Unrestricted Global Bonds*. A Holder of an Unrestricted Definitive Bond may exchange such Bond for a beneficial interest in an Unrestricted Global Bond or transfer such Unrestricted Definitive Bond to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Bond at any time. Upon receipt of a written request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Bond and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Bonds.

If any such exchange or transfer from a Definitive Bond to a beneficial interest is effected pursuant to subparagraphs (ii)(B), (ii)(D) or (iii) above at a time when an Unrestricted Global Bond has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.2 hereof, the Trustee shall authenticate, one or more Unrestricted Global Bonds in an aggregate principal amount equal to the principal amount of Definitive Bonds so transferred.

(e) *Transfer and Exchange of Definitive Bonds for Definitive Bonds.*

Upon request by a Holder of Definitive Bonds and such Holder's compliance with the provisions of this Section 2.6(e), the Registrar shall register the transfer or exchange of Definitive Bonds. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Bonds duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by his attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.6(e).

(i) *Restricted Definitive Bonds to Restricted Definitive Bonds*. Any Restricted Definitive Bond may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Bond if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A under the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(ii) *Restricted Definitive Bonds to Unrestricted Definitive Bonds*. Any Restricted Definitive Bond may be exchanged by the Holder thereof for an Unrestricted Definitive Bond or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Bond if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a

transfer, certifies in the Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the New Bonds or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) any such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) any such transfer is effected by an Initial Purchaser pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(1) if the Holder of such Restricted Definitive Bonds proposes to exchange such Bonds for an Unrestricted Definitive Bond, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (I)(d) thereof; or

(2) if the Holder of such Restricted Definitive Bonds proposes to transfer such Bonds to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Bond, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) *Unrestricted Definitive Bonds to Unrestricted Definitive Bonds*. A Holder of Unrestricted Definitive Bonds may transfer such Bonds to a Person who takes delivery thereof in the form of an Unrestricted Definitive Bond. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Bonds pursuant to the instructions from the Holder thereof.

(f) *Intentionally Omitted.*

(g) *Legends.*

The following legends shall appear on the face of all Global Bonds and Definitive Bonds issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture.

(i) *Private Placement Legend*.

(A) Except as permitted by subparagraph (B) below, each Global Bond and each Definitive Bond (and all Bonds issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

"THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE OR OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERRED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS THE TRANSACTION IS EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THE HOLDER OF THIS

SECURITY BY ITS ACQUISITION HEREOF (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR AN INSTITUTIONAL ACCREDITED INVESTOR WITHIN THE MEANING OF SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT (AN "INSTITUTIONAL ACCREDITED INVESTOR") OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN "OFFSHORE TRANSACTION" PURSUANT TO RULE 904 OF REGULATION 5, (2) AGREES THAT IT WILL NOT PRIOR TO (X) THE DATE WHICH IS TWO YEARS (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144(k) UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER) AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF (OR ANY PREDECESSOR OF THIS SECURITY) OR THE LAST DAY ON WHICH THE COMPANY OR AN AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAWS (THE "RESALE RESTRICTION TERMINATION DATE") OFFER, SELL OR OTHERWISE TRANSFER THIS SECURITY, EXCEPT (A) TO THE COMPANY, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL ACCREDITED INVESTOR THAT IS PURCHASING THE CERTIFICATES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT OR (F) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; PROVIDED THAT

THE COMPANY AND THE TRUSTEE SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER (I) PURSUANT TO CLAUSE (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND (II) IN EACH OF THE FOREGOING CASES, TO REQUIRE THAT A CERTIFICATION OR TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

(B) Notwithstanding the foregoing, any Global Bond or Definitive Bond issued pursuant to subparagraphs (b)(iv), (c)(ii), (c)(iii), (d)(ii), (d)(iii), (e)(ii), (e)(iii) or (f) to this Section 2.6 (and all Bonds issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(ii) Global Bond Legend. Each Global Bond shall bear a legend in substantially the following form:

"THIS GLOBAL BOND IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS BOND) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.7 OF THE INDENTURE, (II) THIS GLOBAL BOND MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.6(a) OF THE INDENTURE, (III) THIS GLOBAL BOND MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL BOND MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY."

(iii) *Regulation S Temporary Global Bond Legend*. The Regulation S Temporary Global Bond shall bear a legend in substantially the following form:

"THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL BOND, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR CERTIFICATED BONDS, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN). NEITHER THE HOLDER NOR THE BENEFICIAL OWNERS OF THIS REGULATION S TEMPORARY GLOBAL BOND SHALL BE ENTITLED TO RECEIVE PAYMENT OF INTEREST HEREON."

(h) *Cancellation and/or Adjustment of Global Bonds.*

At such time as all beneficial interests in a particular Global Bond have been exchanged for Definitive Bonds or a particular Global Bond has been redeemed, repurchased or canceled in whole and not in part, each such Global Bond shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Bond is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Bond or for Definitive Bonds, the principal amount of Bonds represented by such Global Bond shall be reduced

accordingly and an endorsement shall be made on such Global Bond by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Bond, such other Global Bond shall be increased accordingly and an endorsement shall be made on such Global Bond by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(i) *General Provisions Relating to Transfers and Exchanges.*

(i) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Global Bonds and Definitive Bonds upon receipt of an Authentication Order in accordance with Section 2.2 hereof or upon receipt of a written request of the Registrar in accordance with the terms hereof.

(ii) No service charge shall be made to a holder of a beneficial interest in a Global Bond or to a Holder of a Definitive Bond for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.6, 3.7, 3.8 and 9.5 hereof).

(iii) The Registrar shall not be required to register the transfer of or exchange any Bond selected for redemption in whole or in part, except the unredeemed portion of any Bond being redeemed in part.

(iv) All Global Bonds and Definitive Bonds issued upon any registration of transfer or exchange of Global Bonds or Definitive Bonds shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Bonds or Definitive Bonds surrendered upon such registration of transfer or exchange.

(v) The Company shall not be required (A) to issue, to register the transfer of or to exchange any Bonds during a period beginning at the opening of business 15 days before the day of any selection of Bonds for redemption under Section 3.2 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Bond so selected for redemption in whole or in part, except the unredeemed portion of any Bond being redeemed in part or (C) to register the transfer of or to exchange a Bond between a record date and the next succeeding interest payment date.

(vi) Prior to due presentment for the registration of a transfer of any Bond, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(vii) The Trustee shall authenticate Global Bonds and Definitive Bonds in accordance with the provisions of Section 2.2 hereof.

(viii) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.6 to effect a registration of transfer or exchange may be submitted by facsimile.

SECTION 2.7 REPLACEMENT BONDS

If any mutilated Bond is surrendered to the Trustee or the Company and the Trustee and the Company receives evidence to its satisfaction of the destruction, loss or theft of any Bond, the Company shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Bond if the Company's and the Trustee's requirements are met. If required by the Trustee or the Company, an indemnity Bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Bond is replaced. The Company and the Trustee may charge for their expenses in replacing a Bond.

Every replacement Bond is an additional obligation of the Company and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Bonds duly issued hereunder.

SECTION 2.8 OUTSTANDING BONDS

The Bonds outstanding at any time are all the Bonds authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Bond effected by the Trustee in accordance with the provisions hereof, and those described in this Section as not outstanding. Except as set forth in Section 2.9 hereof, a Bond does not cease to be outstanding because the Company or an Affiliate of the Company holds the Bond.

If a Bond is replaced pursuant to Section 2.7 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Bond is held by a bona fide purchaser.

If the principal amount of any Bond is considered paid under Section 4.1 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Bonds payable on that date, then on and after that date such Bonds shall be deemed to be no longer outstanding and shall cease to accrue interest.

SECTION 2.9 TREASURY BONDS

In determining whether the Holders of the required principal amount of Bonds have concurred in any direction, waiver or consent, Bonds owned by the Company, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Bonds that the Trustee knows are so owned shall be so disregarded.

SECTION 2.10 TEMPORARY BONDS

Until certificates representing Bonds are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Bonds. Temporary Bonds shall be substantially in the form of certificated Bonds but may have variations that the Company considers appropriate for temporary Bonds and as shall be reasonably acceptable to the Trustee.

Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate Definitive Bonds in exchange for temporary Bonds.

Holders of temporary Bonds shall be entitled to all of the benefits of this Indenture.

SECTION 2.11 CANCELLATION

The Company at any time may deliver Bonds to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Bonds surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Bonds surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall destroy canceled Bonds (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all canceled Bonds shall be delivered (at the expense of the Company) to the Company. The Company may not issue new Bonds to replace Bonds that it has paid or that have been delivered to the Trustee for cancellation.

SECTION 2.12 DEFAULTED INTEREST

If the Company defaults in a payment of interest on the Bonds, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Bonds and in Section 4.1 hereof. The Company shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Bond and the date of the proposed payment. The Company shall fix or cause to be fixed each such special record date and payment date, *provided* that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) shall mail or cause to be mailed to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

SECTION 2.13 CUSIP NUMBERS

The Company in issuing the Bonds may use "CUSIP" numbers (if then generally in use) and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders, *provided, however*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Bonds or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Bonds, and any such redemption shall not be affected by any defect in or omission of such numbers.

ARTICLE 3.
REDEMPTION AND PREPAYMENT

SECTION 3.1 NOTICES TO TRUSTEE

If the Company elects to redeem Bonds pursuant to the redemption provisions of Section 3.7 or 3.8 hereof, it shall furnish to the Trustee, at least 30 days but not more than 60 days before a redemption date, an Officer's Certificate setting forth (i) the clause of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Bonds to be redeemed and (iv) the redemption price.

SECTION 3.2 SELECTION OF BONDS TO BE REDEEMED

If less than all of the Bonds are to be redeemed at any time, the Trustee shall select the Bonds to be redeemed among the Holders of the Bonds in compliance with the requirements of the principal national securities exchange, if any, on which the Bonds are listed or, if the Bonds are not so listed, on a *pro rata* basis, by lot or in accordance with any other method the Trustee considers fair and appropriate. In the event of partial redemption by lot, the particular Bonds to be redeemed shall be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption date by the Trustee from the outstanding Bonds not previously called for redemption.

The Trustee shall promptly notify the Company of the Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed. Bonds and portions of Bonds selected shall be in amounts of $100,000 or whole multiples of $1,000 in excess thereof; except that if all of the Bonds of a Holder are to be redeemed, the entire outstanding amount of Bonds held by such Holder, even if not in the amount of $100,000 or a multiple of $1,000 in excess thereof, shall be redeemed. Except as provided in the preceding sentence, provisions of this Indenture that apply to Bonds called for redemption also apply to portions of Bonds called for redemption.

SECTION 3.3 NOTICE OF REDEMPTION

At least 30 days but not more than 60 days before a redemption date, the Company shall mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Bonds are to be redeemed at its registered address.

The notice shall identify the Bonds to be redeemed and shall state:

(a) the redemption date;

(b) the redemption price;

(c) if any Bond is being redeemed in part, the portion of the principal amount of such Bond to be redeemed and that, after the redemption date upon surrender of such Bond, a new Bond or Bonds in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Bond;

(d) the name and address of the Paying Agent;

(e) that Bonds called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Company defaults in making such redemption payment, interest on Bonds called for redemption ceases to accrue on and after the redemption date;

(g) the paragraph of the Bonds and/or Section of this Indenture pursuant to which the Bonds called for redemption are being redeemed; and

(h) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Bonds.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; *provided*, *however*, that the Company shall have delivered to the Trustee, at least 45 days prior to the redemption date (or such shorter time period acceptable to the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

SECTION 3.4 EFFECT OF NOTICE OF REDEMPTION

Once notice of redemption is mailed in accordance with Section 3.3 hereof, Bonds called for redemption become irrevocably due and payable on the redemption date at the redemption price. A notice of redemption may not be conditional.

SECTION 3.5 DEPOSIT OF REDEMPTION PRICE

One Business Day prior to the redemption date, the Company shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption price of and accrued interest on all Bonds to be redeemed on that date. The Trustee or the Paying Agent shall promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption price of, and accrued interest on, all Bonds to be redeemed.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption date, interest shall cease to accrue on the Bonds or the portions of Bonds called for redemption. If a Bond is redeemed on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest shall be paid to the Person in whose name such Bond was registered at the close of business on such record date. If any Bond called for redemption shall not be so paid upon surrender for redemption because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Bonds and in Section 4.1 hereof.

SECTION 3.6 BONDS REDEEMED IN PART

Upon surrender of a Bond that is redeemed in part, the Company shall issue and, upon receipt of an Authentication Order, the Trustee shall authenticate for the Holder at the expense of the Company a new Bond equal in principal amount to the unredeemed portion of the Bond surrendered.

SECTION 3.7 OPTIONAL REDEMPTION

The Bonds shall be subject to optional redemption at any time at a Redemption Price equal to the outstanding principal amount of the Bonds to be redeemed plus all accrued and unpaid interest thereon to the Redemption Date, plus the Make-Whole Premium, if any.

SECTION 3.8 MANDATORY REDEMPTION

The Bonds will be subject to mandatory redemption upon the occurrence of a Recovery Event with respect to the Facilities, other than with respect to amounts received by the Owner Lessor in connection with a Recovery Event for which the Facility Lessee elects to restore or replace the asset or assets in respect of which such Recovery Event occurred and a Reinvestment Notice is provided to the Collateral Agent and the Trustee within 45 days of such Recovery Event (provided that, with respect to any Recovery Event of $50 million or more, the Independent Engineer shall have certified as to the reasonableness, in light of Prudent Industry Practice, of the Facility Lessee's repair and replacement plans as set forth in the Facility Lessee's Reinvestment Notice relating to such Recovery Event). Any mandatory redemption of the Bonds will be without premium or penalty at a Redemption Price equal to the unpaid principal amount thereof plus accrued and unpaid interest thereon to the Redemption Date.

SECTION 3.9 NOTICES TO BONDHOLDERS BY LEASE INDENTURE TRUSTEE

All provisions with respect to notices to the Bondholders will be deemed to have been satisfied by delivery of such notice to the Bondholders by the Lease Indenture Trustee or the Owner Lessor in compliance with the provisions of this Article III. In addition, all notices provided to the Company under this Indenture must also be provided by the Trustee to the Owner Lessor, Security Agent, Facility Lessee and Lease Indenture Trustee.

ARTICLE 4.
COVENANTS

SECTION 4.1 PAYMENT OF BONDS

The Company shall pay or cause to be paid the principal of, premium, if any, and interest on the Bonds on the dates and in the manner provided in the Bonds. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Company, holds as of 10:00 a.m. Eastern Time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to 1% per annum in excess of the then applicable interest rate on the Bonds to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

SECTION 4.2 MAINTENANCE OF OFFICE OR AGENCY

The Company shall maintain in the Borough of Manhattan, the City of New York, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Bonds may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Bonds and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Bonds may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, the City of New York for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with this Section and Section 2.3.

SECTION 4.3 INFORMATION REQUIREMENTS

(a) The Company shall furnish or cause to be furnished to the Trustee, all information that it receives pursuant to Section 5.1 of the Participation Agreement, *provided, however* that the Company is not obligated to provide such information if it has been provided to the Trustee directly by Homer City.

SECTION 4.4 STAY, EXTENSION AND USURY LAWS

The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 4.5 LIMITATION ON SUBSIDIARIES AND INVESTMENTS

The Company shall not create or acquire any Subsidiary.

SECTION 4.6 LIMITATION ON INCURRENCE OF INDEBTEDNESS

The Company shall not, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "*incur*") any indebtedness other than Permitted Indebtedness.

"*Permitted Indebtedness*" shall mean Indebtedness incurred in respect of the Bonds.

Accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness will not be deemed to be an incurrence of Indebtedness for purposes of this Section 4.6.

SECTION 4.7 LIMITATION OF SALE OF ASSETS

The Company shall not sell, transfer, convey, lease or otherwise dispose of any assets.

SECTION 4.8 LIMITATION ON TRANSACTIONS WITH AFFILIATES

The Company shall not enter into any transaction or arrangement, whether or not in the ordinary course of business, with any Affiliates of the Company; *provided however* that any transaction between the Company and Wilmington Trust Company as the sole member of the Company consistent with the terms of the limited liability company agreement as in effect on the date hereof of the Company will not be deemed to be an affiliate transaction for purposes of this Section 4.8.

SECTION 4.9 LIMITATION ON LIENS

The Company shall not create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind upon any of its property or assets, now owned or hereafter acquired, other than Permitted Liens.

The provisions of the first paragraph of this Section 4.9 shall not apply to the incurrence of any of the following types of Liens (collectively, "*Permitted Liens*"):

(a) Liens created in this Indenture; and

(b) Liens for taxes, assessments or governmental charges or levies that are not yet delinquent and remain payable without penalty or that are being contested in good faith by appropriate proceedings promptly instituted and diligently prosecuted; *provided* that any reserve or other appropriate provision as shall be required to conform with GAAP shall have been made therefor.

SECTION 4.10 LIMITATION ON BUSINESS ACTIVITIES

The Company shall not engage in any business or conduct any activities other than payment on and other obligations in respect of the Bonds as set forth in Section 4.1.

SECTION 4.11 MAINTENANCE OF EXISTENCE

The Company shall at all times (i) maintain its respective existence in good standing under the laws of Delaware and (ii) maintain and renew all of its respective rights, powers, privileges and franchises in all material respects.

SECTION 4.12 PAYMENTS FOR CONSENT

The Company shall not directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder of any Bonds for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Bonds unless such consideration is offered to be paid or is paid to all Holders of the Bonds that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

SECTION 4.13 COMPLIANCE WITH LAWS

The Company shall comply with all applicable laws, acts, rules, regulations, permits, orders and requirements of any legislative, executive, administrative or judicial body relating to the Company in all material respects.

SECTION 4.14 PERFECTION OF SECURITY INTERESTS

Upon receipt of written instructions from the Trustee, the Company shall undertake, or shall cause to be undertaken, such specified actions as may be necessary or appropriate in the reasonable judgement of the Trustee to (a) maintain the security interest in the Collateral in full force and effect (including the priority thereof) and (b) preserve and protect the Collateral and protect and enforce the Company's rights and title to the Collateral including, without limitation, the making or delivery of all filings and recordations, the payment of fees and other charges and the issuance of supplemental documentation for such purposes. The Trustee shall undertake to provide the Company with the written instructions required herein, however, failure by the Trustee, for any reason, to provide such written instructions shall not, in any way, negate or override the Company's covenant to preserve, or cause to be preserved,the security interests granted under this Indenture.

SECTION 4.15 CONSENT PAYMENT

Until the Consent Payment is paid in accordance with this Section 4.15, the Company shall maintain with the Trustee the Consent Payment Account. On the Expiration Date, the Trustee shall deposit the Consent Payment it has received pursuant to Section 2.3(d) of each Participation Agreement into the Consent Payment Account. The Trustee shall pay the aggregate amount of the Consent Payment to each Holder of the Bonds who had consented to the Proposals as described in the Consent Solicitation Statement on or prior to the Expiration Date its portion of the Consent Payment within five (5) Business Days of the Expiration Date.

ARTICLE 5.
SUCCESSORS

SECTION 5.1 LIMITATION ON MERGER, CONSOLIDATION AND SALE OF SUBSTANTIALLY ALL ASSETS

The Company shall not, directly or indirectly, consolidate or merge with or into any other person (whether or not the Company is the surviving corporation), or sell, assign, convey, lease, transfer or otherwise dispose of, all or substantially all of its properties or assets in one or a series of transactions, to any Person or Persons.

ARTICLE 6.
EVENTS OF DEFAULT

SECTION 6.1 EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default hereunder:

(a) default for 5 Business Days in the payment when due of any principal of, premium, if any, or interest on the Bonds; or

(b) failure by the Company to comply with the provisions described above under Sections 4.6, 4.7, 4.9, 4.10, 4.11, or 5.1, and such failure shall continue uncured for 30 or more days from the date an authorized officer of the Company receives actual notice thereof;

(c) the Company pursuant to or within the meaning of Bankruptcy Law:

(i) commences a voluntary case,

(ii) consents to the entry of an order for relief against it in an involuntary case,

(iii) consents to the appointment of a custodian of it or for all or substantially all of its property,

(iv) make a general assignment for the benefit of its creditors, or

(v) generally is not paying its debts as they become due;

(d) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Company in an involuntary case;

(ii) appoints a custodian of the Company or for all or substantially all of the property of the Company; or

(iii) orders the liquidation of the Company; and, in which case, the order or decree remains unstayed and in effect for 60 consecutive days;

(e) any Lease Indenture Event of Default; or

(f) failure by the Company to comply with any of its agreements in this Indenture and such failure shall continue uncured for 60 or more days from the date an authorized officer of the Company receives actual notice thereof (or to the extent the Default is curable but cannot be cured) within such 60 day period, so long as the Company provides an Officer's Certificate to the Trustee stating that it is diligently pursuing a cure, such longer period of time which may be necessary in good faith to cure the same, but in no event to exceed 90 days.

SECTION 6.2 ACCELERATION

If any Event of Default (other than an Event of Default specified in clause (c) or (d) of Section 6.1 hereof with respect to the Company) occurs and is continuing, the Trustee may, and upon written direction of the Holders of at least $33^{1}/_{3}\%$ (in the case of any Event of Default specified in clause (a) of Section 6.1 hereof) or 50% (in the case of any other Event of Default) in principal amount of the then outstanding Bonds shall, declare, by written notice to the Company, all the Bonds to be due and payable immediately. Notwithstanding the foregoing, if an Event of Default specified in clause (c) or (d) of Section 6.1 hereof occurs with respect to the Company, all outstanding Bonds shall be due and payable without further action or notice. Holders of the Bonds may not enforce this Indenture or the Bonds except as provided in this Indenture. The Trustee may withhold from Holders of the Bonds notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest) if it determines that withholding notice is in their best interest. The Holders of at least $66^{2}/_{3}\%$ in aggregate principal amount of the then outstanding Bonds by notice to the Trustee may on behalf of the Holders of all of the Bonds rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

The Holders of a majority in aggregate principal amount of the Bonds then outstanding by notice to the Trustee may on behalf of the Holders of all of the Bonds waive any existing Default or Event of Default and its consequences under this Indenture except (i) a continuing Default or Event of Default in the payment of principal of, premium, if any, or interest on, the Bonds (including in connection with an offer to purchase) and (ii) an Event of Default specified in clause (c) or (d) of Section 6.1 hereof.

SECTION 6.3 OTHER REMEDIES

If an Event of Default occurs and is continuing, the Trustee, in its sole discretion, may pursue any available remedy to collect the payment of principal, premium, if any, or interest on the Bonds or to enforce the performance of any provision of the Bonds or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Bonds or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Bond in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy

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or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

SECTION 6.4 WAIVER OF PAST DEFAULTS

Upon any waiver of any existing Default or Event of Default pursuant to the second paragraph of Section 6.2, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

SECTION 6.5 CONTROL BY MAJORITY

Holders of a majority in principal amount of the then outstanding Bonds may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines may be unduly prejudicial to the rights of

other Holders of Bonds or that may involve the Trustee in personal liability. The Trustee may take any other action consistent with this Indenture relating to any such direction.

SECTION 6.6 LIMITATION ON SUITS

A Holder of a Bond may pursue a remedy with respect to this Indenture or the Bonds only if:

(a) the Holder of a Bond gives to the Trustee written notice of a continuing Event of Default;

(b) the Holders of a majority in principal amount of the then outstanding Bonds make a written request to the Trustee to pursue the remedy;

(c) such Holder of a Bond or Holders of Bonds offer and, if requested, provide to the Trustee security and indemnity satisfactory to the Trustee against any loss, liability or expense;

(d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer and, if requested, the provision of security and indemnity; and

(e) during such 60-day period the Holders of a majority in principal amount of the then outstanding Bonds do not give the Trustee a direction inconsistent with the request.

A Holder of a Bond may not use this Indenture to prejudice the rights of another Holder of a Bond or to obtain a preference or priority over another Holder of a Bond.

SECTION 6.7 RIGHTS OF HOLDERS OF BONDS TO RECEIVE PAYMENT

Notwithstanding any other provision of this Indenture, the right of any Holder of a Bond, which is absolute and unconditional, to receive payment of principal, premium, if any, and interest on the Bond, on or after the respective due dates expressed in the Bond (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, or the obligation of the Company, which is also absolute and unconditional, to pay the principal of, premium, if any, and interest on the Bond to such Holder at the time and place set forth in the Bond, shall not be impaired or affected without the consent of such Holder.

SECTION 6.8 COLLECTION SUIT BY TRUSTEE

If an Event of Default specified in Section 6.1(a) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Bonds and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, fees, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 6.9 TRUSTEE MAY FILE PROOFS OF CLAIM

The Trustee is authorized 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 (including any claim for the reasonable compensation, fees, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Bonds allowed in any judicial proceedings relative to the Company (or any other obligor upon the Bonds), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the compensation, fees, expenses, disbursements and advances of the Trustee, its agents and counsel, and any

other amounts due the Trustee under or in connection with this Indenture. To the extent that the payment of any such compensation, fees, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under or in connection with this Indenture out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a perfected, first priority Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise, and such Lien in favor of a predecessor Trustee shall be senior to the Lien in favor of the current Trustee. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Bonds or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10 PRIORITIES

If the Trustee collects any money pursuant to this Article, it shall pay out the money in the following order:

First: to the Trustee (including any predecessor Trustee), its agents and attorneys for amounts due under Section 7.7 hereof, including payment of all compensation, fees, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders of Bonds for amounts due and unpaid on the Bonds for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the

amounts due and payable on the Bonds for principal, premium, if any, and interest, respectively; and

Third: to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Bonds pursuant to this Section 6.10.

SECTION 6.11 FOR COSTS

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder of a Bond pursuant to Section 6.7 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Bonds.

ARTICLE 7.
TRUSTEE

SECTION 7.1 DUTIES OF TRUSTEE

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c), (e) and (f) of this Section.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee shall be under no obligation to exercise any of its rights and powers

under this Indenture at the request or direction of any Holders, unless such Holder shall have offered and, if requested, provided to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held or deposited with the Trustee for the benefit of the Holders shall be held in a segregated account maintained or controlled by the Trustee.

SECTION 7.2 RIGHTS OF TRUSTEE

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company personally or by agent or attorney.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered and, if requested, provided to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(g) No permissive right of the Trustee to act hereunder shall be construed as a duty.

(h) Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers Certificate, an Opinion of Counsel, or both.

SECTION 7.3 INDIVIDUAL RIGHTS OF TRUSTEE

The Trustee in its individual or any other capacity may become the owner or pledgee of Bonds and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

SECTION 7.4 TRUSTEE'S DISCLAIMER

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Bonds or the Registration Rights Agreement; it shall not be

accountable for the Company's use of the proceeds from the Bonds or any money paid to the Company or upon the Company's direction under any provision of this Indenture; it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Bonds or any other document in connection with the sale of the Bonds or pursuant to this Indenture other than its certificate of authentication.

SECTION 7.5 NOTICE OF DEFAULTS

If a Default or an Event of Default occurs and is continuing and if the Trustee receives written notice thereof, the Trustee shall (at the expense of the Company) mail to Holders of Bonds a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or an Event of Default in payment of principal of, premium, if any, or interest on any Bond or Lessor Note, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Bonds.

SECTION 7.6 REPORTS BY TRUSTEE TO HOLDERS OF THE BONDS

Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, and for so long as Bonds remain outstanding, the Trustee shall (at the expense of the Company) mail to the Holders of the Bonds a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with TIA § 313(b). The Trustee shall transmit by mail all reports as required by TIA § 313(c).

A copy of each report at the time of its mailing to the Holders of Bonds shall be mailed to the Company and filed with the Commission and each stock exchange on which the Bonds are listed in accordance with TIA § 313(d). The Company shall promptly notify the Trustee when the Bonds are listed on any stock exchange.

SECTION 7.7 COMPENSATION AND INDEMNITY

The Company agrees to pay to the Trustee from time to time compensation as agreed upon by the Trustee and the Company, and, in the absence of any such agreement, reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee promptly upon request for all disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the compensation, disbursements and reasonable expenses of the Trustee's agents and counsel.

The obligations of the Company to the Trustee under this Indenture shall survive the satisfaction and discharge of this Indenture.

To secure the Company's payment obligations in this Section, the Trustee shall have a Lien prior to the Bonds on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Bonds. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.1(c) or (d) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

The Trustee shall comply with the provisions of TIA § 313(b)(2) to the extent applicable.

SECTION 7.8 REPLACEMENT OF TRUSTEE

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section.

The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of Bonds of a majority in principal amount of the then outstanding Bonds may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may by a Board Resolution remove the Trustee if:

(a) the Trustee fails to comply with Section 7.10 hereof;

(b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(c) a custodian or public officer takes charge of the Trustee or its property; or

(d) the Trustee becomes incapable of acting as trustee hereunder.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Bonds may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee does not take office within 60 days after a vacancy exists in the office of Trustee, the Company, or the Holders of Bonds of at least 10% in principal amount of the then outstanding Bonds may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after receiving a written request by any Holder of a Bond who has been a *bona fide* Holder of a Bond for at least six months, fails to comply with Section 7.10, such Holder of a Bond may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders of the Bonds. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.7 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.8, the Company's obligations under Section 7.7 hereof shall continue for the benefit of the retiring Trustee.

SECTION 7.9 SUCCESSOR TRUSTEE BY MERGER, ETC

If the Trustee or any Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee or Agent, as the case may be.

SECTION 7.10 ELIGIBILITY; DISQUALIFICATION

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that together with its direct parent, if any, or in the case of a corporation included in a bank holding company system, its related bank holding company, has a combined capital and surplus of at least $50 million as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

SECTION 7.11 PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY

The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

SECTION 7.12 OTHER CAPACITIES

All references in this Indenture to the Trustee shall be deemed to refer to the Trustee in its capacity as Trustee and in its capacities as any Agent, to the extent acting in such capacities, and every provision of this Indenture relating to the conduct or affecting the liability or offering protection, immunity or indemnity to the Trustee shall be deemed to apply with the same force and effect to the Trustee acting in its capacities as any Agent.

ARTICLE 8.
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

SECTION 8.1 OPTION TO EFFECT LEGAL DEFEASANCE OR COVENANT DEFEASANCE

The Company may, at its option and at any time, elect to have either Section 8.2 or 8.3 hereof be applied to all outstanding Bonds upon compliance with the conditions set forth below in this Article 8.

SECTION 8.2 LEGAL DEFEASANCE AND DISCHARGE

Upon the Company's exercise under Section 8.1 hereof of the option applicable to this Section 8.2, the Company shall, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Bonds on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Bonds, which shall thereafter be deemed to be "*outstanding*" only for the purposes of Section 8.5 hereof and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all its other obligations under such Bonds and this Indenture (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Bonds to receive solely from the trust fund described in Section 8.4 hereof, and as more fully set forth in such Section, payments in respect of the principal of, premium, if any, and interest on such Bonds when such payments are due, (b) the Company's obligations with respect to such Bonds under Article 2 and Section 4.1 hereof, (c) the rights, powers, trusts, duties and immunities of the Trustee and any Agent hereunder and the Company's obligations in connection therewith, including, without limitation, Article 7 and Section 8.5 and 8.7 hereunder, and (d) this Article 8. Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.2 notwithstanding the prior exercise of its option under Section 8.3 hereof.

SECTION 8.3 COVENANT DEFEASANCE

Upon the Company's exercise under Section 8.1 hereof of the option applicable to this Section 8.3, the Company shall, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be released from its obligations under the covenants contained in Sections 4.3, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.13 and 5.1 hereof with respect to the outstanding Bonds on and after the date the conditions set forth in Section 8.4 are satisfied (hereinafter, "*Covenant Defeasance*"), and the Bonds shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to

be deemed "*outstanding*" for all other purposes hereunder (it being understood that such Bonds shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Bonds, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.1 hereof, but, except as specified above, the remainder of this Indenture and such Bonds shall be unaffected thereby. In addition, upon the Company's exercise under Section 8.1 hereof of the option applicable to this Section 8.3 hereof, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, Sections 6.1(d) through 6.1(f) hereof shall not constitute Events of Default.

SECTION 8.4 CONDITIONS TO LEGAL OR COVENANT DEFEASANCE

The following shall be the conditions to the application of either Section 8.2 or 8.3 hereof to the outstanding Bonds:

In order to exercise either Legal Defeasance or Covenant Defeasance:

(a) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Bonds, cash in United States dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest on the

outstanding Bonds on the stated maturity or on the applicable redemption date, as the case may be, and the Company must specify whether the Bonds are being defeased to maturity or to a particular redemption date;

(b) in the case of an election under Section 8.2 hereof, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Bonds will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 8.3 hereof, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions, the Holders of the outstanding Bonds will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or an Event of Default resulting from the borrowing of funds to be applied to such deposit) or insofar as Sections 6.1(c) or 6.1(d) hereof are concerned, at any time in the period ending on the 91st day after the date of deposit;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture or any other Transaction Document) to which the Company is a party or by which the Company is bound;

(f) the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that (subject to customary qualifications and assumptions) after the 91st day following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally;

(g) the Company shall have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of Bonds over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding creditors of the Company or others; and

(h) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that, subject to customary assumptions and exclusions, all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

SECTION 8.5 DEPOSITED MONEY AND GOVERNMENT SECURITIES TO BE HELD IN TRUST; OTHER MISCELLANEOUS PROVISIONS

Subject to Section 8.6 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.5, the "*Trustee*") pursuant to Section 8.4 hereof in respect of the outstanding Bonds shall be held in trust and applied by the Trustee, in accordance with the provisions of such Bonds and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent), to the Holders of such Bonds of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company agrees to pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.4 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Bonds.

Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.4 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.4(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

SECTION 8.6 REPAYMENT TO COMPANY

Any money deposited with the Trustee or any Paying Agent, or then held by the Company in trust for the payment of the principal of, premium, if any, or interest on any Bond and remaining unclaimed for two years after such principal, and premium, if any, or interest has become due and payable shall be paid to the Company on its request or (if then held by the Company) shall be discharged from such trust; and the Holder of such Bond shall thereafter, as a secured creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in The New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 8.7 REINSTATEMENT

If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable Government Securities in accordance with Section 8.2 or 8.3 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Bonds shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.2 or 8.3 hereof until such time as the Trustee or Paying Agent is permitted by such court or governmental authority to apply all such money in accordance with Section 8.2 or 8.3 hereof, as the case may be; *provided*, *however*, that, if the Company makes any payment of principal of, premium, if any, or interest on any Bond following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Bonds to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9.
AMENDMENT, SUPPLEMENT AND WAIVER

SECTION 9.1 WITHOUT CONSENT OF HOLDERS OF BONDS

Notwithstanding Section 9.2 of this Indenture, the Company and the Trustee may amend or supplement this Indenture, the Bonds or any Financing Document without the consent of any Holder of a Bond:

(a) to cure any ambiguity, omission, defect or inconsistency;

(b) to provide for uncertificated Bonds in addition to or in place of certificated Bonds or to alter the provisions of Article 2 hereof (including the related definitions) in a manner that does not adversely affect any Holder;

(c) to make any change that would provide any additional rights or benefits to the Holders of the Bonds or that does not adversely affect the legal rights hereunder of any Holder of the Bonds; or

(d) to comply with requirements of the Commission in order to effect or maintain the qualification of this Indenture or any Security Document under the TIA.

Upon the request of the Company accompanied by a Board Resolution authorizing the execution of any such amended or supplemental Indenture, and upon receipt by the Trustee of the documents described in Section 7.2 hereof, the Trustee shall join with the Company in the execution of any amended or supplemental Indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental Indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

SECTION 9.2 WITH CONSENT OF HOLDERS OF BONDS

Except as provided below in this Section 9.2, the Company and the Trustee may amend or supplement this Indenture and the Bonds may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the Bonds then outstanding voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Bonds), and, subject to Sections 6.4 and 6.7 hereof, any existing Default or Event of Default (other than a Default or an Event of Default in the payment of the principal of, premium, if any, or interest on the Bonds, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture or the Bonds may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Bonds voting as a single class (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Bonds). Section 2.8 hereof shall determine which Bonds are considered to be "outstanding" for purposes of this Section 9.2.

Upon the request of the Company accompanied by a Board Resolution authorizing the execution of any such amended or supplemental Indenture, and upon receipt by the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Bonds as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.2 hereof, the Trustee shall join with the Company in the execution of such amended or supplemental Indenture unless such amended or supplemental Indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental Indenture.

It shall not be necessary for the consent of the Holders of Bonds under this Section 9.2 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section becomes effective, the Company shall mail to the Holders of Bonds affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental Indenture or waiver. Subject to Sections 6.4 and 6.7 hereof, the Holders of a majority in aggregate principal amount of the Bonds then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of this Indenture or the Bonds. However, without the consent of each Holder affected, an amendment or waiver under this Section 9.2 may not (with respect to any Bonds held by a non-consenting Holder):

(a) reduce the principal amount of Bonds whose Holders must consent to an amendment, supplement or waiver;

(b) reduce the principal of or change the fixed maturity of any Bond or alter or waive any of the provisions with respect to the redemption of the Bonds;

(c) reduce the rate of or change the time for payment of interest, including default interest, on any Bond;

(d) waive a Default or an Event of Default in the payment of principal of, premium, if any, or interest on the Bonds (except a rescission of acceleration of the Bonds by the Holders of at least $66^{2}/_{3}\%$ in aggregate principal amount of the then outstanding Bonds and a waiver of the payment Default that resulted from such acceleration);

(e) make any Bond payable in money other than that stated in the Bonds;

(f) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of Bonds to receive payments of principal of, premium, if any, or interest on the Bonds;

(g) waive a redemption payment with respect to any Bond; or

(h) make any change in the foregoing amendment and waiver provisions.

SECTION 9.3 COMPLIANCE WITH TRUST INDENTURE ACT

Every amendment or supplement to this Indenture or the Bonds shall be set forth in an amended or supplemental Indenture that complies with the TIA as then in effect.

SECTION 9.4 REVOCATION AND EFFECT OF CONSENTS

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Bond is a continuing consent by the Holder of a Bond and every subsequent Holder of a Bond or portion of a Bond that evidences the same debt as the consenting Holder's Bond, even if notation of the consent is not made on any Bond. However, any such Holder of a Bond or subsequent Holder of a

Bond may revoke the consent as to its Bond if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

SECTION 9.5 NOTATION ON OR EXCHANGE OF BONDS

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Bond thereafter authenticated. The Company in exchange for a Bond may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Bonds that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Bond shall not affect the validity and effect of such amendment, supplement or waiver.

SECTION 9.6 TRUSTEE TO SIGN AMENDMENTS, ETC

The Trustee shall sign any amended or supplemental Indenture authorized pursuant to this Article Nine if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amendment or supplemental Indenture until the sole member of the Company approves it. In executing any amended or supplemental indenture, the Trustee shall be entitled to receive and (subject to Section 7.1 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 10.4 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture.

SECTION 9.7 ACTIONS WITH RESPECT TO PLEDGED NOTES

The Company shall take action and give consents, waivers and otherwise vote with respect to the Pledged Notes and the Lease Indentures in accordance with the direction of the Holders. The principal amount of Pledged Notes that the Company shall vote on pursuant to which the Company shall direct any action shall be in proportion to the principal amount of Bonds, voting as a single class, so voting or directing the Company and taking the corresponding position.

ARTICLE 10.
MISCELLANEOUS

SECTION 10.1 TRUST INDENTURE ACT CONTROLS

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by TIA § 318(c), the imposed duties shall control.

SECTION 10.2 NOTICES

Any notice or communication by the Company or the Trustee to the others is duly given if in writing and delivered in person or mailed by first class mail (registered or certified, return receipt requested), telex, telecopier or overnight air courier guaranteeing next day delivery, to the others' address

If to the Company:

Homer City Funding LLC
c/o Wilmington Trust Company
1100 North Market Street
Wilmington, DE 19890
Attention: Corporate Trust Administration
Facsimile: 302-651-8915

With a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036-6522
Attention: Harold F. Moore, Esq.
Facsimile: 212-735-2000

If to the Trustee:

The Bank of New York
114 West 47th Street
25th Floor
New York, New York 10036
Attention: Corporate Trust Division
Facsimile: 212-852-1625

The Company or the Trustee, by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder shall be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in TIA § 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it, except for notices or communications to the Trustee, which shall be effective only upon actual receipt thereof.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

SECTION 10.3 COMMUNICATION BY HOLDERS OF BONDS WITH OTHER HOLDERS OF BONDS

The Trustee will comply with TIA § 312(b) and the Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Bonds. The Company, the Trustee, the Registrar and anyone else, as applicable, shall have the protection of TIA § 312(c).

SECTION 10.4 CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee, if so requested by the Trustee:

(a) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 10.5 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 10.5 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

SECTION 10.5 STATEMENTS REQUIRED IN CERTIFICATE OR OPINION

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) shall comply with the provisions of TIA § 314(e) and shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

SECTION 10.6 RULES BY TRUSTEE AND AGENTS

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

SECTION 10.7 NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS

No director, officer, employee, incorporator, shareholder, member, manager, agent or Affiliate of the Company, as such, shall have any liability for any obligations of the Company under the Bonds, this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Bonds by accepting a Bond waives and releases all such liability and agrees that all recourse against the Company shall be limited solely to the Collateral. The waiver and release are part of the consideration for issuance of the Bonds. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Commission that such a waiver is against public policy.

SECTION 10.8 GOVERNING LAW

THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE AND THE BONDS.

SECTION 10.9 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 10.10 SUCCESSORS

All agreements of the Company in this Indenture and the Bonds shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 10.11 SEVERABILITY

In case any provision in this Indenture or in the Bonds shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 10.12 COUNTERPART ORIGINALS

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 10.13 TABLE OF CONTENTS, HEADINGS, ETC

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 10.14 EFFECTIVENESS OF THIS INDENTURE

Notwithstanding the execution and delivery of this Indenture by the Company and the Trustee, this Indenture shall become effective only upon the consummation of the Sale-Leaseback Transaction (the "Effective Date"). The Initial Indenture will remain in effect until the Sale-Leaseback Transaction is consummated. Upon the effectiveness of this Indenture, the Initial Indenture shall be terminated and all obligations of Holdings or the Trustee thereunder shall be discharged and the Initial Indenture shall be replaced by this Indenture, and every Holder of Bonds heretofore or hereafter authenticated and delivered under the Initial Indenture or this Indenture shall be bound hereby. Notwithstanding the foregoing provisions of this Section 10.14, if the Sale-Leaseback Transaction is not consummated and the Consent Payment is not made within five Business Days after the Expiration Date, this Indenture will become null and void.

[Signatures on following page]

SIGNATURES

Dated as of December 7, 2001

HOMER CITY FUNDING LLC

By: /s/ Mary St. Amand
Name: Mary St. Amand
Title: Secretary

THE BANK OF NEW YORK, as Trustee

By: /s/ Christopher J. Grell
Name: Christopher J. Grell
Title: Authorized Signer

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.3, 7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.5
(b)	10.3
(c)	10.3
313(a)	7.6
(b)(1)	7.6, 7.7
(b)(2)	7.6, 7.7

(c)	7.6, 10.2
(d)	7.6
314(a)	4.3; 10.2
(b)	N.A.
(c)(1)	10.4
(c)(2)	10.4
(c)(3)	N.A.
(e)	10.5
(f)	N.A.
315(a)	7.1
(b)	7.5 10.2
(c)	7.1
(d)	7.1
(e)	6.11
316(a)(last sentence)	2.9
(a)(1)(A)	6.5
(a)(1)(B)	6.4
(a)(2)	NA.
(b)	6.7
(c)	2.12
317(a)(1)	6.8
(a)(2)	6.9
(b)	2.4
318(a)	10.1
(b)	N.A.
(c)	10.1

N.A. means not applicable.

*This Cross-Reference Table is not part of the Indenture.

EXHIBIT A-1

(Face of Bond)

[Insert the Global Bond Legend, if applicable pursuant to the provisions of the Indenture]
[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]
[Insert DTC Legend]

CUSIP/CINS

[8.137] [8.734]% Senior Secured Bond due [2019] [2026]

No. $

Homer City Funding LLC

promises to pay to _____

or registered assigns,

the principal sum of _____
Dollars in a series of installments as specified below with a final payment date of

Payment Dates: April 1 and October 1

Record Dates: March 15 and September 15

Homer City Funding LLC

BY: _____
Name:
Title:

BY: _____
Name:
Title:

This is one of the Global
Bonds referred to in the
within-mentioned Indenture:

THE BANK OF NEW YORK,
as successor Trustee

By: _____ Dated: December , 2001
Name:
Title:

(Back of Bond)

[8.137] [8.734]% Senior Secured Bond due [2019] [2026]

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. *INTEREST.* Homer City Funding LLC (the "*Company*"), a Delaware limited liability company, promises to pay interest on the principal amount of this Bond at [8.137] [8.734]% per annum from December , 2001 until maturity, as adjusted pursuant to Section 4 of the Registration Rights Agreement referred to below. The Company shall pay interest semi-annually on April 1 and October 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each a "*Payment Date*"). Interest on the Bonds will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that if there is no existing Default in the payment of interest, and if this Bond is authenticated between a record date referred to on the face hereof and the next succeeding Payment Date, interest shall accrue from such next succeeding Payment Date; *provided*, *further*, that the first Payment Date shall be April 1, 2002. The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at a rate that is 1% per annum in excess of the rate then in effect; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. *PRINCIPAL.* The principal of this Bond shall be due and payable in consecutive semi-annual installments on each Payment Date, commencing on April 1, 2004, and ending on the Payment Date for the final installment of principal set forth above, and each such installment of principal shall be in the amount, if any, set forth in Schedule 1 attached hereto in the column headed "Scheduled Principal Amount Payable" with respect to the date of such installment, *provided* that the final installment of principal shall be equal to the then unpaid principal balance of the Bond.

3. *METHOD OF PAYMENT.* The Company will pay interest or principal due on the Bonds (except defaulted interest) to the Persons who are registered Holders of Bonds at the close of business on the March 15 or September 15 next preceding the Payment Date, even if such Bonds are canceled after such record date and on or before such Payment Date, except as provided in Section 2. 12 of the Indenture (as herein defined) with respect to defaulted interest. The Bonds will be payable as to principal, premium, if any, and interest at the office or agency of the Company maintained for such purpose within the City and State of New York, or, at the option of the Company, payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders, and provided that all payments of principal, premium, if any, and interest with respect to Bonds the Holders of which have given wire transfer instructions to the Company at least ten business days prior to the applicable payment date will be required to be made by wire transfer of immediately available funds to the accounts specified by the Holders thereof. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

4. *PAYING AGENT AND REGISTRAR.* Initially, The Bank of New York, the successor Trustee under the Indenture, will act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company may act in any such capacity.

5. *INDENTURE.* The Company issued the Bonds under an Indenture dated as of May 27, 1999, as amended or supplemented from time to time ("*Indenture*"), between the Company and the Trustee. The terms of the Bonds include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (15 U.S. Code §§ 77aaa-77bbbb). The Bonds are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement

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of such terms. To the extent any provision of this Bond conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Series [8.137] [8.734]% Senior Secured Bonds due [2019] [2026] are obligations of the Company limited to [$] million in aggregate principal amount.

6. *OPTIONAL REDEMPTION.* The Bonds shall be subject to optional redemption at any time at a Redemption Price equal to the outstanding principal amount of the Bonds to be redeemed plus all accrued and unpaid interest thereon to the Redemption Date, plus the Make-Whole Premium, if any.

7. *MANDATORY REDEMPTION.* The Bonds will be subject to mandatory redemption upon the occurrence of a Recovery Event with respect to the Facilities, other than with respect to amounts received by the Owner Lessor in connection with a Recovery Event for which the Facility Lessee elects to restore or replace the asset or assets in respect of which such Recovery Event occurred and a Reinvestment Notice is provided to the Collateral Agent and the Trustee within 45 days of such Recovery Event (provided that, with respect to any Recovery Event of $50 million or more, the Independent Engineer shall have certified as to the reasonableness of the Facility Lessee's repair and replacement plans as set forth in the Facility Lessee's Reinvestment Notice relating to such Recovery Event). Any mandatory redemption of the Bonds will be without premium or penalty at a Redemption Price equal to the unpaid principal amount thereof plus accrued and unpaid interest thereon to the Redemption Date.

8. *NOTICE OF REDEMPTION.* Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder whose Bonds are to be redeemed at its registered address. Bonds in denominations larger than $100,000 may be redeemed in part but only in whole multiples of $l,000 in excess thereof, unless all of the Bonds held by a Holder are to be redeemed. On and after the redemption date, interest ceases to accrue on Bonds or portions thereof called for redemption.

9. *DENOMINATIONS, TRANSFER, EXCHANGE.* The Bonds are in registered form without coupons in denominations of $100,000 and integral multiples of $1,000 in excess thereof. The transfer of Bonds may be registered and Bonds may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Bond or portion of a Bond selected for redemption, except for the unredeemed portion of any Bond being redeemed in part. Also, the Company need not exchange or register the transfer of any Bonds for a period of 15 days before a selection of bonds to be redeemed or during the period between a record date and the next succeeding Payment Date.

10. *PERSONS DEEMED OWNERS.* The registered Holder of a Bond may be treated as its owner for all purposes.

11. *AMENDMENT, SUPPLEMENT AND WAIVER.* Subject to certain exceptions, the Indenture or the Bonds may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the then outstanding Bonds voting as a single class, and any existing default or compliance with any provision of the Indenture or the Bonds may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Bonds voting as a single class. Without the consent of any Holder of a Bond, the Indenture, the Bonds or any Financing Document may be amended or supplemented to cure any ambiguity, omission, defect or inconsistency, to provide for uncertificated Bonds in addition to or in place of certificated Bonds or to alter the provisions of Article 2 of the Indenture (including the related definitions) in a manner that does not affect any Holder, to provide for the assumption of the Company's obligations to Holders of the Bonds in case of a merger or consolidation, to make any change that would provide any additional rights or benefits to the Holders of the Bonds or that does not adversely affect the legal rights under the Indenture of any

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such Holder or to comply with the requirements of the Commission in order to effect or maintain the qualification of the Indenture or any Security Document under the Trust Indenture Act.

12. *DEFAULTS AND REMEDIES.* An "Event of Default" occurs if there is the occurrence of any of the following: (i) default for 5 business days in the payment when due of any principal of, premium, if any, or interest on the Bonds; (ii) failure by the Company to comply with the provisions described under Sections 4.6, 4.7, 4.9 4.10, 4.11 or 5.1 of the Indenture, and such failure shall continue uncured for 30 or more days from the date an authorized officer of the Company receives actual notice thereof; (iii) the failure by the Company to comply with any of its agreements in this Indenture and such failure shall continue uncured for 60 or more days from the date an authorized officer of the Company receives actual notice thereof (or to the extent the Default is curable but cannot be cured within such 60 day period, so long as the Company provides an Officer's Certificate to the Trustee stating that it is diligently pursuing a cure, such longer period of time which may be necessary in good faith to cure the same, but in no event to exceed 90 days), (iv) certain events of bankruptcy or insolvency with respect to the Company; and (v) any Lease Indenture Event of Default. If any Event of Default (other than an Event of Default specified in clause (c) or (d) of Section 6.1 of the Indenture with respect to the Company) occurs and is continuing, the Trustee may, and upon the written direction of the Holders of at least $33^{1}/_{3}$% (in the case of any Event of Default specified in clause (i) above) or 50% (in the case of any other Event of Default) in principal amount of the then outstanding Bonds shall, declare, by written notice to the Company all the Bonds to be due and payable. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, with respect to the Company, all outstanding Bonds shall be due and payable without further action or notice. Holders may not enforce the Indenture or the Bonds except as provided in the Indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Bonds may in writing direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Bonds notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the Bonds then outstanding by written notice to the Trustee may on behalf of the Holders of all of the Bonds waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Bonds.

13. *TRUSTEE DEALINGS WITH COMPANY.* The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not the Trustee.

14. *NO RECOURSE AGAINST OTHERS.* No director, officer, employee, incorporator or shareholder, member, manager, agent or Affiliate of the Company, as such, shall have any liability for any obligations of the Company under the Bonds, the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Bond waives and releases all such liability and agrees that all recourse against the Company shall be limited solely to the Collateral. The waiver and release are part of the consideration for the issuance of the Bonds. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Commission that such a waiver is against public policy.

15. *AUTHENTICATION.* This Bond shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

16. *ABBREVIATIONS.* Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT(= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

17. *CUSIP NUMBERS.* Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Bonds and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Bonds or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

18. *GUARANTEES AND SECURITY.* This Bond will be entitled to the benefits of certain security interests created for the benefit of the Holders and holders of other senior indebtedness of the Company. Reference is hereby made to the Security Documents for a statement of the security interests granted therein.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture and/or the Registration Rights Agreement. Requests may be made to:

Homer City Funding LLC
18101 Von Karman Avenue
Suite 1700
Irvine, CA 92612-1046
Attention: Treasurer
Facsimile: 949-752-5624

19. *COUNTERPARTS.* This Bond may be executed by one or more of the parties to this Bond on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

20. *GOVERNING LAW.* THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THE INDENTURE AND THIS BOND.

SCHEDULE OF SCHEDULED PAYMENTS OF PRINCIPAL

[Attach the following table for Series A Bonds]

PRINCIPAL PAYMENT DATES	PERCENTAGE OF PRINCIPAL AMOUNT PAYABLE ON EACH PRINCIPAL PAYMENT DATE
April 1 and October 1, 2004	1.000%
April 1 and October 1, 2005	2.000%
April 1 and October 1, 2006	2.000%
April 1 and October 1, 2007	2.500%
April 1 and October 1, 2008	3.000%
April 1 and October 1, 2009	3.000%
April 1 and October 1, 2010	3.000%
April 1 and October 1, 2011	3.000%
April 1 and October 1, 2012	3.000%
April 1 and October 1, 2013	3.000%
April 1 and October 1, 2014	3.000%
April 1 and October 1, 2015	4.000%
April 1 and October 1, 2016	4.000%
April 1 and October 1, 2017	5.000%
April 1 and October 1, 2018	5.000%
April 1 and October 1, 2019	3.500%

[Attach the following table for Series B Bonds]

PRINCIPAL PAYMENT DATES	PERCENTAGE OF PRINCIPAL AMOUNT PAYABLE ON EACH PRINCIPAL PAYMENT DATE
April 1 and October 1, 2004	0.055%
April 1 and October 1, 2005	0.480%
April 1 and October 1, 2006	0.590%
April 1 and October 1, 2007	0.375%
April 1 and October 1, 2008	0.375%
April 1 and October 1, 2009	0.415%
April 1 and October 1, 2010	1.000%
April 1 and October 1, 2011	1.750%
April 1 and October 1, 2012	2.000%
April 1 and October 1, 2013	1.250%
April 1 and October 1, 2014	1.500%
April 1 and October 1, 2015	2.000%
April 1 and October 1, 2016	2.000%
April 1 and October 1, 2017	2.000%
April 1 and October 1, 2018	2.000%
April 1 and October 1, 2019	2.500%
April 1 and October 1, 2020	3.500%
April 1 and October 1, 2021	3.500%
April 1 and October 1, 2022	3.500%
April 1 and October 1, 2023	4.000%
April 1 and October 1, 2024	4.000%
April 1 and October 1, 2025	5.000%
April 1 and October 1, 2026	6.210%

ASSIGNMENT FORM

To assign this Bond, fill in the form below: (I) or (we) assign and transfer this Bond to

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Bond on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your signature: _____
(Sign exactly as your name appears on the face of this Bond)

Tax Identification No.: _____

SIGNATURE GUARANTEE:

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("*STAMP*") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL BOND(1)

The following exchanges of apart of this Global Bond for an interest in another Global Bond or for a Definitive Bond, or exchanges of a part of another Global Bond or Definitive Bond for an interest in this Global Bond, have been made:

Date of Exchange	Amount of decrease in Principal Amount Of this Global Bond	Amount of increase in Principal Amount of this Global Bond	Principal Amount of this Global Bond following such decrease (or increase	Signature of authorized officer of Trustee or Custodian

(1) *This should be included only if the Bond is issued in global form.*

EXHIBIT A-2

(Face of Regulation S Temporary Global Bond)

THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL BOND, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR CERTIFICATED BONDS, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN). NEITHER THE HOLDER NOR THE BENEFICIAL OWNERS OF THIS REGULATION S TEMPORARY GLOBAL BOND SHALL BE ENTITLED TO RECEIVE PAYMENT OF INTEREST HEREON.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR BONDS IN DEFINITIVE FORM, THIS BOND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THE BONDS EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A)(1) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (3) TO AN INSTITUTIONAL ACCREDITED INVESTOR IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, (4) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES

ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

CUSIP/CINS

[8.137] [8.734]% Senior Secured Bond due [2019] [2026]

No. $

Homer City Funding LLC

promises to pay to _____

or registered assigns,

the principal sum of _____
Dollars in a series of installments as specified below with a final payment date of

Payment Dates: April 1 and October 1

Record Dates: March 15 and September 15

Homer City Funding LLC

BY: _____
Name:
Title:

BY: _____
Name:
Title:

This is one of the Global
Bonds referred to in the
within-mentioned Indenture:

THE BANK OF NEW YORK,
as successor Trustee

By: _____ Dated: December , 2001
Name:
Title:

(Back of Regulation S Temporary Global Bond)

[8.137] [8.734%] Senior Secured Bond due [2019] [2026]

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST. Homer City Funding LLC (the "Company"), a Delaware limited liability company, promises to pay interest on the principal amount of this Bond at [8.137] [8.734]% per annum from December , 2001 until maturity, as adjusted pursuant to Section 4 of the Registration Rights Agreement referred to below. The Company shall pay interest semi-annually on April 1 and October 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each a "Payment Date"). Interest on the Bonds will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; provided that if there is no existing Default in the payment of interest, and if this Bond is authenticated between a record date referred to on the face hereof and the next succeeding Payment Date, interest shall accrue from such next succeeding Payment Date; provided, further, that the first Payment Date shall

be April 1, 2002. The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at a rate that is 1% per annum in excess of the rate then in effect; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

Until this Regulation S Temporary Global Bond is exchanged for one or more Regulation S Permanent Global Bonds, the Holder hereof shall not be entitled to receive payments of interest hereon; until so exchanged in full, this Regulation S Temporary Global Bond shall in all other respects be entitled to the same benefits as other Bonds under the Indenture.

2. PRINCIPAL. The principal of this Bond shall be due and payable in consecutive semi-annual installments on each Payment Date, commencing on April 1, 2004, and ending on the Payment Date for the final installment of principal set forth above, and each such installment of principal shall be in the amount, if any, set forth in Schedule 1 attached hereto in the column headed "Scheduled Principal Amount Payable" with respect to the date of such installment, provided that the final installment of principal shall be equal to the then unpaid principal balance of the Bond.

3. METHOD OF PAYMENT. The Company will pay interest or principal due on the Bonds (except defaulted interest) to the Persons who are registered Holders of Bonds at the close of business on the March 15 or September 15 next preceding the Payment Date, even if such Bonds are canceled after such record date and on or before such Payment Date, except as provided in Section 2.12 of the Indenture (as herein defined) with respect to defaulted interest. The Bonds will be payable as to principal, premium, if any, and interest at the office or agency of the Company maintained for such purpose within the City and State of New York, or, at the option of the Company, payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders, and provided that all payments of principal, premium, if any, and interest with respect to Bonds the Holders of which have given wire transfer instructions to the Company at least ten business days prior to the applicable payment date will be required to be made by wire transfer of immediately available funds to the accounts specified by the Holders thereof. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

4. PAYING AGENT AND REGISTRAR. Initially, The Bank of New York, as successor Trustee under the Indenture, will act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company may act in any such capacity.

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5. INDENTURE. The Company issued the Bonds under an Indenture dated as of May 27, 1999, as amended or supplemented from time to time ("Indenture"), between the Company and the Trustee. The terms of the Bonds include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (15 U.S. Code §§ 77aaa-77bbbb). The Bonds are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms. To the extent any provision of this Bond conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Series [8.137] [8.734]% Senior Secured Bonds due [2019] [2026] are obligations of the Company limited to [$] million in aggregate principal amount.

6. OPTIONAL REDEMPTION. The Bonds shall be subject to optional redemption at any time at a Redemption Price equal to the outstanding principal amount of the Bonds to be redeemed plus all accrued and unpaid interest thereon to the Redemption Date, plus the Make-Whole Premium, if any.

7. MANDATORY REDEMPTION. The Bonds will be subject to mandatory redemption, upon the occurrence of a Recovery Event with respect to the Facilities, other than with respect to amounts received by the Owner Lessor in connection with a Recovery Event for which the Facility Lessee elects to restore or replace the asset or assets in respect of which such Recovery Event occurred and a Reinvestment Notice is provided to the Collateral Agent and the Trustee within 45 days of such Recovery Event (provided that, with respect to any Recovery Event

of $50 million or more, the Independent Engineer shall have certified as to the reasonableness of the Facility Lessee's repair and replacement plans as set forth in the Facility Lessee's Reinvestment Notice relating to such Recovery Event). Any mandatory redemption of the Bonds will be without premium or penalty at a Redemption Price equal to the unpaid principal amount thereof plus accrued and unpaid interest thereon to the Redemption Date.

8. NOTICE OF REDEMPTION. Notice of Redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder whose Bonds are to be redeemed at its registered address. Bonds in denominations larger than $100,000 may be redeemed in part but only in whole multiples of $l,000 in excess thereof, unless all of the Bonds held by a Holder are to be redeemed. On and after the redemption date, interest ceases to accrue on Bonds or portions thereof called for redemption.

9. DENOMINATIONS, TRANSFER, EXCHANGE. The Bonds are in registered form without coupons in denominations of $100,000 and integral multiples of $1,000 in excess thereof. The transfer of Bonds may be registered and Bonds may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Bond or portion of a Bond selected for redemption, except for the unredeemed portion of any Bond being redeemed in part. Also, the Company need not exchange or register the transfer of any Bonds for a period of 15 days before a selection of bonds to be redeemed or during the period between a record date and the next succeeding Payment Date.

This Regulation S Temporary Global Bond is exchangeable in whole or in part for one or more Global Bonds only (i) on or after the termination of the 40-day restricted period (as defined in Regulation S) and (ii) upon presentation of certificates (accompanied by an Opinion of Counsel, if applicable) required by Article 2 of the Indenture. Upon exchange of this Regulation S Temporary Global Bond for one or more Global Bonds, the Trustee shall cancel this Regulation S Temporary Global Bond.

10. PERSONS DEEMED OWNERS. The registered Holder of a Bond may be treated as its owner for all purposes.

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11. AMENDMENT, SUPPLEMENT AND WAIVER. Subject to certain exceptions, the Indenture or the Bonds may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the then outstanding Bonds voting as a single class, and any existing default or compliance with any provision of the indenture or the Bonds may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Bonds voting as a single class. Without the consent of any Holder of a Bond, the Indenture, the Bonds or any Financing Document may be amended or supplemented to cure any ambiguity, omission, defect or inconsistency, to provide for uncertificated Bonds in addition to or in place of certificated Bonds or to alter the provisions of Article 2 of the Indenture (including the related definitions) in a manner that does not affect any Holder, to provide for the assumption of the Company's obligations to Holders of the Bonds in case of a merger or consolidation, to make any change that would provide any additional rights or benefits to the Holders of the Bonds or that does not adversely affect the legal rights under the Indenture of any such Holder or to comply with the requirements of the Commission in order to effect or maintain the qualification of the Indenture or any Security Document under the Trust indenture Act.

12. DEFAULTS AND REMEDIES. An "Event of Default" occurs if there is the occurrence of any of the following: (i) default for 5 business days in the payment when due of any principal of, premium, if any, or interest on the Bonds, (ii) failure by the Company to comply with the provisions described under Sections 4.6, 4.7, 4.9, 4.10, 4.11 or 5.1 of the Indenture, and such failure shall continue uncured for 30 or more days from the date an authorized officer of the Company receives actual notice thereof, (iii) the failure by the Company to comply with any of its agreements in this Indenture and such failure shall continue uncured for 60 or more days from the date an authorized officer of the Company receives actual notice thereof (or to the extent the Default is curable but cannot be cured within such 60 day period, so long as the Company provides an Officer's Certificate to the Trustee stating that it is diligently pursuing a cure, such longer period of time which may be necessary in good faith to cure the same, but in no event to exceed 90 days); (iv) certain events of bankruptcy or insolvency with respect to the Company; and (v) any Lease Indenture Event of Default. If any Event of Default (other than an Event of Default specified in clause (c) or (d) of Section 6.1 of the Indenture with respect to the Company occurs and is continuing, the Trustee may, and upon the written direction of

the Holders of at least 33 1/3% (in the case of any Event of Default specified in clause (i) above) or 50% (in the case of any other Event of Default) in principal amount of the then outstanding Bonds shall, declare all the Bonds to be due and payable. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, with respect to the Company all outstanding Bonds shall be due and payable without further action or notice. Holders may not enforce the Indenture or the Bonds except as provided in the indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Bonds may in writing direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Bonds notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the Bonds then outstanding by written notice to the Trustee may on behalf of the Holders of all of the Bonds waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Bonds.

13. TRUSTEE DEALINGS WITH COMPANY The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not the Trustee.

14. NO RECOURSE AGAINST OTHERS. No director, officer, employee, incorporator or shareholder, member, manager, agent or Affiliate of the Company, as such, shall have any liability for any obligations of the Company under the Bonds, the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Bond waives and

releases all such liability and agrees that all recourse against the Company shall be limited solely to the Collateral. The waiver and release are part of the consideration for the issuance of the Bonds. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Commission that such a waiver is against public policy.

15. AUTHENTICATION. This Bond shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

16. ABBREVIATIONS. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (= custodian), and U/GIM/A (Uniform Gifts to Minors Act).

17. CUSIP NUMBERS. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Bonds and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Bonds or as contained in any notice of Redemption and reliance may be placed only on the other identification numbers placed thereon.

18. GUARANTEES AND SECURITY. This Bond will be entitled to the benefits of certain security interests created for the benefit of the Holders and holders of other senior indebtedness of the Company. Reference is hereby made to the Security Documents for a statement of the security interests granted therein.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture and/or the Registration Rights Agreement. Requests may be made to:

Homer City Funding LLC
18101 Von Karman Avenue
Suited 1700
Irvine, CA 92612-1046
Attention: Treasurer
Facsimile: 949-752-5624

19. COUNTERPARTS. This Bond may be executed by one or more of the parties to this Bond on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

20. GOVERNING LAW. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THE INDENTURE AND THIS BOND.

SCHEDULE OF SCHEDULED PAYMENTS OF PRINCIPAL

[Attach the following table for Series A Bonds]

PRINCIPAL PAYMENT DATES	PERCENTAGE OF PRINCIPAL AMOUNT PAYABLE ON EACH PRINCIPAL PAYMENT DATE
April 1 and October 1, 2004	1.000%
April 1 and October 1, 2005	2.000%
April 1 and October 1, 2006	2.000%
April 1 and October 1, 2007	2.500%
April 1 and October 1, 2008	3.000%
April 1 and October 1, 2009	3.000%
April 1 and October 1, 2010	3.000%
April 1 and October 1, 2011	3.000%
April 1 and October 1, 2012	3.000%
April 1 and October 1, 2013	3.000%
April 1 and October 1, 2014	3.000%
April 1 and October 1, 2015	4.000%
April 1 and October 1, 2016	4.000%
April 1 and October 1, 2017	5.000%
April 1 and October 1, 2018	5.000%
April 1 and October 1, 2019	3.500%

[Attach the following table for Series B Bonds]

PRINCIPAL PAYMENT DATES	PERCENTAGE OF PRINCIPAL AMOUNT PAYABLE ON EACH PRINCIPAL PAYMENT DATE
April 1 and October 1, 2004	0.055%
April 1 and October 1, 2005	0.480%
April 1 and October 1, 2006	0.590%
April 1 and October 1, 2007	0.375%
April 1 and October 1, 2008	0.375%
April 1 and October 1, 2009	0.415%
April 1 and October 1, 2010	1.000%
April 1 and October 1, 2011	1.750%
April 1 and October 1, 2012	2.000%
April 1 and October 1, 2013	1.250%
April 1 and October 1, 2014	1.500%
April 1 and October 1, 2015	2.000%
April 1 and October 1, 2016	2.000%

April 1 and October 1, 2017	2.000%
April 1 and October 1, 2018	2.000%
April 1 and October 1, 2019	2.500%
April 1 and October 1, 2020	3.500%
April 1 and October 1, 2021	3.500%
April 1 and October 1, 2022	3.500%
April 1 and October 1, 2023	4.000%
April 1 and October 1, 2024	4.000%
April 1 and October 1, 2025	5.000%
April 1 and October 1, 2026	6.210%

ASSIGNMENT FORM

To assign this Bond, fill in the form below: (I) or (we) assign and transfer this Bond to

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Bond on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your signature: _____
(Sign exactly as your name appears on the face of this Bond)

Tax Identification No.: _____

SIGNATURE GUARANTEE:

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("*STAMP*") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

SCHEDULE OF EXCHANGES OF REGULATION S TEMPORARY GLOBAL BOND

The following exchanges of a part of this Regulation S Temporary Global Bond for an interest in another Global Bond, or of other Restricted Global Bonds for an interest in this Regulation S Temporary Global Bond, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Bond	Amount of increase in Principal Amount of this Global Bond	Principal Amount of this Global Bond following such decrease (or increase	Signature of authorized officer of Trustee or Custodian

EXHIBIT B
FORM OF CERTIFICATE OF TRANSFER

Homer City Funding LLC
18101 Von Karman Avenue
Suite 1700
Irvine, CA 92612-1046
Attention: Treasurer
Facsimile: 949-752-5624

The Bank of New York
114 West 47th Street
25th Floor
New York, New York 10036
Attention: Corporate Trust Division

Re: *[8.137] [8.734]% Senior Secured Bonds due [2019] [2026]*

Reference is hereby made to the First Amended and Restated Indenture, dated as of December , 2001, as amended and supplemented from time to time (the "*Indenture*"), between Homer City Funding LLC (the "*Company*"), and The Bank of New York, as successor trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

(the "*Transferor*") owns and proposes to transfer the Bond[s] or interest in such Bond[s] specified in Annex A hereto, in the principal amount of $ in such Bond[s] or interests (the "*Transfer*"), to (the "*Transferee*"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. ***Check if Transferee will take delivery of a beneficial interest in the 144A Global Bond or a Definitive Bond Pursuant to Rule 144A.*** The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "*Securities Act*"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Bond is being transferred to a Person that the Transferor reasonably believed and believes is purchasing the beneficial interest or Definitive Bond for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Bond will be subject to the restrictions

on transfer enumerated in the Private Placement Legend printed on the 144A Global Bond and/or the Definitive Bond and in the Indenture and the Securities Act.

2. ***Check if Transferee will take delivery of a beneficial interest in the Temporary Regulation S Global Bond the Regulation S Global Bond or a Definitive Bond pursuant to Regulation S.*** The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or

Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Bond will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Regulation S Global Bond, the Temporary Regulation S Global Bond and/or the Definitive Bond and in the Indenture and the Securities Act.

3. ***Check and complete if Transferee will take delivery of a Definitive Bond pursuant to any provision of the Securities Act other than Rule 144A or Regulation S.*** The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Bonds and Restricted Definitive Bonds and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) such Transfer is being effected to the Company or a subsidiary thereof;

or

(c) such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act;

or

(d) such Transfer is being effected to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Bond or Restricted Definitive Bonds and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee and (2) if such Transfer is in respect of a principal amount of Bonds at the time of transfer of less than $250,000, an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in compliance with the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Bond will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Definitive Bonds and in the Indenture and the Securities Act.

4. ***Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Bond or of an Unrestricted Definitive Bond.***

(a) **Check if Transfer is Pursuant to Rule 144.** (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Bond will no longer be subject to the restrictions on

transfer enumerated in the Private Placement Legend printed on the Restricted Global Bonds and the Restricted Definitive Bonds and in the Indenture.

(b) **Check if Transfer is Pursuant to Regulation S.** (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Bond will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Bonds and the Restricted Definitive Bonds and in the Indenture.

(c) **Check if Transfer is Pursuant to Other Exemption.** (1) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Bond will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Bonds and the Restricted Definitive Bonds and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

_____

[Insert Name of Transferor]

By: _____

Name:

Title:

Dated: _____

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) a beneficial interest in the:

(i) 144A Global Bond (CUSIP), or

(ii) Regulation S Global Bond (CUSIP), or

(b) a Restricted Definitive Bond.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) a beneficial interest in the:

(i) 144A Global Bond (CUSIP), or

(ii) Regulation S Global Bond (CUSIP), or

(iii) Unrestricted Global Bond (CUSIP); or

(b) a Restricted Definitive Bond; or

(c) an Unrestricted Definitive Bond,

in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

Homer City Funding LLC
18101 Von Karman Avenue
Suite 1700
Irvine, CA 92612-1046
Attention: Treasurer

The Bank of New York
114 West 47th Street
25th Floor
New York, New York 10036
Attention: Corporate Trust Division

Re: [8.137] [8.734]% Senior Secured Bonds due [2019] [2026]

Reference is hereby made to the Indenture, dated as of May 27, 1999, as amended and supplemented form time to time (the "*Indenture*"), between Edison Mission Holdings Co. (the "*Company*") and United States Trust Company of New York, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

(the "*Owner*") owns and proposes to exchange the Bond[s] or interest in such Bond[s] specified herein, in the principal amount of $ in such Bond[s] or interests (the "*Exchange*"). In connection with the Exchange, the Owner hereby certifies that:

1. **Exchange of Restricted Definitive Bonds or Beneficial Interests in a Restricted Global Bond for Unrestricted Definitive Bonds or Beneficial Interests in an Unrestricted Global Bond**

(a) ***Check if Exchange is from beneficial interest in a Restricted Global Bond to beneficial interest in an Unrestricted Global Bond.*** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Bond for a beneficial interest in an Unrestricted Global Bond in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Bonds and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the "*Securities Act*"), (iii) the restrictions on transfer contained in the indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Bond is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b) ***Check if Exchange is from beneficial interest in a Restricted Global Bond to Unrestricted Definitive Bond.*** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Bond for an Unrestricted Definitive Bond, the Owner hereby certifies (i) the Definitive Bond is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Bonds and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Bond is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c) ***Check if Exchange is from Restricted Definitive Bond to beneficial interest in an Unrestricted Global Bond.*** In connection with the Owner's Exchange of a Restricted Definitive Bond for a

beneficial interest in an Unrestricted Global Bond, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Bonds and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(d) ***Check if Exchange is from Restricted Definitive Bond to Unrestricted Definitive Bond.*** In connection with the Owner's Exchange of a Restricted Definitive Bond for an Unrestricted Definitive Bond, the Owner hereby certifies (i) the Unrestricted Definitive Bond is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Bonds and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Bond is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2. **Exchange of Restricted Definitive Bonds or Beneficial Interests in Restricted Global Bonds for Restricted Definitive Bonds or Beneficial Interests in Restricted Global Bonds**

(a) ***Check if Exchange is from beneficial interest in a Restricted Global Bond to Restricted Definitive Bond.*** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Bond for a Restricted Definitive Bond with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Bond is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the

Restricted Definitive Bond issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Bond and in the Indenture and the Securities Act.

(b) ***Check if Exchange is from Restricted Definitive Bond to beneficial interest in a Restricted Global Bond.*** In connection with the Exchange of the Owner's Restricted Definitive Bond for a beneficial interest in the [CHECK ONE] 144A Global Bond, Regulation S Global Bond with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Bonds and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Bond and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

[Insert Name of Owner]

By: _____

Name:

Title:

Dated: _____

QuickLinks

Exhibit 4.1.4

EXECUTION COPY

ASSUMPTION AGREEMENT

ASSUMPTION AGREEMENT, dated as of December 7, 2001 (this "Agreement"), made by EME Homer City Generation, L.P. ("Homer City" or "EME Homer City"), Homer City OL1 LLC, Homer City OL2 LLC, Homer City OL3 LLC, Homer City OL4 LLC, Homer City OL5 LLC, Homer City OL6 LLC, Homer City OL7 LLC and Homer City OL8 LLC (each, an "Owner Lessor" and collectively, the "Owner Lessors"), The Bank of New York, as successor to United States Trust Company of New York (the "Bondholder Trustee") and Homer City Funding LLC ("Homer City Funding").

RECITALS

WHEREAS, Homer City Funding is a Delaware limited liability company and special purpose funding vehicle created for the purpose of engaging in the sale-leaseback transaction (the "Sale-Leaseback Transaction") involving certain facilities (the "Facilities") owned by Homer City.

WHEREAS, Edison Mission Holdings Co. ("Holdings") entered into the Indenture, dated as of May 27, 1999, between Holdings and the United States Trust Company of New York (as amended from time to time, the "Indenture") pursuant to which Holdings issued 8.137% Senior Secured Bonds due 2019 and 8.734% Senior Secured Bonds due 2026 which it subsequently exchanged for a like amount of substantially similar bonds that had been registered under the Securities Act of 1933 (collectively, the "Bonds").

WHEREAS, the direct and indirect subsidiaries of Holdings, including EME Homer City (collectively, the "Subsidiary Guarantors") entered into the Guarantee and Collateral Agreement, dated as of March 18, 1999, among Holdings, each Subsidiary Guarantor and the United States Trust Company of New York (as amended from time to time, the "Guarantee and Collateral Agreement") pursuant to which each Subsidiary Guarantor unconditionally guarantees the obligations of Holdings under the Indenture and the Bonds.

WHEREAS, in connection with the Sale-Leaseback Transaction, Holdings and each Subsidiary Guarantor (other than EME Homer City), were released from all their respective obligations under the Indenture, the Guarantee and Collateral Agreement and the Bonds.

WHEREAS, pursuant to the Assumption Agreement, dated December 7, 2001, among Holdings, EME Homer City and the Bondholder Trustee, EME Homer City assumed, and Holdings was released from, all the obligations of Holdings under the Indenture and the Bonds.

WHEREAS, pursuant to the Bills of Sale and Participation Agreements, and in partial consideration for the sale of the Facilities, each Owner Lessor agreed to expressly assume, on a several basis, a pro rata portion of all the obligations of EME Homer City under the Indenture and the related Bonds.

WHEREAS, Homer City Funding desires to expressly assume, on behalf of each Owner Lessor, all obligations of EME Homer City under the Indenture and the Bonds in consideration for (i) the issuance to Homer City Funding by the Owner Lessors of notes in an aggregate principal amount of approximately $830,000,000 (the "*Notes*") and (ii) the transfer of funds as set forth below.

NOW THEREFORE, for and in consideration of the premises and the mutual promises and covenants set forth herein:

1. *Assumption.* Homer City Funding hereby unconditionally and irrevocably assumes all obligations of EME Homer City under the Indenture and the Bonds, including, but not limited to, all accrued and unpaid interest on the Bonds to the date hereof. Each Owner Lessor is released from its obligations to assume, on a several basis, a pro rata portion of all obligations of EME Homer City

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under the Indenture and the Bonds. EME Homer City is released from its obligations under the Indenture and the Bonds.

2. *Acceptance.* Homer City and each Owner Lessor hereby accepts this assumption of all its respective obligations to assume, on a several basis, and in the case of each Owner Lessor a pro rata portion of all obligations of EME Homer City under the Indenture and the Bonds.

3. *Acknowledgment.* The Bondholder Trustee acknowledges that, as a consequence of the assignment and assumption contained herein, neither EME Homer City nor any Owner Lessor has any liability under the Bonds and the Bond Indenture Trustee agrees, and by its acceptance, each holder of a Bond agrees, that it will not look to EME Homer City or such Owner Lessor for payments of any amounts owed in respect of the Bonds. (For the avoidance of doubt the foregoing will not be deemed to limit application of payments made by any Owner Lessor on Lessor Notes for the account of Homer City Funding to Homer City Funding's obligations in respect of the Bonds.)

4. *Transfer.* EME Homer City shall transfer to The Bank of New York as Bondholder Trustee/Paying Agent funds in an amount equal to the accrued and unpaid interest on the Bonds as of the date hereof, to be used on the next Payment Date (as defined in the Bonds) to pay a portion of the interest on the Bonds.

5. *Binding Obligation.* Each Owner Lessor, Homer City Funding and the Bondholder Trustee hereby represents that its respective obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its respective terms.

6. *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon each Owner Lessor, Homer City Funding and the Bondholder Trustee and their respective heirs, successors and assigns as permitted under the Indenture.

7. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

8. *Limitations of Liability of the Independent Manager.* It is expressly understood and agreed by the parties hereto that this Agreement is executed by Wells Fargo, not individually or personally, but solely as Independent Manager under the applicable Lessor LLC Agreement in the exercise of the power and authority conferred and vested in it as such Independent Manager, that each and all of the representations, undertakings and agreements herein made on the part of the Independent Manager or the Owner Lessor are intended not as personal representations, undertakings and agreements by Wells Fargo, or for the purpose or with the intention of binding Wells Fargo, personally, but are made and intended for the purpose of binding only the Lease Indenture Estate, that nothing herein contained shall be construed as creating any liability of Wells Fargo, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of Wells Fargo, to perform any covenant either express or implied contained herein or in the other Operative Documents to which the Independent Manager or the Owner Lessor is a party, and that so far as Wells Fargo is concerned, any Person shall look solely to the Lease Indenture Estate for the performance of any obligation hereunder or thereunder or under any of the instruments referred to herein or therein; *provided*, that nothing contained in this *Section* shall be construed to limit in scope or substance any general corporate liability of Wells Fargo as expressly provided in the Lessor LLC Agreement or in the Participation Agreement.

9. *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

10. *Limitation of Liability.* No director, officer, employee, incorporator, shareholder, member, manager, agent or affiliate of Homer City Funding shall have any liability for or in connnection with any of the representations, warranties, or obligations of Homer City Funding under this Agreement, the Bonds or the Indenture, as to all of which recourse shall be had solely to the Notes.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the date first written above.

EME HOMER CITY GENERATION, L.P.
By:

By: /s/ Joseph P. O'Donnell
Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

HOMER CITY OL1 LLC
By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ Joseph P. O'Donnell
Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

HOMER CITY OL2 LLC
By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ Joseph P. O'Donnell
Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

HOMER CITY OL3 LLC
By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ Joseph P. O'Donnell
Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

HOMER CITY OL4, LLC
By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ Joseph P. O'Donnell
Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

HOMER CITY OL5 LLC
By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ Joseph P. O'Donnell
Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

HOMER CITY OL6 LLC
By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ Joseph P. O'Donnell
Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

HOMER CITY OL7 LLC
By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ Joseph P. O'Donnell
Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

HOMER CITY OL8 LLC
By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ Joseph P. O'Donnell
Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

HOMER CITY FUNDING LLC
By:

By: /s/ Mary St. Amand
Name: Mary St. Amand
Title: Secretary

[THE BANK OF NEW YORK, as successor to UNITED STATES TRUST COMPANY OF NEW YORK
By:

By:
Name:
Title:]

QuickLinks

Exhibit 4.2

Execution Copy

HOMER CITY OL1 LLC

$90,000,000 8.137% Series A Lessor Notes due 2019

$159,000,000 8.734% Series B Lessor Notes due 2026

INDENTURE OF TRUST AND SECURITY AGREEMENT

Dated as of December 7, 2001

THE BANK OF NEW YORK,
as Lease Indenture Trustee

and

THE BANK OF NEW YORK,
as Security Agent

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SCHEDULES:

INDENTURE OF TRUST AND SECURITY AGREEMENT

This **INDENTURE OF TRUST AND SECURITY AGREEMENT (LI1)** (as amended, supplemented or otherwise modified from time to time in accordance with the provisions hereof, this "*Lease Indenture*"), dated as of December 7, 2001, among Homer City OL1 LLC, a Delaware limited liability company created for the benefit of the Owner Participant referred to below, as grantor (the "*Owner Lessor*" or the "*Mortgagor*"), The Bank of New York, as grantee and as successor in interest to United States Trust Company of New York (the "*Lease Indenture Trustee*" or the "*Mortgagee*") and The Bank of New York, as Security Agent (the "*Security Agent*").

WITNESSETH:

WHEREAS, this Lease Indenture is executed pursuant to the Participation Agreement as of the date hereof set forth on Schedule II hereto among the Owner Lessor, the Owner Manager, the Owner Participant, EME Homer City Generation L.P. ("*Homer City*"), Homer City Funding LLC ("*Lender*"), the Lease Indenture Trustee, and the Bondholder Trustee (as defined herein);

WHEREAS, by a Facility Deed of even date intended to be recorded in the office of the Recorder of Deeds of Indiana County, Pennsylvania, Homer City will convey to the Owner Lessor an Undivided Interest Percentage in the Facility, which is more particularly described in Exhibit A attached hereto and made a part hereof and is located on the Facility Site in Indiana County, Pennsylvania;

WHEREAS, the Owner Lessor and Homer City (the "*Facility Lessee*") will, pursuant to the Participation Agreement, enter into the Facility Lease Agreement (FL1), dated as of December 7, 2001 (as amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof, the "*Facility Lease*"), pursuant to which the Owner Lessor will lease to the Facility Lessee and the Facility Lessee will lease from the Owner Lessor for a term of $33^{3}/_{4}$ years all of the Owner Lessor's interest in and to the Facility with the right to nonexclusive possession thereof;

WHEREAS, a Memorandum of the Facility Lease executed by the Owner Lessor and Homer City is intended to be recorded as aforesaid;

WHEREAS, Homer City will lease to the Owner Lessor a corresponding undivided interest equal to the Undivided Interest Percentage in and to the Facility Site described in Exhibit B attached hereto and made a part hereof with the right to nonexclusive possession thereof and has granted certain non-exclusive easements (such undivided leasehold interest, together with such non-exclusive easements, the "*Ground Interest*") pursuant to a Facility Site Lease between Homer City and the Owner Lessor (the "*Facility Site Lease*") as of the date hereof;

WHEREAS, a Memorandum of the Facility Site Lease executed by Homer City and the Owner Lessor is intended to be recorded prior to this Lease Indenture;

WHEREAS, the Owner Lessor will sublease the Ground Interest back to Homer City pursuant to a Sublease of even date herewith (the "*Facility Site Sublease*"), a memorandum of which is intended to be recorded;

WHEREAS, the Facility is more particularly described in Exhibit A attached hereto and made a part hereof and is located on the Facility Site located in Indiana County, in the Commonwealth of Pennsylvania, which, together with certain easements, are more particularly described in Exhibit B attached hereto and made a part hereof;

WHEREAS, the Owner Lessor was authorized and directed in the LLC Agreement (LA1), effective as of December 4, 2001 (as amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof, the "*Lessor LLC Agreement*"), between Wells Fargo Bank Northwest, National Association, as independent manager (the "*Trust Company*"), and General Electric

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Capital Corporation (the "*Owner Participant*"), a copy of which is recorded contemporaneously herewith, to execute and deliver this Lease Indenture;

WHEREAS, in connection with the transactions contemplated by the Lessor LLC Agreement, the Owner Lessor entered into the Participation Agreement;

WHEREAS, by entering into an Assumption Agreement, dated December 7, 2001, between Homer City and Edison Mission Holdings Co., Homer City will assume all obligations of Edison Mission Holdings Co. on the Existing Debt;

WHEREAS, the Owner Lessor, pursuant to the Facility Deed and Bill of Sale, will purchase the Undivided Interest from the Facility Lessee, the purchase price for which will include assumption of the Existing Debt from Homer City, and concurrently therewith will lease such Undivided Interest to the Facility Lessee pursuant to the Facility Lease;

WHEREAS, the holders of the Existing Debt have consented to the amendments and waivers to the Bondholder Indenture;

WHEREAS, in accordance with this Lease Indenture, the Owner Lessor will execute and deliver the Initial Lessor Notes, in consideration of the assumption of certain indebtedness by the initial Noteholders which constitutes a portion of the Purchase Price, and will grant to the Security Agent the Mortgage and the other liens and security interests herein provided;

WHEREAS, in accordance with this Lease Indenture, the Owner Lessor will execute and deliver an open-end mortgage, leasehold mortgage, assignment of leases and rents and fixture filing (the "Mortgage") in the form attached as Exhibit B hereto;

WHEREAS, this Lease Indenture is intended to be a security agreement under the Uniform Commercial Code of the State of New York;

WHEREAS, the Owner Lessor, the Security Agent and the Lease Indenture Trustee desire to enter into this Lease Indenture, to, among other things, provide for (a) the issuance by the Owner Lessor of the Lessor Notes in two series, and (b) creation of the liens and security interests in favor of the Security Agent as security for, *inter alia*, the Owner Lessor's obligations to and for the benefit of the Debt Service Reserve Letter of Credit Secured Parties and for the benefit and security of such Noteholders; and

WHEREAS, in order to simplify the administration of the common collateral, the Lease Indenture Trustee and the Owner Lessor desire to appoint the Security Agent to serve as a common representative and to hold the Indenture Estate for the benefit of the Lease Indenture Secured Parties.

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

GRANTING CLAUSE:

As collateral to secure the prompt payment of the principal of and interest on, and all other amounts due with respect to, the Lessor Notes from time to time outstanding hereunder, and all other amounts owing hereunder by the Owner Lessor and the performance and observance by the Owner Lessor of all the agreements, covenants and provisions contained in the Operative Documents, and the prompt payment of all amounts from time to time due or to become due to any Lease Indenture Secured Party under the Operative Documents (collectively, the "*Lessor Secured Obligations*"), and for the uses and purposes and subject to the terms and provisions hereof, and in consideration of the premises and of the covenants herein contained, and of the acceptance of the Lessor Notes by the Noteholders thereof, and other valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, the Owner Lessor does hereby pledge and grant a first priority security interest in, and by the execution and delivery of the Mortgage shall grant, bargain, sell, assign, transfer, convey, mortgage, pledge and warrant, unto and for the security and benefit of, the Security Agent acting for and on behalf of the Lease Indenture Secured Parties, a first priority mortgage lien on, all estate, right, title and interest now held or hereafter acquired by the Owner Lessor in, to and under the following described property, rights, interests and privileges, whether now or hereafter acquired, other than Excepted Payments (such property, rights, interests and privileges as are conveyed pursuant to this granting clause, but excluding Excepted Payments and the rights to enforce and collect the sums as set forth herein, being hereinafter referred to as the "*Indenture Estate*"):

(1) the Undivided Interest, the Owner Lessor's interest in all goods (as defined in the Uniform Commercial Code as in effect in the State of New York from time to time) constituting the Facility; all Components; the Owner Lessor's interest in any Improvements; the Owner Lessor's interest in any Project Document now or hereinafter acquired by pledge, assignment or otherwise; the Facility Site Lease and the Ground Interest thereunder; the Facility Lease and all payments of any kind by the Facility Lessee thereunder (including Rent); the Facility Site Sublease and the Sublease Ground Interest thereunder and all payments of any kind by the Facility Lessee thereunder; Owner Lessor's interest in all tangible property located on or at or attached to the Facility Land that an interest in such tangible property arises under applicable real estate law ("*fixtures*"); the Facility Deed, the Bill of Sale, the Ownership and Operation Agreement, the Lessor LLC Agreement, and all and any interest in any property now or hereafter granted to the Owner Lessor pursuant to any provision of the Facility Site Lease, Facility Lease or the Facility Site Sublease; the Amended and Restated Security Deposit Agreement, the Debt Service Reserve Letter of Credit, the Pledge and Collateral Agreement, the Amended and Restated Guarantee and Collateral Agreement and each other Operative Document to which the Owner Lessor is a party (the Undivided Interest, the Owner Lessor's interest in any Components, the Owner Lessor's interest in any fixtures, Improvements and the Ground Interest are collectively referred to as the "*Property Interest*" and the documents, specifically referred to above in this paragraph (1) are collectively referred to as the "*Indenture Estate Documents*"), including, without limitation, (x) all rights of the Owner Lessor or the Facility Lessee (to the extent assigned by the Facility Lessee to the Owner Lessor) to receive any payments or other amounts or to exercise any election or option or to make any decision or determination or to give or receive any notice, consent, waiver or approval or to make any demand or to take any other action under or in respect of any such document, to accept surrender or redelivery of the Property Interest or any part thereof, as well as all the rights, powers and remedies on the part of the Owner Lessor or the Facility Lessee (to the extent assigned by the Facility Lessee to the Owner Lessor), whether acting under any such document or by statute or at law or in equity or otherwise, arising out of any Lease Default or Lease Event of Default and (y) any right to restitution from the Facility Lessee, any sublessee or any other Person in respect of any determination of invalidity of any such document;

(2) all rents, royalties, issues, profits, revenues, proceeds, damages, claims and other income from the property described in this Granting Clause, including, without limitation, all payments or proceeds payable to the Owner Lessor as the result of the sale of the Property Interest or the lease or other disposition of the Property Interest, and all estate, right, title and interest of every nature whatsoever of the Owner Lessor in and to such rents, issues, profits, revenues and other income and every part thereof (the "*Lease Revenues*");

(3) all condemnation proceeds with respect to the Property Interest or any part thereof (to the extent of the Owner Lessor's interest therein), and all proceeds (to the extent of the Owner Lessor's interest therein) of all insurance maintained pursuant to Section 11 of the Facility Lease or otherwise;

(4) all other property of every kind and description and interests therein now held or hereafter acquired by the Owner Lessor pursuant to the terms of any Operative Document, wherever located;

(5) all damages resulting from breach (including, without limitation, breach of warranty or misrepresentation) or termination of any of the Indenture Estate Documents or arising from bankruptcy, insolvency or other similar proceedings involving any party to the Indenture Estate Documents;

(6) the Debt Service Reserve Account and all amounts on deposit therein; and

(7) all proceeds of the foregoing;

BUT EXCLUDING from the Indenture Estate all Excepted Payments, any and all rights to enforce and collect the same, and **SUBJECT TO** the rights of the Owner Lessor and the Owner Participant hereunder.

Concurrently with the delivery hereof, the Owner Lessor is delivering to the Security Agent on behalf of the Lease Indenture Secured Parties, from time to time the original executed counterpart of the Facility Lease to which a chattel paper receipt is attached and the Mortgage.

The Mortgage will be recorded in the Office of the Recorder of Deeds of Indiana County, Pennsylvania, and is intended (i) to constitute an open-end mortgage and leasehold mortgage and fixture filing under the laws of the Commonwealth of Pennsylvania and (ii) to be consistent with the terms and conditions of this Lease Indenture.

The Mortgage is intended to constitute an open-end mortgage and leasehold mortgage under the laws of the Commonwealth of Pennsylvania and this Lease Indenture is intended to constitute a security agreement as required under the Uniform Commercial Code of the State of New York. This Lease Indenture and the Mortgage are given to secure the payment and performance of the Lessor Secured Obligations.

PROVIDED, HOWEVER, that if the principal, interest and any other amounts due in respect of all the Lessor Notes, all other amounts due to the Noteholders at the time and in the manner required hereby and by the Lessor Notes, the Facility Lease and the Participation Agreement (but not including Excepted Payments) and any other Lessor Secured Obligations shall have been paid, then this Lease Indenture and the Mortgage shall be surrendered and cancelled and upon such surrender and cancellation the rights hereby and thereby granted and assigned shall terminate and cease and the Security Agent shall take such actions as are required to be taken by it to evidence such termination and cancellation pursuant to and as directed under Section 12.1.

Subject to the terms and conditions hereof, the Lease Indenture Secured Parties do hereby irrevocably constitute and appoint the Security Agent as their true and lawful attorney (which appointment is coupled with an interest) with full power (in the name of each Lease Indenture Secured Party, as applicable) to ask, require, demand and receive any and all moneys and claims for moneys (in each case, including, without limitation, insurance and requisition proceeds to the extent of the Owner Lessor's interest therein but excluding in all cases Excepted Payments) due and to become due under or arising out of the Indenture Estate Documents and all other property which now or hereafter constitutes part of the Indenture Estate and, to endorse any checks or other instruments or orders in connection therewith and to file any claims or to take any action or to institute any proceedings (other than in connection with the enforcement or collection of Excepted Payments) which the Security Agent may deem to be necessary or advisable. Pursuant to the Facility Lease, the Facility Lessee is directed to make all payments of Rent required to be paid or deposited with the Owner Lessor (other than Excepted Payments) and all other amounts which are required to be paid to or deposited with the Owner Lessor pursuant to the Facility Lease (other than Excepted Payments) directly to the Security

Agent at such address or addresses as the Security Agent shall specify, for application as provided in this Lease Indenture. Further, the Owner Lessor agrees that promptly on receipt thereof, it will transfer to the Security Agent any and all moneys from time to time received by it constituting part of the Indenture Estate, whether or not expressly referred to in the immediately preceding sentence, for distribution pursuant to this Lease Indenture.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Owner Lessor shall remain liable under the Indenture Estate Documents to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and the Lease Indenture Trustee and the Noteholders shall have no obligation or liability under any term or provision thereof by reason of or arising out of the assignment hereunder, nor shall the Lease Indenture Trustee or the Noteholders be required or obligated in any manner, except as herein expressly provided, to perform or fulfill any obligations of the Owner Lessor under or pursuant to any of the Indenture Estate Documents to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Owner Lessor agrees that at any time and from time to time, upon the written request of the Lease Indenture Trustee (acting on the instruction of any Noteholder) or any Noteholder, the Owner Lessor will promptly and duly execute and deliver or cause to be duly executed and delivered any and all such further instruments and documents necessary to obtain the full benefits of the assignment hereunder and of the rights and powers herein granted; *provided, however*, that the Owner Lessor shall have no obligation to execute or deliver or to cause to be executed or delivered any further instruments or documents that would give the Lease Indenture Trustee, the Security Agents or the Lease Indenture Secured Parties Reserve Letter of Credit greater rights and powers than the rights and powers of the Owner Lessor which have been granted herein or intended to be granted herein.

The Owner Lessor does hereby warrant and represent that it has not assigned, pledged or granted a lien or security interest in, to or under, and hereby covenants that, so long as this Lease Indenture shall remain in effect and the lien hereof and of the Mortgage shall not have been released pursuant to Section 7.1 hereof, it will not assign, pledge or grant a lien or security interest in any of its estate, right, title or interest in, to or under, the Indenture Estate to anyone other than the Security Agent for the benefit of the Lease Indenture Secured Parties. The Owner Lessor hereby further covenants that with respect to its estate, right, title and interest in, to or under the Indenture Estate, it will not, except as provided in this Lease Indenture and except as to Excepted Payments, (i) accept any payment from the Facility Lessee or any sublessee or enter into any agreement amending, modifying or supplementing any of the Indenture Estate Documents, execute any waiver or modification of, or consent under, the terms of any of the Indenture Estate Documents or revoke or terminate any of the Indenture Estate Documents, (ii) settle or compromise any claim arising under any of the Indenture Estate Documents, or (iii) submit or consent to the submission of any dispute, difference or other matter arising under or in respect of any of the Indenture Estate Documents to arbitration thereunder.

Except as provided herein, the Owner Lessor hereby ratifies and confirms its obligations under the Indenture Estate Documents and does hereby agree that it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of any of the Indenture Estate Documents or of any of the rights created by any such Indenture Estate Document or the assignment (subject to the previous paragraph) hereunder.

The Security Agent, for itself and its successors and permitted assigns, hereby agrees that it shall hold the Indenture Estate, in trust for the benefit and security of (i) the Noteholders of the Lessor Notes from time to time outstanding, without any priority of any one Lessor Note over any other except as herein otherwise expressly provided, (ii) the Lease Indenture Trustee, and for the uses and

purposes and subject to the terms and provisions set forth in this Lease Indenture and (iii) the Debt Service Reserve Letter of Credit Secured Parties.

Accordingly, the Owner Lessor, for itself and its successors and permitted assigns, agrees that all Lessor Notes are to be issued and delivered and that all property subject or to become subject hereto is to be held subject to the further covenants, conditions, uses and trusts hereinafter set forth, and the Owner Lessor, for itself and its successors and permitted assigns, hereby covenants and agrees with the Security Agent, for the benefit and security of the Noteholders from time to time of the Lessor Notes from time to time outstanding and the Debt Service Letter of Credit Secured Parties and to protect the security of this Lease Indenture, and the Lease Indenture Trustee and the Security Agent agree to accept the trusts and duties hereinafter set forth, as follows:

ARTICLE I
DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.1 DEFINITIONS

"*Acceptable Credit Support*" means an irrevocable letter of credit from an Acceptable Credit Provider. In the event that (a) such letter of credit will expire or otherwise terminate, substitute Acceptable Credit Support must be provided at least 30 days prior to the applicable expiration or termination date or (b) a downgrade of any Acceptable Credit Provider by Moody's or S&P to below the minimum criteria specified in the definition thereof, substitute Acceptable Credit Support must be provided within 30 days of such event. Otherwise, in either such case above the Security Agent shall draw down the then outstanding amount of the Acceptable Credit Support and deposit such monies into the Debt Service Reserve Account.

"*Agent*" means any Paying Agent, authenticating agent or securities custodian.

"*Assumption Event*" means the election by the Facility Lessee to assume the Lessor Notes pursuant to Section 10.2(b) or Section 13.4 of the Facility Lease.

"*Bondholder Indenture*" means the Indenture dated May 27, 1999 between Edison Mission Holdings Co. and The Bank of New York, as Trustee, as amended and restated.

"*Board Resolution*" means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person or the general partner, in the case of a limited partnership, of such Person (or, if such Person is a partnership, one of its general partners) to have been duly adopted by the Board of Directors of such Person or the general partner, in the case of a limited partnership, of such Person (or, if such Person is a partnership, one of its general partners) and to be in full force and effect on the date of such certification, and delivered to the Lease Indenture Trustee.

"*Business Day*" means a day other than a Saturday, Sunday or other day on which commercial banking institutions are authorized or required by law, regulation or executive order to be closed in New York, New York or the city and state in which the office of the Lease Indenture Trustee is located.

"*Capital Lease Obligation*" means, as to any Person, all monetary obligations of such Person under any leasing or similar arrangement which, in accordance with GAAP, would be classified as capitalized leases, and, for purposes of the Lease Indenture, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"*Closing Date*" means the date of issuance and delivery of the Initial Lessor Notes.

"*Collateral*" means the collective reference to all assets, whether now owned or hereafter acquired, upon which a lien is created or granted from time to time pursuant to any Security Document.

"*Corporate Trust Office of the Lease Indenture Trustee*" shall be at the address of the Lease Indenture Trustee specified in Section 13.2 hereof or such other address as to which the Lease Indenture Trustee may give notice to the Owner Lessor.

"*Custodian*" means the Lease Indenture Trustee, as custodian with respect to the Lessor Notes in global form, or any successor entity thereto.

"*Debt Service Reserve Account*" has the meaning set forth in Section 5.4 hereof.

"Debt Service Reserve Letter of Credit Secured Parties" means the Reimbursement Agreement Agent, the DSR Noteholder and the Issuer of the Debt Service Reserve Letter of Credit.

"*Depositary*" means, with respect to the Lessor Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.11 hereof as the Depositary with respect to the Lessor Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Lease Indenture.

*"DSR Noteholder"*shall have the meaning set forth in the Reimbursement Agreement.

DSR Notes" shall have the meaning set forth in the Reimbursement Agreement.

"*Duff & Phelps*" means Duff & Phelps Credit Rating Co. and its successors and assigns.

"*Euroclear*" means Morgan Guaranty Trust Company of New York, Brussels office, as operator of the Euroclear system.

"*Financing Documents*" has the meaning set forth in the Security Deposit Agreement.

"*Government Securities*" means direct obligations of, or obligations guaranteed by, the United States of America, and the payment for which the United States pledges its full faith and credit.

"*Independent Engineer*" means Stone and Webster Management Consultants, Inc. or another nationally recognized independent engineering and consulting firm which, as Independent Engineer, will independently review the technical aspects of the project, analyze the contractual structure and create financial projections for the benefit of the Noteholders.

"*Independent Manager*" means Wells Fargo Bank Northwest, National Association, a Delaware corporation or its successors and assigns.

"*Issuer of the Debt Service Reserve Letter of Credit*" has the meaning set forth in the Reimbursement Agreement.

"*Lease Indenture Default*" means an event or condition that, with the giving of notice or the lapse of time, or both, would become a Lease Indenture Event of Default.

"*Lease Indenture Secured Party*" means each Noteholder, the Security Agent, the Lease Indenture Trustee and the Reimbursement Agreement Agent, the DSR Noteholder and the Issuer of the Debt Service Reserve Letter of Credit.

"*Lessor Notes*" means the Series A Lessor Notes and the Series B Lessor Notes.

"*Make-Whole Premium*" means, with respect to any Lessor Note to be redeemed on any Redemption Date, an amount calculated by the Owner Lessor as of such date equal to the excess, if any, of (i) the net present value of the then remaining scheduled installments of principal and payments of interest (but excluding that portion of any scheduled installment of principal or payment of interest that is actually due and paid on the Redemption Date) in respect of such Lessor Note calculated using a discount factor equal to the sum of the Treasury Yield plus 50 basis points, over

(ii) the unpaid principal amount of such Lessor Note. Such Yield Maintenance Premium shall be determined in accordance with the following provisions:

(a) the average life of the remaining scheduled installments of principal in respect of such Lessor Note (the "Remaining Average Life") shall be calculated as of such Redemption Date; and

(b) the "Treasury Yield" shall be calculated for the United States Treasury security having an average life equal to the Remaining Average Life and trading in the secondary market at the price closest to par (the "Primary Issue"); *provided, however*, that, if no United States Treasury security has an average life equal to the Remaining Average Life, the yields (the "Other Yields") for maturities of the two United States Treasury securities having average lives most closely corresponding to such Remaining Average Life and trading in the secondary market at the price closest to par shall be calculated, and the yield to maturity for the Primary Issue shall be the yield interpolated or extrapolated from such Other Yields on a straight-line basis, rounding in each of such relevant periods to the nearest month.

"*Manager's Certificate*" means a certificate signed by the Independent Manager of the Owner Lessor.

"*Moody's*" means Moody's Investors Service, Inc., a division of Moody's Corporation, and its successors and assigns.

"*New Lessor Notes*" has the meaning set forth in Section 2.6(a) to this Lease Indenture.

"*Noteholder*" means a Person in whose name a Lessor Note is registered.

"*Offering*" means the offering of the Initial Lessor Notes by the Owner Lessor.

"*Opinion of Counsel*" means a written opinion of counsel for any Person either expressly referred to in the Lease Indenture or otherwise reasonably satisfactory to the Lease Indenture Trustee which may include, without limitation, counsel for the Owner Lessor, whether or not such counsel is an employee of the Owner Lessor.

"*Power Market Consultant*" means PHB Hagler Bailly, Inc. or another nationally recognized power market consulting firm which, as Power Market Consultant, will perform a market study of certain markets relating to the Facility and develop independent electricity price forecasts for the benefit of the Noteholders.

"*Recovery Event*" means any settlement of or payment of $5,000,000 or more in respect of (i) any property or casualty insurance claim relating to the Facility or (ii) any seizure, condemnation, confiscation or taking of, or requisition of title or use of, the Facility or any part thereof by any Governmental Authority.

"*Redemption Date*" means a date set forth for redemption of Lessor Notes pursuant to this Lease Indenture.

"*Redemption Price*" means the price to be paid by the Owner Lessor for the Lessor Notes that are redeemed pursuant to this Lease Indenture.

"*Reimbursement Agreement*" means the Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001, by and among the Owner Lessor, Westdeutsche Landesbank Girozentrale, New York Branch and Credit Suisse First Boston, New York Branch.

"*Reimbursement Agreement Agent*" means the Agent as defined in the Reimbursement Agreement.

"*Rent Default Remedy Date*" means the earlier to occur of the date on which (i) the Existing Debt is retired or (ii) there is an acceleration under Section 7.3 hereof so long as such acceleration is not rescinded.

"*Required Lease Indenture Secured Parties*" means, at any time, holders of debt that at such time hold greater than 50% of the sum of (i) the Lessor Notes outstanding at such time (disregarding for such computation any Lessor Notes held directly or beneficially by the Facility Lessee, the Owner Lessor, the Owner Participant, or any of their respective Affiliates, unless such Person owns all of the Lessor Notes in accordance with the provisions of this Lease Indenture) and (ii) in the case of the Debt Service Reserve Letter of Credit, the commitments with respect thereto at such time.

"*Responsible Officer*," when used with respect to the Lease Indenture Trustee, means any officer within the Corporate Trust Office of the Lease Indenture Trustee (or any successor group of the Lease Indenture Trustee) or any other officer of the Lease Indenture Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"*Rule 144*" means Rule 144 promulgated under the Securities Act.

"*Rule 144A*" means Rule 144A promulgated under the Securities Act.

"*Rule 903*" means Rule 903 promulgated under the Securities Act.

"*Rule 904*" means Rule 904 promulgated under the Securities Act.

"*S&P*" means Standard & Poor's Rating Services.

"*Securities Act*" means the Securities Act of 1933, as amended.

"*Senior Rent*" has the meaning set forth in the Security Deposit Agreement.

"*Series A Lessor Notes*" has the meaning set forth in Section 2.2.

"*Series B Lessor Notes*"" has the meaning set forth in Section 2.2.

SECTION 1.2 OTHER DEFINITIONS

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"*Security Agent's Account*"	3.7

SECTION 1.3 OTHER DEFINITIONS

Unless otherwise defined in *Section 1.1* hereof (including Annex A hereto), each capitalized term used in this Lease Indenture and not otherwise defined herein shall have the respective meaning set forth in Appendix A to the Participation Agreement (PA1) dated as of December 7, 2001 (as amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof, the "*Participation Agreement*") among the Facility Lessee, the Owner Manager, the Owner Lessor, the Owner Participant, the Lease Indenture Trustee, the Lender and the Bondholder Lease Indenture Trustee, unless the context hereof shall otherwise require. The general provisions of Appendix A to the Participation Agreement shall apply to terms used in this Lease Indenture and specifically defined herein.

SECTION 1.4 ONE CLASS OF SECURITIES

The Series A Lessor Notes and Series B Lessor Notes (and any Subsequent Lessor Notes issued pursuant to Section 2.6 hereof) shall vote and consent together on all matters as one class and none of the Series A Lessor Notes or Series B Lessor Notes shall have the right to vote or consent as a separate class on any matter.

ARTICLE II
THE LESSOR NOTES

SECTION 2.1 LIMITATION ON LESSOR NOTES

No Lessor Notes may be issued under the provisions of, or become secured by, this Lease Indenture except in accordance with the provisions of this Section 2. The aggregate principal amount of the Lessor Notes which may be authenticated and delivered and outstanding at any one time under this Lease Indenture shall be limited to the aggregate principal amount of the Initial Lessor Notes issued on the Closing Date to the Lender plus the aggregate principal amount of Additional Lessor Notes issued pursuant to Section 2.6 hereof.

SECTION 2.2 INITIAL LESSOR NOTES

There are hereby created and established hereunder two series of Lessor Notes consisting of the Series A Lessor Notes (the "Series A Lessor Notes") and the Series B Lessor Notes (the "Series B Lessor Notes"), each in substantially the form set forth in Exhibit A to this Lease Indenture and each such series in the aggregate principal amount, having installments payable on the dates and in the amounts and having the final maturity date and interest rate set forth in Schedule I to this Lease Indenture (the Series A Lessor Notes and the Series B Lessor Notes, collectively, the "*Initial Lessor Notes*" or, individually, an "*Initial Lessor Note*").

SECTION 2.3 EXECUTION AND AUTHENTICATION OF LESSOR NOTES

Each Lessor Note issued hereunder shall be executed and delivered on behalf of the Owner Lessor by one of its authorized signatories, be in fully registered form, be dated the date of original issuance of such Lessor Note and be in denominations of not less than $1,000. Any Lessor Note may be signed by a Person who, at the actual date of the execution of such Lessor Note, is an authorized signatory of the Owner Lessor although at the nominal date of such Lessor Note such Person may not have been an authorized signatory of the Owner Lessor. No Lessor Note shall be secured by or be entitled to any benefit under this Lease Indenture or be valid or obligatory for any purpose unless there appears thereon a certificate of authentication substantially in the form set forth in Exhibit D to this Lease Indenture (or in the appropriate form provided for in any supplement hereto executed pursuant to Section 2.6 hereof), executed by the Lease Indenture Trustee by the manual signature of one of its authorized officers, and such certificate upon any Lessor Note shall be conclusive evidence that such Lessor Note has been duly authenticated and delivered hereunder. The Lease Indenture Trustee shall authenticate and deliver the Initial Lessor Notes for original issue in the respective aggregate principal amounts specified in Schedule I to this Lease Indenture, upon a written order of the Owner Lessor signed on its behalf by the Owner Manager. The Lease Indenture Trustee shall authenticate and deliver Subsequent Lessor Notes, upon a written order of the Owner Lessor executed on its behalf by the Owner Manager and satisfaction of the conditions specified in Section 2.6 hereof. Such order shall specify the principal amount of the Subsequent Lessor Notes to be authenticated and the date on which the original issue of Subsequent Lessor Notes is to be authenticated.

SECTION 2.4 ISSUANCE AND TERMS OF THE INITIAL LESSOR NOTES

(a) There shall be issued to the Lender the Initial Lessor Notes, dated the Closing Date. The aggregate amount of the Initial Lessor Notes shall be in the principal amount equal to the aggregate principal amount of the Lessor Notes purchased by the Lender from the Owner Lessor pursuant to Section 2.1(b) of the Participation Agreement.

(b) Interest, including post-petition interest in any proceeding under any Bankruptcy Code (computed on the basis of a 360-day year of twelve 30-day months) on any overdue principal and, to the extent permitted by Requirements of Law, on overdue interest or Make-Whole Premium shall be paid on demand at a rate that is 1% per annum in excess of the rate then in effect.

SECTION 2.5 PAYMENTS FROM INDENTURE ESTATE ONLY; NO PERSONAL LIABILITY OF THE OWNER PARTICIPANT SECURITY AGENT OR THE LEASE INDENTURE TRUSTEE

Except as may otherwise specifically be provided in this Lease Indenture or in the Participation Agreement, all payments to be made in respect of the Lessor Notes or under this Lease Indenture shall be made only from the Indenture Estate, and the Owner Lessor shall have no obligation for the payment thereof except to the extent that there shall be sufficient income or proceeds from the Indenture Estate to make such payments in accordance with the terms of Section 3 hereof, and the Owner Participant shall not have any obligation for payments in respect of the Lessor Notes or under this Lease Indenture. The Lease Indenture Trustee, the Security Agent, each Noteholder and the Debt Service Reserve Letter of Credit Secured Parties, by its acceptance thereof, agrees that it will look

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solely to the income and proceeds from the Indenture Estate to the extent available for distribution to the Lease Indenture Trustee, the Security Agent, or such Noteholder or the Debt Service Reserve Letter of Credit Secured Parties, as the case may be, as herein provided and that, except as expressly provided in this Lease Indenture or the Participation Agreement, (x) none of the Owner Participant, the Trust Company, the Security Agent, or the Lease Indenture Trustee, or any Affiliate of any thereof, shall be personally liable to such Noteholder or the Debt Service Reserve Letter of Credit Secured Parties for any amounts payable hereunder, under such Lessor Note or for any performance to be rendered under any Indenture Estate Document or for any liability under any Indenture Estate Document, and (y) such amounts shall be non-recourse to the assets of each of the Owner Participant, the Security Agent, the Trust Company or the Lease Indenture Trustee or the Debt Service Reserve Letter of Credit Secured Parties, or any Affiliate of any thereof. Without prejudice to the foregoing, the Owner Lessor will duly and punctually pay or cause to be paid the principal of, premium (including, without limitation, Make-Whole Premium), if any, and interest on all Lessor Notes according to their terms and the terms of this Lease Indenture. Nothing contained in this Section 2.5 limiting the liability of the Owner Lessor shall derogate from the right of the Lease Indenture Trustee the Security Agent, the Noteholders and the Debt

Service Reserve Letter of Credit Secured Parties to proceed against the Indenture Estate to secure and enforce all payments and obligations due hereunder and under the Indenture Estate Documents and the Lessor Notes.

In furtherance of the foregoing, to the fullest extent permitted by law, each Noteholder (and each assignee of such Person) and each Debt Service Reserve Letter of Credit Secured Party, by their acceptance thereof, agrees, as a condition to its being secured under this Lease Indenture, that neither they nor the Lease Indenture Trustee will exercise any statutory right to negate the agreements set forth in this Section 2.5.

Nothing herein contained shall be interpreted as affecting the representations, warranties or agreements of the Owner Lessor expressly made set forth in the Participation Agreement or the Lessor LLC Agreement.

SECTION 2.6 SUBSEQUENT LESSOR NOTES

(a) The Owner Lessor may, subject to the conditions hereafter provided in this Section 2.6, issue additional Lessor Notes ("*Subsequent Lessor Notes*") under and secured by this Lease Indenture, at any time or from time to time for the purpose of (i) providing funds for a Supplemental Financing pursuant to Section 12.1 of the Participation Agreement (Subsequent Lessor Notes issued for such purpose, the "*Additional Lessor Notes*") or (ii) refinancing the Lessor Notes or other Subsequent Lessor Notes pursuant to Section 12.2 of the Participation Agreement (Subsequent Lessor Notes issued for such purpose, the "*New Lessor Notes*").

(b) Before any Subsequent Lessor Notes shall be issued under the provisions of this Section 2.6, the Owner Lessor shall have delivered to the Lease Indenture Trustee, not less than 5 (15 days in the case of New Lessor Notes) days nor more than 60 days (or in the case of a Supplemental Financing under Section 12.1 of the Participation Agreement, 90 days) prior to the proposed date of issuance of such Subsequent Lessor Notes, a request and authorization to issue such Subsequent Lessor Notes, which request and authorization shall (i) contain the proposed date of issuance of such Lessor Notes and the terms thereof and (ii) include a certification by the Facility Lessee that the terms of such Lessor Notes are in compliance with this Section 2.6 and Section 12.1 or 12.2 of the Participation Agreement, as the case may be. Such Subsequent Lessor Notes shall have a designation so as to distinguish such Subsequent Lessor Notes from the Lessor Notes theretofore issued, be dated their respective dates of issuance, bear interest at such rates (which may be either fixed or floating) as shall be agreed between the Facility Lessee and the Owner Lessor, and shall be stated to be payable by their terms not later than the latest date permitted therefore under Section 12.1 or 12.2 of the Participation Agreement, as the case may be.

(c) Except as to any differences in the maturity dates of the Subsequent Lessor Notes or the rate or rates of interest thereon, such Subsequent Lessor Notes shall be on a parity with, and shall be entitled to the same benefits and security of this Lease Indenture, and shall be subject to the same terms hereof, as the other Lessor Notes issued pursuant to the terms hereof.

(d) The terms, provisions and designations of such Subsequent Lessor Notes shall be set forth in a supplement to this Lease Indenture executed by the Owner Lessor, the Lease Indenture Trustee and the Security Agent. Such Subsequent Lessor Notes shall be executed, delivered and registered as provided in this Lease Indenture, but before such Subsequent Lessor Notes shall be delivered and registered there shall be delivered to the Lease Indenture Trustee and the Security Agent, in addition to other documents and certificates required by this Section 2.6, the following, all of which shall be dated as of the date of the supplement to this Lease Indenture:

(i) a copy of such supplement (which shall include the form of such series of Subsequent Lessor Notes);

(ii) unless the Subsequent Lessor Notes will upon issuance be the only Lessor Notes outstanding, evidence of the filing of record of such supplement, together with UCC lien searches, supplemental title reports, opinions, title insurance endorsements and such other evidence that may be reasonably required by the Lease Indenture Trustee or the Security Agent, as applicable, demonstrating that this Lease Indenture and such supplement provide a first-priority perfected lien and security interest, subject to Permitted Liens, in the Indenture Estate for the full amount of all Lessor Notes outstanding, including all Subsequent Lessor Notes described in such supplement and the Debt Service Reserve Letter of Credit Secured Parties;

(iii) an officer's certificate of an Authorized Officer of the Facility Lessee stating that (A) no Lease Default or Lease Event of Default has occurred and is continuing, (B) the conditions in respect of the issuance of such Subsequent Lessor Notes contained in this Section 2.6 have been satisfied, (C) the Basic Lease Rent and the Termination Value are calculated to be sufficient to pay all the outstanding Lessor Notes, after taking into account the issuance of such Subsequent Lessor Notes and any related prepayment of Lessor Notes theretofore outstanding and (D) all conditions to the Supplemental Financing or refinancing contained in Section 12.1 or 12.2 of the Participation Agreement or in any other provision of the Operative Documents have been satisfied;

(iv) a Manager's Certificate of the Owner Lessor stating that no Lease Indenture Default has occurred and is continuing; and

(v) an opinion of counsel to the Owner Lessor that the Subsequent Lessor Notes and the supplement to this Lease Indenture have been duly authorized, executed and delivered by the Owner Lessor and constitute the legal, valid and binding obligations of the Owner Lessor enforceable in accordance with their terms.

SECTION 2.7 PAYMENT OF EXPENSES ON TRANSFER

Upon the issuance of a new Lessor Note or Lessor Notes pursuant to Section 2.14 or 2.6 hereof, the Owner Lessor or the Lease Indenture Trustee may require from the party requesting the issuance of such new Lessor Note or Lessor Notes payment of a sum to reimburse the Owner Lessor and the Lease Indenture Trustee for, or to provide funds for, the payment on an After-Tax Basis to the Owner Lessor, Lease Indenture Trustee, Security Agent, Owner Participant and any OP Member of any tax or other governmental charge, legal fees and expenses in connection therewith or any charges and expenses connected with such tax or governmental charge paid or payable by the Owner Lessor or the Lease Indenture Trustee.

SECTION 2.8 RESTRICTIONS OF TRANSFER RESULTING FROM FEDERAL SECURITIES LAWS; LEGEND

Each Lessor Note shall be delivered to the initial Noteholder thereof without registration of such Lessor Note under the Securities Act and without qualification of this Lease Indenture under the Trust Indenture Act of 1939, as amended. Prior to any transfer of any such Lessor Note, in whole or in part, to any Person, the Noteholder thereof shall furnish to the Facility Lessee, the Lease Indenture Trustee and the Owner Lessor an opinion of counsel, which opinion and which counsel shall be reasonably satisfactory to the Lease Indenture Trustee, the Owner Lessor and the Facility Lessee, to the effect that such transfer will not violate the registration provisions of the Securities Act or require qualification of this Lease Indenture under the Trust Indenture Act of 1939, as amended, and all Lessor Notes issued hereunder shall be endorsed with a legend which shall read substantially as follows:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE OR OTHERWISE DISPOSED OF EXCEPT WHILE SUCH REGISTRATION IS IN EFFECT OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT.

SECTION 2.9 SECURITY FOR AND PARITY OF LESSOR NOTES

All Lessor Notes issued and outstanding hereunder shall rank on a parity with each other and with each Debt Service Reserve Letter of Credit Secured Party and shall as to each other be secured equally and ratably by this Lease Indenture, without preference, priority or distinction of any thereof over any other by reason of difference in time of issuance or otherwise.

SECTION 2.10 ACCEPTANCE OF THE LEASE INDENTURE TRUSTEE AND APPOINTMENT OF THE SECURITY AGENT

(a) Each Noteholder, by its acceptance of a Lessor Note, shall be deemed to have consented to the appointment of the Lease Indenture Trustee.

(b) Each of the Lease Indenture Secured Parties or their representatives hereby designates and appoints The Bank of New York as the security agent for such Lease Indenture Secured Parties under the Lease Indenture and the Mortgage, and authorizes The Bank of New York in such capacity to take such action on its behalf under the provisions of the Lease Indenture and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Lease Indenture, together with such other powers as are incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Lease Indenture, the Security Agent shall not have any duties or responsibilities, except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Lease Indenture or otherwise exist against the Security Agent.

SECTION 2.11 PAYING AGENT

(a) The Owner Lessor shall maintain in the Borough of Manhattan, the City of New York, an office or agency where Lessor Notes must be presented for registration of transfer and payment by a paying agent ("*Paying Agent*"). The Paying Agent shall keep a register of the Lessor Notes both as to principal and stated interest thereon and of their transfer. The Owner Lessor shall cause the Paying Agent to ensure that the transfer of any Lessor Notes will be effected only by the surrender of the old instrument and either (i) the reissuance by the Paying Agent of the old instrument to the new holder or (ii) the issuance by the Paying Agent of a new instrument to the new holder. The Owner Lessor shall also cause the Paying Agent to ensure that the right to the principal of, and stated interest on, any Lessor Notes will be transferred only through the book entry system maintained by the Paying Agent. The Owner Lessor may appoint one or more additional paying agents. The term Paying Agent includes any additional paying agent. The Owner Lessor may change any Paying Agent without notice to any Noteholder. The Owner Lessor shall notify the Security Agent and the Lease Indenture Trustee

in writing of the name and address of any Paying Agent not a party to this Lease Indenture. If the Owner Lessor fails to appoint or maintain another entity as Paying Agent, the Lease Indenture Trustee shall act as such.

(b) The Owner Lessor initially appoints the Lease Indenture Trustee to act as the Paying Agent and to act as Custodian with respect to the Lessor Notes.

(c) The Security Agent shall deposit with the Lease Indenture Trustee for as long as the Lessor Note Indenture is outstanding, (or to the Paying Agent if applicable) a sum sufficient to pay such principal and interest, and premium, if any, when so becoming due. The Owner Lessor shall require each Paying Agent (other than the Lease Indenture Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Noteholders or the Lease Indenture Trustee all money held by the Paying Agent for the payment of principal of or interest on the Lessor Notes and shall notify the Lease Indenture Trustee of any default by the Security Agent in making any such payment.

SECTION 2.12 PAYING AGENT TO HOLD MONEY IN TRUST

The Owner Lessor shall require each Paying Agent other than the Lease Indenture Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Noteholders or the Debt Service Reserve Letter of Credit Secured Parties, as applicable, and all money held by the Paying Agent for the payment of principal on, premium, if any, or interest on the Lessor Notes, and will notify the Lease Indenture Trustee in writing of any default by the Security Agent in making any such payment. While any such default continues, the Lease Indenture Trustee may require a Paying Agent to pay all money held by it to the Lease Indenture Trustee. The Owner Lessor at any time may require a Paying Agent to pay all money held by it to the Lease Indenture Trustee. Upon payment over to the Lease Indenture Trustee, the Paying Agent shall have no further liability for the money.

SECTION 2.13 [RESERVED]

SECTION 2.14 REPLACEMENT LESSOR NOTES

If any mutilated Lessor Note is surrendered to the Lease Indenture Trustee or the Owner Lessor and the Lease Indenture Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Lessor Note, the Owner Lessor shall issue and the Lease Indenture Trustee,

upon receipt of an Authentication Order, shall authenticate a replacement Lessor Note and deliver in lieu of such Lessor Note, a new Lessor Note, dated the same date as such Lessor Note and of like tenor and principal amounts. If required by the Lease Indenture Trustee or the Owner Lessor, an indemnity Lessor Note must be supplied by the Noteholder that is sufficient in the judgment of the Lease Indenture Trustee and the Owner Lessor to protect the Owner Lessor, the Lease Indenture Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Lessor Note is replaced. The Owner Lessor and the Lease Indenture Trustee may charge for their expenses in replacing a Lessor Note.

Every replacement Lessor Note is an additional obligation of the Owner Lessor and shall be entitled to all of the benefits of this Lease Indenture equally and proportionately with all other Lessor Notes duly issued hereunder.

SECTION 2.15 OUTSTANDING LESSOR NOTES

The Lessor Notes outstanding at any time are all the Lessor Notes authenticated by the Lease Indenture Trustee except for those canceled by it, those delivered to it for cancellation, and those described in this Section as not outstanding. Except as set forth in Section 2.16 hereof, a Lessor Note does not cease to be outstanding because the Owner Lessor or an Affiliate of the Owner Lessor holds the Lessor Note.

If a Lessor Note is replaced pursuant to Section 2.14 hereof, it ceases to be outstanding unless the Lease Indenture Trustee receives proof satisfactory to it that the replaced Lessor Note is held by a bona fide purchaser.

If the principal amount of any Lessor Note is considered paid under Section 5.1 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent holds, on a redemption date or maturity date, money sufficient to pay Lessor Notes payable on that date, then on and after that date such Lessor Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

SECTION 2.16 TREASURY LESSOR NOTES

In determining whether the Noteholders of the required principal amount of Lessor Notes have concurred in any direction, waiver or consent, Lessor Notes owned by the Owner Lessor, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Owner Lessor shall be considered as though not outstanding, except that for the purposes of determining whether the Lease Indenture Trustee shall be protected in relying on any such direction, waiver or consent, only Lessor Notes that the Lease Indenture Trustee knows are so owned shall be so disregarded.

SECTION 2.17 [RESERVED]

SECTION 2.18 CANCELLATION

The Owner Lessor at any time may deliver Lessor Notes to the Lease Indenture Trustee for cancellation. The Paying Agent shall forward to the Lease Indenture Trustee any Lessor Notes surrendered to it for registration of transfer, exchange or payment. The Lease Indenture Trustee and no one else shall cancel all Lessor Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall destroy canceled Lessor Notes (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all canceled Lessor Notes shall be delivered (at the expense of the Owner Lessor) to the Owner Lessor. The Owner Lessor may not issue New Lessor Notes to replace Lessor Notes that it has paid or that have been delivered to the Lease Indenture Trustee for cancellation.

SECTION 2.19 DEFAULTED INTEREST

If the Owner Lessor defaults in a payment of interest on the Lessor Notes, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Noteholders on a subsequent special record date, in each case at the rate

provided in the Lessor Notes and in Section 5.1 hereof. The Owner Lessor shall notify the Security Agent and the Lease Indenture Trustee in writing of the amount of defaulted interest proposed to be paid on each Lessor Note and the date of the proposed payment. The Owner Lessor shall fix or cause to be fixed each such special record date and payment date, *provided* that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Owner Lessor (or, upon the written request of the Owner Lessor, the Lease Indenture Trustee in the name and at the expense of the Owner Lessor) shall mail or cause to be mailed to Noteholders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

SECTION 2.20 [RESERVED]

SECTION 2.21 ASSUMPTION OF LESSOR NOTES

(a) Upon the occurrence of an Assumption Event, the Facility Lessee may notify the Security Agent and the Lease Indenture Trustee of its intention to assume all of the Lessor Notes in whole (but not in part) pursuant to and in accordance with this Section 2.21. In the event of the occurrence of an

Assumption Event and provided each of the conditions set forth below have been satisfied, all of the obligations and liabilities of the Owner Lessor under this Lease Indenture and each Lessor Note shall be assumed by the Facility Lessee and the Owner Lessor shall be released and discharged without further act or formality whatsoever from all obligations and liabilities under this Lease Indenture and each Lessor Note:

(i) no Lease Event of Default shall have occurred and be continuing after giving effect to such assumption;

(ii) the Lease Indenture Trustee shall have received a supplement to this Lease Indenture which shall, among other things, (A) confirm the release of the Owner Lessor thereby effected and (B) contain provisions appropriately amending this Lease Indenture: (1) to reflect the fact that the obligations of the Owner Lessor under this Lease Indenture have been assumed directly by the Facility Lessee, (2) to incorporate herein such provisions from the Facility Lease, the Facility Site Lease and the Participation Agreement as shall be appropriate, including covenants substantially identical to those set forth in the Facility Lease and (3) as otherwise necessary to reflect the foregoing provisions and preserve, protect and maintain the Lien on the Indenture Estate (such supplement, the "*Assumption Agreement*");

(iii) the Lease Indenture Trustee shall have received an opinion of counsel to the Facility Lessee (with customary qualifications and limitations and otherwise reasonably satisfactory to the Lease Indenture Trustee), addressed to the Lease Indenture Trustee and the Noteholders of the Lessor Notes, to the effect that (A) the Assumption Agreement and each other instrument, document or agreement executed and delivered by the Facility Lessee in connection with the assumption contemplated by the Assumption Agreement (collectively, the "*Assumption Documents*") have been duly authorized, executed and delivered by the Facility Lessee, (B) each Assumption Document and the assumption contemplated thereby do not contravene (1) the Organic Documents of the Facility Lessee, (2) any contractual obligation of the Facility Lessee or (3) Requirements of Law, (C) no Governmental Approval is necessary or required in connection with any Assumption with any Assumption Document or the assumption contemplated thereby (or, if any such Governmental Approval is necessary or required that the same has been duly obtained and is final and in full force and effect and any period for the filing of notice of rehearing or application for judicial review of the issuance of such Governmental Approval has expired without any such notice or application having been made), (D) each Assumption Document is a legal, valid and binding obligation of the Facility Lessee, enforceable in accordance with its terms (except as limited by bankruptcy, insolvency or similar laws of general application affecting the enforcement of creditors' rights generally and equitable principles), (E) unless the Facility Lessee has elected to provide to the Lease Indenture Trustee an indemnity against the risk that such assumption of the Lessor Notes will cause a Tax Event to occur as to any direct or indirect holder of a Lessor Note (including any holder of the Bonds), such Assumption Agreement and the assumption of the Notes thereunder shall not cause a Tax Event to occur as to any

direct or indirect holder of any Lessor Note (including any Fundco Bondholders) and (F) the lien of this Lease Indenture will continue to be a first priority perfected lien on the Indenture Estate;

(iv) the Lease Indenture Trustee shall have received copies of all Governmental Approvals (if any) referred to in the opinion of counsel referred to in clause (iii) above;

(v) the Lease Indenture Trustee shall have received UCC lien searches, supplemental title reports, opinions and such other evidence as may reasonably be required by the Lease Indenture Trustee demonstrating that no impairment exists or will exist to the first priority perfected lien and security interest in the Undivided Interest; and

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(vi) the Lease Indenture Trustee shall have received ratings letters from each of Moody's and S&P to the effect that the then existing rating of the Bonds will not be downgraded as a result of such assumption.

(b) Notice of any assumption of the Lessor Notes shall be given by the Lease Indenture Trustee to the Noteholders as promptly as practicable after the Lease Indenture Trustee has received notice thereof in accordance with the first sentence of section 2.21(a) hereof.

ARTICLE III
RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM INDENTURE ESTATE

SECTION 3.1 DISTRIBUTION PRIOR TO LEASE INDENTURE EVENT OF DEFAULT

Except as otherwise provided in Section 3.2 or 3.3 of this Lease Indenture, each installment of Basic Lease Rent and any payment of Supplemental Lease Rent constituting interest on overdue installments of Basic Lease Rent or constituting reimbursement for any drawing under the Debt Service Reserve Letter of Credit received by the Security Agent, or otherwise payable to the Owner Lessor pursuant to Sections 10, 13 or 14 of the Facility Lease shall be deposited into the Security Agent's Account and distributed in the following order of priority:

first, ratably to (i) so much of such amounts as shall be required to pay in full the aggregate principal, accrued interest and other fees and expenses (as well as any interest on overdue principal and, to the extent permitted by Requirements of Law, on overdue interest) then due and payable under the Lessor Notes issued under this Lease Indenture shall be deposited into the Lessor Notes Payment Account and distributed by the Lease Indenture Trustee or by each Paying Agent and shall be distributed to the Noteholders ratably, without priority of any Noteholder over any other Noteholder, in the proportion that the amount of such payment then due and payable under each such Lessor Note bears to the aggregate amount of the payments then due and payable under all such Lessor Notes and (ii) so much of such amounts as shall be required to reimburse the Issuer of the Debt Service Reserve Letter of Credit for any amount drawn thereunder or to pay in full the aggregate principal, accrued interest and other fees and expenses (as well as any interest on overdue principal and, to the extent permitted by Requirements of Law, on overdue interest) then due and payable under the DSR Notes;

second, so much of such amounts as shall be required to meet the required balance in the Debt Service Reserve Account pursuant to Section 5.4 shall be distributed to the Debt Service Reserve Account; and

third, the balance, if any, of such amounts remaining in the Lessor Notes Payment Account shall be distributed to the Owner Lessor for distribution by it in accordance with the terms of the Lessor LLC Agreement; *provided, however*, that if a Lease Indenture Event of Default shall have occurred and be continuing, then such balance shall not be distributed as provided in this clause "*third*" but shall be held by the Lease Indenture Trustee or the Security Agent, as applicable, as part of the Indenture Estate until the earliest to occur of (i) receipt by the Security Agent of a Notice of Action stating that all Lease Indenture Events of Default

shall have been cured or waived, in which event such balance shall be distributed as provided in this clause "*third*," or (ii) receipt by the Security Agent of a Notice of Action stating that Section 3.3 hereof shall be applicable, in which event such balance shall be distributed in accordance with the provisions of said Section 3.3.

SECTION 3.2 PAYMENTS FOLLOWING EVENT OF LOSS OR OTHER EARLY TERMINATION

(a) Except as otherwise provided in Section 3.3 hereof, any payment received by the Security Agent and deposited into the Security Agent's Account on account of a redemption of the Lessor Notes shall then be deposited into the Lessor Notes Payment Account and distributed by the Lease Indenture Trustee or by each Paying Agent with respect to such redemption arising pursuant to Article 4 hereof in the following order of priority: *first*, as provided in clause "*second*" of Section 3.3 hereof; (but including all Make-Whole Premium (if any) due in respect thereof required to be paid in accordance with Section 4.7 hereof); *second*, to reimburse the applicable Noteholders (to the extent not previously reimbursed) for any reasonable out-of-pocket costs or expenses incurred in connection with such prepayment (including payments provided for in clause "*third*" of Section 3.3 hereof); and *third*, as provided in clause "*fourth*" of Section 3.3 hereof.

(b) Except as otherwise provided in Section 3.2(a) or 3.3 hereof, any amounts received directly or indirectly from any Governmental Authority or insurer or other party not as a result of an Event of Loss or pursuant to any provision of Section 10.3, Section 10.5 or Section 11 of the Facility Lease shall be applied as provided in the applicable provisions of the Facility Lease and, if and to the extent that any portion of such amounts are required to be held for the account of the Facility Lessee and are not at the time required to be paid to the Facility Lessee pursuant to the applicable provisions of the Facility Lease, shall be promptly paid to (if not initially paid directly to the Security Agent) and, thereafter, held by, the Security Agent as security for the obligations of the Facility Lessee under the Facility Lease, and at such time as the Security Agent shall have received written notice from the Facility Lessee (i) stating that the conditions specified in the Facility Lease for payment of such amounts to the Facility Lessee shall have been satisfied and (ii) setting out the portion of such amounts so held by the Security Agent to be paid to the Facility Lessee, the Security Agent shall pay to the Facility Lessee the amount specified in such notice.

SECTION 3.3 PAYMENTS AFTER LEASE INDENTURE EVENT OF DEFAULT

If, during the continuance of a Lease Indenture Event of Default, (a) the Security Agent has elected to pursue remedies in respect thereof or (b) the entire principal amount of the Lessor Notes shall have become due and payable as provided herein, all payments (other than Excepted Payments) received by the Security Agent or the Lease Indenture Trustee or by each Paying Agent in respect of all amounts (other than Excepted Payments) held or realized by the Security Agent or the Lease Indenture Trustee upon, and all other payments or amounts (other than Excepted Payments) held by the Security Agent or the Lease Indenture Trustee or by each Paying Agent as part of the Indenture Estate shall be promptly distributed in the following order of priority:

first, to the Lease Indenture Trustee and the Security Agent, so much of such payments or amounts as shall be required to reimburse the Lease Indenture Trustee and the Security Agent for any amounts payable to them under Section 8.7 hereof and Section 10.1 of the Participation Agreement and not previously paid;

second, ratably paid to (i) so much of such payments or amounts remaining as shall be required to pay in full the aggregate unpaid principal amount of all Lessor Notes and accrued but unpaid interest and premium, if any, thereon to the date of distribution (as well as any interest on overdue principal and, to the extent permitted by Requirements of Law, overdue interest as provided in Section 5.1(b) hereof), shall be distributed to the Noteholders, (ii) all amounts as shall be required to reimburse to the Issuer of the Debt Service Reserve Letter of Credit for any drawings thereunder that are due and payable or to pay in full the aggregate principal, accrued interest and other fees and expenses (as well as any interest on overdue principal and, to the extent permitted by

Requirements of Law, on overdue interest) then due and payable under the DSR Notes, and if the aggregate amount shall be insufficient to pay all such amounts of (i) and (ii) above in full, such amounts shall be distributed ratably, without priority of any Lease Indenture Secured Party over any other Lease Indenture Secured Party, in the proportion that the aggregate amount due to each such Lease Indenture Secured Party under this clause "*second*" bears to the aggregate amount due to all such Noteholders under this clause "*second*"; and if the aggregate amount so to be distributed shall be insufficient to pay in full as aforesaid, then such distribution shall be made, ratably, without priority of one Lease Indenture Secured Party over any other Lease Indenture Secured Party, in the proportion that the aggregate amount due to each such Lease Indenture Secured Party, plus the accrued but unpaid interest or fees thereon to the date of distribution, bears to the aggregate unpaid principal amount due to each such Lease Indenture Secured Party, plus the accrued but unpaid interest or fees thereon to the date of distribution;

third, to the Noteholders, so much of such payments or amounts as shall be required to reimburse each such Noteholder, in each case to the extent the Facility Lessee has an obligation to indemnify under the Participation Agreement, for any tax, expense, charge or other loss (including, without limitation, all amounts to be expended at the expense of, or charged upon, the tolls, rents, revenues, issues, products and profits of the Indenture Estate pursuant to Section 7.5(b) hereof) incurred by such Noteholder (to the extent reimbursable and not previously reimbursed) under the Operative Documents, including, without limitation, the expenses of any sale, taking or other proceeding, reasonable attorneys' fees and expenses, court costs, and any other expenditures incurred or expenditures or advances made by such Noteholder in the protection, exercise or enforcement of any right, power or remedy or any damages sustained by such Noteholder, liquidated or otherwise, upon such Lease Indenture Event of Default shall be applied by such Noteholder in reimbursement of such expenses; and

fourth, the balance, if any, of such payments or amounts remaining thereafter shall be paid to the Owner Lessor for distribution in accordance with the terms of the Lessor LLC Agreement.

SECTION 3.4 CERTAIN PAYMENTS

(a) Except as otherwise provided in this Lease Indenture, any payments received by the Lease Indenture Trustee or the Security Agent for which provision as to the application thereof is made in any other Operative Document shall be applied forthwith to the purpose for which such payment was made in accordance with the terms of such Operative Document.

(b) The Owner Lessor hereby agrees that if, at any time during the term of this Lease Indenture, it receives from the Facility Lessee or any Affiliate of the Facility Lessee any amount or payment (other than Excepted Payments) described in Section 3.4(c) hereof, it shall hold such amount of payment in trust for the benefit of the Security Agent and promptly pay such amount of payment to the Security Agent. The Owner Lessor further aggress that the obligation to remit such amount or payment shall be secured by this Lease Indenture.

(c) Any payment of Supplemental Lease Rent received by the Owner Participant or the Security Agent pursuant to the fourth sentence of Section 7.2 hereof shall, so long as no Lease Indenture Event of Default shall have occurred and be continuing, and except to the extent applied as provided in Section 3.3 hereof, be retained by, or promptly distributed to, the Owner Participant. Notwithstanding anything to the contrary in this Section 3 or any of the Operative Documents and without regard to whether a Lease Indenture Event of Default shall have occurred and be continuing, all Excepted Payments received by the Security Agent shall be paid by the Security Agent forthwith to the Person or Persons entitled thereto.

SECTION 3.5 OTHER PAYMENTS

Any payments in respect of the Indenture Estate received by the Security Agent no provision for the application of which is made in the Facility Lease or in another Operative Document or elsewhere in this Indenture shall (i) to the extent received or realized at any time prior to the payment in full of all obligations to the Noteholders or to the Debt Service Reserve Letter of Credit Secured Parties, as applicable, secured by the lien of this Lease Indenture, be deposited into the Lease Indenture Trustee's Account, and thereafter applied to the payment of principal, interest, Make-Whole Premium or other amounts as and when such principal, interest, Make-Whole Premium or other amounts come due

pursuant to priority "*first*" specified in Section 3.1 hereof or, if applicable at such time, pursuant to Section 3.2 or 3.3 hereof and (ii) to the extent received or realized at any time after payment in full of all obligations to the Noteholders and to the Debt Service Reserve Letter of Credit Secured Parties, as applicable, secured by the lien of this Lease Indenture, in the following order of priority: *first*, to reimburse the Lease Indenture Trustee and the Security Agent (to the extent not previously reimbursed) for any reasonable out-of-pocket costs or expenses to which it is entitled to reimbursement pursuant to an Operative Document; and *second*, in the manner provided in clause "*fourth*" of Section 3.3 hereof.

SECTION 3.6 MANNER OF PAYMENT TO THE OWNER LESSOR

Any amounts distributed hereunder by the Security Agent to the Owner Lessor shall be paid by the Security Agent to the Owner Lessor by wire transfer of funds of the type received by the Security Agent at such offices and to such account or accounts of such entity or entities as shall be designated in advance by written notice from the Owner Lessor to the Security Agent from time to time. The Security Agent shall, whether or not the lien of this Lease Indenture shall have been discharged in accordance herewith, act as paying agent for the Owner Lessor, in connection with the Security Agent's duties to make distributions to or for the benefit of the Owner Lessor pursuant to this Section 3 and to accept all revenues, payments, securities, investments and other amounts received by the Security Agent and to be distributed to the Owner Lessor pursuant thereto or held in trust for the benefit of the Owner Lessor pursuant to the terms of this Lease Indenture. The Owner Lessor hereby notifies and instructs the Security Agent that unless and until the Security Agent receives written notice to the

contrary from the Owner Lessor, all amounts to be distributed to the Owner Lessor pursuant to clause "*second*" of Section 3.1 hereof shall be distributed by wire transfer of funds of the type received by the Security Agent to the Owner Participant. In the event that the Security Agent is unable to distribute any amounts to the Owner Lessor or the Owner Participant on the same day such amounts are received by the Security Agent, the Security Agent agrees that such amounts shall be held in trust for the benefit of the Owner Lessor or the Owner Participant, as the case may be, and shall be invested by the Security Agent for and at the expense and risk of the Owner Lessor or the Owner Participant, as the case may be, in Permitted Investments identified in written instructions to the Security Agent from the Owner Lessor or the Owner Participant, as the case may be, if such investments are reasonably available.

SECTION 3.7 ESTABLISHMENT OF THE NOTE ACCOUNTS; AND LIEN AND SECURITY INTEREST; ETC.

(a) The Security Agent hereby confirms that it has established securities accounts entitled the "*Security Agent's Account*" (the "*Security Agent's Account*") and "*Lessor Notes Payment Account*" (the "*Lessor Notes Payment Account*", collectively with the Security Agent's Accounts, the "*Note Accounts*") which Note Accounts shall be maintained by the Account Bank until the date this Lease Indenture is terminated pursuant to Section 12.1 hereof. The account number of the Note Accounts established hereunder is specified in Schedule III hereto. The Note Accounts shall not be evidenced by passbooks or similar writings.

(b) All amounts from time to time held in the Note Accounts shall be maintained (i) in the name of the Owner Lessor subject to the lien and security interest of the Security Agent for the benefit of the Lease Indenture Secured Parties as set forth herein and (ii) in the custody of the Security Agent for and on behalf of the Security Agent for the benefit of the Secured Parties for the purposes and on the terms set forth in this Lease Indenture. All such amounts shall constitute a part of the Note Accounts Collateral and shall not constitute payment of any Indebtedness or any other obligation of the Owner Lessor until applied as hereinafter provided.

(c) As collateral security for the prompt payment in full when due of the Lessor's Secured Obligations owed to the Lease Indenture Secured Parties, the Owner Lessor hereby pledges, assigns, hypothecates and transfers to the Security Agent for the benefit of the Lease Indenture Secured Parties, and hereby grants to the Security Agent for the benefit of the Lease Indenture Secured Parties, a lien on and security interest in and to (i) the Note Accounts and any successor account thereto and (ii) all cash, investments, investment property, securities or other property at any time on deposit in or credited to the Note Accounts, including all income or gain earned thereon and any proceeds thereof (the "*Note Accounts Collateral*").

SECTION 3.8 THE ACCOUNT BANK; LIMITED RIGHTS OF THE OWNER LESSOR

(a) *The Account Bank.*

(i) *Establishment of Securities Account.* The Security Agent hereby agrees and confirms that (A) that it has established the Note Accounts as set forth in Section 3.7, (B) Note Accounts are and each will be maintained as a "*securities account*" (within the meaning of Section 8-501 (a) of the UCC), (C) the Owner Lessor is the "*entitlement holder*" (within the meaning of Section 8-102(a)(7) of the UCC) in respect of the "*financial assets*" (within the meaning of Section 8-102(a)(9) of the UCC) credited to each Note Account, (D) all property delivered to the Security Agent pursuant to this Lease Indenture or any other Operative Document will be held by the Security Agent and promptly credited to each Note Account by an appropriate entry in its records in accordance with this Lease Indenture, (E) all "*financial assets*" (within the meaning of Section 8-102(a)(9) of the UCC) in registered form or payable to or to the order of and credited to each Note Account shall be registered in the name of, payable to or to the order of, or indorsed

to, the Security Agent or in blank, or credited to another securities account maintained in the name of the Security Agent, and in no case will any financial asset credited to any of the Note Accounts be registered in the name of, payable to or to the order of, or indorsed to, the Owner Lessor except to the extent the foregoing have been subsequently indorsed by the Owner Lessor to the Account Bank or in blank and (F) the Security Agent shall not change the name or account number of the Security Agent's Account without the prior written consent of the Security Agent.

(ii) *Financial Assets Election.* The Security Agent agrees that each item of property (including any security, instrument or obligation, share, participation, interest or other property whatsoever) credited to the Security Agent's Account shall be treated as a "*financial asset*" within the meaning of Section 8-102(a)(9) of the UCC.

(iii) *Entitlement Orders.* Notwithstanding anything in this Lease Indenture to the contrary, if at any time the Security Agent shall receive any "*entitlement order*" (within the meaning of Section 8-102(a)(8) of the UCC) or any other order directing the transfer or redemption of any financial asset relating to the Security Agent's Account, the Security Agent shall comply with such entitlement order or other order without further consent by the Owner Lessor or any other Person. The parties hereto hereby agree that the Security Agent shall have "*control*" (within the meaning of Section 8-106(d) of the UCC) of the Owner Lessor's "*security entitlements*" (within the meaning of Section 8-102(a)(17) of the UCC) with respect to the financial assets credited to the Security Agent's Account and the Owner Lessor hereby disclaims any entitlement to claim "*control*" of such "*security entitlements*". Unless a Lease Indenture Event of Default shall have occurred and is continuing, the Lease Indenture Trustee shall not deliver any entitlement order directing the transfer or redemption of any financial asset relating to the Security Agent's Account.

(iv) *Subordination of Lien; Waiver of Set-Off.* In the event that the Security Agent has or subsequently obtains by agreement, operation of law or otherwise a lien or security interest in the Security Agent's Account or any security entitlement credited thereto, the Security Agent agrees that such lien or security interest shall be subordinate to the lien and security interest of the Security Agent for the benefit of the Lease Indenture Secured Parties. The financial assets standing to the credit of the Lease Indemnitee's Lease Indenture Trustee's Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any Person other than the Security Agent for the benefit of the Lease Indenture Secured Parties (except for the face amount of any checks which have been credited to the Note Accounts but are subsequently returned unpaid because of uncollected or insufficient funds).

(v) *No Other Agreements.* The Security Bank and the Owner Lessor have not entered into any agreement with respect to the Note Accounts or any financial assets credited to the Note Accounts other than this Lease Indenture. The Security Agent has not entered into any agreement with the Owner Lessor or any other Person purporting to limit or condition the obligation of the Security Agent to comply with entitlement orders originated by the Security Agent in accordance with Section 3.8(a)(iii) hereof. In the event of any conflict between this Section 3.8 or any other agreement now existing or hereafter entered into, the terms of this Section 3.8 shall prevail.

(vi) *Notice of Adverse Claims.* Except for the claims and interest of the Security Agent for the benefit of the Lease Indenture Secured Parties and the Owner Lessor in the Note Accounts, the Security Agent does not know of any claim to, or interest in, the Note Accounts or in any financial asset credited thereto. If any Person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Note Accounts or in any financial asset credited thereto, the Security Agent will promptly notify the Security Agent and the Owner Lessor in writing thereof.

(vii) *Rights and Powers of the Security Agent.* The rights and powers granted by the Lease Indenture Secured Parties to the Security Agent have been granted in order to perfect its lien and

security interests in the Security Agent's Account, are powers coupled with an interest and will neither be affected by the bankruptcy of the Owner Lessor nor the lapse of time.

(b) *Limited Rights of the Owner Lessor.* The Owner Lessor shall not have any rights against or to monies held in the Note Accounts, as third party beneficiary or otherwise, or any right to direct the Security Agent or the Security Agent to apply or transfer monies in the Note Accounts, except the right to receive or make requisitions of monies held by the Security Agent and to direct investments of monies as provided in Section 3.10 hereof, as provided in this Lease Indenture. Except as provided in this Lease Indenture, in no event shall any amounts or Cash Equivalent Investments deposited in or credited to the Note Accounts be registered in the name of the Owner Lessor, payable to the order of the Owner Lessor or specially indorsed to the Owner Lessor except to the extent that the foregoing have been specially indorsed to the Security Agent or in blank.

SECTION 3.9 EXERCISE OF POWERS; INSTRUCTIONS OF REQUIRED LEASE INDENTURE SECURED PARTIES.

(a) All of the powers, remedies and rights of the Security Agent set forth in or contemplated by this Agreement may be exercised by the Security Agent as though set forth in full herein, and all of the powers, remedies and rights of the Security Agent and the Lease Indenture Secured Parties as set forth herein.

(b) Following the delivery of a direction of acceleration under Section 7.4 hereof to the Security Agent, during any Event of Default, the Required Lease Indenture Secured Parties may deliver a "*Notice of Action*" to the Security Agent directing the Security Agent to exercise one or more of the rights and remedies available to the Security Agent under this Lease Indenture and under the Security Deposit Agreement. The Security Agent shall deliver to each Lease Indenture Secured Party a copy of such Notice of Action promptly after receipt thereof. The Security Agent shall exercise the rights and remedies and take the other actions described in such Notice of Action at the time or times specified in such Notice of Action.

(c) All Proceeds of the Indenture Estate received by the Security Agent from the exercise of its rights and remedies under this Lease Indenture or under the Mortgage shall be applied as set forth in Article 3 hereof.

SECTION 3.10 INVESTMENT OF AMOUNTS HELD BY LEASE INDENTURE TRUSTEE.

Any amounts held by the Security Agent pursuant to the proviso to clause "*second*" of Section 3.1 hereof, pursuant to Section 3.2 or Section 3.3 hereof, or pursuant to Section 10 or 11 of the Facility Lease shall be invested by the Security Agent from time to time in Permitted Investments identified in written instructions to the Security Agent from the Owner Lessor, at the expense of the Owner Lessor, if such investments are reasonably available. Unless otherwise expressly provided in this Lease Indenture, any income realized as a result of any such investment, net of the Security Agent's reasonable fees and expenses in making such investment, shall be held and applied by the Security Agent in the same manner as the principal amount of such investment is to be applied, and any losses, net of earnings and such reasonable fees and expenses, shall be charged against the principal amount invested. The Security Agent shall not be liable for any loss resulting from any investment required to be made by it under this Lease Indenture other than by reason of its willful misconduct or gross negligence as determined by a court of competent jurisdiction in receiving, handling or disbursing funds, and any such investment may be sold (without

regard to its maturity) by the Security Agent without instructions whenever it reasonably believes such sale is necessary to make a distribution required by this Lease Indenture.

ARTICLE IV
REDEMPTION AND PREPAYMENT

SECTION 4.1 NOTICES TO LEASE INDENTURE TRUSTEE

If the Owner Lessor elects to redeem Lessor Notes pursuant to the redemption provisions of Section 4.7 or 4.8 hereof, it shall furnish to the Lease Indenture Trustee, the Security Agent, and for so long as the Bonds are outstanding, the Bondholder Trustee at least 30 days but not more than 60 days before a redemption date, an Officer's Certificate setting forth (i) the clause of this Lease Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Lessor Notes to be redeemed and (iv) the redemption price.

SECTION 4.2 SELECTION OF LESSOR NOTES TO BE REDEEMED

If less than all of the Lessor Notes are to be redeemed at any time, the Lease Indenture Trustee shall select the Lessor Notes to be redeemed among the Noteholders of the Lessor Notes in compliance with the requirements of the principal national securities exchange, if any, on which the Lessor Notes are listed or, if the Lessor Notes are not so listed, on a *pro rata* basis, between the Series A Lessor Notes and the Series B Lessor Notes. In the event of partial redemption, the particular Lessor Notes to be redeemed shall be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption date by the Lease Indenture Trustee from the outstanding Lessor Notes not previously called for redemption.

The Lease Indenture Trustee shall promptly notify the Owner Lessor and the Security Agent of the Lessor Notes selected for redemption and, in the case of any Lessor Note selected for partial redemption, the principal amount thereof to be redeemed. Lessor Notes and portions of Lessor Notes selected shall be in amounts of $100,000 or whole multiples of $1,000 in excess thereof; except that if all of the Lessor Notes of a Noteholder are to be redeemed, the entire outstanding amount of Lessor Notes held by such Noteholder, even if not in the amount of $100,000 or a multiple of $1,000 in excess thereof, shall be redeemed. Except as provided in the preceding sentence, provisions of this Lease Indenture that apply to Lessor Notes called for redemption also apply to portions of Lessor Notes called for redemption.

SECTION 4.3 NOTICE OF REDEMPTION

At least 30 days but not more than 60 days before a redemption date, the Owner Lessor shall mail or cause to be mailed, by first class mail, a notice of redemption to each Noteholder whose Lessor Notes are to be redeemed at its registered address and, for as long as the Bonds are outstanding, the Bondholder Trustee and each holder of the Bonds corresponding to the tenor and the principal amount of the Lessor Notes being redeemed.

The notice shall identify the Lessor Notes to be redeemed and shall state:

(a) the redemption date;

(b) the redemption price;

(c) if any Lessor Note is being redeemed in part, the portion of the principal amount of such Lessor Note to be redeemed and that, after the redemption date upon surrender of such Lessor Note, a new Lessor Note or Lessor Notes in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Lessor Note;

(d) the name and address of the Paying Agent;

(e) that Lessor Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Owner Lessor defaults in making such redemption payment, interest on Lessor Notes called for redemption ceases to accrue on and after the redemption date;

(g) the paragraph of the Lessor Notes and/or Section of this Lease Indenture pursuant to which the Lessor Notes called for redemption are being redeemed; and

(h) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Lessor Notes.

At the Owner Lessor's request, the Lease Indenture Trustee shall give the notice of redemption in the Owner Lessor's name and at its expense; *provided, however*, that the Owner Lessor shall have delivered to the Lease Indenture Trustee, at least 45 days prior to the redemption date (or such shorter time period acceptable to the Lease Indenture Trustee), an Officer's Certificate requesting that the Lease Indenture Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

SECTION 4.4 EFFECT OF NOTICE OF REDEMPTION

Once notice of redemption is mailed in accordance with Section 4.3 hereof, Lessor Notes (and the Bonds corresponding to the tenor and principal amount of such Lessor Notes) called for redemption become irrevocably due and payable on the redemption date at the redemption price. A notice of redemption may not be conditional.

SECTION 4.5 DEPOSIT OF REDEMPTION PRICE

One Business Day prior to the redemption date, the Security Agent shall deposit with the Lease Indenture Trustee or with the Paying Agent into the Lessor Notes Payment Account money sufficient to pay the redemption price of and accrued interest on all Lessor Notes to be redeemed on that date. The Lease Indenture Trustee or the Paying Agent shall promptly return to the Owner Lessor any money deposited with the Lease Indenture Trustee or the Paying Agent by the Owner Lessor in excess of the amounts necessary to pay the redemption price of, and accrued interest on, all Lessor Notes to be redeemed.

If the Owner Lessor complies with the provisions of the preceding paragraph, on and after the redemption date, interest shall cease to accrue on the Lessor Notes or the portions of Lessor Notes called for redemption. If a Lessor Note is redeemed on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest shall be paid to the Person in whose name such Lessor Note was registered at the close of business on such record date. If any Lessor Note called for redemption shall not be so paid upon surrender for redemption because of the failure of the Owner Lessor to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Lessor Notes and in Section 5.1 hereof.

SECTION 4.6 LESSOR NOTES REDEEMED IN PART

Upon surrender of a Lessor Note that is redeemed in part, the Owner Lessor shall issue and, upon receipt of an Authentication Order, the Lease Indenture Trustee shall authenticate for the Noteholder at the expense of the Owner Lessor a new Lessor Note equal in principal amount to the unredeemed portion of the Lessor Note surrendered.

SECTION 4.7 OPTIONAL REDEMPTION

The Lessor Notes shall be subject to optional redemption at any time at a Redemption Price equal to the outstanding principal amount of the Lessor Notes to be redeemed plus all accrued and unpaid interest thereon to the Redemption Date, plus the Make-Whole Premium, if any.

SECTION 4.8 MANDATORY REDEMPTION

The Lessor Notes will be subject to mandatory redemption upon the occurrence of a Recovery Event with respect to the Facility, other than with respect to amounts received by the Owner Lessor in connection with a Recovery Event for which the Facility Lessee elects to restore or replace the asset or assets in respect of which such Recovery Event occurred and a Reinvestment Notice is provided by the Facility Lessee to the Owner Participant, the Collateral Agent and the Lease Indenture Trustee within 45 days of such Recovery Event (provided that, with respect to any Recovery Event of $50 million or more, the Independent Engineer shall have certified as to the reasonableness, in light of Prudent Industry Practice, of the Facility Lessee's repair and replacement plans as set forth in the Facility Lessee's Reinvestment Notice relating to such Recovery Event). Any mandatory redemption of the Lessor Notes will be without premium or penalty at a Redemption Price equal to the unpaid principal amount thereof plus accrued and unpaid interest thereon to the Redemption Date.

ARTICLE V
COVENANTS

SECTION 5.1 PAYMENT OF LESSOR NOTES

The Owner Lessor hereby covenants and agrees as follows:

(a) The Owner Lessor will duly and punctually pay the principal of and interest on and other amounts (including any Make-Whole Premium) due under the Lessor Notes and this Lease Indenture in accordance with the terms hereof and thereof and all amounts payable by it to the Lease Indenture Trustee, the Noteholders and the Debt Service Reserve Letter of Credit Secured Parties, as applicable, under any other Operative Document. Principal, premium, if any, and interest shall be considered paid on the date due if the Security Agent holds as of 10:00 A.M. Eastern time on the due date, money deposited by, or at the direction of the Owner Lessor, in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due;

(b) The Owner Lessor shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Code) on overdue principal at the rate equal to 1% per annum in excess of the then applicable interest rate on the Lessor Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Code) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

(c) In the event that the Independent Manager of the Owner Lessor shall have actual knowledge of a Lease Indenture Event of Default or a Lease Indenture Default, the Owner Lessor will give prompt written notice of such Lease Indenture Event of Default or Lease Indenture Default to the Facility Lessee, the Owner Participant, the Lease Indenture Trustee (and the Lease Indenture Trustee shall thereupon promptly deliver a copy of such notice to each Noteholder and the Security Agent); and

(i) in the event that an Authorized Officer of the Owner Lessor shall have actual knowledge of an Event of Loss, then, to the extent that the Facility Lessee is not required, pursuant to the Facility Lease, to give notice of such event to the Lease Indenture Trustee and the Security Agent, the Owner Lessor will give prompt written notice of such Event of Loss to the Lease Indenture Trustee (and the Lease Indenture Trustee shall thereupon promptly deliver a copy of such notice to each Noteholder) and the Security Agent; and

(ii) the Owner Lessor will furnish to the Lease Indenture Trustee and the Security Agent true and correct duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to the Owner Lessor under the Facility Lease, to the extent that the same shall not have been (or are not required to be) furnished to the Lease

Indenture Trustee, the Noteholders, or the Security Agent pursuant to the Facility Lease or the Participation Agreement.

(d) Except as contemplated by the Operative Documents, the Owner Lessor will not incur any Indebtedness or engage in any business activity except with the prior written consent of the Lease Indenture Trustee and acting on the instructions of the Required Holders.

SECTION 5.2 STAY, EXTENSION AND USURY LAWS

The Owner Lessor covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Lease Indenture; and the Owner Lessor (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Security Agent or the Lease Indenture Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 5.3 PAYMENTS FOR CONSENT

The Owner Lessor shall not directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Noteholder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Lease Indenture or the Lessor Notes unless such consideration is offered to be paid or is paid to all Noteholders of the Lessor Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

SECTION 5.4 DEBT SERVICE RESERVE ACCOUNT

The Owner Lessor shall establish and, so long as any Lessor Notes and Bonds remain outstanding, maintain with the Security Agent the Debt Service Reserve Account (the "*Debt Service Reserve Account*"). On the Closing Date and on any date on which a payment is made pursuant to Section 6.9 of the Participation Agreement, the Debt Service Reserve Amount on such date of determination will be 100% of the projected debt service on the Lessor Notes for the succeeding six-month period, and may be satisfied by one or a combination of the following: (i) cash or (ii) a letter of credit issued by a bank or trust company that constitutes Acceptable Credit Support. The Security Agent is hereby authorized to withdraw funds from the Debt Service Reserve Account or draw on such letter of credit to make any payments, to the extent the amounts on deposit in the Note Accounts are insufficient, due to the Noteholders in the manner provided in Article III hereof. Withdrawal of funds from the Debt Service Reserve Account or a draw on such letter of credit issued pursuant to this Section 5.4 following a Lease Event of Default resulting from failure to pay any Basic Lease Rent or Supplemental Lease Rent when due, shall be deemed to be an exercise by the Owner Lessor of its rights under Section 7.2 hereof (other than clause (i) of the last proviso of the last sentence of Section 7.2). Any deposit made by the Owner Lessor into the Debt Service Reserve Account and any reinstatement of the Debt Service Reserve Letter of Credit other than in connection with the payment by the Facility Lessee of the related overdue Rent shall be deemed to be an exercise by the Owner Lessor of its rights under Section 7.2 hereof for purposes of clause (i) of the last proviso of the last sentence of Section 7.2.

ARTICLE VI
SUCCESSORS

SECTION 6.1 LIMITATION ON MERGER, CONSOLIDATION AND SALE OF SUBSTANTIALLY ALL ASSETS

The Owner Lessor shall not, directly or indirectly, consolidate or merge with or into any other person (whether or not the Owner Lessor is the surviving corporation), or sell, assign, convey, lease, transfer or otherwise dispose of, all or substantially all of its properties or assets in one or a series of transactions, to any Person or Persons.

ARTICLE VII
LEASE INDENTURE EVENTS OF DEFAULT

SECTION 7.1 LEASE INDENTURE EVENTS OF DEFAULT

"*Lease Indenture Event of Default*" means any of the following events (whatever the reason for such Lease Indenture Event of Default and whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

(a) any Lease Event of Default (other than with respect to (x) a Rent Default Event, (y) Excepted Payments unless the Facility Lease has been declared in default by the Owner Lessor or (z) the failure of the Facility Lessee to maintain insurance in the amounts and on the terms set forth in the Operative Documents so long as the insurance actually maintained by the Facility Lessee is in accordance with Prudent Industry Practice, so long as such Lease Event of Default is waived by the Owner Lessor and the Owner Participant) shall have occurred and be continuing; or

(b) default of the Owner Lessor in the payment when due of any (i) payment of principal of, premium (including, without limitation, Make-Whole Premium), if any, or interest on, or any scheduled fees within 5 Business Days after the same shall become due or (ii) other amounts due and payable by the Owner Lessor under or with respect to, any Lessor Note and such failure shall continue for thirty days after receipt by the Owner Lessor of written demand therefore from the Security Agent; or

(c) any material representation or warranty made by the Owner Participant or the Owner Lessor in this Lease Indenture or in any other Operative Document to which it is a party shall prove to have been inaccurate when made or deemed made in any material respect or by any OP Guarantor in its OP Guaranty (provided the OP Guaranty shall not have been terminated or released), as the case may be, and such misrepresentation or breach of warranty remains material and shall not have been corrected within a period of 30 days following written notice thereof being given to the Owner Lessor and the Owner Participant or such OP Guarantor, as the case may be, by any Noteholder (through the Lease Indenture Trustee); provided that, if such misrepresentation or breach of warranty is capable of correction but cannot with diligence be corrected within such 30-day period, such failure will not constitute a Lease Indenture Event of Default so long as the party whose representation or warranty was inaccurate promptly institutes corrective action within such 30-day period and diligently pursues such corrective action (but in no event shall the total period permitted to correct such misrepresentation or breach of warranty extend beyond 120 days from the date such notice was provided); or

(d) any failure (i) by the Owner Lessor to observe, perform or comply with the provisions of any material covenant or obligation of the Owner Lessor contained in this Lease Indenture or in any Operative Document to which it is a party (other than as provided in clause (a) above) in any material respect or (ii) by the Owner Participant to observe or perform any material covenant or obligation of the Owner Participant contained in any Operative Document (other than the Tax Indemnity

Agreement) to which it is a party or (iii) by any OP Guarantor to observe or any material covenant or obligation of such OP Guarantor contained in any OP Guaranty (provided the OP Guaranty shall not have been terminated or released); and such covenant remains material and such failure shall not have been cured within a period of 30 days following written notice thereof being given to the Owner Lessor and the Owner Participant, as the case may be, by any Noteholder (through the Lease Indenture Trustee); provided that, if such failure is capable of cure but cannot with diligence be cured within such 30-day period, such failure will not constitute a Lease Indenture Event of Default so long as the party failing to observe or perform such covenant promptly institutes corrective action within such 30-day period and diligently pursues such corrective action (but in no event shall the total period permitted to cure such failure extend beyond 180 days from the date such notice was provided); or

(e) the Owner Participant, any OP Guarantor (provided the OP Guaranty shall not have been terminated or released) or the Owner Lessor shall (i) voluntarily commence any proceeding or file any petition seeking relief under Bankruptcy Code or any other federal, state or foreign

bankruptcy, insolvency or similar law, (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for the Owner Lessor, such OP Guarantor (provided the OP Guaranty shall not have been terminated or released) the Owner Participant or any substantial part of the property of any of the foregoing, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due, or (vii) take corporate action for the purpose of effecting any of the foregoing; or

(f) an involuntary proceeding is commenced or an involuntary petition is filed in a court of competent jurisdiction seeking (i) relief in respect of the Owner Participant, any OP Guarantor (provided the OP Guaranty shall not have been terminated or released) or the Owner Lessor under Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency or similar law now or hereafter in effect, (ii) the appointment of a receiver, Lease Indenture Trustee, custodian, sequestrator or similar official for the Owner Participant, such OP Guarantor (provided the OP Guaranty shall not have been terminated or released) or the Owner Lessor or any substantial part of the property of the foregoing or (iii) the winding-up or liquidation of the Owner Participant, such OP Guarantor (provided the OP Guaranty shall not have been terminated or released) or the Owner Lessor and such proceeding or petition continues undismissed for 60 days or an order or decree approving or ordering any of the foregoing continues unstayed and in effect for 60 days; or

(g) If Owner Lessor shall give any notice pursuant to 42 Pa.C.S. §8143(c) or otherwise to terminate the operation of the Mortgage as security for future advances or future obligations made or incurred after the date the Lease Indenture Secured Parties receive such notice, or Owner Lessor shall take any other similar action for the purpose of limiting or attempting to limit the operation of the Mortgage as such security.

SECTION 7.2 CERTAIN RIGHTS TO CURE

In the event of any Lease Indenture Event of Default triggered by a Lease Event of Default that arises in connection with the payment of any installment of Basic Lease Rent or Supplemental Lease Rent (other than with respect to Excepted Payments) due under the Facility Lease, the Owner Lessor or the Owner Participant may, but shall not be obligated to, within ten Business Days (but with respect to a default in the payment of Basic Lease Rent in no event more than 15 days after the related Rent Payment Date), after receipt by the Owner Lessor and Owner Participant of written notice of the occurrence of such Lease Default or Lease Event of Default, without the consent or concurrence of the Security Agent, the Lease Indenture Trustee or any Noteholder, pay, as provided in Section 2.11 hereof, for application in accordance with Section 3.1 hereof, the principal of, interest on and other

amounts payable under or in respect of, the Lessor Notes as shall then be due and payable on the Lessor Notes (without giving effect to any acceleration pursuant to Section 7.3 hereof). If any other Lease Default or other Lease Event of Default that gives rise to a Lease Indenture Event of Default occurs and the Owner Lessor shall have been furnished (by or for the account of the Owner Participant) with all funds necessary for remedying such Lease Default or Lease Event of Default, the Owner Participant may, within ten Business Days after the earlier of (a) receipt by the Owner Participant of written notice of or (b) the Owner Participant acquiring actual knowledge of the occurrence of such Lease Event of Default, without the consent or concurrence of the Security Agent, the Lease Indenture Trustee or any Noteholder, instruct the Owner Lessor to exercise the Owner Lessor's rights under Section 20 of the Facility Lease to perform such obligation on behalf of the Facility Lessee. Solely for the purpose of determining whether there exists a Lease Indenture Event of Default, (a) any payment by the Owner Participant or the Owner Lessor pursuant to, and in compliance with, the first sentence of this Section 7.2 shall be deemed to remedy (for purposes of this Lease Indenture only) any Lease Default or Lease Event of Default in the payment of installments of Basic Lease Rent theretofore due and payable and to remedy any default by the Owner Lessor in the payment of any amount due and payable under the Lessor Notes or hereunder, and (b) any performance by the Owner Lessor of any obligation of the Facility Lessee under the Facility Lease pursuant to, and in compliance with, the second sentence of this Section 7.2 shall be deemed to remedy (for purposes of this Lease Indenture) any Lease Default or Lease Event of Default to the same extent that like performance by the Facility Lessee itself would have remedied such Lease Event of Default (but any such payment or performance shall not relieve the Facility Lessee of its duty to pay all Rent and perform all of its

obligations pursuant to the Facility Lease). If, on the basis specified in the preceding sentence, such Lease Default or Lease Event of Default shall have been remedied, then any determination that the Facility Lease, and any declaration pursuant to this Lease Indenture that the Lessor Notes are due and payable or that a Lease Indenture Default or Lease Indenture Event of Default exists hereunder, based upon such Lease Default or Lease Event of Default, shall be deemed to be rescinded, and the Owner Participant shall (to the extent of any such payments made by or for the account of the Owner Lessor) be subrogated to the rights of the Noteholders hereunder to receive such payment of Rent from the Facility Lessee (and the payment of interest on account of such Rent from the Facility Lessee being overdue), and shall be entitled, so long as no other Lease Indenture Event of Default shall have occurred or would result therefrom, to receive and retain such payment from the Facility Lessee; provided, however, that the Owner Participant shall not, so long as this Lease Indenture shall not have terminated, otherwise attempt to recover any such amount paid by it or for its account on behalf of the Facility Lessee pursuant to this Section 7.2 except by demanding of the Facility Lessee payment of such amount or by commencing an action at law and obtaining and enforcing a judgment against the Facility Lessee for the payment of such amount or taking appropriate action in a pending action at law against the Facility Lessee and the Owner Participant will not obtain any lien on any part of the Indenture Estate on account of such payment nor will any claim of the Owner Participant against the Facility Lessee or any other party for the repayment thereof impair the prior right and security interest of the Lease Indenture Secured Parties in and to the Indenture Estate, as the case may be; provided, further, however, that

(i) this Section 7.2 shall not apply with respect to any cure of any default in the payment of Basic Lease Rent if such cure shall have previously been effected with respect to (A) four (4) consecutive payments of Basic Lease Rent immediately preceding the date of such default, or (B) more than eight (8) payments of Basic Lease Rent;

(ii) neither the Owner Lessor nor the Owner Participant shall (without a Notice of Action) have the right to cure any Lease Event of Default except as specified in this Section 7.2; and

(iii) until the expiration of the period during which the Owner Lessor shall be entitled to exercise rights under the first and second sentence of this Section 7.2 with respect to any failure by

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the Facility Lessee referred to therein, neither the Lease Indenture Trustee and the Security Agent nor any Lease Indenture Secured Party shall take or commence any action it would otherwise be entitled to take or commence as a result of such failure by the Facility Lessee, whether under this Section 7 or Section 17 of the Facility Lease or otherwise.

SECTION 7.3 ACCELERATION

If any Lease Indenture Event of Default (other than a Lease Indenture Event of Default specified in clause (e) or (f) of Section 7.1 hereof with respect to the Owner Lessor) occurs and is continuing, the Security Agent may, and upon written direction of the Noteholders of at least $33^{1}/_{3}\%$ (in the case of any Lease Indenture Event of Default specified in clause (b) of Section 7.1 hereof) or 50% (in the case of any other Lease Indenture Event of Default) in principal amount of the then outstanding Lessor Notes shall, declare, by written notice to the Owner Lessor, all the Lessor Notes to be due and payable immediately. Notwithstanding the foregoing, if a Lease Indenture Event of Default specified in clause, (e) or (f) of Section 7.1 hereof occurs with respect to the Owner Lessor, all outstanding Lessor Notes shall be due and payable without further action or notice. Noteholders may not enforce this Lease Indenture or the Lessor Notes except as provided in this Lease Indenture. The Lease Indenture Trustee may withhold from Noteholders a notice of any continuing Lease Indenture Default or Lease Indenture Event of Default (except a Lease Indenture Default or Lease Indenture Event of Default relating to the payment of principal or interest) if it determines that withholding notice is in their best interest. The Noteholders of $66^{2}/_{3}\%$ in aggregate principal amount of the then outstanding Lessor Notes by notice to the Security Agent may on behalf of all Noteholders rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Lease Indenture Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

The Noteholders of a majority (or $66^{2}/_{3}\%$ in case of a Lease Indenture Event of Default triggered by a Lease Event of Default specified in clause (d)(i) of Section 16 of the Facility Lease, for non-compliance with Section 6.1 of the Participation Agreement) in aggregate principal

amount of the Lessor Notes then outstanding by notice to the Lease Indenture Trustee may on behalf of the Noteholders of all of the Lessor Notes waive any existing Lease Indenture Lease Indenture Default or Lease Indenture Event of Default and its consequences under this Lease Indenture except (i) a continuing Lease Indenture Default or Lease Indenture Event of Default in the payment of principal of, premium, if any, or interest on, the Lessor Notes (including in connection with an offer to purchase) and (ii) a Lease Indenture Event of Default specified in clause (e) or (f) of Section 7.1 hereof.

SECTION 7.4 OTHER REMEDIES

(a) If a Lease Indenture Event of Default shall have occurred and so long as the same shall be continuing unremedied the Security Agent may, if not precluded by law or otherwise, exercise any or all of the rights and powers and pursue any and all remedies available to collect the payment of principal, premium, if any, or interest on the Lessor Notes including the remedies pursuant to this Section 7.4 and shall have and may exercise all of the rights and remedies of a secured party under any and all applicable laws, rules or regulations. It is understood and agreed that if a Lease Indenture Event of Default has occurred and is continuing by virtue of one or more Lease Events of Default the Security Agent shall not exercise foreclosure remedies under this Lease Indenture without exercising material remedies seeking to dispossess the Lessee under the Lease, unless exercising such remedies under the Facility Lease shall be prohibited at the time by law, governmental authority or court order, in which case the Security Agent shall not exercise foreclosure remedies under the Lease Indenture until the expiration of a period of one year from the commencement of such prohibition. For the avoidance of doubt, it is expressly understood and agreed that the above-described inability of the

Security Agent to exercise any right or remedy under the Facility Lease shall not prevent the Security Agent from exercising any of its other rights, powers and remedies under this Lease Indenture.

(b) Both the Owner Lessor, the Lease Indenture Trustee and the Security Agent irrevocably agree for the benefit of the Facility Lessee that neither of them will exercise any remedies on account of a Lease Event of Default resulting from a Rent Default Event other than (x) the Owner Lessor may at any time a Rent Default Event has occurred and is continuing, exercise the remedy set forth in Section 17.1(g) of the Facility Lease and (y) upon the Rent Default Remedy Date, the Owner Lessor may declare the Facility Lease in default and the Owner Lessor, or if the lien of this Lease Indenture has not terminated, the Security Agent may exercise all remedies. The Owner Lessor and the Security Agent irrevocably agree that the Facility Lessee is a third party beneficiary of this section 7.4(b).

SECTION 7.5 TAKING POSSESSION OF INDENTURE ESTATE

(a) Subject to the rights of the Owner Lessor and the Owner Participant under Sections 7.2 and 2.21 hereof, and unless a Lease Indenture Event of Default shall have occurred and be continuing and the Lessor Notes shall have been accelerated (and any such acceleration has not been rescinded) pursuant to Section 7.3 hereof, upon a Notice of Action, the Owner Lessor shall promptly execute and deliver or cause to be delivered to the Security Agent such instruments and other documents as the Required Lease Indenture Secured Parties may deem necessary or advisable to enable the Security Agent at such time or times and place or places as the Security Agent (acting upon a Notice of Action) may specify, to obtain possession of all or any part of the Indenture Estate to which the Lease Indenture Secured Parties shall at the time be entitled hereunder. If the Owner Lessor shall for any reason fail to execute and deliver or cause to be delivered such instruments and documents after such request by the Security Agent, the Security Agent (acting upon a Notice of Action) may (i) obtain a judgment conferring on the Security Agent the right to immediate possession and requiring the Owner Lessor to execute and deliver or cause to be delivered such instruments and documents to the Security Agent and the Owner Lessor hereby specifically consents to the entry of such judgment to the fullest extent it may lawfully do so, and (ii) to the extent permitted by law, pursue all or part of such Indenture Estate, as applicable, wherever it may be found, subject to Article XI of the Participation Agreement and Section 4.2 of the Facility Lease, if applicable. All expenses (including those of the Security Agent) of obtaining such judgment or of pursuing, searching for and taking such property shall, until paid, be secured by the lien of this Lease Indenture.

(b) Upon every such taking of possession in connection with a Lease Event of Default, the Security Agent (acting upon a Notice of Action) may, from time to time at the expense of the Indenture Estate, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Indenture Estate as the Required Lease Indenture Secured Parties may deem proper. In each such case, the Security Agent (acting upon a Notice of Action) or its designee shall have the right to maintain, use, operate, store, lease, control or manage the Indenture Estate and to carry on the business and to exercise all rights and powers of the Owner Lessor relating to the Indenture Estate, as the Required Lease Indenture Secured Parties shall deem best, including the right to enter into any and all such agreements with respect to the maintenance, insurance, use, operation, storage, leasing, control, management or disposition of the Indenture Estate or any part thereof as the Required Lease Indenture Secured Parties may determine; and the Security Agent shall be entitled to collect and receive directly all tolls, rents (including Rent), revenues, issues, income, products and profits constituting part of the Indenture Estate and every part thereof, except Excepted Payments, without prejudice, however, to the right of the Security Agent under any provision of this Lease Indenture to collect and receive all cash held by, or required to be deposited with, the Security Agent hereunder. Such tolls, rents (including Rent), revenues, issues, income, products and profits shall be applied to pay the expenses of use, operation, storage, subleasing, control, management or disposition of the Indenture Estate and of conducting the business thereof, and of all maintenance, repairs, replacements, alterations, additions and improvements, and to make all

payments which the Security Agent may be required or may elect (acting upon a Notice of Action) to make, if any, for taxes, assessments, insurance or other proper charges upon the Indenture Estate or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Owner Lessor), and all other payments which the Security Agent may be required or authorized to make under any provision of this Lease Indenture, as well as reasonable compensation for the services of the Lease Indenture Trustee and the Security Agent, and of all Persons properly engaged and employed by the Lease Indenture Trustee and the Security Agent.

SECTION 7.6 WAIVER OF PAST LEASE INDENTURE DEFAULTS

Upon any waiver of any existing Lease Indenture Default or Lease Indenture Event of Default pursuant to the second paragraph of Section 7.3, such Lease Indenture Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Lease Indenture; but no such waiver shall extend to any subsequent or other Lease Indenture Default or impair any right consequent thereon.

SECTION 7.7 CONTROL BY MAJORITY

The Required Lease Indenture Secured Parties may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Security Agent or exercising any trust or power conferred on it. However, the Security Agent may refuse to follow any direction that conflicts with law or this Lease Indenture or that the Security Agent determines may be unduly prejudicial to the rights of other Noteholders or the Debt Service Reserve Letter of Credit Secured Parties or that may involve the Security Agent in personal liability. The Security Agent may take any other action consistent with this Lease Indenture relating to any such direction.

SECTION 7.8 [RESERVED]

SECTION 7.9 RIGHTS OF HOLDERS OF LESSOR NOTES TO RECEIVE PAYMENT

Notwithstanding any other provision of this Lease Indenture but subject to Section 2.5, the right of any Noteholder, which is absolute and unconditional, to receive payment of principal, premium, if any, and interest on the Lessor Note, on or after the respective due dates expressed in the Lessor Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, or the obligation of the Owner Lessor, which is also absolute and unconditional, to pay the principal of, premium, if any, and interest on the Lessor Note to such Noteholder at the time and place set forth in the Lessor Note, shall not be impaired or affected without the consent of such Noteholder.

SECTION 7.10 COLLECTION SUIT BY LEASE INDENTURE TRUSTEE

If a Lease Indenture Event of Default specified in Section 6.1(a) occurs and is continuing, the Security Agent is authorized to recover judgment in its own name and as Lease Indenture Trustee of an express trust against the Owner Lessor for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Lessor Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, fees, expenses, disbursements and advances of the Security Agent, its agents and counsel.

SECTION 7.11 [RESERVED]

SECTION 7.12 NO ACTION CONTRARY TO THE FACILITY LESSEE'S RIGHTS UNDER THE FACILITY LEASE

Notwithstanding any other provision of any Operative Document, so long as the Facility Lease shall not have been declared (or deemed to have been declared) in default, the Security Agent shall

not take or cause to be taken any action contrary to the right of the Facility Lessee under the Facility Lease, including its rights, as between the Facility Lessee and the Owner Lessor, to quiet use and possession of the Undivided Interest under the Facility Lease.

ARTICLE VIII
LEASE INDENTURE TRUSTEE AND SECURITY AGENT

SECTION 8.1 DUTIES OF LEASE INDENTURE TRUSTEE AND SECURITY AGENT

(a) If a Lease Indenture Event of Default has occurred and is continuing, the Security Agent and the Lease Indenture Trustee shall exercise such of the rights and powers vested in it by this Lease Indenture, and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of a Lease Indenture Event of Default:

(i) the duties of each of the Lease Indenture Trustee and the Security Agent shall be determined solely by the express provisions of this Lease Indenture and the Lease Indenture Trustee and the Security Agent need perform only those duties that are specifically set forth in this Lease Indenture and no others, and no implied covenants or obligations shall be read into this Lease Indenture against the Lease Indenture Trustee or the Security Agent; and

(ii) in the absence of bad faith on its part, the Lease Indenture Trustee or the Security Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Lease Indenture Trustee or the Security Agent and conforming to the requirements of this Lease Indenture. However, the Lease Indenture Trustee and the Security Agent shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Lease Indenture.

(c) The Lease Indenture Trustee nor the Security Agent may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section;

(ii) the Lease Indenture Trustee nor the Security Agent shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Lease Indenture Trustee or the Security Agent was negligent in ascertaining the pertinent facts; and

(iii) the Lease Indenture Trustee and the Security Agent shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 7.7 hereof.

(d) Whether or not therein expressly so provided, every provision of this Lease Indenture that in any way relates to the Lease Indenture Trustee or the Security Agent is subject to paragraphs (a), (b), (c), (e) and (f) of this Section.

(e) No provision of this Lease Indenture shall require the Lease Indenture Trustee nor the Security Agent to expend or risk its own funds or incur any liability. The Lease Indenture Trustee and the Security Agent shall be under no obligation to exercise any of its rights and powers under this Lease Indenture at the request or direction of any Noteholders, unless such Noteholder shall have offered and, if requested, provided to the Lease Indenture Trustee security and indemnity satisfactory to it against any loss, liability or expense.

(f) The Lease Indenture Trustee shall not be liable for interest on any money received by it except as the Lease Indenture Trustee or the Security Agent may agree in writing with the Owner Lessor. Money held in trust by the Lease Indenture Trustee or the Security Agent need not be segregated from other funds except to the extent required by law.

SECTION 8.2 RIGHTS OF LEASE INDENTURE TRUSTEE

(a) The Lease Indenture Trustee or the Security Agent may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Lease Indenture Trustee and the Security Agent need not investigate any fact or matter stated in the document, but the Lease Indenture Trustee nor the Security Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and if the Lease Indenture Trustee or the Security Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Owner Lessor personally or by agent or attorney.

(b) Before the Lease Indenture Trustee or the Security Agent acts or refrains from acting, it may require a Manager's Certificate or an Opinion of Counsel or both. The Lease Indenture Trustee or the Security Agent shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Lease Indenture Trustee or the Security Agent may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Lease Indenture Trustee or the Security Agent may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Lease Indenture Trustee or the Security Agent shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Lease Indenture.

(e) Unless otherwise specifically provided in this Lease Indenture, any demand, request, direction or notice from the Owner Lessor shall be sufficient if signed by the Independent Manager of the Owner Lessor.

(f) The Lease Indenture Trustee or the Security Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Lease Indenture at the request or direction of any of the Lease Indenture Secured Parties unless such Lease Indenture Secured Parties shall have offered and, if requested, provided to the Lease Indenture Trustee or the Security Agent reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(g) No permissive right of the Lease Indenture Trustee or the Security Agent to act hereunder shall be construed as a duty.

(h) Whenever in the administration of this Lease Indenture the Lease Indenture Trustee or the Security Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Lease Indenture Trustee or the Security Agent (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers Certificate, an Opinion of Counsel, or both.

SECTION 8.3 INDIVIDUAL RIGHTS OF SECURITY AGENT

The Security Agent in its individual or any other capacity may become the owner or pledgee of Lessor Notes and may otherwise deal with the Owner Lessor or any Affiliate of the Owner Lessor with the same rights it would have if it were not the Security Agent. However, in the event that the Security Agent acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as Lease Indenture Trustee or resign. Any Agent may do the same with like rights and duties. The Security Agent is also subject to Sections 8.10 and 8.11 hereof.

SECTION 8.4 LEASE INDENTURE TRUSTEE'S DISCLAIMER

The Lease Indenture Trustee or the Security Agent shall not be responsible for and makes no representation as to the validity or adequacy of this Lease Indenture or the Lessor Notes; they shall not be accountable for the Owner Lessor's use of the proceeds from the Lessor Notes or any money paid to the Owner Lessor or upon the Owner Lessor's direction under any provision of this Lease Indenture; they shall not be responsible for the use or application of any money received by any Paying Agent other than the Lease Indenture Trustee, and they shall not be responsible for any statement or recital herein or any statement in the Lessor Notes or any other document in connection with the sale of the Lessor Notes or pursuant to this Lease Indenture other than its certificate of authentication.

SECTION 8.5 NOTICE OF LEASE INDENTURE DEFAULTS

If a Lease Indenture Default or a Lease Indenture Event of Default occurs and is continuing and if the Lease Indenture Trustee receives written notice thereof, the Lease Indenture Trustee shall (at the expense of the Owner Lessor) mail to Noteholders a notice of the Lease Indenture Default or Lease Indenture Event of Default within 90 days after it occurs. Except in the case of a Lease Indenture Default or Lease Indenture Event of Default in payment of principal of, premium, if any, or interest on any Lessor Note, the Lease Indenture Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Noteholders of the Lessor Notes.

SECTION 8.6 GENERAL AUTHORITY OF THE SECURITY AGENT OVER THE INDENTURE ESTATE

Each Lease Indenture Secured Party hereby irrevocably constitutes and appoints, effective after the occurrence and during the continuance of a Lease Indenture Event of Default, the Security Agent and any officer or agent thereof, with full power of substitution as among such officers and agents, as its true and lawful attorney-in-fact with full power and authority in the name of such Lease Indenture Secured Party or in its own name, from time to time in the Security Agent's reasonable discretion to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of the Lease Indenture (but subject to the terms hereof and thereof) and to accomplish the purposes hereof and thereof; and, without limiting the generality of the foregoing, each Lease Indenture Secured Party hereby gives the Security Agent, during any Lease Indenture Event of Default or Lease Indenture Default, the power and right on behalf of such Lease Indenture Secured Party, without notice to or further assent by such Lease Indenture Secured Party, to: (i) ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due upon, or in connection with, the Indenture Estate; (ii) receive, take, endorse, assign and deliver any and all checks, notes, drafts, acceptances, documents and other negotiable and non-negotiable instruments taken or received by the Security Agent as, or in connection with, the Indenture Estate, (iii) commence, prosecute, defend, settle, compromise or adjust any claim, suit, action or proceeding with respect to, or in connection with, the Indenture Estate; (iv) sell, transfer, assign or otherwise deal in or with the Indenture Estate or any part thereof as fully and effectively as if the

Security Agent were the absolute owner thereof; (v) exercise all remedies provided for by the Lease Indenture; and (vi) do, at its option and at the expense and for the account of such Lease Indenture Secured Party, at any time or from time to time, all acts and things which the Security Agent reasonably deems necessary to perfect the liens and security interests of the Security Agent in the Indenture Estate, to protect or preserve the Indenture Estate and to realize upon the Indenture Estate in each case is accordance with the terms hereof. Each Lease Indenture Secured Party hereby ratifies all that said attorneys-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

SECTION 8.7 COMPENSATION

The Owner Lessor agrees to pay to the Lease Indenture Trustee and the Security Agent from time to time compensation as agreed upon by the Lease Indenture Trustee and the Security Agent and the Owner Lessor, and, in the absence of any such agreement, reasonable compensation for its acceptance of this Lease Indenture and services hereunder. The Lease Indenture Trustee's and the Security Agent's compensation shall not be limited by any law on compensation of a Lease Indenture Trustee of an express trust.

To secure the Owner Lessor's payment obligations in this Section, the Lease Indenture Trustee and the Security Agent shall have a lien prior to the Lessor Notes on all money or property held or collected by the Lease Indenture Trustee or the Security Agent, except that held in trust to pay principal and interest on particular Lessor Notes.

When the Lease Indenture Trustee or the Security Agent incurs expenses or renders services after a Lease Indenture Event of Default specified in Section 7.1(e) or (b) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Code.

SECTION 8.8 REPLACEMENT OF LEASE INDENTURE TRUSTEE

A resignation or removal of the Lease Indenture Trustee or the Security Agent and appointment of a successor Lease Indenture Trustee or Security Agent shall become effective only upon the successor Lease Indenture Trustee's acceptance of appointment as provided in this Section.

The Lease Indenture Trustee or the Security Agent may resign in writing at any time and be discharged from the trust hereby created by so notifying the Owner Lessor. The Noteholders of a majority in principal amount of the then outstanding Lessor Notes may remove the Lease Indenture Trustee or the Security Agent by so notifying the Lease Indenture Trustee or the Security Agent and the Owner Lessor in writing. The Owner Lessor may by a Board Resolution remove the Lease Indenture Trustee or the Security Agent if:

(a) the Lease Indenture Trustee or the Security Agent fails to comply with Section 8.10 hereof;

(b) the Lease Indenture Trustee or the Security Agent is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Lease Indenture Trustee or the Security Agent under any Bankruptcy Code;

(c) a custodian or public officer takes charge of the Lease Indenture Trustee or Security Agent or either of its property; or

(d) the Lease Indenture Trustee or the Security Agent becomes incapable of acting as Lease Indenture Trustee hereunder.

If the Lease Indenture Trustee or the Security Agent resigns or is removed or if a vacancy exists in the office of Lease Indenture Trustee or the Security Agent for any reason, the Owner Lessor shall promptly appoint a successor Lease Indenture Trustee or Security Agent. Within one year after the successor Lease Indenture Trustee or Security Agent takes office, the Required Lease Indenture Secured Parties may appoint a successor Lease Indenture Trustee or Security Agent to replace the successor Lease Indenture Trustee or Security Agent appointed by the Owner Lessor.

If a successor Lease Indenture Trustee or Security Agent does not take office within 60 days after a vacancy exists in the office of the Lease Indenture Trustee or the Security, as applicable, the non-retiring Lease Indenture Trustee or Security Agent, as applicable, the Owner Lessor, the Noteholders of at least 10% in principal amount of the then outstanding Lessor Notes or any of the Debt Service Reserve Letter of Credit Secured Parties may petition any court of competent jurisdiction for the appointment of a successor Lease Indenture Trustee or Security Agent, as applicable.

If the Lease Indenture Trustee or Security Agent, as applicable, after receiving a written request by any Noteholder who has been a *bona fide* Noteholder for at least six months, fails to comply with Section 8.10, such Noteholder or any of the Debt Service Reserve Letter of Credit Secured Parties may petition any court of competent jurisdiction for the removal of the Lease Indenture Trustee or Security Agent, as applicable and the appointment of a successor Lease Indenture Trustee or Security Agent, as applicable.

A successor Lease Indenture Trustee or Security Agent, as applicable shall deliver a written acceptance of its appointment to the retiring Lease Indenture Trustee or Security Agent, as applicable and to the Owner Lessor. Thereupon, the resignation or removal of the retiring Lease Indenture Trustee shall become effective, and the successor Lease Indenture Trustee or Security Agent, as applicable shall have all the rights, powers and duties of the Lease Indenture Trustee or Security Agent, as applicable under this Lease Indenture. The successor Lease Indenture Trustee or Security Agent, as applicable shall mail a notice of its succession to the Noteholders. The retiring Lease Indenture Trustee or Security Agent, as applicable shall promptly transfer all property held by it as Lease Indenture Trustee or Security Agent, as applicable to the successor Lease Indenture Trustee or Security Agent, as applicable, *provided* all sums owing to the Lease Indenture Trustee or Security Agent, as applicable hereunder have been paid and subject to the lien provided for in Section 8.7 hereof. Notwithstanding replacement of the Lease Indenture Trustee or Security Agent pursuant to this Section 8.8, the Owner Lessor's obligations under Section 8.7 hereof shall continue for the benefit of the retiring Lease Indenture Trustee.

SECTION 8.9 SUCCESSOR LEASE INDENTURE TRUSTEE BY MERGER, ETC

If the Lease Indenture Trustee or Security Agent or any Agent of theirs consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Lease Indenture Trustee, Security Agent or Agent, as the case may be.

SECTION 8.10 ELIGIBILITY; DISQUALIFICATION

(a) There shall at all times be a Lease Indenture Trustee and a Security Agent hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that together with its direct parent, if any, or in the case of a corporation included in a bank holding company system, its related bank holding company, has a combined capital and surplus of at least $100 million as set forth in its most recent published annual report of condition.

SECTION 8.11 OTHER CAPACITIES

All references in this Lease Indenture to the Lease Indenture Trustee shall be deemed to refer to the Lease Indenture Trustee in its capacity as Lease Indenture Trustee and in its capacities as any Agent, to the extent acting in such capacities, and every provision of this Lease Indenture relating to the conduct or affecting the liability or offering protection, immunity or indemnity to the Lease Indenture Trustee shall be deemed to apply with the same force and effect to the Lease Indenture Trustee acting in its capacities as any Agent.

ARTICLE IX
SHARED RIGHTS

SECTION 9.1 CERTAIN RIGHTS OF OWNER LESSOR AND OWNER PARTICIPANT

(a) Notwithstanding any other provisions of this Lease Indenture other than Section 9.1 hereof, including the Granting Clause, the following rights (the "*Section 9.1 Rights*") shall be exercisable by the Owner Lessor or the Security Agent (acting upon a Notice of Action):

(i) at all times the Owner Lessor shall have the right, together with or independently of the Security Agent, (A) to receive from the Facility Lessee all notices, certificates, reports, filings, opinions of counsel and other documents and all information which the Facility Lessee is permitted or required to give or furnish to the Owner Lessor pursuant to any Operative Document, (B) to exercise inspection rights granted to the Owner Lessor pursuant to Section 12 of the Facility Lease, (C) to exercise, to the extent necessary to enable it to exercise its rights under Section 7.2 hereof, the rights of the Owner Lessor under Section 20 of the Facility Lease, (D) to request from the Facility Lessee such further documents or assurances, or request that the Facility Lessee take such further actions in respect of such party's interests, as shall be required to be delivered or taken by the Facility Lessee pursuant to Section 5.6 or 17.14 of the Participation Agreement and (E) to declare and give notice of a Lease Default or a Lease Event of Default pursuant to Section 17 of the Facility Lease; *provided*, *however*, that the rights excepted and reserved by this Section 9.1(a)(i) shall not be deemed to include the exercise of any remedies provided for in Section 17.1 of the Facility Lease (other than Section 17.1(g)), except that the Owner Lessor and the Owner Participant may proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Facility Lessee of the applicable covenants and terms of Excepted Payments but not proceed to terminate the Facility Lease;

(ii) so long as the Lessor Notes have not been accelerated pursuant to Section 7.3 hereof and the Security Agent shall not have commenced the exercise of remedies to dispossess the Facility Lessee of the Undivided Interest under this Lease Indenture, the Owner Lessor shall have the right, but not to the exclusion of the Security Agent and to the extent permitted by the Operative Documents and Requirements of Law, to (A) seek specific performance of the, covenants of the Facility Lessee under the Operative Documents relating to the protection, insurance, maintenance, possession, use and return of the Property Interest, (B) to provide such insurance as may be permitted by Section 11 of the Facility Lease and (C) to perform for the Facility Lessee as provided in Section 20 of the Facility Lease; and

(iii) so long as the Lessor Notes have not been accelerated pursuant to Section 7.3 hereof (or, if accelerated, such acceleration has theretofore been rescinded) and the Security Agent shall not have commenced the exercise of remedies to dispossess the Facility Lessee of the Undivided Interest under this Lease Indenture, neither the Owner Lessor nor the Security Agent shall have any right, without the prior consent of the other (A) to amend, supplement, modify or waive any return condition in Section 5 of the Facility Lease or to amend, supplement, modify, waive or replace the Reimbursement Agreement or the Ownership and Operation Agreement, or (B) to exercise any rights with respect to the Facility Lessee's use and operation, modification or maintenance of the Property Interest which the Facility Lease specifically confers on the Owner Lessor or to exercise any rights with respect to the use and operation, modification or maintenance of Owner Lessor under the Ownership and Operation Agreement, or (C) to exercise the Owner Lessor*s right under Section 22.4(b) of the Facility Lease to withhold or grant its consent to an assignment by the Facility Lessee of its rights under the Facility Lease; and

(b) Notwithstanding the foregoing provisions of this Section 9.1 but subject to Section 7.4(b) hereof, the Security Agent (acting upon a Notice of Action) shall at all times have the right to declare

the Facility Lease in default and to exercise the remedies set forth in Section 17.1 of the Facility Lease and in Section 7.4 and 7.5 hereof. Notwithstanding anything herein or in any other Operative Document to the contrary, so long as the Facility Lessee or any Affiliate of the Facility Lessee is a Noteholder or Owner Lessor, neither the Facility Lessee nor any such Affiliate, in its capacity as Noteholder or Owner

Lessor, shall have any rights to approve, consent to, vote on or ratify any action, inaction or determination taken or made or to be taken or made hereunder; provided, however, that this sentence shall not apply to the Facility Lessee or any such Affiliate with respect to those matters set forth in Section 10.2 hereof requiring the consent of all Noteholders.

(c) Notwithstanding any other provision of this Lease Indenture:

(i) The Owner Lessor shall at all times, to the exclusion of the Lease Indenture Trustee and the Security Agent, retain all rights (A) subject to the Lease Subordination Agreement (so long as it has not been terminated) in accordance with its terms, to demand and receive payment of, and to commence an action for payment of, Excepted Payments, but the Owner Lessor shall have no remedy or right with respect to any such payment against the Indenture Estate nor any right to collect any such payment by the exercise of any of the remedies under Section 17 of the Facility Lease; (B) except in connection with the exercise of remedies pursuant to the Facility Lease, to exercise the Owner Lessor*s rights relating to the Appraisal Procedure and to confer and agree with the Facility Lessee on Fair Market Rental Value, or any Renewal Lease Term; (C) retain all rights with respect to insurance that Section 11 of the Facility Lease specifically confers upon the Owner Lessor and to waive any failure by the Facility Lessee to maintain the insurance required by Section 11 of the Facility Lease before or after the fact so long as the insurance maintained by the Facility Lessee still constitutes Prudent Industry Practice; (D) to consent or withhold consent to (1) any change of control as provided in Section 6.1 of the Participation Agreement or Section 16.1(m) of the Facility Lease or (2) to sell, lease, convey or otherwise transfer its interest provided in Article 14 of the Participation Agreement, *provided that* such consent shall not be given if: (i) the Bonds are not rated at least BBB- by S&P, Baa3 by Moody's, and BBB by Duff & Phelps, and a reaffirmation of such ratings if obtained and (ii) the reduction of EME's interest in the facility Lessee has not been approved by more than $66^2/_3$ of the Noteholders; (E) to exercise remedies from time to time set forth in Section 17.1(g) of the Facility Lease; (F) to adjust Basic Lease Rent (or any component thereof), Allocated Rent, Lessor Section 467 Loan Balance, Lessee Section 467 Loan Balance, Lessor Section 467 Interest, Proportional Rent, Lessee Section 467 Interest and Termination Value as provided in Section 3.4 of the Facility Lease, Section 13 of the Participation Agreement or the Tax Indemnity Agreement; provided, however, that after giving effect to any such adjustment (x) the amount of Basic Lease Rent (exclusive of Component A thereof) payable on each Rent Payment Date shall be at least equal to the aggregate amount of all principal and accrued interest payable on such Rent Payment Date on all Lessor Notes then outstanding and (y) Termination Value (exclusive of any Component A thereof) shall in no event be less (when added to all other amounts required to be paid by the Facility Lessee in respect of any early termination of the Facility Lease other than any portion thereof that is Component A of Basic Lease Rent or an Excepted Payment) than an amount sufficient, as of the date of payment, to pay in full the principal of, and interest on all Lessor Notes outstanding on and as of such date of payment; and (G) to modify the provisions of Section 6.10 of the Participation Agreement, provided that such terms as modified are no more favorable than the provisions of Section 6.9 of the Participation Agreement;

(ii) So long as the Lessor Notes have not been accelerated pursuant to Section 7.3 hereof (or, if accelerated, such acceleration has theretofore been rescinded) or the Security Agent shall not have exercised any of its rights pursuant to Section 7 hereof to take possession of, foreclose, sell or otherwise take control of all or any part of the Indenture Estate, the Owner Lessor shall retain the right to the exclusion of the Security Agent to exercise the rights of the Owner Lessor under the

provisions of Section 10 (other than Section 10.3 and Section 10.5 thereof), 13, 14 and 15 of the Facility Lease; *provided*, *however*, that if a Lease Indenture Event of Default shall have occurred and be continuing, subject to Section 7.2, the Owner Lessor shall cease to retain such rights upon notice from the Security Agent (acting upon a Notice of Action) stating that such rights shall no longer be retained by the Owner Lessor.

SECTION 9.2 NO REPRESENTATIONS OR WARRANTIES AS TO THE PROPERTY INTEREST.

NONE OF THE OWNER LESSOR, THE OWNER MANAGER, THE TRUST COMPANY OR THE OWNER PARTICIPANT MAKES OR SHALL BE DEEMED TO HAVE MADE, AND EACH HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR

WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, WORKMANSHIP, COMPLIANCE WITH SPECIFICATIONS, CONDITION, DESIGN, QUALITY, DURABILITY, OPERATION, MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OF THE PROPERTY INTEREST OR ANY PART THEREOF, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, INCLUDING ANY ENVIRONMENTAL LIABILITY, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY INTEREST OR ANY PART THEREOF WHATSOEVER, except that the Owner Lessor warrants that on the Closing Date it shall have received such rights and interests that were conveyed to it with respect to the Property Interest pursuant to the Facility Deed, the Bill of Sale and the Facility Site Lease subject to the rights of the parties to this Lease Indenture and to Permitted Liens and Permitted Encumbrances, and the Trust Company warrants that on the Closing Date the Property Interest shall be free and clear of Owner Lessor Liens attributable to the Trust Company. None of the Owner Manager or the Trust Company makes or shall be deemed to have made any representation or warranty as to the validity, legality or enforceability of this Indenture, the Lessor LLC Agreement or the Lessor Notes or as to the correctness of any statement contained in any such document, except for the representations and warranties of the Owner Lessor, the Owner Manager or the Trust Company in its individual capacity made under this Lease Indenture or in the Participation Agreement.

ARTICLE X
SUPPLEMENTS AND AMENDMENTS TO THIS LEASE INDENTURE AND OTHER DOCUMENTS

SECTION 10.1 WITHOUT CONSENT OF NOTEHOLDERS OR REQUIRED NOTEHOLDERS.

Subject to the provisions of the Participation Agreement, at any time and from time to time, the Owner Lessor (but only on the written request of the Owner Participant) and the Lease Indenture Trustee may enter into any indenture or indentures supplemental hereto or execute any amendment, modification, supplement, waiver or consent with respect to any other Operative Document, without the consent of the Noteholders or the Required Lease Indenture Secured Parties for one or more of the following purposes:

(i) to correct, confirm or amplify the description of any property at any time subject to the lien on the Indenture Estate or to convey, transfer, assign, mortgage or pledge any property or assets to the Security Agent as security for the Lessor Notes;

(ii) to evidence the succession of another corporation as Owner Manager or the appointment of a co-manager in accordance with the terms of the Lessor LLC Agreement;

(iii) to add to the covenants of the Owner Lessor for the benefit of the Lease Indenture Secured Parties such further covenants, restrictions, conditions or provisions as the Owner Lessor and the Security Agent shall consider to be for the protection of the Noteholders of any series,

and to make the occurrence, or the occurrence and continuance, of a default in complying with any such additional covenant, restriction, condition or provision a Lease Indenture Event of Default permitting the enforcement of all or any of the several remedies provided in this Lease Indenture as herein set forth; in respect of any such additional covenant, restriction, condition or provision, such supplement may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such a Lease Indenture Event of Default or may limit the remedies available to the Security Agent upon such a Lease Indenture Event of Default or may limit the right of the Required Lease Indenture Secured Parties to waive such a Lease Indenture Event of Default;

(iv) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplement which may be defective or inconsistent with any other provision contained herein or in any supplement, or to add or modify such other provisions or agreements herein or in any other Operative Documents, in each case as the Owner Lessor may deem necessary or desirable, with

respect to matters or questions arising under this Lease Indenture; provided that no such action shall, in the reasonable judgment of the Security Agent, materially adversely affect the interests of the Lease Indenture Secured Parties of any series;

(v) to provide for any evidence of the creation and issuance of any Subsequent Lessor Notes of any series pursuant to, and subject to the conditions of, Section 2.6 and to establish the form and terms of such Subsequent Lessor Notes;

(vi) to effect an assumption of the Lessor Notes, as permitted by Section 2.21; *provided* that the supplemental indenture entered into to effect such assumption shall contain all of the covenants applicable to the Facility Lessee contained in the Facility Lease and the Participation Agreement for the benefit of the Lease Indenture Trustee, the Security Agent or the Lease Indenture Secured Parties, such that the Facility Lessee's obligations contained therein, to the extent they are applicable, will continue to be in full force and effect in the event the Facility Lease is terminated;

(vii) to evidence and provide for the removal of the Lease Indenture Trustee or Security Agent or the acceptance of appointment hereunder by a successor Lease Indenture Trustee or Security Agent with respect to the Lessor Notes as provided in Section 8.8;

(viii) to grant or confer upon the Lease Indenture Trustee or the Security Agent for the benefit of the Lease Indenture Secured Parties any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred upon the Lease Indenture Trustee or the Security Agent and which are not contrary to or inconsistent with this Lease Indenture;

(ix) subject to Section 10.2 with respect to the provisions of the Indenture Estate Documents referred to therein, to effect any other amendment, modification, supplement, waiver or consent with respect to any Indenture Estate Document; provided that no such action shall, in the judgment of the Security Agent, materially and adversely affect the interests of the Lease Indenture Secured Parties; *provided*, *however*, that no such amendment, modification, supplement, waiver or consent contemplated by this Section 10.1 shall, without the consent of the Required Lease Indenture Secured Parties, modify the provisions of Sections 5.4, 5.10, 6.1, 6.2, 6.3, 6.7 or 6.10 of the Participation Agreement or Sections 19.1, 22.4(b), 22.4(c) or 22.4(d) of the Facility Lease (other than any amendment, modification, supplement, waiver or consent having no adverse effect on the interests of the Lease Indenture Secured Parties).

(x) The Security Agent and the Lease Indenture Trustee is hereby authorized to join with the Owner Lessor in the execution of any such supplement, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance,

transfer, assignment, mortgage or pledge of any property or assets thereunder, but the Security Agent and the Lease Indenture Trustee shall not be obligated to enter into any such supplement which affects the Lease Indenture Trustee's or the Security Agent's own rights, duties or immunities under this Lease Indenture or otherwise.

SECTION 10.2 WITH CONSENT OF REQUIRED NOTEHOLDERS; LIMITATIONS.

Subject to the provisions of the Participation Agreement, at any time and from time to time, (i) the Owner Lessor (but only on the written request of the Owner Participant) and the Security Agent and the Lease Indenture Trustee (but only if so directed upon a Notice of Action to the extent that the same is not expressly permitted by Section 10.1), may execute a supplement or amendment hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Lease Indenture as specified in such request, (ii) the Owner Lessor (but only on the written request of the Owner Participant) and, except with respect to Excepted Payments, the Security Agent and the Lease Indenture Trustee (but only if so directed upon a Notice of Action to the extent that the same is not expressly permitted by Section 10.1), may enter into such written amendment of or supplement to any Indenture Estate Document as may be specified in such request and (iii) the Owner Lessor shall not revoke or otherwise terminate the Lessor LLC Agreement or, if such amendment or supplement would impair the rights of the Security Agent and the Lease Indenture Trustee or any Lease Indenture Secured Parties, amend or supplement the Lessor LLC Agreement; provided, however, that, without the consent of each Lease Indenture Secured Party affected, except with respect to Excepted Payments, no

such amendment of or supplement to any Indenture Estate Document, and no waiver or modification of the terms of any thereof, shall, except to the extent pertaining to the Excepted Payments,

(i) modify the definition of the term "Required Lease Indenture Secured Party" or reduce the percentage of Lease Indenture Secured Parties required to take or approve any action hereunder,

(ii) change the amount or the time of payment of any amount owing or payable under any Lessor Note or change the rate or manner of calculation of interest payable with respect to any Lessor Note, or make any Lessor Note payable in money other than that stated on the Lessor Notes,

(iii) alter or modify the provisions of Section 3 hereof with respect to the manner of payment or the order of priorities in which distribution thereunder shall be made as between the Noteholders, the Debt Service Reserve Letter of Credit Secured Parties and the Owner Lessor or the Owner Participant, or waive a Lease Indenture Event of Default in the payment of principal of, premium, if any, or interest on the Lessor Notes (except a rescission of acceleration of the Lessor Notes by the Noteholders of at least $66^{2}/_{3}\%$ in aggregate principal amount of then outstanding Lessor Notes and a waiver of the payment default that resulted from such acceleration),

(iv) reduce the amount (except as to any amount as shall be sufficient to pay the aggregate principal of, make-whole premium, if any, and interest on, all outstanding Lessor Notes) or extend the time of payment of Basic Lease Rent or Termination Value except as expressly provided in the Facility Lease, or, except in connection with Section 10.1(vi), change any of the circumstances under which Basic Lease Rent or Termination Value is payable,

(v) except in connection with Section 10.1(vi) or as expressly provided in Section 22.4 of the Facility Lease, allow for the assignment of the Facility Lease if, in connection therewith, the Facility Lessee will be released from its obligation to pay Basic Lease Rent and Termination Value,

(vi) except in connection with Section 10.1(vi), release the Facility Lessee from its obligation to pay Basic Lease Rent or Termination Value or change the absolute and unconditional character of such obligations as set forth in Section 9 of the Facility Lease,

(vii) deprive the Security Agent of the lien on a material portion of the Indenture Estate or permit the creation of any lien on a material portion of the Indenture Estate ranking equally or prior to the lien of the Security Agent, except for permitted liens.

(viii) make any change in the provisions of this Lease Indenture relating to waivers of past Lease Indenture Defaults or the rights of Noteholders to receive payments of principal of, premium, if any, or interest on the Lessor Notes;

(ix) waive a redemption payment with respect to any Lessor Note; or

(x) make any change in the foregoing amendment and waiver provisions.

SECTION 10.3 DOCUMENTS FURNISHED TO NOTEHOLDERS.

Promptly after the execution by the Owner Lessor, the Security Agent or the Lease Indenture Trustee of any document entered into pursuant to Sections 10.1 and 10.2, the Lease Indenture Trustee shall furnish a copy thereof to the Noteholders but the failure of the Lease Indenture Trustee to deliver such conformed copy, or the failure of the Noteholders to receive such conformed copies, shall not impair or affect the validity of such document.

SECTION 10.4 LEASE INDENTURE TRUSTEE AND SECURITY AGENT PROTECTED.

Notwithstanding anything to the contrary contained herein, if, in the opinion of the Lease Indenture Trustee or the Security Agent, any document required to be executed by it pursuant to Sections 10.1 and 10.2 adversely affects any right, duty, immunity or indemnity of or in favor of the Lease Indenture Trustee or the Security Agent under any Indenture Estate Document or under any other Operative Document, the Lease Indenture Trustee or the Security Agent may in its discretion decline to execute such document unless the Person or Persons requesting any related action shall provide an indemnity that is reasonably satisfactory to the Lease Indenture Trustee or the Security Agent.

SECTION 10.5 REVOCATION AND EFFECT OF CONSENTS

Until an amendment, supplement or waiver becomes effective, a consent to it by a Lease Indenture Secured Party is a continuing consent by the Lease Indenture Secured Party, even if notation of the consent is not made on any Lessor Note. However, any such Lease Indenture Secured Party may revoke the consent if the Security Agent receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Lease Indenture Secured Party.

SECTION 10.6 NOTATION ON OR EXCHANGE OF LESSOR NOTES

The Lease Indenture Trustee may place an appropriate notation about an amendment, supplement or waiver on any Lessor Note thereafter authenticated. The Owner Lessor in exchange for all Lessor Notes may issue and the Lease Indenture Trustee shall, upon receipt of an Authentication Order, authenticate new Lessor Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Lessor Note shall not affect the validity and effect of such amendment, supplement or waiver.

SECTION 10.7 LEASE INDENTURE TRUSTEE TO SIGN AMENDMENTS, ETC

The Lease Indenture Trustee and the Security Agent shall sign any amended or supplemental Lease Indenture authorized pursuant to this Article Ten if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Lease Indenture Trustee or the Security Agent. The Owner Lessor may not sign an amendment or supplemental Lease Indenture unless signed pursuant to Section 6.1 of the Lessor LLC Agreement. In executing any amended or supplemental indenture, the Lease Indenture Trustee and the Security Agent shall be entitled to receive and (subject to Section 8.1 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 12.4 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Lease Indenture.

ARTICLE XI
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

SECTION 11.1 OPTION TO EFFECT LEGAL DEFEASANCE OR COVENANT DEFEASANCE

The Owner Lessor may, at its option and at any time, elect to have either Section 11.2 or 11.3 hereof be applied to all outstanding Lessor Notes upon compliance with the conditions set forth below in this Article 11.

SECTION 11.2 LEGAL DEFEASANCE AND DISCHARGE

Upon the Owner Lessor's exercise under Section 11.1 hereof of the option applicable to this Section 11.2, the Owner Lessor shall, subject to the satisfaction of the conditions set forth in Section 11.4 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Lessor Notes on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Owner Lessor shall be deemed to have paid and discharged the entire Indebtedness represented by the Debt Service

Reserve Letter of Credit and by the outstanding Lessor Notes, which shall thereafter be deemed to be "*outstanding*" only for the purposes of Section 11.5 hereof and the other Sections of this Lease Indenture referred to in (a) and (b) below, and to have satisfied all its other obligations under such Lessor Notes and this Lease Indenture (and the Lease Indenture Trustee or the Security Agent, as applicable, on demand of and at the expense of the Owner Lessor, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Noteholders of outstanding Lessor Notes to receive solely from the trust fund described in Section 11.4 hereof, and as more fully set forth in such Section, payments in respect of the principal of, premium, if any, and interest on such Lessor Notes when such payments are due, (b) the Owner Lessor's obligations with respect to such Lessor Notes under Article 2 hereof, (c) the rights, powers, trusts, duties and immunities of the Security Agent, the Lease Indenture Trustee and any Agent hereunder and the Owner Lessor's obligations in connection therewith, including, without limitation, Article 8 and Section 11.5 and 11.7 hereunder, and (d) this Article 11. Subject to compliance with this Article 11, the Owner Lessor may exercise its option under this Section 11.2 notwithstanding the prior exercise of its option under Section 11.3 hereof.

SECTION 11.3 COVENANT DEFEASANCE

Upon the Owner Lessor's exercise under Section 11.1 hereof of the option applicable to this Section 11.3, the Owner Lessor shall, subject to the satisfaction of the conditions set forth in Section 11.4 hereof, be released from its obligations under the material covenants contained herein with respect to the outstanding Lessor Notes on and after the date the conditions set forth in Section 11.4 are satisfied (hereinafter, "*Covenant Defeasance*"), and the Lessor Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of

Noteholders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "*outstanding*" for all other purposes hereunder (it being understood that such Lessor Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Lessor Notes or any outstanding amounts due under the Debt Service Reserve Letter of Credit, the Owner Lessor may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Lease Indenture Default or a Lease Indenture Event of Default under Section 7.1 hereof, but, except as specified above, the remainder of this Lease Indenture and such Lessor Notes shall be unaffected thereby. In addition, upon the Owner Lessor's exercise under Section 11.1 hereof of the option applicable to this Section 11.3 hereof, subject to the satisfaction of the conditions set forth in Section 11.4 hereof, Section 7.1(a) hereof shall not constitute a Lease Indenture Event of Default.

SECTION 11.4 CONDITIONS TO LEGAL OR COVENANT DEFEASANCE

The following shall be the conditions to the application of either Section 11.2 or 11.3 hereof to the outstanding Lessor Notes or any outstanding amounts due under the Debt Service Reserve Letter of Credit, as applicable:

In order to exercise either Legal Defeasance or Covenant Defeasance:

(a) the Owner Lessor must irrevocably deposit with the Security Agent in the Security Agent's Account, in trust, for the benefit of the Noteholders (or the Debt Service Reserve Letter of Credit Secured Parties as applicable), cash in United States dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest on the outstanding Lessor Notes on the stated maturity or on the applicable redemption date, as the case may be, and the Owner Lessor must specify whether the Lessor Notes are being defeased to maturity or to a particular redemption date and any amount outstanding under the Debt Service Reserve Letter of Credit;

(b) in the case of an election under Section 11.2 hereof, the Owner Lessor shall have delivered to the Lease Indenture Trustee an Opinion of Counsel in the United States reasonably acceptable to the Lease Indenture Trustee confirming that (A) the Owner Lessor has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this Lease Indenture, there has been a change in

the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Noteholders of the outstanding Lessor Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 11.3 hereof, the Owner Lessor shall have delivered to the Lease Indenture Trustee an Opinion of Counsel in the United States reasonably acceptable to the Lease Indenture Trustee confirming that, subject to customary assumptions and exclusions, the Noteholders of the outstanding Lessor Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Lease Indenture Default or Lease Indenture Event of Default shall have occurred and be continuing on the date of such deposit (other than a Lease Indenture Default or a Lease Indenture Event Default resulting from the borrowing of funds to be applied to such deposit) or insofar as

Sections 7.1(e) or 7.1(f) hereof are concerned, at any time in the period ending on the 91st day after the date of deposit;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a Lease Indenture Default under, any material agreement or instrument (other than this Lease Indenture or any other Financing Document) to which the Owner Lessor is a party or by which the Owner Lessor is bound;

(f) the Owner Lessor shall have delivered to the Security Agent an Opinion of Counsel to the effect that (subject to customary qualifications and assumptions) after the 91st day following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally;

(g) the Owner Lessor shall have delivered to the Security Agent an Officer's Certificate stating that the deposit was not made by the Owner Lessor with the intent of preferring the Noteholders or the Debt Service Reserve Letter of Credit Secured Parties over any other creditors of the Owner Lessor or with the intent of defeating, hindering, delaying or defrauding creditors of the Owner Lessor or others; and

(h) the Owner Lessor shall have delivered to the Lease Indenture Trustee and the Security Agent an Officer's Certificate and an Opinion of Counsel, each stating that, subject to customary assumptions and exclusions, all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

SECTION 11.5 DEPOSITED MONEY AND GOVERNMENT SECURITIES TO BE HELD IN TRUST; OTHER MISCELLANEOUS PROVISIONS

Subject to Section 11.6 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Security Agent (or other qualifying trustee or agent) pursuant to Section 11.4 hereof in respect of the outstanding Lessor Notes or outstanding amounts due under the Debt Service Reserve Letter of Credit shall be held in trust and applied by the Security Agent, in accordance with the provisions of such Lessor Notes and this Lease Indenture, to the payment, either directly or through any Paying Agent, to the Noteholders of such Lessor Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law or any of the Debt Service Reserve Letter of Credit Secured Parties.

The Owner Lessor agrees to pay and indemnify the Lease Indenture Trustee and the Security Agent against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 11.4 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Noteholders of the outstanding Lessor Notes.

Anything in this Article 11 to the contrary notwithstanding, the Lease Indenture Trustee or the Security Agent shall deliver or pay to the Owner Lessor from time to time upon the request of the Owner Lessor any money or non-callable Government Securities held by it as provided in Section 11.4 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Lease Indenture Trustee (which may be the opinion delivered under Section 11.4(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

SECTION 11.6 REPAYMENT TO OWNER LESSOR

Any money deposited with the Security Agent or any Paying Agent, or then held by the Owner Lessor in trust for the payment of the principal of, premium, if any, or interest on any Lessor Note and remaining unclaimed for two years after such principal, and premium, if any, or interest has become

due and payable shall be paid to the Owner Lessor on its request or (if then held by the Owner Lessor) shall be discharged from such trust; and the Noteholder of such Lessor Note shall thereafter, as a secured creditor, look only to the Owner Lessor for payment thereof, and all liability of the Security Agent or such Paying Agent with respect to such trust money, and all liability of the Owner Lessor as trustee thereof, shall thereupon cease; *provided, however,* that the Security Agent or such Paying Agent, before being required to make any such repayment, may at the expense of the Owner Lessor cause to be published once, in The New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Owner Lessor.

SECTION 11.7 REINSTATEMENT

If the Security Agent or Paying Agent is unable to apply any United States dollars or non-callable Government Securities in accordance with Section 11.2 or 11.3 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Owner Lessor's obligations under this Lease Indenture and the Lessor Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.2 or 11.3 hereof until such time as the Security Agent or Paying Agent is permitted by such court or governmental authority to apply all such money in accordance with Section 11.2 or 11.3 hereof, as the case may be; provided, however, that, if the Owner Lessor makes any payment of principal of, premium, if any, or interest on any Lessor Note following the reinstatement of its obligations, the Owner Lessor shall be subrogated to the rights of the Noteholders of such Lessor Notes to receive such payment from the money held by the Security Agent or Paying Agent.

ARTICLE XII
MISCELLANEOUS

SECTION 12.1 TERMINATION OF INDENTURE

Upon payment in full of the principal of and interest on, and all other amounts payable to the Noteholders hereunder, under all Lessor Notes and under the Operative Documents and to each of the Debt Service Letter of Credit Secured Parties, the Security Agent shall execute and deliver to the Owner Lessor an appropriate instrument releasing the Indenture Estate from the lien of this Lease Indenture and releasing the Indenture Estate Documents from the assignment and pledge thereof hereunder, and the Security Agent shall execute and deliver such instrument as aforesaid and, at the Owner Lessor's expense, will execute and deliver such other instruments or documents as may be reasonably requested by the Owner Lessor to give effect to such release; provided, however, that this Lease Indenture shall earlier terminate and shall be of no further force or effect upon any sale or other final disposition by the Security Agent of all property constituting part of the Indenture Estate and the final distribution by the Security Agent of all moneys or other property or proceeds constituting part of the Indenture Estate in accordance with the terms hereof. Further, upon the purchase or redemption of the Lessor Notes pursuant to Section 4.7 or 4.8 hereof, and receipt by the Lease Indenture Trustee and then the Security Agent of a certificate from each Noteholder to the effect that all sums payable to the Noteholders hereunder and under the Operative Documents, the Security Agent shall execute and deliver to the Owner Lessor

an appropriate instrument releasing the Indenture Estate from the lien of this Lease Indenture and releasing the Indenture Estate Documents from the assignment and pledge hereunder, and the Security Agent shall execute and deliver such instruments as aforesaid. Except as otherwise provided in this Section 12.1, this Lease Indenture and the lien created by this Lease Indenture shall continue in full force and effect in accordance with the terms hereof. Promptly upon receipt by a Noteholder of payment in full of the principal of and interest on the Lessor Notes held by it, and all other amounts payable to it hereunder, under the Lessor Notes and under the Operative Documents and under the Debt Service Reserve Letter of Credit such

Noteholder shall deliver the appropriate certificate contemplated by the foregoing sentences of this Section 12.1 to be delivered by it.

SECTION 12.2 NOTICES

Any notice or communication by the Owner Lessor, the Lease Indenture Trustee and the Security Agent to the others is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telex, telecopier or overnight air courier guaranteeing next day delivery, to the others' address.

If to the Owner Lessor:

Homer City OL1 LLC

c/o Wells Fargo Bank Minnesota, N.A.
Corporate Trustee Services
MAC; N2691-090
213 Court Street
Middletown, CT 06457

With a copy to:

Wells Fargo Bank Northwest, N.A.
Corporate Trust Services
MAC; U1254-031
Salt Lake City, UT 84111

If to the Lease Indenture Trustee or the Security Agent:

The Bank of New York
114 West 47th Street
25th Floor
New York, New York 10036
Attention: Corporate Trust Division
Facsimile: 212-852-1625

The Owner Lessor, the Lease Indenture Trustee or the Security Agent, by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Noteholders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Lease Indenture Secured Party shall be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Paying Agent.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it, except for notices or communications to the Security Agent or the Lease Indenture Trustee, which shall be effective only upon actual receipt thereof.

If the Owner Lessor mails a notice or communication to Noteholders, it shall mail a copy to the Lease Indenture Trustee, the Security Agent and each Agent at the same time.

SECTION 12.3 RULES BY LEASE INDENTURE TRUSTEE AND AGENTS

The Lease Indenture Trustee may make reasonable rules for action by or at a meeting of Noteholders. The Paying Agent may make reasonable rules and set reasonable requirements for its functions.

SECTION 12.4 NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS

No director, officer, employee, incorporator, shareholder or Affiliate of the Owner Lessor, as such, shall have any liability for any obligations of the Owner Lessor under the Lessor Notes, this Lease Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Noteholder of Lessor Notes by accepting a Lessor Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Lessor Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Commission that such a waiver is against public policy.

SECTION 12.5 GOVERNING LAW

THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS LEASE INDENTURE AND THE LESSOR NOTES EXCEPT TO THE EXTENT THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA ARE MANDATORILY APPLICABLE UNDER THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.

SECTION 12.6 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS

This Lease Indenture may not be used to interpret any other indenture, loan or debt agreement of the Owner Lessor or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Lease Indenture.

SECTION 12.7 SUCCESSORS

All agreements of the Owner Lessor in this Lease Indenture and the Lessor Notes shall bind its successors. All agreements of the Lease Indenture Trustee and the Security Agent in this Lease Indenture shall bind its successors.

SECTION 12.8 SEVERABILITY

In case any provision in this Lease Indenture or in the Lessor Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 12.9 COUNTERPART ORIGINALS

The parties may sign any number of copies of this Lease Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 12.10 TABLE OF CONTENTS, HEADINGS, ETC

The Table of Contents and Headings of the Articles and Sections of this Lease Indenture have been inserted for convenience of reference only, are not to be considered a part of this Lease Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 12.11 CONCERNING THE OWNER MANAGER.

The Owner Manager is executing this Lease Indenture on behalf of the Owner Lessor solely in its capacity as Owner Manager under the Lessor LLC Agreement and not in its individual capacity (except as expressly stated herein) and in no case shall the Trust Company (or any successor entity acting as Owner Manager under the Lessor LLC Agreement) be personally liable for or on account of any of the

statements, representations, warranties, covenants or obligations stated to be those of the Owner Lessor or the Owner Manager hereunder, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through, or under such party; *provided, however,* that the Trust Company (or any such successor Owner Manager) shall be personally liable hereunder for its own gross negligence or willful misconduct or for its breach of its covenants, representations and warranties contained herein, to the extent covenanted or made in its individual capacity.

SECTION 12.12 ACKNOWLEDGEMENT.

In order to secure the Fundco Bonds of the Lender, the Lender will assign and grant a first priority security interest in favor of the Bondholder Trustee in and to all of the Lender's right, title and interest to and under the Lessor Notes. The Owner Lessor hereby consents to such assignment and to the creation of such lien and security interest and acknowledges receipt of copies of the Fundco Indenture. In addition, the Lender has granted to the Bondholder Trustee a power of attorney to, among other things, take any action with respect to and exercise any rights or remedies of the Lender under the Lessor Notes and this Lease Indenture and has assigned to the Bondholder Trustee its rights to receive any and all payments on and in respect of the Lessor Notes and this Lease Indenture for as long as the estate created by the Fundco Indenture remains in existence. The Owner Lessor hereby acknowledges and consents to such power of attorney and assignment and further agrees that all amounts due to the Lender under the Lessor Notes and this Lease Indenture will be paid directly to the Bondholder Trustee. Unless and until the lien of the Fundco Indenture shall have been discharged, the Bondholder Trustee shall have the right to exercise the rights of the Lender under this Lease Indenture and to directly receive for application in accordance with the Fundco Indenture all amounts payable or otherwise distributable with respect to the Lessor Notes or this Lease Indenture.

SIGNATURES

Dated as of December 7, 2001

THE BANK OF NEW YORK, as Lease Indenture Trustee

By: /s/ CHRISTOPHER J. GRELL
Name: Christopher J. Grell
Title: Authorized Signer

THE BANK OF NEW YORK, as Security Agent

By: /s/ CHRISTOPHER J. GRELL

Name: Christopher J. Grell
Title: Authorized Signer

HOMER CITY OLI LLC, as Owner Lessor

By: WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Owner Manager under the Lessor LLC Agreement

/s/ ROBERT L. REYNOLDS

By: Name: Robert L. Reynolds
Title: Vice President

EXHIBIT A to Lease Indenture

FORM OF INITIAL LESSOR NOTES

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE SUCH A REGISTRATION IS IN EFFECT OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT

Homer City OL1 LLC
as Owner Lessor

SERIES [A] [B] LESSOR NOTE DUE [ ]

$[ ] December, 20

Homer City OL1 LLC (herein called the "*Owner Lessor*", which term includes any successor person under the Indenture hereinafter referred to), a Delaware limited liability company and wholly-owned subsidiary of [General Electric Capital Corporation], a Delaware corporation (the "*Owner Participant*") acting pursuant to that certain LLC Agreement (LA1) effective as of September , 2001 (as the same may from time to time be amended, amended and restated, supplemented or otherwise modified in accordance with the terms thereof and, where applicable, the terms of the other Operative Documents, the "*Lessor LLC Agreement*") between the Owner Participant and Wells Fargo Bank Northwest, National Association (the "*Trust Company*"), hereby promises to pay to [ ][, as Lease Indenture Trustee/ Paying Agent,] or its registered assigns, the principal sum of [ ] Dollars, which is due and payable in a series of installments of principal on the Rent Payment Dates and in the amounts set forth in Annex A hereto; *provided, however,* that the final principal payment hereon shall in any and all events equal the then outstanding principal balance hereof. Interest shall be due and payable in arrears on each Rent Payment Date and on the date the Lessor Note is paid in full at the rate of [ ]% per annum on the unpaid principal amount hereof from time to time outstanding from and including the date hereof until such principal amount is paid in full. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. This Lessor Note shall bear interest, to the extent permitted by Requirements of Law, at a rate that is 1% per annum in excess of the rate then in effect on any part of the principal amount hereof and on any interest, Make-Whole Premium or other amounts due hereunder, not paid when due (whether at stated maturity, by acceleration or otherwise), for the period the same is past due, payable on demand of the holder hereof.

Capitalized terms used in this Lessor Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture of Trust and Security Agreement, dated as of December , 2001 (as the same may from time to time be amended, amended and restated, supplemented or otherwise modified in accordance with the terms thereof and, where applicable, the terms of the other Operative Documents, the "*Lease Indenture*"), between the Owner Lessor and The Bank of New York, not in its individual capacity but solely as trustee (the "*Lease Indenture Trustee*").

All payments of principal and interest and all other amounts to be made by the Owner Lessor hereunder or under the Lease Indenture shall be made only from the income and proceeds from the Indenture Estate and the Owner Lessor and Lease Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Lease Indenture Trustee shall have sufficient income or proceeds from the Indenture Estate to enable such payments to be made in accordance with the terms of the Lease Indenture. Each holder hereof, by its acceptance of this Lessor Note, agrees that (a) it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to the holder hereof as above provided, (b) none of the Lease Indenture Trustee, Owner Participant, any OP Guarantor, the Owner Manager or the Trust Company, or any Affiliate of any thereof, is, or shall be, personally liable to the holder hereof for any amounts payable under this Lessor

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Note or under the Lease Indenture or for any liability under the Lease Indenture, except as expressly provided in the Lease Indenture and (c) any such amounts shall be non-recourse to the assets of each of the Lease Indenture Trustee, the Owner Participant, any OP Guarantor, the Owner Manager or the Trust Company, or any Affiliate of any thereof.

Principal, Make-Whole Premium (if any) and interest and other amounts due hereunder or under the Lease Indenture shall be payable in Dollars by wire transfer of immediately available funds on the due date thereof to the Security Agent's Account (by wire transfer of immediately available funds if not otherwise specified) or to such other account as the holder hereof shall have designated to the Owner Lessor in writing. Payment to the Lease Indenture Trustee must be received by 10:00 a.m., New York City time. If any sum payable hereunder or under the Lease Indenture falls due on a day which is not a Business Day, then such sum shall be payable on the next succeeding Business Day and, if paid on such Business Day, the payment thereof shall be without penalty or interest (unless calculation of such amount is based on actual days elapsed) or other adjustment.

The holder hereof, by its acceptance of this Lessor Note, agrees that each payment of principal and interest or other amounts received by it hereunder shall be applied, first, to the payment of interest on this Lessor Note (as well as any interest on overdue principal, and, to the extent permitted by law, interest and other amounts hereunder) due and payable to the date of such payment as hereinabove provided, second, to the payment of the principal of, and Make-Whole Premium, if any, then due hereunder, and third, to the extent permitted under the Lease Indenture, the balance, if any, remaining thereafter, to the payment of the principal amount of, and Make-Whole Premium, if any, hereunder.

This Lessor Note is one of the Lessor Notes, and one of the Initial Lessor Notes, referred to in the Lease Indenture which have been or are to be issued by the Owner Lessor pursuant to the terms of the Lease Indenture. The Indenture Estate is held by the Lease Indenture Trustee as security for the Lessor Notes. Reference is hereby made to the Lease Indenture for a statement of the rights and obligations of the holder of, and the nature and extent of the security for, this Lessor Note and of the rights and obligations of the Noteholders of, and the nature and extent of the security for, the other Lessor Notes, as well as for a statement of the terms and conditions of the trusts created thereby. By its acceptance of this Lessor Note, each holder hereof agrees to all of the terms and conditions in the Lease Indenture and in the Participation Agreement referred to therein expressed to be binding on the Lease Indenture Trustee or a holder of a Lessor Note.

There shall be maintained a register for the purpose of registering this Lessor Note and registering transfers and exchanges of Lessor Notes in the manner provided in Section 2.11 of the Lease Indenture. As provided in the Lease Indenture and subject to certain limitations therein set forth, the Lessor Notes are exchangeable for Lessor Notes of the same series, of any authorized denominations and of like aggregate original principal amount, as requested by the holder hereof surrendering the same.

Except as otherwise provided in Section 2.11 of the Lease Indenture, prior to the due presentment for registration of transfer of this Lessor Note, the Owner Lessor and the Lease Indenture Trustee shall deem and treat the Person in whose name this Lessor Note is registered on the register as the absolute owner and holder hereof for the purpose of receiving payment of all amounts payable with respect to this Lessor

Note and for all other purposes whether or not this Lessor Note is overdue, and neither the Owner Lessor nor any holder hereof shall be affected by any notice to the contrary. All payments made on this Lessor Note in accordance with the provisions of this paragraph shall be valid and effective to satisfy and discharge the liability on this Lessor Note to the extent of the sums so paid and neither the Lease Indenture Trustee nor the Owner Lessor shall have any liability in respect of such payment.

This Lessor Note is subject to redemption solely as required or permitted by Sections 4.7 and 4.8 of the Lease Indenture, to purchase by the Facility Lessee or the Owner Participant as provided in Sections 10.2(a), 13.3(a) and 14.3 of the Facility Lease and to assumption by the Facility Lessee in accordance with Section 2.21 of the Lease Indenture. If at any time a Lease Indenture Event of

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Default shall have occurred and be continuing, this Lessor Note may, subject to certain rights of the Owner Lessor and Owner Participant contained or referred to in the Lease Indenture, be declared, and under certain circumstances shall automatically be deemed to be declared, due and payable, all upon the conditions, in the manner and with the effect provided in the Lease Indenture.

By its acceptance hereof, the holder of this Lessor Note agrees that the Owner Manager is executing this Lessor Note on behalf of the Owner Lessor solely in its capacity as Owner Manager under the Lessor LLC Agreement and not in its individual capacity and in no case shall the Trust Company (or any entity acting as Owner Manager under the Lessor LLC Agreement) be personally liable in respect of the obligations stated to be those of the Owner Lessor or the Owner Participant hereunder.

In circumstances set forth in Section 2.21 of the Lease Indenture, the obligations of the Owner Lessor under this Lessor Note may, subject to the conditions set forth in Section 2.21 of the Lease Indenture, be assumed in whole by the Facility Lessee in accordance with Section 2.21 of the Lease Indenture, in which case the Owner Lessor shall be released and discharged from all such obligations. In connection with such an assumption, the holder of this Lessor Note may be required to exchange this Lessor Note for a new Lessor Note evidencing such assumption.

THIS LESSOR NOTE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE, WITH THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the Owner Lessor has caused this Lessor Note to be executed in its name by the Owner Manager by an officer of the Owner Manager thereunto duly authorized, as of the date hereof.

Homer City OL1 LLC, as Owner Lessor

By: Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as Owner Manager under the LLC Agreement

By: _____

Name:

Title:

EXHIBIT B to Lease Indenture

FORM OF OPEN-END MORTGAGE,
SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

When recorded return to:

THIS MORTGAGE CONSTITUTES A FIXTURE FILING
UNDER THE PENNSYLVANIA UNIFORM COMMERCIAL CODE

THIS IS AN OPEN-END MORTGAGE SECURING FUTURE ADVANCES
UP TO A MAXIMUM PRINCIPAL AMOUNT OF [$]
PLUS ACCRUED INTEREST AND OTHER INDEBTEDNESS
AS DESCRIBED IN 42 Pa.C.S. §8143

OPEN-END MORTGAGE, SECURITY AGREEMENT

AND ASSIGNMENT OF RENTS

dated as of December , 2001

from

HOMER CITY OL1 LLC,
as the Owner Lessor

to

THE BANK OF NEW YORK,
as Security Agent and Mortgagee

THIS IS AN OPEN-END MORTGAGE SECURING FUTURE ADVANCES
UP TO A MAXIMUM PRINCIPAL AMOUNT OF [$]
PLUS ACCRUED INTEREST AND OTHER INDEBTEDNESS
AS DESCRIBED IN 42 Pa.C.S. §8143

OPEN-END MORTGAGE, SECURITY AGREEMENT

AND ASSIGNMENT OF RENTS

THIS OPEN-END MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (this "Mortgage"), dated as of December , 2001, is made by and between **HOMER CITY OL1 LLC**, a Delaware limited liability company ("*Owner Lessor*"), as mortgagor, and **THE BANK OF NEW YORK** as Security Agent for the Lease Indenture Secured Parties as defined below (the "*Security Agent*").

WHEREAS, the Owner Lessor is the ground tenant of an undivided percentage interest (the "*Ground Interest*") in the land more particularly described on Schedule I hereto (the "*Site*") pursuant to the Facility Site Lease described on Schedule II hereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Facility Site Lease*"), a memorandum of which Facility Site Lease is recorded in Book , page in the Office of the Recorder of Deeds for Indiana County, Pennsylvania;

WHEREAS, the Owner Lessor has subleased the Ground Interest to EME Homer City Generation L.P. ("*Homer City*") pursuant to the Facility Site Sublease described on Schedule III hereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Facility Site Sublease*"), a memorandum of which Facility Site Sublease is recorded in Book , page in the Office of the Recorder of Deeds for Indiana County, Pennsylvania;

WHEREAS, the Owner Lessor is the fee owner of an undivided % interest in the generating facilities located on the Site (the "*Facility*") more particularly described in Schedule IV hereto (the "*Undivided Interest*").

WHEREAS, the Owner Lessor has leased the Undivided Interest in the Facility to Homer City pursuant to a Facility Lease described on Schedule V hereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Facility Lease*"), a memorandum of which Facility Lease is recorded in Book , page in the Office of the Recorder of Deeds for Indiana County, Pennsylvania;

WHEREAS, Owner Lessor, the Security Agent and The Bank of New York (the "*Lease Indenture Trustee*") have entered into an Indenture of Trust and Security Agreement, dated as of December , 2001 (as amended, restated, supplemented or otherwise modified from time to time, the "*Lease Indenture*"), to provide among other things for the issuance by the Owner Lessor of certain Lessor Notes as defined therein, and for the grant of this Mortgage;

WHEREAS, pursuant to the Lease Indenture, the Security Agent serves as a common representative and to hold the Indenture Estate for the benefit of the Lease Indenture Secured Parties;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure (i) the prompt payment of the principal of and interest on, and all other amounts due with respect to, the Lessor Notes from time to time outstanding, and all other amounts owing by Owner Lessor hereunder or under the Lease Indenture, and the performance and observance by Owner Lessor of all the agreements, covenants and provisions contained in the Operative Documents, and the prompt payment of all amounts from time to time due or to become due to any Lease Indenture Secured Party under the Operative Documents (collectively the "*Lessor Secured Obligations*"), Owner Lessor hereby grants, bargains, sells, conveys, aliens, enfeoffs, confirms, releases, assigns, transfers, pledges and mortgages unto the Security Agent acting for and on behalf of the Lease Indenture Secured Parties, a first priority security interest in and mortgage lien on all estate, right, title and interest now held or hereafter acquired by the Owner Lessor in, to and under the following described property, rights, interests and privileges, whether now or hereafter acquired, other

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than Excepted Payments (such property, rights, interests and privileges as are conveyed pursuant to this granting clause, but excluding Excepted Payments and the rights to enforce and collect the sums as set forth herein, being hereinafter referred to as the "*Indenture Estate*"):

(1) the Undivided Interest; the Owner Lessor's interest in all goods (as defined in the Uniform Commercial Code as in effect in the State of New York from time to time) constituting the Facility; all appliances, parts, instruments, appurtenances, accessories, furnishings, equipment or other property of whatever nature that may from time to time be incorporated in the Facility ("Components"), except to the extent constituting a modification, alteration, addition or improvement to the Facility ("Improvements"); the Owner Lessor's interest in any Improvements; the Facility Site Lease and the Ground Interest thereunder; the Facility Lease and all payments of any kind by the Facility Lessee thereunder (including Rent); the Facility Site Sublease and the Sublease Ground Interest thereunder and all payments of any kind by the Facility Lessee thereunder; Owner Lessor's interest in all tangible property located on or at or attached to the Facility Land that an interest in such tangible property arises under applicable real estate law ("*fixtures*"); the Facility Deed, the Bill of Sale, the Ownership and Operation Agreement, the Lessor LLC Agreement, and all and any interest in any property now or hereafter granted to the Owner Lessor pursuant to any provision of the Facility Site Lease, Facility Lease or the Facility Site Sublease; the Security Depositary Agreement, the Debt Service Reserve Letter of Credit, the Pledge and Collateral Agreement and each other Operative Document to which the Owner Lessor is a party (the Undivided Interest, the Owner Lessor's interest in any Components, the Owner Lessor's interest in any fixtures, Improvements and the Ground Interest are collectively referred to as the "*Property Interest*" and the documents, specifically referred to above in this paragraph (1) are collectively referred to as the "*Indenture Estate Documents*"), including, without limitation, (x) all rights of the Owner Lessor or the Facility Lessee (to the extent assigned by the Facility Lessee to the Owner Lessor) to receive any payments or other amounts or to exercise any election or option or to make any decision or determination or to give or receive any notice, consent, waiver or approval or to make any demand or to take any other action under or in respect of any such document, to accept surrender or redelivery of the Property Interest or any part thereof, as well as all the rights, powers and remedies on the part of the Owner Lessor or the Facility Lessee (to the extent assigned by the Facility Lessee to the Owner Lessor), whether acting under any such document

or by statute or at law or in equity or otherwise, arising out of any Lease Default or Lease Event of Default and (y) any right to restitution from the Facility Lessee, any sublessee or any other Person in respect of any determination of invalidity of any such document;

(2) all rents, royalties, issues, profits, revenues, proceeds, damages, claims and other income from the property described in this Granting Clause, including, without limitation, all payments or proceeds payable to the Owner Lessor as the result of the sale of the Property Interest or the lease or other disposition of the Property Interest, and all estate, right, title and interest of every nature whatsoever of the Owner Lessor in and to such rents, issues, profits, revenues and other income and every part thereof (the "*Lease Revenues*");

(3) all condemnation proceeds with respect to the Property Interest or any part thereof (to the extent of the Owner Lessor's interest therein), and all proceeds (to the extent of the Owner Lessor's interest therein) of all insurance maintained pursuant to Section 11 of the Facility Lease or otherwise;

(4) all other property of every kind and description and interests therein now held or hereafter acquired by the Owner Lessor pursuant to the terms of any Operative Document, wherever located;

(5) all damages resulting from breach (including, without limitation, breach of warranty or misrepresentation) or termination of any of the Indenture Estate Documents or arising from bankruptcy, insolvency or other similar proceedings involving any party to the Indenture Estate Documents;

(6) the Debt Service Reserve Account and all amounts on deposit therein; and

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(7) all proceeds of the foregoing;

BUT EXCLUDING from the Indenture Estate all Excepted Payments, any and all rights to enforce and collect the same, and SUBJECT TO the rights of the Owner Lessor and the Owner Participant under the Lease Indenture.

TO HAVE AND TO HOLD the Indenture Estate unto the Security Agent, forever, provided that if Owner Lessor shall pay and otherwise observe and perform all of the Lessor Secured Obligations, then this Mortgage and the estate and interests hereby granted, shall cease and be void.

AND Owner Lessor covenants and agrees with Security Agent as follows:

1. Payment and Performance. THIS IS AN OPEN-END MORTGAGE SECURING FUTURE ADVANCES UP TO A MAXIMUM PRINCIPAL AMOUNT OF [$] PLUS ACCRUED INTEREST AND OTHER INDEBTEDNESS AS DESCRIBED IN 42 Pa.C.S. §8143. Subject to the terms and conditions of the Lease Indenture, Owner Lessor shall pay when due and shall observe and perform all of the Lessor Secured Obligations.

2. Default. Owner Lessor shall not be deemed in default hereunder unless and until a Lease Indenture Event of Default shall have occurred.

3. Remedies. Upon the occurrence and continuance of a Lease Indenture Event of Default, Mortgagee may forthwith exercise, separately, concurrently, successively or otherwise, but only in compliance with the Lease Indenture, any and all rights and remedies available to Mortgagee pursuant to this Mortgage or the Lease Indenture or available by law, equity or otherwise.

4. Mortgagee's Right to Perform Obligations. Upon the occurrence and continuance of any Lease Indenture Event of Default, and in addition to all other rights and remedies available to it, to the extent provided in the Lease Indenture the Security Agent shall have the right, but not the obligation, to perform the Obligation of Owner Lessor then in default, and to make all advances of funds in connection therewith as the Security Agent deems appropriate, including, without limitation, for the payment of taxes, assessments, and other charges and costs for

the protection of the Indenture Estate or the lien of this Mortgage and expenses incurred by reason of the default of this Mortgage, all of which expenditures shall be secured by the lien of this Mortgage and payable on demand of Security Agent.

5. Invalidity. If any term, provision, or condition of the Lease Indenture, Facility Lease, the Facility Sublease, the Facility Site Lease and/or this Mortgage or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable in any respect, the remainder thereof shall be construed without such provision and the application of such term or provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, as the case may be, shall not be affected thereby, and each term and provision thereof shall be valid and enforced to the fullest extent permitted by law.

9. Governing Law. This Mortgage shall be governed by the laws of the Commonwealth of Pennsylvania.

10. Lease Indenture. This Mortgage is executed pursuant to the Lease Indenture, and is subject to the rights and obligations of the Owner Lessor, the Owner Participant and the Security Agent as set forth therein (except to the extent inapplicable by their nature to a mortgage). Capitalized terms used and not defined herein shall have the meaning given such terms in the Lease Indenture.

11. Future Advances, 42 Pa. C.S. §8143. This Mortgage shall secure any additional loans as well as any and all present or future advances and readvances under or in connection with the Lessor Secured Obligations, made pursuant to or in connection with the Lease Indenture to or for the benefit of Owner Lessor or the Indenture Estate, all of which shall be entitled to the benefits of an Open-End Mortgage under 42 Pa.C.S.A. §8143 and shall have the same lien priority as if the future loans, advances or readvances were made as of the date hereof including, without limitation: (i) principal, interest, late charges, fees and other amounts due under the Lease Indenture, the Lessor Notes, or this

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Mortgage; (ii) all advances made or costs incurred by Mortgagee for the payment of real estate taxes, and other charges and costs incurred by Security Agent for the enforcement and protection of the Indenture Estate or the lien of this Mortgage; and (ii) all legal fees, costs and other expenses incurred by the Security Agent by reason of any Lease Indenture Event of Default.

12. **42 Pa. C.S. §8144.** In addition to any other indebtedness secured hereby, this Mortgage secures unpaid balances of advances made with respect to the Indenture Estate, for the payment of taxes, assessments, and other charges or costs incurred for the protection of the Indenture Estate or the lien of this Mortgage, and expenses incurred by the Security Agent by reason of default by Owner Lessor under this Mortgage. This Mortgage shall be a lien on the Indenture Estate from the time the Mortgage is left for record, or the time of delivery to the Security Agent of a Purchase Money Mortgage which is recorded within ten days after its date, for the full amount of the unpaid balances of such advances that are made under this Mortgage, plus interest thereon, regardless of the time when such advances are or may be made.

IN WITNESS WHEREOF, Owner Lessor has executed this Mortgage as of the date first above written.

HOMER CITY OL1 LLC

I certify that the precise address
of the within named mortgagee is:

Schedule I
To the Lease Indenture

SCHEDULE OF SCHEDULED PAYMENTS OF PRINCIPAL

[Attach the following table for Series A Lessor Notes]

PRINCIPAL PAYMENT DATES	PERCENTAGE OF PRINCIPAL AMOUNT PAYABLE ON EACH PRINCIPAL PAYMENT DATE
April 1 and October 1, 2004	1.000%
April 1 and October 1, 2005	2.000%
April 1 and October 1, 2006	2.000%
April 1 and October 1, 2007	2.500%
April 1 and October 1, 2008	3.000%
April 1 and October 1, 2009	3.000%
April 1 and October 1, 2010	3.000%
April 1 and October 1, 2011	3.000%
April 1 and October 1, 2012	3.000%
April 1 and October 1, 2013	3.000%
April 1 and October 1, 2014	3.000%
April 1 and October 1, 2015	4.000%
April 1 and October 1, 2016	4.000%
April 1 and October 1, 2017	5.000%
April 1 and October 1, 2018	5.000%
April 1 and October 1, 2019	3.500%

Schedule I
To the Lease Indenture

SCHEDULE OF SCHEDULED PAYMENTS OF PRINCIPAL

[Attach the following table for Series B Lessor Notes]

PRINCIPAL PAYMENT DATES	PERCENTAGE OF PRINCIPAL AMOUNT PAYABLE ON EACH PRINCIPAL PAYMENT DATE
April 1 and October 1, 2004	0.055%
April 1 and October 1, 2005	0.480%
April 1 and October 1, 2006	0.590%
April 1 and October 1, 2007	0.375%
April 1 and October 1, 2008	0.375%
April 1 and October 1, 2009	0.415%
April 1 and October 1, 2010	1.000%
April 1 and October 1, 2011	1.750%
April 1 and October 1, 2012	2.000%
April 1 and October 1, 2013	1.250%
April 1 and October 1, 2014	1.500%
April 1 and October 1, 2015	2.000%

April 1 and October 1, 2016	2.000%
April 1 and October 1, 2017	2.000%
April 1 and October 1, 2018	2.000%
April 1 and October 1, 2019	2.500%
April 1 and October 1, 2020	3.500%
April 1 and October 1, 2021	3.500%
April 1 and October 1, 2022	3.500%
April 1 and October 1, 2023	4.000%
April 1 and October 1, 2024	4.000%
April 1 and October 1, 2025	5.000%
April 1 and October 1, 2026	6.210%

Schedule I
To the Lease Indenture

ASSIGNMENT FORM

To assign this Lessor Note, fill in the form below: (I) or (we) assign and transfer this Lessor Note to

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Lessor Note on the books of the Owner Lessor. The agent may substitute another to act for him.

Date: _____

Your signature: _____
(Sign exactly as your name appears on the face of this Lessor Note)

Tax Identification No.: _____

SIGNATURE GUARANTEE:

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Paying Agent, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("*STAMP*") or such other "signature guarantee program" as may be determined by the Paying Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Schedule I
To the Lease Indenture

SCHEDULE OF EXCHANGES OF REGULATION S TEMPORARY GLOBAL BOND

The following exchanges of a part of this Regulation S Temporary Global Bond for an interest in another Global Bond for an interest in this Regulation S Temporary Global Bond, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Bond	Amount of increase in Principal Amount of this Global Bond	Principal Amount of this Global Bond following such decrease (or increase

Schedule II
To the Lease Indenture

1. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL1, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

2. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL2, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

3. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL3, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

4. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL4, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust

Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

5. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL5, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its

individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

6. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL6, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

7. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL7, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

8. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL8, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

Exhibit 4.2.1

Schedule identifying substantially identical agreements to Indenture of Trust and Security Agreement

1. The Indenture of Trust and Security Agreement dated as of December 7, 2001 by and among Homer City OL1, L.L.C., a Delaware Limited Liability Corporation, as Issuer and the Bank of New York, as Lease Indenture Trustee and Security Agent.

2. The Indenture of Trust and Security Agreement dated as of December 7, 2001 by and among Homer City OL2, L.L.C., a Delaware Limited Liability Corporation, as Issuer and the Bank of New York, as Lease Indenture Trustee and Security Agent.

3. The Indenture of Trust and Security Agreement dated as of December 7, 2001 by and among Homer City OL3, L.L.C., a Delaware Limited Liability Corporation, as Issuer and the Bank of New York, as Lease Indenture Trustee and Security Agent.

4. The Indenture of Trust and Security Agreement dated as of December 7, 2001 by and among Homer City OL4, L.L.C., a Delaware Limited Liability Corporation, as Issuer and the Bank of New York, as Lease Indenture Trustee and Security Agent.

5. The Indenture of Trust and Security Agreement dated as of December 7, 2001 by and among Homer City OL5, L.L.C., a Delaware Limited Liability Corporation, as Issuer and the Bank of New York, as Lease Indenture Trustee and Security Agent.

6. The Indenture of Trust and Security Agreement dated as of December 7, 2001 by and among Homer City OL6, L.L.C., a Delaware Limited Liability Corporation, as Issuer and the Bank of New York, as Lease Indenture Trustee and Security Agent.

7. The Indenture of Trust and Security Agreement dated as of December 7, 2001 by and among Homer City OL7, L.L.C., a Delaware Limited Liability Corporation, as Issuer and the Bank of New York, as Lease Indenture Trustee and Security Agent.

8. The Indenture of Trust and Security Agreement dated as of December 7, 2001 by and among Homer City OL8, L.L.C., a Delaware Limited Liability Corporation, as Issuer and the Bank of New York, as Lease Indenture Trustee and Security Agent.

Exhibit 4.3
Execution Copy

FACILITY LEASE AGREEMENT

(OL1)

Dated as of December 7, 2001

between

HOMER CITY OL1 LLC,
as Owner Lessor

and

EME HOMER CITY GENERATION L.P.
as Facility Lessee

HOMER CITY GENERATING STATION
1,884 Megawatt (net), Coal-Fired Electric Generation Power Facility
Located northeast of
Pittsburgh, Pennsylvania

CERTAIN OF THE RIGHT, TITLE AND INTEREST OF THE OWNER LESSOR IN AND TO THIS LEASE AND THE RENT DUE AND TO BECOME DUE HEREUNDER HAVE BEEN ASSIGNED AS COLLATERAL SECURITY TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF LENDER, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS LEASE INDENTURE TRUSTEE UNDER AN INDENTURE OF TRUST AND SECURITY AGREEMENT, DATED AS OF DECEMBER 7, 2001 AMONG SAID LEASE INDENTURE TRUSTEE AND SECURITY AGENT, AS SECURED PARTIES, FOR THE BENEFIT OF THE HOLDERS THEREUNDER, AND THE OWNER LESSOR, AS DEBTOR. SEE *SECTION 21* HEREOF FOR INFORMATION CONCERNING THE RIGHTS OF THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF.

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FACILITY LEASE AGREEMENT

This FACILITY LEASE AGREEMENT, dated as of December 7, 2001 (as amended, supplemented or otherwise modified from time to time and in accordance with the provisions hereof, this "*Facility Lease*"), between HOMER CITY OL1 LLC, a Delaware limited liability company (together with its successors and permitted assigns, the "*Owner Lessor*") created for the benefit of General Electric Capital Corporation, a Delaware corporation (together with its successors and permitted assigns, the "*Owner Participant*"), and EME HOMER CITY GENERATION L.P., a Pennsylvania limited partnership (together with its successors assigns, the "*Facility Lessee*" or "*Homer City*").

WITNESSETH:

WHEREAS, the Facility Lessee owns the Facility Site which is more particularly described in Exhibit A hereto, such Exhibit A being attached to this Facility Lease as a part hereof;

WHEREAS, pursuant to the Facility Site Lease, Homer City has leased the Ground Interest and granted certain non-exclusive easements to the Owner Lessor for the Facility Lease Term;

WHEREAS, pursuant to the Facility Site Sublease, the Owner Lessor has leased the Ground Interest to Homer City for the term equal to the term of this Facility Lease, including any renewals hereof;

WHEREAS, the Facility is located on the Facility Site and is more particularly described in Exhibit B hereto, such Exhibit B being attached to this Facility Lease as a part hereof;

WHEREAS, pursuant to the Facility Deed and the Bill of Sale, the Owner Lessor has acquired from the Facility Lessee an undivided ownership interest in the Facility, with the right to nonexclusive possession of the Facility including an entitlement share in the electrical capacity and output of the Facility equal to the Owner Lessor's Percentage (such undivided ownership interest and entitlement share together, the "*Undivided Interest*");

WHEREAS, the Facility does not include the Facility Site or any part thereof, and the Facility Site is being leased to the Owner Lessor pursuant to the Facility Site Lease and is being subleased to the Facility Lessee pursuant to the Facility Site Sublease; and

WHEREAS, pursuant to this Facility Lease, the Owner Lessor will lease the Undivided Interest to the Facility Lessee for the Basic Lease Term and the Renewal Lease Terms, if any, provided herein.

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

SECTION 1 DEFINITIONS

Capitalized terms used in this Facility Lease, including those in the recitals, and not otherwise defined herein shall have the respective meanings set forth in Appendix A to that certain Participation Agreement (P1), dated as of December 7, 2001, among the Facility Lessee, the Owner Lessor, the Owner Manager, the Owner Participant, The Bank of New York (as successor to United States Trust Company of New York) as Bondholder Trustee, the Lender, the Security Agent and the Lease Indenture Trustee (the "*Participation Agreement*"), unless the context hereof shall otherwise require. The general provisions of Appendix A to the Participation Agreement shall apply to the this Facility Lease.

SECTION 2 LEASE OF THE UNDIVIDED INTEREST

Upon the terms and conditions set forth herein, the Owner Lessor hereby leases the Undivided Interest to the Facility Lessee, and the Facility Lessee hereby leases the Undivided Interest from the Owner Lessor, for the Basic Lease Term and, subject to the Facility Lessee's exercise of any of its options to renew this Facility Lease as provided in *Section 15*, one or more Renewal Lease Terms. The

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Facility Lessee and the Owner Lessor understand and agree that this Facility Lease is subject to those encumbrances set forth in the Title Policies. The Undivided Interest shall be subject to the terms of this Facility Lease from the date on which this Facility Lease is executed and delivered.

SECTION 3 FACILITY LEASE TERM AND RENT

Section 3.1 Basic Lease Term. The basic lease term of this Facility Lease (the "*Basic Lease Term*") shall commence on the Closing Date (the "*Basic Lease Commencement Date*") and shall continue for a period of 33 years and eight months, to and including , 2035, subject to earlier termination pursuant to *Sections 10, 13, 14* or *17* hereof. The Facility Lessee shall have the right to renew this Facility Lease in accordance with *Section 15* hereof. The Basic Lease Term and the Renewal Lease Terms are referred to as the "*Facility Lease Term*".

Section 3.2 Rent

(a) The Facility Lessee hereby agrees to pay to the Owner Lessor lease rent payable with respect to the Basic Lease Term ("*Basic Lease Rent*"). The Basic Lease Rent shall be paid by the Facility Lessee to the Owner Lessor in installments in the amounts and on the dates (each a "*Rent Payment Date*") shown on *Schedule 1-1* hereto. All Basic Lease Rent to be paid pursuant to this *Section 3.2* shall be payable in the manner set forth in *Section 3.5* and shall be adjusted from time to time in accordance with *Section 3.4* hereof. Renewal Rent, with respect to any exercised Renewal Lease Term, shall be paid in accordance with the provisions of *Section 15.3* hereof. The term "*Basic Lease Rent*" is intended to constitute "fixed rent" (as such term is defined in Treasury Regulation §1.467-1(h)(3)).

(b) Unless and until such time as adjustments are made pursuant to *Section 3.4*, the Basic Lease Rent allocated to each period for the use by the Facility Lessee of the Undivided Interest shall be the amount set forth on *Schedule 1-2* hereto (the "*Allocated Rent*"). Notwithstanding that Basic Lease Rent is payable in accordance with *Section 3.2(a)*, the Allocated Rent allocated pursuant to this *Section 3.2(b)* shall represent and be the amount of Basic Lease Rent for which the Facility Lessee becomes liable on account of the use of the Undivided Interest for each calendar year in whole or in part of the Basic Lease Term.

(c) It is the intention of the parties hereto that the allocation of Basic Lease Rent to each Rent Payment Period as provided in *Section 3.2(b)* constitutes a specific allocation of fixed rent within the meaning of Treasury Regulation §1.467-1(c)(2)(ii)(A) with the effect that pursuant to Treasury Regulation §§1.467-1(d) and 1.467-2 the Owner Lessor and the Facility Lessee, on any federal income tax returns filed by them (or on any return on which their income is included), shall accrue the amounts of rental income and rental expense, respectively, set forth for each Rent Payment Period on *Schedule 1-3* hereto under the caption "Proportional Rent" (the "*Proportional Rent*") and shall include such amounts in income for each taxable year in accordance with Treasury Regulation § 1.467-1(d)(1). Because there shall be from time to time a difference between (i) the cumulative amount of Basic Lease Rent paid by the Facility Lessee (as set forth in *Section 3.2(a)*) and (ii) the cumulative amount of Basic Lease Rent allocated pursuant to *Section 3.2(b)*, for the purpose of determining the Owner Lessor's and the Facility Lessee's tax consequences under Section 467 of the Code, there shall be considered to exist a loan for purposes of Section 467 of the Code, the amount of which is based on the difference between the cumulative amount of Basic Lease Rent paid by the Facility Lessee and the cumulative amount of the Proportional Rent accrued by the Facility Lessee adjusted to account for an interest component, as provided in Treasury Regulation §1.467-4(b)(1) and the amount of which is set forth on *Schedule 2* hereto under the caption "Section 467 Loan" (the "*Section 467 Loan*"). If the applicable amount of the Section 467 Loan set forth on *Schedule 2* hereto is positive, such amount (the "*Lessor Section 467 Loan Balance*") represents a loan in favor of the Owner Lessor; if the applicable amount of the Section 467 Loan set forth on *Schedule 2* hereto is negative, such amount (the "*Lessee Section 467 Loan Balance*") represents a loan in favor of the Facility Lessee. If there shall be a Lessor Section 467 Loan Balance, the Owner Lessor shall deduct interest expense and the Facility Lessee shall

accrue interest income, in each case, in an amount equal to the amount set forth under the caption "Lessor Section 467 Interest" for the applicable Rent Payment Period on *Schedule 1-3* hereto (the "*Lessor Section 467 Interest*"). If there shall be a Lessee Section 467 Loan Balance, the Owner Lessor shall accrue interest income and the Facility Lessee shall deduct interest expense, in each case, in an amount equal to the amount set forth for the applicable Rent Payment Period on *Schedule 1-3* hereto (the "*Lessee Section 467 Interest*").

(d) If the Lease is terminated prior to the end of the Basic Lease Term or the Facility Lessee is otherwise required to pay Termination Value (or amounts computed by reference thereto) (A) the Owner Lessor shall make a payment to the Facility Lessee on the applicable Termination Date equal to the Lessor Section 467 Loan Balance on such date, if any, and (B) the Facility Lessee shall make a payment to the Owner Lessor on the applicable Termination Date equal to the Lessee Section 467 Loan Balance on such date, if any. Notwithstanding the foregoing, either party may offset any Lessor Section 467 Loan Balance owed by the Owner Lessor to the Facility Lessee against the amount of Termination Value (or amounts computed by reference thereto) due and payable by the Facility Lessee to the Owner Lessor on such date, and the Facility Lessee shall pay an amount equal to the excess of such Termination Value (or amounts computed by reference thereto) over such Lessor Section 467 Loan Balance or the Owner Lessor shall pay an amount equal to the excess of such Lessor Section 467 Loan Balance over such Termination Value (or amounts computed by reference thereto). Notwithstanding anything in this Facility Lease to the contrary, if by operation of law, the full amount of Termination Value is not payable by the Facility Lessee in accordance with the provisions hereof, the amount of the Section 467 Loan from the Facility Lessee to the Owner Lessor will be reduced by an amount equal to any such reduction of the amount of Termination Value payable by the Facility Lessee. For the avoidance of doubt, it is the explicit intent, understanding and agreement

of the parties hereto that, under such circumstances, the Facility Lessee is not to receive any amounts in respect of any Section 467 Loan then outstanding from the Facility Lessee to the Owner Lessor to the extent such amounts are in excess of Termination Value then payable to the Facility Lessee.

Section 3.3 Supplemental Lease Rent. The Facility Lessee also agrees to pay, on an After-Tax Basis, to the Owner Lessor, or to any other Person entitled thereto as expressly provided herein or in any other Operative Document, as appropriate, any and all Supplemental Lease Rent, promptly as the same shall become due and owing, or where no due date is specified, promptly after demand by the Person entitled thereto, and in the event of any failure on the part of the Facility Lessee to pay any Supplemental Lease Rent, the Owner Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise for the failure to pay Basic Lease Rent. The Facility Lessee will also pay as Supplemental Lease Rent, unless prohibited by any Requirement of Law, an amount equal to interest at the applicable Overdue Rate (computed on the basis of a 360-day year of twelve 30-day months) on any part of any payment of Basic Lease Rent not paid when due for any period for which the same shall be overdue and on any Supplemental Lease Rent not paid when due (whether on demand or otherwise) for the period from such due date until the same shall be paid. All Supplemental Lease Rent to be paid pursuant to this *Section 3.3* shall be payable in the manner set forth in *Section 3.5*.

Section 3.4 Adjustment of Basic Lease Rent and Termination Value. (a) The Facility Lessee and the Owner Lessor agree that Basic Lease Rent, Allocated Rent, Proportional Rent, Lessor Section 467 Loan Balance, Lessee Section 467 Loan Balance, Lessor Section 467 Interest, Lessee Section 467 Interest and Termination Values may be adjusted, either upwards or downwards, at the request of the Facility Lessee or the Owner Participant in the following situations: (i) after the Closing Date to reflect the change in interest rate on any New Lessor Notes issued in connection with a refinancing pursuant to Section 12.2 of the Participation Agreement and pursuant to *Section 2.6* of the Lease Indenture, (ii) in connection with the financing of improvements through Additional Lessor Notes pursuant to

Section 12.1(a)(iii) of the Participation Agreement and (iii) to reflect the payments made pursuant to Section 10.3(d) hereof.

(b) Any adjustments pursuant to this *Section 3.4* shall be calculated, (A) first, so as to maintain the Owner Participant's Net Economic Return, the minimum and average Rent Service Coverage Ratios set forth in the Closing Projections through the end of the Basic Lease Term, and the "operating lease" treatment for the Facility Lessee and, (B) second, at the option of the Facility Lessee (x) to minimize the average annual Basic Lease Rent over the Basic Lease Term for GAAP accounting purposes of the Facility Lessee and/or (y) to minimize, to the extent possible, the net present value of the Basic Lease Rent (*provided that*, with respect to GAAP earnings, the Owner Participant shall not be obligated by any such adjustment to record a book loss or reduce book earnings in the year of adjustment). Adjustments shall be computed by the Owner Participant, using the same method of computation, Tax Assumptions and Pricing Assumptions originally used (other than those that have changed as a result of the event giving rise to the adjustment) in the calculation of Basic Lease Rent, Allocated Rent, Proportional Rent, Lessor 467 Interest, Lessee 467 Interest, Lessor Section 467 Loan Balance, Lessee Section 467 Loan Balance and Termination Values set forth in *Schedules 1-1*, *1-2*, *1-3* and *Schedule 2* hereto, respectively, but shall be subject to the verification procedure described in *Section 3.4(d)* and shall be in compliance with Section 467 of the Code and Rev. Proc. 2001-28, 2001-19 IRB 1156 and Rev. Proc. 2001-29, 2001-19 IRB 1160 except to the extent the original transaction did not comply therewith.

(c) Anything herein or in any other Operative Document to the contrary notwithstanding, Basic Lease Rent (excluding Component A of Basic Lease Rent) payable on any Rent Payment Date, whether or not adjusted in accordance with this *Section 3.4*, shall, in the aggregate, be in an amount at least sufficient to pay in full principal and interest payable on the Lessor Notes on such Rent Payment Date. Anything herein or in any other Operative Document to the contrary notwithstanding, Termination Values (excluding Component A of Termination Value) payable on any date under this Facility Lease, whether or not adjusted in accordance with this *Section 3.4*, shall in the aggregate, together with all other Rent due and owing on such date, exclusive of any portion thereof that is Component A of Basic Lease Rent or an Excepted Payment, be in an amount at least sufficient to pay in full the principal of, premium, if any, and accrued interest on the Lessor Notes payable on such date.

(d) Any adjustment pursuant to this *Section 3.4* computed by the Owner Participant pursuant to *Section 3.4(b)* shall be subject to the verification procedure described in this *Section 3.4(d)*. Once computed, the results of such computation shall promptly be delivered by the Owner Participant to the Facility Lessee. Within 30 days after the receipt of the results of any such adjustment, the Facility Lessee may request that a nationally recognized firm of accountants or lease advisors selected by the Owner Participant and reasonably acceptable to the Facility Lessee (the "*Verifier*") verify, on a confidential basis, after consultation with the Owner Participant and the Facility Lessee, the accuracy of such adjustment in accordance with this *Section 3.4*. The Owner Participant and the Facility Lessee hereby agree, subject to the execution by the Verifier of an appropriate confidentiality agreement, to provide the Verifier with all necessary information and materials (other than the Owner Participant's, the OP Guarantor's or any of their respective Affiliates' income tax returns or accounting records) as shall be necessary in connection with such verification. Both the Owner Participant and the Facility Lessee shall have the right to communicate with the Verifier and to submit supporting information and data to the Verifier. If the Verifier confirms that such adjustment is in accordance with this *Section 3.4*, and the adjustment to Basic Lease Rent, Allocated Rent, Proportional Rent, Lessor Section 467 Loan Balance, Lessee Section 467 Loan Balance, Lessor 467 Interest, Lessee 467 Interest and Termination Value calculated by the Verifier are the same as those calculated by the Owner Participant, it shall so certify to the Facility Lessee, the Owner Lessor and the Owner Participant and such certification shall be final, binding and conclusive on the Facility Lessee, the Owner Lessor and the Owner Participant. If

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the Verifier concludes that such adjustment is not in accordance with this *Section 3.4*, and the adjustments to Basic Lease Rent, Allocated Rent, Proportional Rent, Lessor Section 467 Loan Balance, Lessee Section 467 Loan Balance, Lessor 467 Interest, Lessee 467 Interest and Termination Value calculated by the Verifier are different from those calculated by the Owner Participant, it shall so certify to the Facility Lessee, the Owner Lessor and the Owner Participant, and the Verifier's calculation shall be final, binding and conclusive on the Facility Lessee, the Owner Lessor and the Owner Participant. If the Facility Lessee does not request a verification of any adjustment within the 30 day period specified above in this *Section 3.4(d)*, the computation provided by the Owner Participant shall be final, binding and conclusive on the Facility Lessee, the Owner Lessor and the Owner Participant. The final determination of any adjustment hereunder shall be set forth in an amendment to this Facility Lease, executed and delivered by the Owner Lessor and the Facility Lessee and consented to by the Owner Participant; *provided, however*, that any omission to execute and deliver such amendment shall not affect the validity and effectiveness of any such adjustment. The reasonable costs of the Verifier in verifying an adjustment pursuant to this *Section 3.4* shall be paid by the Facility Lessee; *provided, however*, that in the event that such Verifier determines that the present value of the remaining Basic Lease Rent to be made under this Facility Lease as calculated by the Owner Participant is greater than the present value of the remaining Basic Lease Rent as certified by the Verifier, in each case, discounted annually at the Discount Rate, by more than ten basis points, then such reasonable costs of the Verifier shall be paid by the Owner Participant. Notwithstanding anything herein to the contrary, the sole responsibility of the Verifier shall be to verify the calculations hereunder and the scope of the Verifier's responsibilities shall not include matters of interpretation of this Facility Lease or any other Operative Document.

Section 3.5 Manner of Payments. All Rent (whether Basic Lease Rent, Renewal Rent or Supplemental Lease Rent) and all Termination Value payments shall be paid by the Facility Lessee in Dollars in immediately available funds to the recipient not later than 11:00 a.m. (New York City time) on the date due. If any Rent is due on a day which is not a Business Day, payment thereof shall be made on the next succeeding Business Day with the same effect as if made on the date on which such payment was due. All Rent payments payable to the Owner Lessor (other than Excepted Payments) shall be paid by the Facility Lessee to the Owner Lessor at its account at US Trust Company (Account No. 04003018) (the "*Owner Lessor's Rent Account*"), or to such other place as the Owner Lessor shall notify the Facility Lessee in writing; *provided, however,* that so long as the Lessor Notes are outstanding and the Lien created under the Lease Indenture has not been discharged, the Owner Lessor hereby irrevocably directs (it being agreed and understood that such direction shall be deemed to have been revoked after the Lien created under the Lease Indenture shall have been fully discharged in accordance with its terms), and the Facility Lessee agrees, that all payments of Rent (other than Excepted Payments) payable to the Owner Lessor shall be paid by "wire" transfer directly to the Security Agent's Account or to such other place as the Security Agent shall notify the Facility Lessee in writing pursuant to the Participation Agreement. On each Rent Payment Date, Basic Lease Rent shall be paid by transferring funds in the amount equal to the Basic Lease Rent payment (in the amount notified by the Facility Lessee to the Owner Lessor and, so long as the Lessor Notes are outstanding and the Lien created under the Lease Indenture has not been discharged, the Security Agent) into the Owner Lessor's Rent Account or, so long as the Lessor Notes are outstanding and the Lien created under the Lease Indenture has not been discharged, the Security Agent's Account.

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

SECTION 4 DISCLAIMER OF WARRANTIES; RIGHT OF QUIET ENJOYMENT

Section 4.1 Disclaimer of Warranties.

(a) Without waiving any claim the Facility Lessee may have against any manufacturer, vendor or contractor, THE FACILITY LESSEE ACKNOWLEDGES AND AGREES SOLELY FOR THE BENEFIT OF THE OWNER LESSOR AND THE OWNER PARTICIPANT THAT (i) THE FACILITY AND EACH COMPONENT ARE OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE ACCEPTABLE TO THE FACILITY LESSEE, (ii) THE FACILITY LESSEE IS SATISFIED THAT THE FACILITY AND EACH COMPONENT ARE SUITABLE FOR THEIR RESPECTIVE PURPOSES, (iii) NEITHER THE OWNER LESSOR NOR THE OWNER PARTICIPANT IS A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND, (iv) THE UNDIVIDED INTEREST IS LEASED HEREUNDER TO THE EXTENT PROVIDED HEREBY FOR THE BASIC LEASE TERM AND THE RENEWAL LEASE TERMS, IF ANY, SPECIFIED HEREIN SUBJECT TO ALL REQUIREMENTS OF LAW NOW IN EFFECT OR HEREAFTER ADOPTED, INCLUDING (1) ZONING REGULATIONS, (2) ENVIRONMENTAL LAWS OR (3) BUILDING RESTRICTIONS, AND IN THE STATE AND CONDITION OF EVERY PART THEREOF WHEN THE SAME FIRST BECAME SUBJECT TO THIS FACILITY LEASE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY THE OWNER LESSOR OR THE OWNER PARTICIPANT AND (v) THE OWNER LESSOR LEASES FOR THE BASIC LEASE TERM AND THE RENEWAL LEASE TERMS, IF ANY, SPECIFIED HEREIN AND THE FACILITY LESSEE TAKES THE UNDIVIDED INTEREST UNDER THIS FACILITY LEASE "AS-IS," "WHERE-IS" AND "WITH ALL FAULTS," AND THE FACILITY LESSEE ACKNOWLEDGES THAT NEITHER THE OWNER LESSOR, NOR THE OWNER PARTICIPANT MAKES NOR SHALL BE DEEMED TO HAVE MADE, AND EACH EXPRESSLY DISCLAIMS, ANY AND ALL RIGHTS, CLAIMS, WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION, MERCHANTABILITY THEREOF OR AS TO THE TITLE OF THE FACILITY, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN TORT OR ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT THERETO, except that the Owner Lessor represents and warrants that on the Closing Date, the Undivided Interest will be free of Owner Lessor Liens. It is agreed that all such risks, as between the Owner Lessor and the Owner Participant on the one hand and the Facility Lessee on the other hand are to be borne by the Facility Lessee with respect to acts, occurrences or omissions during the Facility Lease Term. Neither the Owner Lessor nor the Owner Participant shall have any responsibility or liability to the Facility Lessee or any other Person with respect to any of the following: (w) any liability, loss or damage caused or alleged to be caused directly or indirectly by the Facility or any Component or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (x) the use, operation or performance of the Facility, any Component or any risks relating thereto; (y) the delivery, operation, servicing, maintenance, repair, improvement, replacement or decommissioning of the Facility or any Component; or (z) a Lessor Section 467 Loan Balance to the extent of the reduction in the Facility Lessee's obligation to pay Termination Value pursuant to operation of law. The provisions of this paragraph (a) of this *Section 4.1* have been negotiated, and, except to the extent otherwise expressly stated, the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties of the Owner Lessor, express or implied, with respect to the Facility, any Component or the Undivided Interest that may arise pursuant to any Requirement of Law now or hereafter in effect, or otherwise.

(b) During the Facility Lease Term, so long as no Lease Event of Default shall have occurred and be continuing, the Owner Lessor hereby appoints irrevocably and constitutes the Facility Lessee its agent and attorney-in-fact, coupled with an interest, to assert and enforce, from time to time, in the name and for the account of the Owner Lessor and the Facility Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Facility Lessee, whatever claims and rights the Owner Lessor may have in respect of the Facility, any Component or the Undivided Interest against any manufacturer, vendor or contractor, or under any express or implied warranties relating to the Facility, any Component or the Undivided Interest. Notwithstanding the foregoing, any amount in excess of $5,000,000 that is payable under any warranty shall not be payable to or retained by the Facility Lessee (for application in repair or replacement of the affected property if necessary) if at the time of such payment a Material Lease Default or Lease Event of Default shall have occurred and be continuing, but shall be paid to and held by the Owner Lessor as security for the obligations of the Facility Lessee under this Facility Lease (or, if the Lien created under the Lease Indenture shall not have been discharged pursuant to the terms thereof, such amounts shall be paid to and held by the Security Agent in accordance with the terms of the Lease Indenture) in accordance with *Section 21* or shall be applied towards payment of the Facility Lessee's obligations under the Operative Documents at the Owner Lessor's option during such time as any Material Lease Default or Lease Event of Default shall have occurred and be continuing. At such time thereafter as no Material Lease Default or Lease Event of Default shall be continuing, such amount at the time held by the Owner Lessor, or, if applicable, the Security Agent, in excess of the amount applied in accordance with the preceding sentence shall be paid to the Facility Lessee net of and after deduction for any applicable withholding Taxes, upon the Facility Lessee's written request therefor, specifying the amount to be paid and certifying that no Material Lease Default or Lease Event of Default has occurred and is continuing. The Owner Lessor agrees to execute and deliver such further documents and take such further action (including the assignment of warranty claims), at the Facility Lessee's expense and at no after-tax cost to the Owner Participant, as may be reasonably requested by the Facility Lessee in order to obtain such warranty service as may be furnished for the Facility or any Component by any of the warrantors.

Section 4.2 Quiet Enjoyment. So long as no Lease Event of Default has occurred and is continuing, the Facility Lessee's quiet enjoyment of the use, operation, or possession by the Facility Lessee of the Facility or the Undivided Interest will not be disturbed by the Owner Lessor or the Owner Participant, any of their respective Affiliates thereof or any other Person having a rightful, valid and legal claim by, through or under the Owner Lessor or any of its Affiliates.

SECTION 5 RETURN OF UNDIVIDED INTEREST

Section 5.1 Return. Upon expiration of the Facility Lease Term (or earlier than such date if required pursuant to the provisions of this Facility Lease) (the "*Date of Return*"), unless the Undivided Interest is being transferred to the Facility Lessee (or its designee) pursuant to *Section 10* or *Section 13*, the Facility Lessee shall return the Undivided Interest (together with all Required Improvements, all Non-Severable Improvements, all other Improvements financed through this Facility Lease, if any, all logs and records relating to the Undivided Interest, title to each of which shall vest in the Owner Lessor) to the Owner Lessor or any designee or transferee of the Owner Lessor by surrendering the Undivided Interest into the possession of the Owner Lessor, or such designee or transferee at the location of the Facility on the Facility Site.

Section 5.2 Condition Upon Return. On the Date of Return, (other than in connection with a return of the Undivided Interest by the Facility Lessee pursuant to *Section 13* or *Section 14*), the Facility Lessee agrees that the following conditions (the "*Return Conditions*") shall be satisfied or waived, whereupon this Facility Lease shall terminate:

(a) the Facility will be in at least as good condition as it would have been in if it had been maintained during the Facility Lease Term in compliance with the provisions of this Facility Lease

(including, without limitation, *Section 7*), ordinary wear and tear excepted; and the Owner Lessor shall be entitled to exercise its right pursuant to the Designated Representative Agreement to appoint itself or a party of its choosing, in its sole discretion, as the designated account representative on file with the EPA or DEP (as the case may be) to be allocated any emission allowances granted by such agencies with respect to the Facility on or after the Termination Date, and all such emission allowances shall be for the exclusive account of the Owner Lessor (and the Facility Lessee shall take such action as the Owner Lessor may reasonably request which the Owner Lessor deems necessary to obtain such allowances);

(b) the Facility Lessee shall, to the extent permitted by Requirements of Law and the provisions of such licenses or permits, assign an undivided interest equal to the Owner Lessor's Percentage to the Owner Lessor or its transferee or designee in, and shall cooperate with all reasonable requests of the Owner Participant, the Owner Lessor or any transferee or designee of either such Person for purposes of obtaining, or enabling the Owner Participant, the Owner Lessor or such transferee or designee to obtain, any and all licenses and permits of any Governmental Authorities or other Persons that are or will be required to be obtained by the Owner Participant, the Owner Lessor or such transferee or designee in connection with the use, operation or maintenance of the Undivided Interest that are not already in the name of the Owner Lessor or a transferee or designee, as the case may be on or after such return as required by Requirements of Law;

(c) the Facility Lessee shall provide the Owner Lessor or its transferee or designee with originals or copies of all documents, instruments, plans, maps, specifications, manuals, drawings and other documentary materials relating to the installation, maintenance, operation, construction, design, modification and repair of the Facility, in each case as shall be in the Facility Lessee's possession and reasonably appropriate or necessary for the continued operation of the Facility;

(d) the Facility Lessee, at the request of the Owner Lessor, shall sell to the Owner Lessor or its designee or transferee at the then fair market value thereof, determined by agreement between the Facility Lessee and the Owner Lessor or, absent such agreement, by an appraisal (the fees and expenses to be for the account of the Owner Lessor) conducted according to the Appraisal Procedure, an undivided interest equal to the Owner Lessor's Percentage in (i) the Facility Lessee's right, title and interest in and to any or all Severable Improvements made to the Facility that are owned by the Facility Lessee, and (ii) any and all supplies, spare parts, consumables, safety equipment, and other parts or materials as shall be in the Facility Lessee's possession and shall be reasonably appropriate or necessary for the continued operation of the Facility;

(e) the Undivided Interest (and the Severable Improvements, supplies, spare parts, consumables, safety equipment, and other parts and materials referred to in *Section 5.2(d)*) shall be free and clear of all Liens other than Permitted Encumbrances set forth in clauses (ii), (iii), (vii), (viii), (ix), (xi) and (xiii) of the definition thereof; *provided, however*, in the case of Permitted Encumbrances set forth in clauses (iii), (vii), (viii) and (ix) of the definition thereof, adequate cash reserves shall have been escrowed in a manner reasonably satisfactory to the Owner Lessor; *provided, further*, that nothing in this *Section 5.2(e)* shall limit the obligations of the Facility Lessee under *Section 10.1* of the Participation Agreement;

(f) any Component in existence on the Date of Return shall be in the same condition as required under *Section 7.2*;

(g) the Facility Lessee, or an Affiliate thereof, shall enter into an agreement or other arrangements reasonably acceptable to the Owner Lessor, which arrangements, however, shall not be a condition precedent to the return of the Undivided Interest (the "*Support Arrangements*") to provide the Owner Lessor with the Support Services; *provided*, that the Facility Lessee, or its Affiliate, as the case may be, shall be bound to provide Support Services only to the extent the

Facility Lessee or any domestic, unregulated Affiliate thereof is capable of providing such services and is either in the business of providing such Support Services to others or performs such Support Services on its own behalf, and only to the extent that such services are necessary for the operation of the Facility and cannot commercially reasonably and timely be obtained by the Owner Lessor or its Affiliates from third parties. It is the intent of the parties hereto that the Support Arrangements, together with the Facility Site Lease, and mutually agreed easements and rights of way, if required, will provide all rights, including reasonable access to the Facility and the Facility Site, that are necessary and appropriate for the Owner Lessor (or any transferee or designee thereof) to own and operate the Facility, and transmit power generated thereby, during and after the expiration of this Facility Lease in the same manner as operated and transmitted by the Facility Lessee during the Facility Lease Term (assuming such operation and transmission was in accordance with the Facility Site Lease and the other Operative Documents). Support Arrangements shall provide for the provision of Support Services from and after the expiration of this Facility Lease, and will provide for fair market value compensation from time to time to be paid to the Facility Lessee, or an Affiliate thereof, for the performance of such Support

Services, periodically in advance on no more than a monthly basis and no less than an annual basis, for such rights and the performance of other services, and all such arrangements shall terminate upon expiration or early termination of the Facility Site Lease or at the Owner Lessor's option. Within 180 days after the expiration or termination of this Facility Lease, the Owner Lessor shall notify the Facility Lessee of the material elements of the Support Services that the Owner Lessor desires the Facility Lessee, or its Affiliate, to perform. Following such notice, the Facility Lessee and the Owner Lessor shall negotiate in good faith the terms of the fair market value, performance standards, compensation and other terms of such specified Support Services, including the circumstances under which the Facility Lessee and its Affiliates shall be released from any further obligation to provide such Support Services, and enter into contracts for the performance of the Support Services upon any such negotiated terms, *provided, however*, that if the notice referenced in the preceding sentence is given by the Owner Lessor at any time up to 60 days prior to the Date of Return, the Owner Lessor and the Facility Lessee shall use reasonable efforts to cause such contracts to be executed no later than the Date of Return; *provided, further*, that in the event such contracts shall not have been executed prior to the Date of Return, from the period beginning on such Date of Return and ending on the date on which such contracts are executed, the Facility Lessee shall provide to the Owner Lessor, at the then prevailing rate being charged for the same or similar services in the power generation industry, such specified Support Services as are necessary to enable the Owner Lessor to operate, maintain and repair the Facility in accordance with Prudent Industry Practice and the Facility Lease and in compliance with applicable Requirements of Law. The Facility Lessee shall also, subject to obtaining any required third party consents, assign to the Owner Lessor upon termination of this Facility Lease any support or similar agreements to the extent relating to the Facility it has with third parties.

(h) the Facility Lessee shall provide to the Owner Lessor and the Owner Participant a Phase I Environmental Survey of the Facility and the Facility Site and, if as a result of such survey, facts are revealed that would reasonably necessitate a Phase II Environmental Survey, a Phase II Environmental Survey, as to the presence or absence of Environmental Conditions (and compliance or non-compliance with applicable Environmental Laws), not later than 12 months prior to the Date of Return or, in connection with a return other than pursuant to *Section 5.1*, not later than the date such Undivided Interest is returned, such surveys to be prepared by a reputable and nationally recognized environmental consulting firm (selected by the Facility Lessee and reasonably acceptable to the Owner Participant) and to be in form and scope reasonably satisfactory to the Owner Participant. The cost and expense of preparing and providing such surveys shall be for the account of the Facility Lessee. If, as a result of either such environmental survey, any action (including, any cleaning, investigation, abatement, correction, removal or remediation) is required in order that the Facility and the Facility Site are in compliance with applicable Environmental Laws and the Return Conditions, the Facility Lessee shall, at its own expense, within 90 days of the Owner Lessor having received such environmental survey, (a) provide the Owner Participant and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture shall not have been discharged, the Security Agent with a plan, reasonably satisfactory to the Owner Participant and/or the Security Agent, designed to ensure that the Facility and the Facility Site will be brought into compliance with applicable Environmental Laws, and all material Environmental Conditions recommended for correction in such survey will be corrected as promptly as is reasonably practicable and without materially adversely affecting the continued operation of the Facility. The actions referred to in this *Section 5.2(h)* shall be completed prior to the expiration of the Basic Lease Term or any then existing Renewal Lease Term or early termination thereof, as applicable, in compliance with Environmental Laws other than immaterial violations that do not involve any (1) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than Liens permitted pursuant to *Section 5.2(e)*) on the Facility, the Undivided Interest or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (2) the risk of criminal liability being incurred by the Owner Lessor, the Owner Participant or the OP Guarantor or (3) a material risk of any material adverse effect on the interest of the Owner Lessor, the Owner Participant or the OP Guarantor; *provided, however*, if any such action cannot reasonably be completed prior to the expiration or early termination of such Lease Term, and if continued operation of the Facility could not reasonably be expected to result in strict liability being imposed upon the Owner Lessor, the Owner Participant, the OP Guarantor or the Facility Lessee, then the Facility Lessee shall complete such action as promptly thereafter as is reasonably practicable and shall provide financial assurance in the form of a letter of credit or equivalent collateral to the Owner Lessor and the Owner Participant, reasonably satisfactory to each such Person, during the period of such action following the end of such Lease Term and provided, further, that any such action shall be completed no later than twelve (12) months after the Date of Return. Neither the provision of the surveys contemplated by this *Section 5.2(h)*, nor any other provision of this *Section 5.2(h)*, shall alter the obligations of any party to the

Operative Documents, including those set forth in *Sections 5.4(iii)* and *10.1* of the Participation Agreement. The obligations of the Facility Lessee set forth in this *Section 5.2(h)* shall survive the termination of this Facility Lease and the expiration of the applicable Facility Lease Term;

(i) the Facility shall have at least the capability and the functional ability to generate electricity, on a continuous basis in normal commercial operating conditions, substantially at the ratings for which it was designed after taking into account normal performance degradation as a function of (a) time and (b) all Required Improvements to the Facility made in accordance with this Facility Lease; and

(j) at the Owner Lessor's request, a nationally recognized independent engineer (selected by the Facility Lessee and reasonably acceptable to the Owner Participant) shall provide a certificate certifying that the Facility is in compliance with the Return Conditions.

There shall be no other return conditions or requirements other than the Return Conditions set forth in this *Section 5.2*.

Section 5.3 Expenses. Except as provided in *Section 5.2(d)* and *5.2(g)*, the Facility Lessee agrees to pay or reimburse or to cause to be paid or reimbursed, on an After-Tax Basis, on demand, all costs and expenses incurred in connection with any return contemplated by this *Section 5*.

SECTION 6 LIENS

The Facility Lessee hereby covenants that it will not directly or indirectly create, incur, assume or suffer to exist any Lien or other encumbrance on or with respect to the Undivided Interest, the Facility, the Facility Site, any Component, any Project Document, or on any Operative Document or on the Owner Lessor's or the Owner Participant's interest in or under any Operative Document, except Permitted Encumbrances. The Facility Lessee shall promptly notify the Owner Lessor of the imposition of any such Lien of which the Facility Lessee has Actual Knowledge and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such Lien (except for Permitted Encumbrances). The Facility Lessee shall defend the Owner Lessor from and against all claims to the Owner Lessor's title to the Undivided Interest or any portion thereof.

SECTION 7 MAINTENANCE; REPLACEMENTS OF COMPONENTS

Section 7.1 Maintenance. The Facility Lessee, at its own cost and expense, will (i) cause the Facility to be maintained in as good condition, repair and working order as when delivered, ordinary wear and tear excepted, and in any event, in all material respects (a) no less favorably as compared to other facilities of a similar type owned or operated by the Facility Lessee (or any of its domestic unregulated Affiliates), solely as a result of the status of the Facility as a leased facility as opposed to an owned facility, (b) in accordance with Prudent Industry Practice, (c) in compliance with all Requirements of Law, including without limitation all applicable Environmental Laws and safety laws and FERC, unless such noncompliance could not reasonably be expected to result in a Material Adverse Effect or involve any (1) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than a Permitted Encumbrance) on, the Facility, the Undivided Interest or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (2) risk of criminal or material civil liability being incurred by the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, any Lender or the Bondholder Trustee or any of their respective Affiliates, or (3) material risk of any material adverse effect on the interests of the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, any Lender or the Bondholder Trustee or any of their respective Affiliates (including, without limitation, subjecting any such Person to regulation as a public utility under any Requirement of Law), and (d) in accordance with the terms of all insurance policies required to be maintained pursuant to *Section 11* and (ii) cause to be made all repairs, renewals, replacements, betterments and improvements to the Facility, all as in the reasonable judgment of the Facility Lessee may be necessary so that the Facility may be operated (x) in compliance with all Requirements of Law, unless such noncompliance could not reasonably be expected to result in a Material Adverse Effect, (y) in accordance with the Operative Documents and (z) to the extent commercially reasonable, consistent with the estimated

remaining economic useful life of the Facility as set forth in the Closing Appraisal (it being understood and agreed that the timing of such repairs, renewals, replacements, betterments and improvements required under clause (z) of this *Section 7.1* shall be in the sole discretion of the Facility Lessee).

Section 7.2 Replacement of Components. In the ordinary course of maintenance, service, repair or testing of the Facility or any Component, the Facility Lessee, at its own cost and expense, may remove or cause or permit to be removed from the Facility any Component; *provided, however,* that the Facility Lessee shall (a) cause any such Component to be replaced as soon as commercially practicable by a replacement Component which shall be free and clear of all Liens (other than Permitted Encumbrances) and which shall be in as good an operating condition as and shall have a current and residual value, remaining economic useful life and utility at least equal to that of the Component replaced, assuming such replaced Component was maintained in accordance with the terms of this Facility Lease, and (b) cause such replacement to be performed in a manner that does not diminish the current value, residual value, utility or remaining economic useful life of the Facility by more than a de minimis amount (as measured immediately prior to such replacement, assuming the Facility is, at such time, in the condition required by the terms of this Facility Lease) or cause the Facility to become "limited use property" within the meaning of Rev. Proc. 2001-28, 2001-19 IRB 1156 or Rev. Proc. 2001-29, 2001-19 IRB 1160 (each such replacement Component being herein referred to as a "*Replacement Component*"). An undivided interest equal to the Owner Lessor's Percentage in each Component at any time removed from the Facility shall remain subject to this Facility Lease, wherever located, until such time as such Component shall be replaced by a Replacement Component which has been incorporated in the Facility and which meets the requirements for Replacement Components specified above. Immediately upon any Replacement Component becoming incorporated in the Facility, without further act (and at no cost to the Owner Lessor and with no adjustment to the Purchase Price, Basic Lease Rent, Renewal Rent, Proportional Rent, Allocated Rent, Lessor Section 467 Loan Balance, Lessee Section 467 Loan Balance, Lessor Section 467 Interest, Lessee Section 467 Interest or Termination Values), (i) the replaced Component shall no longer be subject to this Facility Lease, (ii) title to the Owner Lessor's undivided interest equal to the Owner Lessor's Percentage in the removed Component shall thereupon vest in the Facility Lessee or such other Person as shall be designated by the Facility Lessee, free and clear of all rights of the Owner Lessor and the Lease Indenture Trustee, and (iii) title to an undivided interest equal to the Owner Lessor's Percentage in the Replacement Component shall thereupon vest with the Owner Lessor and such undivided interest shall (a) become subject to this Facility Lease and, so long as the Lessor Notes are outstanding, the Lien of the Lease Indenture, and (b) be deemed a part of the Facility and the Undivided Interest for all purposes of this Facility Lease. Notwithstanding anything in this *Section 7.2* to the contrary, if the Facility Lessee has determined that any part, Component or portion of the Facility is surplus or obsolete, the Facility Lessee shall have the right to remove such part, Component or portion of the Facility without replacing it as long as such removal would not diminish the current value, residual value, utility or remaining economic useful life of the Facility or the Undivided Interest by more than a de minimis amount below the then current or residual value, the remaining economic useful life or the utility thereof (as measured immediately prior to such removal, assuming the Facility is, at such time, in the condition required by the terms of this Facility Lease) or cause the Facility to become "limited use property" within the meaning of Rev. Proc. 2001-28, 2001-19 IRB 1156 or Rev. Proc. 2001-29, 2001-19 IRB 1160.

Section 7.3 Environmental Matters. The Facility Lessee will, at its own expense:

(a) comply with all Environmental Laws applicable to the Facility or the Facility Site, except instances of non-compliance that could not reasonably be expected to have a Material Adverse Effect or involve any (1) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than a Permitted Encumbrance) on, the Facility, the Undivided Interest or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (2) risk of criminal or material civil liability being incurred by the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, any Lender or the Bondholder Trustee or any of their respective Affiliates, or (3) material risk of any

material adverse effect on the interests of the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, any Lender or the Bondholder Trustee or any of their respective Affiliates (including, without limitation, subjecting any such Person to regulation as a public utility under any Requirement of Law);

(b) obtain and maintain all necessary Governmental Approvals required under any applicable Environmental Law in connection with the use, operation and maintenance of the Facility and the Facility Site and operate the Facility in compliance with such Governmental Approvals, except instances of non-compliance that could not reasonably be expected to have a Material Adverse Effect or involve any (1) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than a Permitted Encumbrance) on, the Facility, the Undivided Interest or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (2) risk of criminal or material civil liability being incurred by the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, any Lender or the Bondholder Trustee or any of their respective Affiliates, or (3) material risk of any material adverse effect on the interests of the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, any Lender or the Bondholder Trustee or any of their respective Affiliates (including, without limitation, subjecting any such Person to regulation as a public utility under any Requirement of Law);

(c) conduct and complete, at no cost and expense to the Owner Participant or the Owner Lessor, any investigation, study, sampling, monitoring and testing and undertake any cleanup, removal, remediation, correction, mitigation, response or other action necessary or advisable to abate, correct, remove and clean up any Environmental Condition at the Facility or the Facility Site, to the extent required by and in material compliance with applicable Environmental Laws except instances of non-compliance that could not reasonably be expected to have a Material Adverse Effect or involve any (1) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than a Permitted Encumbrance) on, the Facility, the Undivided Interest or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (2) risk of criminal or material civil liability being incurred by the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, any Lender or the Bondholder Trustee or any of their respective Affiliates, or (3) material risk of any material adverse effect on the interests of the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, any Lender or the Bondholder Trustee or any of their respective Affiliates (including, without limitation, subjecting any such Person to regulation as a public utility under any Requirement of Law); and

(d) as soon as possible and in any event within thirty Business Days of the Facility Lessee obtaining Actual Knowledge thereof, provide the Owner Lessor with written notice of any pending or threatened material Environmental Claim involving the Facility or the Facility Site that could be expected to have a Material Adverse Effect on the Facility Lessee or involve any (1) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than a Permitted Encumbrance) on, the Facility, the Undivided Interest or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (2) risk of criminal or material civil liability being incurred by the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, any Lender or the Bondholder Trustee or

any of their respective Affiliates, or (3) material risk of any material adverse effect on the interests of the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, any Lender or the Bondholder Trustee or any of their respective Affiliates (including, without limitation, subjecting any such Person to regulation as a public utility under any Requirement of Law).

SECTION 8 IMPROVEMENTS

Section 8.1 Required Improvements. The Facility Lessee, at its own cost and expense, and without the consent of the Lease Indenture Trustee, the Security Agent, the Lender, the Bondholder Trustee, the Owner Lessor or Owner Participant, shall make or cause to be made any Improvements as are required (x) by Requirements of Law or by any Governmental Authority having jurisdiction thereon, (y) by any insurance policy required to be maintained by the Facility Lessee under any Operative Document or (z) by the terms of the Operative Documents (each, a "*Required Improvement*"); *provided, however,* that the Facility Lessee may, in good faith and by appropriate proceedings, diligently contest the validity or application of any Requirement of Law in any reasonable manner which does not involve any (1) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than a Permitted Encumbrance) on, the Facility, the Undivided Interest or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (2) risk of criminal liability being incurred by the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, any Lender or the Bondholder Trustee or any of their respective Affiliates, or (3) material risk of any material adverse effect on the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent or any of its respective Affiliates (including, without limitation, subjecting any such Person to regulation as a public utility under any Requirement of Law); *provided further*, that no such contest may extend beyond the date that is 180 days prior to the expiration or earlier termination of this Facility Lease.

Section 8.2 Optional Improvements. So long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing, the Facility Lessee at any time may, at its own cost and expense, and without the consent of the Lease Indenture Trustee, the Lender, the Security Agent, the Bondholder Trustee, the Owner Lessor or Owner Participant make, cause to be made, or permit to be made any Improvement as the Facility Lessee considers desirable in the proper conduct of its business (any such non-Required Improvement being referred to as an "*Optional Improvement*"); provided that the Facility Lessee shall prevent any Optional Improvement from being made that would decrease the then current value, residual value, utility or remaining economic useful life of the Facility by more than a de minimis amount below the then current or residual value, the remaining economic useful life or the utility thereof (as measured immediately prior to the making of such Optional Improvement, assuming the Facility is, at such time, in the condition required by the terms of this Facility Lease), or cause the Facility to become "limited use property" within the meaning of Rev. Proc. 2001-28, 2001-19 IRB 1156 or Rev. Proc. 2001-29, 2001-19 IRB 1160.

Section 8.3 Title to Improvements. Title to an undivided interest equal to the Owner Lessor's Percentage in (i) all Required Improvements, (ii) all Non-Severable Improvements and (iii) all other Improvements which are financed by the Owner Lessor by an Additional Equity Investment or a Supplemental Financing pursuant to *Section 12.1* of the Participation Agreement shall (at no cost to the Owner Lessor, the Owner Participant or the OP Guarantor and with no adjustment to the Purchase Price, or except as expressly provided herein, Basic Lease Rent, Renewal Rent, Proportional Rent, Allocated Rent, Lessor Section 467 Loan Balance, Lessee Section 467 Loan Balance, Lessor Section 467 Interest, Lessee Section 467 Interest or Termination Values) automatically vest in the Owner Lessor upon being affixed to or incorporated into the Facility, and such undivided interest shall

immediately (a) become subject to this Facility Lease and (b) be deemed part of the Undivided Interest for all purposes of this Facility Lease. The Facility Lessee shall, at its own cost and expense, take such steps as the Owner Lessor may reasonably require from time to time to confirm that title to such Improvement has vested in the Owner Lessor and is subject to this Facility Lease. No interest in any Optional Improvement which is a Severable Improvement (other than Severable Improvements which are financed by the Owner Lessor by an Additional Equity Investment or a Supplemental Financing pursuant to *Section 12.1* of the Participation Agreement) shall vest in the Owner Lessor or become subject to this Facility Lease; *provided, however*, that if the Facility Lessee shall, at its cost and expense, cause such Optional Improvements which are Severable Improvements to be made to the Facility, the Owner Lessor shall have the right, prior to the return of the Undivided Interest to the Owner Lessor hereunder, to purchase an undivided interest equal to the Owner Lessor's Percentage in any such Optional Improvements which are Severable Improvements. The purchase price for such undivided interest shall be the then Fair Market Sales Value of such undivided interest. If the Owner Lessor does not elect to purchase such Optional Improvements which are Severable Improvements, the Facility Lessee may, and at the request of the Owner Lessor shall, remove such Improvements at the end of the Facility Lease Term. The Facility Lessee shall repair any damage to the Facility and the Facility Site caused by such removal, all at the

Facility Lessee's sole cost and expense; provided that such removal shall not (i) materially diminish the value, remaining economic useful life or utility of the Facility as a whole (assuming the Facility is, at such time, in the condition required by the terms of this Facility Lease) or (ii) cause the Facility to become "limited use property" within the meaning of Rev. Proc. 2001-28, 2001-19 IRB 1156 or Rev. Proc. 2001-29, 2001-19 IRB 1160. If the Facility Lessee shall have failed to remove any Optional Improvement which is a Severable Improvement as above provided prior to the return of the Undivided Interest pursuant to *Section 5.1*, title to an undivided interest equal to the Owner Lessor's Percentage in such Optional Improvement shall (at no cost to the Owner Lessor, the Owner Participant or the OP Guarantor) vest in the Owner Lessor.

Section 8.4 Financing of Improvements. Subject to *Section 6.7* of the Participation Agreement, the Facility Lessee shall at all times have the right to finance Improvements other than through this Facility Lease. The Facility Lessee may elect to finance Improvements to the Facility through this Facility Lease in accordance with *Section 12.1* of the Participation Agreement.

SECTION 9 NET LEASE

This Facility Lease is a "net lease." The Facility Lessee's obligation to make all Rent payments payable hereunder (and all amounts, including Termination Value, following termination of this Facility Lease) shall be absolute and unconditional under any and all circumstances, and shall not be terminated, extinguished, diminished, lost or otherwise impaired by any circumstance of any character, including by (i) any setoff, counterclaim, recoupment, defense or other right which the Facility Lessee may have against the Owner Lessor, the Owner Participant, the OP Guarantor, the Lease Indenture Trustee, the Security Agent, the Lender, the Bondholder Trustee or any other Person, including, without limitation, any claim as a result of any breach by any of said parties of any covenant or provision in this Facility Lease or any other Operative Document, (ii) any lack or invalidity of title or any defect in the title, condition, design, operation, merchantability or fitness for use of the Facility or any Component, or any eviction by paramount title or otherwise, or any unavailability of the Facility, the Facility Site, any Component, any other portion of the Undivided Interest, or any part thereof, (iii) any loss or destruction of, or damage to, the Facility or any Component or interruption or cessation in the use or possession thereof or any part thereof by the Facility Lessee for any reason whatsoever and of whatever duration, (iv) the condemnation, requisitioning, expropriation, seizure or other taking of title to or use of the Facility, the Facility Site, any Component, or any other portion of the Undivided Interest by any Governmental Authority or otherwise, (v) the invalidity or unenforceability or lack of due authorization or other infirmity of this Facility Lease or any other Operative Document, (vi) the lack of right, power or authority of the Owner Lessor to enter into this

Facility Lease or any other Operative Document, (vii) any ineligibility of the Facility or any Component for any particular use, whether or not due to any failure of the Facility Lessee to comply with any Requirement of Law, (viii) any Event of Force Majeure or any frustration of purpose, (ix) any legal requirement similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, (x) any insolvency, bankruptcy, reorganization or similar proceeding by or against the Facility Lessee or any other Person, (xi) any Lien of any Person with respect to the Facility, the Facility Site, any Component, any other portion of the Undivided Interest or any part thereof, (xii) any prohibition, limitation or restriction of the Facility Lessee's use of all or any part of the Facility or any portion thereof or any interest therein or the interference with such use by any Person, (xiii) the termination or loss of the Facility or any portion thereof, any other lease, sublease, right-of-way, easement or other interest in personal or real property upon or to which any portion of the Facility is located, attached or appurtenant or in connection with which any portion of the Facility is used or otherwise affects or may affect the Facility or any right thereto, (xiv) the existence of any Lien with respect to the Facility or any act or circumstance that may constitute an eviction or constructive eviction, failure of consideration or commercial frustration of purpose, (xv) any breach, default or misrepresentation by the Owner Lessor or any other Person under the Facility Lease or any of the other Operative Documents, *provided that* the Facility Lessee reserves its rights with respect to any breach, default or misrepresentation by the Owner Lessor or any other Person or (xvi) any other cause, whether similar or dissimilar to the foregoing, any present or future law notwithstanding, except as expressly set forth herein or in any other Operative Document, it being the intention of the parties hereto that Allocated Rent shall continue to accrue and all Basic Lease Rent, Renewal Rent and Supplemental Lease Rent (and all amounts, including Termination Value, in lieu of Basic Lease Rent, following termination of this Facility Lease) payable by the Facility Lessee hereunder shall continue to be payable in all events in the manner and at times provided for herein. Such Allocated Rent, Basic Lease Rent, Renewal Rent and Supplemental Lease Rent (and all amounts, including Termination Value, in lieu of Basic Lease Rent,

following termination of this Facility Lease) shall not be subject to any abatement and the accrual and payment thereof shall not be subject to any setoff or reduction for any reason whatsoever, including any present or future claims of the Facility Lessee or any other Person against the Owner Lessor or any other Person under this Facility Lease or otherwise. To the extent permitted by Requirements of Law, the Facility Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Facility Lease with respect to the Undivided Interest except in accordance with *Sections 10, 13,* or *14*. If for any reason whatsoever this Facility Lease shall be terminated in whole or in part by operation of law or otherwise, except as specifically provided herein, the Facility Lessee nonetheless agrees, to the extent permitted by Requirements of Law, (x) that Allocated Rent shall continue to accrue and (y) to pay to the Owner Lessor an amount equal to each installment of Basic Lease Rent, Renewal Rent and all Supplemental Lease Rent due and owing, at the time such payment would have become due and payable in accordance with the terms hereof had this Facility Lease not been so terminated. Nothing contained herein shall be construed to waive any claim which the Facility Lessee might have under any of the Operative Documents or otherwise or to limit the right of the Facility Lessee to make any claim it might have against the Owner Lessor or any other Person or to pursue such claim in such manner as the Facility Lessee shall deem appropriate.

SECTION 10 EVENTS OF LOSS

Section 10.1 Occurrence of Events of Loss.

(a) Each of the Owner Participant and the Owner Lessor will promptly notify the Facility Lessee of any event of which it is aware that would result in a Regulatory Event of Loss; *provided, however*, that the failure to provide such notice shall not result in any liability with respect to the Owner Participant or the Owner Lessor and shall not in any way relieve the Facility Lessee of any of its

obligations under this Facility Lease, including the obligations under this *Section 10*. The Facility Lessee shall promptly notify each other Lease Financing Party of any Event of Loss.

(b) If an Event of Loss described in clauses (i), (ii) or (iii) of the definition of Event of Loss shall occur, then the Facility Lessee shall rebuild or replace the Facility in accordance with this Facility Lease and the other Operative Documents and subject to the Rebuild Conditions; *provided that* in the event that any such Event of Loss occurs after the last day upon which the Facility Lessee may exercise a renewal right under this Facility Lease pursuant to *Section 15.1*, (i) the Lease Term shall be automatically extended for such period of time as is reasonably necessary for the Facility Lessee to complete any rebuilding or replacement required hereunder, (ii) the Facility Lessee shall pay as Renewal Rent during any such extended term an amount, payable monthly in arrears, equal to the average monthly Rent paid during the Basic Lease Term or Renewal Term, as the case may be, then being extended, and (iii) the Termination Value during such extended term shall be the Termination Value as of the end of the Facility Lease Term without giving effect to any such extension. The Facility Lessee shall have the right, in lieu of rebuilding or replacing the Facility, to terminate this Facility Lease and purchase the Undivided Interest from the Owner Lessor by paying to the Owner Lessor an amount equal to the Termination Value and paying to the parties entitled thereto all other amounts payable pursuant to *Section 10.2*; *provided that* the Facility Lessee shall give irrevocable written notice of its election to terminate the Facility Lease not later than six (6) months after such Event of Loss.

(c) In the event of a Regulatory Event of Loss or an Event of Loss described in clause (v) of the definition of Event of Loss, the Facility Lessee shall use commercially reasonable efforts to obtain bids from third parties unaffiliated with the Facility Lessee and sell the Owner Lessor's interest following such Event of Loss, subject to *Section 10.2(b)* hereof.

Section 10.2 Payment Upon Termination; Special Lessee Transfer Payment Upon Termination; Special Lessee Transfer

(a) If (A) the Facility Lessee shall elect (or be deemed to have elected) to terminate this Facility Lease pursuant to *Section 10.1(b)* following an Event of Loss described in clause (i), (ii) or (iii) of the definition of Event of Loss, then on the next Termination Date following the Facility Lessee's election not to rebuild or replace the Facility and (B) the Owner Lessor tenders all of its right, title and interest in the Facility to the Facility Lessee, the Facility Lessee shall pay to the Owner Lessor, or so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent, the sum of (a) the Termination Value determined as of the relevant

Termination Value Payment Date, plus (b) on an After-Tax Basis, all reasonable documented out-of-pocket costs and expenses incurred in connection with the Event of Loss by the Owner Lessor, the Owner Participant, and so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent, the Lease Indenture Trustee, the Lender and the Bondholder Trustee plus (c) any other Rent (other than Basic Lease Rent or Renewal Rent payable after the Termination Value Payment Date) due and unpaid on the Termination Value Payment Date and any amount due and unpaid or accrued and unpaid on the Termination Value Payment Date under any other Operative Document plus (d) any Lessee Section 467 Loan Balance (such sum, the "*Event of Loss Payment*"). Upon payment of the Event of Loss Payment (i) the Owner Lessor shall redeem the Lessor Notes together with all other amounts due to the Security Agent including the Lessor Section 467 Loan Balance, if any, determined as of such date; (ii) the Bondholder Trustee shall use such funds to repay the Lease Debt; (iii) this Facility Lease shall terminate and the Facility Lessee shall cease to have any liability to the Owner Lessor or the Owner Participant other than for obligations surviving pursuant to the express terms of the Operative Documents and (iv) all of the Owner Lessor's right, title and interest in and to the Facility shall be transferred to the Facility Lessee, on an "as is," "where is" and "with all faults" basis, without warranty but free of Lessor Liens and (v) Owner Lessor shall repay to the Facility Lessee the Lessor Section 467 Loan Balance, if any, determined as of the relevant

Termination Value Payment Date (the obligations to make such payments shall be subject to the provisions of Section 3.2(d)).

(b) In the case of Regulatory Event of Loss or an Event of Loss described in clause (v) of the definition of Event of Loss, if at least one cash bid is received on or prior to the next Termination Date occurring at least three months after the occurrence of such Regulatory Event of Loss or an Event of Loss described in clause (v) of the definition of Event of Loss, this Facility Lease shall terminate on such Termination Date and the Owner Lessor shall, subject to the Facility Lessee's right of first refusal, sell the Undivided Interest in the Facility to the party submitting the highest cash bid on an "as is", "where is" and "with all faults" basis, without representations or warranties other than a warranty of the Owner Lessor as to the absence of Owner Lessor Liens and a warranty of the Owner Participant as to the absence of Owner Participant Liens, all of the proceeds of which will be for the account of the Owner Lessor. The Facility Lessee shall pay to the Owner Lessor (i) the amount, if any, by which the Termination Value determined as of the Termination Date exceeds the sales price received by the Owner Lessor for the Facility (net of the fees, commissions and costs of any broker engaged by the Facility Lessee or any Affiliate thereof), plus (ii) on an After-Tax Basis all reasonable documented out-of-pocket costs and expenses incurred in connection with the Event of Loss by the Owner Lessor, the Owner Participant, and so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent, the Lease Indenture Trustee, the Lender and the Bondholder Trustee plus (iii) any other Rent (other than Basic Lease Rent or Renewal Rent payable after the Termination Value Payment Date) due and unpaid on the Termination Value Payment Date and any amount due and unpaid or accrued and unpaid on the Termination Value Payment Date under any other Operative Document plus (iv) Lessee Section 467 Loan Balance. If no cash bids are received by such time or if any cash bids are received but no sale is consummated, the Facility Lessee shall pay (x) Termination Value as of such Termination Date, plus (y) the amounts described in clauses (ii) and (iii) above. In either case, upon payment of such amounts, (a) Allocated Rent shall cease to accrue, this Facility Lease, and the Facility Lessee's obligation to pay Basic Lease Rent or Renewal Lease Rent hereunder, as the case may be, shall terminate, except for covenants that survive pursuant to the express terms of any Operative Document and (c) the Owner Lessor shall pay to the Facility Lessee the Lessor Section 467 Loan Balance, if any, determined as of the Termination Value Payment Date. The obligation to make such payments shall be subject to the provisions of *Section 3.2(d)*. In the case of a Regulatory Event of Loss, if shutting down the Facility does not eliminate the burdensome regulation on the Owner Participant, the Owner Lessor shall sell the Facility as scrap subject to the Facility Lessee's right of first refusal; *provided, however*, that if shutting down the Facility eliminates such burdensome regulation, the Facility shall be shut down and the Facility Lessee may, at its option, continue marketing the Facility for up to an additional three months (the "*Extended Marketing Period*"). In the case of an Event of Loss defined in clause (v) of the definition of Event of Loss, the Facility Lessee may, at its option, continue remarketing the Facility during the Extended Marketing Period. If at least one cash bid is received prior to the end of the Extended Marketing Period, the Owner Lessor shall, subject to the Facility Lessee's right of first refusal, sell the Undivided Interest in the Facility to the highest cash bidder on an "as, is", "where is" and "with all faults" basis, without representations or warranties other than a warranty of the Owner Lessor as to the absence of Owner Lessor's Liens and a warranty of the Owner Participant as to the absence of Owner Participant's Liens. The Facility Lessee shall pay on an After-Tax Basis all reasonable, documented out-of-pocket costs and expenses of the Owner Participant, the Owner Lessor, and so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been terminated, the Security Agent, the Lender and the Bondholder

Trustee; the Owner Lessor shall pay the net cash proceeds of the sale to the Facility Lessee to the extent of payments made by the Facility Lessee under clauses (x) or (y) above. If there is no Extended Marketing Period or no offers are received prior to the end of the Extended Marketing Period, the Owner Lessor shall sell the Facility as scrap subject to the Facility Lessee's right of first refusal.

(c) Any Requisition or property damage insurance proceeds received in respect of an Event of Loss shall be used to pay, or to reimburse the Facility Lessee for, the Event of Loss Payment. Requisition proceeds in excess of the Event of Loss Payment shall be for the account of the Owner Lessor and the Facility Lessee in accordance with their respective interests.

(d) Notwithstanding anything herein to the contrary, in the event of a Regulatory Event of Loss or an Event of Loss described in clause (v) of the definition of Event of Loss and in connection with the Facility Lessee's purchase of the Undivided Interest in accordance with *Section 10.1(b)*, the Facility Lessee may, at its option, in lieu of paying Termination Value, assume the Owner Lessor's obligations under the Lease Indenture and pay an amount equal to the difference between the Termination Value and the outstanding principal amount of the Lessor Notes assumed by the Facility Lessee, so long as all payments required to be made pursuant to *Section 10.3(d)* have been made and no Lease Event of Default or Material Lease Default shall have occurred and be continuing after giving effect to such assumption. Alternatively, the Facility Lessee may purchase the Owner Participant's interest in the Owner Lessor and elect not to terminate this Facility Lease pursuant to *Section 13.4*. In addition, on the Termination Value Payment Date, the Facility Lessee, in addition to the Termination Value determined as of the relevant Termination Value Payment Date, shall also pay (without duplication of any other amount paid hereunder) on an After-Tax Basis to the Owner Lessor all reasonable documented out-of-pocket costs and expenses incurred in connection with the Event of Loss by the Owner Lessor, the Owner Participant, and so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent, the Lease Indenture Trustee, the Lender and the Bondholder Trustee plus any other Rent (other than Basic Lease Rent or Renewal Rent payable after the Termination Value Payment Date) due and unpaid on the Termination Value Payment Date plus any Lessee Section 467 Loan Balance and any amount due and unpaid or accrued and unpaid on the Termination Value Payment Date under any other Operative Document, whereupon (other than in the case of a Special Lessee Transfer) this Facility Lease shall terminate. Upon payment of such amounts due under this paragraph by the Facility Lessee, Allocated Rent shall cease to accrue and this Facility Lease, and the Facility Lessee's obligation to pay Basic Lease Rent or Renewal Lease Rent, as the case may be, shall terminate and the Owner Lessor shall pay to the Facility Lessee the Lessor Section 467 Loan Balance, if any, determined as of the Termination Value Payment Date. The obligation to make such payments shall be subject to the provisions of *Section 3.2(d)*.

Section 10.3 Application of Proceeds. Any payments with respect to the Undivided Interest received at any time by the Owner Lessor or the Facility Lessee from any Governmental Authority or from insurance proceeds as a result of the occurrence of an Event of Loss shall be applied as follows:

(a) all such payments received at any time by the Facility Lessee shall be promptly paid to the Owner Lessor or, so long as the Lessor Notes are outstanding, to the Security Agent, for application pursuant to the following provisions of this *Section 10.3*, except that, so long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing or shall be created thereby (other than Material Lease Defaults and Lease Events of Defaults arising as a result of such Event of Loss), the Facility Lessee may retain any amounts that the Owner Lessor would at the time be obligated to pay to the Facility Lessee as reimbursement pursuant to *Section 10.3(b)*;

(b) so much of such payments as shall not exceed the Event of Loss Payment required to be paid by the Facility Lessee pursuant to *Section 10.2* shall be applied in reduction of the Facility Lessee's obligation to pay such amount if not already paid by the Facility Lessee or, if already paid by the Facility Lessee, shall, so long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing or shall be created thereby (other than Material Lease Defaults and Lease Events of Defaults arising as a result of such Event of Loss), be applied to reimburse the Facility Lessee for its payment of such amount; and

(c) the balance, if any, of such payments remaining thereafter shall be apportioned between the Owner Lessor and the Facility Lessee in accordance with their respective interests.

Notwithstanding the foregoing, if the Facility Lessee shall have elected to rebuild or replace the Facility pursuant to *Section 10.1(b)*, any insurance proceeds received by the Owner Lessor, the Security Agent or the Facility Lessee as a result of the occurrence of an Event of Loss described in clause (i) or (ii) of the definition of Event of Loss shall be applied as provided in *Section 11.2*.

(d) Notwithstanding anything to the contrary herein, upon the occurrence of an Event of Loss described in clauses (i), (ii), (iii) or (v) of the definition of Event of Loss or a Partial Event of Loss in connection with which the Facility Lessee does not elect to rebuild or does not deliver the Reinvestment Notice to the Owner Lessor, the Owner Participant and so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent, the Lender and the Bondholder Trustee, within 45 days of the settlement of or payment of $5,000,000 or more in respect of an Event of Loss described in clauses (i), (ii), (iii) or (v) of the definition of Event of Loss or a Partial Event of Loss, then the Facility Lessee shall pay to the Owner Lessor as Supplemental Rent an amount equal to the Owner Lessor's Percentage of such payment to be applied pursuant to *Section 4.8* of the Lease Indenture. Payment of any such Supplemental Rent shall not relieve the Facility Lessee from any of its other obligations hereunder including its obligations set forth in *Section 10.6*.

Section 10.4 Rebuilding or Replacement. In connection with the Facility Lessee's obligation to rebuild or replace the Facility pursuant to *Section 10.1(b)*, the Facility Lessee shall have satisfied the conditions set forth in clauses (a) through (g) below (collectively, the "*Rebuild Conditions*"):

(a) delivery to the Owner Participant of either (i) an opinion reasonably satisfactory to it from Owner Participant's Counsel to the effect that such rebuilding or replacement should not result in any material unindemnified incremental tax consequences to the Owner Participant, (ii) an indemnity against such risk in form and substance reasonably satisfactory to the Owner Participant from or guaranteed by an entity that meets the Minimum Credit Rating or (iii) any other indemnity arrangement against such risks satisfactory to the Owner Participant;

(b) delivery to the Owner Participant and, so long as the Lessor Notes are outstanding, the Security Agent, the Lender and the Bondholder Trustee (i) a report of the Engineering Consultant, or such other independent engineer satisfactory to the Owner Participant and the Lease Indenture Trustee, to the effect that the rebuilding or replacement of the Facility is technologically feasible and economically viable and that it is reasonable to expect that such rebuilding or replacement can be completed prior to the end of the Facility Lease Term, including any Renewal Lease Term then in effect or elected by the Facility Lessee (including any extension pursuant to *Section 10.1(b)*, and (ii) a report of an appraiser selected by the Facility Lessee and reasonably acceptable to the Owner Participant, to the effect that the Facility will after completion of the rebuilding or replacement have at least the same current value, residual value, utility and remaining economic useful life as the Facility immediately prior to the Event of Loss (assuming the Facility was in the condition required by the terms of this Facility Lease) and such rebuilding or replacement will not result in the Facility being "limited use property" within the meaning of Rev. Proc. 2001-28, 2001-19 I.R.B. 1156;

(c) delivery of a certificate from a responsible officer of the Facility Lessee to the reasonable satisfaction of the Owner Participant and the Lease Indenture Trustee that the Facility Lessee (i) has adequate financial resources, from insurance proceeds or otherwise, to complete such rebuilding or replacement and to perform its other obligations under the Operative Documents including the payment of Basic Lease Rent or Renewal Rent, as the case may be, that is projected to become due and payable while the Facility is being rebuilt or replaced and (ii) reasonably expects to be capable of replacing or modifying any project documents that must be replaced or modified in order to avoid a Material Adverse Effect;

(d) commencement of such rebuilding or replacement as soon as reasonably practicable and, in any event, within twelve (12) months of such damage or destruction;

(e) not causing any material adverse accounting effect on the Owner Participant;

(f) demonstration of the absence of any Material Lease Default or Lease Event of Default (other than any Material Lease Default or Lease Event of Default that would be cured by such rebuilding); and

(g) demonstration that all Governmental Approvals required in connection with the work done or proposed to be done have been obtained or can reasonably be expected to be obtained on or prior to the date required in connection therewith

Section 10.5 Application of Payments Not Relating to an Event of Loss. (a) In the event that during the Facility Lease Term title to, or the use of, all or any portion of the Undivided Interest, the Facility or the Facility Site is requisitioned or taken by or pursuant to a request of any Governmental Authority under the power of eminent domain or otherwise for a period or in a manner which does not constitute an Event of Loss, the Facility Lessee's obligation to pay all installments of Basic Lease Rent or Renewal Rent, as applicable, shall continue for the duration of such requisitioning or taking. Subject to Section 10.3(d) hereof, the Facility Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such Governmental Authority as compensation for such requisition or taking of possession; *provided that* if at the time of such payment a Material Lease Default or a Lease Event of Default shall have occurred and be continuing, such amounts shall be paid to and held by the Owner Lessor unless the Lessor Notes are outstanding, in which case such amounts shall be paid to and held by the Security Agent, as security for the obligations of the Facility Lessee under this Facility Lease until such time as no Material Lease Default or Lease Event of Default is continuing.

(b) Any insurance proceeds with respect to the Undivided Interest received at any time by the Owner Lessor, the Security Agent or the Facility Lessee under any of the insurance policies required to be maintained by the Facility Lessee under *Section 11* as a result of any damage to the Facility or any part thereof which does not constitute an Event of Loss shall be applied as follows: (i) in accordance with *Section 11.7*, and (ii) the balance, if any, of such insurance proceeds remaining thereafter shall be paid to the Facility Lessee.

Section 10.6 Partial Casualties. If the Facility or any part thereof shall suffer any destruction, damage, loss or theft not constituting an Event of Loss ("*Partial Event of Loss*"), the Facility Lessee shall rebuild or make such repairs as are necessary (i) to restore the Facility to the current value, residual value, utility and remaining economic useful life it had immediately prior to such destruction, damage, loss or theft (assuming, for the purposes of determining the current value, residual value, utility and remaining economic useful life of the Facility, that no Severable Improvements that are not Required Improvements or Improvements financed through this Facility Lease shall have been made to the Facility during the Facility Lease Term and assuming the Facility was in the condition and repair required to be maintained by the terms of this Facility Lease) and (ii) to ensure that the Facility is maintained in accordance with *Sections 7* and *8* hereof and that the Facility does not become "limited use property" within the meaning of Rev. Proc. 2001-28, 2001-19 I.R.B. 1156 or Rev. Proc. 2001-29, 2001-19 I.R.B. 1160, *provided however*, that in connection with a Partial Event of Loss in respect of which the Facility Lessee received a settlement of or payment of $5,000,000 or more, the Facility Lessee shall deliver a Reinvestment Notice to the Owner Lessor, the Owner Participant, the Lease Indenture Trustee, the Security Agent, the Lender and the Bondholder Trustee within 45 days of the receipt of the proceeds in respect of such Partial Event of Loss.

SECTION 11 INSURANCE

Section 11.1 General. The Facility Lessee will comply with the requirements set forth in Schedule 5.10 of the Participation Agreement.

Section 11.2 Application of Insurance Proceeds. (a) All insurance proceeds exceeding $5,000,000 but less than $50,000,000 on account of any damage to, or destruction of, the Facility or any part thereof (in each case less the actual costs, fees and expenses incurred in the collection thereof), shall, subject to the provisions of *Section 11.2(d)*, be held in the Recovery Event Proceeds Account for application in repair or replacement of the affected property. If the insurance proceeds on account of such damage to, or destruction of, the Facility exceed $50,000,000, or in the case of an Event of Loss, then the Owner Lessor's Percentage of all insurance proceeds on account of such damage or

destruction to the Facility shall be paid to the Owner Lessor or, if the Lessor Notes are outstanding and the Lien of the Lease Indenture shall not have been discharged, the Security Agent and shall be applied and dealt with as provided in *Section 11.2(b)* below.

(b) Other than proceeds of insurance paid to the Security Agent or the Owner Lessor in connection with an Event of Loss, all proceeds of insurance paid to the Security Agent or the Owner Lessor, as the case may be, and the Facility Lessee shall be paid over to the Facility Lessee upon receipt by the Owner Lessor and the Lease Indenture Trustee, if applicable, of evidence satisfactory to each of them, in their reasonable judgment that such proceeds, together with funds of the Facility Lessee available for the purpose will be sufficient to complete such repair and restoration of the Facility or a portion thereof. Promptly after receiving Actual Knowledge that a Material Lease Default or Lease Event of Default shall have occurred and be continuing, the Facility Lessee shall notify the insurer under any property insurance policy providing coverage of the Undivided Interest of the existence of such Material Lease Default or Lease Event of Default. After receipt of any such notification, each such insurer shall pay the proceeds of any property insurance policies in accordance with *Section 11.2(d)*.

(c) Within 30 days after receiving Actual Knowledge that an Event of Loss has occurred, the Facility Lessee shall notify the insurer under any property insurance policy providing coverage for such Event of Loss, the Security Agent so long as the Lien of the Lease Indenture shall not have been discharged, and the Owner Lessor of the occurrence of such Event of Loss. Each of the Facility Lessee, the Owner Lessor and the Security Agent, as applicable, shall provide any necessary endorsements and otherwise cooperate in the processing of any related claims or proceeds in accordance with the terms of this *Section 11*.

(d) Notwithstanding the foregoing provisions of this *Section 11* or *Section 10*, so long as a Material Lease Default or Lease Event of Default shall have occurred and be continuing, the proceeds of any insurance required to be maintained pursuant to this *Section 11* that would otherwise be payable to or for the account of, or that would otherwise be retained by, the Facility Lessee pursuant to this *Section 11* or *Section 10.3* will be held as security for the obligations of the Facility Lessee under this Facility Lease by the Owner Lessor or, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Security Agent and, at such time thereafter as no Material Lease Default or Lease Event of Default shall be continuing, such amount shall be paid promptly to the Facility Lessee.

SECTION 12 INSPECTION

During the Facility Lease Term, each of the Owner Lessor, the Owner Participant, the OP Guarantor and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent, the Lender and the Bondholder Trustee and their respective representatives shall have the right, during normal business hours, upon reasonable notice to the Facility Lessee and at their own expense (except when a Lease Default or a Lease Event of Default has

occurred and is continuing) and risk, to inspect the Facility and the records relating to the operation and maintenance thereof in the Facility Lessee's custody or, so long as the Facility Lessee has the opportunity to be present, to which the Facility Lessee has access; *provided, however*, that any such inspection will not interfere with the operation or maintenance of the Facility or the conduct by the Facility Lessee of its business and shall be in accordance with the Facility Lessee's safety and insurance programs; *provided further*, *however*, that, except during the continuance of a Material Lease Default or a Lease Event of Default, no more than one inspection in any twelve (12) month period shall be conducted by each of (x) the Owner Lessor and the Owner Participant and (y), if applicable, the Lease Indenture Trustee; *provided further, however,* that any such Person (or group of Persons) may make more than one inspection during the last eighteen (18) months of the Facility Lease Term unless the Facility Lessee has exercised one of its options under *Section 15* hereof to renew this Facility Lease beyond such eighteen (18) month period. In no event shall the Owner Lessor, the Owner Participant, the OP Guarantor, or the Lease Indenture Trustee, the Lender and the Bondholder Trustee have any duty or obligation to make any such inspection and such Persons shall not incur any liability or obligation by reason of not making any such inspection.

SECTION 13 TERMINATION OPTION FOR BURDENSOME EVENTS

Section 13.1 Election to Terminate. The Facility Lessee, by giving written notice (the "*Burdensome Termination Notice*") to the Owner Lessor no later than twelve (12) months after the date the Facility Lessee receives notice or first has Actual Knowledge of either of the

events specified below, shall have the right, at its option, to terminate this Facility Lease in accordance with *Section 13.3* on the Termination Date specified in the Burdensome Termination Notice (which shall be a date occurring not less than 30 days nor more than 60 days after the date of the Burdensome Termination Notice) or such later Termination Date (which shall be a date occurring not more than 12 months after the date of the Burdensome Termination Notice) as may be necessary for the Facility Lessee to obtain such consents and approvals required for the Facility Lessee to comply with its obligations under this *Section 13* if:

(a) as a result of a change in Requirements of Law, it shall have become illegal for the Facility Lessee to continue this Facility Lease or for the Facility Lessee to make payments under this Facility Lease, and the transactions contemplated by the Operative Documents cannot be restructured to comply with such change in Requirements of Law in a manner reasonably acceptable to the Facility Lessee, the Owner Participant, the Owner Lessor, and, so long as the Lessor Notes are outstanding, the Security Agent, the Lender and the Bondholder Trustee; or

(b) one or more events outside the control of the Facility Lessee, shall have occurred which will, or can reasonably be expected to give rise to an obligation by the Facility Lessee to make a payment or to incur an indemnity obligation in respect of the Tax Indemnity Agreement or Section 10.1 or 10.2 of the Participation Agreement; *provided, however*, that (i) such payment or indemnity obligation (and the underlying cost or tax) can be avoided in whole or in material part if this Facility Lease is terminated or the Owner Lessor sells the Owner Lessor's Interest and (ii) the amount of such avoided payments would exceed (on a present value basis, discounted at the Discount Rate, compounded on an annual basis to the date of the termination) 2.5% of the Purchase Price (unless the Owner Participant has waived its right to payments in excess of 2.5% of the Purchase Price or arranged for its own account for the payment thereof).

(c) Notwithstanding the foregoing, if the Owner Participant or any Affiliate thereof owns the membership interest in any Other Owner Lessor, the Facility Lessee may deliver to the Owner Lessor a Burdensome Termination Notice and exercise the Burdensome Buyout Option (as defined below) only if (i) it has also delivered such a notice to each Other Owner Lessor under Section 13.1 of the Other Facility Leases and (ii) it is concurrently exercising its Burdensome Buyout Option under Section 13 of the Other Facility Leases; *provided, however*, that the requirements in clauses (i) and (ii) of this paragraph shall not apply in the event the Facility

Lessee does not have the right to deliver such notice or exercise such Burdensome Buyout Option, as applicable, under Section 13 of the Other Facility Leases.

(d) If the Facility Lessee does not give the Burdensome Termination Notice within twelve (12) months of the date the Facility Lessee receives notice or has Actual Knowledge of an event or condition described above, the Facility Lessee shall lose its right to terminate this Facility Lease pursuant to this *Section 13.1* as a result of such event or condition.

Section 13.2 Solicitation of Qualifying Bids; Payments Upon Termination. (a) Upon receipt of a Burdensome Termination Notice pursuant to *Section 13.1*, the Owner Lessor shall have the right, but shall be under no obligation to, sell the Undivided Interest and, at the request of the Owner Lessor, the Facility Lessee will, as nonexclusive agent for the Owner Lessor, use commercially reasonable efforts to obtain cash bids from unaffiliated third parties for the sale of the Undivided Interest. In connection with the delivery of a Burdensome Termination Notice, the Facility Lessee may, but shall be under no obligation to, make an offer to purchase the Undivided Interest and shall have a right of first refusal with respect to any offer received from an unaffiliated third party (which may be exercised any time prior to the Termination Date), in connection with such sale. Only bona fide bids, whether from the Facility Lessee or a third party, to purchase the Undivided Interest for cash on the Termination Date on an "as is, where is" and "with all faults" basis without any representation, other than by the Owner Lessor that the Owner Lessor's Undivided Interest is free of Owner Lessor Liens and a warranty of the Owner Participant as to the absence of Owner Participant Liens, shall be qualifying cash bids ("*Qualifying Cash Bids*") and all the proceeds of any such Qualifying Cash Bid shall be for the account of the Owner Lessor. If a Qualifying Cash Bid is received and the Owner Lessor accepts such bid in writing, the Facility Lessee shall pay the Owner Lessor on the Termination Date (i) the Termination Value determined as of such Termination Date, less the cash actually received by the Owner Lessor in connection with such Qualifying Cash Bid (or, if the amount of such cash actually

received by the Owner Lessor from such Qualifying Cash Bid is equal to or greater than such Termination Value, zero) plus (ii) all amounts due and payable under *Section 13.3*. If a Qualifying Cash Bid is rejected in writing by the Owner Lessor and the Owner Lessor has not elected to retain the Owner Lessor's Interest, the Facility Lessee shall pay the Owner Lessor on the Termination Date (x) the Termination Value determined as of such Termination Date, less the amount of such rejected Qualifying Cash Bid (or, if the amount of such rejected Qualifying Cash Bid is equal to or greater than such Termination Value, zero) plus (y) all amounts due and payable under *Section 13.3*. If no Qualifying Cash Bid is offered and the Owner Lessor has not elected to retain the Owner Lessor's Interest, the Facility Lessee shall pay the Owner Lessor on the Termination Date (A) the Termination Value determined as of such Termination Date plus (B) all amounts due and payable under *Section 13.3*. If the Owner Lessor elects in writing to retain the Owner Lessor's Interest, the Facility Lessee shall pay the Owner Lessor on the Termination Date all amounts due and payable under Section 13.3 (but shall have no obligation to pay Termination Value). In any case, the Owner Lessor shall be obligated to pay all amounts payable under *Section 13.3*.

(b) If, within 30 days of the Termination Date set forth in the Burdensome Termination Notice delivered pursuant to Section 13.1 (a), (i) the Facility Lessee shall not have purchased the Facility pursuant to Section 13.2(a) above, (ii) the Owner Lessor shall not have received a Qualifying Cash Bid from the Facility Lessee, and (iii) the Owner Lessor shall not have elected to retain the Owner Lessor's Interest, this Facility Lease shall continue, the Facility Lessee shall lose its right to terminate this Facility Lease for the Burdensome Buyout Event referred to in such Burdensome Termination Notice, and any and all rights that the Owner Lessor had immediately prior to the receipt of such Burdensome Termination Notice shall remain in full force and effect.

Section 13.3 Procedure for Exercise of Termination Option. (a) If the Facility Lessee shall have exercised its option under *Section 13.1* (a "*Burdensome Buyout Option*"), the Facility Lessee shall, prior to and as a condition to the closing of the sale, pay (in addition to the applicable amount set forth in

Section 13.2(a), if any, without duplication of any other amounts paid hereunder): (i) on an After-Tax Basis, all reasonable documented out-of-pocket costs and expenses of the Owner Lessor, the Owner Participant and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent; (ii) any Lessee Section 467 Loan Balance as of the Termination Date; and (iii) any other payment under this Facility Lease (other than Basic Lease Rent or Renewal Rent payable after the Termination Date) due and unpaid on the Termination Date and any amounts due and unpaid, or accrued and unpaid, on the Termination Date under any other Operative Document. Concurrently with the payment of all sums specified in *Section 13.2* and this *Section 13.3(a)*, (A) Allocated Rent shall cease to accrue and the Facility Lessee's obligation to pay Basic Lease Rent or Renewal Lease Rent, as the case may be, shall terminate, (B) this Facility Lease shall terminate and the Facility Lessee shall cease to have any liability to the Owner Lessor with respect to the Undivided Interest, except for Supplemental Lease Rent and other obligations surviving pursuant to the express terms of any Operative Document, (C) the Owner Lessor will pay all amounts of principal and interest and any other amounts owing under the Lessor Notes (including any Make Whole Premium, if any, due and payable) to the Security Agent pursuant to *Section 2.11* of the Lease Indenture, (D) in connection with any sale of the Owner Lessor's Interest pursuant to *Section 13.2*, the Owner Lessor shall transfer (by an appropriate instrument of transfer in form and substance reasonably satisfactory to the Owner Participant and Facility Lessee and prepared by and at the expense of the Facility Lessee) all of its right, title and interest in and to the Owner Lessor's Interest to the Facility Lessee (or its designee) or to the third party making the accepted Qualifying Cash Bid on an "as is", "where is", "with all faults" basis, without representation or warranty other than a warranty as to the absence of Owner Lessor Liens and a warranty of the Owner Participant as to the absence of Owner Participant Liens, (E) the Owner Lessor shall execute and deliver appropriate releases and other documents or instruments necessary or desirable to effect the foregoing all to be prepared, filed and recorded (as appropriate) at the sole cost and expense of the Facility Lessee and (F) the Owner Lessor shall pay to the Facility Lessee the Lessor Section 467 Loan Balance, if any, determined as of the Relevant Termination Date. The obligation to make such payments shall be subject to the provisions of *Section 3.2(d)*. It shall be a condition precedent to the termination of this Facility Lease pursuant to this *Section 13.3*, that the Owner Lessor and the Facility Lessee shall each pay all amounts that each is obligated to pay under this *Section 13.3*.

(b) If the Facility Lessee fails to consummate the termination option under this *Section 13* after giving notice of its intention to do so (other than in consequence of failure of the Owner Lessor or the Owner Participant to fulfill their respective obligations under this *Section 13)*,

(A) this Facility Lease shall continue, (B) such failure to consummate shall not constitute a default under this Facility Lease, (C) the Facility Lessee will lose its right to terminate this Facility Lease pursuant to this *Section 13* as a result of such event or condition during the remainder of the Facility Lease Term but the Facility Lessee shall in any event (without relieving the Owner Lessor of any liability hereunder) pay the amounts set forth in clause (i) of the first sentence of *Section 13.3(a)*.

Section 13.4 Assumption of the Lessor Notes; Special Lessee Transfers.

(a) Notwithstanding the foregoing provisions of *Section 13.3* to the contrary, at the option of the Facility Lessee, if (i) the Facility Lessee shall have executed and delivered an assumption agreement to assume the Lessor Notes on a fully recourse basis, as permitted by and in accordance with *Section 2.21* of the Lease Indenture, (ii) all other conditions contained in such *Section 2.21* of the Lease Indenture shall have been satisfied, (iii) no Material Lease Default or Lease Event of Default shall have occurred and be continuing and shall not be cured by such assumption and (iv) the Facility Lessee shall purchase the Undivided Interest pursuant to its right of first refusal or right of offer as set forth in Section 13.2, as the case may be, then, the obligation of the Facility Lessee to pay Termination Value shall be reduced by the outstanding principal amount of the Lessor Notes so assumed by the Facility Lessee and the Owner Lessor shall have no further obligation to prepay the outstanding principal and accrued

interest on the Lessor Notes to the extent of the Lessor Notes so assumed by the Facility Lessee; *provided, however,* for so long as the Lessor Notes are outstanding, if the Facility Lessee shall have chosen to assume the Lessor Notes pursuant to this *Section 13.4(a)*, the Facility Lessee shall acquire the Undivided Interest from the Owner Lessor subject to the Lien of the Lease Indenture.

(b) If the Facility Lessee assumes the Lessor Notes under this *Section 13*, the Facility Lessee shall, on the Termination Date, also pay (without duplication of any other amount paid hereunder) the Owner Lessor the following: (i) on an After-Tax Basis, all reasonable out-of-pocket costs and expenses of the Owner Lessor, the Owner Participant, the OP Guarantor, the Security Agent, the Lender and the Bondholder Trustee; (ii) any Lessee Section 467 Loan Balance and; (iii) any other payment under this Facility Lease (other than Basic Lease Rent or Renewal Rent payable after the Termination Date) due and unpaid on the Termination Date and any amounts due and unpaid, or accrued and unpaid, on the Termination Date under any other Operative Document. The Owner Lessor shall pay to the Facility Lessee the Lessor Section 467 Loan Balance, if any, determined as of such Termination Date. The obligation to make such payment shall be subject to the provisions of *Section 3.2(d)*.

(c) Notwithstanding the foregoing provisions of *Section 13.3* to the contrary, if, in connection with a Burdensome Buyout Event, the Facility Lessee elects to purchase the Facility in accordance with *Section 13* of the Facility Lease, the Facility Lessee (or its designee) so long as the Facility Lessee shall remain liable under this Facility Lease to pay Basic Lease Rent and all other payments hereunder in full, and in all respects in accordance with *Section XV* of the Participation Agreement, may purchase the Lessor Membership Interest, in lieu of purchasing the Undivided Interest pursuant to *Sections 13.1* and *13.2* hereof, and keep this Facility Lease (and Lessor Notes) in place in consideration of the amounts set forth in *Section XV* of the Participation Agreement.

Section 13.5 Certain Conditions to Termination. Anything to the contrary in this Section 13 notwithstanding, the Facility Lessee and the Owner Lessor agree for the benefit of the Lease Indenture Trustee (without relieving the Owner Lessor of any liability hereunder) that, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, no termination pursuant to this Section 13 shall be effective and the Facility Lessee's rights and obligations under this Facility Lease immediately prior to the election to terminate this Facility Lease pursuant to this Section 13 shall remain in full force and effect in all respects unless and until the Facility Lessee shall have assumed the Lessor Notes pursuant to Section 13.4 or the Owner Lessor shall have paid all outstanding principal and accrued interest on the Lessor Notes with respect to such Undivided Interest or the Facility, as the case may be, and all other amounts due under the Lease Indenture as of such proposed date of termination.

SECTION 14 TERMINATION FOR OBSOLESCENCE; PARTIAL RELEASE OF INTEREST

Section 14.1 Termination. Upon at least six months' prior written notice to the Owner Lessor, (which notice shall be accompanied by a certification by the Facility Lessee's Manager as to one or more of the matters described below), the Facility Lessee shall have the option, so long as no Lease Event of Default shall have occurred and be continuing on the date of such notice or on the proposed Obsolescence Termination Date (as defined below), to terminate this Facility Lease on any Termination Date occurring on or after the seventh anniversary of the Closing Date (the date of termination selected by the Facility Lessee being the "Obsolescence Termination Date") which proposed Obsolescence Termination Date shall be set forth in the aforementioned notice, on the terms and conditions set forth in this *Section 14*, if the Facility is economically or technologically obsolete; as determined by the general partner of the Facility Lessee in good faith, including, without limitation, as a result of any change in applicable law, regulation or tariff, any material change in the markets for the wholesale purchase and/or sale of energy or any imposition by FERC or any other Governmental Authority having or claiming jurisdiction over the Facility Lessee or the Facility of any burdensome conditions or requirements including requiring capital improvements to the Facility.

Notwithstanding the foregoing, the Facility Lessee may elect to terminate this Facility Lease pursuant to this *Section 14.1* and exercise its other rights under this *Section 14* only if (i) concurrently with such election, it also elects to terminate all Other Facility Leases pursuant to *Section 14.1* thereof and (ii) concurrently with its termination hereunder, it terminates all Other Facility Leases in accordance with *Section 14* thereof.

Section 14.2 Solicitation of Offers. If the Facility Lessee shall give the Owner Lessor notice pursuant to *Section 14.1* and the Owner Lessor shall not have elected to retain the Undivided Interest pursuant to *Section 14.3* below, the Facility Lessee shall (i) as non-exclusive agent for the Owner Lessor, use commercially reasonable efforts to obtain bids from unaffiliated third parties with the Facility Lessee and sell the Owner Lessor's Interest on the Obsolescence Termination Date and (ii) covenant that it will not sell the Owner Lessor's Interest to itself, an Affiliate or to any third party with whom the Facility Lessee or its Affiliate has an arrangement to use or operate the Facility to generate power for the Facility Lessee's or any such Affiliate's benefit after the termination of this Facility Lease. All of the proceeds of any such sale, will be for the account of the Owner Lessor; *provided that*, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the proceeds of such sale shall be paid directly to the Security Agent. At least 120 days prior to the Obsolescence Termination Date, the Facility Lessee shall certify to the Owner Lessor and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent, the Lender and the Bondholder Trustee each bid or offer, the amount and terms thereof and the name and address of the party (which shall not be the Facility Lessee, any of its Affiliates or any third party with whom it or any such Affiliate has an arrangement to use or operate the Facility to generate power for the benefit of the Facility Lessee or such Affiliate after the termination of this Facility Lease) submitting such bid or offer. The Owner Lessor shall also have the right, but not the obligation, to obtain bids for the sale of the Owner Lessor's Interest either directly or through agents other than the Facility Lessee.

Section 14.3 Right of Owner Lessor to Retain the Undivided Interest. The Owner Lessor may irrevocably elect to retain, rather than sell, the Undivided Interest by giving notice to the Facility Lessee at least 90 days prior to the Obsolescence Termination Date. If the Owner Lessor elects to retain the Undivided Interest pursuant to this *Section 14.3*, on the Obsolescence Termination Date the Facility Lessee shall pay to the Owner Lessor the amounts described in clauses (i) through (iii) of *Section 14.4* below. Upon the payment of all sums required to be paid pursuant to this *Section 14.3* and *Section 14.4* below, (i) Allocated Rent shall cease to accrue, and the Facility Lessee's obligation to pay Basic Lease Rent or Renewal Lease Rent, as the case may be, shall terminate, (ii) this Facility Lease shall terminate and the Facility Lessee shall cease to have any liability or obligations hereunder or any other Operative Document with respect to the Undivided Interest, except for Supplemental Lease Rent and other obligations surviving pursuant to the express terms of the Operative Documents, (iii) the Owner Lessor shall pay all outstanding principal and accrued interest on the Lessor Notes and, to the extent actually received from the Facility Lessee as Supplemental Lease Rent, all other amounts due under the Lease Indenture including the reimbursement of any fees or expenses of the Security Agent, (iv) the Facility Lessee shall return the Undivided Interest to the Owner Lessor in accordance with *Section 5.1* hereof and (v) only with respect to the termination option of the Owner Lessor under Section 14.4, the Owner Lessor will transfer (by an appropriate instrument of transfer in form and substance reasonably satisfactory to the Owner Lessor the Owner Lessor's Interest under Section 14.4 to the purchaser on "as is", "where is", "with all faults" basis, without representations or warranties other than a warranty as to the absence of Owner Lessor's Liens and a warranty from the Owner Participant as to the absence of Owner Participant's Liens, (vi) the Owner Lessor shall execute and deliver appropriate releases and other documents or instruments necessary or desirable to effect the foregoing and (vii) the Owner Lessor

shall pay to the Facility Lessee the Lessor Section 467 Loan Balance, if any, determined as of such Obsolescence Termination Date. The obligation to make such payments shall be subject to the provisions of *Section 3.2(d)*. It shall be a condition precedent to the

termination of this Facility Lease pursuant to this *Section 14.3*, that the Owner Lessor and the Facility Lessee shall each pay all amounts that each is obligated to pay under this *Section 14.3*.

Section 14.4 Procedure for Exercise of Termination Option. If the Owner Lessor has not elected to retain the Undivided Interest in accordance with *Section 14.3* hereof, on the Obsolescence Termination Date, the Owner Lessor shall sell the Owner Lessor's Undivided Interest under this *Section 14.4* and its interest in the Ground Interest under *Section 6* of the Facility Site Lease to the bidder or bidders pursuant to *Section 14.2* hereof (which shall not be the Facility Lessee, any Affiliate thereof or any third party with whom the Facility Lessee or any such Affiliate has an arrangement to use or operate the Facility to generate power for the benefit of the Facility Lessee or such Affiliate after the termination of this Facility Lease), that shall have submitted the highest cash bid or bids with respect to the Owner Lessor's Interest and the Facility Lessee shall certify to the Owner Lessor, the Owner Participant and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Security Agent that such buyer is not the Facility Lessee, any Affiliate thereof or any third party with whom it or an Affiliate has an arrangement with respect to the use or operation of the Facility after the termination of this Facility Lease. On the Obsolescence Termination Date, the Facility Lessee shall pay to the Owner Lessor the excess, if any, of the applicable Termination Value determined as of such Obsolescence Termination Date over the net proceeds from the sale of the Undivided Interest paid to or retained by the Owner Lessor plus (without duplication) (i) on an After-Tax Basis, all reasonable out-of-pocket costs and expenses incurred by the Owner Lessor, the Owner Participant, the OP Guarantor, if any, and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, Security Agent in connection therewith (excluding the reasonable fees and costs of any broker unless engaged by the Facility Lessee on the Owners Lessor's behalf) plus (ii) any Lessee Section 467 Loan Balance plus (iii) any other payment of the Facility Lessee (other than Basic Lease Rent or Renewal Rent payable after the Obsolescence Termination Date) under this Facility Lease due and unpaid on the Obsolescence Termination Date and any amount due and unpaid, or accrued and unpaid, on the Obsolescence Termination Date under any Operative Document. Upon payment of all amounts due under this section, the Owner Lessor shall pay to the Facility Lessee the Lessor Section 467 Loan Balance, if any, determined as of the Obsolescence Termination Date. The obligation to make such payments shall be subject to the provisions of *Section 3.2(d)*. Unless the Owner Lessor, with the consent of the Facility Lessee, shall have entered into a legally binding contract to sell the Owner Lessor's Interest, the Facility Lessee may, at its election, revoke its notice of termination by giving notice to the Owner Lessor at least 30 days prior to the proposed Obsolescence Termination Date, in which event this Facility Lease shall continue with respect to the Undivided Interest and the Facility Lessee shall have the right to later reissue a notice to terminate pursuant to *Section 14.1*; *provided that* the Facility Lessee may give notice that it is exercising its Termination Option for obsolescence no more than once in any five (5) year period. The Owner Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Facility Lessee to obtain bids or otherwise take any action in arranging any such sale of the Owner Lessor's Interest other than, if the Owner Lessor has not elected to retain the Owner Lessor's Interest, to transfer the Owner Lessor's Interest in accordance with this *Section 14.4*. It shall be a condition of the Owner Lessor's obligation to consummate a sale of the Owner Lessor's Interest that the Facility Lessee shall pay all amounts it is obligated to pay under this *Section 14.4*. If no sale shall occur on the Obsolescence Termination Date, the notice of termination shall be deemed revoked and this Facility Lease shall continue with respect to the Undivided Interest in full force and effect in accordance with its terms (without prejudice to the Facility Lessee's right to exercise its rights under this *Section 14*); *provided, however*, that the Facility Lessee shall in any event pay, without duplication of any amounts payable hereunder, the amounts set forth in clause (i) of this *Section 14.4*.

Section 14.5 Certain Conditions to Termination. Anything to the contrary in this Section 14 notwithstanding, the Facility Lessee and the Owner Lessor agree for the benefit of the Lease Indenture Trustee (without relieving the Owner Lessor of any liability hereunder) that, so long as the Lien of the

Lease Indenture shall not have been terminated or discharged, no termination pursuant to this Section 14 shall be effective and the Facility Lessee's rights and obligations under this Facility Lease immediately prior to the election to terminate this Facility Lease pursuant to this Section 14 shall remain in full force and effect in all respects (regardless of whether the Owner Lessor shall elect to retain or sell such Undivided Interest or the Facilities, as applicable, in connection with such proposed termination) unless and until the Owner Lessor shall have paid all outstanding principal and accrued interest on the Lessor Notes with respect to such Undivided Interest or the Facility and all other amounts due under the Lease Indenture as of such proposed date of termination.

SECTION 15 LEASE RENEWAL

Section 15.1 Renewal Lease Terms. (a) Not earlier than 42 months prior to, but not less than 18 months prior to, the expiration of the Basic Lease Term, so long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing on the date any notice is given pursuant to this *Section 15.1(a)*and no Material Lease Default or Lease Event of Default shall have occurred and be continuing on the date the lease renewal proposed pursuant to this *Section 15.1(a)* is to commence, the Facility Lessee may deliver to the Owner Lessor a notice (which notice may be in addition to a notice of the Facility Lessee's interest in electing a FMV Renewal Lease Term under *Section 15.2*) of the Facility Lessee's interest in renewing this Facility Lease at the end of the Basic Lease Term for a term (the "*First Renewal Term*") selected by the Facility Lessee, which term shall satisfy the following criteria: (i) the aggregate of the proposed First Renewal Term and the Basic Lease Term shall be no greater than 75% of the estimated remaining economic useful life of the Facility as of the Closing Date, as determined in an appraisal to be conducted at such time and (ii) on the last date of such proposed First Renewal Term, the estimated Fair Market Sales Value of the Facility is expected to be no less than 20% of the Purchase Price (without taking into account inflation or deflation subsequent to the Closing Date as determined in an appraisal to be conducted at such time). Items (i) and (ii) of the immediately preceding sentence shall be determined by an Independent Appraiser selected by the Facility Lessee and reasonably acceptable to the Owner Lessor. The Facility Lessee shall pay all expenses and fees of such Independent Appraiser. The Facility Lessee may withdraw any notice given in accordance with this *Section 15.1(a)* by written notice of such withdrawal to the Owner Lessor, on or prior to the date which is 18 months before the commencement of the proposed First Renewal Term.

(b) Not earlier than 42 months prior to, but not less than 18 months prior to, the expiration of the First Renewal Term, so long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing on the date any notice is given pursuant to this *Section 15.1(b)* and no Material Lease Default or Lease Event of Default shall have occurred and be continuing on the date the lease renewal proposed pursuant to this *Section 15.1(b)* is to commence, the Facility Lessee may deliver to the Owner Lessor a notice (which notice may be in addition to a notice of the Facility Lessee's interest in electing a FMV Renewal Lease Term under *Section 15.2*) of the Facility Lessee's interest in renewing this Facility Lease at the end of the First Renewal Term for a term (the "*Second Renewal Term*") selected by the Facility Lessee, which term shall satisfy the following criteria: (i) the aggregate of the proposed Second Renewal Term, the First Renewal Term and the Basic Lease Term shall be no greater than 75% of the estimated remaining economic useful life of the Facility as of the Closing Date, as determined in an appraisal to be conducted at such time and (ii) on the last date of such proposed Second Renewal Term, the estimated Fair Market Sales Value of the Facility is expected to be no less than 20% of the Purchase Price (without taking into account inflation or deflation subsequent to the Closing Date as determined in an appraisal to be conducted at such time). Items (i) and (ii) of the immediately preceding sentence shall be determined by an Independent Appraiser selected by the Facility Lessee and reasonably acceptable to the Owner Lessor. The Facility Lessee shall pay all expenses and fees of such Independent Appraiser. The Facility Lessee may withdraw any

notice given in accordance with this *Section 15.1(b)* by written notice of such withdrawal to the Owner Lessor on or prior to 18 months before commencement of the proposed Second Renewal Lease Term.

(c) Notwithstanding the foregoing, the Facility Lessee may elect to renew this Facility Lease pursuant to subsection (a) or (b) of this *Section 15.1* and exercise its other rights under such subsections only if (i) concurrently with such election, the Facility Lessee also elects to renew each Other Facility Lease pursuant to subsection (a) or (b), as applicable, of *Section 15.1* thereof, (ii) concurrently with the renewal of this Facility Lease, the Facility Lessee renews each Other Facility Lease in accordance with subsection (a) or (b), as applicable, of

Section 15.1 thereof and (iii) with regard to subsection (a) of this Section 15.1, the length of the proposed renewal term is not less than three (3) months.

Section 15.2 Fair Market Value Renewal Lease Terms. Not earlier than 42 months prior to, but not less than 18 months prior to, the expiration of the Basic Lease Term or any Renewal Lease Term, so long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing on the date any notice is given pursuant to this *Section 15.2* and no Material Lease Default or Lease Event of Default shall have occurred and be continuing on the date the lease renewal proposed pursuant to this *Section 15.2* is to commence, the Facility Lessee may deliver to the Owner Lessor a notice (which notice may be in addition to a notice of the Facility Lessee's interest in electing the First Renewal Term or the Second Renewal Term, as applicable) of the Facility Lessee's interest in renewing this Facility Lease for a term (each such term, a "*FMV Renewal Lease Term*") commencing upon expiration of the Basic Lease Term or the Renewal Lease Term otherwise expiring and extending for no less than one year and no more than five years; *provided that* no such FMV Renewal Lease Term shall extend beyond the first date (rounded to the last day of the immediately preceding whole year) as of which 10% or less of the estimated remaining economic useful life of the Facility as of the Closing Date would remain (such estimated remaining economic useful life being measured as of the Closing Date) and on or after which the estimated Fair Market Sales Value of the Facility is expected to be less than 10% of the Purchase Price (in each case, as set forth in the most recent of (a) the Closing Appraisal, (b) the appraisal obtained in connection with the Facility Lessee's option to elect the First Renewal Term (the "*First Renewal Option*") and (c) the appraisal obtained in connection with the Facility Lessee's option to elect the Second Renewal Term (the "*Second Renewal Option.*") The Facility Lessee may withdraw any notice given in accordance with this *Section 15.2* by written notice of such withdrawal to the Owner Lessor on or prior to 18 months before commencement of the proposed Fair Market Value Renewal Lease Term.

Notwithstanding the foregoing, the Facility Lessee may elect to renew this Facility Lease pursuant to this *Section 15.2* and exercise its other rights under such Section only if (i) concurrently with such election, the Facility Lessee also elects to renew each Other Facility Lease pursuant to *Section 15.1* thereof and (ii) concurrently with the renewal of this Facility Lease, the Facility Lessee renews each Other Facility Lease in accordance with *Section 15.1* thereof.

Section 15.3 Renewal Rent and Termination Value for Renewal Lease Term. During each Renewal Lease Term, Renewal Rent shall be paid on the Rent Payment Dates. The installment of Renewal Rent payable on each such Rent Payment Date during the First Renewal Term shall be equal to the lesser of (i) the Fair Market Rental Value of the Undivided Interest (as determined at the commencement of the First Renewal Lease Term) and (ii) 75% of the average Basic Lease Rent payable with respect to the Basic Lease Term. The installment of Renewal Rent payable on each such Rent Payment Date during the Second Renewal Term shall be equal to the lesser of (i) the Fair Market Rental Value of the Undivided Interest (determined at the commencement of the Second Renewal Term) and (ii) 75% of the average Basic Lease Rent payable with respect to the Basic Lease Term. The installment of Renewal Rent payable on each such Rent Payment Date during the FMV Renewal Lease Term shall be equal to the Fair Market Rental Value of the Undivided Interest at the end of the applicable Lease Term (determined not more than 36 months prior to the commencement of such FMV Renewal Lease Term).

Section 15.4 Determination of Fair Market Rental Value. The Fair Market Rental Value of the Undivided Interest as of the commencement of any Renewal Lease Term shall be determined by agreement of the Owner Lessor and the Facility Lessee within six months after receipt by the Owner Lessor of the notice from the Facility Lessee of its election to renew pursuant to *Section 15.1* or *15.2* (but not more than 36 months before the commencement of such Renewal Lease Term) or, if they shall fail to agree within such six month period, shall be determined by an appraisal conducted by an Independent Appraiser according to the Appraisal Procedure. The Facility Lessee shall be responsible for such Independent Appraiser's fees and expenses.

Section 15.5 Termination Value During Renewal Lease Terms. The amounts which are payable during any Renewal Lease Term in respect of Termination Value shall be determined on the basis of the Fair Market Sales Value of the Undivided Interest as of the commencement of such Renewal Lease Term, amortized on a straight-line basis over such Renewal Lease Term to the projected Fair Market Sales Value of the Facility as of the expiration of such Renewal Lease Term, as such Fair Market Sales Value in each case is determined prior to the commencement of such Renewal Lease Term.

SECTION 16 EVENTS OF DEFAULT

Each of the following events shall constitute a "Lease Event of Default" hereunder (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

(a) the Facility Lessee shall fail to make any payment of Basic Lease Rent, Renewal Rent, or Termination Value, when due, and such failure shall continue unremedied for five (5) Business Days; or

(b) the Facility Lessee shall fail to make any other payment required to be made under any Operative Document (other than Excepted Payments, unless the Owner Participant shall have declared a default with respect thereto) when due, and such failure shall have continued unremedied for 10 days after receipt by the Facility Lessee of written notice of such failure from the Owner Participant, the Owner Lessor or, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent; or

(c) the Facility Lessee shall fail to maintain insurance in the amounts and on the terms set forth in the Operative Documents, including *Section 11* hereof; or

(d) the Facility Lessee shall fail to perform or observe in all material respects (i) the covenant set forth in *Sections* 6.1 and 5.13 of the Participation Agreement, or (ii) if such failure is in respect of any borrowed money, the covenant set forth in *Section 6.3* of the Participation Agreement; or

(e) the Facility Lessee shall fail to perform or observe any other covenant set forth in the Participation Agreement, this Facility Lease, any Project Document or in any other Operative Document (other than any of the covenants referred to in clauses (a), (b), (c) and (d) of this *Section 16*), in any material respect and such failure shall continue unremedied for 30 days after receipt by the Facility Lessee of written notice thereof from the Owner Participant, Owner Lessor, or, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent; *provided, however*, that for any failure other than a failure to comply with any covenant set forth in Article 6 of the Participation Agreement if such failure cannot be remedied within such 30-day period, then the period within which to remedy such failure shall be extended up to an additional 180 days, so long as the Facility Lessee diligently pursues such remedy and such failure is reasonably capable of being remedied within such additional 180-day period; *provided, further,* that in the case of the Facility Lessee's obligation set forth in clause (b) of *Section 7.1*, to the extent and for so long as a test, challenge, appeal or

proceeding to review with respect to such non-compliance shall be prosecuted in good faith by the Facility Lessee, the failure by the Facility Lessee to comply with the requirements thereof shall not constitute a Lease Event of Default if such test, challenge, appeal or proceeding shall not involve any (i) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than a Permitted Encumbrance) on, the Facility, the Undivided Interest or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (ii) risk of criminal liability being incurred by the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent, the Lender or the Bondholder Trustee or any of their respective Affiliates, or (iii) material risk of any material adverse effect on the Owner Lessor, the Owner Participant or the OP Guarantor, or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent or any of their respective Affiliates (including, without limitation, subjecting any such Person to regulation as a public utility under any Requirement of Law); and *provided, further,* also in the case of the Facility Lessee's obligation set forth in clause (b) of *Section 7.1*, if such noncompliance is not of a type that can be immediately remedied, the failure to comply shall not be a Lease Event of Default if the Facility Lessee is taking all reasonable action to remedy such noncompliance and if, and only if, such noncompliance shall not involve any danger described in clause (i), (ii) or (iii) of the preceding proviso; and *provided, further,* such noncompliance, or such

test, challenge, appeal or proceeding to review with respect to such noncompliance shall not extend beyond the date that is 36 months prior to the scheduled expiration of the Basic Lease Term or any Renewal Lease Term then in effect or already irrevocably elected by the Facility Lessee; or

(f) any representation or warranty of the Facility Lessee set forth in the Operative Documents (other than a tax representation set forth in the Tax Indemnity Agreement) shall prove to have been incorrect in any material respect when made or misleading in any material respect when made because the omission to state a material fact continues to be material and the circumstances upon which such breach of representation or warranty is based continue to be material and unremedied for a period of 30 days after receipt by the Facility Lessee of written notice thereof from the Owner Participant, Owner Lessor, or, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent; *provided, however*, that if such condition cannot be remedied within such 30-day period, then the period within which to remedy such condition shall be extended by up to an additional 60 days, so long as the Facility Lessee diligently pursues such remedy, such condition is reasonably capable of being remedied within such additional 60-day period; or

(g) the Facility Lessee, ME Westside, Chestnut Ridge, Finance Co., Property Co. or EMHC shall (i) commence a voluntary case or other proceeding seeking relief under Title 11 of the Bankruptcy Code or liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or apply for or consent to the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) consent to, or fail to controvert within 60 days, any such relief or the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or (iv) make a general assignment for the benefit of creditors; or

(h) an involuntary case or other proceeding shall be commenced against the Facility Lessee, ME Westside, Chestnut Ridge, Finance Co., Property Co. or EMHC seeking (i) liquidation, reorganization or other relief with respect to it or its debts under Title 11 of the Bankruptcy Code or any bankruptcy, insolvency or other similar law now or hereafter in effect, or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official with respect to it

or any substantial part of its property or (iii) the winding-up or liquidation of such entity, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 days; or

(i) default under any bond, debenture, note or other evidence of Indebtedness (but excluding non-recourse Indebtedness) for money borrowed by the Facility Lessee under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness of the Facility Lessee, whether such indebtedness now exists or shall hereafter be created, which Indebtedness is in an aggregate principal amount exceeding $5,000,000 at all other times and which default shall have resulted in such Indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, without such Indebtedness having been discharged, or such acceleration having been rescinded or annulled; or

(j) any of the Security Documents to which the Facility Lessee, Owner Lessor, Owner Participant, the OP Guarantor or (so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged) the Security Agent or the Lender is a party or the Liens created thereunder are declared unenforceable, are terminated, or cease to be in full force and effect and such condition shall remain unremedied for a period of 10 days; or

(k) any Reportable Event shall occur; (ii) there shall be initiated any action by the Facility Lessee, the Facility Sublessee or any member of the Controlled Group to terminate a Plan; (iii) there shall be initiated proceedings by the PBGC under *Section 4042* of ERISA to terminate a Plan or to appoint a trustee to administer a Plan; (iv) any Plan shall incur an "accumulated funding deficiency" (as defined in *Section 412* of the Code or *Section 302* of ERISA), unless waived; (v) the imposition upon the Facility Lessee, the

Facility Sublessee or any member of the Controlled Group or any Plan fiduciary of a material liability resulting from either the engagement by any such party in a transaction prohibited under *Section 4975* of the Code or *Section 406* of ERISA or any other violation of Title I of ERISA; (vi) the Facility Lessee, the Facility Sublessee or any member of the Controlled Group suffers a partial or complete withdrawal from a Multiemployer Plan, which, with respect to clauses (i) through (vi) above, results in a liability, individually or in the aggregate, of at least $5,000,000; or

(l) judgments or orders for the payment of money against the Facility Lessee, which judgments or orders, as the case may be, are in excess of $1,000,000 in the aggregate (taking into account any insurance proceeds payable under a policy where the insurer has accepted coverage without reservation) and which are not vacated, discharged or effectively stayed or bonded within 60 days from the entry thereof; or

(m) except as permitted by Section 6.1 of the Participation Agreement, EME shall, without the prior written consent of the Owner Lessor, the Owner Participant and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture shall have been discharged or terminated, the Lender or the Bondholder Trustee, cease to own directly or indirectly in excess of 50% of the Ownership Interests in the Facility Lessee; *provided, however*, that the consent of the Lender or Bondholder Trustee shall not be required if, at such time either (i) the Fundco Bonds are rated at least BBB- by S&P, Baa3 by Moody's, and BBB- by Duff & Phelps, and a reaffirmation of such ratings is obtained, or (ii) the reduction of EME's interest in the Facility Lessee has been approved by holders of more than $66^2/_3\%$ of the holders of the Lessor Notes; or

(n) any of the Facility Site Lease, the Facility Site Sublease, or any other material Project Document shall have been cancelled or terminated, or shall otherwise cease to be in full force and effect unless, in any such case, alternative arrangements satisfactory to the Owner Lessor, the Owner Participant and, so long as the Lessor Notes are outstanding and the Lien of the Lease

Indenture has not been released or discharged, the Security Agent, the Lender and the Bondholder Trustee have been made and such parties have so acknowledged in writing; or

(o) at any time, funds on deposit in any Account are used by or at the direction of the Facility Lessee other than for the purposes expressly specified in the Operative Documents; or

(p) the Amended and Restated Guarantee and Collateral Agreement or the Pledge and Collateral Agreement, once executed and delivered, shall for any reason, cease to be in full force and effect; or

(q) at any time, the Facility Lessee shall fail to remain exempt from regulation under PUHCA or to remain exempt from regulation under state utility law which would cause a Material Adverse Effect (or would materially adversely affect any of the Lease Financing Parties); or

(r) any material Operative Document to the which the Facility Lessee or any of its Affiliates is a party is declared unenforceable against the Facility Lessee or any of its Affiliates, is terminated by the Facility Lessee or any of its Affiliates, or ceases to be in full force and effect in respect of the Facility Lessee or any of its Affiliates (in each case, other than in accordance with their terms); or

(s) default under any of the Other Facility Leases.

SECTION 17 REMEDIES

Section 17.1 Remedies for Lease Event of Default. Upon the occurrence of any Lease Event of Default and at any time thereafter so long as the same shall be continuing, the Owner Lessor may, at its option, declare this Facility Lease to be in default by written notice to the Facility Lessee (*provided*, that this Facility Lease shall automatically be in default without the need for giving any notice upon the occurrence

of a Lease Event of Default in clause (g) or (h) of *Section 16*) in respect of the Facility Lessee; and at any time thereafter, so long as the Facility Lessee shall not have remedied all outstanding Lease Events of Default, the Owner Lessor may, at the Facility Lessee's sole cost and expense, do one or more of the following as the Owner Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory Requirements of Law then in effect:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Facility Lessee of the applicable covenants and terms of this Facility Lease or to recover damages for breach thereof;

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

(c) sell the Owner Lessor's Interest at public or private sale, as the Owner Lessor may determine, free and clear of any rights of the Facility Lessee under this Facility Lease and without any duty to account to the Facility Lessee with respect to such sale or for the proceeds thereof (except to the extent required by paragraph (f) below if the Owner Lessor elects to exercise its rights under said paragraph and by Requirements of Law), in which event (i) Allocated Rent shall cease to accrue and (ii) the Facility Lessee's obligation to pay Basic Lease Rent or Renewal Rent

hereunder due for any periods subsequent to the date of such sale shall terminate (except to the extent that Basic Lease Rent or Renewal Rent is to be included in computations under paragraph (f) below if the Owner Lessor elects to exercise its rights under said paragraph) and in which event the Owner Lessor shall pay to the Facility Lessee the Lessor Section 467 Loan Balance, if any, determined as of such date, *provided*, *however*, that the obligation of the Owner Lessor to make such payments shall be subject to the provisions of Section 3.2(d);

(d) hold, keep idle or lease to others the Owner Lessor's Interest as the Owner Lessor in its sole discretion may determine, free and clear of any rights of the Facility Lessee under this Facility Lease and without any duty to account to the Facility Lessee with respect to such action or inaction or for any proceeds with respect thereto, except that the Facility Lessee's obligation to pay Basic Lease Rent or Renewal Rent with respect to the Undivided Interest due for any periods subsequent to the date upon which the Facility Lessee shall have been deprived of possession and use of the Undivided Interest pursuant to this *Section 17* shall be reduced by the net proceeds, if any, received by the Owner Lessor from leasing the Undivided Interest to any Person other than the Facility Lessee and in which event the Owner Lessor shall pay to the Facility Lessee the Lessor Section 467 Loan Balance, if any, determined as of such date, *provided*, *however*, that the obligation of the Owner Lessor to make such payments shall be subject to the provisions of Section 3.2(d);

(e) whether or not the Owner Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (b) above with respect to the Undivided Interest, the Owner Lessor, by written notice to the Facility Lessee specifying a Termination Date that shall be not earlier than 10 days after the date of such notice, may demand that the Facility Lessee pay to the Owner Lessor, and the Facility Lessee shall pay to the Owner Lessor, on the Termination Date specified in such notice any due and unpaid, or accrued and unpaid, Basic Lease Rent or Renewal Rent due through the Termination Date, any Supplemental Lease Rent due and payable as of the payment date specified in such notice, plus as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Lease Rent or Renewal Rent due after the Termination Date specified in such notice), (i) an amount equal to the excess, if any, of the sum of the Termination Value plus any Lessee Section 467 Loan Balance plus any Basic Lease Rent or

Renewal Rent due and unpaid, in each case, computed as of the Termination Date specified in such notice over the Fair Market Sales Value of the Owner Lessor's Interest as of the Termination Date specified in such notice; or (ii) an amount equal to the excess, if any, of the sum of the Termination Value plus any Lessee Section 467 Loan Balance plus any Basic Lease Rent or Renewal Rent due and unpaid, in each case, computed as of the Termination Date specified in such notice over the Fair Market Rental Value of the Owner Lessor's Interest until the end of the Basic Lease Term or the then current Renewal Lease Term, after discounting such Fair Market Rental Value semi-annually to present value as of the Termination Date specified in such notice at a rate equal to the Discount Rate; or (iii) an amount equal to the Termination Value computed as of the Termination Date specified in such notice *provided that* upon payment of such Termination Value by the Facility Lessee pursuant to this clause (iii) and all other Rent then due and unpaid, or accrued and unpaid by the Facility Lessee and the payment of the Lessee Section 467 Loan Balance as of such Termination Date, the Owner Lessor shall proceed to exercise its commercially reasonable efforts promptly to sell the Undivided Interest at public or private sale and shall pay over to the Facility Lessee upon consummation of any such sale the net proceeds of such sale (after deducting from such proceeds all costs and expenses incurred by the Owner Lessor in connection therewith and all other amounts that may become payable to the Owner Lessor, the Security Agent or any other Lease Financing Party) and the Facility Lessee waives all claims against the Owner Lessor and the Owner Participant in connection with the sale of the Undivided Interest or the use of commercially reasonable efforts pursuant to this proviso; *provided further* that in lieu of paying an amount equal to the Termination Value pursuant to clause (iii) above, the Facility Lessee may make a rejectable

offer in writing to the Owner Lessor (within 5 days following the Facility Lessee's receipt of notice by the Owner Lessor specifying a Termination Date) (an "*Offer*") to purchase the Undivided Interest at a purchase price equal to or greater than Termination Value (the "*Offer Price*"). If the Owner Lessor rejects such Offer in writing, the Facility Lessee shall remain liable to pay Termination Value pursuant to clause (iii) above, all other Rent then due and unpaid, or accrued and unpaid, by the Facility Lessee and any Lessee *Section 467* Loan Balance, determined as of the Termination Date *provided that* (1) the Facility Lessee shall have no obligation to pay the costs and expenses incurred by the Owner Lessor solely in connection with any sale of the Undivided Interest and (2) the Owner Lessor shall proceed to exercise its best efforts promptly to sell the Undivided Interest at public or private sale and shall pay over to the Facility Lessee upon consummation of any such sale the proceeds of such sale, but not to exceed the sum of Termination Value paid by the Facility Lessee plus interest at the Applicable Rate from the Termination Date until the date of payment of such proceeds to the Facility Lessee. If the Facility Lessee has made an Offer and the Owner Lessor accepts such Offer or fails to respond to such Offer within two (2) Business Days prior to the date on which the Facility Lessee would have been required to pay Termination Value pursuant to clause (iii) above, the Facility Lessee shall pay to the Owner Lessor the Offer Price on or before the Termination Date and upon such payment of the Offer Price and all other Rent then due and unpaid, or accrued and unpaid, by the Facility Lessee and any Lessee Section 467 Loan Balance determined as of the Termination Date on the Termination Date, the Facility Lessee shall no longer remain liable to pay Termination Value or other amounts pursuant to clause (iii) above and the Owner Lessor shall forthwith transfer to the Facility Lessee (or its designee) in accordance with this *Section 17.1(e)* hereof and *Section 6* of the Facility Site Lease on an "as is," "where is" and "with all faults" basis, without representation or warranty other than a warranty as to the absence of Owner Lessor Liens accompanied by a warranty of the Owner Participant as to the absence of the Owner Participant Liens, all of its interest in the Owner Lessor's Interest and execute, acknowledge and deliver, and record and file (as appropriate), appropriate releases, including a release from the Lien of the Lease Indenture, and all other documents or instructions necessary or desirable to effect the foregoing all in form and substance reasonably satisfactory to the Owner Lessor and at the cost and expense of the Facility Lessee, and upon payment of such amounts due under this paragraph (e), (x) Allocated Rent shall cease to accrue, (y) this Facility Lease, and the Facility Lessee's obligation to pay Basic Lease Rent or Renewal Lease Rent hereunder, as the case may be, due for any periods subsequent to the date of such payment shall terminate and (z) the Owner Lessor shall pay to the Facility Lessee the Lessor Section 467 Loan Balance, if any, determined as of the relevant Termination Date. The obligation to make such payments shall be subject to the provisions of *Section 3.2(d)*; and

(f) if the Owner Lessor shall have sold the Owner Lessor's Interest pursuant to paragraph (c) above, the Owner Lessor may, if it shall so elect, demand that the Facility Lessee pay to the Owner Lessor, and the Facility Lessee shall pay to the Owner Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Lease Rent or Renewal Rent due for any periods

subsequent to the date of such sale), an amount equal to (i) any unpaid Basic Lease Rent or Renewal Rent due and unpaid through the Relevant Termination Date plus (ii) any Lessee Section 467 Loan Balance plus (iii) the amount, if any, by which the Termination Value computed as of the Termination Date next preceding the date of such sale or, if such sale occurs on a Rent Payment Date or a Termination Date then computed as of such date, exceeds the net proceeds of such sale, and, upon payment of such amount, this Facility Lease and the Facility Lessee's obligation to pay Basic Lease Rent or Renewal Rent for any periods subsequent to the date of such payment shall terminate, Allocated Rent shall cease to accrue and the Owner Lessor shall pay to the Facility Lessee the Lessor Section 467 Loan Balance, if any, determined as of the relevant Termination Date. The obligation to make such payments shall be subject to the

provisions of *Section 3.2(d)*. In addition, the Facility Lessee shall be liable, except as otherwise provided above, for (i) any and all unpaid Basic Lease Rent or Renewal Rent due hereunder before, or during the exercise of any of the foregoing remedies, and (ii) on an After-Tax Basis, for legal fees and other costs and expenses incurred by reason of the occurrence of any Lease Event of Default or the exercise of the Owner Lessor's remedies with respect thereto, including the repayment in full of any costs and expenses necessary to be expended in connection with the return of the Undivided Interest in accordance with *Section 5* hereof, including, without limitation, any costs and expenses incurred by the Owner Lessor, the Owner Participant and the Lease Indenture Trustee in connection with retaking constructive possession of, or in repairing, the Undivided Interest in order to cause it to be in compliance with all maintenance standards imposed by this Facility Lease.

(g) upon the occurrence and during the continuance of a Rent Default Event, the Owner Lessor may from time to time withdraw amounts from the Equity Account pursuant to Section 4.6(b) of the Amended Security Deposit Agreement and subject to the posting of an Equity Letter of Credit required thereunder.

Section 17.2 Cumulative Remedies. The remedies in this Facility Lease provided in favor of the Owner Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in the Owner Lessor's favor existing at law or in equity; and the exercise or beginning of exercise by the Owner Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Owner Lessor of any or all of such other remedies. To the extent permitted by Requirements of Law, the Facility Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Owner Lessor to sell, lease or otherwise use the Undivided Interest or any Component in mitigation of Owner Lessor's damages as set forth in this *Section 17* or which may otherwise limit or modify any of Owner Lessor's rights and remedies in this *Section 17*.

Section 17.3 No Delay or Omission to be Construed as Waiver. No delay or omission to exercise any right, power or remedy accruing to the Owner Lessor upon any breach or default by the Facility Lessee under this Facility Lease shall impair any such right, power or remedy of the Owner Lessor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default hereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default.

SECTION 18 SECURITY INTEREST AND INVESTMENT OF SECURITY FUNDS

Any moneys received by the Owner Lessor or the Security Agent pursuant to *Section 10.3, 10.5 or 11.2* shall, until paid to the Facility Lessee as provided in accordance with such Sections, be held by the Owner Lessor or the Security Agent, as the case may be, as security for the Facility Lessee's obligations under this Facility Lease and be invested in Permitted Investments by the Owner Lessor or the Security Agent, as the case may be, at the sole risk of the Facility Lessee, from time to time as directed in writing by the Facility Lessee if such investments are reasonably available for purchase. Any gain (including interest received) realized as the result of any such Permitted Investment (net of any fees, commissions, taxes and other expenses, if any, incurred in connection with such Permitted Investment) shall be applied or remitted to the Facility Lessee in the same manner as the principal invested.

SECTION 19 RIGHT TO SUBLEASE

Section 19.1 Sublease. The Facility Lessee shall have the right to sublease the Undivided Interest without the consent of the Owner Lessor, the Owner Participant, the Security Agent or the Lease Indenture Trustee if:

(a) the sublessee is a United States Person within the meaning of *Section 7701(a)(30)* of the Code that (i) is a solvent corporation, partnership, business trust, limited liability company or other person or entity not then subject to bankruptcy proceedings; and (ii) is not involved in material pending or unresolved litigation with the Owner Participant or any of its Affiliates; and (iii) is, or its operating, maintenance and use obligations under the sublease are guaranteed by, or such obligations are contracted to be performed by, an experienced operator of United States based, coal-fired electric generating facilities similar to the Facility;

(b) The Owner Lessor, the Owner Participant, so long as the Lessor Notes are outstanding, the Security Agent and the Bondholder Trustee shall have received an opinion of counsel, which opinion of counsel shall be reasonably acceptable to the recipients thereof, to the effect that all material regulatory approvals required to enter into the sublease have been obtained;

(c) the sublease does not extend beyond the scheduled expiration of the Basic Lease Term or any Renewal Lease Term then in effect or irrevocably elected by the Facility Lessee (and may be terminated upon early termination of this Facility Lease) and is expressly subject and subordinate to this Facility Lease;

(d) all terms and conditions of this Facility Lease and the other Operative Documents and Project Documents remain in effect and the Facility Lessee remains fully and primarily liable for its obligations under this Facility Lease, the other Operative Documents and Project Documents;

(e) no Lease Default or Lease Event of Default shall have occurred and be continuing or be created as a result of such sublease;

(f) the sublease prohibits further assignment or subletting;

(g) the sublease requires the sublessee to operate and maintain the Undivided Interest (or to cause the Undivided Interest to be operated and maintained) in a manner consistent with this Facility Lease;

(h) the sublease does not cause the Facility to become "tax-exempt use property" within the meaning of *Section 168(h)* of the Code (unless the Facility Lessee shall make a payment to the Owner Participant contemporaneously with the execution of the sublease that, in the reasonable judgment of the Owner Participant, compensates the Owner Participant for the adverse tax consequences resulting from the classification of the Facility as "tax-exempt use property");

(i) Neither the sublease nor the sublessee shall jeopardize the Owner Lessor's, the Owner Participant's and the Lender or Bondholder Trustee's exemption from regulation under PUHCA and other laws relating to electric utilities, generators, wholesalers or retailers; and

(j) the Facility sublessee shall pay all reasonable documented out-of-pocket expenses incurred by the other Lease Financing Parties in connection with such sublease.

As a condition precedent to such sublease, the Facility Lessee shall provide the Owner Lessor, the Owner Participant and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture shall not have been terminated or discharged, the Security Agent with all documentation in respect of such sublease and an opinion of counsel to the effect that such sublease complies with the provisions of this *Section 19* (such documentation, counsel and opinion to be reasonably satisfactory to each such recipient).

SECTION 20 OWNER LESSOR'S RIGHT TO PERFORM

If the Facility Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein after notice to the Facility Lessee and failure of the Facility Lessee to so perform or comply within 10 Business Days thereafter, the Owner Lessor or the Owner Participant may itself make such payment or perform or comply with such agreement in a reasonable manner, but shall not be obligated hereunder to do so, and the amount of such payment and of the reasonable expenses of the Owner Lessor, the Owner Participant or the OP Guarantor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Overdue Rate, to the extent permitted by the Requirements of Law shall be deemed to be Supplemental Lease Rent, payable by the Facility Lessee to the Owner Lessor on demand. Notwithstanding anything to the contrary contained in the foregoing, the provisions of this *Section 20* shall in no event restrict any of the Owner Lessor's rights following the occurrence of a Lease Event of Default, it being agreed and understood that, subject to *Section 7.3* of the Participation Agreement, the Owner Lessor shall be entitled to exercise all of its remedies pursuant to *Section 17* upon the occurrence of any such event.

SECTION 21 SECURITY FOR OWNER LESSOR'S OBLIGATION TO THE LEASE INDENTURE TRUSTEE

In order to secure the Lessor Notes, the Owner Lessor will assign and grant a first priority security interest in favor of the Lease Indenture Trustee in and to all of the Owner Lessor's right, title and interest in, to and under this Facility Lease, and the Undivided Interest (other than Excepted Payments and the rights to enforce and collect the same). The Facility Lessee hereby consents to such assignment and to the creation of such Lien and security interest and acknowledges receipt of copies of the Lease Indenture, it being understood that such consent shall not affect any requirement or the absence of any requirement for any consent of the Facility Lessee under any other circumstances. Unless and until the Facility Lessee shall have received written notice from the Lease Indenture Trustee that the Lien of the Lease Indenture has been fully discharged, the Lease Indenture Trustee shall have the right to exercise the rights of the Owner Lessor under this Facility Lease (other than Excepted Payments and the rights to enforce and collect the same) to the extent set forth in and subject in each case to the exceptions set forth in the Lease Indenture. TO THE EXTENT, IF ANY, THAT THIS FACILITY LEASE CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS FACILITY LEASE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART HEREOF OTHER THAN THE ORIGINAL COUNTERPART, WHICH SHALL BE IDENTIFIED AS THE COUNTERPART CONTAINING THE RECEIPT THEREFOR EXECUTED BY THE LEASE INDENTURE TRUSTEE ON THE SIGNATURE PAGE THEREOF.

SECTION 22 MISCELLANEOUS

Section 22.1 Amendments and Waivers. No term, covenant, agreement or condition of this Facility Lease may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto.

Section 22.2 Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein to a party hereto shall be in writing or shall be produced by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly

confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to such party and any copy party at its address set forth below or at such other address as such party or copy party may from time to time designate by written notice to the other party:

If to the Owner Lessor:

Homer City OL1 LLC
c/o Wells Fargo Bank Minnesota, N.A.
Corporate Trustee Services
MAC; N2691-090
213 Court Street
Middletown, CT 06457

With a copy to:

Wells Fargo Bank Northwest, N.A.
Corporate Trust Services
MAC; U1254-031
Salt Lake City, UT 84111

with a copy to the Owner Participant:

General Electric Capital Corporation
120 Long Ridge Road
Stamford, CT 06927
Attention: Manager Energy Portfolio
Telephone: 203-354-4580
Facsimile: 203-357-4890

With a copy to:
Amy Fisher, Esq.
General Electric Capital Corporation
120 Long Ridge Road
Stamford, CT 06927

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and to the Lease Indenture Trustee:
The Bank of New York
c/o United States Trust Company of New York
114 West 47th Street, 25th Floor
New York, New York 10036
Attention: Corporate Trust Administration
Facsimile: 212.852.1625

with a copy to:

David J. Fernandez, Esq.
C/o Stadtmauer Bailkin LLP
850 Third Avenue 10022
212.822.2249 (phone)
212.980.9578 (fax)

If to the Facility Lessee:

Homer City
1750 Power Plant Road
Homer City, PA 15748-8009
724.479.9011

with a copy to:

Edison Mission Energy
18101 Von Karman Avenue
Suite 1700
Irvine, CA 92612
Telephone No.: (949)752.5588
Facsimile No.: (949) 752-1420
Attention: President, with a copy to General Counsel

Section 23.3 Survival. Except for the provisions of *Sections 3.3, 3.5, 5, 9 and 17*, which shall survive, the warranties and covenants made by each party hereto shall not survive the expiration or termination of this Facility Lease in accordance with its terms. Notwithstanding any provisions hereof, any indemnity contained in Sections 10.1 and 10.2 of the Participation Agreement or elsewhere in the Operative Documents shall, subject to the provisions thereof, survive the expiration or early termination of this Facility Lease regardless of the cause therefor.

Section 23.4 Successors and Assigns. (a) This Facility Lease shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof.

(b) Except as expressly provided in *Section 22.4(c)*, the Facility Lessee may not assign this Facility Lease or any other Operative Document or Project Document, or any interest therein, without the prior written consent of the Owner Lessor.

(c) The Facility Lessee may, upon satisfaction of the conditions set forth herein and in Section 22.4(d), without the consent of the Owner Lessor or the Owner Participant, so long as none of the Owner Lessor, the Owner Participant and the OP Guarantor becomes subject to regulation as a "public utility," a "public utility company," a "holding company," a "subsidiary company" of a "holding company" or an "affiliate" of a "holding company" within the meaning of the Federal Power Act or

PUHCA as a result of such assignment, assign this Facility Lease and the corresponding Operative Documents to any person or entity. In the case of an assignment, upon the transferee's assumption of the Facility Lessee's obligations under this Facility Lease and the other Operative Documents in accordance with the terms of this *Section 22.4(c)* and *Section 22.4(d)* , the Facility Lessee shall have no further liability or obligation thereunder, except any liability and obligation relating to the period prior to such assignment.

(d) Any assignment by the Facility Lessee pursuant to *Section 22.4(b)* shall be subject to satisfaction of the following additional conditions:

(1) the Facility Lessee offers to assign the Facility Lease and the corresponding Operative Documents pursuant to *Article XIII* of the Participation Agreement;

(2) the transferee (or a party which guarantees such transferee's obligations under the Operative Documents assigned to such entity): (i) shall have a credit rating equal to, or greater than, BBB- by S&P and Baa3 by Moody's (ii) shall be organized under the laws of the United States, any state thereof or the District of Columbia, (iii) shall be a corporation, limited liability company or limited partnership; and (iv) shall be substantially engaged in the wholesale power generating

business, experienced in coal-fired electricity generation, and, together with its Affiliates, own and operate facilities with not less than 5,000 MW of capacity;

(3) such transfer occurs subsequent to the seventh year of the Lease Term;

(4) the Owner Lessor and the Owner Participant (and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent) shall have received an opinion of counsel, which opinion of counsel shall be reasonably satisfactory to each recipient thereof, to the effect that all regulatory approvals required in connection with such transfer or necessary to assume the Facility Lessee's obligations under the Operative Documents shall have been obtained and such transfer shall not subject the Facility Lessee, the Owner Lessor or the Owner Participant to regulation under PUHCA or state laws and regulations regarding the rate and financial or organizational regulation of electric utilities;

(5) such transfer shall be pursuant to an assignment and assumption agreement in form and substance reasonably satisfactory to the Owner Participant (and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent);

(6) the Owner Lessor and the Owner Participant (and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Security Agent and the Pass Through Trustee) shall have received an opinion of counsel, which opinion of counsel shall be reasonably satisfactory to each recipient thereof, in respect of such assignment and assumption;

(7) the Owner Participant shall have received (x) an opinion reasonably satisfactory to it from Owner Participant's Counsel to the effect that such transfer should not result in any incremental risk of material adverse federal income tax consequences to the Owner Participant or (y) an indemnity against such risk in form and in substance reasonably satisfactory to the Owner Participant;

(8) no Lease Event of Default shall have occurred and be continuing, or shall be created by such transfer;

(9) such transfer by the Facility Lessee shall not result in a Regulatory Event of Loss;

(10) the transferee shall not be involved in material litigation with the Owner Participant or any of its Affiliates;

(11) the Facility Lessee shall pay on an After-Tax Basis all reasonable documented out-of-pocket expenses incurred by the Owner Lessor and the Owner Participant, the Lease Indenture Trustee and the Pass Through Trustees, in connection with such assignment;

(12) concurrently with such transfer, the Facility Lessee assigns to the transferee each Other Facility Lease and, in each such case, the corresponding Operative Documents;

(13) each of the Rating Agencies shall have confirmed the then existing long term secured debt credit rating of the Lender and the Bondholder Trustee; and

(14) unless the Facility Lessee has elected to provide to the Lease Indenture Trustee an indemnity against the risk that such assignment will cause a Tax Event to occur to any direct or indirect holder of any Lessor Note, the Lease Indenture Trustee shall have received an opinion of counsel to the Facility Lessee (with customary qualifications and limitations and otherwise reasonably satisfactory to the Lease Indenture Trustee), addressed to the Lease Indenture Trustee, the Lender

and the Bondholder Trustee, to the effect that such assignment shall not cause a Tax Event to occur to any direct or indirect holder of any Lessor Note.

Section 22.5 True Lease; Separate Legal Obligations. This Facility Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Facility Lessee any right, title or interest in or to the Undivided Interest except as lessee only. The parties hereto hereby agree that the Facility Lessee's obligation to make Excepted Payments is a separate and independent obligation from its obligation to make other Rent payments, and that the Facility Lessee's obligation to make Excepted Payments may be assigned, pledged or otherwise transferred separately from the Facility Lessee's obligations to make other Rent payments. The obligation to make Excepted Payments has been included herein for the convenience of the parties.

Section 22.6 Governing Law. This Facility Lease shall be governed by, and construed in accordance with, the laws of the State of Pennsylvania applicable to contracts made and performed in such State and any Requirement of Law of the United States of America. To the fullest extent permitted by law, the Facility Lessee and the Owner Lessor hereby unconditionally and irrevocably waive any claim to assert that the law of any other jurisdiction governs this Facility Lease, except as expressly otherwise provided above.

Section 22.7 Severability. Any provision of this Facility Lease that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 22.8 Counterparts. This Facility Lease may be executed by the parties hereto in separate counterparts, each of which, subject to *Section 21*, when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 22.9 Headings and Table of Contents. The headings of the sections of this Facility Lease and the table of contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

Section 22.10 Further Assurances. Each party hereto will promptly and duly execute and deliver such further documents and assurances for and take such further action reasonably requested by the other party, all as may be reasonably necessary to carry out more effectively the intent and purpose of this Facility Lease.

Section 22.11 Effectiveness. This Facility Lease has been dated as of the date first above written for convenience only. This Facility Lease shall be effective on the date of execution and delivery by the Facility Lessee and the Owner Lessor.

Section 22.12 Limitation of Liability. It is expressly understood and agreed by the parties hereto that (a) this Facility Lease is executed and delivered by the Trust Company, not individually or personally but solely as manager of the Owner Lessor under the Owner Lessor LLC Agreement, in the exercise of the powers and authority conferred and vested in it pursuant thereto, (b) each of the representations, undertakings and agreements herein made on the part of the Owner Lessor is made and intended not as personal a representation, undertaking and agreement by the Trust Company but is made and intended for the purpose for binding only the Owner Lessor, (c) nothing herein contained shall be construed as creating any liability on the Trust Company individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall the Trust Company be personally liable for the payment of any indebtedness or expenses of the Owner Lessor or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Owner Lessor under this Facility Lease.

Section 22.13 Measuring Life. If and to the extent that any of the rights and privileges granted under this Facility Lease, would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule or law relating to the vesting of interests in property or the suspension of the power of alienation of property, then it is agreed that notwithstanding any other provision of this Facility Lease, such options, rights and privileges, subject to the respective conditions hereof

governing the exercise of such options, rights and privileges, will be exercisable only during (a) the longer of (i) a period which will end twenty-one (21) years after the death of the last survivor of the descendants living on the date of the execution of this Facility Lease of the following Presidents of the United States: Franklin D. Roosevelt, Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, Richard M. Nixon, Gerald R. Ford, James E. Carter, Ronald W. Reagan, George H.W. Bush, William J. Clinton and George W. Bush or (ii) the period provided under the Uniform Statutory Rule Against Perpetuities or (b) the specific applicable period of time expressed in this Facility Lease, whichever of (a) and (b) is shorter.

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

HOMER CITY OL1 LLC

By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ ROBERT L. REYNOLDS
Name: Robert L. Reynolds
Title: Vice President

EME HOMER CITY GENERATION L.P.

By: MISSION ENERGY WESTSIDE, as its

General Partner

By: /s/ STEVEN D. EISENBERG
Name: Steven D. Eisenberg
Title: Vice President

QuickLinks

Exhibit 4.3.1

Schedule identifying substantially identical agreements to Facility Lease Agreement

1. The Facility Lease dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee and Homer City OL1, a Delaware limited liability company, as Owner Lessor.

2. The Facility Lease dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee and Homer City OL2, a Delaware limited liability company, as Owner Lessor.

3. The Facility Lease dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee and Homer City OL3, a Delaware limited liability company, as Owner Lessor.

4. The Facility Lease dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee and Homer City OL4, a Delaware limited liability company, as Owner Lessor.

5. The Facility Lease dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee and Homer City OL5, a Delaware limited liability company, as Owner Lessor.

6. The Facility Lease dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee and Homer City OL6, a Delaware limited liability company, as Owner Lessor.

7. The Facility Lease dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee and Homer City OL7, a Delaware limited liability company, as Owner Lessor.

8. The Facility Lease dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee and Homer City OL8, a Delaware limited liability company, as Owner Lessor.

Exhibit 4.4

PARTICIPATION AGREEMENT (OL1)

Dated as of December 7, 2001, among

EME HOMER CITY GENERATION L.P.,

HOMER CITY OL1 LLC,

GENERAL ELECTRIC CAPITAL CORPORATION,

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,
not in its individual capacity, except as expressly provided herein,
but solely as Owner Manager,

THE BANK OF NEW YORK,
as successor to United States Trust Company of New York,
not in its individual capacity, except as expressly provided herein,
but solely as Security Agent,

THE BANK OF NEW YORK,
as successor to United States Trust Company of New York,
not in its individual capacity, except as expressly provided herein,
but solely as Collateral Agent,

HOMER CITY FUNDING LLC,

THE BANK OF NEW YORK,
not in its individual capacity, except as expressly provided herein,
but solely as the Lease Indenture Trustee

and

THE BANK OF NEW YORK,
as successor to United States Trust Company of New York,
not in its individual capacity, except as expressly provided herein,
but solely as the Bondholder Trustee

HOMER CITY
COAL-FIRED POWER GENERATION FACILITY

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Schedule D	Equity Portion of Purchase Price

Execution Copy

This **PARTICIPATION AGREEMENT** (OL1), dated as of December 7, 2001 (as amended, supplemented or otherwise modified from time to time, in accordance with the provisions hereof, this "*Participation Agreement*" or this "*Agreement*"), among (i) **EME HOMER CITY GENERATION L.P.**, a Pennsylvania limited partnership, as Facility Lessee and Ground Lessor (herein, together with its successors and permitted assigns, "*Homer City*"), (ii) **HOMER CITY OL1 LLC**, a Delaware limited liability company, as Facility Lessor and Ground Lessee (herein, together with its successors and permitted assigns, the "*Owner Lessor*"), (iii) **WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION**, a national banking association, not in its individual capacity, except as expressly provided herein, but solely as independent manager under the Lessor LLC Agreement (as defined below) (herein in its capacity as independent manager under the Lessor LLC Agreement, together with its successors and permitted assigns, the "*Owner Manager*," and herein in its individual capacity, together with its successors and permitted assigns, the "*OM Company*"), (iv) **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation (herein, together with its successors and permitted assigns, the "*Owner Participant*"), (v) **HOMER CITY FUNDING, LLC**, a Delaware limited liability company, as lender (herein, together with its successors and permitted assigns, the "*Lender*"), (vi) **THE BANK OF NEW YORK**, not in its individual capacity, except as expressly provided herein, but solely as holder representative under the Indenture (herein in its capacity solely as trustee, together with its successors and permitted assigns, the "*Lease Indenture Trustee,*" and herein in its individual capacity, together with its successors and permitted assigns, the "*Lease Indenture Company*"), (vii) **THE BANK OF NEW YORK**, not in its individual capacity, except as expressly provided herein, but solely as security agent under the Lease Indenture (as defined below) (herein in its capacity solely as security agent, together with its successors and permitted assigns, the "*Security Agent,*" and (viii) **THE BANK OF NEW YORK** (as successor to the United States Trust Company of New York), not in its individual capacity, except as expressly provided herein, but solely as bondholder representative under the Fundco Indenture (herein in its capacity solely as trustee, together with its successors and permitted assigns, the "*Bondholder Trustee,*" and herein in its individual capacity, together with its successors and permitted assigns, the "*Bondholder Trustee Company*").

WITNESSETH:

WHEREAS, Homer City owns certain coal-fired power generation and related assets as more fully described on *Exhibit B* to the Facility Lease, located in the Commonwealth of Pennsylvania, consisting of one 620 MW unit, one 614 MW unit and one 650 MW unit;

WHEREAS, in consideration of Owner Lessor's payment of the Purchase Price, Homer City will sell, and the Owner Lessor will acquire, the Undivided Interest pursuant to the Facility Deed and the Bill of Sale;

WHEREAS, the Owner Lessor will lease the Undivided Interest to Homer City pursuant to the Facility Lease;

WHEREAS, Homer City will (i) lease the Ground Interest and grant certain non-exclusive easements to the Owner Lessor pursuant to the Facility Site Lease and (ii) sublease the Ground Interest from the Owner Lessor pursuant to the Facility Site Sublease;

WHEREAS, prior to the execution and delivery of this Agreement, the Owner Participant has entered into the Lessor LLC Agreement pursuant to which the Owner Participant authorizes the Owner Lessor to, among other things, (i) issue the Lessor Notes and sell such Lessor Notes to the Lender, (ii) lease the Undivided Interest to Homer City pursuant to the Facility Lease, (iii) lease the Ground Interest from Homer City pursuant to the Facility Site Lease, (iv) sublease the Ground Interest to Homer City pursuant to the Facility Site Sublease and (v) pursuant to the Indenture, grant the Security Interest;

WHEREAS, the Lender has agreed to acquire the Lessor Notes in the manner and subject to the conditions set forth herein;

WHEREAS, the parties hereto desire to consummate the transactions contemplated hereby;

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

ARTICLE I

DEFINITIONS; INTERPRETATION OF THIS PARTICIPATION AGREEMENT

The capitalized terms used in this Agreement, including the foregoing recitals, and not otherwise defined herein shall have the respective meanings specified in Appendix A hereto. The general provisions of Appendix A shall apply to terms used in this Agreement and specifically defined herein.

ARTICLE II

PARTICIPATION; CLOSING DATE; TRANSACTION EXPENSES

Section 2.1 Agreements to Participate.

Subject to the terms and conditions of this Agreement, and in reliance on the agreements, representations and warranties made herein, the parties hereto agree to participate in the following transactions on or prior to the Closing Date:

(a) The Owner Participant will provide to the Owner Lessor funds in an amount sufficient to (i) fund the Purchase Price and (ii) pay the Transaction Expenses which the Owner Lessor is responsible to pay pursuant to *Section 2.3(a)* hereof (collectively, the "*Owner Participant's Commitment*"), *provided, however*, that the Owner Participant may elect at its sole discretion to pay all or any portion of such Owner Participant's Commitment directly to Homer City in accordance with *Section 2.2(b)* hereof;

(b) Homer City will assume the Existing Debt, and immediately thereafter, as part of the Purchase Price, the Owner Lessor will agree to assume the Owner Lessor's Percentage of Homer City's obligations under the Existing Debt;

(c) The Lender will assume the Owner Lessor's Percentage of Homer City's obligations under the Existing Debt on behalf of the Owner Lessor in consideration for the issuance to the Lender by the Owner Lessor of the Lessor Notes, in each case in the manner and subject to the conditions set forth herein;

(d) The Owner Lessor will (i) issue the Lessor Notes, (ii) sell the Lessor Notes to Lender and (iii) grant the Security Interest;

(e) The Owner Lessor will use the proceeds of the (i) Owner Participant's Commitment and (ii) sale of the Lessor Notes to pay (x) the Purchase Price for the Undivided Interest to Homer City and (y) the Transaction Expenses which the Owner Lessor is responsible to pay pursuant to *Section 2.3(a)* hereof;

(f) Homer City will convey the Undivided Interest to the Owner Lessor pursuant to the Facility Deed and the Bill of Sale;

(g) The Owner Lessor and Homer City will enter into the Facility Lease, pursuant to which the Owner Lessor will lease the Undivided Interest to Homer City and Homer City will lease the Undivided Interest from the Owner Lessor;

(h) Homer City and the Owner Lessor will enter into the Facility Site Lease, pursuant to which Homer City will lease the Ground Interest to the Owner Lessor and the Owner Lessor will lease the Ground Interest from Homer City;

(i) The Owner Lessor and Homer City will enter into the Facility Site Sublease, pursuant to which the Owner Lessor will sublease the Ground Interest to Homer City and Homer City will sublease the Ground Interest from the Owner Lessor;

(j) The Owner Lessor, the Lease Indenture Trustee, and the Security Agent will enter into the Lease Indenture, pursuant to which the Owner Lessor will grant the Security Interest to the Security Agent;

(k) The Owner Participant and Homer City will enter into the Tax Indemnity Agreement; and

(l) The parties hereto will enter into the agreements referred to above and the other Operative Documents.

Section 2.2 Closing Date; Procedure for Participation.

(a) *Closing Date.* The closing of the transactions contemplated hereby (the "*Closing*") shall take place after 9:00 a.m., New York City time, on the closing date (the "*Closing Date*"), at the offices of SASM&F, Four Times Square, New York, New York 10036.

(b) *Procedures for Funding.* Unless the Closing Date has been postponed pursuant to *Section 2.2(c)*, subject to the terms and conditions of this Agreement, the Owner Participant shall make the Owner Participant's Commitment available at the time of Closing on the Scheduled Closing Date by transferring or delivering such amount, in funds immediately available on the Scheduled Closing Date to the Owner Lessor, *provided, however*, that the Owner Participant may elect at its sole discretion to make available all or any portion of the Owner Participant's Commitment by transferring or delivering any such amount, in funds immediately available at the time of the closing on the Closing Date, directly to an account maintained by Homer City specified by Homer City for such purpose.

(c) *Postponement of the Closing.* The Scheduled Closing Date may be postponed from time to time for any reason if Homer City gives the Owner Participant, the Owner Lessor, the Owner Manager, the Lender and the Lease Indenture Trustee a telex, telegraphic, facsimile or telephonic (confirmed in writing) notice of such postponement and notice of the date to which the Closing has been postponed, such notice of postponement to be received by each party no later than 9:00 a.m., New York City time, on the Business Day immediately preceding the Scheduled Closing Date.

(d) *Expiration of Commitments.* The obligations of the parties hereto shall expire on December 7, 2001, at 11:59 p.m., New York City time, if the Closing Date has not occurred on or before that date. Upon such expiration, the parties hereto shall have no obligation to consummate the transactions contemplated under this Agreement except as provided in *Sections 2.3, 10.1* and *10.2* and all obligations of the Lease Transaction Parties shall cease and terminate.

Section 2.3 Transaction Expenses.

(a) If the transactions contemplated by this Agreement are consummated, all Transaction Expenses up to an amount equal to the amount set forth in *Schedule 2.3(a)* incurred on or prior to the Closing Date and substantiated or otherwise supported in reasonable detail shall be paid on the Closing Date by the Owner Lessor with the funds provided by the Owner Participant pursuant to *Section 2.2(b)* above, *provided, however*, that the Owner Lessor will also be responsible for amounts in respect of the Consent Payment which may be incurred and become payable after the Closing Date as described in *Section 2.3(d)* hereof. If Transaction Expenses are in excess of the amount set forth on *Schedule 2.3(a)*, the Facility Lessee shall be required to pay the fees of its counsel and other expenses to be agreed upon by the Facility Lessee and the Owner Participant to the extent of such excess. If the

Overall Transaction is not consummated for any reason, the Facility Lessee shall bear all Transaction Expenses; *provided*, *however,* that the Facility Lessee shall not be obligated to pay Transaction Expenses incurred by the Owner Participant if the Overall Transaction is not consummated on the basis of the provisions of this Agreement due to a failure of the Owner Participant to satisfy any condition to the Closing required to be satisfied by the Owner Participant.

(b) Subject to *Article X* below, the Facility Lessee will not be responsible for any fees, costs or expenses of the Owner Participant incurred prior to the Closing Date in respect of the Closing except as described in paragraph (a) of this *Section 2.3*.

(c) Following the Closing Date, Homer City will be responsible for, and will pay as Supplemental Lease Rent on an After-Tax Basis to the Owner Participant and the Owner Lessor, (i) the annual administration fees, if any, and expenses of the Owner Manager, and (ii) any appraiser's fees and expenses incurred in connection with fair market value determinations in connection with any Renewal Option.

(d) All holders of the Existing Debt who render their consent prior to the consent expiration date set forth in the Exchange Offer Registration Statement will be paid the Consent Payment. On the Closing Date, the Owner Lessor will pay the Consent Payment to the Bondholder Trustee who will use the funds in accordance with the Fundco Indenture.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of Homer City. Homer City represents and warrants that, as of the date of execution and delivery hereof and as of the Closing Date:

(a) *Organization; Power.* Homer City (A) is a limited partnership, duly formed, validly existing and in good standing under the laws of Pennsylvania with the sole legal name, as set forth in the public records filed in Pennsylvania, of "EME Homer City Generation L.P.," (B) is duly qualified to do business and in good standing in each jurisdiction where the nature of its business requires such qualification and (C) has all requisite power and authority and holds all requisite Governmental Approvals to (i) hold under lease the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as presently proposed to be conducted and (iii) enter into and perform its obligations under this Agreement and each of the other Transaction Documents to which it is or will be a party and to conduct the business of owning and operating the Facility and the sale and marketing of wholesale electric power and other products and services related thereto, except, with respect to clauses (B) and (C) above, where failure to be so qualified or be in good standing or the failure to obtain such Governmental Approvals would not, individually or in the aggregate, result in a Material Adverse Effect. ME Westside and Chestnut Ridge are the sole general partner and sole limited partner, respectively, of the Facility Lessee. Each of the Facility Lessee, ME Westside and Chestnut Ridge is an indirect wholly-owned subsidiary of EME.

(b) *Due Authorization; Non-Contravention.* The execution, delivery and performance by Homer City of this Agreement and each of the other Transaction Documents to which it is or will be a party have been or when executed and delivered will be duly authorized by all necessary company action and do not and will not (i) contravene the Organic Documents of Homer City or (ii) contravene any Requirement of

Law, binding on or affecting Homer City, except where such contravention could not reasonably be expected to have a Material Adverse Effect.

(c) *No Violation.* The execution, delivery and performance by Homer City of the Transaction Documents to which it is a party do not (i) violate, in a manner which has had or could reasonably be expected to have a Material Adverse Effect, or a material adverse effect on any material contract, agreement or instrument to which Homer City is a party or by which Homer City or any of its property

is bound; (ii) constitute, in a manner which has had or could reasonably be expected to have a Material Adverse Effect, a default by Homer City under any such contract, agreement or instrument; or (iii) result, in a manner which has had or could reasonably be expected to have a Material Adverse Effect, in the creation of any Lien upon the property of Homer City (other than pursuant to any Operative Document).

(d) *Government Approvals and Third Party Consents*.

(i) All Governmental Approvals required (1) in connection with the execution and delivery of, or performance of the transactions contemplated by, this Agreement and the other Transaction Documents to which Homer City is or will be a party and for the conduct of the business by Homer City and (2) without regard to any other transactions of the Owner Participant, the Owner Lessor, the Owner Manager or any Affiliate of any of them and assuming that none of the Owner Participant, the Owner Lessor, the Owner Manager or any Affiliate of any of them is an "electric utility" or a "public utility" or a "public utility holding company" or any similar entity subject to public utility regulation under any Requirement of Law immediately prior to the Closing Date, with respect to the participation by the Owner Participant, the Owner Lessor or the Owner Manager in the transactions contemplated by this Agreement and the other Operative Documents, are listed on Part A of *Schedule 3.1(d)* and have been duly obtained or made and are in full force and effect, in each case, other than (A) as may be required under existing Requirements of Law to be obtained, given, accomplished or renewed at any time after the date of execution and delivery hereof or from time to time after the Closing Date in connection with the maintenance or operation of the Facility and other assets and properties of Homer City, (B) which are routine in nature and which cannot be obtained and such failure to obtain would not result in a Material Adverse Effect, or are not normally applied for, prior to the time they are required, and which Homer City has no reason to believe will not be timely obtained, (C) as may be required in connection with any refinancing of the Lessor Notes or the issuance of Additional Lessor Notes, (D) as may be required in consequence of any transfer of the Lessor Membership Interest or the Member Interest or any transfer of ownership of the Undivided Interest or the Lessor Estate by the Owner Lessor or any relinquishment of the use or operation of the Undivided Interest by Homer City, (E) filing and recording to perfect the Lien of the Security Agent and the ownership and leasehold interests conveyed pursuant to this Agreement to the extent arrangements have been made satisfactory to the Owner Participant, the Owner Lessor, the Security Agent and the Lease Indenture Trustee to effect such filings, and (F) as may be required under Environmental Laws to transfer or modify Governmental Approvals relating to the operation of the Facility as a result of the transactions contemplated by this Agreement. Except as noted in Part B of *Schedule 3.1(d)*, all Governmental Approvals that have been obtained pursuant to the first sentence of this *Section 3.1(d)* are final, any period for the filing of notice of rehearing or application for judicial review of the issuance of each such Governmental Approval has expired without any such notice or application having been made (in each case, other than those for which the failure to be final would not have a Material Adverse Effect). No such Governmental Approval is the subject of any pending or, except as noted in Part C of *Schedule 3.1(d)*, threatened judicial or administrative proceeding, which judicial review or proceeding could have a Material Adverse Effect.

(ii) All consents and approvals required to be obtained from Persons other than Governmental Authorities in connection with the transactions contemplated by the Transaction Documents have been obtained and are in full force and effect and are set forth in *Schedule 3.1(d)*, other than such consents or approvals the failure of which to obtain, would not, individually or in the aggregate, result in a Material Adverse Effect.

(e) *Title; Liens.*

(i) On or before the Closing Date, (x) Homer City will have good, clear, record and marketable title to the Facility Site and the Easement Areas free and clear of all Liens other than Permitted Encumbrances and (y) Homer City will have good and marketable title or will have valid rights to lease or otherwise use all items of real and personal property which are material to its business, in each case free and clear of all Liens and title defects except Permitted Encumbrances, and other title defects and rights which defects and invalidity of rights would not reasonably, individually or in the aggregate, be expected to have a Material Adverse Effect.

(ii) Upon execution and delivery of the Operative Documents and recording or filing (as appropriate) of the documents and instruments referred to in *Schedule 4.12* in accordance with *Section 4.12*, good, clear, record and valid leasehold interest in the Ground Interest will be duly, validly and effectively conveyed to the Owner Lessor upon the terms and conditions in the Facility Site Lease, free and clear of all Liens other than Permitted Encumbrances.

(iii) Upon execution and delivery of, and after giving effect to the transactions contemplated by, the Operative Documents, good, clear, record and marketable title to the Undivided Interest will be duly, validly and effectively conveyed to the Owner Lessor, free and clear of all Liens, encumbrances or title defects other than Permitted Encumbrances.

(iv) Assuming the representations and warranties of the Owner Lessor contained in *Section 3.2* are true, when duly authorized, executed and delivered by each of the parties thereto, the Lease Indenture will create a valid Lien in favor of the Security Agent in the Indenture Estate and no filing, recording, registration or notice with any federal or state Governmental Authority or other action will be necessary to establish or, except for such filings and recordings and other actions referred to in *Schedule 4.12* hereto as will be made pursuant to *Section 4.12*, to perfect, or give record notice of, the Lien in favor of such Security Agent in the Indenture Estate to the extent such Lien may be perfected by filings, recordings, registrations or notices.

(v) None of the Permitted Encumbrances could reasonably be expected to, on and after the Closing Date, materially interfere with the ownership, use, operation or possession of the Facility (as contemplated by the Operative Documents) or the use of or the exercise by the Owner Lessor of its rights under the Facility Deed, the Bill of Sale, the Facility Site Lease, the Easements, and Facility Site Sublease.

(f) *Securities Act.* Neither the Facility Lessee nor anyone authorized by it (not including GECC or any of its Affiliates) has directly or indirectly offered or sold any interest in the Beneficial Interest or the Lessor Notes or any part thereof, or in any similar security or lease, or in any security or lease the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the Beneficial Interest or the Lessor Notes or any part thereof or solicited any offer to acquire any of the same, in any such case, in violation of the registration requirements of Section 5 of the Securities Act.

(g) *Validity.* Each of the Transaction Documents to which Homer City is or will be a party constitutes, or, upon the due execution and delivery thereof by Homer City, will constitute, the legal, valid and binding obligation of Homer City, enforceable in accordance with its terms (except as such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and general principles of equity).

(h) *Compliance with Requirements of Law.* Each of Homer City and the Facility is in compliance with all Requirements of Law (including all applicable zoning, use and building codes, laws, regulations and ordinances relating to the operation, maintenance, use, lease or ownership of the Facility, the Facility Site and the Easements, ERISA and regulations of the Federal Reserve System) applicable to it, except to the extent that failure to so comply would not result or has not resulted in a Material

Adverse Effect or involve any (i) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than Permitted Encumbrances) on, the Facility or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (ii) risk of criminal liability being imposed on the Owner Participant, the Owner Lessor, the Owner Manager, the Security Agent, the Lease Indenture Trustee, or the Lender or any of their Affiliates or (iii) material risk of the occurrence of any material adverse effect being incurred by the Owner Participant, the Owner Lessor, the Owner Manager, the Security Agent, the Lease Indenture Trustee, or the Lender, including subjecting the Owner Participant or the Owner Lessor to public utility regulation under Requirements of Law.

(i) *Margin Regulation.* Homer City is not engaged in the business of extending credit for the purposes of purchasing or carrying margin stock, and no proceeds of the Lessor Notes and the Purchase Price as contemplated by this Agreement and the other Operative Documents will be used for a purpose which violates, or would be inconsistent with, the Regulations T, U and X of the Federal Reserve System. Terms for which meanings are provided in the Regulations T, U and X of the Federal Reserve System or any regulations substituted therefor, as from time to time in effect, are used in this *Section 3.1* with such meanings.

(j) *Litigation.* There is no pending or, to the Actual Knowledge of Homer City, threatened, litigation, arbitration or administrative proceeding against Homer City, any of the Homer City Parties or EME which, if determined adversely to it, could reasonably be expected to have a Material Adverse Effect.

(k) *Tax Returns.* Homer City, and each entity holding a partnership interest in Homer City, has filed all material federal, state and local tax returns and reports that are required by law to have been filed by it and have paid all material Taxes shown to be due and payable on such returns or pursuant to any assessment received by it (other than Taxes and assessments which are being diligently contested in good faith by such Person and with respect to which adequate reserves have to the extent required by GAAP been set aside) and neither Homer City nor any entity holding a partnership interest in Homer City has Actual Knowledge of any threatened actual or proposed deficiency or additional assessment in connection therewith that, either in any case or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(l) *Investment Company Act.* Homer City is not subject to regulation as an "investment company" or an "affiliated person" of a registered "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(m) *Holding Company Act.* Homer City is not subject to regulation as a "holding company," a "public utility company" or a "subsidiary company" or an "affiliate" of a "holding company" required to register under PUHCA. The execution, delivery and performance of the Operative Documents to which Homer City is or will be a party do not violate any provision of PUHCA or any rule or regulation thereunder.

(n) *EWG Status.* Homer City is an "exempt wholesale generator" under PUHCA. The Facility is interconnected with the high voltage network and has access to transmission services and ancillary services to sell wholesale electric power. Homer City has the authority to sell wholesale electric power at market-based rates.

(o) *Environmental Warranties.* Except as has not or would not, individually or in the aggregate, result in a Material Adverse Effect:

(i) The Facility and the Facility Site are, and to the Actual Knowledge of Homer City have been, owned, leased and operated in compliance with all applicable Environmental Laws, and Homer City is and has been in compliance with all applicable Environmental Laws.

(ii) There are no pending or, to the Actual Knowledge of Homer City, threatened Environmental Claims involving or against Homer City, the Facility, the Facility Site or the Easement Areas.

(iii) Homer City has obtained and is in compliance with all Governmental Approvals required under any applicable Environmental Law for its business, and with respect to the Governmental Approvals not obtained by the date of execution and

delivery hereof, including those that may be required as a result of the transactions contemplated by this Agreement, Homer City does not have any reason to believe that such approvals will not be timely obtained.

(iv) None of the Facility, the Facility Site or the Easement Areas are listed on (A) the National Priorities List (B) the CERCLIS or (C) the priority list of sites under the Pennsylvania Hazardous Site Clean Up Act or, to the Actual Knowledge of Homer City, on any similar state list of sites requiring investigation or clean-up.

(v) To the Actual Knowledge of Homer City, there is not and has not been any Environmental Condition (A) at, on or under the Facility or any Component thereof, the Facility Site or the Easement Areas or (B) resulting from or arising in connection with the operation of the Facility that could have a Material Adverse Effect or involve any (1) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a lien on, the Undivided Interest, the Facility, the Facility Site or the Easement Areas or the impairment of the use, operation or maintenance of the Facility, the Facility Site or the Easement Areas in any material respect, or (2) risk of criminal liability being incurred by the Owner Participant, the Owner Lessor, the Owner Manager, the Security Agent, the Lease Indenture Trustee or the Lender or any of their respective Affiliates, or (3) material risk of the occurrence of any material adverse effect being incurred by the Owner Participant, the Owner Lessor, the Owner Manager, the Security Agent, the Lease Indenture Trustee or the Lender, including subjecting the Owner Participant or the Owner Lessor to public-utility regulation under Requirements of Law.

(p) *ERISA.* Assuming the correctness of the representations of the other parties hereto, the transactions contemplated hereunder and by the other Operative Documents will not constitute a "prohibited transaction" under ERISA and will not result in the imposition of a Tax under Section 4975 of the Code.

(q) *Location of Chief Executive Office and Principal Place of Business, etc.*

(i) The chief executive office and principal place of business of Homer City and the office where Homer City keeps its corporate records concerning the Facility, the Facility Site and the Transaction Documents is located at 1750 Power Plant Road, Homer City, PA 15748-8009.

(ii) The Facility is located on the Facility Site.

(iii) The condition of the Facility is substantially identical to the condition it was in when inspected by the Appraiser in connection with the Closing Date Appraisal.

(r) *Access; Egress.* Homer City has sufficient access to public roads, easements of ingress and egress and other rights of access to permit use and operation of the Facility, the Facility Site and the Easement Areas as contemplated by the Transaction Documents. To Homer City's Actual Knowledge, there are no plans of any governmental entity to change the highway or road system in the vicinity of the Facility, the Facility Site or the Easement Areas, or to restrict or change access from any such highway or road to the Facility or the Facility Site, in either case, in any manner which could reasonably be expected to have a Material Adverse Effect.

(s) *Ability to Deliver Power.* As of the Closing Date, Homer City has all rights that are necessary and sufficient to deliver the net electric power output of the Facility to two points of interconnection of the Facility to the electricity grid.

(t) *Power Sales Agreements and Other Contracts.* There are no contracts or agreements providing for sales of power and ancillary services produced by the Facility or for the use and operation of the Facility that have a term which extends beyond the expiration of the Basic Lease Term other than the Interconnection Agreement.

(u) *Utility Services.* The Facility, the Facility Site and the Easement Areas have available all public utility services necessary for the use and operation of the Facility as currently being used and as contemplated by the Transaction Documents.

(v) *Subdivision.* Pursuant to the Facility Site Lease, the Owner Lessor will have a ground lease which entitles it to operate the Facility as currently operated.

(w) *Adequate Rights.* Assuming the representations and warranties of the Owner Lessor set forth in *Section 3.2(d)*, the OM Company and the Owner Manager set forth in *Section 3.3(d)*, and of the Owner Participant set forth in *Section 3.4(d)* are true, based upon Requirements of Law in effect on the Closing Date and upon Homer City's reasonable expectations, and, in the case of such actions after the Facility Lease Term, subject to the Owner Lessor obtaining any necessary Governmental Approvals (which Homer City reasonably believes are obtainable by the Owner Lessor in the ordinary course other than those Governmental Approvals the failure to maintain or obtain which could not reasonably be expected to have a material adverse effect on the Owner Lessor's ability, on a commercially practicable basis, to have the rights and take the actions set forth in clauses (i) through (v) below), the rights and interests made available to the Owner Lessor pursuant to the Transaction Documents and the rights contemplated by the Facility Lease to be made available under the Transaction Documents are sufficient to permit the following actions by the Facility Lessee during the Facility Lease Term and by the Owner Lessor or any such permitted transferee following the expiration or termination of the Facility Lease until the end of the expected economic useful life of the Facility as set forth in the Closing Date Appraisal: (i) the occupation, interconnection, maintenance and repair of the Facility, (ii) the use, operation and possession of the Facility, (iii) the construction, use, operation, possession, maintenance, replacement, repair and renewal of all modifications, additions, improvements, replacements and substitutions of and to the Facility, (iv) appropriate ingress to and egress from the Facility and the Facility Site for any reasonable purpose in connection with the exercise of rights under the Ownership and Operation Agreement and such Person's interest in the Facility and (v) transmission of the electric energy and ancillary services provided by the Facility to a point of interconnection to the relevant electricity grid for each of the markets controlled by the Pennsylvania, New Jersey and Maryland Independent System Operator and the New York Independent System Operator or any successor organizations.

(x) *Return Acceptance Tests.* Homer City has no reason to believe that the Facility will not be able to satisfy the return conditions set forth in *Section 5* of the Facility Lease as of the expiration of the Facility Lease Term if the Facility is maintained in accordance with *Section 7* of the Facility Lease.

(y) *No Default; No Event of Loss; No Burdensome Buyout Event.* No Lease Event of Default, or event that, with the passage of time or giving of notice, or both, would constitute a Lease Event of Default has occurred or will occur upon execution and delivery of the Operative Documents. No event of default under the Existing Debt, or event that, with the passage of time or giving of notice, or both, would constitute such an event of default has occurred or will occur upon execution and delivery of the Operative Documents. Homer City is not in default, and to the Actual Knowledge of Homer City, no condition exists that with notice or lapse of time or both would constitute a default, under any mortgage, indenture or other contract, agreement or instrument to which Homer City is a party or by which it or its property is bound in any such case where any such default, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. No Event of Loss, other than a Regulatory Event of Loss, has occurred or will occur upon the execution and delivery of the Operative Documents, and Homer City does not have Actual Knowledge of any event that could

reasonably be expected to result in a Regulatory Event of Loss. No Burdensome Buyout Event has occurred or will occur upon the execution and delivery of the Operative Documents, and Homer City does not have Actual Knowledge of any event that could reasonably be expected to result in a Burdensome Buyout Event.

(z) *Regulatory Matters.* None of the Owner Lessor, the Owner Participant, the Security Agent or the Lease Indenture Trustee solely as a result of the execution, delivery and performance of, and the consummation of the transactions contemplated by the Operative Documents shall be or become (i) subject to regulation as a "public-utility company," a "holding company," an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" within the meaning of PUHCA, (ii) a "public utility," a "transmitting utility," or an "electric utility" within the meaning of the Federal Power Act or (iii) subject to state financial or rate regulation.

(aa) *Notices.* To Homer City's Actual Knowledge, (i) there are no outstanding written notices from any Governmental Authority of any violation of, or that the Facility or the Facility Site are not in compliance with, any and all Requirements of Law relating to the Facility

and the Facility Site or the ownership, use, occupancy and operation thereof and (ii) there are no outstanding written notices that any repairs or work or capital improvements are required to be done at or with respect to the Facility or the Facility Site by any Governmental Authority or by any insurance company which currently issues any insurance to Homer City or by any board of fire underwriters or other body exercising similar functions, except, in either case with respect to (i) or (ii) above, where such violation, noncompliance or repairs could not reasonably be expected to have a Material Adverse Effect.

(bb) *Accuracy of Information.* All factual information provided in writing by Homer City or its Affiliates to (i) the Engineering Consultant, in connection with the preparation of the Engineering Consultant's Report, (ii) the Appraiser, in connection with the preparation of the Closing Date Appraisal, (iii) the Environmental Consultant, in connection with the preparation of the Environmental Consultant's Report, (iv) the Insurance Consultant, in connection with the preparation of the Insurance Consultant's Report, (v) the Power Market Consultant, in connection with the preparation of the report of the Power Market Consultant and (vi) the Owner Manager, the Owner Participant, the Lease Indenture Trustee and the Lender in connection with the transactions contemplated hereby (other than projections and "forward-looking" information) is true and accurate in every material respect on the date as of which such information is dated or certified and such information does not omit to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they are made not misleading. The assumptions used for projections and "forward-looking" information contained in the items (i) through (vi) above were prepared in good faith and are based upon reasonable assumptions.

(cc) *Contracts with Affiliates.* Other than as set forth on *Schedule 3.1(cc)* hereto or as contemplated by the Operative Documents, there are no material contracts or agreements in effect on the Closing Date between Homer City and any Affiliate of Homer City. Homer City has delivered to the Owner Participant copies of each of the contracts and agreements set forth on *Schedule 3.1(cc)* hereto as in effect on the Closing Date.

(dd) *Insurance.* All insurance required to be obtained pursuant to Section 5.10 hereof has been obtained and is in full force and effect.

(ee) *No Default of Judgment.* Homer City is not in default of any judgments, orders or decrees of any governmental authority relating to the Facility which could reasonably be expected to have a Material Adverse Effect.

(ff) *Eminent Domain.* There is no action pending with respect to, or, to the Facility Lessee's Actual Knowledge, threatened by a governmental entity or other Person to initiate, a Requisition of the Facility, the Facility Site or the Easements, which could reasonably be expected to have a Material Adverse Effect.

(gg) *Labor Disputes and Acts of God.* Neither the business nor the properties of the Facility Lessee are affected by any fire, explosion, accident, strike, lockout, or to the Actual Knowledge of the Facility Lessee pending or threatened unfair labor practice complaint or proceeding or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance), which could reasonably be expected to have a Material Adverse Effect.

(hh) *Intellectual Property.* To the Actual Knowledge of the Facility Lessee, the Facility Lessee has the right to use all patents, trademarks, service marks, trade names, copyrights, licenses and other rights which are necessary or material for the operation of its business as presently conducted. To the Actual Knowledge of the Facility Lessee, (a) no material product, process, method, substance, part or other material presently contemplated to be sold by or employed by the Facility Lessee in connection with its business infringes upon any patent, trademark, service mark, trade name, copyright, license or other intellectual property right of any other Person, (b) there are no pending or threatened claims or litigation against or affecting the Facility Lessee contesting or calling into question its right to sell or use any such product, process, method, substance, part or other material and (c) there is no existing, pending or proposed patent, invention or device, or any application or principle of any applicable law, standard or code, in any such case, with respect to clauses (a), (b) and (c) above, which could reasonably be expected to have a Material Adverse Effect.

(ii) *No Fraudulent Conveyances.* The Facility Lessee is consummating the transactions contemplated hereby, including transfer of certain of its assets and properties to the Owner Lessor, in good faith and without any intent to defraud creditors of the Facility Lessee or

subsequent purchasers. Based upon the Closing Date Appraisal and the Closing Projections, the execution and delivery of the Operative Documents to which the Facility Lessee is a party and the granting of any Liens pursuant to such Operative Documents by the Facility Lessee will not render the Facility Lessee insolvent under GAAP or leave the Facility Lessee with assets whose present fair valuation is less than the present fair valuation of the Facility Lessee's debts. As used in this *Section 3.1(ii)*, "debts" includes any and all liabilities, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent, and whether or not such liabilities are required under GAAP to be shown on the Facility Lessee's balance sheet. Based upon the Closing Date Appraisal and the Closing Projections, the execution and delivery of the Operative Documents to which the Facility Lessee is a party and the granting of the Liens pursuant to such Operative Documents by the Facility Lessee will not leave the Facility Lessee with property remaining in its hands which would constitute unreasonably small assets or capital, and the Facility Lessee has and, after giving effect to such transactions will have, an adequate amount of assets and capital to engage in its business now and in the future, based on the actual and anticipated needs for capital of the businesses anticipated to be conducted by the Facility Lessee, and based upon the Closing Projections and other information described herein. Based upon the Closing Date Appraisal and the Closing Projections, after giving effect to the transactions contemplated under the Operative Documents, the Facility Lessee will be able to pay all of its debts and liabilities, including unrecorded contingent liabilities, as they mature, the Facility Lessee will have positive cash flow after paying all of

its scheduled and anticipated debt as it matures, and the Facility Lessee will realize sufficient monies from current assets in the ordinary and usual course of business to pay recurring current debt, short-term debt and long-term debt as such debts mature.

(jj) *No Additional Fees.* Except for the fee of Credit Suisse First Boston as Facility Lessee adviser, the Facility Lessee has not paid or become obligated to pay any fee or commission to any broker, finder or Person providing similar services in connection with the transactions contemplated by the Operative Documents; provided that, for the avoidance of doubt, none of the fees described in this Section 3.1(jj) shall be construed as constituting Transaction Expenses, it being understood that all Transaction Expenses are to be paid by the Owner Lessor.

(kk) *Financial Statements.* The financial statements of Homer City for the Fiscal Quarter ending September 30, 2001 (i) were prepared in accordance with GAAP, and (ii) fairly present in all material respects the financial position and the results of the operations of Homer City as of such date and for the period then ended in accordance with GAAP.

(ll) *Land Not in Flood Zone.* No portion of the Facility or the Facility Site includes improved real property that is located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, except for such areas as are covered by such insurance.

(mm) *Business, Debt, Contracts, Etc.* The Facility Lessee does not conduct any business other than the development, ownership, operation, maintenance, leasing and financing of the Facility and the Facility Site and activities incidental thereto. The Facility Lessee does not have any outstanding Indebtedness or other material liabilities other than pursuant to the Transaction Documents, and is not a party to or bound by any material contract other than the Transaction Documents to which it is a party.

(nn) *Project Documents.* The copies of the Power Sales Agreements, the Energy Sales Agreement, the NOx Agreement, the real property documents under which the Facility Lessee has an interest in the Facility Site and the Easements, the Fuel Supply Agreement, the Homer City Partnership Agreement and the Interconnection Agreement, provided by the Facility Lessee to the Owner Participant as of the Closing Date constitute true and correct copies of all such documents as of such date, and no such document has been amended, supplemented or otherwise modified except as copies of such amendments, supplements and modifications have been provided to the Owner Participant as of such date. Except for the agreements described in the immediately preceding sentence, no other material or long term Project Document exists as of the Closing Date.

Section 3.2 Representations and Warranties of the Owner Lessor. The Owner Lessor represents and warrants that as of the date of execution and delivery hereof and as of the Closing Date:

(a) *Due Organization.* The Owner Lessor is a duly formed and validly existing limited liability company in good standing under the laws of the State of Delaware with the sole legal name, as set forth in the public records filed in Delaware, of "Homer City OL1". The Owner Participant is the sole member of the Owner Lessor. The Owner Lessor has the limited liability company power and authority to enter into and perform its obligations under this Agreement and each of the other Operative Documents to which it is a party.

(b) *Due Authorization, Enforceability; etc.*

(i) This Agreement and each of the other Operative Documents (other than the Lessor Notes) to which the Owner Lessor is or will be a party has been or when executed and delivered will be duly authorized, executed and delivered by the Owner Lessor, and assuming the due authorization, execution and delivery of this Agreement by each party hereto other than the Owner

Lessor, this Agreement constitutes, and when executed and delivered each of the other Operative Documents (other than the Lessor Notes) to which it is or will be a party, will be the legal, valid and binding obligations of the Owner Lessor, enforceable against the Owner Lessor in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(ii) Upon the execution of the Lessor Notes by the Owner Lessor, authentication of the Lessor Notes by the Lease Indenture Trustee and delivery of such Lessor Notes against payment therefor, the Lessor Notes will constitute legal, valid and binding obligations of the Owner Lessor, enforceable against the Owner Lessor in accordance with their terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) *Non-Contravention.* The execution and delivery by the Owner Lessor of this Agreement and the other Operative Documents to which it is or will be a party, the consummation by the Owner Lessor of the transactions contemplated hereby and thereby, and the compliance by the Owner Lessor with the terms and provisions hereof and thereof, do not and will not contravene (except where such contravention would not result in a material adverse effect on the Owner Lessor) (i) Lessor LLC Agreement or any of the Organic Documents of the Owner Lessor, (ii) any Requirement of Law binding on the Owner Lessor or (iii) the provisions of, or constitute a default by the Owner Lessor under any indenture, mortgage, deed of trust or other material contract, agreement or instrument to which the Owner Lessor is a party or by which the Owner Lessor or its property is bound, or in the creation of any Owner Lessor Lien; *provided, however,* that no representation is made with respect to the right, power or authority of the Owner Lessor to act as operator of the Facility following a Lease Event of Default or the expiration or termination of the Facility Lease.

(d) *Governmental Actions.* Assuming the representations and warranties of Homer City contained in paragraphs (d), (f), (g), (h), (i), (l), (m), (o) and (z) of *Section 3.1* are true, no authorization or approval or other action by, and no notice to or filing or registration with, any Governmental Authority is required for the due execution, delivery or performance by the Owner Lessor, as the case may be, of the Organic Documents of the Owner Lessor, the Lessor Notes, this Agreement or the other Operative Documents to which the Owner Lessor is or will be a party, other than any such authorization or approval or other action or notice or filing as has been duly obtained, taken or given, and other than as may be required under Environmental Laws to transfer or modify Governmental Approvals relating to the operation of the Facility as a result of the transactions contemplated by this Agreement; *provided, however,* that no representation is made with respect to the right, power or authority of the Owner Lessor to act as operator of the Facility following a Lease Event of Default or the expiration or termination of the Facility Lease.

(c) *Litigation.* There is no pending or, to the Actual Knowledge of the Owner Lessor, threatened, action, suit, investigation or proceeding against the Owner Lessor before any Governmental Authority which, if determined adversely to it, would materially adversely affect the ability of the Owner Lessor to perform its obligations under the Lessor Notes, this Agreement or the other Operative Documents to which it is or will be a party or would materially adversely affect the Facility, the Facility Site or any interest therein or part thereof or the lien

of the Security Agent on the Indenture Estate or which questions the validity or enforceability of any Operative Document to which the Owner Lessor is or will be a party.

(f) *Liens.* The Owner Lessor's right, title and interest in and to the Lessor Estate is free of any Owner Lessor Liens.

(g) *Compliance with Requirements of Law.* The Owner Lessor is in compliance with all Requirements of Law, rules, regulations, orders, judgments, writs and decrees (including ERISA and regulations of the Federal Reserve System), except where failure to so comply, individually or in the aggregate, would not result or has not resulted in a material adverse effect on the Owner Lessor's ability to perform its obligations under the Operative Documents.

(h) *Location of Chief Executive Office; Principal Place of Business; Situs.* The chief executive office and principal place of business of the Owner Lessor where the Owner Lessor will keep its corporate records concerning the Facility, the Facility Site and the Operative Documents is located in Middletown, Connecticut. The situs of the Owner Lessor is in Connecticut.

(i) *Payment of Taxes.* The Owner Lessor has filed all federal, state and local tax returns and reports required by law to have been filed by it and has paid all Taxes shown to be due and payable on such returns or pursuant to any assessment received by it (other than Taxes and assessments which are being diligently contested in good faith by the Owner Lessor and with respect to which adequate reserves have, to the extent required by GAAP, been set aside on its books).

Section 3.3 Representations and Warranties of the Owner Manager and the OM Company. The OM Company (only with respect to representations and warranties relating to the OM Company) and the Owner Manager hereby severally represent and warrant that, as of the date of execution and delivery hereof and as of the Closing Date:

(a) *Due Incorporation; etc.* The OM Company is a national banking association duly organized, validly existing and in good standing under the laws of the United States, has the requisite power and authority, as the Owner Manager and/or in its individual capacity to the extent expressly provided herein or in the Lessor LLC Agreement, to enter into and perform its obligations under the Lessor LLC Agreement, this Agreement and each of the other Operative Documents to which it is or will be a party.

(b) *Due Authorization, Enforceability; etc.*

(i) (x) The Lessor LLC Agreement has been duly authorized, executed and delivered by the OM Company, and (y) assuming the due authorization, execution and delivery of the Certificate of Formation of the Owner Lessor by the Owner Participant, Lessor LLC Agreement constitutes the legal, valid and binding obligation of the OM Company, enforceable against it in its individual capacity or as Owner Manager, as the case may be, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(ii) (x) This Agreement has been duly authorized, executed and delivered by the Owner Manager and the OM Company, and (y) assuming the due authorization, execution and delivery of this Agreement by each party hereto other than the Owner Manager and the OM Company, this Agreement constitutes a legal, valid and binding obligation of the Owner Manager and the OM Company, enforceable against the OM Company or the Owner Manager, as the case may be, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(iii) (x) Each of the other Operative Documents to which the OM Company or the Owner Manager is or will be a party has been or when executed and delivered will be duly authorized, executed and delivered by the OM Company or the Owner Manager and (y) assuming the due authorization, execution and delivery of each of the other Operative Documents by each party thereto other

than the OM Company or the Owner Manager, each of the other Operative Documents to which the OM Company or the Owner Manager is or will be a party constitutes or

when executed and delivered will constitute a legal, valid and binding obligation of the OM Company or the Owner Manager, as the case may be, enforceable against the OM Company or the Owner Manager in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) *Non-Contravention.* The execution and delivery by the OM Company, in its individual capacity or as Owner Manager, of the Lessor LLC Agreement, this Agreement and the other Operative Documents to which it is or will be a party, the consummation by the OM Company, in its individual capacity or as Owner Manager, of the transactions contemplated hereby and thereby, and the compliance by the OM Company, in its individual capacity or as Owner Manager, with the terms and provisions hereof and thereof, do not and will not (i) contravene any Requirement of Law of the State of Utah or the United States governing the banking or trust powers of the OM Company, or contravene the provisions of its Organic Documents or (ii) contravene the provisions of, or constitute a default by the OM Company under, or result in the creation of any Owner Lessor Lien attributable to it under any indenture, mortgage or other material contract, agreement or instrument to which the OM Company is a party or by which the OM Company or its property is bound; *provided, however,* that no representation is made with respect to the right, power or authority of the OM Company or the Owner Manager to act as operator of the Facility following a Lease Event of Default.

(d) *Governmental Actions.* Assuming the representations and warranties of Homer City contained in paragraphs (d), (f), (g), (h), (i), (l), (m), (o) and (z) of *Section 3.1* are true, no authorization or approval or other action by, and no notice to or filing or registration with, any Governmental Authority of the State of Utah or the United States governing the banking or trust powers of the OM Company is required for the due execution, delivery or performance by the OM Company or the Owner Manager, of the Lessor LLC Agreement, this Agreement or the other Operative Documents to which the OM Company or the Owner Manager is or will be a party, other than any such authorization or approval or other action or notice or filing as has been duly obtained, taken or given.

(e) *Litigation.* There is no pending or, to the Actual Knowledge of the OM Company, threatened action, suit, investigation or proceeding against the OM Company either in its individual capacity or as the Owner Manager, before any Governmental Authority of the State of Utah or the United States governing its banking and trust powers which, if determined adversely to it, would materially adversely affect the ability of the OM Company, in its individual capacity or as Owner Manager, to perform its obligations under the Lessor LLC Agreement, this Agreement or the other Operative Documents to which it is or will be a party or would materially adversely affect the Facility, the Facility Site or any interest therein or part thereof or the security interest of the Security Agent in the Indenture Estate or which question the validity or enforceability of any Operative Document to which the OM Company, in its individual capacity or as the Owner Manager, is or will be a party.

(f) *Liens.* The Lessor Estate is free of any Owner Lessor Liens attributable to the OM Company or the Owner Manager.

Section 3.4 Representations and Warranties of the Owner Participant. The Owner Participant represents and warrants that as of the date of execution and delivery hereof and as of the Closing Date:

(a) *Due Organization.* The Owner Participant is a corporation duly formed, validly existing and in good standing under the laws of the State of Delaware and has the necessary power and authority to enter into and perform its obligations under this Agreement, Lessor LLC Agreement, the Organic Documents of the Owner Participant, and the Tax Indemnity Agreement.

(b) *Due Authorization, Enforceability; etc.* This Agreement, the Lessor LLC Agreement, the Tax Indemnity Agreement and the other Operative Documents to which it is or will be a party have been or when executed and delivered will be duly authorized, executed and delivered by the Owner Participant and assuming the due authorization, execution and delivery by each other party thereto, this Agreement, the Lessor LLC Agreement, the Tax Indemnity Agreement and the other Operative Documents to which it is or will be a party constitute or when executed and delivered will constitute the legal, valid and binding obligations of the Owner Participant, enforceable against the Owner Participant in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) *Non-Contravention.* The execution and delivery by the Owner Participant of this Agreement, the Lessor LLC Agreement, the Organic Documents of the Owner Participant and the Tax Indemnity Agreement, the consummation by the Owner Participant of the transactions contemplated hereby and thereby, and the compliance by the Owner Participant with the terms and provisions hereof and thereof, do not and will not contravene (i) any Requirement of Law binding on the Owner Participant (except where such contravention would not result in a material adverse effect on the Owner Participant), (ii) its Organic Documents, or (iii) contravene the provisions of, or constitute a default under, or result in the creation of any Owner Participant's Lien (other than any Lien created under any Operative Document) under any indenture, mortgage or other material contract, agreement or instrument to which the Owner Participant is a party or by which the Owner Participant or its property is bound (*provided, however,* that no representation or warranty is being made as to any Requirement of Law relating to (1) the Facility, (2) the Facility Site, (3) the Undivided Interest or (4) ERISA (other than as set forth in Section 3.4(g) hereof) or Section 4975 of the Code)).

(d) *Governmental Action.* Assuming the representations and warranties of Homer City contained in paragraphs (d), (f), (g), (h), (i), (l), (m), (o) and (z) of *Section 3.1* are true, no authorization or approval or other action by, and no notice to or filing or registration with, any Governmental Authority is required for the due execution, delivery or performance by the Owner Participant of this Agreement, the Lessor LLC Agreement, the Organic Documents of the Owner Participant, or the Tax Indemnity Agreement, other than any authorization or approval or other action or notice or filing as has been duly obtained, taken or given; *provided, however,* that no representation or warranty is being made as to any Requirements of Law relating to the ownership or operation of the Facility or the Facility Site.

(e) *Litigation.* There is no pending or, to the Actual Knowledge of the Owner Participant, threatened action, suit, investigation or proceeding against the Owner Participant before any Governmental Authority which, if determined adversely to it, would materially adversely affect the Owner Participant's ability to perform its obligations under this Agreement, the Lessor LLC Agreement, the Organic Documents of the Owner Participant, or the Tax Indemnity Agreement or would materially adversely affect the Facility, the Facility Site or any interest therein or part thereof or the Lien of the Security Agent in the Indenture Estate or which questions the validity or enforceability of any Operative Document to which the Owner Participant is a party.

(f) *Liens.* The Lessor Estate is free of any Owner Participant's Liens.

(g) *ERISA.* No part of the funds to be used by the Owner Participant to make its investment pursuant to this Agreement, directly or indirectly, constitutes or is deemed to constitute assets (within the meaning of ERISA and any applicable rules, regulations and court decisions thereunder) of any Plan.

(h) *Regulatory Event of Loss.* To the Actual Knowledge of the Owner Participant, there exists no fact or circumstance that would constitute or cause a Regulatory Event of Loss.

(i) *Securities Act.* Neither the Owner Participant nor anyone authorized by it has directly or indirectly offered or sold any interest in the Lessor Membership Interest, the Lessor Notes or any part thereof, or in any similar security or lease or in any security or lease, the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the Lessor Membership

Interest, the Lessor Notes or any part thereof or solicited any offer to acquire any of the same in violation of the registration requirements of Section 5 of the Securities Act.

(j) *Holding Company Act and Federal Power Act.* Immediately prior to executing this Agreement, the Owner Participant is not (i) an "electric utility," "electric utility company," "public utility," "public-utility company," or a "holding company" under the Federal Power Act or PUHCA or (ii) a "subsidiary company" or "affiliate" of a "holding company", as such terms are defined in PUHCA, required to register under PUHCA.

(k) *Payment of Taxes.* The Owner Participant has filed all federal, state and local tax returns and reports required by law to have been filed by it and has paid all Taxes shown to be due and payable on such returns or pursuant to any assessment received by it (other than Taxes and assessments which are being diligently contested in good faith by the Owner Participant and with respect to which adequate reserves have, to the extent required by GAAP, been set aside on its books) except to the extent non-payment thereof would not have a material adverse effect on the Owner Participant.

Section 3.5 Representations and Warranties of Lease Indenture Trustee and the Lease Indenture Company. Each of the Lease Indenture Company and the Lease Indenture Trustee hereby severally represents and warrants that, as of the date of execution hereof and as of the Closing Date:

(a) *Due Organization.* The Lease Indenture Company is a banking corporation duly organized, validly existing and in good standing under the laws of the State of New York, has the corporate power and authority, as Lease Indenture Trustee and/or in its individual capacity to the extent expressly provided herein or in the Lease Indenture, to enter into and perform its obligations under the Lease Indenture, this Agreement and each of the other Operative Documents to which it is or will be a party.

(b) *Due Authorization, Enforceability; etc.*

(i) (A) This Agreement has been duly authorized, executed and delivered by the Lease Indenture Trustee and the Lease Indenture Company, and (B) assuming the due authorization, execution and delivery of this Agreement by each party hereto other than the Lease Indenture Trustee and the Lease Indenture Company, this Agreement constitutes a legal, valid and binding obligation of the Lease Indenture Company and the Lease Indenture Trustee, enforceable against the Lease Indenture Company or the Lease Indenture Trustee, as the case may be, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(ii) (A) Each of the other Operative Documents to which the Lease Indenture Trustee is or will be a party has been or when executed and delivered will be duly authorized, executed and delivered by the Lease Indenture Trustee, and (B) assuming the due authorization, execution and delivery of each of the other Operative Documents by each party thereto other than the Lease Indenture Trustee, each of the other Operative Documents to which the Lease Indenture Trustee is or will be a party constitutes or when executed and delivered will be a legal, valid and binding obligation of the Lease Indenture Trustee, enforceable against the Lease Indenture Trustee in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) *Non-Contravention.* The execution and delivery by the Lease Indenture Company, in its individual capacity or as Lease Indenture Trustee, as the case may be, of this Agreement and the other

Operative Documents to which it is or will be a party, the consummation by the Lease Indenture Company, in its individual capacity or as Lease Indenture Trustee, as the case may be, of the transactions contemplated hereby and thereby, and the compliance by the Lease Indenture Company, in its individual capacity or as Lease Indenture Trustee, as the case may be, with the terms and provisions hereof and thereof, do not and will not contravene any Requirement of Law of the United States of America or the State of New York governing the Lease Indenture

Company or the banking or trust powers of the Lease Indenture Company, or its organizational documents or bylaws, or contravene the provisions of, or constitute a default by the Lease Indenture Company under, or result in the creation of any Lien attributable to the Lease Indenture Company upon the Indenture Estate or any indenture, mortgage or other material contract, agreement or instrument to which the Lease Indenture Company is a party or by which the Lease Indenture Company or its property is bound which would materially adversely affect the ability of the Lease Indenture Company, in its individual capacity or as Lease Indenture Trustee, as the case may be, to perform its obligations under this Agreement or the other Operative Documents to which it is or will be a party or would materially adversely affect the Facility, the Facility Site or any interest therein or part thereof or the security interest of the Security Agent in the Indenture Estate; *provided, however,* that no representation is made with respect to the right, power or authority of the Lease Indenture Company or the Lease Indenture Trustee to act as operator of the Facility following a Lease Event of Default.

(d) *Governmental Action.* Assuming the representations and warranties of Homer City contained in paragraphs (d), (f), (g), (h), (i), (l), (m), (o) and (z) of *Section 3.1* are true, no authorization or approval or other action by, and no notice to or filing or registration with, any Governmental Authority governing its banking or trust powers is required for the due execution, delivery or performance by the Lease Indenture Company or the Lease Indenture Trustee, as the case may be, of this Agreement or the other Operative Documents to which the Lease Indenture Trustee is or will be a party, other than any such authorization or approval or other action or notice or filing as has been duly obtained, taken or given.

(e) *Litigation.* There is no pending or, to the Actual Knowledge of the Lease Indenture Company, threatened action, suit, investigation or proceeding against the Lease Indenture Company either in its individual capacity or as Lease Indenture Trustee, before any Governmental Authority which, if determined adversely to it, would materially adversely affect the ability of the Lease Indenture Company, in its individual capacity or as Lease Indenture Trustee, as the case may be, to perform its obligations under this Agreement or the other Operative Documents to which it is or will be a party or would materially adversely affect the Facility, the Facility Site or any interest therein or part thereof or the security interest of the Security Agent in the Indenture Estate or which questions the validity or enforceability of any Operative Document to which the Lease Indenture Trustee or the Lease Indenture Company is a party.

Section 3.6 Representations and Warranties of the Bondholder Trustee and the Bondholder Trustee Company. Each of the Bondholder Trustee Company and the Bondholder Trustee hereby severally represents and warrants that, as of the date of execution hereof and as of the Closing Date:

(a) *Due Organization.* The Bondholder Trustee Company is a banking corporation duly organized, validly existing and in good standing under the laws of the State of New York, has the corporate power and authority, as Bondholder Trustee and/or in its individual capacity to the extent expressly provided herein, to enter into and perform its obligations under this Agreement and each of the other Operative Documents to which it is or will be a party.

(b) *Due Authorization, Enforceability; etc.*

(i) (A) This Agreement has been duly authorized, executed and delivered by the Bondholder Trustee and the Bondholder Trustee Company and (B) assuming the due authorization, execution and delivery of this Agreement by each party hereto other than the Bondholder Trustee and the

Bondholder Trustee Company, as the case may be, this Agreement constitutes a legal, valid and binding obligation of the Bondholder Trustee Company and the Bondholder Trustee, enforceable against the Bondholder Trustee Company or the Bondholder Trustee, as the case may be, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(ii) (A) Each of the other Operative Documents to which the Bondholder Trustee Company or the Bondholder Trustee is or will be a party has been or when executed and delivered will be duly authorized, executed and delivered by the Bondholder Trustee Company or the Bondholder Trustee, as the case may be, and (B) assuming the due authorization, execution and delivery of each of

the other Operative Documents by each party thereto other than the Bondholder Trustee Company or the Bondholder Trustee, as the case may be, each of the other Operative Documents to which the Bondholder Trustee Company or the Bondholder Trustee is or will be a party constitutes or when executed and delivered will constitute a legal, valid and binding obligation of the Bondholder Trustee Company or the Bondholder Trustee, enforceable against the Bondholder Trustee Company or the Bondholder Trustee, as the case may be, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) *Non-Contravention.* The execution and delivery by the Bondholder Trustee Company, in its individual capacity or as Bondholder Trustee, as the case may be, of this Agreement and the other Operative Documents to which it is or will be a party, the consummation by the Bondholder Trustee Company, in its individual capacity or as Bondholder Trustee, as the case may be, of the transactions contemplated hereby and thereby, and the compliance by the Bondholder Trustee Company, in its individual capacity or as Bondholder Trustee, as the case may be, with the terms and provisions hereof and thereof, do not and will not contravene any Requirement of Law of the United States of America or the State of New York governing the Bondholder Trustee Company or the banking or trust powers of the Bondholder Trustee Company, or its organizational documents or by-laws, or contravene the provisions of, or constitute a default by the Bondholder Trustee Company under, or result in the creation of any Lien attributable to the Bondholder Trustee Company upon the Certificates or any indenture, mortgage or other material contract, agreement or instrument to which the Bondholder Trustee Company is a party or by which the Bondholder Trustee Company or its property is bound which would materially adversely affect the ability of the Bondholder Trustee Company, in its individual capacity or as Bondholder Trustee, as the case may be, to perform its obligations under this Agreement or the other Operative Documents to which it is a party or would materially adversely affect the Facility, the Facility Site or any interest therein or part thereof or the security interest of the Bondholder Trustee in the Indenture Estate; *provided, however*, that no representation is made with respect to the right, power or authority of the Bondholder Trustee Company or the Bondholder Trustee to act as operator of the Facility following a Lease Event of Default.

(d) *Governmental Action.* Assuming the representation and warranties of Homer City contained in paragraphs (d), (h), (1), (m) and (o) of Section 3.1 are true, no authorization or approval or other action by, and no notice to or filing or registration with, any Governmental Authority governing its banking or trust powers is required for the due execution, delivery or performance by the Bondholder Trustee Company or the Bondholder Trustee, as the case may be, of this Agreement or the other Operative Documents to which the Bondholder Trustee is or will be a party, other than any such authorization or approval or other action or notice or filing as has been duly obtained, taken or given.

(e) *Litigation.* There is no pending or, to the knowledge of the Bondholder Trustee Company, threatened action, suit, investigation or proceeding against the Bondholder Trustee Company either in its individual capacity or as Bondholder Trustee, before any Governmental Authority which, if

determined adversely to it, would materially adversely affect the ability of the Bondholder Trustee Company, in its individual capacity or as Bondholder Trustee, as the case may be, to perform its obligations under this Agreement or the other Operative Documents to which it is a party or would materially adversely affect the Facility, the Facility Site or any interest therein or part thereof or the security interest of the Bondholder Trustee in the Indenture Estate.

ARTICLE IV

CLOSING CONDITIONS

The obligations of the Owner Participant, the Owner Lessor, the Owner Manager, the Lease Indenture Trustee, the Security Agent, the Lender and Homer City to consummate the transactions contemplated hereby on the Closing Date shall be subject to prior or concurrent

satisfaction or waiver of the following conditions, except that the obligations of any Person shall not be subject to such Person's own performance or compliance.

Section 4.1 Operative Documents and Project Documents. On or before the Closing Date, each of the Operative Documents to be delivered at the Closing shall have been duly authorized, executed and delivered by the parties thereto (if attached as an Exhibit hereto, in substantially the form attached as such Exhibit or if not so attached, in form and substance satisfactory to each Transaction Party), shall each be in full force and effect, and executed counterparts of each shall have been delivered to each of the parties hereto (other than the Tax Indemnity Agreement, which shall only be provided to the parties thereto). On or before the Closing Date, Homer City shall have delivered to the Owner Lessor each of the Project Documents described in clause (a) of the definition thereof, all of which shall have been duly authorized, executed and delivered by Homer City and shall be in full force and effect.

Section 4.2 The Lessor Notes. Each of the conditions precedent contained in the Lease Indenture shall have been satisfied or waived and the Lender shall have purchased the Initial Lessor Notes pursuant to, and in accordance with, the terms thereof.

Section 4.3 Organizational Documents, etc. Each of the Lease Transaction Parties shall have received certified copies of the Organic Documents of each of the other parties hereto (except for the Security Agent, the Lease Indenture Trustee and the Bondholder Trustee, who shall not be required to provide such documents) and resolutions of the board of directors or managers (or managing members), as the case may be, of each such other Lease Transaction Party duly authorizing the Overall Transaction and such documents and such evidence as each party may reasonably request in order to establish the authority of each such other party to consummate the transactions contemplated by this Agreement, the taking of all proceedings in connection therewith and compliance with the conditions herein or therein set forth and the incumbency of all officers signing any of the Operative Documents. Each of the foregoing documents shall be reasonably satisfactory to the recipient.

Section 4.4 Representations and Warranties. The representations and warranties set forth in *Article 3* hereof shall be true and correct on and as of the Closing Date with the same effect as though made on and as of the Closing Date and each of the Lease Transaction Parties shall have received a certificate to such effect from each of the parties making such representations and warranties.

Section 4.5 Defaults, Events of Default, Events of Loss, Burdensome Buyout Event. No Lease Event of Default, Lease Indenture Event of Default, Event of Loss, Burdensome Buyout Event, or event that, with the passage of time or giving of notice or both, would constitute a Lease Event of Default, Lease Indenture Event of Default, an Event of Loss or Burdensome Buyout Event shall have occurred and be continuing and the Owner Participant shall be satisfied that the Facility shall be in the condition described in the Closing Date Appraisal.

Section 4.6 Consents. All permits, licenses, approvals and consents, necessary to consummate the Overall Transaction shall have been duly obtained and shall be in full force and effect and in form and substance satisfactory to each of the Lease Transaction Parties, as applicable, except any such permits, licenses, approvals and consents the failure of which to obtain or maintain could not reasonably be expected to have a material adverse effect on any of the Lease Transaction Parties.

Section 4.7 Governmental Actions. All actions, if any, required to have been taken by any Governmental Authority including, without limitation, the issuance of the FERC Orders, each of which shall be in full force and effect; shall have been taken and all orders, permits, waivers, exemptions, authorizations and approvals of and registrations with Governmental Authorities required to be in effect on the Closing Date in connection with the transactions contemplated by the Transaction Documents shall have been issued; and all such orders, permits, waivers, exemptions, authorizations and approvals shall be in full force and effect on the Closing Date, except any such Governmental Approvals that may be required as a result of the transactions contemplated hereunder pursuant to Environmental Laws, provided that the failure to obtain, maintain, transfer or modify such Governmental Approvals could not reasonably be expected to have a material adverse effect on any of the Lease Transaction Parties.

Section 4.8 Insurance. Insurance (including all related endorsements) complying with the requirements of *Section 5.10* hereof shall be in full force and effect and all premiums thereon shall be current;

(a) The Owner Participant, the Owner Lessor, the Lease Indenture Trustee, the Security Agent, the Bondholder Trustee and the Lender shall have received a certificate or certificates dated the Closing Date of the Insurance Advisor or an independent insurance broker or carrier reasonably satisfactory to such Persons stating that such insurance is in full force and effect;

(b) The Owner Participant shall have received a report from its insurance consultant in form and substance satisfactory to it; and

(c) EIX shall have (i) executed an irrevocable power of attorney in favor of the Owner Lessor with respect to any insurance proceeds it may receive that are owed to the Owner Lessor pursuant to the terms of the Operative Documents and *Schedule 5.10* hereto; and (ii) agreed to turn over any such insurance proceeds actually received by it to the Owner Lessor promptly upon EIX's receipt of the same.

Section 4.9 Consultants' Reports. The Owner Participant, the Owner Lessor, the Lease Indenture Trustee, the Bondholder Trustee and the Lender shall have received the Power Market Consultant's report and the final report prepared by the Engineering Consultant, which reports shall be in form and substance satisfactory to the Owner Participant. The Owner Participant, the Bondholder Trustee and the Lender shall have received the Phase I and Phase II environmental reports prepared in 1999 with respect to the Facility Site from the Environmental Consultants, which reports shall be satisfactory to the Owner Participant, the Bondholder Trustee and the Lender.

Section 4.10 Appraisal; Tax Opinion, Condition of the Facility. The Owner Participant shall have received the Closing Date Appraisal prepared by the Appraiser and an opinion from Dewey Ballantine LLP as to certain tax matters, in each case satisfactory in form and substance to the recipient. The Closing Date Appraisal and such opinion shall each be addressed and delivered only to the Owner Participant. The Owner Participant shall be satisfied that the Facility shall be in the condition described in the Closing Date Appraisal. The Lender, the Lease Indenture Trustee and Homer City shall have received a copy of the verification of value and useful life prepared by the Appraiser in connection with the appraisal of assets subject to the Facility Lease, each of which will be reasonably satisfactory to the recipients.

Section 4.11 Opinions of Counsel. Each of the relevant Lease Transaction Parties shall have received an opinion or opinions, dated the Closing Date, of (a) SASM&F, special New York counsel to Homer City, substantially in the form of *Exhibit A*, (b) Dewey Ballantine LLP, special New York counsel to the Owner Lessor and the Owner Participant, substantially in the form of *Exhibit B* (c) Buchanan Ingersoll, special Pennsylvania regulatory counsel to the Owner Participant, substantially in the form of *Exhibit C*, (d) Amy Fisher, Esq., in-house counsel to the Owner Participant, substantially in the form of *Exhibit D*; (e) Morgan, Lewis & Bockius LLP, special Pennsylvania counsel to Homer City, substantially in the form of *Exhibit E*; (f) Hogan & Hartson, special regulatory counsel to Homer City, substantially in the form of *Exhibit F*; (g) Blank Rome Comisky & McCauley LLP, special Pennsylvania counsel to the Owner Participant, substantially in the form of *Exhibit G*; and (h) Ray, Quinney & Nebeker, counsel to the OM Company and the Owner Manager, substantially in the form of *Exhibit H*. Each such Person expressly consents to the rendering by its counsel of the opinion referred to in this *Section 4.11* and acknowledges that such opinion shall be deemed to be rendered at the request and upon the instructions of such Person, each of whom has consulted with and has been advised by its counsel as to the consequences of such request, instructions and consent. Furthermore, each such counsel shall, to the extent requested, permit the Rating Agencies and the Solicitation Agents to rely on their opinion as if such opinion were addressed to such parties.

Section 4.12 Recordings and Filings. All filings and recordings listed on *Schedule 4.12* hereto shall have been duly made and all filing, recordation, transfer and other fees payable in connection therewith shall have been paid; and the filing of all precautionary financing statements under the Uniform Commercial Code of Pennsylvania and any other mortgages, security agreements or other documents as may be reasonably requested by counsel to the Owner Participant, the Lease Indenture Trustee, the Security Agent or the Lender to perfect (i) the right, title and interest of the Owner Lessor in the Owner Lessor's Interest, or any part thereof or interest therein; (ii) the Lien of the Security Agent on the Indenture Estate; (iii) the Lien of the Owner Lessor over the equity interests in ME Westside, Inc. pursuant to the Pledge and Collateral Agreement; (iv) the Lien of the Owner Lessor over the general intangibles of the Facility Lessee (other than emission allowances and credits) pursuant to the Collateral and Guarantee Agreement, and (v) the Lien of the Owner Lessor over the Pledged Accounts.

Section 4.13 Taxes. All Taxes, if any, due and payable on or before the Closing Date in connection with the execution, delivery, recording and filing of this Agreement or any other Operative Document, or any document or instrument contemplated thereby shall have been duly paid in full.

Section 4.14 No Changes in Requirements of Law. No change shall have occurred in Requirements of Law or the interpretation thereof by any competent court or other Governmental Authority that would make it illegal for the Owner Participant, the Owner Lessor, the Owner Manager, the Security Agent, the Lease Indenture Trustee, the Bondholder Trustee, the Lender or Homer City to participate in any of the transactions contemplated by the Operative Documents or would materially adversely affect the Facility, the Facility Site, the Undivided Interest or the Ground Interest.

Section 4.15 Registered Agent for Lease Transaction Parties. Each Lease Transaction Party that does not maintain an office in the State of New York shall have appointed a registered agent for service of process in the State of New York and such agents shall have accepted such appointments.

Section 4.16 FAS 13. The present value of Basic Lease Rent payable during the Basic Lease Term under the Facility Lease (taking into account any rent adjustment through or contemplated on the Closing Date), together with all rent payable under the related Facility Site Sublease, discounted at the Discount Rate, shall satisfy the 90 percent test for operating lease treatment under FAS 13 and Homer City shall have been advised by its auditor that the Facility Lease qualifies for such operating lease treatment.

Section 4.17 No Material Adverse Change. No material adverse change shall have occurred with respect to (i) the financial condition, business assets or operation of Homer City, since the date of Homer City's last audited or unaudited financial statements provided to the Owner Participant or (ii) the Facility or the Facility Site since the date of the Closing Date Appraisal.

Section 4.18 Survey. The Owner Lessor, the Owner Participant, the Lender, the Bondholder Trustee and the Lease Indenture Trustee shall have received a copy of the Survey in form and substance reasonably satisfactory to the recipients.

Section 4.19 Title Insurance. Each of the Title Policies shall have been delivered to the Owner Lessor and the Security Agent.

Section 4.20 Rating of the Existing Debt. The Existing Debt shall be rated at least "Baa3" by Moody's and "BBB-" by S&P.

Section 4.21 No Threatened Proceedings. No action, suit, investigation or proceeding shall have been instituted nor shall governmental action be threatened before any governmental entity, nor shall any order, judgment or decree have been issued or proposed to be issued by any governmental entity at the time of the Closing Date, to set aside, restrain, enjoin or prevent the consummation of the Transaction Documents or any of the transactions contemplated by any of the Transaction Documents.

Section 4.22 Financial Statements. The Owner Participant and the Lender shall have received the most recent financial statements of Homer City referred to in *Section 3.1(kk)*.

Section 4.23 Initial Annual Operating Budget. The Owner Participant shall have received a copy of the initial Annual Operating Budget.

Section 4.24 Closing Projections; Major Maintenance Projections. The Owner Participant shall have received a certified copy of the Closing Projections and the Major Maintenance Projections, in form and substance satisfactory to such party.

Section 4.25 Lien Searches. The Owner Participant (with a copy to the Lease Indenture Trustee) shall have received Lien searches with respect to the Facility Lessee and other Homer City Parties in form and substance satisfactory to such party.

Section 4.26 Project Documents. The Owner Participant and the Lender shall have received copies of all Project Documents existing as of the Closing Date.

The Facility Lessee shall have complied with its obligation pursuant to Section 2.4(b) of the Fundco Indenture to transfer certain funds to the Bondholder Trustee.

Section 4.27 Accounts. Each of the Accounts required pursuant to the Security Deposit Agreement shall have been established at the Depositary, and the Reserve Account shall have been funded at its required level.

Section 4.28 Existing Debt. No litigation shall have been commenced or, to the Actual Knowledge of Homer City, threatened with respect to the Existing Debt (including as a result of modifications thereto contemplated by the Operative Documents).

Section 4.29 Assignment of Material Project Agreements. Each of the Material Project Agreements shall have been assigned to the Collateral Agent (acting on behalf of the Owner Lessors) and the Collateral Agent (acting on behalf of the Owner Lessors) shall have sub-assigned its interest in such agreements back to the Facility Lessee. To the extent necessary for such assignment and subassignment, the consents of the third parties party to such Material Project Agreements shall have been obtained. The Facility Lessee shall have obtained the consent of each party that is obligated to make payments to the Facility Lessee pursuant to such Material Project Agreements to thenceforth make any such payments directly to the Collateral Agent for deposit in the Revenue Account.

Section 4.30 No Material Adverse Tax Law Change. No material adverse Tax Law Change shall have occurred since July 1, 2001.

Section 4.31 Payoff Notice. On or prior to the Closing Date, Homer City shall have provided evidence reasonably satisfactory to the Owner Participant of arrangements for the payment in full on the Closing Date of its outstanding indebtedness under its existing credit facilities (other than the Intercompany Loan Agreement), including termination and release of all liens of existing creditors, including its approximately $35 million letter of credit reimbursement obligations and its working capital facility, but excluding the debt outstanding under the Intercompany Loan Agreement.

Section 4.32 Establishment of Debt Service Reserve Letter of Credit, Reserve Account. On or prior to the Closing Date: (i) Homer City shall have provided evidence reasonably satisfactory to the Owner Participant that it has established the Reserve Account and that immediately following the Closing, the amounts on deposit therein shall be approximately $134 million; and (ii) the Debt Service Reserve Letter of Credit shall have been established and shall be in full force and effect and the amount available for drawing thereunder shall be at least equal to the Debt Service Reserve Amount.

Section 4.33 EME Side Letter. On or prior to the Closing Date, EME shall have entered into an agreement with the Owner Lessor pursuant to which EME (i) shall covenant that it will not voluntarily take any action to subject the Facility Lessee to the provisions of any applicable bankruptcy or insolvency law (as now or hereafter in effect), and (ii) shall provide certain tax related indemnities to the Owner Participant.

ARTICLE V

AFFIRMATIVE COVENANTS OF HOMER CITY

Homer City covenants and agrees that it will perform the obligations set forth in this *Article V*.

Section 5.1 Financial Information; Other Information. Homer City will furnish to the Owner Participant, the Lease Indenture Trustee, the Bondholder Trustee, the Lender, each of the Rating Agencies, and, with respect to clause (i)(a) below, upon written request, to any Bondholder the following:

(i) (a) audited annual financial statements of Homer City on a consolidated basis within 120 days following the end of each fiscal year of Homer City, and (b) unaudited, certified, consolidated balance sheets and unaudited consolidated statements of income and cash flow on a consolidated basis within 60 days following the end of each of the first three Fiscal Quarters of each fiscal year of Homer City;

(ii) together with the financial statements delivered in clause (i), a certificate in the form of *Exhibit I* (the "*Compliance Certificate*") signed by an authorized officer of the Facility Lessee shall be delivered, certifying (a) that to such officer's knowledge after due inquiry of the Facility Lessee, no Lease Default, Lease Event of Default or Indenture Event of Default exists, or if any such event or condition exists, the nature thereof and the corrective actions that such Person has taken or proposes to take with respect thereto and (b) that the attached calculations of the Debt Service Coverage Ratio, the Senior Rent Service Coverage Ratio, the Basic Lease Rent Service Coverage Ratio and the Modified Senior Rent Service Coverage Ratio (if applicable) for the most recently ended four Fiscal Quarters, taken as one accounting period, are true and correct;

(iii) promptly, but in no event later than thirty (30) days after the receipt thereof by the Facility Lessee, copies of (a) all Applicable Permits obtained by the Facility Lessee after the Closing Date, and (b) any material amendment, supplement or other modification to any Applicable Permits received by the Facility Lessee after the Closing Date;

(iv) promptly, but in no event later than thirty (30) days after the end of each Fiscal Quarter, (a) a statement in a form reasonably satisfactory to the Owner Lessor, the Owner Participant and the Lender, showing all operating data for the Facility for the previous Fiscal Quarter (the "*Quarterly Operating Report*"), including availability, capacity, total energy produced, total Project Revenues for the Facility, down time, aggregate O&M Costs incurred, Major Maintenance incurred, Capital Expenditures incurred, (b) any updates to the Power Market Consultant's report that may have been generated in the Fiscal Quarter then ending, and (c) and such other operating information as the Owner Lessor, the Owner Participant or the Lender may reasonably request; and

(v) promptly after each Fiscal Quarter (but in no event later than the date of delivery of the unaudited financial statements delivered pursuant to Section 5.1(i)(b) hereof) reports with respect to any Capital Expenditures for the Facility.

Section 5.2 Notices. Promptly upon obtaining Actual Knowledge thereof, the Facility Lessee shall give written notice to the Owner Lessor, the Owner Participant, the Lease Indenture Trustee, the Security Agent, the Bondholder Trustee and the Lender of:

(i) Any litigation pending or threatened against the Facility Lessee, the Owner Lessor or the Owner Participant involving claims against the Facility Lessee, the Owner Lessor, the Owner Participant, the Facility, the Facility Site or the Easement Areas in excess of $5 million per claim or $10 million in the aggregate or involving any injunctive or declaratory relief, such notice to include copies of all papers filed in such litigation and to be given monthly if any such papers have been filed since the last notice given;

(ii) Any dispute or disputes which may exist between the Facility Lessee, the Owner Lessor or the Owner Participant and any Governmental Authority and which involve (a) claims against any such Person which exceeds $5 million per claim or $10 million in the aggregate, (b) injunctive or declaratory relief, (c) revocation or material violation of any material Applicable Permit or (d) any Liens for taxes due but not paid;

(iii) Any (a) Lease Default or Lease Event of Default or (b) any Indenture Default or Indenture Event of Default;

(iv) Any casualty, damage or loss, whether or not insured, through fire, theft, other hazard or casualty, or any act or omission of the Facility Lessee, its respective employees, agents, contractors, consultants or representatives, or of any other Person if such casualty, damage or loss affects the Facility Lessee, the Facility or the Facility Site, in excess of $500,000 for any one casualty or loss, or an aggregate of $1 million;

(v) Any cancellation or material change in the terms, coverages or amounts of any insurance required to be maintained pursuant to the Facility Lease;

(vi) Any matter which has resulted or is reasonably likely to have a Material Adverse Effect;

(vii) Initiation of any condemnation proceedings involving the Facility or any material portion of the Facility Site or the Easements;

(viii) Any termination or material default or notice thereof under any Material Project Agreement;

(ix) Any material Environmental Condition;

(x) The execution and delivery of any additional Project Document relating to the Facility, including delivery of a copy thereof to the Owner Lessor, the Owner Participant, the Lease Indenture Trustee, the Bondholder Trustee and the Lender; provided, however, that the execution of trading confirmations between Homer City and EMMT pursuant to the Material Project

Agreements shall not be considered additional project documents requiring notification for purposes of this subsection, but shall be provided to the Owner Lessor and Owner Participant on a quarterly basis;

(xi) Any situation requiring the Facility Lessee to make any payment of Supplemental Lease Rent pursuant to the Operative Documents, such notice to set forth the reason for and amount of such payment; and

(xii) Any filings by Homer City made with the Securities and Exchange Commission.

Section 5.3 Information Concerning the Facility Lessee or Facility. The Facility Lessee shall, to the extent reasonably requested, deliver to the Owner Lessor, the Owner Participant and their respective authorized representatives, information from time to time with respect to the Facility Lessee, the condition, use, operation and maintenance of the Facility, and such other financial or operating information and other matters with regard to the Facility Lessee, the Facility or the generation, transmission or sale of power therefrom, as may be reasonably requested by such Person; *provided*, that, except for delivery of quarterly and annual financial statements required pursuant to *Section 5.1(i)* above and the related certificate with respect to defaults described in *Section 5.1(ii)*, the Facility Lessee reserves the right not to provide to any transferee Owner Participant which is not an Affiliate of the Owner Participant any information that is not otherwise publicly available, if the Facility Lessee reasonably believes in its good faith judgment that such transferee Owner Participant is a Competitor or is an Affiliate of a Competitor; *provided, further,* that the Facility Lessee shall have no obligation under this *Section 5.3* to any Person or such Person's representatives unless and until such Person becomes party hereto or has executed an agreement to be bound by the provisions of *Section 17.19*.

Section 5.4 Maintenance of Existence and Properties. Except as permitted under *Section 6.1*, Homer City will, at its own cost and expense, (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect the legal existence of Homer City; (ii) do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect any rights and Governmental Approvals material to the conduct of the business of Homer City; (iii) keep and maintain all property material to the conduct of the business of Homer City (a) in good working order and condition (ordinary wear and tear excepted), except where failure to do so could not reasonably be expected to result in a Material Adverse Effect, (b) in compliance with all Requirements of Law of any Governmental Authority having jurisdiction, including without limitation, all Environmental Laws, unless such noncompliance could not reasonably be expected to result in a Material Adverse Effect, or unless such noncompliance was attributable to an Event of Force Majeure and (c) in accordance with Prudent Industry Practice. The foregoing shall not prohibit any merger, consolidation, liquidation, dissolution or other transaction permitted under the Operative Documents.

Section 5.5 Compliance with Laws. At its own expense, Homer City will comply with all Requirements of Law, such compliance to include (i) those relating to pollution control, environmental protection, equal employment opportunity plans, ERISA plans and employee safety, (ii) with respect to the Facility Lessee, the Facility or the Facility Site whether or not compliance therewith shall require structural changes in the Facility or any part thereof or require major changes in operational practices or interfere with the use and enjoyment of the Facility or any part thereof and (iii) the payment, before the same become delinquent, of all taxes, assessments and governmental charges or levies (including those with respect to the Lender), except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 5.6 Further Assurances. Upon written request of the Owner Manager, the Owner Lessor, the Owner Participant, the Lender, the Security Agent, the Bondholder Trustee or the Lease Indenture Trustee, or as is otherwise necessary, Homer City, at its own cost and expense, shall promptly perform or cause to be performed any and all acts and execute or cause to be executed any and all documents

(including financing statements and continuation statements) as may be necessary in order to carry out the intent and purposes of this Participation Agreement and the transactions contemplated hereby and thereby, including those documents necessary for filing under the provisions of the Uniform Commercial Code or any Requirement of Law which are necessary or advisable in order to establish, preserve, protect and perfect the right, title and interest of the Owner Lessor in and to the Undivided Interest, the Ground Interest under the Facility Site Lease, or any portion of any thereof or any interest therein and the first priority Lien intended to be created by the Lease Indenture therein. The Facility Lessee shall take or cause to be taken all actions necessary or advisable in order to establish, preserve, protect, and perfect the right, title, and interest of the Bondholder Trustee in the Lessor Notes and the Lien thereon granted to the Fundco Bondholders. The Facility Lessee shall promptly from time to time furnish to the Owner Participant, the Owner Lessor, the Owner Manager and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Security Agent, the Lender or Bondholder Trustee such information with respect to the Facility or the Facility Site or the transactions contemplated by the Operative Documents to which the Facility Lessee is a party as may be required to enable the Owner Participant, the Owner Lessor, the Owner Manager and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Security Agent, or the Lender, as the case may be, to timely file with any governmental entity any reports and obtain any licenses or permits required to be filed or obtained by the Owner Manager or the Owner Lessor under any Operative Document, the Owner Participant as the owner of the Beneficial Interest, the Lease Indenture Trustee, the Security Agent or the Lender.

Section 5.7 ERISA. Homer City will not permit the occurrence of any event or condition with respect to a Pension Plan if such event or condition, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect or involve any (1) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than a Permitted Lien) on, the Facility, the Undivided Interest or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (2) risk of criminal liability being incurred by the Owner Lessor, the Owner Participant, or, so long as the Lien of the Lease Indenture has not been terminated or discharged, the Lease Indenture Trustee and the Security Agent or any of their respective Affiliates or (3) material risk of any material adverse effect on the interests of the Owner Lessor, the Owner Participant, or, so long as the Lien of the Lease Indenture has not been terminated or discharged, the Lease Indenture Trustee and the Security Agent or any of their respective Affiliates (including, without limitation, subjecting any such Person to regulation as a public utility under any applicable law).

Section 5.8 Regulatory Status. Homer City shall comply in all material respects with the applicable requirements of FERC imposed on it as a public utility with authorization to sell electric power at wholesale at market-based rates and with the provisions of 18 C.F.R. § 365 to the extent necessary to maintain its status as an "exempt wholesale generator" under Section 32 of the Holding Company Act.

Section 5.9 Notice of Change in Address or Name. Homer City shall provide the Owner Participant, the Owner Lessor, the Owner Manager and, so long as the Lien of the Lease Indenture has not been terminated or discharged, the Lease Indenture Trustee and the Security Agent, prompt written notice of any anticipated change in its jurisdiction of organization, chief executive office, principal place of business, or name, or the place where it maintains its business records concerning the Facility and the Operative Documents, which notice shall, in any event, be provided no later than 30 days prior to such change.

Section 5.10 Insurance. Homer City will comply with the provisions set forth on *Schedule 5.10* hereto.

Section 5.11 [Intentionally Omitted]

Section 5.12 Intellectual Property Rights. The Facility Lessee agrees to obtain and maintain all patents, licenses and other proprietary rights and technology necessary in connection with the operation and maintenance of the Facility except where the failure to so maintain such rights or technology could not reasonably be expected to have a Material Adverse Effect.

Section 5.13 Maintenance of Accounts, Use of Project Revenues.

(a) The Facility Lessee shall at all times maintain the Accounts in accordance with the Security Deposit Agreement. The Facility Lessee shall maintain all of its banking accounts with the Collateral Agent (or the Collateral Agent's designee in the case of accounts that are not trust accounts), except for the Distributions Account and the Operating Account.

(b) During any period prior to the expiration or termination of the Facility Lease Term, the Facility Lessee (a) shall deposit any Revenues, payments received pursuant to the SocGen Instrument or under the SCR Construction Contract received by it into the Revenue Account within fifteen (15) calendar days of the receipt thereof, and shall apply all Revenues solely for the purposes and in the order and manner provided in the Security Deposit Agreement, and (b) shall not without the prior written consent of the Owner Participant and, so long as the Lien of the Lease Indenture has not been terminated or discharged, the Lease Indenture Trustee and the Security Agent, instruct any party who pays Revenues to pay such Revenues other than directly to the Collateral Agent for deposit in the Revenue Account. If, during any period prior to the expiration or termination of the Facility Lease Term the Basic Lease Rent Service Coverage Ratio shall be less than 1.2, the Facility Lessee shall promptly deliver irrevocable notice in form and substance reasonably satisfactory to the Owner Lessor to any third parties then obligated under any Project Document to make payments to the Facility Lessee, notifying such Person to thenceforth make any payments due under such Project Document directly to the Collateral Agent for deposit in the Revenue Account.

Section 5.14 Annual Budgets and Major Maintenance Projections.

(a) Not less than forty-five (45) days before the beginning of each Fiscal Year of the Facility Lessee, the Facility Lessee shall, in good faith, based upon reasonable assumptions and subject to *Section 5.14(b)* and *(c)* (if applicable), adopt an Annual Operating Budget for the Facility for the ensuing Fiscal Year covering all anticipated Revenues, Basic Lease Rent, maintenance, repair and operation expenses (including reasonable allowance for contingencies), Capital Expenditures, maintenance reserves, all other anticipated O&M Costs and O&M Fees and proposed distributions for the Facility for such period (for budgeting purposes, fuel and emission allowance costs shall be the Facility Lessee's good faith estimate, considering prevailing spot prices and (in the case of fuel) fixed prices reflected in coal supply contracts for the ensuing year). Copies of the Annual Operating Budget for the Facility shall be promptly furnished to the Owner Participant and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Security Agent.

(b) If, as of the end of the third quarter of any Fiscal Year of the Facility Lessee, the Basic Lease Rent Service Coverage Ratio shall equal or be less than 1.4 to 1.0, but exceed 1.15 to 1.0, for the four Fiscal Quarters then ending, (i) the Annual Operating Budget for the immediately succeeding fiscal year shall not exceed one hundred ten percent (110%) of the Annual Operating Budget for the fiscal year then ending, without the prior written approval of the Owner Participant, (ii) the Facility Lessee will operate and maintain the Facility, or cause the Facility to be operated and maintained, within such Annual Operating Budget as so adopted by the Facility Lessee for such ensuing fiscal year and (iii) such Annual Operating Budget may be amended with the consent of the Owner Participant, which consent will not be unreasonably withheld or delayed, to account for contingencies which were not reasonably expected, and in such event the Facility Lessee shall operate and maintain the Facility, or

cause the Facility to be operated and maintained, within such Annual Operating Budget as so amended; *provided that*, in determining the percentage increase over the Annual Operating Budget for the Fiscal Year then ending, (i) any projected increase in fuel costs and emissions allowance costs from those used in setting the Annual Operating Budget for the fiscal year then ending and (ii) charges for Major Maintenance approved in accordance with subclause (d) below, shall be disregarded for purposes of such calculations.

(c) If, as of the end of the third quarter of any Fiscal Year of the Facility Lessee, the Basic Lease Rent Service Coverage Ratio shall equal or be less than 1.15 to 1.0 for the four Fiscal Quarters then ending, then (i) not less than forty-five (45) days before the end of the then-current Fiscal Year of the Facility Lessee, the Facility Lessee shall deliver a draft of the Annual Operating Budget for the immediately succeeding Fiscal Year to the Owner Participant for its review and approval (which approval shall not be unreasonably withheld or delayed) and the Facility Lessee shall consult with and, to the extent reasonably acceptable to the Facility Lessee, incorporate suggestions of the Owner Participant into a final Annual Operating Budget for such Fiscal Year, which shall be completed no less than fifteen (15) days in advance of the beginning of each Fiscal Year, (ii) the Facility Lessee will operate and maintain the Facility, or cause the Facility to be operated and maintained, within such Annual Operating Budget as so adopted by the Facility Lessee for such ensuing Fiscal Year (*except that*, with respect to the costs of fuel and emission allowances, the actual expenditures by the Facility Lessee may exceed the amount budgeted for such items without need for the Facility Lessee to obtain the approval or consent of the Owner Participant) and (iii) such Annual Operating Budget may be amended with the consent of the Owner Participant, which consent will not be unreasonably withheld or delayed, to account for contingencies which were not reasonably expected, and in such event the Facility Lessee shall operate and maintain the Facility, or cause the Facility to be operated and maintained, within such Annual Operating Budget as so amended. In the event that, for any reason, there is no approved Annual Operating Budget for the Facility for a Fiscal Year by the beginning of such Fiscal Year, the Annual Operating Budget for the Facility for the previous Fiscal Year shall continue in effect (*except that*, with respect to the costs of fuel and emission allowances, the actual expenditures by the Facility Lessee may exceed the amount budgeted for such items without need for the Facility Lessee to obtain to approval or consent of the Owner Participant), with the various line items (other than Capital Expenditures) on such Annual Operating Budget being adjusted for inflation based upon the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau for Labor Statistics of the United States Department of Labor with respect to the previous year.

(d) Prior to the Closing Date and thereafter not less than one hundred eighty (180) days before the sixth anniversary of the Closing Date (and every six years thereafter unless otherwise agreed between Homer City and the Owner Participant), the Facility Lessee shall adopt Major Maintenance Projections for the Facility for the next full cycle of Major Maintenance covering all anticipated Major Maintenance to be incurred during such period. Copies of the draft Major Maintenance Projections for the Facility shall be promptly furnished to the Owner Participant for its review and approval (which approval shall not be unreasonably withheld or delayed) and the Facility Lessee shall consult with and, to the extent reasonably acceptable to the Facility Lessee, incorporate such parties' suggestions into a final Major Maintenance Projections for the Facility for such cycle, which shall be completed no less than fifteen (15) days in advance of the beginning of each such cycle.

Section 5.15 Accounts Receivable.

The Facility Lessee agrees to promptly bill, and use commercially reasonable efforts to diligently pursue collection of, all material accounts receivable owing to it and all other material amounts that may from time to time be owing to it for services rendered or goods sold.

Section 5.16 Obligations. The Facility Lessee shall pay all of its obligations, howsoever arising, as and when due and payable except such as may be contested in good faith or as to which a bona fide

dispute may exist; *provided*, that adequate reserves consistent with GAAP requirements are maintained for such contested or disputed obligations or the Facility Lessee otherwise establishes and maintains adequate security arrangements for the payment of such contested or disputed obligations which are reasonably acceptable to the Owner Participant.

Section 5.17 Books and Records, Access. The Facility Lessee shall maintain or cause to be maintained adequate books, accounts and records with respect to the Facility Lessee, the Facility and the Facility Site and prepare all financial statements required hereunder in accordance with GAAP and in compliance with the regulations of any Governmental Authority having jurisdiction thereof, and permit employees, agents and representatives of the Owner Lessor, the Owner Participant, the Lease Indenture Trustee, the Security Agent, the Bondholder Trustee and the Lender, and such parties' independent consultants, at all reasonable times during normal business hours and upon reasonable prior notice and at no risk or (except during the existence of a Lease Default or Lease Event of Default) expense to the Facility Lessee to inspect the Facility and the Facility Site, to examine or audit all of the Facility Lessee's books, accounts and records and make copies and memoranda thereof and, together with such consultants, to observe the operation, maintenance and repair of the Facility; *provided*, that (i) each such inspection shall be conducted so as to not interfere with the operation or maintenance of the Facility or the Facility Site and shall be subject to the Facility Lessee's safety, insurance and confidentiality programs, and (ii) any such party making an inspection pursuant to this *Section 5.17* shall comply with the reasonable request of the Facility Lessee to maintain the confidentiality of any information identified by the Facility Lessee in writing to the recipient thereof as confidential and received as a result of such inspection.

Section 5.18 Special Purpose Covenants.

(a) So long as the Facility Lease shall not have been terminated in accordance with its terms, the Facility Lessee shall:

(i) maintain its own separate books and records and bank accounts, and at all times hold itself out to the public as a legal entity separate from the partners of the limited partnership of the Facility Lessee and any other Person (such partners and any Person holding a beneficial interest in any such partner, collectively, the "*Ownership Interestholders*");

(ii) file its own tax returns, if any, as may be required under Applicable Law, to the extent (a) not part of a consolidated or combined group filing a consolidated return or returns or (b) not treated as a division for tax purposes of another taxpayer, and pay any taxes so required to be paid under Applicable Law;

(iii) maintain financial statements separate from those of any other Person (except that the Facility Lessee may be included in the consolidated financial statement of another Person where required by and in accordance with GAAP);

(iv) pay its own liabilities only out of its own funds;

(v) hold title to assets it owns in its own name, and deposit all of its funds in checking accounts, saving accounts, time deposits or certificates of deposit in its own name or invest such funds in its own name;

(vi) observe all limited partnership formalities under Applicable Law necessary to maintain its identity as an entity separate and distinct from the Ownership Interestholders and all of its other Affiliates;

(vii) not commingle its assets with assets of any other Person or make any loans or advances to, or pledge its assets for the benefit of, any other Person;

(viii) not guarantee (other than guarantees in connection with Permitted Trading Activities or permitted pursuant to *Section 6.8*), become obligated for, or hold itself or its credit out to be responsible for, the debt, or obligations of any other Person or become involved in the day to day management or act as the agent of any other Person; and

(ix) not identify in writing its Ownership Interestholders or any of its Affiliates as a division or part of it or itself as a division or part of any of them (except for the inclusion of the Facility Lessee in consolidated financial statements in accordance with and as required by GAAP or for tax purposes).

(b) So long as the Facility Lease shall not have been terminated in accordance with its terms, the Facility Lessee shall cause each of ME Westside and Chestnut Ridge to comply with the provisions of *Schedule 5.18*.

Section 5.19 Warranty of Title to Facility Site.

(a) The Facility Lessee shall maintain good and valid fee, leasehold title to, or easement or other surface rights in, the Facility Site and the Easements, subject only to Permitted Encumbrances.

The Facility Lessee shall maintain good and valid title to all of its other properties and assets (other than properties and assets disposed of in the ordinary course of business including any sale, transfer or other disposition of any obsolete, surplus or worn out equipment, parts, supplies or other materials or assets to the extent permitted by the Operative Documents), subject only to Permitted Encumbrances or to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

ARTICLE VI

NEGATIVE COVENANTS OF HOMER CITY

Homer City covenants and agrees that it will perform the obligations set forth in this *Article VI*.

Section 6.1 Limitations on Merger, Consolidation or Sale of Substantially All Assets. Except as permitted by this *Section 6.1(a)* or *Section 6.2*, Homer City will not (i) consolidate or merge with or into, any other Person or (ii) sell, assign, convey, lease, transfer or otherwise dispose of all or substantially all of its properties or assets to any Person or Persons in one or a series of transactions, except that if, after giving effect thereto, no Material Lease Default or Lease Event of Default shall have occurred and be continuing:

(a) Homer City may consolidate or merge with any other Person or sell, assign, convey, lease, transfer or otherwise dispose of all or substantially all of its properties or assets to any Person or Persons in one or a series of transactions, *provided* that: (i) (x) Homer City first offers to sell, assign, convey, lease or transfer such properties or assets to the Owner Lessor who shall expressly assume, pursuant to an agreement which, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, shall be reasonably acceptable to the Lease Indenture Trustee and the Security Agent, all of Homer City's obligations under the Operative Documents; or (y) the transferee or the entity resulting from such consolidation, surviving such merger or succeeding to such properties or assets (A) shall be organized under the laws of the United States, any state thereof or the District of Columbia and shall expressly assume, pursuant to an agreement reasonably acceptable to the Owner Participant and, so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged, the Lease Indenture Trustee and the Security Agent, all of Homer City's obligations under the Operative Documents; (B) shall be a corporation, limited liability company or limited partnership; (C) such other Person shall be substantially engaged in the wholesale power generating business, experienced in coal-fired electricity generation, and, together with its Affiliates, own and operate facilities with not less than 5,000 MW of capacity; and (D) such

consolidation, merger or succession shall not subject the Owner Lessor or the Owner Participant to regulation under PUHCA; (ii) Homer City shall provide to the Lease Indenture Trustee, the Owner Lessor and the Owner Participant a customary officers' certificate and a customary legal opinion addressing certain matters in connection therewith, including, without limitation, with respect to the agreement referred to in clause (a)(i)(y)(A) and (a)(i)(y)(D) of this *Section 6.1*; and (iii) if the entity with whom Homer City has consolidated or merged has any Indebtedness (after giving effect to such consolidation or merger), Homer City would have been permitted to incur such Indebtedness pursuant to *Section 6.7* at the time of such consolidation or merger. Notwithstanding the foregoing, Homer City shall not consummate any such consolidation, merger or sale of all or substantially all of its assets, unless after giving effect to such consolidation, merger or sale of all or substantially all of its assets, the Fundco Bonds shall have a credit rating of at least BBB- from S&P and Baa3 from Moody's and, prior to the consummation of any such transaction, Homer City shall have provided an Officer's Certificate to such effect or a copy of the letters from the Rating Agencies confirming such ratings.

(b) Upon the consummation of such transaction described in *Section 6.1(a)*, the resulting, surviving or succeeding entity, if other than the Facility Lessee, shall succeed to, and be substituted for, and may exercise every right and power and shall perform every obligation of, the Facility Lessee under this Participation Agreement and each other Operative Document to which the Facility Lessee was a party immediately prior to such transaction, with the same effect as if such entity had been named herein and therein. The Facility Lessee will pay the reasonable costs and expenses (including reasonable attorneys' fees and expenses) of the Owner Participant, the Owner Lessor, the Owner Manager, the OM Company, the Lease Indenture Trustee, the Security Agent, the Lease Indenture Company and the Lender in connection with any transaction contemplated by this *Section 6.1*.

Section 6.2 Sale of Assets. Homer City will not sell, transfer, convey, lease or otherwise dispose of any assets other than Permitted Asset Sales.

Section 6.3 Liens. Homer City will not (a) create, incur, assume or otherwise cause or suffer to exist or become effective any Liens on its properties or assets, except for Permitted Encumbrances, (b) permit the validity or effectiveness of the Lien of the Lease Indenture to be impaired, or permit the Lien of the Lease Indenture to be subordinated, terminated or discharged or (c) permit the Lien of the Lease Indenture not to constitute a valid first priority perfected security interest in the Indenture Estate, except for Permitted Encumbrances.

Section 6.4 Provisions in Contracts with Affiliates. Homer City covenants that it will not enter into any agreements with EMMT or any other EME Affiliate in respect of Permitted Trading Activities unless (i) such agreements provide that such EME Affiliate covenants it will not voluntarily take any action that shall or is intended to submit the Facility Lessee, as debtor, to any proceeding under any Requirement of Law involving bankruptcy, insolvency, reorganization or other laws affecting the rights of creditors generally (as now or hereafter in effect); and (ii) such EME Affiliate shall have agreed that, in the event of a Homer City bankruptcy, any obligation of Homer City to pay claims in respect of liquidated damages pursuant to Permitted Trading Activities to such EME Affiliate shall be subordinated to the prior payment in full of all claims of the Owner Lessor and the Other Owner Lessors.

Section 6.5 Certain Contracts and Agreements. Without the consent of the Owner Participant, Homer City agrees that, except as expressly required by the Operative Documents, it will not (a) enter into any Trading Activities other than Permitted Trading Activities (b) enter into or become bound by any contract or agreement providing for Trading Activities or the purchase of services to be performed at, for or in connection with, the Facility or any other contract or agreement relating to the Facility that has a term that extends beyond the scheduled expiration date of the Facility Lease or the scheduled expiration of any Renewal Lease Term then in effect or irrevocably elected by Homer City, unless, solely in the case of any such contract or agreement contemplated by clause (b), such contract or

agreement may be terminated by Homer City without material costs or obligation to any Person prior to such expiration date or the scheduled expiration of such Renewal Lease Term, as the case may be;

Section 6.6 Limitation on Transactions with Affiliates. Homer City shall not enter into or amend any agreement or transaction with an Affiliate other than agreements, transactions or amendments that are on terms no more favorable to such Affiliate than those entered into with third parties on an arm's- length basis, it being agreed that the following arrangements shall be considered to be on an "arm's-length basis":

(a) agreements for cost reimbursement and/or other compensation (*provided*, that such cost reimbursement or such other compensation, as the case may be, shall be no greater than amounts that would have been payable to a third party on an arm's-length basis);

(b) EMMT risk management arrangements whereby:

(i) EMMT arranges for, or purchases and sells on behalf of, or provides any or all of the following services to Facility Lessee, all in accordance with applicable risk management committee guidelines: (A) fuel purchases and deliveries; (B) forward power sales; (C) procurement or disposition of emissions allowances and/or credits; (D) dispatch of (or bidding of) the Facility into the applicable power pool(s); (E) financial products such as options, derivatives, swaps and/or contracts for differences for the purpose of hedging all or a portion of Facility Lessee's various commodity exposures;

(ii) Facility Lessee pays EMMT's actual out-of-pocket costs for performing the above risk management services, including EMMT's allocated overhead costs;

(iii) EMMT passes through to Facility Lessee all revenues received in conjunction with the performance of the above risk management services; and

(iv) EMMT is paid an annual incentive award for exceeding mutually agreed financial goals for each year, with such annual financial goals to be agreed to in writing by the parties on an annual basis, and with such annual incentive award, if any, to be subordinated in right of payment on terms reasonably acceptable to the Owner Participant to payments of all Rent; and

(c) Permitted Trading Activities with EMMT;

provided, that any such arrangement with an Affiliate shall be terminated without penalty at such time as the applicable Affiliate ceases to be an Affiliate or upon the exercise of remedies following the occurrence of a Lease Event of Default; *provided*, *further*, that no Permitted Trading Activity shall be terminated upon the exercise of remedies to the extent (but only to the extent) that the Facility Lessee's Affiliate that is the counterparty to such Permitted Trading Activity has, in reliance on such Permitted Trading Activity and prior to the Owner Participant giving notice to Homer City of the occurrence of a Lease Event of Default (which notice shall not be given prior to the occurrence of a Lease Event of Default or continue to be effective following the cure by the Facility Lessee of such Lease Event of Default), entered into Trading Activities with an unrelated third party pursuant to which such Affiliate has agreed to sell to, or acquire from, such third party the commodity which such Affiliate had contracted to acquire from, or sell to, the Facility Lessee pursuant to such Permitted Trading Activity (or which such Affiliate, promptly after entering into such Trading Activity with such unrelated third party, contracts to acquire from, or sell to, the Facility Lessee pursuant to such Trading Activity).

Section 6.7 Limitations on Incurrence of Indebtedness. The Facility Lessee shall not, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "*incur*") any Indebtedness other than Subordinated Indebtedness to its Affiliates (*provided* that such Indebtedness shall be subject to the terms of the Subordination Agreement) and Permitted Indebtedness.

"*Permitted Indebtedness*" shall mean any of the following items of Indebtedness:

(a) Indebtedness represented by interest rate hedging obligations incurred for the purpose of fixing a rate of interest on floating rate Indebtedness of the Facility Lessee, so long as such interest rate hedging obligations relate to Indebtedness otherwise permitted to be incurred by the Facility Lessee hereunder not to exceed $20 million at any time outstanding (with such amount to be escalated annually in accordance with increases in the Consumer Price Index for All Urban Consumers);

(b) Indebtedness incurred for working capital purposes only (which shall include the SocGen Instrument); and

(c) Indebtedness in respect of letters of credit, surety bonds or performance bonds issued in the ordinary course of the Facility Lessee's business;

provided, however, the aggregate of Permitted Indebtedness incurred shall not exceed $50 million at any time outstanding (with such amount to be escalated annually in accordance with increases in the Consumer Price Index for All Urban Consumers) and *provided*, *further*, that at no time shall the Facility Lessee incur additional Indebtedness if a Lease Event of Default shall have occurred and be continuing.

For purposes of determining compliance with this Section, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness described in clauses (a) through (c) above as of the date of incurrence thereof, the Facility Lessee shall, in its sole discretion, be entitled to classify or reclassify such item of Indebtedness in any manner that complies with this

Section 6.7. Accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness will not be deemed to be an incurrence of Indebtedness for purposes of this *Section 6.7*.

Section 6.8 Guarantees and Contingent Obligations. Other than pursuant to the contracts listed on *Schedule 6.8* hereto, the Facility Lessee will not create, incur, assume or suffer to exist any guarantee or other material contingent obligations except: (i) guarantees with respect to Permitted Trading Activities, (ii) Indebtedness permitted pursuant to *Section 6.7*, (iii) by reason of endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of the Facility Lessee's business, (iv) indemnities in respect of unfiled mechanics' liens and other liens permitted by clause (g) of the definition of "*Permitted Encumbrances*," (v) contingent obligations set forth in, or incurred in connection with, or indemnities set forth in, the Operative Documents, (vi) customary indemnities provided by the Facility Lessee in connection with easements relating to the Facility or the Facility Site, and (vii) customary indemnities in favor of the title insurers providing the title policies covering the Facility Site or any portion thereof or any easement or appurtenant right relating thereto in respect of claims by the holder of mechanics' liens.

Section 6.9 Limitations on Payments of Component A of Basic Lease Rent. Except for payments contemplated by the Operative Documents to be made on the Closing Date, so long as the Lien of the Lease Indenture is in effect and the Lessor Notes have not been defeased pursuant to *Article XI* of the Lease Indenture, Homer City shall not make any payments in respect of the Component A of Basic Lease Rent (any "*Component A Payment*") other than from the Reserve Account and the Subordinated Reserve Account (provided no Lease Event of Default (other than a Rent Default Event) has occurred and is continuing, in which case no payments from the Reserve Account shall be permitted) unless each of the following conditions is satisfied:

(a) The date of such Component A Payment shall be a Restricted Payment Date (or within five days thereafter);

(b) at the time of and after giving effect to such Component A Payment no Material Lease Default (other than a Rent Default Event) or Lease Event of Default (other than a Rent Default

Event) shall have occurred and be continuing or would occur as a result of such Component A Payment (unless such Lease Default or Lease Event of Default has been cured pursuant to *Section 7.2* of the Lease Indenture);

(c) either:

(i) (A) the Senior Rent Service Coverage Ratio for the most recently ended four Fiscal Quarters, taken as one accounting period, is equal to or greater than 1.50 to 1.0 in the case of any such period ending on or prior to December 31, 2001 or 1.70 to 1.0 in the case of any period ending thereafter; and (B) the projected Senior Rent Service Coverage Ratio for each four Fiscal Quarter period, taken as one accounting period, during the next two such four-Fiscal-Quarter periods, is equal to or greater than 1.50 to 1.0 in the case of any such period ending on or prior to December 31, 2001 or 1.70 to 1.0 in the case of any period ending thereafter, in each case, as set forth in an Officer's Certificate; *or*

(ii) if and only if the Limitation Period (as defined in the Security Deposit Agreement) has been in effect for at least eighteen months prior to the date of determination:

(A) (x) the Senior Rent Service Coverage Ratio for the preceding four Fiscal Quarters, taken as one accounting period, is equal to or greater than 1.30 to 1.00 and (y) the projected Senior Rent Service Coverage Ratio for each four Fiscal Quarter period, taken as one accounting period, during the next two such four-Fiscal-Quarter periods, is equal to or greater than 1.30 to 1.00; *and*

(B) (x) the Modified Senior Rent Service Coverage Ratio for the most recently ended four Fiscal Quarters, taken as one accounting period, is equal to or greater than 1.50 to 1.0 in the case of any such period ending on or prior to December 31, 2001 or 1.70 to 1.0 in the case of any period ending thereafter; and (y) the projected Modified Senior Rent

Service Coverage Ratio for each four Fiscal Quarter period, taken as one accounting period, during the next two such four-Fiscal-Quarter periods is equal to or greater than 1.50 to 1.0 in the case of any such period ending on or prior to December 31, 2001 or 1.70 to 1.0 in the case of any period ending thereafter;

in each case, as set forth in an Officer's Certificate;

(d) After giving effect to payments of Senior Rent and any deposits made into the Debt Service Reserve Account on such a date, (i) the Debt Service Reserve Account shall be funded in cash in an amount equal to the Debt Service Reserve Amount; or (ii) the requirement to so fund such account shall be satisfied by the Debt Service Reserve Letter of Credit, which shall be in full force and effect (and the amount available for drawing thereunder shall be at least equal to the Debt Service Reserve Amount), or (iii) any combination of (i) and (ii); and

(e) the amount on deposit in each of the accounts maintained by Homer City with the Collateral Agent (other than the Reserve Account and the Subordinated Reserve Account) is equal to or greater than the amount required to be on deposit therein or is supported by a letter of credit in the requisite amount, in each case in accordance with the Security Deposit Agreement.

The Facility Lessee shall cause the Power Market Consultant to provide to the Facility Lessee, at intervals not to exceed every three years, updated electricity price projections to allow the Facility Lessee certification for purposes of making Restricted Payments pursuant to this Section 6.9.

Section 6.10 Limitations on Restricted Payments. Except for payments contemplated by the Operative Documents to be made on the Closing Date, Homer City shall not make any Restricted Payment unless each of the following conditions is satisfied:

(a) the date of such payment is a Restricted Payment Date (or within five days thereafter);

(b) at the time of and after giving effect to such Restricted Payment (i) no Lease Default or Lease Event of Default shall have occurred and be continuing, (ii) no Rent Default Event (other than an Rent Default Event due to a decrease in Revenue attributable to an Event of Force Majeure) had occurred and been continuing for a period of nine (9) months prior to the date of such Restricted Payment (whether or not cured subsequent to such nine-month period but prior to such Restricted Payment Date) and (iii) not more than two Rent Default Events have occurred on or prior to such Restricted Payment Date (whether or not cured prior to such Restricted Payment Date);

(c) the Senior Rent Service Coverage Ratio for the most recently ended four Fiscal Quarters, taken as one accounting period, is equal to or greater than 1.50 to 1.0 in the case of any such period ending on or prior to December 31, 2001 or 1.70 to 1.0 in the case of any period ending thereafter, as set forth in an Officer's Certificate;

(d) the projected Senior Rent Service Coverage Ratio for each four Fiscal Quarter period, taken as one accounting period, during the next two such four-Fiscal-Quarter periods is equal to or greater than 1.50 to 1.0 in the case of any such period ending on or prior to December 31, 2001 or 1.70 to 1.0 in the case of any period ending thereafter, as set forth in an Officer's Certificate;

(e) (i) the Debt Service Reserve Account shall be funded in cash in an amount equal to the Debt Service Reserve Amount, or (ii) the requirement to so fund such account shall be satisfied by the Debt Service Reserve Letter of Credit, which shall be in full force and effect (and the amount available for drawing thereunder shall be at least equal to the Debt Service Reserve Amount), or (iii) any combination of (i) and (ii) (and in either case, no reimbursement obligation (including any deferred loan with respect thereto) shall then be outstanding with respect to the Debt Service Letter of Credit);

(f) the amount on deposit in each of the accounts maintained by Homer City with the Collateral Agent (including the Reserve Account and the Subordinated Reserve Account) is equal to or greater than the amount required to be on deposit therein or is supported by a letter of credit in the requisite amount, in each case in accordance with the Security Deposit Agreement; and

(g) all Component A Payments required to have been made on or before such Restricted Payment Date have been made.

The Facility Lessee shall cause the Power Market Consultant to provide to the Facility Lessee and the Owner Participant, at intervals not to exceed every three years, updated electricity price projections to allow the Facility Lessee certification for purposes of making Restricted Payments pursuant to this Section 6.10.

Section 6.11 Restrictions on Capital Expenditures. The Facility Lessee shall not, without the prior written consent of the Owner Participant and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Security Agent, enter into any binding future commitment to make Capital Expenditures other than any such commitment (a) which is a direct commitment of an Affiliate of Homer City on behalf of the Facility Lessee, (b) which is supported by an irrevocable guarantee, endorsement or other contingent agreement to purchase or furnish funds on the Facility Lessee's behalf by an Affiliate of Homer City rated at least Investment Grade, (c) for which the payment of which has been fully reserved by the Facility Lessee or (d) which is otherwise to be funded with a capital contribution to Homer City. Notwithstanding the foregoing, if the Facility Lessee is permitted to finance such Capital Expenditures in accordance with *Section 6.7* hereof, the restrictions of this *Section 6.11* shall not apply.

Section 6.12 No Subsidiaries. The Facility Lessee shall not create or suffer to exist any Subsidiaries of the Facility Lessee.

Section 6.13 Partnerships. The Facility Lessee shall not become a general or limited partner in any partnership or a joint venturer in any joint venture.

Section 6.14 Dissolution. The Facility Lessee shall not liquidate or dissolve, except pursuant to transactions permitted under *Section 5.2*.

Section 6.15 Amendment of Contracts, Etc. The Facility Lessee shall not without the prior written consent of the Owner Participant and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Security Agent, cause, consent to or permit, any amendment, modification, extension, termination, variance or waiver of timely compliance with any terms or conditions of any Project Document if such amendment, modification, extension, termination, variance or waiver could be reasonably expected to result in a Material Adverse Effect.

(b) The Facility Lessee shall not permit to be revoked, amended, supplemented or otherwise modified the Homer City Partnership Agreement without the prior written consent of the Owner Participant and, so long as the Lien of the Lease Indenture has not been terminated or discharged, the Lease Indenture Trustee and the Security Agent; *provided that*, other than any such amendment, modification or supplement to Sections 2.7, 8.1, 8.2, 8.3, 9.2, 9.5, 9.6 and Article 12 thereof, consent of the Owner Participant and, if applicable, the Lease Indenture Trustee and the Security Agent, shall not be required for any such amendment, modification or supplement required to reflect any (i) transfer of ownership interest in the Facility Lessee or (ii) any merger, consolidation or similar transaction with respect to the Facility Lessee, in each such case, as expressly permitted pursuant to any Operative Document, so long as any equity interest in the general partner (or successor general partner) of the Facility Lessee is pledged under the Pledge and Collateral Agreement.

Section 6.16 Fiscal Year. The Facility Lessee shall not change its Fiscal Year.

Section 6.17 Use of Facility Site. The Facility Lessee shall not use, or permit to be used (except to the extent required pursuant to the Project Documents in effect on the Closing Date), the Facility Site or the Easements for any purpose other than for the development, operation and maintenance of the Facility as contemplated by or otherwise permitted by the Operative Documents, including Article VIII of the Facility Site Sublease. The Facility Lessee shall use commercially reasonable efforts to achieve any required subdivision of the Facility Site as soon as practicable after the Closing.

Section 6.18 Abandonment of Facility. The Facility Lessee shall not voluntarily abandon the operation, maintenance or repair of the Facility.

Section 6.19 Assignment of Rights. The Facility Lessee shall not assign any of its rights or obligations hereunder except as permitted by the Operative Documents.

Section 6.20 Regulations. The Facility Lessee shall not, directly or indirectly, apply any part of the proceeds of the Purchase Price or any other Revenues to the purchasing or carrying of any margin stock within the meaning of Regulations T, U or X of the Federal Reserve Board, or any regulations, interpretations or rulings thereunder.

Section 6.21 Accounts. The Lessee shall not establish, maintain or make deposits in any deposit accounts other than as expressly permitted by the Operative Documents.

Section 6.22 PUHCA. The Facility Lessee shall not take any action or fail to take any action that would subject the Owner Lessor, the Owner Participant or any Lender to regulation under PUHCA, *provided* that with respect to circumstances or events outside of the control of the Facility Lessee, the Facility Lessee shall not be deemed to have breached the covenant contained in this *Section 6.22* so long as the Facility Lessee is using commercially reasonable efforts to maintain (or re-establish) such exemptions from regulation under PUHCA.

Section 6.23 Investments. The Facility Lessee shall not make or permit to remain outstanding any advances, loans or extensions of credit to, or purchase or own any stock, bonds, notes, debentures or other securities of any Person, except Permitted Investments and guarantees with respect to Permitted Trading Activities.

Section 6.24 Permitted Business. The Facility Lessee shall not engage in any business other than the business of the ownership or leasing, as applicable, operation, maintenance and output marketing of the Facility and the generation of income therefrom.

ARTICLE VII

COVENANTS OF THE OM COMPANY, THE OWNER MANAGER AND THE OWNER LESSOR

Section 7.1 Compliance with the Lessor LLC Agreement. Each of the Owner Lessor, the OM Company and the Owner Manager hereby severally covenants and agrees severally and as to itself only that it will:

(a) comply with all of the terms of the Lessor LLC Agreement applicable to it;

(b) not amend, supplement, or otherwise modify Sections 5.2, 9, 10.10, 14, 15.2 or 15.3 of the Lessor LLC Agreement without the prior written consent of Homer City so long as no Material Lease Default or Lease Event of Default has occurred and is continuing or the Lease Indenture Trustee so long as the Lessor Notes are outstanding; and

(c) not exercise its rights under *Section 4.7* of the Lease Indenture to optionally prepay the Lessor Notes without the prior written consent of the Facility Lessee; *provided, however*, that such prior written consent shall not be required if a Lease Event of Default shall have occurred and be continuing.

Section 7.2 Owner Lessor Liens. The OM Company, the Owner Manager and the Owner Lessor each covenants severally and as to itself only that it will not directly or indirectly create, incur, assume or suffer to exist any Lien, attributable to it and unrelated to the transactions contemplated hereby, on the Lessor Estate arising as a result of (i) Claims against or any act or omission of the Owner Lessor or the OM Company or the Owner Manager, or any Affiliate thereof, that is not related to, or is in violation of, any Operative Document or the transactions contemplated thereby or any breach of any covenant or agreement of the Owner Lessor or the OM Company or the Owner Manager set forth therein; (ii) Taxes against the Owner Lessor or the OM Company or the Owner Manager, or any Affiliate thereof, for which it is not indemnified by the Facility Lessee (or, in the case of the OM Company, the Owner Lessor) pursuant to the Operative Documents; or (iii) Claims against or affecting the Owner Lessor or the OM Company or the Owner Manager, or any Affiliate thereof, arising out of the

voluntary or involuntary transfer by the Owner Lessor or the OM Company or the Owner Manager (other than transfers requested by the Facility Lessee or required by the Operative Documents or during the continuance of a Lease Event of Default) of any portion of the interest of the Owner Lessor in the Facility ("*Owner Lessor Liens*" and, together with Owner Participant Liens, "*Lessor Liens*"). The OM Company, the Owner Manager or the Owner Lessor will promptly notify Homer City, the Owner Participant and the Lease Indenture Trustee of the imposition of any Owner Lessor Lien of which it has knowledge and shall promptly, at its own expense, take such action as may be necessary to duly discharge such Owner Lessor Lien attributable to it.

Section 7.3 Amendments to Operative Documents. The Owner Manager and the OM Company each covenants severally and as to itself only that it will not, unless such action is expressly contemplated by the Operative Documents, or, with respect to the Owner Manager and the Owner Lessor, unless it is expressly directed by the Owner Participant in writing, (a) through its own action terminate any Operative Document to which it is a party, (b) amend, supplement, waive or modify (or consent to any such amendment, supplement, waiver or modification) any Operative Document (other than the Lessor LLC Agreement, amendments to and modifications of which are governed by *Section 7.1* hereof) in any manner other than with respect to administrative or ministerial matters or (c) except as provided in *Section 12.2* hereof, take any action to prepay, redeem or refund the Lessor Notes or amend any of the payment terms of the Lessor Notes without, in each case, the prior written consent of Homer City except as provided in *Section 7.1(c)* and, in the case of clause (a) or (b), the Lease Indenture Trustee, the Security Agent and the Lender as long as the Lessor Notes are outstanding.

Section 7.4 Transfer of the Owner Lessor's Interest. Other than as contemplated by the Operative Documents, each of the Owner Lessor and the Owner Manager covenants severally and as to itself only that it will not assign, pledge, sell, lease, convey or otherwise transfer any of its then existing right, title or interest in and to the Owner Lessor's Interest, the Lessor Estate or the other Operative Documents without the consent of Homer City and, so long as the Lessor Notes are outstanding, the Lease Indenture Trustee and the Security Agent, which consent may not be unreasonably withheld. Nothing in this *Section 7.4* shall limit the ability of the Owner Manager or the Owner Participant to appoint a successor Owner Manager pursuant to *Section 12* of the Lessor LLC Agreement.

Section 7.5 Notice Regarding Debt Service Reserve Letter of Credit The Owner Lessor shall, promptly upon receipt of any notice relating to the Debt Service Reserve Letter of Credit (including without limitation notices of drawings thereunder and notices of any downgrade of the rating of the issuer of the Debt Service Reserve Letter of Credit), provide a copy of such notice to the Facility Lessee, the Owner Participant, the Owner Manager and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Security Agent, the Lender and the Bondholder Trustee.

Section 7.6 Limitation on Indebtedness and Actions. The Owner Lessor covenants that it will not incur any indebtedness other than Subordinated Indebtedness nor enter into any business or activity except as required or expressly permitted or contemplated by any Operative Document.

Section 7.7 Change of Location. The Owner Manager shall use all reasonable efforts to give the Owner Participant, the Lease Indenture Trustee and Homer City a 30 days' written notice of any relocation of the Owner Manager's chief executive office or the place where documents and records relating to the Owner Manager or the Lessor Estate are kept from the location set forth in *Section 3.2(h)* and of any change in its name, but in any event the Owner Manager and the Owner Lessor shall give such notice within 30 days after such relocation or name change.

Section 7.8 Bankruptcy of Owner Lessor; Lessor Estate. Each of the OM Company, the Owner Manager and the Owner Lessor hereby agrees severally and as to itself only that it shall not voluntarily take any action that shall, or cause any action to be taken that is intended to, submit the Owner Lessor, as debtor, or the Lessor Estate to any proceeding under any Requirement of Law involving bankruptcy, insolvency, reorganization or other laws affecting the rights of creditors generally (as now or hereafter in effect) unless a Lease Event of Default or a Material Lease Default shall have occurred and be continuing (in which case, if the Lien of the Lease Indenture shall not have been discharged, the OM Company or the Owner Lessor shall not take such action unless the Lease Indenture Trustee and the Security Agent shall have given their prior written consent to such action in their sole discretion).

Section 7.9 Limitation On Subsidiaries And Investments. The Owner Lessor shall not create or acquire any Subsidiary.

Section 7.10 Limitation On Transactions With Affiliates. The Owner Lessor shall not enter into any transaction or arrangement, whether or not in the ordinary course of business, with any Affiliate, other than (i) management, operating, marketing, trading or other similar services agreements between and among the Owner Lessor and its Affiliates in existence on the Closing Date and (ii) any transaction which is on terms that are no less favorable to the Owner Lessor than those that would have been obtained in a comparable arm's-length transaction by the Owner Lessor with an unrelated Person.

Section 7.11 Maintenance Of Existence. The Owner Lessor covenants that it will at all times (i) maintain its existence in good standing under the laws of Delaware and (ii) maintain and renew all of its respective rights, powers, privileges and franchises except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

Section 7.12 Compliance With Laws. The Owner Lessor covenants that it will comply with all applicable laws, acts, rules, regulations, permits, orders and requirements of any legislative, executive, administrative or judicial body relating to the Owner Lessor except where (i) the failure to do so could not reasonably be expected to have a Material Adverse Effect; (ii) the Owner Lessor is disputing in good faith any such law, act, rule, regulation, permit, order or requirement and (A) the Owner Lessor has established or accrued adequate cash reserves in accordance with GAAP or provided other appropriate assurances against any liabilities arising from such dispute and (B) the Owner Lessor's action to dispute such law, act, rule, regulation, permit, order or requirement could not reasonably be expected to have a Material Adverse Effect; or (iii) such failure to do so results from a Lease Default or a Lease Event of Default.

ARTICLE VIII

COVENANTS OF THE OWNER PARTICIPANT

Section 8.1 Restrictions on Transfer of Lessor Membership Interest.

(a) The Owner Participant covenants and agrees that it shall not during the Facility Lease Term assign, convey or transfer any of its right, title or interest in the Lessor Membership Interest without the prior written consent of Homer City and, so long as the Lien of the Lease Indenture has not been terminated or discharged, without the prior written consent of the Lease Indenture Trustee and the Security Agent; *provided, however,* that the Owner Participant may assign, convey or transfer all or any part of its interest in the Lessor Membership Interest without such consent to a Person (the "*Transferee*") which shall assume the duties and obligations of the Owner Participant under the Operative Documents with respect to the interest being transferred pursuant to an Assignment and Assumption Agreement substantially in the form of *Exhibit J* hereto, if each of the following conditions shall have been satisfied:

(i) Homer City, the Owner Manager and, so long as the Lessor Notes are outstanding, the Lease Indenture Trustee and the Security Agent shall have received an opinion of counsel consistent in scope to the opinions delivered on behalf of the Owner Participant on the Closing Date, the form of which opinion of counsel is reasonably satisfactory to each recipient thereof, to the effect that such Assignment and Assumption Agreement and the OP Guaranty, if any, is a legal, valid and binding obligation of, and is enforceable against, each party thereto, that all regulatory approvals required in connection with such transfer or necessary to assume the Owner Participant's obligations under the Operative Documents shall have been obtained and that the proposed transfer of the Lessor Membership Interest will not require registration under the Securities Act;

(ii) the Transferee shall be a corporation, limited liability company or partnership that is a "United States person" within the meaning of Section 7701(a)(30) of the Code;

(iii) the Transferee (or the OP Guarantor guaranteeing the obligations of such Transferee under the Operative Documents) meets the following criteria: (1) the Consolidated Tangible Net Assets of such Transferee or such OP Guarantor shall be at least equal to $75 million calculated in accordance with GAAP, (2) such Transferee agrees to be bound by the terms of the Operative Documents pursuant to an Assignment and Assumption Agreement substantially in the form of *Exhibit J* hereto; and (3) the OP Guarantor, if any, agrees to guarantee the obligations of the Transferee pursuant to an OP Guaranty substantially in the form of *Exhibit K* hereto.

(iv) so long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing, such Transferee shall not be a Competitor of, or in material litigation with, Homer City or any Affiliate of Homer City, without the express written consent of Homer City which consent shall not be unreasonably withheld; and

(v) the transferring Owner Participant shall pay, without any right of indemnification from Homer City or any other Person, all reasonable documented out-of-pocket costs, fees and expenses incurred in connection with any such transfer by (x) the other Lease Transaction Parties, except Homer City and any of its Affiliates, and (y) Homer City and any of its Affiliates, so long as no Lease Default or Lease Event of Default shall have occurred and be continuing.

(b) Notwithstanding any provision of *Section 8.1(a)* to the contrary, (1) the restrictions set forth in *Section 8.1(a)* shall not inure to the benefit of Homer City if such transfer is in connection with the exercise of remedies during a Lease Event of Default and (2) the restrictions set forth in clause (iv) of *Section 8.1(a)* shall inure to the benefit of Homer City only.

(c) The Pricing Assumptions (as set forth on *Schedule 8.1(c)* hereto) shall not be changed as a result of any such transfer except if such transfer is in connection with the exercise of remedies during a Lease Event of Default.

(d) The Owner Participant shall give the Owner Lessor, the Owner Manager, the Lease Indenture Trustee and Homer City a 10 days' prior written notice of such transfer, or 10 days in the case of a transfer to an Affiliate of the Owner Participant, specifying the name and address of any proposed Transferee and such additional information as shall be necessary to determine whether the proposed transfer satisfies the requirements of this *Section 8.1*. If requested by the Owner Participant or the Lease Indenture Trustee, Homer City shall acknowledge qualifying transfers.

(e) Upon any such transfer in compliance with this *Section 8.1*, (i) such Transferee shall, to the extent of the Lessor Membership Interest conveyed to the Transferee, (x) be deemed the "Owner Participant" for all purposes, and (y) enjoy the rights and privileges and perform the obligations of the Owner Participant hereunder and under the Assignment and Assumption Agreement and each other Operative Document to which such Owner Participant is a party, and each reference in this Agreement, the Assignment and Assumption Agreement and each other Operative Document to the "Owner Participant" shall thereafter be deemed to include such Transferee, to the extent of the Lessor Membership Interest conveyed to the Transferee, for all purposes and (ii) the transferor Owner Participant and the OP Guarantor, if any, of such transferor Owner Participant's obligations, shall be released from all obligations hereunder and under each other Operative Document to which such transferor or OP Guarantor is a party or by which such transferor Owner Participant or OP Guarantor is bound to the extent such obligations are expressly assumed by a Transferee; *provided, however,* that in no event shall any such transfer waive or release the transferor or any OP Guarantor from any liability existing immediately prior to or occurring simultaneously with such transfer.

Section 8.2 Owner Participant Liens. The Owner Participant covenants that it will not directly or indirectly create, incur, assume or suffer to exist any Lien on the Facility, Facility Site or the Facility

Lease arising as a result of (i) claims against or any act or omission of the Owner Participant, or any Affiliate thereof, that is not related to, or is in violation of, any Operative Document or the transactions contemplated thereby or any breach of any covenant or agreement of the Owner Participant set forth therein; (ii) taxes against the Owner Participant or any Affiliate thereof for which it is not indemnified by Homer City pursuant to the Operative Documents; or (iii) claims against or affecting the Owner Participant, or any Affiliate thereof, arising out of the

voluntary or involuntary transfer by the Owner Participant (other than transfers requested by Homer City or required by the Operative Documents or during the continuance of a Lease Event of Default) of its interest in the Lessor Estate ("*Owner Participant Liens*").

Section 8.3 Amendments or Revocation of Lessor LLC Agreement. The Owner Participant covenants that it will not (a) amend, supplement, or otherwise modify *Sections 5.2, 9, 10.10, 14, 15.2* or *15.3* of the Lessor LLC Agreement except for amendments required by the Operative Documents or by any Requirement of Law or which are administrative or ministerial in nature without the prior written consent of Homer City so long as no Material Lease Default or Lease Event of Default has occurred and is continuing, and without the prior written consent of the Lease Indenture Trustee and the Security Agent, so long as the Lessor Notes are outstanding or (b) revoke, or otherwise waive compliance with or terminate the Lessor LLC Agreement without the prior written consent of Homer City so long as no Material Lease Default or Lease Event of Default has occurred and is continuing, and the Lessor LLC Agreement so long as the Lien of the Lease Indenture has not been terminated or discharged.

Section 8.4 Bankruptcy Filings. The Owner Participant agrees that it will not file a petition, or join in the filing of a petition, seeking reorganization, arrangement, adjustment or composition of, or in respect of, the Owner Lessor under the Bankruptcy Code, or any other applicable Federal or state law or the law of the District of Columbia, without the prior written consent of the Bondholder Trustee.

Section 8.5 Instructions. The Owner Participant agrees that it will not instruct the Owner Lessor to take any action prohibited by this Agreement or any other Operative Document.

Section 8.6 Appointment of Successor Owner Manager. Notwithstanding any other provision of this Agreement, a successor Owner Manager shall not be appointed by the Owner Participant without the consent of Homer City, so long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing, and, so long as Lessor Notes are outstanding, the Lease Indenture Trustee and the Security Agent unless such successor Owner Manager (a) meets the requirements of the Lessor LLC Agreement, (b) has a combined capital and surplus of at least $150 million and (c) Homer City and, so long as the Lien of the Lease Indenture has not been terminated or discharged, the Lease Indenture Trustee and the Security Agent, shall have received at the expense of the Owner Participant: (i) an opinion or opinions of counsel, such counsel and such opinion to be reasonably acceptable to such parties, to the effect that no regulatory consents or approvals are required, or (ii) such other documentation reasonably satisfactory to Homer City or the Lease Indenture Trustee and the Security Agent, as the case may be; *provided, however,* that if Wells Fargo resigns as Owner Manager, is terminated for cause, or shall become incapable of acting or shall be adjudged bankrupt or insolvent or a receiver of the Owner Manager or its properties shall be appointed or any public officer shall take charge or control of the Owner Manager or its property or affairs for the purpose of rehabilitation, conservation or liquidation, the opinion required by clause (c) shall be at the expense of Homer City.

Section 8.7 Cooperation. The Owner Lessor agrees, and each of the Owner Participant and the Owner Manager agree to cause the Owner Lessor to, at the request of Homer City and at the sole cost and expense of Homer City on an After-Tax Basis, take such actions as may be necessary for the Owner Lessor to take as the owner of the Facility for purposes of obtaining the valid and effective issue, transfer or amendment, as the case may be, of all Governmental Approvals to the extent the same are required for the use, ownership, operation or maintenance of the Facility, the Facility Site, the

Undivided Interest, the Ground Interest or any Component by Homer City or any permitted assignee of Homer City in the manner contemplated by the Operative Documents, except to the extent the same involves any (i) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than a Permitted Lien) on, the Facility, the Undivided Interest or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (ii) risk of criminal or material civil liability being incurred by the Owner Lessor, the Owner Participant, or, so long as the Lien of the Lease Indenture has not been terminated discharged, the Lease Indenture Trustee and the Security Agent, or any of its respective Affiliates or (iii) material risk of any material adverse effect on the Owner Lessor, the Owner Participant, or, so long as the Lien of the Lease Indenture has not been terminated or discharged, the Lease Indenture Trustee and the Security Agent, or any of its respective Affiliates (including, without limitation, subjecting any such Person to regulation as a public utility under any applicable law). Homer City shall pay on an After-Tax Basis all reasonable costs and expenses

(including, without limitation, the reasonable fees and expenses of counsel) of the Owner Lessor and each other Person party to an Operative Document incurred in connection with any such action. It is understood and agreed that, with respect to any action requested of it, and taken by it, under this *Section 8.7*, the Owner Lessor, the Owner Participant and the Owner Manager shall make no representation or warranty as to, and shall have no responsibility for the effectiveness of such action to accomplish or promote the objective intended by the Person making such request.

ARTICLE IX

COVENANTS OF THE LEASE INDENTURE TRUSTEE, BONDHOLDER TRUSTEE AND SECURITY AGENT

Section 9.1 Security Interest of the Lease Indenture Trustee. The Lease Indenture Trustee will not directly or indirectly create, incur, assume or suffer to exist any Lien on the Indenture Estate attributable to it and arising out of events or conditions not related to its rights in the Indenture Estate or the administration thereof, and will promptly notify the Owner Participant, the Owner Lessor, the Owner Manager, the Security Agent and Homer City in writing of the imposition of any such Lien of which it has Actual Knowledge and shall promptly, at its own expense, take such action as may be necessary to duly discharge such Indenture Trustee Lien.

Section 9.2 Security Interest of the Security Agent. The Security Agent will not directly or indirectly create, incur, assume or suffer to exist any Lien on the Indenture Estate attributable to it and arising out of events or conditions not related to its rights in the Indenture Estate or the administration thereof, and will promptly notify the Owner Participant, the Owner Lessor, the Owner Manager, the Lease Indenture Trustee and Homer City in writing of the imposition of any such Lien of which it has Actual Knowledge and shall promptly, at its own expense, take such action as may be necessary to duly discharge such Lien.

Section 9.3 Covenants of the Lease Indenture Trustee and BondholderTrustee. Each of the Lease Indenture Trustee and the Bondholder Trustee covenant with respect to the Lease Indenture, and the Bondholder Trustee covenants with respect to the Fundco Indenture, that it will comply with the terms of such agreement and will not amend or consent to the amendment of such agreement without the prior written consent of the Owner Lessor, the Owner Participant and, so long as no Lease Event of Default (other than a Rent Default Event) has occurred and is continuing, the Facility Lessee.

ARTICLE X

HOMER CITY'S INDEMNIFICATIONS

Section 10.1 General Indemnity.

(a) *Claims Indemnified.* Subject to the exclusions stated in paragraph (b) below, Homer City agrees to, on an After-Tax Basis, protect, defend and hold harmless, and does hereby indemnify the Owner Lessor, the Owner Participant, the Owner Manager, the OM Company, in its individual capacity, the Security Agent, the Lender, the Bondholder Trustee and the Lease Indenture Trustee and each of their respective successors, permitted assigns, agents, employees, servants, directors, members, managers, partners, officers and Affiliates (each an "*Indemnitee*") against any and all liabilities, obligations, losses, damages, penalties, actions, suits, costs, expenses and claims of any nature (whether or not any of the transactions contemplated by the Operative Documents are consummated) imposed on incurred or asserted against such Indemnitee arising out of, in connection with, or relating to any of the following (collectively, "*Claims*"):

(i) the construction, financing, refinancing, acquisition, operation, warranty, ownership, possession, maintenance, repair, lease, condition, alteration, modification, restoration, refurbishing, return, purchase, sale or other disposition, insuring, sublease, or other use or nonuse of the Facility or the Facility Site, or any portion or Component thereof or interest therein;

(ii) the conduct of the business or affairs of (x) Homer City or (y) any Affiliate of Homer City but, in the case of any such Affiliate, only at the Facility and Facility Site or in connection therewith;

(iii) the manufacture, design, purchase, acceptance, rejection, delivery or condition of, or improvement to, the Facility, the Facility Site or any Component, or any portion of any thereof or any interest therein;

(iv) the Facility Lease or any other Operative Documents in respect of the Facility or the Facility Site, the execution or delivery thereof, or the performance, enforcement, attempted enforcement or any amendment, supplement or modification to, or any waiver (collectively, "*Amendments*") of any terms thereof or thereto;

(v) any Environmental Claim or any Environmental Condition resulting from the Facility, the Facility Site, or any Component (or portion of any Component) thereof, including any such Environmental Claim or Environmental Condition arising from or related to the operation of the Facility or any Component thereof;

(vi) the reasonable costs and expenses of each Indemnitee in connection with Amendments or supplements of or to the Operative Documents (x) requested by Homer City or required pursuant to the provisions of any Operative Document, including under *Section 12* hereof, or (y) as a result of a Lease Event of Default under the Facility Lease that has occurred and is continuing;

(vii) the imposition of any Lien other than, with respect to a particular Indemnitee, a Lien arising by or through such Indemnitee (or its agents, employees, servants or affiliates) that is prohibited under the terms of the Operative Documents;

(viii) any violation by, or liability relating to, Homer City, any Homer City Party, the Facility or the Facility Site of, or under, any Requirement of Law, whether now or hereafter in effect (including Environmental Laws), or any action of any Governmental Authority or other Person taken with respect to the Facility or Facility Site, the Operative Documents or the interests of the Lease Indenture Trustee, the Security Agent, the Owner Lessor or the Owner Participant under the Operative Documents or the presence, use, storage, transportation, treatment or manufacture of any hazardous substance in, at, under or from the Facility or Facility Site;

(ix) the nonperformance or breach by Homer City or any Affiliate of any obligation contained in the Operative Documents or the falsity or inaccuracy of any representation or warranty of Homer City or any Affiliate in the Operative Documents;

(x) the continuing fees (if any) and expenses of the Owner Manager, Owner Lessor, Owner Participant, the Bondholder Trustee, the Lender, the Security Agent and the Lease Indenture Trustee (including the reasonable fees and expenses of counsel, accountants and other professional persons) arising out of discharge of their duties under or in connection with the Operative Documents;

(xi) the offer, issuance, sale or acquisition of the Lessor Notes or any Additional Lessor Notes, or, in each case, any refinancing thereof;

(xii) any regulatory approvals or licenses (or any renewals thereof) including, without limitation, any obligations imposed by FERC in connection with the Facility or Facility Site;

(xiii) (a) any charge, indemnity payment, cost, expense or other obligation of the Owner Lessor incurred in connection with the Debt Service Reserve Letter of Credit (including under any reimbursement agreement or application therefor) (excluding principal of any reimbursement obligation or loan thereunder, interest thereon or any fee with respect to the Debt Service Reserve Letter of Credit), (b) any replacement, renewal or re-issuance of the Debt Service Reserve Letter of Credit (and any applicable application or reimbursement agreement with respect thereto) and (c) to the extent relating to an issuer downgrade or the expiration of such letter of credit, any drawing thereunder (including interest accruing thereon); *provided that*, in the event that the Facility Lease is terminated in accordance with its terms, then the applicable Indemnitee shall refund to Homer City any amounts on deposit in the

Debt Service Reserve Account up to a maximum of those amounts previously paid by Homer City prior to the termination of the Facility Lease as Supplemental Rent pursuant to this Section 10.1(a)(xiii)(c);

(xiv) any and all fees, including interest accruing thereon, with respect to the Debt Service Reserve Letter of Credit, payable to such letter of credit issuer in excess of the Base DSRLC Costs; provided, however, that in no event shall the Facility Lessee be liable for Claims pursuant to this clause (xiv) for any amounts that are in excess of that amount which, when added to the Basic Lease Rent, together with all rent payable under the Facility Site Sublease, discounted at the Discount Rate, causes the present value to not satisfy the ninety percent (90%) test for operating lease treatments described in *Section 4.16*.

(b) *Claims Excluded.* The general indemnity of Homer City in this *Section 10.1* will be subject to exclusions for Claims to the extent (x) attributable to, (y) arising as a result of, or (z) such Claims would not have occurred but for, any of the following:

(i) acts, omissions or events occurring after the expiration or early termination of the Facility Lease and, where required by the Facility Lease, surrender to the Owner Lessor or its successor of the Facility and its interest in the Facility Site Sublease in compliance with the provisions of the Facility Lease or Facility Site Sublease, as the case may be other than, in each such case referred to in this clause (i), claims arising from or related to acts, omissions, events or conditions occurring or existing prior to such expiration or early termination, or arising pursuant to the Facility Lessee's obligations set forth in *Section 5.2(h)* of the Facility Lease;

(ii) with respect to the relevant Indemnitee or a Related Party, any offer, sale, assignment, transfer or other disposition (voluntary or involuntary) by or on behalf of (x) the Owner Participant of any of its interest in the Owner Lessor, (y) the Owner Lessor of all or any of its interest in the Facility or Facility Site or (z) the Lender, the Security Agent or the Lease Indenture Trustee of any of its interests in the Lessor Loans, unless such transfer is required by the terms of

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the Operative Documents or occurs in connection with the exercise of remedies during a Lease Event of Default;

(iii) the gross negligence or willful misconduct of the Indemnitee (or a Related Party of such Indemnitee) seeking indemnification;

(iv) the noncompliance with the terms of the Operative Documents by, or the breach of any agreement, covenant, representation or warranty of, the Indemnitee (or a Related Party of such Indemnitee) seeking indemnification unless attributable to Homer City or breach by another party of its obligations under an Operative Document;

(v) any obligation or liability expressly borne, assumed or to be paid in any Operative Document by the Indemnitee (or a Related Party of such Indemnitee) seeking indemnification (other than any Claim pursuant to Section 10.1(a)(xiii) or (xiv));

(vi) with respect to the Indemnitee seeking indemnification, any claim constituting or arising from a Lessor Lien attributable to such Indemnitee or to a Related Party of such Indemnitee;

(vii) any Claim that is a Tax or is a cost of contesting a Tax, whether or not Homer City is required to indemnify therefor under *Section 10.2* below, except as required to make payments on an After-Tax Basis;

(viii) any failure by the Owner Manager to distribute in accordance with the Lessor LLC Agreement any amounts received and distributable thereunder;

(ix) any Amendment not requested by Homer City and not required by any Operative Document (other than an Amendment existing as a result of a Lease Event of Default that has occurred and is continuing);

(x) any Claim that constitutes principal or interest on the Lessor Notes; and

(xi) any Claims arising with respect to the Equity Letter of Credit.

(c) *Claims Procedure.* Each Indemnitee shall promptly after such Indemnitee shall have Actual Knowledge of any Claim notify Homer City in writing of any such Claim as to which indemnification is sought; *provided*, that the failure to so notify Homer City shall not reduce or affect Homer City's liability which it may have to such Indemnitee under this *Section 10.1*. Any amount payable to any Indemnitee pursuant to this *Section 10.1* shall be paid within fifteen (15) days after receipt of such written demand therefor from such Indemnitee, accompanied by a certificate of such Indemnitee stating in reasonable detail the basis for the indemnification thereby sought and (if such Indemnitee is not a party hereto) an agreement to be bound by the terms hereof as if such Indemnitee were such a party. The foregoing shall not, however, constitute an obligation to disclose confidential information of any kind without the execution of an appropriate confidentiality agreement. Promptly after Homer City receives notification of such Claim accompanied by a written statement describing in reasonable detail the Claims which are the subject of and basis for such indemnity and the computation of the amount so payable, Homer City shall notify such Indemnitee in writing whether it intends to pay, object to, compromise or defend any matter involving the asserted liability of such Indemnitee. Homer City shall have the right to investigate and so long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing, Homer City shall have the right in its sole discretion, to defend or compromise any Claim for which indemnification is sought under this *Section 10.1* which Homer City acknowledges in writing to the applicable Indemnitee is subject to indemnification hereunder; *provided*, that no such defense or compromise shall involve any (i) material risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than a Permitted Lien) on the Facility, the Undivided Interest or the Facility Site or the impairment of the use, operation or maintenance of the Facility or the Facility Site in any material respect, (ii) risk of criminal liability being incurred by the Owner Lessor, the Owner Participant, or the Owner Manager or (so long as the Lessor Notes are outstanding) the Lease

Indenture Trustee and the Security Agent or any of their respective Affiliates, or (iii) material risk of any material adverse effect on the interests of the Owner Lessor, the Owner Participant, the Owner Manager or (so long as the Lessor Notes are outstanding) the Lease Indenture Trustee and the Security Agent or any of their respective Affiliates (including, without limitation, subjecting any such Person to regulation as a public utility under any applicable law); *provided, further,* that no Claim shall be compromised by Homer City on a basis that admits any criminal violation or gross negligence or willful misconduct on the part of such Indemnitee without the express written consent of such Indemnitee; and *provided, further,* that to the extent that other Claims unrelated to the transactions contemplated by the Operative Documents are part of the same proceeding involving such Claim, Homer City may assume responsibility for the contest or compromise of such Claim only if the same may be and is severed from such other Claims (and each Indemnitee agrees to use reasonable efforts to obtain such a severance). If Homer City elects, subject to the foregoing, to compromise or defend any such asserted liability, it may do so at its own expense and by counsel selected by it and reasonably satisfactory to such Indemnitee. Upon Homer City's election to compromise or defend such asserted liability and prompt notification to such Indemnitee of its intent to do so, such Indemnitee shall cooperate at Homer City's expense with all reasonable requests of Homer City in connection therewith to minimize the cost and expense to Homer City of such compromise or defense (*provided* that such Indemnitee shall not suffer any material economic, legal or regulatory disadvantage as a result of such cooperation) and will provide Homer City with all information not within the control of Homer City as is reasonably available to such Indemnitee which Homer City may reasonably request; *provided, further, however,* that such Indemnitee shall not, unless otherwise required by Requirement of Law, be obligated to disclose to Homer City or any other Person, or permit Homer City or any other Person to examine (i) any income tax returns of the Owner Participant or the Owner Lessor or (ii) any confidential information or pricing information not generally accessible by the public possessed by the Owner Participant or the Owner Lessor (and, in the event that any such information is made available, Homer City shall treat such information as confidential and shall take all actions reasonably requested by such Indemnitee for purposes of obtaining a stipulation from all parties to the related proceeding providing for the confidential treatment of such information from all such parties). Where Homer City, or the insurers under a policy of insurance maintained by Homer City, undertake the defense of such Indemnitee with respect to a Claim (with counsel reasonably satisfactory to each such Indemnitee and without reservation of rights against such Indemnitee), no additional legal fees or expenses of such Indemnitee in connection with the defense of such Claim shall be indemnified hereunder unless such fees or expenses were incurred at the request of Homer City or such insurers. Notwithstanding the foregoing, an Indemnitee may participate at its own expense in any judicial proceeding controlled by Homer City pursuant to the preceding provisions, but only to the extent that such party's participation does not in the reasonable opinion of counsel to Homer City interfere with such control;

provided, however, that such party's participation does not constitute a waiver of the indemnification provided in this *Section 10.1*; *provided, further,* that if and to the extent that (i) such Indemnitee is advised by counsel that an actual or potential conflict of interest exists where it is advisable for such Indemnitee to be represented by separate counsel or (ii) there is a risk that such Indemnitee may be indicted or otherwise charged in a criminal complaint and such Indemnitee informs Homer City that such Indemnitee desires to be represented by separate counsel, such Indemnitee shall have the right to control its own defense of such Claim and the reasonable fees and expenses of such defense (including, without limitation, the reasonable fees and expenses of such separate counsel) shall be borne by Homer City. So long as no Lease Event of Default shall have occurred and be continuing, no Indemnitee shall enter into any settlement or other compromise with respect to any Claim without the prior written consent of Homer City unless (i) the Indemnitee waives its rights to indemnification hereunder or (ii) Homer City has not acknowledged its indemnity obligation with respect thereto and there is a significant risk that a default judgment will be entered against such Indemnitee. Nothing contained in this *Section 10.1(c)* shall be deemed to require an Indemnitee to contest any Claim or to assume responsibility for or control of any judicial proceeding with respect thereto.

Section 10.2 General Tax Indemnity.

(a) *Indemnity.* Except as provided in paragraph (b), Homer City agrees to indemnify on an After-Tax Basis each of the Owner Participant, the OP Guarantor, the Owner Lessor, the OM Company in its individual capacity, the Owner Manager, the Lender, the Lease Indenture Trustee, the Lease Indenture Company in its individual capacity, the Security Agent, their respective successors, assigns, agents, employees, servants, directors and officers, the past and present partners or members of or holders of the ownership interests in, as the case may be, the Owner Participant and the Affiliates of each of the foregoing (each a "*Tax Indemnitee*") and to hold each Tax Indemnitee harmless from and to defend each Tax Indemnitee against all Taxes that are imposed upon any Tax Indemnitee, the Facility, the Facility Site, the Undivided Interest, the Ground Interest, or any portion or Component thereof or any interest therein, or upon any Operative Document or Project Document or any interest in any of the foregoing, arising out of, in connection with or relating to, any of the following:

(i) the construction, financing, refinancing, acquisition, operation, warranty, ownership, use, possession, maintenance, repair, lease, condition, alteration, modification, restoration, refurbishing, rebuilding, transport, assembly, repossession, dismantling, abandonment, retirement, decommissioning, storage, replacement, return, purchase, sale or other disposition, insuring, sublease, or other use or non-use of, imposition of any Lien (or occurrence of any liability to refund or pay over any amount as a result of any Lien) on, the Facility, Undivided Interest, Ground Interest or the Facility Site, or any portion or Component thereof or any interest therein;

(ii) the conduct of the business or affairs of Homer City, any Affiliate thereof, any holder of a partnership interest therein (but only prior to any foreclosure action undertaken with respect to such partnership interest pursuant to the Pledge and Collateral Agreement), or any other operator at or in connection with the Facility or the Facility Site;

(iii) the manufacture, design, purchase, acceptance, rejection, delivery or condition of, or improvement to, the Facility, the Undivided Interest, the Ground Interest, the Facility Site, or any portion or Component thereof, or any interest therein;

(iv) the Facility Lease, the Facility Site Lease, the Facility Site Sublease, any other Operative Document or any other documents contemplated thereby (including all Project Documents), including the execution or delivery thereof, or the performance, enforcement or amendment of any terms thereof;

(v) the payment or receipt of Basic Lease Rent, Renewal Rent, Supplemental Lease Rent or any other amount payable under the Facility Lease;

(vi) the conveyance of title to the Facility;

(vii) the existence or operation of any provision in the Existing Debt or the Lessor Notes, including any payments with respect thereto or any modification thereof;

(viii) any other amount paid or payable pursuant to the Operative Documents; or

(ix) otherwise relating to the transactions contemplated by the Operative Documents.

(b) *Excluded Taxes*. The indemnity provided for in paragraph (a) above shall not extend to any of the following Taxes (the "*Excluded Taxes*"):

(i) Taxes imposed by the United States federal government, or Taxes imposed on, based on or measured by gross or net income or receipts or capital or net worth (in each case, other than Taxes that are or are in the nature of sales, use, property, ad valorem, rental, stamp, transfer, excise, license, and value added taxes or Taxes collected by withholding against payments under the Existing Debt, the Lease Indenture or the Lessor Notes or Taxes arising out of, or in connection with or related to the matters described);

(ii) Taxes attributable to any period after expiration or other termination of the Facility Lease and, where required by the Facility Lease, return of the Facility to the Owner Lessor or its designee in accordance with the Facility Lease (or, in the case of the Lease Indenture Trustee and the Security Agent, after the repayment of the Lessor Notes) and not as a result of any act, event or omission occurring prior to or simultaneous with such expiration, termination or surrender (or in the case of the Noteholders, the Lease Indenture Trustee, the Security Agent, the Lease Indenture Company or any Related Party in respect of any thereof (each, a "Lender Indemnitee"), such repayment), provided that this exclusion shall not apply so long as a Lease Event of Default shall have occurred and be continuing;

(iii) Taxes imposed on a Tax Indemnitee attributable to the gross negligence or willful misconduct of such Tax Indemnitee or any Related Party of such Tax Indemnitee;

(iv) Taxes in the nature of capital gain, accumulated earnings, personal holding company, excess profits, succession or estate, minimum, alternative minimum, preference, franchise, conduct of business and other similar taxes (in each case, other than Taxes that are or are in the nature of sales, use, property, ad valorem, rental, stamp, transfer, excise, license, and value added taxes or Taxes collected by withholding against payments under the Lease Indenture or the Lessor Notes);

(v) Taxes imposed on a Tax Indemnitee that arise out of, or are caused by, any act or omission of such Tax Indemnitee (or any Related Party thereof) that is expressly prohibited by any Operative Document or by a breach by such Tax Indemnitee (or any Related Party thereof) of any of its representations, warranties or covenants under any Operative Document, except to the extent attributable to any acts or omissions of the Facility Lessee or any sublessee, transferee or assignee of the Facility Lessee;

(vi) Taxes arising out of, or caused by, any voluntary assignment, sale, transfer or other voluntary disposition, or any involuntary transfer or disposition resulting from a bankruptcy or similar proceeding for relief of debtors in which such Tax Indemnitee is a debtor, by (or a foreclosure by a creditor of) (A) the Owner Participant of any of its Lessor Membership Interest, (B) the Owner Lessor of all or any of its interest in the Facility or the Facility Site, or (C) the Security Agent of any interest in the Lessor Notes or the Indenture Estate unless (i) such transfer or disposition occurs during the continuance of a Lease Event of Default, or (ii) such transfer or disposition is required under, or occurs pursuant to, the Operative Documents and the price paid is other than Fair Market Sales Value;

(vii) in the case of a Tax Indemnitee that is the Owner Participant or a Related Party thereto, Taxes arising in connection with Owner Participant Liens or in the case of a Tax Indemnitee that is the Owner Lessor or a Related Party thereto, Taxes arising in connection with Owner Lessor Liens;

(viii) Taxes imposed on any assignee or successor-in-interest to a Tax Indemnitee to the extent any such Taxes exceed the Taxes that would have been imposed had no assignment or transfer taken place determined under the law as in effect on the date of transfer; provided that this exclusion shall not apply to the computation of the gross-up amounts necessary to make a payment on an

After-Tax Basis, nor to a transferee, assignee or successor in interest that acquires the interest of a Tax Indemnitee pursuant to an assignment, transfer or disposition during the continuance of a Material Lease Default or Lease Event of Default;

(ix) Taxes that are properly included as a part of Transaction Expenses;

(x) Taxes imposed on, based on, or measured by any compensation that any Owner Manager, the Security Agent or the Lease Indenture Trustee receives for its services;

(xi) any U.S. federal income taxes, including with respect to the Owner Participant, U.S. federal income taxes for which Homer City is obligated to indemnify the Owner Participant under the Tax Indemnity Agreement (or which are expressly excluded from indemnification thereunder);

(xii) other than with respect to a Lender Indemnitee, Taxes resulting from the Owner Lessor not being treated as a grantor trust, a nonentity or a pass-through or disregarded entity for federal, state or local income tax purposes;

(xiii) Taxes attributable to the failure of any Tax Indemnitee to comply with certification, information, documentation, reporting or other similar requirements concerning the nationality, residence, identity, connection with the jurisdiction imposing such Taxes or other similar matters; provided that the foregoing exclusion shall only apply if such Tax Indemnitee is eligible and obligated under applicable law or the Operative Documents to comply with such requirement and shall have been given timely written notice of such requirement by or on behalf of Homer City;

(xiv) Taxes imposed on a Tax Indemnitee where the Tax Indemnitee's breach of its contest obligations under *Section 10.2(g)* effectively precludes Homer City's ability to contest the Taxes;

(xv) Taxes imposed on any Tax Indemnitee resulting from an amendment, modification, supplement or waiver to any Operative Document which was not requested by Homer City and as to which Homer City is not a party and the Tax Indemnitee (or, in the case of the Owner Participant, the Owner Lessor if acting at the express direction of the Owner Participant) is a party unless such amendment, modification, supplement or waiver (A) was required by applicable law or the Operative Documents, (B) may be necessary or appropriate to, and is in conformity with, any amendment, modification, supplement or waiver to any Operative Document agreed to or requested by Homer City in writing, or (C) is made while a Lease Event of Default shall have occurred and be continuing;

(xvi) Taxes imposed under Section 4975 of the Code, Section 406 of ERISA or any comparable laws of any governmental authority resulting from any breach of any of the representations or warranties of such Tax Indemnitee set forth in *Section 3.4(g)* hereof;

(xvii) Taxes imposed to the extent such Taxes result from the Tax Indemnitee (and in the case of the Owner Lessor, only if acting at the written direction of the Owner Participant) being organized under the laws of a jurisdiction other than the United States or any State thereof (other than, in the case of a Lender Indemnitee, such Taxes which did not exist under law in effect on the date such Lender Indemnitee became a party to this transaction);

(xviii) Any Taxes (other than Taxes that are or are in the nature of sales, use, property, ad valorem, rental, stamp, transfer, excise, license and value added taxes or Taxes collected by withholding against payments under the Lease Indenture or the Lessor Notes) imposed on a Tax Indemnitee to the extent that such taxes would not have been imposed but for the activities of such Tax Indemnitee unrelated to the transactions contemplated hereby;

(xix) Taxes imposed on a Tax Indemnitee in the nature of interest, penalties, fines and additions to tax (i) payable as a result of such Tax Indemnitee's failure to file, in a procedurally proper manner and on a timely basis, any tax reports, returns or statements as

to which Homer City has timely notified such Tax Indemnitee in writing of the requirement to file, unless such failure is otherwise caused by the failure of Homer City to fulfill its obligations, if any, with respect to such return (including provision of information sufficient to enable such Tax Indemnitee to file such report, return or statement), or (ii) to the extent not attributable to or resulting from Taxes for which an indemnity is provided hereunder; and

(xx) Taxes for as long as such Taxes are being contested pursuant to the contest provisions contained in *Section 10.2(g)* (subject to the Tax Indemnitee's right to obtain a Tax Advance pursuant to *Section 10.2(g)(iii)(5)*).

(c) *Payment.* Each payment required to be made by Homer City to a Tax Indemnitee pursuant to this *Section 10.2* shall be paid either (i) when due directly to the applicable taxing authority by Homer City if it is permitted to do so, or (ii) where direct payment is not permitted and with respect to gross up amounts in immediately available funds to such Tax Indemnitee by the latest of (A) 15 days following Homer City's receipt of the Tax Indemnitee's written demand for the payment (which demand shall be accompanied by a statement of the Tax Indemnitee describing in reasonable detail the Taxes for which the Tax Indemnitee is demanding indemnity and the computation of such Taxes), (B) in the case of amounts which are being contested pursuant to such paragraph (g), 15 days following the time and in accordance with a final determination of such contest or (C) in the case of any indemnity demand for which Homer City has requested review and determination pursuant to paragraph (d) below, the completion of such review and determination, but in no event later than the date which is three Business Days prior to the date payment of such Taxes is due. Any amount payable to Homer City pursuant to paragraph (e) or (f) below shall be paid within 15 days after the Tax Indemnitee realizes a Tax Benefit giving rise to a payment under paragraph (e) or receives a refund or credit giving rise to a payment under paragraph (f), as the case may be, and shall be accompanied by a statement of the Tax Indemnitee computing in reasonable detail the amount of such payment. Upon the final determination of any contest pursuant to paragraph (g) below in respect of any Taxes for which Homer City has made a Tax Advance, the amount of Homer City's obligation under paragraph (a) above shall be determined as if such Tax Advance had not been made. Any obligation of Homer City under this *Section 10.2* and the Tax Indemnitee's obligation to repay the Tax Advance will be satisfied first by set off against each other, and any difference owing by either party will be paid within 10 days of such final determination. All payments required to be made by Homer City pursuant to this *Section 10.2* shall be made on an After-Tax Basis.

(d) *Independent Examination.* Within 15 days after Homer City receives any computation from the Tax Indemnitee, Homer City may request in writing that an independent public accounting firm selected by the Tax Indemnitee and reasonably acceptable to Homer City review and determine on a confidential basis the amount of any indemnity payment by Homer City to the Tax Indemnitee pursuant to this *Section 10.2* or any payment by a Tax Indemnitee to Homer City pursuant to paragraph (e) or (f) below. The Tax Indemnitee and Homer City shall cooperate with such accounting firm and supply it with all information reasonably necessary for the accounting firm to conduct such review and determination, *provided* that such accounting firm shall agree in writing in a manner satisfactory to the Tax Indemnitee, or Homer City, as the case may be, to maintain the confidentiality of such information, and *provided further* that neither any Tax Indemnitee nor Homer City shall be required to disclose any of its tax returns or books that such Tax Indemnitee or Homer City, as the case may be, reasonably deems to be confidential in connection with such verification, and the parties hereto agree that such Tax Indemnitee, or Homer City, as the case may be, shall have sole control over the positions taken with respect to such party's tax returns and filings. The fees and disbursements of such accounting firm will be paid by Homer City; *provided* that such fees and disbursements will be paid by the Tax Indemnitee if the accountants determine that the present value of the total payments as calculated by the Tax Indemnitee is more than 105 percent of the present value of the correct payments (such present values in each case to be determined by the Discount Rate). In the event such accounting firm determines that such computations are incorrect, then such firm shall determine what it believes to be the correct computations. The computations of the accounting firm shall be final, binding and conclusive upon Homer City and the Tax Indemnitee. The parties hereto agree that the independent public accounting firm's sole responsibility shall be to verify the computation of any payment pursuant to this *Section 10.2* and that matters of interpretation of this Participation Agreement or any other

Operative Document are not within the scope of the independent accountant's responsibility. Such accounting firm shall be requested to make its determination within 30 days.

(e) *Tax Benefit.* If, as the result of any Taxes paid or indemnified against by Homer City under this *Section 10.2*, the aggregate Taxes actually paid by the Tax Indemnitee in connection with such payment for any taxable year and not subject to indemnification pursuant to this *Section 10.2* are less (whether by reason of a deduction, credit, allocation or apportionment of income or otherwise) than the amount of such Taxes that otherwise would have been payable by such Tax Indemnitee (a "*Tax Benefit*"); then to the extent such Tax Benefit was not taken into account in determining the amount of indemnification payable by Homer City under paragraph (a) above and provided no Material Lease Default or Lease Event of Default shall have occurred and be continuing (in which event the payment provided under this *Section 10.2(e)* shall be deferred until the Material Lease Default or Lease Event of Default has been cured), such Tax Indemnitee shall pay to Homer City the lesser of (A) (y) the amount of such Tax Benefit, plus (z) an amount equal to any United States federal, state or local income tax benefit resulting to the Tax Indemnitee from the payment under clause (y) above and this clause (z) (determined using the same assumptions as set forth in the second sentence under the definition of After-Tax Basis) and (B) the amount of the indemnity paid pursuant to this *Section 10.2* giving rise to such Tax Benefit, *provided* that any excess of the amount described in clause (A) over the amount described in clause (B) shall be carried forward and applied to reduce pro tanto any subsequent obligations of Homer City to make payment to such Tax Indemnitee pursuant to this *Section 10.2*. If it is subsequently determined that the Tax Indemnitee was not entitled to such Tax Benefit, the portion of such Tax Benefit that is required to be repaid or recaptured will be treated as Taxes for which Homer City must indemnify the Tax Indemnitee pursuant to this *Section 10.2* without regard to paragraph (b) hereof.

(f) *Refund.* If a Tax Indemnitee obtains a refund or credit or would have received such refund or credit but for a counterclaim or other claim not indemnified by Homer City hereunder against which such refund or credit has not been applied (an "offset refund or credit") of all or part of any Taxes paid, reimbursed or advanced by Homer City pursuant to this *Section 10.2*, the Tax Indemnitee shall pay to Homer City within 15 days of such receipt, or in the case of an offset refund or credit, within 15 days of the applicable event (x) the amount of such refund or credit (net of any Tax payable by the Tax Indemnitee as a result of the receipt or accrual of such refund or credit) plus (y) an amount equal to any Tax Benefit realized by such Tax Indemnitee by reason of such payment to Homer City (determined using the same assumptions as set forth in the second sentence under the definition of After-Tax Basis), *provided* that (A) if at the time such payment is due to Homer City a Material Lease Default or Lease Event of Default shall have occurred and be continuing, such amount shall not be payable until such Material Lease Default or Lease Event of Default has been cured, and (B) the amount payable to Homer City pursuant to this sentence shall not exceed the amount of the indemnity payment in respect of such refunded or credited Taxes that was made by Homer City (and such excess shall be carried forward and applied to reduce pro tanto any subsequent obligations of Homer City to make payments to such Tax Indemnitee pursuant to this *Section 10.2*). If it is subsequently determined that the Tax Indemnitee was not entitled to such refund or credit, the portion of such refund or credit that is required to be repaid or recaptured will be treated as Taxes for which Homer City must indemnify the Tax Indemnitee pursuant to this *Section 10.2* without regard to paragraph (b) hereof. If, in connection with a refund or credit of all or part of any Taxes paid, reimbursed or advanced by Homer City pursuant to this *Section 10.2*, a Tax Indemnitee receives an amount representing interest on such refund or credit, the Tax Indemnitee shall pay to Homer City within 15 days (1) the amount of such interest that shall be fairly attributable to such Taxes paid, reimbursed or advanced by Homer City prior to the receipt of such refund or credit (net of Taxes payable in respect of the receipt or accrual of such interest) and (2) any Tax savings resulting from payments made by the Tax Indemnitee pursuant to this sentence (determined using the assumptions set forth in the second sentence of the definition of After-Tax Basis).

(g) *Contest*.

(i) Notice of Contest. If a written claim is made by any taxing authority against a Tax Indemnitee for any Taxes with respect to which Homer City may be required to indemnify against hereunder (a "*Tax Claim*"), such Tax Indemnitee shall give Homer City written notice of such Tax Claim promptly after its receipt, and shall furnish Homer City with copies of such Tax Claim and all other writings received from the taxing authority to the extent relating to such claim, provided that failure so to notify Homer City shall not relieve Homer City of any obligation to indemnify the Tax Indemnitee hereunder except to the extent such failure effectively precludes Homer City from contesting such Tax. The Tax Indemnitee shall not pay such Tax Claim until at least 30 days

after providing Homer City with such written notice, unless (a) the Tax Indemnitee is required to do so by law or regulation and (b) in the written notice described above, the Tax Indemnitee has notified Homer City of such requirement.

(ii) Control of Contest. Subject to subsection (g)(iii) below, Homer City will be entitled to contest (acting through counsel selected by Homer City and reasonably satisfactory to the Tax Indemnitee), and control the contest of, any Tax Claim if (i) such Tax Claim may be segregated procedurally and contested independently from tax claims for which Homer City is not obligated to indemnify the Tax Indemnitee, provided that if the Tax Indemnitee in its sole discretion determines at any time that permitting Homer City to conduct or continue to conduct such contest could have an adverse business effect or other consequences to such Tax Indemnitee, such Tax Indemnitee shall have the right to control or reassert control over such contest, or (ii) the Tax Indemnitee requests that Homer City control such contest; provided that in the case of any such contest pursuant to (i) or (ii) Homer City shall use all reasonable efforts to contest such Tax Claim in its own name, and provided further that such contest shall be at Homer City's sole cost and expense with no after tax cost to the Tax Indemnitee. Homer City shall consult in good faith with and keep reasonably informed the Tax Indemnitee and its counsel and shall provide the Tax Indemnitee with copies of any reports or claims issued by the relevant auditing agent or taxing authority, but the decisions regarding what actions to be taken shall be made by Homer City in its sole judgment.

(iii) In the case of all other Tax Claims, the Tax Indemnitee will contest the Tax Claim at Homer City's expense if Homer City shall request that the Tax be contested (in accordance with subsection (g)(iii) below), and the following rules shall apply with respect to such contest:

(A) the Tax Indemnitee will control the contest of such Tax Claim, and all decisions with respect to such contest shall be made in its sole judgment exercised in good faith (acting through counsel selected by the Tax Indemnitee and reasonably satisfactory to Homer City),

(B) at Homer City's written request, if payment is made to the applicable taxing authority, the Tax Indemnitee shall use all reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings,

(C) the Tax Indemnitee conducting such contest shall consult with and keep reasonably informed Homer City and its designated counsel with respect to such Tax Claim and shall consider and consult in good faith with Homer City regarding any request (a) to resist payment of Taxes if practical and (b) not to pay such Taxes except under protest if protest is necessary and proper, but the decision regarding what actions to be taken shall be made by the Tax Indemnitee in its sole judgment.

(D) Notwithstanding paragraph (C), above, the Tax Indemnitee shall not otherwise settle, compromise or abandon such contest without Homer City's prior written consent except as provided in paragraph (g)(iv) below.

(iv) *Conditions of Contest*. Notwithstanding the foregoing, no contest with respect to a Tax Claim will be required or permitted pursuant to this *Section 10.2*, and Homer City shall be required to pay the applicable Taxes without contest, unless:

(A) within 30 days after notice by the Tax Indemnitee to Homer City of such Tax Claim, Homer City shall request in writing to the Tax Indemnitee that such Tax Claim be contested, *provided* that if a shorter period is required for taking action with respect to such Tax Claim and the Tax Indemnitee notifies Homer City of such requirement, Homer City shall request such contest within a reasonable time period (taking into account the time required to take action) after its receipt of notice within such shorter period, and such Tax Indemnitee shall take no action for as long as it is legally able to do so,

(B) no Lease Event of Default has occurred and is continuing,

(C) there is no risk of sale, forfeiture or loss of, or the creation of a Lien (other than a Permitted Lien) on the Facility, Owner Lessor's or Owner Participant's interest in the Facility, the Facility Site, the Undivided Interest, the Ground Interest or any portion or Component thereof or any interest therein as a result of such Tax Claim; *provided* that this clause (C) shall not apply if Homer City shall have posted and maintained a bond or otherwise provided security for Homer City's obligations under *Section 10.2*, in each case satisfactory to the Tax Indemnitee as to coverage and credit, or the Tax is fully paid in either manner specified in clause (E) below,

(D) there is no risk of imposition of any criminal liability or penalties,

(E) if such contest involves payment of such Tax, Homer City will either advance to the Tax Indemnitee on an interest-free basis and with no after-tax cost to such Tax Indemnitee (a "*Tax Advance*") or pay such Tax Indemnitee the amount payable by Homer City pursuant to *Section 10.2(a)* above with respect to such Tax, and such Tax Indemnitee shall promptly pay to Homer City any net Tax Benefit recognized which results from any imputed interest deduction arising from such interest free Tax Advance plus any net Tax Benefit recognized which results from making any such payment (determined using the assumptions set forth in the second sentence of the definition of After-Tax Basis).

(F) Homer City agrees to pay (and pays on demand) and with no after-tax cost to such Tax Indemnitee all reasonable costs, losses and expenses incurred by the Tax Indemnitee in connection with the contest of such claim (including, without limitation, all reasonable legal, accounting and investigatory fees and disbursements),

(G) the Tax Indemnitee has been provided at Homer City's sole expense with an opinion, reasonably acceptable to such Tax Indemnitee, of independent tax counsel of recognized standing selected by Homer City and reasonably acceptable to the Tax Indemnitee to the effect that there is a Reasonable Basis for contesting such Tax Claim; *provided* that if the subject matter of the contest shall have previously been decided by a court of competent jurisdiction pursuant to the contest provisions of this *Section 10.2(g)*, such opinion shall be that as a result of a change in law or fact, it is more likely than not that the Tax Indemnitee will prevail,

(H) in the case of a judicial appeal, no appeal to the U.S. Supreme Court shall be required of the Tax Indemnitee or shall be permitted by Homer City.

(I) In the case of a judicial contest, Homer City shall have delivered to the Tax Indemnitee a written acknowledgment of its liability under this *Section 10.2* for such Taxes, *provided, however*, that Homer City shall not be bound by its acknowledgment of liability if the contest is resolved on the basis of a written decision of the adjudicator that clearly indicates

the basis for the conclusion that Homer City has no liability under this *Section 10.2* with respect to such Tax, unless Homer City's conduct of the contest has materially prejudiced the Tax Indemnitee.

(v) *Waiver of Indemnification.* Notwithstanding anything to the contrary contained in this *Section 10.2*, the Tax Indemnitee at any time may elect to decline to take any action or any further action with respect to a Tax Claim and may in its sole discretion settle or compromise any contest with respect to such Tax Claim without Homer City's consent if the Tax Indemnitee:

(A) waives its right to any indemnity payment by Homer City pursuant to this *Section 10.2* in respect of such Tax Claim (and any other claim for Taxes with respect to any other taxable year the contest of which is effectively precluded by the Tax Indemnitee's declination to take action with respect to the Tax Claim), and

(B) promptly repays to Homer City any Tax Advance and any amount paid to such Tax Indemnitee under *Section 10.2(a)* above in respect of such Taxes.

Except as provided in the preceding sentence, any such waiver shall be without prejudice to the rights of the Tax Indemnitee with respect to any other Tax Claim.

(h) Reports.

(i) If any report, statement or return is required to be filed by a Tax Indemnitee with respect to any Tax that is subject to indemnification under this *Section 10.2*, Homer City will (1) notify the Tax Indemnitee in writing of such requirement not later than 30 days prior to the date such report, statement or return is required to be filed (determined without regard to extensions) and (2) either (x) if permitted by applicable law, prepare such report, statement or return for filing by Homer City in such manner as will show the ownership of the Facility by the Owner Lessor for United States federal, state and local income tax purposes (if applicable), send a copy of such report, statement or return to the Tax Indemnitee and timely file such report, statement or return with the appropriate taxing authority, (y) if so directed by the Tax Indemnitee or in any event if practicable and if the return to be filed reflects only information in respect of the transactions contemplated by the Operative Documents, prepare and furnish to such Tax Indemnitee not later than 30 days prior to the date such report, statement or return is required to be filed (determined without regard to extensions) a proposed form of such report, statement or return for filing by the Tax Indemnitee, or (z) if Homer City is not permitted by law to file such report, statement or return or if such return does not reflect only information in respect of the transactions contemplated by the Operative Documents, provide the Tax Indemnitee with the information in respect of the transactions contemplated by the Operative Documents that is within Homer City's control and is necessary to file such report, statement or return.

(i) Each of the Tax Indemnitee or Homer City, as the case may be, will timely provide the other, at Homer City's expense, with all information in its possession that the other party may reasonably require and request to satisfy its obligations under this paragraph (h), but only if and to the extent that such Tax Indemnitee is legally entitled to furnish such information. Homer City will hold each Tax Indemnitee harmless on an After-Tax Basis from and against all liabilities arising out of any insufficiency or inaccuracy of any report, statement or return if such insufficiency or inaccuracy results from the insufficiency or inaccuracy of any information supplied by Homer City pursuant to this paragraph (h) in preparing and filing such report, statement or return.

(j) Non-Parties. If a Tax Indemnitee is not a party to this Agreement, Homer City may require such Tax Indemnitee to agree in writing, in a form reasonably acceptable to Homer City, to the terms of this *Section 10* (to the extent applicable to such Tax Indemnitee) prior to making any payment to such Tax Indemnitee under this Section.

ARTICLE XI

HOMER CITY'S RIGHT OF QUIET ENJOYMENT

Each party to this Agreement acknowledges notice of, and consents in all respects to, the terms of the Facility Lease and the Facility Site Sublease and expressly, severally and as to its own actions only, agrees that, so long as no Lease Event of Default has occurred and is continuing, neither it nor any party acting by, through or under such party shall take or cause to be taken any action contrary to Homer City's rights under the Facility Lease and the Facility Site Sublease, including the quiet enjoyment of the use, operation or possession of the Undivided Interest and the Ground Interest.

ARTICLE XII

SUPPLEMENTAL FINANCING OF IMPROVEMENTS; OPTIONAL REFINANCINGS

Section 12.1 Financing Improvements.

(a) Upon the written request of Homer City delivered at least 90 days prior to any proposed financing of the cost of any Required or Non-Severable Improvement, the Owner Lessor and the Lease Indenture Trustee agree to cooperate with Homer City to (i) issue Additional Lessor Notes to finance such Improvement, which Additional Lessor Notes shall rank *pari passu* with the Lessor Notes then outstanding; (ii) execute and deliver one or more supplements to the Lease Indenture for the purpose of subjecting any such Improvements to the Security Interest; and (iii) execute and deliver an amendment to the Facility Lease to reflect the adjustments required by subclause (iii) below; *provided however,* that (x) the Owner Participant shall have been given the opportunity, but shall have no obligation, to provide all or part of the funds required to finance the Owner Lessor's Percentage of any such Improvement by making an Additional Equity Investment in such amount, if any, as it may determine in its sole and absolute discretion, but Homer City shall have no obligation to accept such Additional Equity Investment; and (y) the conditions set forth below and in Section 2.6 of the Lease Indenture shall have been satisfied. The obligation to finance such Improvements through the issuance of Additional Lessor Notes under Section 2.6 of the Lease Indenture (any financing of Improvements through the issuance of such Additional Lessor Notes under the Lease Indenture being called a "*Supplemental Financing*") is subject to the following conditions:

(i) there shall be no more than one such financing in any calendar year; provided, that there shall be no such limitation with respect to Required Improvements;

(ii) the Additional Lessor Notes (x) shall have a final maturity date no later than two (2) years prior to the last day of the Basic Lease Term; (y) will be fully repaid out of additional Basic Lease Rent as adjusted pursuant to the Facility Lease; and (z) shall be subject to such terms and conditions as are customary for indebtedness issued in connection with leveraged lease transactions;

(iii) appropriate adjustments to Basic Lease Rent and Termination Value (determined without regard to any tax benefits associated with such Improvements, unless the Owner Participant is making an Additional Equity Investment) shall be made to protect the Owner Participant's Net Economic Return; provided, however, that there shall be no changes to the amortization schedule or interest amounts and payment dates on the Initial Lessor Notes;

(iv) Homer City shall have paid, on an After-Tax Basis, all reasonable costs and expenses of the Lease Transaction Parties, including the reasonable fees and expenses of counsel to the Owner Participant, the Owner Lessor, the Owner Manager, the Security Agent and the Lease Indenture Trustee, in each case to the extent incurred in connection with such Supplemental Financing;

(v) no Material Lease Default or Lease Event of Default shall have occurred and be continuing unless the Improvements to be made with the proceeds of Additional Lessor Notes

shall cure such Material Lease Default or Lease Event of Default, and such Improvements shall be made in compliance with the Operative Documents;

(vi) such financing is for an amount not less than $5 million, nor greater than 100% of the costs of the Improvements being financed; provided that the aggregate principal amount of the Additional Lessor Notes shall not exceed the Owner Lessor's Percentage of $300,000,000;

(vii) the Owner Participant shall have received (x) an opinion reasonably satisfactory to it from Owner Participant's Counsel to the effect that such financing should not result in any incremental risk of material adverse federal income tax consequences to the Owner Participant, and (y) an indemnity against such risk in form and substance reasonably satisfactory to the Owner Participant from or guaranteed by an entity that meets the Minimum Credit Rating (or, if the Minimum Credit Rating requirement is not met, the Owner Participant shall have received credit support in respect of such indemnity reasonably satisfactory to the Owner Participant); provided that if the opinion referred to in clause (x) shall be that such financing "will" not result in any incremental risk of material adverse federal income tax consequences to the Owner Participant, then the Minimum Credit Rating requirement shall not be required with respect to the indemnity set forth in clause (y);

(viii) Homer City shall have made or delivered such representations, warranties, covenants, opinions or certificates as the Owner Participant may reasonably request;

(ix) the Owner Participant shall not suffer any material adverse accounting effect under GAAP as a result of such financing;

(x) the projected Basic Lease Rent Service Coverage Ratio shall be at least 1.5 to 1.0 and the average Basic Lease Rent Service Coverage Ratio shall be at least 1.75 to 1.0, calculated at the time of issuance of such Additional Lessor Notes, and determined according to the lesser of (a) such ratios as set forth in an Officer's Certificate of the Facility Lessee, and (b) such ratios calculated in accordance with MAPS and the then Base Case assumptions; and

(xi) Homer City shall have received, and shall have provided to the Owner Participant, written confirmation from the Rating Agencies that the then-current ratings of the Fundco Bonds will not be reduced as a result of such financing.

The Facility Lessee shall cause the Power Market Consultant to provide to the Facility Lessee updated electricity price projections for purposes of allowing the Facility Lessee to provide its certification specified subsection (x)(a) above.

Notwithstanding the provisions of paragraph (a) of this *Section 12.1*, with respect to the financing of Improvements through the Facility Lease, Homer City shall, subject to *Section 6.7* hereof, at all times have the right to fund Improvements to the Facility other than through the Facility Lease.

Section 12.2 Optional Refinancing of Lessor Loan. Homer City will have the right, exercisable on no more than three occasions, for as long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing, to request that the Owner Lessor refund or refinance all but not less than all of the Lessor Notes outstanding through the issuance of New Lessor Notes either in the public or private market to any Person that is not Homer City or any Affiliate of Homer City; *provided* that any refinancing under this *Section 12.2* shall also be subject to satisfaction of the following additional conditions (and the Lender agrees not to consent to any such refinancing except on the terms and conditions set forth below):

(a) the New Lessor Notes can be issued and sold upon terms and conditions substantially the same terms as those then existing, or on such modified terms and conditions which shall be reasonably acceptable to the Owner Participant, and in an amount adequate (but not in excess of an amount

necessary) to accomplish such refunding or refinancing, *provided* that such proceeds are used to repay the holders of the existing indebtedness simultaneously with the issuance of the New Lessor Notes;

(b) the Owner Participant shall have received (i) an opinion reasonably satisfactory to it from Owner Participant's Counsel to the effect that the refinancing should not result in any incremental risk of material adverse federal income tax consequences to the Owner Participant, and (ii) an indemnity against such risk in form and in substance reasonably satisfactory to the Owner Participant from or guaranteed by an entity that meets the Minimum Credit Rating (or, if the Minimum Credit Rating is not met, the Owner Participant shall have received credit support in respect of such indemnity reasonably satisfactory to the Owner Participant); *provided* that if the opinion referred to in clause (i) shall be that the refinancing "will" not result in any incremental risk of material adverse federal income tax consequences to the Owner Participant, then the Minimum Credit Rating requirement shall not be required with respect to the indemnity set forth in clause (ii);

(c) the refinancing, taken as a whole, shall not result in any other material adverse effect on the Owner Lessor or the Owner Participant;

(d) all documentation in connection with such refinancing shall be reasonably satisfactory to the Owner Lessor, the Owner Participant, and the conditions set forth therein shall be met;

(e) all necessary authorizations, approvals and consents in connection with such refinancing shall have been obtained from each Person whose authorization, approval or consent is necessary to consummate such refinancing with respect to the Facility Lessee, the Owner Lessor, the Owner Participant, the Lender, the Security Agent and the Lease Indenture Trustee and such authorizations, approvals and consents shall be in full force and effect on the closing date of such refinancing;

(f) the New Lessor Notes shall have the same principal amount and maturity date as the Lessor Notes issued on the Closing Date and will be fully repaid out of Basic Lease Rent during the Basic Lease Term;

(g) there shall be no change to the amortization schedule or the payment dates for principal and interest payments (including increases in payments of Debt Service) from the amortization schedule and payment dates with respect to the Initial Lessor Notes;

(h) on the closing date of such refinancing, each of the Facility Lessee, the Owner Lessor, the Lender, the Security Agent and the Lease Indenture Trustee shall have executed and delivered all appropriate supplements to the Operative Documents that are necessary to consummate such refinancing, in form and substance reasonably satisfactory to the Owner Lessor, the Lender, the Security Agent and the Lease Indenture Trustee;

(i) each of the Owner Lessor, the Owner Participant, the Lender, the Security Agent and the Lease Indenture Trustee shall have received an opinion of counsel for Homer City on such matters as they may reasonably request and in form and substance reasonably satisfactory to such Persons;

(j) Homer City shall have delivered such certificates, reports and other documents and shall have taken all other actions which are required to be delivered or taken by the Facility Lessee pursuant to *Section 2.6* of the Lease Indenture;

(k) each of the Owner Lessor, the Owner Participant, the Lender, the Security Agent and the Lease Indenture Trustee have received from the Facility Lessee an Officer's Certificate dated the date of the issuance of the New Lessor Notes stating that all conditions precedent to the issuance of such New Lessor Notes have been satisfied or waived;

(l) the consummation of such refinancing shall not violate any Requirement of Law;

(m) no Material Lease Default or Lease Event of Default shall have occurred and be continuing;

(n) the Owner Participant shall suffer no adverse accounting effects under GAAP;

(o) Homer City shall have made or delivered representations, warranties, covenants and certificates, of no greater scope than required on the Closing Date except to the extent necessitated by differences between the existing documentation and the terms and conditions of the proposed refinancing, as the Owner Participant may reasonably request;

(p) the Owner Participant shall receive a fee equal to the Owner Lessor's percentage of $100,000 for each refinancing after the first such refinancing; and

(q) such refinanced Lessor Notes shall be subject to such terms and conditions as are customary for indebtedness issued in connection with leveraged lease transactions.

Section 12.3 Owner Lessor's Right to Redeem Lessor Notes. The Owner Lessor may, at its option, (a) with the consent of Homer City, redeem any Initial Lessor Note, or any Subsequent Lessor Note, in whole or in part, in accordance with the provisions of *Article IV* of the Lease Indenture, and (b) without the consent of Homer City, redeem any Lessor Notes in accordance with *Section 7.1(c)* hereof.

Section 12.4 Cooperation. The Owner Participant will cooperate with and reasonably assist Homer City in connection with any refinancing and/or assumption of the Lessor Notes, so long as such refinancing is in accordance with the terms of the Operative Documents. The Owner Participant will execute such agreements and documents as may be necessary with respect to any such refinancing and will instruct the Owner Lessor to act accordingly. Nothing contained in this *Section 12* shall limit Homer City's right to request a refinancing in accordance with *Section 12.2*, above. In connection with any such refinancing, the parties shall comply with the rent adjustment provisions set forth in *Section 3* of the Facility Lease.

ARTICLE XIII

RIGHT OF FIRST OFFER TO THE OWNER PARTICIPANT

Section 13.1 Right of First Offer. In the event the Facility Lessee desires to directly or indirectly (i) consolidate or merge, with or into any other Person or sell, lease, convey or otherwise transfer some or all of its properties or assets pursuant to *Section 6.1* hereof or (ii) assign its interest in the Facility Lease pursuant to *Section 22.4* of the Facility Lease (the "*Facility Lease Interest*"), then, if and only if as a result of such proposed assignment, sale or sales less than 50.1% of the ownership interests in the Facility Lease Interest or the Facility Lessee would be held beneficially by EME or Persons who are Affiliates of EME, then the Facility Lessee must first offer to sell, subject to the proviso contained in Section 16(m) of the Facility Lease, the Owner Lessor's Percentage of the ownership interest being so transferred pursuant to clause (i) above or such Facility Lease Interest (together, the "*HC Facility Interest*") to the Owner Participant on the terms and conditions set forth in this *Section 13.1*. Such offer shall be made to the Owner Participant in the form of a proposed term sheet, which proposed term sheet shall include an outline of the price and of all of the material terms, conditions and provisions upon which the Facility Lessee would be willing to transfer such HC Facility Interest or any part thereof. The Owner Participant will thereafter have the right within a period of thirty (30) days from and after the receipt by the Owner Participant of such proposed term sheet to notify the Facility Lessee of its irrevocable intent to exercise its right (whether directly or through an Affiliate) to purchase all, but not less than all, of the HC Facility Interest being offered hereunder. If the Owner Participant elects to exercise the right provided in the preceding sentence, it shall within sixty (60) days of such notice purchase, and the Facility Lessee shall sell (subject to the proviso contained in Section 16(m) of the Facility Lease), the HC Facility Interest on the same terms and conditions as the offer giving rise to such right. If the Owner Participant does not give such notice to the Facility Lessee within the thirty (30) day period or does not purchase the HC Facility Interest within sixty (60) days of such notice, the

Facility Lessee will be free to so merge, consolidate, sell, lease, convey or otherwise transfer such HC Facility Interest or a portion thereof, at a price no less than the price set forth in the proposed term sheet and on terms and conditions, taken as a whole, that, other than in an immaterial respect, are no less favorable to the Facility Lessee than the terms and conditions set forth in the proposed term sheet. In the event that the terms or conditions are revised in any way that the price is reduced or any of the other terms and conditions thereof, taken as a whole, change the agreement for sale, lease, conveyance or transfer such that the terms and conditions of any such subsequent transaction are less favorable, other than in an immaterial respect, to the Facility Lessee, the Facility Lessee must again comply with the notice and acceptance provisions of this *Section 13.1*. Notwithstanding the foregoing, if the Facility Lessee offers to sell its HC Facility Interest pursuant to this *Section 13.1*, then the Owner Participant shall exercise its purchase rights under this *Section 13.1* only if, concurrently therewith, the HC Facility Interest and the analogous interests defined as the "HC Facility Interest" under each of the Other Participation Agreements are purchased by the Owner Participant or some or all of the Other Owner Participants (*provided that*, in the event the Owner Participant elects to acquire such interest and one or more Other Owner Participants do not elect to acquire the interest offered to them, the Facility Lessee agrees to offer to the Owner Participant (and the Other Owner Participants so electing on a pro rata basis) such interests on the same terms as provided therein (in order to allow the Owner Participant and the Other Owner Participants so electing the opportunity to acquire 100% of the Facility Lessee's interests)); *provided however,* that nothing in this *Section 13.1* shall be deemed to require the Facility Lessee to take any action that might result in an Event of Default under the Facility Leases or to derogate from the rights of the Fundco Bondholders under the Amended and Restated Indenture.

ARTICLE XIV

RIGHT OF FIRST REFUSAL; RIGHT OF FIRST OFFER

Section 14.1 Right of First Offer. In the event (i) the Owner Participant desires to directly or indirectly sell, lease, convey or otherwise transfer some or all of its Lessor Membership Interest (other than to an Affiliate of the Owner Participant or while a Lease Event of Default is continuing) or (ii) the Owner Lessor desires (or the Owner Participant desires to cause Owner Lessor) directly or indirectly to sell, lease, convey or otherwise transfer some or all of the Owner Lessor's Interest, in each case prior to the expiration of the Facility Lease Term then, if and only if as a result of such proposed sale or sales less than 50.1% of (i) the ownership interests of the Owner Lessor and each Other Owner Lessor (together, the "*Total Owner Lessor Interests*") or (ii) the Owner Lessor's Interest and the Other Owner Lessor's Interests (together, the "*Total Facility Ownership Interests*") would be held by GECC or Persons who are Affiliates of GECC, then the Owner Participant or the Owner Lessor, as the case may be, must first offer to sell such Lessor Membership Interest or such Owner Lessor's Interest, as the case may be, to Homer City on the terms and conditions set forth in this *Section 14.1*. Such offer shall be made to the Facility Lessee in the form of a proposed term sheet, which proposed term sheet shall include an outline of the price and of all of the material terms, conditions and provisions upon which the Owner Participant or the Owner Lessor, as the case may be, would be willing to transfer such Lessor Membership Interest or such Owner Lessor's Interest, as the case may be, or any part thereof. Homer City will thereafter have the right within a period of thirty (30) days from and after the receipt by the Facility Lessee of such proposed term sheet to notify the Owner Participant or Owner Lessor, as the case may be, of its irrevocable intent to exercise its right to purchase all, but not less than all, of the Lessor Membership Interests or Owner Lessor's Interest being offered hereunder. If the Facility Lessee elects to exercise the right provided in the preceding sentence, it shall within 60 days of such notice purchase, and the Owner Participant or Owner Lessor, as the case may be, shall sell, the Lessor Membership Interest or the Owner Lessor's Interest, as the case may be, on the same terms and conditions as the offer giving rise to such right (except that the Owner Participant shall not be required to make any representations to the Facility Lessee with respect to matters regarding the Facility (even though such representations are being made to a potential third party purchaser) other than a warranty

as to the absence of Owner Participant Liens). If the Facility Lessee does not give such notice to the Owner Participant or Owner Lessor, as the case may be, within the thirty (30) day period or does not purchase the Lessor Membership Interest or the Owner Lessor's Interest, as the case may be, within 60 days of such notice, the Owner Participant or Owner Lessor, as the case may be, will be free to so sell, lease, convey or otherwise transfer such Lessor Membership Interest or such Owner Lessor's Interest, as the case may be, or a portion thereof, at a price no less than the price set forth in the proposed term sheet and on terms and conditions, taken as a whole, that, other than in an immaterial respect, are no less favorable to the Owner Participant or Owner Lessor, as the case may be, than the terms and conditions set forth in the proposed term sheet. In the event that the terms or conditions are revised in any way that the price is reduced or any of the other terms and conditions thereof, taken as a whole change the agreement for sale, lease, conveyance or transfer such that the terms and conditions of any such subsequent transaction are less favorable, other than in an immaterial respect, to the Owner Participant or Owner Lessor, the Owner Participant or Owner Lessor, as the case may be, must again comply with the notice and acceptance provisions of this *Section 14.1*. It is understood and agreed among the parties hereto that the transaction contemplated by this *Section 14.1* shall not effect a merger of the Facility Lessee's leasehold interest in the Facility and its ownership or subleasehold interest in the Facility Site with the Owner Lessor's Interest. Notwithstanding the foregoing, if, concurrently with the Owner Participant's offer to sell its Lessor Membership Interest or the Owner Lessor's offer to sell its Owner Lessor's Interest pursuant to this *Section 14.1*, it or one of its Affiliates offers to sell any interest in an Other Owner Lessor who has entered into any Other Facility Participation Agreement, then the Facility Lessee shall exercise its purchase rights under this *Section 14.1* only if, concurrently therewith, it exercises its purchase rights under *Section 14.1* of each such Other Facility Participation Agreement.

Section 14.2 Right of First Refusal. In the event (i) the Owner Participant desires to sell, lease, convey or otherwise transfer some or all of its Lessor Membership Interest or (ii) the Owner Lessor desires to (or the Owner Participant desires to cause Owner Lessor to) sell, lease, convey or otherwise transfer some or all of Owner Lessor's Interest, in either case on, or at any time within two years after, the expiration or termination of the Facility Lease (other than pursuant to *Sections 13, 14* and *17* of the Facility Lease) to any Person other than an Affiliate of the Owner Participant, the Facility Lessee or an Affiliate thereof, then, if and only if, as a result of such proposed sale, less than 50.1% of the Total Owner Lessor Interests or the Total Facility Ownership Interests would be held by GECC or Persons who are Affiliates of

GECC, the Facility Lessee shall have the right, unless such sale is during the continuance of a Lease Event of Default, to purchase or acquire all, but not less than all, of such interest on the terms and conditions set forth in the bid that the Owner Participant or the Owner Lessor, as the case may be, intends to accept; *provided*, that the Owner Participant's or the Owner Lessor's right to transfer its Lessor Membership Interest or its Owner Lessor Interest during the Facility Lease Term pursuant to *Section 8.1* shall not be impaired by the provisions of this *Section 14.2* (but shall be subject to the provisions of *Section 14.1*). The Owner Participant or the Owner Lessor, as the case may be, shall give the Facility Lessee prompt written notice of all *bona fide* offers that it intends to accept that have been received from any other Person to purchase or acquire the Owner Lessor's Interest or Lessor Membership Interest or any part of either during such two-year period following the expiration or termination of the Facility Lease, and which offers it wishes to accept, together with a full and complete statement of the price and all of the material terms, conditions and provisions contained in such offers. The Facility Lessee shall thereafter have the right within a period of thirty (30) days from and after the receipt by the Facility Lessee of such notice to notify the Owner Participant or the Owner Lessor, as the case may be, of its irrevocable exercise its right of first refusal. If the Facility Lessee elects to exercise the right provided in the preceding sentence, it shall within 60 days of such notice purchase, and the Owner Participant or Owner Lessor shall sell, all but not less than all of the Lessor Membership Interest or the Owner Lessor Interest on the same terms and conditions (except that neither the Owner Participant nor the Owner Lessor shall be required to make

any representations to the Facility Lessee with respect to matters regarding the Facility other than the warranty as to the absence of the Owner Participant's Liens (even though such representations are being offered to a potential third party purchaser)) as the offer giving rise to such right. If the Facility Lessee does not give such notice to the Owner Participant or the Owner Lessor within the thirty (30) day period or does not purchase the Lessor Membership Interest or Owner Lessor Interest within sixty (60) days of such notice, the Owner Participant or the Owner Lessor shall be free to proceed substantially under the terms and conditions as set forth in its notice to the Facility Lessee, unless the Facility Lessee's failure to purchase the Lessor Membership Interest or Owner Lessor Interest within sixty (60) days is attributable to acts or omissions of the Owner Participant or Owner Lessor. In the event that the terms or conditions are revised to be less favorable, taken as a whole, other than in immaterial respects to the Owner Participant or Owner Lessor, including any reduction in price or a change in the terms of payment thereof in a manner that is beneficial to the potential purchaser), the Owner Participant or the Owner Lessor as the case may be must again comply with the notice and acceptance provisions of this *Section 14.2*. In connection with the Facility Lessee's exercise of the right of first refusal pursuant to this *Section 14.2* with respect to the Owner Lessor's Interest, the Ground Interest shall be conveyed to the Facility Lessee subject to the Lien of the Lease Indenture. It is understood and agreed among the parties hereto that the transactions contemplated by this *Section 14.2* shall not effect a merger of the Facility Lessee's leasehold interest in the Facility and its ownership or subleasehold interest in the Facility Site with the Owner Lessor's Interest. Notwithstanding the foregoing, if, concurrently with the Owner Participant's proposal to sell its Lessor Membership Interest or the Owner Lessor's proposal to sell its Owner Lessor's Interest pursuant to this *Section 14.2*, it or one of its Affiliates proposal to sell any interest in any Other Owner Lessor who has entered into any Other Facility Participation Agreement, then the Facility Lessee shall exercise its purchase rights under this *Section 14.2* only if, concurrently therewith, it exercises its purchase rights under *Section 14.2* of each such Other Facility Participation Agreement.

ARTICLE XV

SPECIAL LESSEE TRANSFER

Section 15.1 Method of Transfer. In the case of a Regulatory Event of Loss or Burdensome Buyout Event under the Facility Lease, the Owner Participant (for purposes of this *Article XV*, the "*Selling Party*") shall have the right, but shall be under no obligation, to sell the Lessor Membership Interest, in which event the Facility Lease (and the Lessor Notes) shall remain in place (a "*Special Lessee Transfer*"). At the request of the Selling Party, the Facility Lessee will, as nonexclusive agent for such Selling Party, use commercially reasonable efforts to obtain cash bids from unaffiliated third parties for the sale of the Lessor Membership Interest. Upon not less than 30 days' written notice to the Selling Party, the Facility Lessee may, but shall be under no obligation to, make an offer to purchase the Lessor Membership Interest and shall have a right of first refusal with respect to any offer received from an unaffiliated third party (which may be exercised any time prior to the Termination Date), in connection with such sale. Only *bona fide* bids, whether from (i) the Facility Lessee (either acting pursuant to its right

of first refusal or its right of offer, in each case in accordance with this *Section 15.1*), or (ii) a third party, to purchase the Lessor Membership Interest (A) for cash, (B) on the applicable Termination Date, and (C) on an "as is, where is" basis without any representation, other than by the Owner Participant as to the absence of Owner Participant Liens, shall be qualifying cash bids ("*Qualifying Special Lessee Transfer Bids*") and all the proceeds of any such Qualifying Special Lessee Transfer Bid shall be for the account of the Selling Party.

(a) If a Qualifying Special Lessee Transfer Bid is received and the Selling Party accepts such bid in writing, the Facility Lessee shall pay the Selling Party on the Termination Date (i) the Special Lessee Transfer Amount determined as of such Termination Date, less the cash actually received by such Selling Party in connection with such Qualifying Special Lessee Transfer Bid (or, if the amount of such

cash actually received by such Selling Party from such Qualifying Special Lessee Transfer Bid is equal to or greater than the Special Lessee Transfer Amount, zero) *plus* (ii) any other payment due and unpaid, or accrued and unpaid, under any Operative Document (other than Basic Lease Rent or Renewal Rent payable after such Termination Date) and any Lessee Section 467 Loan Balance as of such Termination Date (the "*Additional Transfer Amounts*"), and the Selling Party shall pay to the Facility Lessee any Lessor Section 467 Loan Balance as of such Termination Date.

(b) If a Qualifying Special Lessee Transfer Bid is rejected in writing by the applicable Selling Party and such Selling Party has not elected to retain the Lessor Membership Interest, the Facility Lessee shall pay such Selling Party on the applicable Termination Date (i) the Special Lessee Transfer Amount determined as of such Termination Date, less the amount of such rejected Qualifying Special Lessee Transfer Bid (or, if the amount of such rejected Qualifying Special Lessee Transfer Bid is equal to or greater than such Special Lessee Transfer Amount, zero) *plus* (ii) all Additional Transfer Amounts, and the Selling Party shall pay to the Facility Lessee any Lessor Section 467 Loan Balance as of such Termination Date.

(c) If no Qualifying Special Lessee Transfer Bid is offered and the applicable Selling Party has not elected to retain the Lessor Membership Interest, the Facility Lessee shall pay such Selling Party on the applicable Termination Date (i) the Special Lessee Transfer Amount determined as of such Termination Date *plus* (ii) all Additional Transfer Amounts. Upon payment by the Facility Lessee of the Special Lessee Transfer Amount and all Additional Transfer Amounts pursuant to the preceding sentence, the Lessor Membership Interest will not be transferred to the Facility Lessee, an Affiliate or to any third party with whom the Facility Lessee or its Affiliate has an arrangement to use or operate the Facility to generate power for the Facility Lessee's or such Affiliate's benefit. If the applicable Selling Party elects in writing to retain the Lessor Membership Interest, the Facility Lessee shall pay such Selling Party on the applicable Termination Date all Additional Transfer Amounts (but shall have no obligation to pay the Special Lessee Transfer Amount).

Section 15.2 Effect of Transfer. Concurrently with the payment of all sums required to be paid pursuant to this *Article XV* (or on such later date of transfer of the Lessor Membership Interest in accordance with clause (ii) below), (i) the Facility Lessee shall cease to have any liability to the Owner Participant with respect to the Operative Documents, except for obligations (including in *Sections 10.1* and *10.2* and in the Tax Indemnity Agreement) surviving pursuant to the express terms of any Operative Document or which have otherwise accrued but not been paid as of such date, and (ii) unless the Selling Party has elected in writing to retain the Lessor Membership Interest, the Selling Party will transfer (by an appropriate instrument of transfer in form and substance reasonably satisfactory to the Selling Party and prepared and recorded at the Facility Lessee's expense) the Lessor Membership Interest to the Facility Lessee (or its designee) or to the third party making the accepted Qualifying Special Lessee Transfer Bid referred to in *Section 15.1*; provided, however, that if, in the case of a proposed transfer to the Facility Lessee, Lessor Notes are outstanding, such transfer shall not be made to the Facility Lessee, but shall be made to the Facility Lessee's designee promptly upon the Facility Lessee's designation of such designee and such designee will agree not to transfer the Lessor Membership Interest to the Facility Lessee until such Lien is discharged.

(a) The Selling Party shall make any transfer under this *Article XV* on an "as is," "where is" basis, without warranty other than as to the absence of Owner Participant Liens on the Lessor Membership Interest. It is understood and agreed among the parties hereto that the transactions contemplated by this *Article XV* shall not effect a merger of the Facility Lessee's leasehold interest in the Facility and its ownership or subleasehold interest in the Facility Site with the Owner Lessor's Interest. The Facility Lessee will pay, on an After-Tax Basis,

all reasonable costs and expenses of the Lease Transaction Parties (including reasonable documented attorneys' fees and disbursements) in connection with any transfer pursuant to this *Article XV*. Subsequent to such transfer, the Facility Lessee and the Owner Lessor may, without the consent of the Lease Indenture Trustee, waive the Regulatory Event of Loss or

Burdensome Buyout Event that gave rise to the right to purchase the Lessor Membership Interest, as the case may be, and the Facility Lease shall continue in full force and effect in accordance with its terms.

ARTICLE XVI

COMMON FACILITIES

The Owner Participant acknowledges that, during the term of the Facility Lease, EME may, so long as no Material Lease Default or Lease Event of Default has occurred and is then continuing, seek to develop, either directly or indirectly through a subsidiary (other than Homer City; EME or such subsidiary is hereinafter referred to as the "*Additional Plants Operator*"), additional electric generation units using solely fossil fuel on the Facility Site ("*Additional Plants*"), including but not limited to the development of both an approximately 730 MW gas-fired plant and an approximately 600 MW coal-fired plant to be located at the Facility Site.

At such time as EME determines the specifications for the Additional Plants, Homer City will prepare a written presentation, including site maps, to be made to the Owner Participant, setting forth the terms and conditions on which it plans to develop the Additional Plants and the physical specifications for operation of the Additional Plants (the "*Development Presentation*"). Neither the Additional Plants, constructed and operated in accordance with the Development Presentation, nor the Additional Plants Operator shall violate any Requirement of Law, including but not limited to, any environmental law. The Owner Participant shall be entitled to receive any additional information it reasonably requests to determine that neither the construction and operation of, and activities related to, the Additional Plants, constructed and operated in accordance with the Development Presentation, nor the Additional Plants Operator are likely to (w) interfere in any material way with the capacity, availability, reliability, performance or operation of the Facility, (x) materially increase O&M Costs for the Facility, (y) diminish the current value, residual value, utility or remaining economic useful life of the Facility by more than a *de minimis* amount (as measured immediately prior to such construction, assuming the Facility is, at such time, in the condition required by the terms of the Facility Lease) or cause the Facility to become "limited-use" property within the meaning of Rev. Proc. 2001-28, 2001-19 IRB 1156 or Rev. Proc. 2001-29, 2001-19 IRB 1160, or (z) otherwise cause Homer City to incur any material cost, expense, claim or liability (collectively, "*Material Impairment*"). The Owner Participant may engage such engineering, environmental or other consultants as are reasonably necessary to assist it in making such determination. In the event the Owner Participant reasonably concludes that there is a reasonable likelihood of a Material Impairment, the Owner Participant shall promptly give Homer City notice of such conclusion in reasonable detail. If such notice is given, the Owner Participant shall cooperate with Homer City in developing modifications, if any, to the Development Presentation which avoid the reasonable likelihood of any Material Impairment (including, if appropriate, (i) modifying shared facilities at Homer City's cost (not payable out of Revenues) for increasing capacity to avoid any Material Impairment or (ii) imposing charges to be paid out of Additional Plant revenues to the Owner Lessor to pay for increased Facility operating costs or to compensate for any Material Impairment). Homer City may revise the Development Presentation to incorporate the Owner Participant's modifications (the "*Revised Development Presentation*"; the Development Presentation, if not objected to by the Owner Participant and the Revised Development Presentation, if applicable, are hereinafter referred to as the "*Actual Development Plan*") and thereafter EME may develop the Additional Plants in accordance with the Revised Development Presentation and in a manner which avoids Material Impairment.

To the extent that the development of the Additional Plants begins prior to the completion of any required subdivision of the Facility Site, Owner Participant agrees that it will direct the Owner Lessor to enter into an agreement with Homer City that will permit the Additional Plant Operator to use such portion of the Facility Site for the Additional Plants as is provided in the Actual Development Plan,

until such time as such subdivision is accomplished, to the extent such use is otherwise permitted by Requirements of Law.

The Owner Participant further agrees that, on the terms and conditions set forth in the Actual Development Plan, it will direct the Owner Lessor to grant to the Additional Plants Operator, easements across the Facility Site which are reasonably required for access to the Additional Plants, fuel supply (including gas pipelines) for the Additional Plants, and electric transmission lines to and from the Additional Plants as set forth in the Actual Development Plan. The Owner Participant further agrees that, on the terms and conditions set forth in the Actual Development Plan, the Additional Plants may share use of: control room facilities; switchyards; fuel handling and processing facilities; all water systems including intake, storage, conditioning and discharge facilities; air systems; auxiliary steam systems; ash handling and disposal systems; bulk chemical and gas storage systems; and other equipment or systems which may support both the Facility and the Additional Plants (to the extent shared, the "*Common Facilities*") and shall enter into such agreements as are necessary to evidence such shared use; *provided* that any arrangement for sharing the Common Facilities shall provide that in all events in which, in the reasonable discretion of the Owner Participant, the Common Facilities have insufficient capacity to service the operations of both the Facility (to the extent necessary to maximize its Revenues) and the Additional Plants, the Facility shall have first call and right to use the Common Facilities to the exclusion of Additional Plants Operator and the Additional Plants, until such time as its requirements are met. Notwithstanding the proviso to the preceding sentence, to the extent that the Common Facilities have been improved as contemplated by the Actual Development Plan to increase capacity of such Common Facilities, the Facility's first call and right to use the Common Facilities will be limited to the pre-improvement capacity of such Common Facilities.

The Owner Participant acknowledges that EME may seek to obtain financing of the Additional Plants and agrees to direct the Owner Lessor to issue consents and other documents reasonably required for such financing, including, but not limited to, releases of any security interests in separate turbines, generators and other equipment which are solely part of the Additional Plants and consents permitting the Additional Plants to grant security interests in the Additional Plants' interest in Common Facilities used by the Additional Plants, to the extent contemplated by the Actual Development Plan.

Whether or not the transactions contemplated by a Development Presentation or Revised Development Presentation are consummated, Homer City agrees to pay or reimburse, on an After-Tax Basis (from equity capital contributions only), any costs or expenses (including reasonable legal fees and expenses) incurred by the Owner Lessor or the Owner Participant in connection with the transactions contemplated by this *Article XVI*, including, without limitation, the reasonable fees and expenses of counsel and any consultant engaged by Owner Participant.

The cost and expense of planning, developing, financing, constructing and operating the Additional Plants (and all claims and liabilities related thereto) shall be borne by EME or the Additional Plants Operator. In no event shall any such material cost, expense, claim or liability be incurred by Homer City, except as set forth in the preceding paragraph.

ARTICLE XVII

MISCELLANEOUS

Section 17.1 Consents. The Owner Participant covenants and agrees that it shall not unreasonably withhold its consent to any consent requested of the Owner Lessor under the terms of the Operative Documents that by its terms is not to be unreasonably withheld by the Owner Lessor.

Section 17.2 Successor Owner Manager. The parties hereto agree that the transfer or assignment pursuant to the terms of the Lessor LLC Agreement by the Owner Manager to a successor Owner Manager, will not violate the terms of any Operative Document.

Section 17.3 Bankruptcy of Lessor Estate. If (i) all or any part of the Lessor Estate becomes the property of a debtor subject to the reorganization provisions of Title 11 of the United States Code, as amended from time to time, (ii) pursuant to such reorganization provisions the Owner Participant is required, by reason of the Owner Participant being held to have recourse liability to the debtor or the trustee of the debtor directly or indirectly, to make payment on account of any amount payable as principal or interest on the Lessor Notes, and (iii) the Security Agent or Lease Indenture Trustee actually receives any Excess Amount, as defined below, which reflects any payment by the Owner Participant on account of clause (ii) above, the Lease Indenture Trustee or the Security Agent, as the case may be, shall promptly refund to the Owner Participant such Excess Amount. For purposes of this *Section 17.3*, "*Excess Amount*" means the amount by which such payment exceeds the amount which would have been received by the Lease Indenture Trustee or the Security Agent, as the case may be if the Owner Participant had not become subject to the recourse liability referred to in clause (ii) above. Nothing contained in this *Section 17.3* shall prevent the Lease Indenture Trustee or the Security Agent from enforcing any personal recourse obligations (and retaining the proceeds thereof) of the Owner Participant as contemplated by this Agreement (other than referred to in clause (ii)).

Section 17.4 Amendments and Waivers. No term, covenant, agreement or condition of this Agreement may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing, executed by each party hereto.

Section 17.5 Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, *provided* such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to each party hereto at its address set forth below or, in the case of any such party hereto, at such other address as such party may from time to time designate by written notice to the other parties hereto:

If to Homer City:

EME Homer City Generation, L.P.
1750 Power Plant Road
Homer City, PA 15748-8009

With a copy to:

Edison Mission Energy
18101 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attention: Steven D. Eisenberg, Esq.

If to the Owner Lessor, the Owner Manager or the OM Company:

Wells Fargo Bank Minnesota, N.A.
Corporate Trustee Services
MAC; N2691-090
213 Court Street
Middletown, CT 06457

With a copy to:

Wells Fargo Bank Northwest, N.A.
Corporate Trust Services

MAC; U1254-031
Salt Lake City, UT 84111

If to the Owner Participant:

General Electric Capital Corporation
120 Long Ridge Road
Stamford, CT 06927
Attention: Manager Energy Portfolio
Facsimile: 203-357-4890

With a copy to:

General Electric Capital Corporation
120 Long Ridge Road
Stamford, CT 06927
Attention: Amy Fisher, Esq.

If to the Lease Indenture Trustee:

The Bank of New York
c/o United States Trust Company of New York
114 West 47th Street, 25th Floor
New York, New York 10036
Attention: Corporate Trust Administration
Facsimile: 212-852-1625

with a copy to:

David J. Fernández, Esq.
c/o Stadtmauer Bailkin LLP
850 Third Avenue 10022
(212) 822-2249 (Phone)
(212) 980-9578 (Fax)

If to the Lender:

Homer City Funding LLC
c/o Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890
Attention: Corporate Trust Administration
Fax: (302) 651-8915

If to the Bondholder Trustee:

The Bank of New York
c/o United States Trust Company of New York

114 West 47th Street, 25th Floor
New York, New York 10036
Attention: Corporate Trust Administration
Facsimile: 212-852-1625

If to the Security Agent:

The Bank of New York
c/o United States Trust Company of New York
114 West 47th Street, 25th Floor
New York, New York 10036
Attention: Corporate Trust Administration
Facsimile: 212-852-1625

A copy of all notices provided for herein shall be sent by the party giving such notice to each of the other parties hereto. In addition, Homer City, without duplication, shall (unless otherwise directed by the applicable Rating Agency) provide to each Rating Agency a copy of any information, report or notice it gives to the Lease Indenture Trustee hereunder or any other Operative Documents.

Section 17.6 Survival. All warranties, representations, indemnities and covenants made by any party hereto, herein or in any certificate or other instrument delivered by any such party or on behalf of any such party under this Agreement shall be considered to have been relied upon by each other party hereto and shall survive the consummation of the transactions contemplated hereby and in the other Operative Documents regardless of any investigation made by any such party or on behalf of any such party. In addition, the indemnifications by Homer City under *Sections 10.1* and *10.2* of this Agreement shall, subject to *Sections 10.1(b)* and *10.2(b)*, respectively, expressly survive the expiration or early termination (in either case, for whatever reason) of the Facility Lease or the transfer or other disposition (including by resignation and removal) of the respective interests of the Owner Participant, the Owner Lessor, the OM Company, the Owner Manager, the Bondholder Trustee, the Security Agent and the Lease Indenture Trustee, to and under this Agreement and other Operative Documents.

Section 17.7 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof, including each successive holder of the Lessor Membership Interest permitted under *Section 8.1* and under *Article XV*. Except as expressly provided herein or in the other Operative Documents, no party hereto may assign its interests herein without the consent of the other parties hereto.

Section 17.8 Governing Law. This Agreement has been delivered in the State of New York and shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance without giving effect to the conflicts of laws provisions thereof except New York General Obligations Law Section 5-1401.

Section 17.9 Severability. If any provision hereof shall be invalid, illegal or unenforceable under any Requirement of Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 17.10 Counterparts. This Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

Section 17.11 Headings and Table of Contents. The headings of the sections of this Agreement and the table of contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

Section 17.12 Limitation of Liability.

(a) None of the Owner Participant, the Owner Lessor, the Owner Manager, the OM Company, the Lender, the Bondholder Trustee, the Security Agent, the Lease Indenture Trustee or the Lease Indenture Company shall have any obligation or duty to Homer City or to others

with respect to the transactions contemplated hereby, except those obligations or duties expressly set forth in this Agreement and the other Operative Documents to which such Person is a party, and neither the Owner Lessor, the Owner Participant, the Owner Manager, the OM Company, the Bondholder Trustee, the Security Agent, the Lender or the Lease Indenture Trustee shall be liable for performance by any other party hereto of such other party's obligations or duties hereunder. Without limitation of the generality of the foregoing, under no circumstances whatsoever shall the Owner Participant be liable to Homer City, for any action or inaction on the part of the Owner Lessor or the Owner Manager in connection with the transactions contemplated herein, whether or not such action or inaction is caused by willful misconduct or gross negligence of the Owner Lessor, unless such action or inaction is at the written direction of the Owner Participant.

(b) The OM Company is executing the Operative Documents to which it is a party solely as manager under the Organic Documents of Owner Lessor and not in its individual capacity, except as expressly provided herein or therein, and in no case whatsoever shall the OM Company be personally liable for, or for any loss in respect of, any of the statements, representations, warranties, agreements or obligations of the Owner Lessor or the Owner Manager hereunder or under any other Operative Document, as to all of which the other parties hereto agree to look solely to the Lessor Estate; *provided, however,* that the OM Company shall be liable hereunder for its own gross negligence or willful misconduct or for a breach of its representations, warranties and covenants made in its individual capacity.

(c) Each of the Lease Indenture Trustee, the Security Agent and the Bondholder Trustee is entering into the Operative Documents to which it is a party solely as Lease Indenture Trustee or Security Agent under the Lease Indenture or Bondholder Trustee under the Fundco Indenture, as the case may be, and not in its individual capacity, except as expressly provided herein or therein, and in no case whatsoever shall the Lease Indenture Trustee, the Security Agent or the Bondholder Trustee be personally liable for, or for any loss in respect of, any of the statements, representations, warranties, agreements or obligations of the Owner Lessor hereunder or under any other Operative Document, as to all of which the other parties hereto agree to look solely to the Lessor Estate and the Indenture Estate; *provided, however,* that such party shall be liable hereunder for its own gross negligence, willful misconduct, bad faith or a breach of its representations, warranties and covenants made in its individual capacity.

(d) The right of the Lease Indenture Trustee, the Security Agent or the Bondholder Trustee, as the case may be, to perform any discretionary act enumerated herein or in any other Operative Document (including, without limitation, the right to consent to any action which requires its consent and the right to waive any provision of, or consent to any change or amendment to, any of the Operative Documents) shall not be construed as a duty, and neither the Lease Indenture Trustee, the Lease Indenture Company, the Security Agent, the Bondholder Trustee nor the Bondholder Trustee Company shall be accountable or liable for other than its gross negligence, willful misconduct or bad faith in the performance or non-performance of such acts. In connection with any such discretionary acts, the Lease Indenture Trustee, the Security Agent or the Bondholder Trustee, as the case may be, may in its own judgment (but shall not, except as otherwise provided in the Lease Indenture or Fundco Indenture, as the case may be, or as otherwise required by a Requirement of Law, have any obligation to) request in writing the approval of the Lender.

(e) The Owner Participant will give Homer City at least fifteen (15) days' prior notice of any proposed amendment or supplement to the Organic Documents of Owner Lessor (other than amendments solely effecting a transfer of the Owner Participant's interest in the Lessor Estate or with respect to administrative matters) and deliver true, complete and fully executed copies to Homer City of any amendment or supplement to the Lessor LLC Agreement. No amendment or supplement to the Lessor LLC Agreement that would materially adversely affect the interests of the Lease Indenture Trustee or the Security Agent shall become effective without the prior written consent of the Lease Indenture Trustee and the Security Agent.

(f) No director, officer, employee, incorporator, shareholder, member, manager, agent or Affiliate of the Lender shall have any liability for or in connection with any of the representations, warranties, or obligations of the Lender hereunder or under any Transaction Document, as to all of which recourse shall be had solely to the Lessor Notes.

Section 17.13 Consent to Jurisdiction; Waiver of Trial by Jury, Process Agent.

(a) Each of the parties hereto (i) hereby irrevocably submits to the nonexclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) and to the

nonexclusive jurisdiction of the United States District Court for the Southern District of New York for the purposes of any suit, action or other proceeding arising out of this Agreement, the other Operative Documents, or the subject matter hereof or thereof or any of the transactions contemplated hereby or thereby brought by any of the parties hereto or their successors or assigns; (ii) hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State court, or in such federal court; and (iii) to the extent permitted by Requirement of Law, hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement, the other Operative Documents, or the subject matter hereof or thereof may not be enforced in or by such court.

(b) TO THE EXTENT PERMITTED BY REQUIREMENT OF LAW, EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES THE RIGHT TO DEMAND A TRIAL BY JURY, IN ANY SUCH SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT, THE OTHER OPERATIVE DOCUMENTS, OR THE SUBJECT MATTER HEREOF OR THEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY BROUGHT BY ANY OF THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS.

(c) By the execution and delivery of this Agreement, Homer City designates, appoints and empowers CT Corporation System as its authorized agent to receive for and on its behalf service of any summons, complaint or other legal process in any such action, suit or proceeding in the State of New York for so long as any obligation of Homer City shall remain outstanding hereunder or under any of the other Operative Documents. Homer City shall grant an irrevocable power of attorney to CT Corporation System in respect of such appointment and shall maintain such power of attorney in full force and effect for so long as any obligation of Homer City shall remain outstanding hereunder or under any of the Operative Documents.

Section 17.14 Further Assurances. Each party hereto will promptly and duly execute and deliver such further documents to make such further assurances for and take such further action reasonably requested by any party to whom such first party is obligated, all as may be reasonably necessary to carry out more effectively the intent and purpose of this Agreement and the other Operative Documents.

Section 17.15 Effectiveness. This Agreement has been dated as of the date first above written for convenience only. This Agreement shall be effective on the date of execution and delivery by each of the parties hereto.

Section 17.16 Measuring Life. If and to the extent that any of the options, rights and privileges granted under this Agreement, would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule or law relating to the vesting of interests in property or the suspension of the power of alienation of property, then it is agreed that notwithstanding any other provision of this Agreement, such options, rights and privileges, subject to the respective conditions hereof governing the exercise of such options, rights and privileges, will be exercisable only during (a) the longer of (i) a period which will end twenty-one (21) years after the death of the last survivor of the descendants living on the date of the execution of this Agreement of the following Presidents of the United States: Franklin D. Roosevelt, Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, Richard M. Nixon, Gerald R. Ford, James E. Carter, Ronald W. Reagan, George H.W. Bush, William J. Clinton and George W. Bush or (ii) the period provided under the Uniform Statutory Rule Against Perpetuities or (b) the specific applicable period of time expressed in this Agreement, whichever of (a) and (b) is shorter.

Section 17.17 No Partnership, Etc. The parties hereto intend that nothing contained in this Agreement or any other Operative Document shall be deemed or construed to create a partnership, joint venture or other co-ownership arrangement by and among any of them.

Section 17.18 [Intentionally deleted].

Section 17.19 Confidentiality. Each party recognizes that, in connection with this Agreement, it may become privy to nonpublic information regarding the financial condition, operations and prospects of the other parties hereto. Each party agrees to keep all nonpublic information regarding each other party strictly confidential, and to use all such information solely in order to effectuate or monitor the purpose of this Agreement and the other Operative Documents; *provided* that each party may provide confidential information to its employees, agents and Affiliates who have a need to know such information in order to effectuate or monitor the transaction and its investment portfolio; *provided, further,* that such information is identified as confidential nonpublic information. In the event that any of the parties to this Agreement or any of the employees, agents or Affiliates of such parties are requested pursuant to, or required by, applicable law, regulation or legal process to disclose any of the nonpublic information, such party will promptly notify any affected party prior to any such disclosure so that such party may seek a protective order or other appropriate remedy or, in such party's sole discretion, waive compliance with the terms of this *Section 17.19*. In the event that no such protective order or other remedy is obtained, or that such party waives compliance with the terms of this *Section 17.19*, the party required to disclose such nonpublic information or its employees, agents or Affiliates will furnish only that portion of the nonpublic information that it is advised by counsel is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the nonpublic information.

Section 17.20 Termination. In the event that the Closing Date fails to occur on or before the Cut-Off Date, this Participation Agreement shall terminate and Homer City shall cease to have any liability hereunder, except for obligations surviving pursuant to the express terms hereof.

Section 17.21 Entire Agreement. This Agreement, together with the other applicable Transaction Documents, constitutes the entire agreement of the parties hereto and thereto with respect to the subject matter hereof and thereof and supersedes all oral and all prior written agreements and understandings with respect to such subject matter.

Section 17.22 Subordination of Claims. Notwithstanding any provision to the contrary contained in this Participation Agreement, the Facility Lease or any other Operative Document, claims against Homer City for Component A of Termination Value shall be subordinated to the payment of Basic Lease Rent available to service the Lessor Notes on the terms and conditions set forth in the Lease Subordination Agreement.

Section 17.23 Like-Kind Exchange. Notwithstanding anything to the contrary contained herein or in any other Operative Agreement, on or prior to the Closing Date, upon notice to Homer City, each of the Owner Lessor's and Owner Participant's rights (but not any of their respective obligations other than the obligation to pay the Owner Participant's Commitment for the Undivided Interest) under this Agreement to acquire the Undivided Interest shall be freely assignable in connection with a like-kind exchange under Section 1031 of the Code, provided that on or prior to the Closing Date the Owner Lessor and the Owner Participant shall have reacquired all such rights which have been so assigned.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date hereof by their respective officers thereunto duly authorized.

HOMER CITY OL1 LLC

By: WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,
not in its individual capacity, except as expressly provided herein, but solely as Owner Manager

/s/ JOSEPH P. O'DONNELL

By: Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,
not in its individual capacity, except as expressly provided herein, but solely as Owner Manager

/s/ JOSEPH P. O'DONNELL

By: Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

GENERAL ELECTRIC CAPITAL CORPORATION

/s/ MARK T. MELLANA

By: Name: Mark T. Mellana
Title: Attorney in Fact

EME HOMER CITY GENERATION L.P.

By: MISSION ENERGY WESTSIDE, INC., its General Partner

/s/ STEVEN D. EISENBERG

By: Name: Steven D. Eisenberg
Title: Vice President

HOMER CITY FUNDING LLC

/s/ MARY ST. AMAND

By: Name: Mary St. Amand
Title: Secretary

THE BANK OF NEW YORK, not in its individual capacity except as expressly provided herein, but solely as Lease Indenture Trustee

/s/ CHRISTOPHER J. GRELL

By: Name: Christopher J. Grell
Title: Authorized Signer

Schedule 5.10

Insurance

(a) *Insurance Coverage.* Without limiting any of the other liabilities of the Facility Lessee under this Agreement, the Facility Lessee shall at all times, carry and maintain, at its expense, such insurance as is customarily maintained by owners and operators of electric generating facilities similar to the Facility and in all events shall carry and maintain at least the minimum insurance coverage set forth in this *Schedule 5.10*. All such insurance shall be placed with brokers and insurers of recognized responsibility, with such insurers having an A.M. Best rating of A:X or better, or with such other insurers reasonably acceptable to the Owner Lessor, and be in such form, with terms, conditions, limits and deductibles as shall be acceptable to the Owner Lessor.

(i) *All Risk Property Insurance.* The Facility Lessee shall maintain all risk property insurance covering against physical loss or damage to the Facility, including but not limited to fire and extended coverage, collapse, flood, earth movement and comprehensive boiler and machinery coverage (including electrical malfunction and mechanical breakdown). Such insurance shall not contain an exclusion for resultant damage caused by faulty workmanship, design or materials. Coverage shall be written in the greater of the then current Termination Value or the full replacement cost value in an amount acceptable to the Owner Lessor and shall contain an agreed amount endorsement waiving any coinsurance penalty and shall include expediting expense coverage in an amount not less than $1,000,000. Deductibles shall not exceed $2,000,000.

(ii) *Business Interruption.* As an extension of the property insurance described in subsection (a)(i) or as a separate policy, the Facility Lessee shall maintain business interruption insurance in an amount equal to eighteen (18) months continuing expenses, debt service and net profits of the Facility. This insurance shall include coverage for contingent business interruption arising from loss or damage to property and equipment of suppliers and customers of the Facility. Such insurance shall also cover service interruption and extra expense each in an amount not less than $1,000,000. Deductibles shall not exceed sixty (60) days.

(iii) *Commercial or Comprehensive General Liability.* The Facility Lessee shall maintain third-party liability insurance with a limit of not less than $1,000,000. Such coverage shall include, but not be limited to, premises/operations, explosion, collapse, underground hazards, sudden and accidental pollution, contractual liability, independent contractors, products/completed operations, property damage and personal injury liability. Such insurance shall not contain exclusions for punitive or exemplary damages where insurable under law.

(iv) *Workers' Compensation/Employer's Liability.* The Facility Lessee shall maintain Workers' Compensation insurance in accordance with statutory provisions covering accidental injury, illness or death of an employee of the Facility Lessee while at work or in the scope of his employment with the Facility Lessee and Employer's Liability in an amount not less than $1,000,000. Such coverage shall not contain any occupational disease exclusions.

(v) *Automobile Liability.* The Facility Lessee shall maintain Automobile Liability insurance covering owned (if any), non-owned, leased, hired or borrowed vehicles against bodily injury or property damage. Such coverage shall have a limit of not less than $1,000,000.

(vi) *Excess/Umbrella Liability.* The Facility Lessee shall maintain Excess/Umbrella Liability insurance providing coverage limits in excess of the primary limits applying under policies described in subsections (a)(iii), (a)(iv), and (a)(v) The limit of such excess/umbrella coverage shall not be less than $50,000,000. Such insurance shall not contain exclusions for punitive or exemplary damages.

(b) *Endorsements.* The Facility Lessee shall cause the insurance maintained in accordance with this section to be endorsed as follows:

(i) the Facility Lessee shall be the named insured and the Security Agent, the Owner Lessor and the Owner Participant shall be additional named insureds with respect to policies described in subsections (a)(i) and (a)(ii). The Security Agent (for so long as

the Lessor Notes are outstanding, and thereafter, the Owner Lessor) shall be the sole loss payee with regard to any claim payments made under subsections (a)(i) and (a)(ii). The Facility Lessee shall be the named insured and the Security Agent, the Owner Lessor and the Owner Participant shall be additional named insureds with respect to policies described in subsections (a)(iii), (a)(iv), (a)(v) and (a)(vi). It shall be understood that any obligation imposed upon the Facility Lessee, including but not limited to the obligation to pay premiums, shall be the sole obligation of the Facility Lessee and not that of the Security Agent, the Owner Lessor or the Owner Participant;

(ii) with respect to policies described in subsections (a)(i) and (a)(ii), the interests of the Security Agent, Owner Lessor or Owner Participant shall not be invalidated by any action or inaction of the Facility Lessee, or any other person, and shall insure the Security Agent, the Owner Lessor and the Owner Participant regardless of any breach or violation by the Facility Lessee, or any other person, of any warranties, declarations or conditions of such policies;

(iii) inasmuch as the liability policies are written to cover more than one insured, all terms conditions, insuring agreements and endorsements, with the exception of the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured;

(iv) the insurers thereunder shall waive all rights of subrogation against the Security Agent, the Owner Lessor and the Owner Participant, any right of setoff or counterclaim and any other right to deduction, whether by attachment or otherwise;

(v) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the Security Agent, the Owner Lessor or the Owner Participant with respect to its interest as such in the Facility; and

(vi) if such insurance is canceled for any reason whatsoever, including for nonpayment of premium, or any changes are initiated by the Facility Lessee or insurer which affect the interest of the Security Agent, the Owner Lessor or the Owner Participant, such cancellation or change shall not be effective as to the Security Agent, the Owner Lessor or the Owner Participant until thirty (30) days, except ten (10) days for non-payment of premiums, after receipt by the Security Agent or Owner Lessor of written notice sent by registered mail from such insurer.

(c) *Certifications.* On the Closing Date, and at each policy renewal, but not less than annually, Facility Lessee shall provide to Owner Lessor and Owner Participant approved certification from each insurer or by an authorized representative of each insurer. Such certification shall identify the underwriters, the type of insurance, the limits, deductibles, and term thereof and shall specifically list the special provisions delineated for such insurance in subsection (b) above. Upon request, the Facility Lessee shall furnish Owner Lessor with copies of all insurance policies, binders, and cover notes or other evidence of such insurance.

(d) *Insurance Report.* Concurrently with the furnishing of all certificates referred to in this section, the Facility Lessee shall furnish the Owner Lessor and Owner Participant with an opinion from an independent insurance broker, acceptable to the Owner Lessor, stating that all premiums then due have been paid and that, in the opinion of such broker, the insurance then maintained by the Facility Lessee is in compliance with this section. Furthermore, upon its first knowledge, such broker shall advise Owner Lessor promptly in writing of any default in the payment of any premiums or any other act or omission, on the part of any person, which might invalidate or render unenforceable, in whole or in part, any insurance provided by the Facility Lessee hereunder.

(e) *Arbitration.*

(i) if any insurance required to be maintained by the Facility Lessee pursuant to this *Schedule 5.10* (including the limits or deductibles or any other terms under policies for such insurance) ceases to be available on a commercially reasonable basis at the time of renewal, the Facility Lessee shall provide written notice to Owner Lessor accompanied by a letter from the Facility Lessee's insurance broker stating that such insurance is unavailable on a commercially reasonable basis. Such notice shall be given not less than thirty (30) days prior to the scheduled date for renewal of any such policy. Upon receipt of such notice by the Owner Lessor,

Owner Lessor and the Facility Lessee shall immediately enter into in good faith negotiations in order to obtain an alternative to such insurance; and,

(ii) in the event that the Owner Lessor and the Facility Lessee cannot reach a resolution acceptable to both parties within five (5) days, the Owner Lessor shall make arrangements for the formation of an insurance panel consisting of the Facility Lessee's insurance advisor (or broker), the Owner Lessor's insurance advisor (or broker) and an independent insurance expert from an internationally recognized insurance brokerage firm, chosen by the Owner Lessor and reasonably acceptable to the Facility Lessee. Such independent expert shall conduct a separate review of the relevant insurance requirements of this *Schedule 5.10*, and the market for such insurance at the time, giving due consideration to the representations of both insurance advisors, and upon conclusion of such review shall issue a written report stating whether such insurance is available or unavailable on a commercially reasonable basis; and,

(iii) if the insurance expert concludes that such insurance is not available on a commercially reasonable basis, the insurance expert shall provide a written recommendation not less than fifteen (15) days before the date for renewal of such insurance which shall be conclusive and binding on both the Facility Lessee and the Owner Lessor. For each insurance policy required to be renewed but not available on a commercially reasonable basis, the Owner Lessor shall issue a waiver to the Facility Lessee for a period of one (1) year upon the insurance expert certifying that the relevant insurance is not available on a commercially reasonable basis and the Facility Lessee having implemented the recommendation of the insurance expert; and,

(iv) all fees, costs and expenses associated with the insurance panel (including the review by the insurance expert) shall be for the sole account of the Facility Lessee.

(f) *Failure to Maintain Insurance.* In the event the Facility Lessee fails to maintain the full insurance coverage required by this *Schedule 5.10*, the Owner Lessor, upon 30 days' prior notice (unless the aforementioned insurance would lapse within such period, in which event notice should be given as soon as reasonably possible) to the Facility Lessee of any such failure, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same. All amounts so advanced by the Owner Lessor shall become an additional obligation of the Facility Lessee to the Owner Lessor, and the Facility Lessee shall forthwith pay such amounts to the Owner Lessor, together with interest thereon at the Overdue Rate from the date so advanced.

(g) *General.* The Owner Lessor shall be entitled, upon reasonable advance notice, to review the Facility Lessee's (or other appropriate party's) books and records regarding all insurance policies carried and maintained with respect to the Facility and the Facility Lessee's obligations under this *Schedule 5.10.* Upon request, the Facility Lessee shall furnish the Owner Lessor with copies of all insurance policies, binders, and cover notes or other evidence of such insurance. Notwithstanding anything to the contrary herein, no provision of this *Schedule 5.10* or any provision of this Agreement shall impose on the Owner Lessor any duty or obligation to verify the existence or adequacy of the insurance coverage maintained by the Facility Lessee, nor shall the Owner Lessor be responsible for any representations or warranties made by or on behalf of the Facility Lessee to any insurance broker, company or underwriter.

SCHEDULE 5.18 TO THE
PARTICIPATION AGREEMENT

So long as the Facility Lease shall not have been terminated in accordance with its terms, each of ME Westside and Chestnut Ridge shall:

(a) at all times have at least one Independent Director on its Board;

(b) not, without the affirmative vote of 100% of its Board (including an affirmative vote of each Independent Director) make any of the following decisions with respect to the Facility Lessee:

(i) cause the Facility Lessee to issue, incur, assume, suffer to exist or guarantee the payment of Indebtedness except as permitted pursuant to the Operative Documents;

(ii) except as permitted pursuant to the Operative Documents, directly or indirectly, in one or in a series of related transactions, cause the Facility Lessee to enter into any mergers, consolidation or amalgamation, or liquidate, windup or dissolve the Facility Lessee (or suffer any liquidation or dissolution), or sell, convey, transfer, lease, exchange or otherwise dispose all, or substantially all, of the assets of the Facility Lessee, to any Person;

(iii) admit, appoint or cause the admittance or appointment of any Person as a new, additional or replacement (a) partner of the limited partnership of the Facility or (b) any Person holding a beneficial interest in any such partner, except as expressly permitted pursuant to the Operative Documents;

(iv) cause the Facility Lessee to make an assignment for the benefit of creditors;

(v) cause the Facility Lessee to commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereinafter in effect, or consent or acquiesce to the entry of an order for relief, or in the filing of any such petition, application, proceeding or appointment of or taking possession by the custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Facility Lessee or any substantial part of the Facility Lessee's property;

(vi) admit the Facility Lessee's inability to pay its debts generally as they become due; or

(vii) authorize any of the foregoing to be done or taken on behalf of the Facility Lessee.

QuickLinks

Insurance

SCHEDULE 5.18 TO THE PARTICIPATION AGREEMENT

Exhibit 4.4.1

Schedule identifying substantially identical agreements to Participation Agreement

1. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL1, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

2. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL2, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

3. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL3, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

4. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL4, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

5. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL5, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

6. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL6, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

7. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL7, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

8. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL8, a Delaware limited liability company, as Owner Lessor; Wells Fargo, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

QuickLinks

Exhibit 4.4.1

Exhibit 4.5

Execution Copy

OWNER LESSOR SUBORDINATION AGREEMENT

dated as of December 7, 2001

by and among

HOMER CITY OL1 LLC,
as the Owner Lessor,

GENERAL ELECTRIC CAPITAL CORPORATION,
as the Owner Participant,

AND

THE BANK OF NEW YORK,

as successor to

UNITED STATES TRUST COMPANY OF NEW YORK
as the Lease Indenture Trustee

This OWNER LESSOR SUBORDINATION AGREEMENT, dated as of December 7, 2001 (this "*Agreement*"), is by and among HOMER CITY OL1 LLC, as the Owner Lessor under the Facility Lease referred to below (the "*Owner Lessor*"), GENERAL ELECTRIC CAPITAL CORPORATION, as the Owner Participant under the Participation Agreement referred to below (the "*Owner Participant*"), and THE BANK OF NEW YORK, as successor to UNITED STATES TRUST COMPANY, not in its individual capacity but solely as the Lease Indenture Trustee under the Lease Indenture.

RECITALS

WHEREAS, the holders of the Initial Lessor Notes (as such term is defined in the Participation Agreement) have purchased the Initial Lessor Notes from the Owner Lessor and have been granted a security interest in the Facility Lease as collateral for the Initial Lessor Notes;

WHEREAS, contemporaneously herewith EME Homer City Generation L.P. ("*Homer City*"), a wholly owned subsidiary of Edison Mission Midwest Holdings Co. ("*Holdings*"), will enter into a transaction pursuant to the Participation Agreement by and among Homer City, the Owner Lessor, Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager, the Owner Participant, Homer City Funding LLC, as Lender, the Lease Indenture Trustee and United States Trust Company of New York, not in its individual capacity but solely as Bondholder Trustee (as amended, modified and supplemented and in effect from time to time, the "*Participation Agreement*") whereby Homer City would sell certain of its generating assets to the Owner Lessor and the Owner Lessor would lease such generating assets to Homer City under the Facility Lease;

WHEREAS, in connection with the transactions contemplated by the Participation Agreement, Holdings and Homer City requested the Lender to approve such sale and lease-back of such generating assets;

WHEREAS, the Owner Lessor has entered into a loan agreement, dated as of December 7, 2001 (the "*Intercompany Loan Agreement*"), with the Owner Participant, pursuant to which the Owner Participant has agreed to make loans (the "*Intercompany Loans*") to the Owner Lessor from time to time on the terms and subject to the conditions contained in the Loan Agreement and set forth herein; and

WHEREAS, as a consideration for the transactions contemplated by the Participation Agreements, the parties hereto will agree to subordinate the Intercompany Loans and all obligations of the Owner Lessor with respect to Intercompany Loan Agreement to the obligations of the Owner Lessor with respect to the Lessor Notes, Debt Service Letter of Credit and the Lease Indenture.

WHEREAS, the execution and delivery of this Agreement is a condition precedent to the effectiveness of the Participation Agreement;

NOW THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, each of the parties hereto hereby agrees as follows:

ARTICLE I
DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 *Definitions.*

(a) Unless otherwise expressly provided herein, capitalized terms used but not defined in this Agreement shall have the meanings given to such terms in the Participation Agreement.

(b) Other Defined Terms. The following terms, when used herein, shall have the following meanings:

"*Intercompany Loan*" shall mean the indebtedness by the Owner Lessor relating to the Intercompany Loan Agreement.

"*Intercompany Loan Agreement*" shall mean the loan extended pursuant to the Intercompany Loan Agreement and any other loan agreement to be entered into from time to time by the Owner Lessor and the Subordinated Party.

"*Intercompany Loan Obligations*" shall mean all obligations of the Owner Lessor under the Intercompany Loan Agreement, including principal of, premium, if any, interest and any other amount owing on the Intercompany Loans, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred or created.

"*Obligations*" shall mean all of the Owner Lessor's obligations under the Operative Documents (i) in respect of the Lessor Notes, the Debt Service Letter of Credit and the Lease Indenture of whatsoever nature and howsoever evidenced (including, but not limited to, principal, interest, make-whole or other premium, reimbursement obligations, cash cover obligations, penalties, indemnities and legal and other expenses, whether due after acceleration or otherwise) to the Noteholders, the issuer of the Debt Service Letter of Credit, the Lease Indenture Trustee, the Security Agent, or to any agent, trustee or other representative of the Noteholders or such issuer, agent, trustee or representative under or pursuant to each agreement, document, or instrument evidencing, securing, guaranteeing or relating to any of the foregoing obligations, in each case, direct or indirect, primary or secondary, fixed or contingent, now or hereafter arising out of or relating to any such agreement, document or instrument; and (ii) the costs and expenses of collection and enforcement of the obligations referred to in clause (i) (including, without limitation, (A) the costs and expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on any collateral securing such obligations, (B) the costs and expenses of exercise by the Lease Indenture Trustee, Security Agent or any other Person of its rights

under the Security Documents or any other security documents related to the obligations referred to in clause (i) and (C) reasonable attorneys' fees and court costs).

"Proceeding" shall have the meaning given to such term in Section 3.2.

"*Senior Claims*" shall have the meaning given to such term in Section 2.1(a).

"*Subordinated Claims*" shall mean as at any date of determination, the aggregate amount of all Intercompany Loan Obligations.

"*Subordinated Notes*" shall have the meaning given to such term in Section 2.1(c).

"*Subordinated Party*" shall mean the Owner Participant in its capacity as lender under the Intercompany Loan Agreement.

Section 1.2 *Principles of Construction.* Unless otherwise expressly provided herein, the principles of construction set forth in the Participation Agreement shall apply to this Agreement.

ARTICLE II
SUBORDINATION PROVISIONS

Section 2.1 *Subordination of Intercompany Loans.* Until all Obligations shall have been indefeasibly paid in full:

(a) the Subordinated Claims shall be subordinated, to the extent and in the manner hereinafter set forth, to the prior payment of, and junior in right of payment to, any and all Obligations whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred or created (collectively, "*Senior Claims*");

(b) without the consent of the Lease Indenture Trustee, the Owner Lessor shall not, directly or indirectly, make any payment of principal or interest on account of, or transfer any collateral for any part of, any Subordinated Claims; provided, however, that the Owner Lessor may (and upon direction from the Owner Participant shall) make payments (including prepayments) of interest and principal on account of the Subordinated Claims to the extent of proceeds received from payments of Rent permitted to be made pursuant to the terms of Section 2.1(b) of the Lease Subordination Agreement and clause *third* of Section 3.1 of the Lease Indenture or proceeds from common equity received from the Owner Participant;

(c) without the consent of the Lease Indenture Trustee, the Subordinated Party shall not demand, sue for or accept any payment or collateral in respect of any Subordinated Claims, or take any other action to enforce their rights or exercise any remedies in respect of any Subordinated Claims (whether upon the occurrence or during the continuation of an event of default under any promissory notes evidencing Subordinated Claims (collectively, "*Subordinated Notes*") or otherwise) or cancel, set off or otherwise discharge any part of any Subordinated Claims; and

(d) without the consent of the Lease Indenture Trustee, neither the Owner Lessor nor the Subordinated Party shall otherwise take any action prejudicial to or inconsistent with the priority position of the Senior Claims over the Subordinated Claims created by this Section 2.1.

Section 2.2 *Reliance.* All Senior Claims shall conclusively be deemed to have been created, contracted or incurred in reliance on the subordination provisions contained in this Agreement and all dealings between the Owner Lessor and each of the holders of Senior Claims shall be deemed to have been consummated in reliance upon the subordination provisions contained herein.

Section 2.3 *Other Holders.* The subordination provisions set forth in this Agreement shall be binding upon transferees or assignees of the Subordinated Party and upon each other holder of Subordinated Claims and shall inure to the benefit of transferees or assignees of the Indenture Estate and every other holder of Senior Claims.

ARTICLE III
WRONGFUL COLLECTIONS

Section 3.1 *Turnover.* Should any payment on account of, or any collateral for any part of, any Subordinated Claims be received by the Subordinated Party in violation of this Agreement, such payment or collateral shall be delivered forthwith to the Lease Indenture Trustee for application in accordance with the Lease Indenture. The Lease Indenture Trustee is irrevocably authorized to supply any required endorsement or assignment which may have been omitted which the Lease Indenture Trustee may reasonably deem necessary or advisable to enforce its rights under this Agreement. Until so delivered, any such payment or collateral shall be held by the Subordinated Party in trust for the holders of the Senior Claims and shall not be commingled with other funds or property of the Subordinated Party.

Section 3.2 *Survival of Obligation.* The obligation of the Subordinated Party to deliver to the Lease Indenture Trustee any payment or collateral received in connection with any Subordinated Claims, set forth in Section 3.1, shall survive and shall not be in any way affected by the result of any (a) insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding relating to any Owner Lessor, its property or its creditors as such, (b) proceeding for any liquidation, dissolution or other winding-up of any Owner Lessor, voluntary or involuntary, whether or not involving insolvency or bankruptcy proceedings, (c) assignment for the benefit of creditors, (d) other marshalling of the assets of any Owner Lessor or (e) general meeting of creditors of any Owner Lessor, in each case, under the laws of the United States or any other jurisdiction (any such event, a "*Proceeding*").

ARTICLE IV
PROCEEDINGS

Section 4.1 *Commencement of Proceedings.* The Subordinated Party shall not commence, or join with any other creditor or creditors of the Owner Lessor in commencing, any Proceeding against the Owner Lessor without the consent of the Lease Indenture Trustee.

Section 4.2 *Payments and Distributions.* In the event of any Proceeding, until all Obligations shall have been indefeasibly paid in full, in cash or cash equivalent, any payment or distribution of any kind or character, whether in cash, property or securities, which, but for the subordination provisions of this Agreement would otherwise be payable or deliverable upon or in respect of Subordinated Claims, shall instead be paid over or delivered to the Lease Indenture Trustee in accordance with Article III and no holder of Subordinated Claims shall receive any such payment or distribution or any benefit therefrom.

Section 4.3 *Enforcement of Subordinated Claims.*

(a) *Enforcement by the Holders of the Senior Claims.* At any Proceeding, until all Obligations shall have been indefeasibly paid in full, in cash or cash equivalent, the holders of the Senior Claims are hereby irrevocably authorized (but not required) to:

(i) enforce claims comprising Subordinated Claims in the name of the Subordinated Party by proof of debt, proof of claim, suit or otherwise;

(ii) collect any assets of any Owner Lessor distributed, divided or applied by way of dividend or payment, and any securities issued, in each case, on account of Subordinated Claims and apply the same, or the proceeds of any realization upon the same that the Indenture Estate in their discretion elect to effect, to Senior Claims until all Obligations shall have been indefeasibly paid in full, in cash or cash equivalent; provided, however, that the Lease Indenture Estate shall render

any surplus to the Subordinated Party or its affiliates, as their interests appear, or interplead such surplus with a court of competent jurisdiction;

(iii) vote claims comprising Subordinated Claims to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition or extension; and

(iv) take generally any action in connection with any such Proceeding which the Subordinated Party might otherwise take.

(b) *Cooperation.* The Subordinated Party shall cooperate fully with the Lease Indenture Trustee and perform all acts requested by the Lease Indenture Trustee to enable the Lease Indenture Trustee to enforce any Subordinated Claims pursuant to clause (a) above, including, without limitation, filing appropriate proofs of claim and executing and delivering all necessary powers of attorney, assignments or other instruments.

(c) *Enforcement by the Subordinated Party.* After the commencement of any Proceeding, the Subordinated Party may inquire in writing of the Lease Indenture Trustee whether the Lease

Indenture Trustee intends to exercise its rights set forth in clause (a) above with respect to any Subordinated Claims. Should the Lease Indenture Trustee fail, within a reasonable time after receipt of such inquiry, either to file a proof of claim with respect to any Subordinated Claims and to furnish a copy thereof to the Subordinated Party, or to inform the Subordinated Party in writing that the Lease Indenture Trustee intends to exercise its rights to assert such Subordinated Claims in the manner provided in clause (a) above, the Subordinated Party may (but shall not be required to) proceed to file a proof of claim with respect to such Subordinated Claims and take such further steps with respect thereto, not inconsistent with this Agreement, as the Subordinated Party may deem proper.

(d) *Subrogation.* The Subordinated Party shall not have any subrogation or other rights as holders of Senior Claims, and the Subordinated Party hereby irrevocably waives all such rights of subrogation and all rights of reimbursement or indemnity whatsoever and all rights of recourse to any security for any Senior Claims, until such time as all Obligations shall have been indefeasibly paid in full, in cash or cash equivalent. Subject to and from and after the indefeasible payment in full of all Obligations, the Subordinated Party shall be subrogated to any rights of the Lease Indenture Trustee to receive payment or distributions of cash, property or securities of the Owner Lessor applicable to any Subordinated Claims until all amounts owing on such Subordinated Claims shall be paid in full, in cash or cash equivalent.

ARTICLE V
LIMITATION ON ACTIONS

Section 5.1 *Actions Prohibited.* Until all Obligations shall have been indefeasibly paid in full, the Subordinated Party shall not, without the prior written consent of the Lease Indenture Trustee:

(a) take, obtain or hold (or permit anyone acting on its behalf to take, obtain or hold) any assets of the Owner Lessor, whether as a result of any administrative, legal or equitable action, or otherwise, in violation of the subordination provisions contained in this Agreement.

(b) accelerate payment of any Subordinated Claims or otherwise require such Subordinated Claims to be paid prior to their stated or scheduled maturity date;

(c) commence, prosecute or participate in (i) any administrative, legal or equitable action against or involving the Owner Lessor relating to any Subordinated Claims, including, without limitation, any Proceeding, or (ii) any administrative, legal or

equitable action to (a) enforce or collect any judgment obtained in respect of any Subordinated Claims, (b) enforce or exercise remedies arising under or pursuant to any Subordinated Claims, (c) enforce or exercise remedies under or pursuant to any lien or other security interest securing any Subordinated Claims;

(d) exercise any other rights or remedies to enforce any Subordinated Claims, any collateral security provided with respect to such Subordinated Claims or any covenant, agreement, representation or other undertaking contained in any Subordinated Notes.

Section 5.2 *Defense in Action.* If the Subordinated Party, in violation of the provisions herein set forth, shall commence, prosecute or participate in any suit, action, case or Proceeding referred to in Section 5.1, the Owner Lessor may interpose as a defense or plea the provisions set forth herein, and any holder of any Senior Claims may intervene and interpose such defense or plea in its own name or in the name of the Owner Lessor, and shall, in any event, be entitled to restrain the enforcement of the provisions of any Subordinated Claims in its own name or in the name of the Owner Lessor, as the case may be, in the same suit, action, case or Proceeding or in any independent suit, action, case or Proceeding.

ARTICLE VI
SUBORDINATION ABSOLUTE

Section 6.1 *Survival of Rights.* The rights under this Agreement of the holders of Senior Claims as against the Subordinated Party shall remain in full force and effect without regard to, and shall not be impaired or affected by:

(a) any act or failure to act on the part of the Owner Lessor;

(b) any extension or indulgence in respect of any payment or prepayment of any Senior Claims or any part thereof or in respect of any other amount payable to any holder of any Senior Claims;

(c) any amendment, modification or waiver of, or addition or supplement to, or deletion from, or compromise, release, consent or other action in respect of, any of the terms of any Senior Claims or the Operative Documents;

(d) (i) any exercise or non-exercise by the holder of any Senior Claims of any right, power, privilege or remedy under or in respect of such Senior Claims, the Operative Documents or the subordination provisions contained herein, (ii) any waiver by the holder of any Senior Claims of any right, power, privilege or remedy or of any default in respect of such Senior Claims, the Operative Documents or the subordination provisions contained herein or (iii) any receipt by the holder of any Senior Claims or any failure by such holder to perfect a security interest in, or any release by such holder of, any security for the payment of such Senior Claims;

(e) any merger or consolidation of the Owner Lessor into or with any other Person, or any sale, lease or transfer of any or all of the assets of the Owner Lessor to any other Person;

(f) any payment or other distribution to any holder of any Senior Claims in any Proceeding;

(g) absence of any notice to, or knowledge by, the Subordinated Party of the existence or occurrence of any of the matters or events set forth in the foregoing clauses (a) through (f); or

(h) any other circumstance.

Section 6.2 *Waivers.*

(a) *Waiver of Defenses.* The Subordinated Party hereby irrevocably waives, in any proceeding by the Lease Indenture Trustee to endorse its rights under this Agreement, (i) any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance of this Agreement and (ii) the defense that claims asserted by the Lease Indenture Trustee pursuant to this Agreement are res judicata as a result of any decision rendered in any prior Proceeding.

(b) *Other Waivers.* The Subordinated Party hereby irrevocably waives (i) notice of any of the matters referred to in Section 6.1, (ii) all notices which may be required, whether by statute, rule of law or otherwise, to preserve intact any rights of any holder of any Senior Claims against the Owner Lessor, including, without limitation, any demand, presentment and protest, or any proof of notice of nonpayment under any document evidencing such Senior Claims or under the Operative Documents, (iii) notice of the acceptance of or reliance on this Agreement by the Indenture Estate, (iv) notice of any renewal, extension or accrual of any Senior Claims, or any loans made or other action taken in reliance on this Agreement, (v) any right to the enforcement, assertion or exercise by any holder of any Senior Claims of any right, power, privilege or remedy conferred in any document evidencing such Senior Claims or in the Operative Documents, or otherwise, (vi) any requirement of diligence on the part of any holder of any Senior Claims, (vii) any requirement on the part of any holder of any Senior Claims to mitigate damages resulting from any default under any documents evidencing such Senior Claims or under the Operative

Documents and (viii) any notice of any sale, transfer or other disposition of any Senior Claims by any holder thereof.

Section 6.3 *Assent.* The Subordinated Party hereby irrevocably assents to (a) any renewal, extension or postponement of the time of payment of any Senior Claims or any other indulgence with respect thereto, (b) any increase in the amount of any Senior Claims, (c) any substitution, exchange or release of collateral for any Senior Claims, (d) the addition or release of any Person primarily or secondarily liable for any Senior Claims and (e) the provisions of any instrument, security or other writing evidencing any Senior Claims.

ARTICLE VII
OWNER LESSOR OBLIGATIONS

The provisions of this Agreement are intended solely for the purpose of defining the relative rights and obligations of the Subordinated Party and the holders of the Senior Claims. Nothing contained herein (a) is intended to or shall impair, as among the Owner Lessor, its creditors and the Subordinated Party, the obligation of the Owner Lessor, which is absolute and unconditional, to pay to the Subordinated Party, as and when the same shall become due and payable in accordance with its terms, all amounts payable in respect of the Subordinated Claims, or (b) is intended to affect the relative rights of the Subordinated Party and creditors of the Owner Lessor other than holders of the Senior Claims.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

Section 8.1 *Waivers, Amendments.*

(a) The provisions of this Agreement may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by each of the parties hereto.

(b) No failure or delay in exercising any power or right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on any party in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval under

this Agreement shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

Section 8.2 *Acknowledgment.* The Owner Participant expressly acknowledges that it will take all actions necessary to cause the Owner Lessor to comply with *Section 3.4* and *Section 3.5* of the Lease Indenture.

Section 8.3 *Notices.* Except as otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be in writing and shall be deemed to have been duly given or made when delivered if delivered by hand or courier or when received if sent by mail or telecopy, in each case addressed to the party to which such notice is required or permitted to be given or made hereunder set forth below its signature hereto, or such other address as may be specified from time to time by such party in a notice to the other parties hereto.

Section 8.4 *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 8.5 *Headings.* The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provisions hereof or thereof.

Section 8.6 *Execution in Counterparts, Effectiveness.* This Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

Section 8.7 *Governing Law; Entire Agreement.* **THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK**. This Agreement constitutes the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any prior agreements, written or oral, with respect thereto.

Section 8.8 *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 8.9 *Forum Selection and Consent to Jurisdiction.* ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. EACH PARTY HERETO FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

Section 8.10 *Waiver of Jury Trial.* EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH PARTY ACKNOWLEDGES

AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OTHER PARTIES ENTERING INTO THIS AGREEMENT.

Section 8.11 *Limitations of Liability of the Independent Manager*. It is expressly understood and agreed by the parties hereto that this Agreement is executed by Wells Fargo, not individually or personally, but solely as Independent Manager under the Lessor LLC Agreement in the exercise of the power and authority conferred and vested in it as such Independent Manager, that each and all of the representations, undertakings and agreements herein made on the part of the Independent Manager or the Owner Lessor are intended not as personal representations, undertakings and agreements by Wells Fargo, or for the purpose or with the intention of binding Wells Fargo, personally, but are made and intended for the purpose of binding only the Lease Indenture Estate, that nothing herein contained shall be construed as creating any liability of Wells Fargo, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of Wells Fargo, to perform

any covenant either express or implied contained herein or in the other Operative Documents to which the Independent Manager or the Owner Lessor is a party, and that so far as Wells Fargo is concerned, any Person shall look solely to the Lease Indenture Estate for the performance of any obligation hereunder or thereunder or under any of the instruments referred to herein or therein; *provided*, that nothing contained in this *Section 8.11* shall be construed to limit in scope or substance any general corporate liability of Wells Fargo as expressly provided in the Lessor LLC Agreement or in the Participation Agreement.

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

HOMER CITY OL1 LLC
By: Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as Owner Manager under the Lessor LLC Agreement

/s/ JOSEPH P. O'DONNELL

By: Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

Address for Notices:

Homer City OL1 LLC
c/o Wells Fargo Bank Minnesota, N.A.
Corporate Trustee Services
MAC: N2691-090
213 Court Street
Middletown, CT 06457

With a copy to:

Wells Fargo Bank Northwest, N.A.
Corporate Trust Services

MAC: U1254-031
Salt Lake City, UT 84111

GENERAL ELECTRIC CAPITAL CORPORATION

/s/ MARK MELLANA

By: Name: Mark Mellana
Title: Attorney in Fact

Address for Notices:

General Electric Capital Corporation
120 Long Ridge Road
Stamford, CT 06927
Attn: Manager, Energy Portfolio
Phone: 203.354.4580
Facsimile: 203.357.4890

With a copy to:
Amy Fisher, Esq.
General Electric Capital Corporation
120 Long Ridge Road
Stamford, Ct 06927

BANK OF NEW YORK, as Lease Indenture Trustee

/s/ CHRISTOPHER J. GRELL

By: Name: Christopher J. Grell
Title: Authorized Signer

Address for Notices:

The Bank of New York
C/o United States Trust Company of New York
114 West 47th Street, 25th Floor
25th Floor
New York, New York 10036
Attention: Corporate Trust Administration
Facsimile: 212-852-1625

Exhibit 4.5.1.

Schedule identifying substantially identical agreements to Owner Lessor Subordination Agreement

1. The Owner Lessor Subordination Agreement dated as of December 7, 2001 by and among Homer City OL1, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

2. The Owner Lessor Subordination Agreement dated as of December 7, 2001 by and among Homer City OL2, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

3. The Owner Lessor Subordination Agreement dated as of December 7, 2001 by and among Homer City OL3, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

4. The Owner Lessor Subordination Agreement dated as of December 7, 2001 by and among Homer City OL4, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

5. The Owner Lessor Subordination Agreement dated as of December 7, 2001 by and among Homer City OL5, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

6. The Owner Lessor Subordination Agreement dated as of December 7, 2001 by and among Homer City OL6, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

7. The Owner Lessor Subordination Agreement dated as of December 7, 2001 by and among Homer City OL7, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

8. The Owner Lessor Subordination Agreement dated as of December 7, 2001 by and among Homer City OL8, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

Exhibit 4.6

Execution Copy

LEASE SUBORDINATION AGREEMENT

dated as of December 7, 2001

by and among

HOMER CITY OL1 LLC,
as the Owner Lessor,

GE CAPITAL CORPORATION,
as the Owner Participant,

EME HOMER CITY GENERATION L.P.,
as the Facility Lessee

AND

THE BANK OF NEW YORK
as successor to

UNITED STATES TRUST COMPANY OF NEW YORK,
as the Security Agent

LEASE SUBORDINATION AGREEMENT

This LEASE SUBORDINATION AGREEMENT, dated as of December 7, 2001 (this "*Agreement*"), is by and among HOMER CITY OL1 LLC, as the Owner Lessor under the Facility Lease referred to below, GE CAPITAL OWNER PARTICIPANT, as the Owner Participant under the Participation Agreement referred to below, EME HOMER CITY GENERATION L.P., as the Facility Lessee under the Facility Lease referred to below and THE BANK OF NEW YORK, as successor to UNITED STATES TRUST COMPANY OF NEW YORK, not in its individual capacity but solely as the Security Agent under the Lease Indenture (as defined in the Participation Agreement referred to below).

RECITALS

WHEREAS, the holders of the Initial Lessor Notes (as such term is defined in the Participation Agreement) have purchased the Initial Lessor Notes from the Owner Lessor and have been granted a security interest in the Facility Lease as collateral for the Initial Lessor Notes;

WHEREAS, contemporaneously herewith EME Homer City Generation L.P. ("*Homer City*" or the "*Facility Lessee*"), a wholly owned subsidiary of Edison Mission Midwest Holdings Co. ("*Holdings*"), will enter into a transaction pursuant to the Participation Agreement by and among Homer City, the Owner Lessor, Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner

Manager, the Owner Participant, Homer City Funding LLC, as Lender, the Security Agent and United States Trust Company of New York, not in its individual capacity but solely as Bondholder Trustee (as amended, modified and supplemented and in effect from time to time, the "*Participation Agreement*") whereby Homer City would sell certain of its generating assets to the Owner Lessor and the Owner Lessor would lease such generating assets to Homer City under the Facility Lease;

WHEREAS, in connection with the transactions contemplated by the Participation Agreement, the parties hereto will agree to subordinate certain claims against Homer City under the Participation Agreement and the other Operative Documents to the rights of holders of the Initial Lessor Notes (as defined in the Participation Agreement as of the date hereof and as such term may hereafter be modified with the consent of the Security Agent); and

WHEREAS, the execution and delivery of this Agreement is a condition precedent to the effectiveness of the Participation Agreement.

AGREEMENT

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

ARTICLE I
DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 *Definitions.*

(a) *Participation Agreement.* Unless otherwise expressly provided herein, capitalized terms used but not defined in this Agreement shall have the meanings given to such terms in Appendix A to the Participation Agreement.

(b) *Other Defined Terms.* The following terms, when used herein, shall have the following meanings:

"*Subordinated Leveraged Lease Obligations*" shall mean, the Component A of Basic Lease Rent, the Component A of Termination Value and any Supplemental Rent constituting Excepted Payments now or hereafter owed by Homer City to the Owner Participant or the Owner Lessor under the Operative Documents; provided, however, that the following items shall be excluded from the Subordinated Leveraged Lease Obligations: (a) any Excepted Payments owing to the Owner Lessor on account of fees and indemnities owed to the Owner Manager; and (b) Rent paid from the Reserve Account.

"*Proceeding*" shall have the meaning given to such term in *Section 3.2*.

"*Senior Claims*" shall have the meaning given to such term in *Section 2.1(a)*.

"*Senior Leveraged Lease Obligations*" shall mean Basic Lease Rent (other than the Component A of Basic Lease Rent), Termination Value (other than the Component A of Termination Value), any Supplemental Rent not constituting Subordinated Leveraged Lease Obligations (whether for indemnities, costs, expenses or otherwise) now or hereafter owed by Homer City to the Owner Lessor, the Security Agent, the Lease Indenture Trustee, the Lender or the Bondholder Trustee under the Operative Documents and any other sum now or hereafter owed with respect to the Initial Lessor Notes (whether for principal thereof, interest thereon, or make-whole payments thereof or otherwise).

"*Subordinated Claims*" shall mean, as at any date of determination, the aggregate amount of all Subordinated Leveraged Lease Obligations for all Fiscal Quarters ending on or immediately prior to such date to the extent not

discharged prior to such date pursuant to and in compliance with the provisions of Section 6.9 of the Participation Agreement.

"*Subordinated Parties*" shall mean the Owner Lessor and the Owner Participant in their capacity as holders of the Subordinated Claims.

Section 1.2 *Principles of Construction.* Unless otherwise expressly provided herein, the principles of construction set forth in the Participation Agreement shall apply to this Agreement.

ARTICLE II
SUBORDINATION PROVISIONS

Section 2.1 *Subordination of Claims.* Until all Senior Leveraged Lease Obligations shall have been paid in full:

(a) the Subordinated Claims shall be subordinate, to the extent and in the manner hereinafter set forth, to the prior payment of, and junior in right of payment to, any and all Senior Leveraged Lease Obligations whether now existing or hereafter incurred or created (collectively, the "*Senior Claims*");

(b) Homer City shall not, directly or indirectly, except with respect to withdrawals from the Equity Account pursuant to Section 4.6(b) of the Amended Security Desposit Agreement and Section 17.1(g) of the Facility Lease, make any payment on account of, or transfer any collateral for any part of, any Subordinated Claims; *provided, however*, that, as long as no Lease Event of Default (other than a Rent Default Event) has occurred and is continuing under the Facility Lease and subject to Section 6.9 of the Participation Agreement and the applicable provisions of the Amended Security Deposit Agreement, Homer City may make payments of Subordinated Claims consisting of Basic Lease Rent, Supplemental Rent and Renewal Lease Rent; and

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(c) without the consent of the Lease Indenture Trustee, the Subordinated Parties shall not demand, sue for or accept (other than with respect to withdrawals from the Equity Account pursuant to Section 4.6(a)(i) and Section 4.6(b) of the Amended Security Deposit Agreement and Section 17.1(g) of the Facility Lease and withdrawals from the Reserve Account pursuant to Section 4.4 of the Amended Security Deposit Agreement) from Homer City any payment or collateral in respect of any Subordinated Claims, or take any other action to enforce its rights or exercise any remedies in respect of any Subordinated Claims (whether upon the occurrence or during the continuation of a Lease Event of Default under the Facility Lease).

(d) Neither Homer City nor the Subordinated Parties shall otherwise take any action prejudicial to or inconsistent with the priority position of the Secured Parties over the Subordinated Parties created by this Section 2.1.

Section 2.2 *Reliance.* All Senior Claims shall conclusively be deemed to have been created, contracted or incurred in reliance on the subordination provisions contained in this Agreement and all dealings between Homer City, the Subordinated Parties and each of the holders of Senior Claims shall be deemed to have been consummated in reliance upon the subordination provisions contained herein.

Section 2.3 *Other Holders.* The subordination provisions set forth in this Agreement shall be binding upon transferees or assignees of each of the Subordinated Parties and upon each other holder of Subordinated Claims and shall inure to the benefit of transferees or assignees of every holder of the Initial Lessor Notes.

ARTICLE III
WRONGFUL COLLECTIONS

Section 3.1 *Turnover.* Should any payment on account of, or any collateral for any part of, any Subordinated Claims be received by the Subordinated Party in violation of this Agreement or the provisions of *Section 6.9* of the Participation Agreement, such payment or collateral shall be delivered forthwith to the Security Agent in the same form as so received (with any necessary endorsement). Until so delivered, any such payment or collateral shall be held by such Subordinated Party in trust for the holders of the Senior Claims and shall not be commingled with other funds or property of such Subordinated Party. The Security Agent is hereby irrevocably authorized to supply any endorsement or assignment which may have been omitted which the Security Agent may reasonably deem necessary or advisable to enforce its rights under this Agreement, including, without limitation, authority to receive, endorse and collect all instruments made payable to any Subordinated Party representing any distribution, interest payment or other payments in respect of the Subordinated Claims.

Section 3.2 *Survival of Obligation.* The obligation of the Subordinated Party to deliver to the Security Agent any payment or collateral received in connection with any Subordinated Claims, as set forth in *Section 3.1*, shall survive and shall not be in any way affected by the result of any (a) insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding relating to Homer City, its property or its creditors as such, (b) proceeding for any liquidation, dissolution or other winding-up of Homer City, voluntary or involuntary, whether or not involving insolvency or bankruptcy proceedings, (c) assignment for the benefit of creditors, (d) other marshalling of the assets of Homer City or (e) general meeting of creditors of Homer City, in each case, under the laws of the United States or any other jurisdiction (any such event, a "*Proceeding*").

ARTICLE IV
PROCEEDINGS

Section 4.1 *Commencement of Proceedings.* Except to the extent otherwise provided herein, no Subordinated Party shall commence, or join with any other creditor or creditors of Homer City in commencing, any Proceeding against Homer City without the consent of the Lease Indenture Trustee.

Section 4.2 *Payments and Distributions.* In the event of any Proceeding, until all Senior Leveraged Lease Obligations shall have been paid in full, any payment or distribution of any kind or character on account of a Subordinated Claim, whether in cash, property or securities, which, but for the subordination provisions of this Agreement would otherwise be payable or deliverable upon or in respect of Subordinated Claims, shall instead be paid over or delivered to the Security Agent and no holder of Subordinated Claims shall be entitled to receive any such payment or distribution or any benefit therefrom.

Section 4.3 *Enforcement of Subordinated Claims.*

(a) *Cooperation.* The Subordinated Parties shall cooperate fully with the Security Agent and perform all acts reasonably requested by the Security Agent to enable the Security Agent to enforce any Subordinated Claims, including, without limitation, filing appropriate proofs of claim and executing and delivering all necessary powers of attorney, assignments or other instruments.

(b) *Enforcement by the Subordinated Party.* After the commencement of any Proceeding, the requesting Subordinated Party may (but shall not be required to) proceed to file a proof of claim, enter appearances and file affirmative or responsive pleadings with respect to such Subordinated Claims and take such further steps with respect thereto, not inconsistent with this Agreement, as the requesting Subordinated Party may deem proper.

(c) *Subrogation.* The Subordinated Parties shall not have any subrogation or other rights as a holder of Senior Claims, and each Subordinated Party hereby irrevocably waives all such rights of subrogation and all rights of reimbursement or indemnity whatsoever and all rights of recourse to any security for any Senior Claims, until such time as all Senior Leveraged Lease Obligations shall have been paid in full. Subject to and from and after the payment in full of all Senior Leveraged Lease Obligations, each Subordinated Party shall be subrogated to any rights of the holders of Senior Claims to receive payments or distributions of cash, property or securities of Homer City applicable to any Subordinated Claims until all amounts owing on such Subordinated Claims shall be paid in full.

(a) *Enforcement by the holders of the Senior Claims.* At any Proceeding, until all Obligations shall have been paid in full, the holders of the Senior Claims are hereby irrevocably authorized (but not required) to:

(i) enforce claims comprising Subordinated Claims in the name of the Subordinated Party by proof of debt, proof of claim, suit or otherwise;

(ii) collect any assets of any Owner Lessor distributed, divided or applied by way of dividend or payment, and any securities issued, in each case, on account of Subordinated Claims and apply the same, or the proceeds of any realization upon the same that the Indenture Estate in their discretion elect to effect, to Senior Claims until all Obligations shall have been paid in full; provided, however, that the Lease Indenture Estate shall render any surplus to the Subordinated Party or its affiliates, as their interests appear, or interplead such surplus with a court of competent jurisdiction;

(iii) vote claims comprising Subordinated Claims to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition or extension; and

(iv) take generally any action in connection with any such Proceeding which the Subordinated Party might otherwise take.

ARTICLE V
LIMITATION ON ACTIONS

Section 5.1 *Actions Prohibited.* Until all Senior Leveraged Lease Obligations shall have been paid in full, except as otherwise expressly provided herein or in the other Operative Documents, the Subordinated Parties shall not, without the prior written consent of the Security Agent:

(a) take, obtain or hold (or permit anyone acting on its behalf to take, obtain or hold) any assets of Homer City (other than Homer City's interest in the Facility and the Facility Site), whether as a result of any administrative, legal or equitable action, or otherwise, in violation of the subordination provisions contained in this Agreement;

(b) commence, prosecute or participate in (i) any administrative, legal or equitable action against or involving Homer City relating to the payment or collection of any Subordinated Claims, including, without limitation, any Proceeding, or (ii) any administrative, legal or equitable action to (a) enforce or collect any judgment obtained in respect of any Subordinated Claims, (b) enforce or exercise remedies seeking to collect or enforce payment of any Subordinated Claims or (c) enforce or exercise remedies under or pursuant to any lien or other security interest securing any Subordinated Claims; or

(c) exercise any other rights or remedies to enforce the payment or collection of any Subordinated Claims or any collateral security provided with respect to such Subordinated Claims.

Section 5.2 *Defense in Action.* If the Subordinated Party, in violation of the provisions herein set forth, shall commence, prosecute or participate in any suit, action, case or Proceeding referred to in Section 5.1, the Owner Lessor may interpose as a defense or plea the provisions set forth herein, and any holder of any Senior Claims may intervene and interpose such defense or plea in its own name or in the name of the Owner Lessor, and shall, in any event, be entitled to restrain the enforcement of the provisions of any Subordinated Claims in its own name or in the name of the Owner Lessor, as the case may be, in the same suit, action, case or Proceeding or in any independent suit, action, case or Proceeding.

ARTICLE VI
SUBORDINATION ABSOLUTE

Section 6.1 *Survival of Rights.* The rights under this Agreement of the holders of Senior Claims as against the Subordinated Parties shall remain in full force and effect without regard to, and shall not be impaired or affected by:

(a) any act or failure to act on the part of Homer City;

(b) any extension or indulgence in respect of any payment or prepayment of any Senior Claims or any part thereof or in respect of any other amount payable to any holder of any Senior Claims;

(c) any amendment, modification or waiver of, or addition or supplement to, or deletion from, or compromise, release, consent or other action in respect of, any of the terms of any Senior Claims;

(d) (i) any exercise or non-exercise by the holder of any Senior Claims of any right, power, privilege or remedy under or in respect of such Senior Claims or the subordination provisions contained herein, (ii) any waiver by the holder of any Senior Claims of any right, power, privilege or remedy or of any default in respect of such Senior Claims or the subordination provisions contained herein or (iii) any receipt by the holder of any Senior Claims or any failure by such

holder to perfect a security interest in, or any release by such holder of, any security for the payment of such Senior Claims;

(e) any merger or consolidation of Homer City or any of its subsidiaries into or with other Person, or any sale, lease or transfer of any or all of the assets of Homer City or any of its subsidiaries to any other Person, provided that such merger or consolidation is effected in compliance with the relevant provisions of the Participation Agreement;

(f) any payment or other distribution to any holder of any Senior Claims in any Proceeding;

(g) absence of any notice to, or knowledge by, the Subordinated Parties of the existence or occurrence of any of the matters or events set forth in the foregoing clauses (a) through (f); or

(h) any other circumstance.

The provisions of this *Section 6.1* are not in derogation of, and are not intended to affect in any way, any rights or remedies of, or available to, the Subordinated Parties that may arise under the other Operative Documents directly or indirectly as a consequences of acts, events or circumstances set forth above.

Section 6.2 *Waivers.*

(a) *Waiver of Defenses.* Each Subordinated Party hereby irrevocably waives, in any proceeding by the holders of Senior Claims to enforce their rights under this Agreement, any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance of this Agreement.

(b) *Other Waivers.* Each Subordinated Party hereby irrevocably waives (i) notice of any of the matters referred to in *Section 6.1*, (ii) all notices which may be required, whether by statute, rule of law or otherwise, to preserve intact any rights of any holder of any Senior Claims against Homer City, including, without limitation, any demand, presentment and protest, or any proof of notice of nonpayment under any document evidencing such Senior Claims, (iii) notice of the acceptance of or reliance on this Agreement by the holders of Senior Claims, (iv) notice of any renewal, extension or accrual of any Senior Claims, or any loans

made or other action taken in reliance on this Agreement, (v) any right to the enforcement, assertion or exercise by any holder of any Senior Claims of any right, power, privilege or remedy conferred in any document evidencing such Senior Claims, or otherwise, (vi) any requirement of diligence on the part of any holder of any Senior Claims, (vii) any requirement on the part of any holder of any Senior Claims to mitigate damages resulting from any default under any documents evidencing such Senior Claims and (viii) any notice of any sale, transfer or other disposition of any Senior Claims by any holder thereof.

Section 6.3 *Assent.* Each Subordinated Party hereby irrevocably assents to (a) any renewal, extension or postponement of the time of payment of any Initial Lessor Notes or any other indulgence with respect thereto, (b) any increase in the amount of any Initial Lessor Notes, subject to the provisions of the Operative Documents, (c) any substitution, exchange or release of collateral for any Initial Lessor Notes, (d) the addition or release of any Person primarily or secondarily liable for any Initial Lessor Notes and (e) the provisions of any instrument, security or other writing evidencing any Initial Lessor Notes.

ARTICLE VII
HOMER CITY OBLIGATIONS

The provisions of this Agreement are intended solely for the purpose of defining the relative rights and obligations of the Subordinated Parties and the holders of Senior Claims. Nothing contained herein

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is intended to affect the relative rights of the Subordinated Parties and creditors of Homer City other than the holders of Senior Claims.

ARTICLE VIII
OPINION OF COUNSEL

Each Subordinated Party shall deliver to the Security Agent an opinion of counsel in form and substance satisfactory to the Security Agent, as to the enforceability of this Agreement against such Subordinated Party.

ARTICLE IX
RIGHTS OF OWNER LESSOR AND OWNER PARTICIPANT

Neither this Agreement not the provisions herein shall prevent the Owner Participant or the Owner Lessor, as the case may be, from exercising its Section 9.1 Rights, other than the rights to demand and receive payments on account of Subordinated Claims.

ARTICLE X
TERMINATION

This Agreement shall terminate when all Senior Leveraged Lease Obligations with respect to the Initial Lessor Notes shall have been paid in full.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.1 *Waivers, Amendments.*

(a) The provisions of this Agreement may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by the Security Agent, the Owner Manager and each other party hereto except that such consent of the Security Agent will be required only if such amendment, modification or waiver increases the obligations of the Security Agent hereunder or adversely affects the rights of the Security Agent hereunder.

(b) No failure or delay in exercising any power or right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on any party in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval under this Agreement shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

Section 11.2 *Notices.* All notices and other communications provided to any party hereto under this Agreement shall be in writing or by facsimile and addressed, delivered or transmitted to such party at its address or facsimile number set forth below or at such other address or facsimile number as may be designated by such party in a written notice to the other parties:

Owner Lessor:
Homer City OL1 LLC
c/o Wells Fargo Bank Minnesota, N.A.
Corporate Trustee Services
MAC; N2691-090

213 Court Street
Middletown, CT 06457

With a copy to:
Wells Fargo Bank Northwest, N.A.
Corporate Trust Services
MAC; U1254-031
Salt Lake City, UT 84111

Owner Participant:
General Electric Capital Corporation
120 Long Ridge Road
Stamford, CT 06927

Attention: Manager Energy Portfolio
Telephone: 203-354-4580
Facsimile: 203-357-4890

With a copy to:
Amy Fisher, Esq.
General Electric Capital Corporation
120 Long Ridge Road
Stamford, CT 06927

Security Agent:
The Bank of New York

C/o United States Trust Company of New York
114 West 47th Street, 25th Floor
New York, New York 10036
Attention: Corporate Trust Administration
Facsimile: 212-852-1625

Homer City:
18101 Von Karman Avenue
Suite 1700
Irvine, CA 92612-1046
Attention: Treasurer
Facsimile: 949-752-5624

Any notice, if mailed and properly addressed with postage prepaid shall be effective five (5) Business Days after being sent or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when transmitted (if confirmed).

Section 11.3 *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 11.4 *Headings.* The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provisions hereof or thereof.

Section 11.5 *Execution in Counterparts, Effectiveness.* This Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

Section 11.6 *Governing Law; Entire Agreement.* THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. This Agreement constitutes the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any prior agreements, written or oral, with respect thereto.

Section 11.7 *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 11.8 *Forum Selection and Consent to Jurisdiction.* ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. EACH PARTY HERETO FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN

BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY PARTY HERETO HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, SUCH PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

Section 11.9 *Waiver of Jury Trial.* EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH PARTY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OTHER PARTIES ENTERING INTO THIS AGREEMENT.

Section 11.10 *Limitations of Liability of the Independent Manager.* It is expressly understood and agreed by the parties hereto that this Agreement is executed by Wells Fargo, not individually or personally, but solely as Independent Manager under the Lessor LLC Agreement in the exercise of the power and authority conferred and vested in it as such Independent Manager, that each and all of the representations, undertakings and agreements herein made on the part of the Independent Manager or the Owner Lessor are intended not as personal representations, undertakings and agreements by Wells Fargo, or for the purpose or with the intention of binding Wells Fargo, personally, but are made and intended for the purpose of binding only the Lease Indenture Estate, that nothing herein contained shall be construed as creating any liability of Wells Fargo, or any incorporator or any past, present or

future subscriber to the capital stock of, or stockholder, officer or director of Wells Fargo y, to perform any covenant either express or implied contained herein or in the other Operative Documents to which the Independent Manager or the Owner Lessor is a party, and that so far as Wells Fargo is concerned, any Person shall look solely to the Lease Indenture Estate for the performance of any obligation hereunder or thereunder or under any of the instruments referred to herein or therein; *provided*, that nothing contained in this *Section* shall be construed to limit in scope or substance any general corporate liability of Wells Fargo as expressly provided in the Lessor LLC Agreement or in the Participation Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Subordination Agreement to be executed by their respective officers as of the days and year first above written.

HOMER CITY OL1

By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager under the Lessor LLC Agreement

/s/ ROBERT L. REYNOLDS

By: Name: Robert L. Reynolds
Title: Vice President

GE CAPITAL CORPORATION

By: /s/ MARK MELLANA

Name: Mark Mellana
Title: Attorney in Fact

EME HOMER CITY GENERATION L.P.
By Its General Partner

MISSION ENERGY WESTSIDE, INC.

/s/ JOHN FINNERAN

By: Name: John Finneran
Title: Vice President

THE BANK OF NEW YORK, AS SUCCESSOR TO THE UNITED STATES TRUST COMPANY, not in its individual capacity, except to the extent provided herein, but solely as Security Agent under the Lease Indenture

/s/ CHRISTOPHER GRELL

By: Name: Christopher Grell
Title: Authorized Signer

QuickLinks

Exhibit 4.6.1

Schedule identifying substantially identical agreements to Lease Subordination Agreement

1. The Lease Subordination Agreement dated as of December 7, 2001 by and among Homer City OL1 LLC, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; EME Homer City Generation, L.P., a California corporation, as Facility Lessee; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

2. The Lease Subordination Agreement dated as of December 7, 2001 by and among Homer City OL2 LLC, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; EME Homer City Generation, L.P., a California corporation, as Facility Lessee; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

3. The Lease Subordination Agreement dated as of December 7, 2001 by and among Homer City OL3 LLC, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; EME Homer City Generation, L.P., a California corporation, as Facility Lessee; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

4. The Lease Subordination Agreement dated as of December 7, 2001 by and among Homer City OL4 LLC, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; EME Homer City Generation, L.P., a California corporation, as Facility Lessee; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

5. The Lease Subordination Agreement dated as of December 7, 2001 by and among Homer City OL5 LLC, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; EME Homer City Generation, L.P., a California corporation, as Facility Lessee; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

6. The Lease Subordination Agreement dated as of December 7, 2001 by and among Homer City OL6 LLC, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; EME Homer City Generation, L.P., a California corporation, as Facility Lessee; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

7. The Lease Subordination Agreement dated as of December 7, 2001 by and among Homer City OL7 LLC, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; EME Homer City Generation, L.P., a California corporation, as Facility Lessee; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

8. The Lease Subordination Agreement dated as of December 7, 2001 by and among Homer City OL8 LLC, a Delaware limited liability company, as Owner Lessor; General Electric Captial Corporation, a Delaware corporation, as Owner Participant; EME Homer City Generation, L.P., a California corporation, as Facility Lessee; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent.

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Exhibit 4.7

Execution Copy

PLEDGE AND COLLATERAL AGREEMENT

made by

EDISON MISSION HOLDINGS CO.,

in favor of

THE BANK OF NEW YORK,
as successor to

UNITED STATES TRUST COMPANY OF NEW YORK,
as Collateral Agent

Dated as of December 7, 2001

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PLEDGE AND COLLATERAL AGREEMENT, dated as of December 7, 2001, made by EDISON MISSION HOLDINGS CO., a California corporation ("*Edison Mission Holdings,*" the "*Pledgor*") in favor of The Bank of New York, as successor to UNITED STATES TRUST COMPANY OF NEW YORK, as Collateral Agent for the Secured Parties (as defined below) (in such capacity, the "*Collateral Agent*").

RECITALS

A. Contemporaneously herewith, EME Homer City Generation, L.P., a Pennsylvania limited partnership ("*EME Homer City*") will enter into a transaction pursuant to the Participation Agreements listed on *Schedule 5* (as amended, modified and supplemented and in effect from time to time, collectively, the "*Participation Agreements*") whereby EME Homer City will sell the undivided interests in its generating assets to the Owner Lessor and the Owner Lessor will lease such undivided interests in the generating assets to EME Homer City under the Facility Lease.

B. In consideration of the transactions contemplated by each of the Participation Agreements, EME Homer City will be obligated to pay to the Secured Parties the aggregate amount of all obligations owed by EME Homer City to the Secured Parties under the Operative Documents (the "*Leveraged Lease Obligations*").

C. In satisfaction of the requirements of the Secured Parties, the Pledgors desire by this Agreement and the other Security Documents (as defined below) to provide collateral as security for EME Homer City's obligations under Participation Agreements and the other Operative Documents (as defined below).

D. In order to simplify administration of such collateral and to provide for the orderly enforcement of their respective rights, the Secured Parties (as defined below) have appointed the Collateral Agent to serve as their common representative, to be the beneficiary under any pledge intended to benefit the Secured Parties, and to hold the liens created, or to be created, under the Operative Documents.

E. EME Homer City is a member of an affiliated group of companies that includes the Pledgor. The Pledgor will derive substantial direct and indirect benefit from the sale-leaseback transaction.

F. It is a condition precedent to the approval by the Secured Parties of the transactions contemplated by the Operative Documents that the Pledgor shall have executed and delivered this Agreement to the Collateral Agent for the benefit of the Secured Parties.

NOW, THEREFORE, in consideration of the premises, the Pledgor hereby agrees with the Collateral Agent, for the benefit of the Secured Parties, as follows:

SECTION 1. DEFINED TERMS

1.1 *Definitions.* (a) Unless otherwise defined herein, terms defined in each Participation Agreement and used herein shall have the meanings given to them in each Participation Agreement.

(b) The following terms shall have the following meanings:

"*Agreement*": this Pledge and Collateral Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

"*Capital Stock*": any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

"*Certificated Security*": the collective reference to (i) any "certificated security" as defined in Section 8-102 of the New York UCC and (ii) all limited liability company certificates,

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partnership interest certificates and certificated options therefor that may be issued or granted by any Issuer.

"*Collateral*": as defined in Section 2(a).

"*Collateral Account*": any collateral account established by the Collateral Agent as provided in Section 5.2.

"*Facility Lease*": as defined in each Participation Agreement.

"*Investment Property*": the collective reference to (i) all "investment property" as such term is defined in Section 9-115 of the New York UCC and (ii) whether or not constituting "investment property" as so defined, all Pledged Shares.

"*Issuers*": MEW as issuer of the Investment Property.

"*Lease Event of Default*": as defined in each Participation Agreement.

"*Lease Indenture Trustee*": as defined in each Participation Agreement.

"*Leveraged Lease Obligations*": as defined in the recitals.

"*MEW*": Mission Energy Westside, Inc., a California corporation.

"*Majority in Interest of Owner Lessors*": the holders of at least 51% of all Undivided Interests (as defined in any Participation Agreement) still subject to a Facility Lease.

"*New York UCC*": the Uniform Commercial Code as from time to time in effect in the State of New York.

"*Person*": any natural person, corporation, partnership, limited liability company, firm, association, trust, government, governmental agency or other entity, whether acting in an individual, fiduciary or other capacity.

"*Pledged Shares*": the shares of Capital Stock of MEW, together with any other shares, stock certificates, options or rights of any nature whatsoever in respect of the Capital Stock of MEW that may be issued or granted to, or held by, the Pledgor while this Agreement is in effect.

"*Proceeds*": all "proceeds" as such term is defined in Section 9-306(1) of the New York UCC and, in any event, shall include all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto.

"*Secured Parties*": the Collateral Agent, the Owner Lessors and the Owner Participant.

"*Securities Act*": the Securities Act of 1933, as amended.

1.2 *Other Definitional Provisions.* (a) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section, schedule, appendix and exhibit references are to this Agreement unless otherwise specified.

(b) Each reference in this Agreement to an Operative Document or other agreement shall be deemed to refer to such Operative Document or other agreement as the same may be amended, supplemented or otherwise modified from time to time.

(c) Any term defined by reference to an agreement, instrument or other document shall have the meaning so assigned to it whether or not such agreement, instrument or document is in effect.

(d) Each reference in this Agreement to a Person shall be deemed to include such Person's successors and assigns.

(e) Each reference in this Agreement to a Requirement of Law shall be deemed to refer to such Requirement of Law as the same may be amended, supplemented or otherwise modified from time to time.

(f) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

SECTION 2. PLEDGE; GRANT OF SECURITY INTEREST

(a) As collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) by EME Homer City of all EME Homer City's Leveraged Lease Obligations, the Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Secured Parties a pledge of and a first priority continuing security interest in, all of the Pledgor's right, title and interest in, to and under the following property, whether now owned by the Pledgor or hereafter acquired and whether now existing or hereafter coming into existence (all being collectively referred to herein as the "*Collateral*"):

(1) all shares of capital stock of MEW (the "*Pledged Shares*"), the certificates representing the Pledged Shares, and all cash dividends, stock dividends, cash, instruments, chattel paper, warrants, options and other rights, property or proceeds and products from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Shares now or hereafter owned by the Pledgor;

(2) additional shares of capital stock of MEW at any time acquired by the Pledgor whether by stock split, stock dividend, transfer, new issuance or any other manner (any such additional shares or membership interests shall constitute part of the Pledged Shares) whether voting or non-voting, and all securities convertible into and warrants, options and other rights to acquire any shares of capital stock of MEW, and the certificates or other instruments representing such additional shares, warrants, options or rights, and all cash dividends, stock dividends, cash, instruments, chattel paper, and any other rights, property or proceeds and products from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing;

(3) all other claims of any kind or nature, and any instruments, certificates, chattel paper or other writings evidencing such claims, whether in contract or tort and whether arising by operation of law, consensual agreement or otherwise, at any time acquired by Pledgor in respect of any or all of the foregoing against MEW;

(4) all books and records relating to any of the foregoing;

(5) all interests in substitution for or in addition to any of the foregoing, any certificates representing or evidencing such interests, and all cash, securities, distributions and other property at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing; and

(6) all Proceeds of and to any of the property of the Pledgor described in the preceding clauses of this Section.

SECTION 3. REPRESENTATIONS AND WARRANTIES

The Pledgor hereby represents and warrants, with respect to itself and its Collateral, to the Collateral Agent and each Secured Party that:

3.1 *Due Organization.* The Pledgor (i) is duly organized, validly existing and in good standing under the law of the jurisdiction of its formation, and has the capacity and power to enter into this Agreement, to perform its obligations hereunder and thereunder and to consummate the transactions

contemplated hereby and thereby, (ii) is duly qualified to do business and in good standing in each other jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary, (iii) has the requisite power to own its Collateral, and (iv) possesses all Governmental Approvals required for its ownership of its Collateral.

3.2 *Due Authorization; Enforceability, etc.* The Pledgor has taken all necessary corporate or other action, as the case may be, to authorize the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by the Pledgor and constitutes the legal, valid and binding obligations of the Pledgor enforceable in accordance with its terms, (except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors' rights generally and general equitable principles).

3.3 *Non-Contravention.* Neither the execution and delivery of this Agreement nor compliance with any of the terms and provisions hereof (i) contravenes any Requirement of Law, binding on or affecting the Pledgor, any law, order, writ, judgment, injunction, decree, determination, or award applicable to the Pledgor or Governmental Approvals applicable to the Pledgor or any of its respective properties or other assets, except where such contravention could not reasonably be expected to have a Material Adverse Effect, (ii) conflicts with, breaches or contravenes the provisions of the organizational documents of the Pledgor or under any mortgage, indenture or other contract, agreement or instrument to which the Pledgor is a party or by which the Pledgor or its property is bound, or (iii) results in the creation or imposition of any Liens (other than those created hereunder) upon any of the property or assets of the Pledgor under, or in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default with respect to any contractual obligations of the Pledgor.

3.4 *Consents.* Except for the actions contemplated herein or in Section 4.6 of the Participation Agreement, no consent of any other Person and no authorization, approval, or other action by, and no notice to or filing with, any Person or Governmental Authority is required (i) for the pledge of the Collateral by the Pledgor pursuant to this Agreement, (ii) for the execution, delivery or performance of this Agreement by the Pledgor, (iii) for the perfection or maintenance of the security interest created hereby (including the first priority nature of such security interest) or (iv) for the exercise by the Owner Lessor, the Owner Participant, or so long as the Lien of the Lease Indenture has not been discharged or released, the Security Agent, of the voting or other rights provided for in this Agreement or the remedies in respect of such Collateral pursuant to this Agreement or as provided by any Requirement of Law, except those which have been duly obtained or made and, in the case of maintenance of perfection, the filing of continuation statements under the Uniform Commercial Code.

3.5 *Litigation.* There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the Pledgor's Actual Knowledge, threatened against or affecting the Pledgor or any of its properties or rights which could reasonably be expected to have a Material Adverse Affect on the right or ability of the Pledgor to fulfill its obligations hereunder, or which questions or challenges the validity of this Agreement or any of the transactions contemplated hereby.

3.6 *Defenses.* To the Actual Knowledge of the Pledgor, no Pledged Shares pledged hereunder are subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against the Pledgor by any Person. As of the Closing Date, there are no certificates, instruments, documents or other writings of MEW which evidence any Pledged Shares other than the stock certificate evidencing the Pledged Shares (the "*Stock Certificate*") the original of which has been delivered to the Lease Indenture Trustee at the Closing.

3.7 *Regulations.* None of the Collateral pledged hereunder constitutes margin stock, as defined in Regulation T, U and X of the Board of Governors of the Federal Reserve System or any regulations substituted therefor, as from time to time in effect, are used in this Section 3 without meaning.

3.8 *Other Contracts.* The Pledgor is not a party to any outstanding agreement, option or contract to sell all or any portion of the Collateral. No part of the Collateral is subject to the terms of any agreement restricting the sale or transfer of such Collateral. No Person has any right to purchase or terminate any or all of the interests of the Pledgor in the Collateral, except pursuant to the terms of this Agreement.

3.9 *Title; No Other Liens.* Except for the security interest granted to the Collateral Agent pursuant to this Agreement, the Pledgor owns each item of the Collateral free and clear of any and all Liens or claims of others. No financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Collateral Agent pursuant to this Agreement or as are permitted by the Operative Documents.

3.10 *Perfected First Priority Liens.* The security interests granted pursuant to this Agreement upon completion of the filings and other actions specified on *Schedule 3* (which, in the case of all filings and other documents referred to on said *Schedule*, have been delivered to the Collateral Agent in completed and duly executed form) will (a) constitute valid and enforceable perfected security interests in all of the Collateral in favor of the Collateral Agent as collateral security for EME Homer City's Leveraged Lease Obligations to the extent that a security interest may be perfected by filing and/or the other actions specified on *Schedule 3*, and (b) are prior to all other Liens on the Collateral in existence on the date hereof except for Liens permitted by the Operative Documents and which have priority over the Liens on the Collateral by operation of law.

3.11 *Chief Executive Office.* On the date hereof, the Pledgor's jurisdiction of organization and the location of the Pledgor's chief executive office or sole place of business are specified on *Schedule 4.*

3.12 *Investment Property.* (a) The shares of Pledged Shares pledged by the Pledgor hereunder constitute all the issued and outstanding shares of all classes of the Capital Stock of the Issuer owned by the Pledgor.

(b) All the shares of the Pledged Shares have been duly and validly issued and are fully paid and nonassessable.

(c) The Pledgor is the record and beneficial owner of, and has good and marketable title to, the Collateral pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except the security interest created by this Agreement.

SECTION 4. COVENANTS

The Pledgor covenants and agrees with the Collateral Agent and the Secured Parties that, from and after the date of this Agreement until the Leveraged Lease Obligations shall have been paid in full:

4.1 *Maintenance of Existence.* The Pledgor shall preserve and maintain its corporate existence and all of its rights, privileges and franchises that are necessary for the fulfillment of its obligations under this Agreement.

4.2 *Payment of Taxes.* The Pledgor shall pay, before any fine, penalty, interest or cost attaches thereto, all taxes, assessments and other governmental or non-governmental charges or levies now or hereafter assessed or levied against the Collateral or upon the Liens provided for herein provided that no such tax, assessment, governmental charge or levy need be paid if being contested in good faith by appropriate actions promptly initiated and diligently conducted and if (i) adequate reserves consistent with GAAP requirements (or other security arrangements reasonably satisfactory to the Lenders and the Owner Participant) are established and maintained in an amount

sufficient to pay any such taxes, assessments or other charges, accrued interest thereon and potential penalties or other costs relating thereto, or other adequate provision for the payment thereof shall have been made, and (ii) any tax,

assessment or other charge determined to be due, together with any interest or penalties thereon, is immediately paid after resolution of such contest.

4.3 *Bankruptcy*. The Pledgor shall not authorize, seek to cause or permit MEW to commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to MEW or its respective debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property or to consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or to make a general assignment for the benefit of creditors.

4.4 *Delivery of Certificated Securities.* If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Certificated Security, such Certificated Security shall be immediately delivered to the Collateral Agent, duly indorsed in a manner satisfactory to the Collateral Agent, to be held as Collateral pursuant to this Agreement.

4.5 *Maintenance of Perfected Security Interest Further Documentation.* (a) The Pledgor shall take any and all actions that may be necessary or, in the reasonable discretion of the Collateral Agent, prudent to maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 3.2 and shall defend such security interest against the claims and demands of all Persons whomsoever.

(b) At any time and from time to time, upon the written request of the Collateral Agent, and at the sole expense of the Pledgor, the Pledgor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including (i) filing any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property, and any other relevant Collateral, taking any actions necessary to enable the Collateral Agent to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto

4.6 *Changes in Locations, Name, etc.* The Pledgor will not, except upon 30 days' prior written notice to the Collateral Agent and delivery to the Collateral Agent of all additional executed financing statements and other documents reasonably requested by the Collateral Agent to maintain the validity, perfection and priority of the security interests provided for herein:

(i) change its jurisdiction of organization or the location of its chief executive office or sole place of business from that referred to in *Section 3.3*; or

(ii) change its name, identity or corporate structure to such an extent that any financing statement filed by the Collateral Agent in connection with this Agreement would become misleading.

4.7 *Notices.* The Pledgor will advise the Collateral Agent promptly, in reasonable detail, of:

(a) any Lien (other than security interests created hereby or Liens permitted under the Operative Documents) on any of the Collateral which could reasonably be expected to have a material adverse effect on the ability of the Collateral Agent to exercise any of its remedies hereunder; and

(b) of the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereby.

4.8 *Investment Property.* (a) If the Pledgor shall become entitled to receive or shall receive any certificate (including any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the capital stock in the Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any of the Pledged Shares, as the case may be, or otherwise in respect thereof, the Pledgor shall accept the same as the agent of the Collateral Agent and the Secured Parties, hold the same in trust for the Collateral Agent and the Secured Parties and deliver the same forthwith to the Collateral Agent in the exact form received, duly indorsed by the Pledgor to the Collateral Agent, if required, together with an undated stock power or power of transfer, as the case may be, covering such certificate duly executed in blank by the Pledgor and with, if the Collateral Agent so requests, signature guaranteed, to be held by the Collateral Agent, subject to the terms hereof as additional collateral security for the Leveraged Lease Obligations. Any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of the Issuer shall be paid over to the Collateral Agent to be held by it hereunder as additional collateral security for the Leveraged Lease Obligations, and in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of the Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected security interest in favor of the Collateral Agent, be delivered to the Collateral Agent to be held by it hereunder as additional collateral security for the Leveraged Lease Obligations. If any sums of money or property so paid or distributed in respect of the Investment Property shall be received by the Pledgor, the Pledgor shall, until such money or property is paid or delivered to the Collateral Agent, hold such money or property in trust for the Secured Parties, segregated from other funds of the Pledgor, as additional collateral security for the Leveraged Lease Obligations.

(b) Without the prior written consent of the Collateral Agent, the Pledgor will not (i) vote to enable, or take any other action to permit, any Issuer to issue any stock, partnership interests or other equity securities of any nature or to issue any other securities convertible into or granting the right to purchase or exchange for any stock or other equity securities of any nature of the Issuer, (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, any Collateral, except pursuant to a transaction expressly permitted by each Participation Agreement, (iii) create, incur or permit to exist any Lien or option in favor of or any claim of any Person with respect to, any of the Collateral, or any interest therein, except for the security interests created by this Agreement or (iv) enter into any agreement or undertaking restricting the right or ability of the Pledgor or the Collateral Agent to sell, assign or transfer any of the Collateral.

(c) MEW hereby agrees that (i) it will be bound by the terms of this Agreement relating to the Investment Property issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Collateral Agent promptly in writing of the occurrence of any of the events described in *Section 4.5(a)* with respect to the Investment Property issued by it and (iii) the terms of *Section 5.1(b)* shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to *Section 5.1(b)* with respect to the Investment Property issued by it.

SECTION 5. REMEDIAL PROVISIONS

5.1 *Investment Property.* (a) Unless a Lease Event of Default shall have occurred and be continuing and the Collateral Agent shall have given notice to the Pledgor of the Collateral Agent's intent to exercise its corresponding rights pursuant to *Section 5.1(b)*, the Pledgor shall be permitted to receive all cash dividends paid in respect of the Pledged Shares, to the extent permitted in the Participation Agreement, and to exercise all voting and corporate rights with respect to the Investment

Property; *provided, however,* that no vote shall be cast or corporate right exercised or other action taken which, in the Collateral Agent's reasonable judgment, would impair the Collateral or which would be inconsistent with or result in any violation of any provision of any Operative Document.

(b) If a Lease Event of Default shall occur and be continuing and the Collateral Agent shall give notice of its intent to exercise such rights to the Pledgor, (i) the Collateral Agent shall have the right to receive any and all cash dividends, distributions, payments or other Proceeds paid in respect of the Investment Property and make application thereof to the Leveraged Lease Obligations in such order as the Collateral Agent may determine, (ii) any or all of the Investment Property shall be registered in the name of the Collateral Agent or its nominee, and (iii) the Collateral Agent or its nominee may thereafter exercise (x) all voting, corporate and other rights pertaining to such Investment Property at any meeting of shareholders or partners of the Issuer or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or partnership structure of any Issuer, or upon the exercise by the Pledgor or the Collateral Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Investment Property with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Collateral Agent may determine), all without liability except to account for property actually received by it, but the Collateral Agent shall have no duty to the Pledgor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

5.2 *Proceeds to be Turned Over To Collateral Agent.* If a Lease Event of Default shall occur and be continuing, all Proceeds received by the Pledgor consisting of cash, checks and other near-cash items shall be held by the Pledgor in trust for the Collateral Agent, segregated from other funds of the Pledgor, and shall, forthwith upon receipt by the Pledgor, be turned over to the Collateral Agent in the exact form received by the Pledgor (duly indorsed by the Pledgor to the Collateral Agent, if required). All Proceeds received by the Collateral Agent hereunder shall be held by the Collateral Agent in the Collateral Account maintained under its sole dominion and control. All Proceeds while held by the Collateral Agent in the Collateral Account (or by the Pledgor in trust for the Collateral Agent and the Secured Parties) shall continue to be held as collateral security for all the Leveraged Lease Obligations and shall not constitute payment thereof until applied as provided in *Section 5.3.*

5.3 *Deposits; Application of Proceeds.* Upon the creation of any Collateral Account, the Collateral Agent shall also establish 8 subaccounts of such Collateral Account, one subaccount with respect to each Facility Lease. All deposits into the Collateral Account shall be credited to each subaccount based upon such Owner Lessor's Percentage of such deposited amount. If a Lease Event of Default under a Participation Agreement shall have occurred and be continuing, at any time thereafter at the Collateral Agent's election, the Collateral Agent may apply all or any part of Proceeds held in the applicable subaccount of the Collateral Account in payment of the applicable Leveraged Lease Obligations, and any part of such funds which the Collateral Agent elects not so to apply and deems not required as collateral security for any Leveraged Lease Obligations shall be paid over from time to time by the Collateral Agent to the Pledgor or to whomsoever may be lawfully entitled to receive the same. Any balance of such Proceeds in a subaccount remaining after applicable Leveraged Lease Obligations shall have been paid in full shall be paid over to the Pledgor or to whomsoever may be lawfully entitled to receive the same. It is acknowledged and agreed that sums on deposit in any subaccount of the Collateral Account shall be held for the benefit of the applicable Owner Lessor (as collateral for the Leveraged Lease Obligations under the applicable Facility Lease and the applicable Operative Documents and shall not constitute collateral for, and shall not be applied to the repayment

of, any obligations of the Facility Lessee owing to any other Owner Lessor under any other Facility Lease (or applicable Operative Documents).

5.4 *Code and Other Remedies.* Subject to Article XIV of the Participation Agreement, if a Lease Event of Default shall occur and be continuing, the Collateral Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to them in

this Agreement and in any other instrument or agreement securing, evidencing or relating to the Leveraged Lease Obligations, all rights and remedies of a secured party under the New York UCC or any other applicable law. Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon the Pledgor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Collateral Agent or any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Collateral Agent or any Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in the Pledgor, which right or equity is hereby waived and released. The Pledgor further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at places which the Collateral Agent shall reasonably select, whether at the Pledgor's premises or elsewhere. The Collateral Agent shall apply the net proceeds of any action taken by it pursuant to this *Section 5.4*, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Collateral Agent and the Secured Parties hereunder (including, without limitation, reasonable attorneys' fees and disbursements) and after crediting such proceeds to the subaccounts of the Collateral Account in accordance with Section 5.3, to the payment in whole or in part of the applicable Leveraged Lease Obligations, in such order as the Collateral Agent may elect, and only after such application and after the payment by the Collateral Agent of any other amount required by any provision of law, including, without limitation, Section 9-504(l)(c) of the New York UCC, need the Collateral Agent account for the surplus, if any, to the Pledgor. To the extent permitted by applicable law, the Pledgor waives all claims, damages and demands it may acquire against the Collateral Agent or any Secured Party arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

5.5 *Pledged Shares.* (a) The Pledgor recognizes that the Collateral Agent may be compelled to resort to one or more private sales of the Pledged Shares to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. The Pledgor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Shares, as the case may be, for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if the Issuer would agree to do so.

(b) The Pledgor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Shares, as the

case may be, pursuant to this *Section 5.5*, valid and binding and in compliance with any and all other applicable Requirements of Law. The Pledgor further agrees that a breach of any of the covenants contained in this *Section 5.5* will cause irreparable injury to the Collateral Agent and the Secured Parties, that the Collateral Agent and the Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this *Section 5.5* shall be specifically enforceable against the Pledgor, and the Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Lease Event of Default has occurred.

5.6 *Direction of Secured Parties.* The Majority in Interest of Owner Lessors shall be entitled to give and refrain from giving consents and directions to the Collateral Agent on behalf of all the Secured Parties (and all Secured Parties shall be bound by such action).

5.7 *Waiver; Deficiency.* The Pledgor waives and agrees not to assert any rights or privileges which it may acquire under Section 9-112 of the New York UCC.

SECTION 6. THE COLLATERAL AGENT

6.1 *Collateral Agent's Appointment as Attorney-in-Fact, etc.* (a) The Pledgor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Pledgor and in the name of the Pledgor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, the Pledgor hereby gives the Collateral Agent the power and right, on behalf of the Pledgor, without notice to or assent by the Pledgor, to do any or all of the following:

(i) in the name of the Pledgor or its own name, or otherwise, file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any and all such moneys due with respect to any other Collateral whenever payable;

(ii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof,

(iii) execute, in connection with any sale provided for in *Section 5.5* or *5.6*, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(iv) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (4) defend any suit, action or proceeding brought against the Pledgor with respect to any Collateral; (5) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Collateral Agent may deem appropriate; and (6) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and do, at the Collateral Agent's option and the Pledgor's expense, at any time, or from time to time, all acts and things which the Collateral Agent deems necessary to protect, preserve or realize upon

the Collateral and the Collateral Agent's and the Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as the Pledgor might do.

Anything in this *Section 6.1(a)* to the contrary notwithstanding, the Collateral Agent agrees that it will not exercise any rights under the power of attorney provided for in this *Section 6.1(a)* unless a Lease Event of Default shall have occurred and be continuing.

(b) If a Lease Event of Default shall have occurred and be continuing, if the Pledgor fails to perform or comply with any of its agreements contained herein, the Collateral Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Collateral Agent incurred in connection with actions undertaken as provided in this *Section 6.1*, together with interest thereon at a rate per annum equal to the highest rate per annum at which interest would then be payable on any category of past due Rent under the Participation Agreement, from the date of payment by the Collateral Agent to the date reimbursed by the Pledgor, shall be payable by the Pledgor to the Collateral Agent on demand.

(d) The Pledgor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

6.2 *Duty of Collateral Agent.* The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the New York UCC or otherwise, shall be to deal with it with the same degree of care as the Collateral Agent deals with similar property for its own account. Neither the Collateral Agent, any Secured Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Pledgor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Collateral Agent and the Secured Parties hereunder are solely to protect the Collateral Agents and the Secured Parties' interests in the Collateral and shall not impose any duty upon the Collateral Agent or any Secured Party to exercise any such powers. The Collateral Agent and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to the Pledgor for any act or failure to act hereunder, except for (i) their own gross negligence or willful misconduct or (ii) breach of their obligations under this Agreement.

6.3 *Execution of Financing Statements.* Pursuant to Section 9-402 of the New York UCC and any other applicable law, the Pledgor authorizes the Collateral Agent to file or record financing statements and other filing or recording documents or instruments with respect to the Collateral without the signature of the Pledgor in such form and in such offices as the Collateral Agent determines appropriate to perfect the security interests of the Collateral Agent under this Agreement. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

6.4 *Authority of Collateral Agent.* The Pledgor and each Secured Party by accepting the benefits of this Agreement acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the Secured Parties, be governed by the Operative Documents and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the

Pledgor, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and the Pledgor shall not be under any obligation, or entitlement, to make any inquiry respecting such authority.

SECTION 7. MISCELLANEOUS

7.1 *Amendments in Writing.* None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in writing and in accordance with the Participation Agreement.

7.2 *Notices.* All notices and other communications to any party hereto shall be in writing or by facsimile and addressed, delivered or transmitted to such party at its address or facsimile number set forth on Schedule 1 or at such other address or facsimile number as may be designated by such party in a notice to the other parties.

7.3 *No Waiver by Course of Conduct; Cumulative Remedies.* Neither the Collateral Agent nor any Secured Party shall by any act (except by a written instrument pursuant to *Section 7.1*), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Lease Event of Default. No failure to exercise, nor any delay in exercising, on the part of the Collateral Agent or any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Collateral Agent or any Secured Party of any right or remedy hereunder on any one occasion shall not be construed

as a bar to any right or remedy which the Collateral Agent or such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

7.4 *Successors and Assigns.* (a) This Agreement shall be binding upon the successors and assigns of the Pledgor and shall inure to the benefit of the Collateral Agent and the Secured Parties and their successors and assigns; *provided* that the Pledgor may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent.

(b) In order to secure the Lessor Notes of each Owner Lessor, such Owner Lessor will assign and grant a first priority security interest in favor of its applicable Lease Indenture Trustee in and to all of such Owner Lessor's right, title and interest in, to and under this Agreement (other than to the extent relating to Excepted Payments and the rights to enforce and collect the same). The Facility Lessee hereby consents to such assignment and to the creation of such Lien and security interest and acknowledges receipt of copies of the Lease Indenture, it being understood that such consent shall not affect any requirement or the absence of any requirement for any consent of the Facility Lessee under any other circumstances. Unless and until the Collateral Agent shall have received written notice from the Lease Indenture Trustee that the Lien of the applicable Lease Indenture has been fully discharged, the applicable Lease Indenture Trustee shall have the right to exercise the rights of such Owner Lessor under this Agreement (other than with respect to Excepted Payments and the rights to enforce and collect the same) to the extent set forth in and subject in each case to the exceptions set forth in the applicable Lease Indenture.

7.5 *Set-Off.* The Pledgor hereby irrevocably authorizes the Collateral Agent and each Secured Party at any time and from time to time (i) upon the occurrence of a Lease Event of Default of the kind described in Section 16 of the Facility Lease or (ii) upon the occurrence and continuance beyond the applicable grace period, if any, of any other Lease Event of Default and with the consent of the Secured Parties, without notice to the Pledgor, any such notice being expressly waived by the Pledgor, to set-off and appropriate and apply any and all deposits (general or special, time or demand,

provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Collateral Agent or such Secured Party to or for the credit or the account of the Pledgor, or any part thereof in such amounts as the Collateral Agent or such Secured Party may elect, against and on account of the obligations and liabilities of the Pledgor to the Collateral Agent or such Secured Party hereunder and claims of every nature and description of the Collateral Agent or such Secured Party against the Pledgor, in any currency, whether arising hereunder, under the Participation Agreement, any other Operative Document or otherwise, as the Collateral Agent or such Secured Party may elect, whether or not the Collateral Agent or any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. The Collateral Agent and each Secured Party shall notify the Pledgor promptly of any such set-off and the application made by the Collateral Agent or such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Collateral Agent and each Secured Party under this *Section 7.5* are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Collateral Agent or such Secured Party may have.

7.6 *Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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

7.8 *Section Headings.* The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

7.9 *Integration.* The Security Documents represent the agreement of the Pledgor, the Collateral Agent and the Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Collateral Agent or any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to in the Security Documents. The Security Documents supersede any and all prior agreements and understandings, oral or written, relative or with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by the Collateral Agent or any Secured Party relative to the subject matter hereof not expressly set forth or referred to herein or in the other Security Documents.

7.10 *GOVERNING LAW.* THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

7.11 *Submission To Jurisdiction; Waivers.* The Pledgor (and, with respect to paragraph (e) below only, the Collateral Agent and each of the Secured Parties) hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to the Operative Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in

any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Pledgor at its address referred to in *Section 7.2* or at such other address of which the Collateral Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

7.12 *Acknowledgments.* The Pledgor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of the Security Documents to which it is a party;

(b) either the Collateral Agent nor any Secured Party has any fiduciary relationship with or duty to the Pledgor arising out of or in connection with any Security Documents, and the relationship between the Pledgor, on the one hand, and the Collateral Agent and Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created by any Security Document or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Pledgor and the Secured Parties.

7.13 *Releases.* (a) At such time as the Leveraged Lease Obligations shall have been paid in full, the Collateral shall automatically be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Collateral Agent and the Pledgor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Pledgor. At the request and sole expense of the Pledgor following any such termination,

the Collateral Agent shall deliver to the Pledgor any Collateral held by the Collateral Agent hereunder, and execute and deliver to the Pledgor such documents as the Pledgor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by the Pledgor in a transaction permitted by the Participation Agreement (and the Indenture, if any Securities have been issued), then the Collateral Agent, at the request and reasonable and sole expense of the Pledgor, shall execute and deliver to the Pledgor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and reasonable and sole expense of the Pledgor, the Pledgor shall be released from its obligations hereunder in the event that all the Capital Stock of the Pledgor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Participation Agreement; *provided* that Pledgor shall have delivered to the Collateral Agent, at least ten Business Days prior to the date of the proposed release, a written request for release and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Pledgor stating that such transaction is in compliance with the Operative Documents.

7.14 *Continuing Assignment; Pledge and Security Interest; Release.*

This Agreement shall create a continuing pledge, assignment of, hypothecation of and security interest in the Collateral and shall (A) remain in full force and effect until the payment in full of the

Leverage Lease Obligations (*provided* that, if the Owner Lessor reasonably determines that there is a material risk of the Facility Lessee being subject to bankruptcy proceedings, the pledge under this Agreement shall remain in full force and effect until all such payments shall have become irrevocable) and the expiration or termination of the Facility Lease, (B) be binding upon the Pledgor, its successors and assigns, provided, that a Pledgor may not transfer or assign any or all of its rights or obligations hereunder without the prior written consent of the Owner Lessor, and (C) inure to the benefit of, and be enforceable by the Owner Lessor and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (C), the Owner Lessor may assign or otherwise transfer all or any portion of its rights in the Obligations to the extent and in the manner provided in the Operative Documents, and such assignee shall thereupon become vested with all the benefits in respect thereof granted to the Owner Lessor herein or otherwise; the parties acknowledge that, pursuant to the Lease Indenture, the Owner Lessor pledges its rights hereunder to the Lease Indenture Trustee as security for its obligations under the Lease Indenture; accordingly, for as long as the Lien of the Collateral Documents remains in effect, the Lease Indenture Trustee may exercise the Owner Lessor's rights hereunder in accordance with, and to the extent set forth in, the Lease Indenture.

7.15 *Expenses.*

(a) The Pledgor agrees to pay or reimburse the Owner Lessor, on an After-Tax Basis, the Owner Participant and so long as the Lien of the Lease Indenture has not been released or discharged, the Security Agent and each Noteholder, for, any and all reasonable fees, costs and expenses of whatever kind or nature incurred in connection with the creation, preservation or protection of the Liens on, and security interest in, the Collateral pledged by it hereunder, including, without limitation, all reasonable fees and taxes in connection with the recording or filing of instruments and documents in public offices, payment or discharge of any taxes or Liens upon or in respect of such Collateral and all other reasonable fees, costs and expenses in connection with protecting, maintaining or preserving such the Collateral, the Owner Lessor's and, the Lease Indenture Trustee's interest therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions, suits or proceedings arising out of or relating to such Collateral. If and to the extent that the obligations of the Pledgor under this Section 7.15 are unenforceable for any reason, the Pledgor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law.

7.16 *Security Interest Absolute.*

(a) The obligations of the Pledgor under this Agreement are independent of the Obligations and a separate action or actions may be brought and prosecuted against the Pledgor to enforce this Agreement, irrespective of whether any action is brought against

another pledgor or any guarantor of the Obligations or whether another pledgor or any guarantor of the Obligations is joined in any such action or actions. All rights of the Owner Lessor and the pledge, hypothecation and security interest hereunder, and all obligations of the Pledgor hereunder, shall be absolute and unconditional, to the extent permitted by Requirements of Law, irrespective of:

(i) any lack of validity or enforceability of any Operative Document or any other agreement or instrument relating thereto;

(ii) any change in the time, manner or place of payment of or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Operative Document, including, without limitation, any increase in the Obligations resulting from the extension of additional credit to the Facility Lessee;

(iii) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of, or consent to departure from any guaranty, for all or any of the Obligations;

(iv) any manner of application of the Collateral, or proceeds thereof, to all or any of the Obligations, or any manner of sale or other disposition of any other collateral for all or any of the Obligations;

(v) any change, restructuring or termination of the structure or existence of the Facility Lessee; or

(vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Facility Lessee or a third party grantor of a security interest.

The Pledgor hereby waives, to the maximum extent permitted by law (i) all rights under any law limiting remedies, including recovery of a deficiency, under an obligation secured by a mortgage or deed of trust on real property if the real property is sold under a power of sale contained in the mortgage, and all defenses based on any loss whether as a result of any such sale or otherwise, of Pledgor's right to recover any amount from the Facility Lessee or MEW, whether by right of subrogation or otherwise; (ii) all rights under any law to require the Owner Lessor to pursue the Facility Lessee, or any other Person, any security which Owner Lessor may hold, or any other remedy before proceeding against the Pledgor; (iii) all rights of reimbursement or subrogation, all rights to enforce any remedy that the Owner Lessor may have against the Facility Lessee, and all rights to participate in any security held by the Owner Lessor until the Obligations have been paid and performed in full; (iv) all rights to require the Owner Lessor to give any notices of any kind, including, without limitation, notices of nonpayment, nonperformance, protest, dishonor, default, delinquency or acceleration, or to make any presentments, demands or protests, except as set forth herein or expressly provided in the Participation Agreement; (v) all rights to assert the bankruptcy or insolvency of the Facility Lessee as a defense hereunder or as the basis for rescission hereof; (vi) all rights under any law purporting to reduce the Pledgor's obligations hereunder if the Obligations are reduced; (vii) all defenses based on the disability or lack of authority of the Facility Lessee or any Person, the repudiation of the Operative Documents by the Facility Lessee or any Person, the failure by the Owner Lessor to enforce any claim against the Facility Lessee, or the unenforceability in whole or in part of any Operative Documents; (viii) all suretyship and guarantor's defenses generally; (ix) all rights to insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshalling of assets, redemption or similar law, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by the Pledgor of its obligations under, or the enforcement by the Owner Lessor of, this Agreement; (x) any requirement on the part of the Owner Lessor to mitigate the damages resulting from any default; and (xi) except as otherwise specifically set forth herein, all rights of notice and hearing of any kind prior to the exercise of rights by the Owner Lessor upon the occurrence and during the continuation of a Lease Event of Default to repossess with judicial process or to replevy, attach or levy upon the Collateral. To the extent permitted by law, the Pledgor waives the posting of any bond otherwise required of the Owner Lessor in connection with any judicial process or proceeding to obtain possession of, replevy, attach, or levy upon the Collateral, to enforce any judgment or other security for the Obligations, to enforce any judgment or other court order entered in favor of Owner Lessor, or to enforce by specific performance, temporary restraining order, preliminary or permanent injunction, this Agreement or any other agreement or document between the Pledgor and the

Owner Lessor. The Pledgor further agrees that upon the occurrence and during the continuation of a Lease Event of Default, the Collateral Agent may elect to nonjudicially or judicially foreclose against any real or personal property security it holds for the Obligations or any part thereof, or to exercise any other remedy against MEW, or the Facility Lessee, any security or any guarantor, even if the effect of that action is to deprive the Pledgor of the right to collect reimbursement from MEW, or the Facility Lessee for any sums paid by the Pledgor to the Collateral Agent.

7.16 *WAIVER OF JURY TRIAL.* EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered as of the date first above written.

EDISON MISSION HOLDINGS CO.

/s/ Kevin M. Smith

Name: Kevin M. Smith
Title: Vice President and Treasurer

MISSION ENERGY WESTSIDE, INC.

/s/ Kevin M. Smith

Name: Kevin M. Smith
Title: Vice President and Treasurer

Acknowledged and Agreed as of the date hereof: THE BANK OF NEW YORK, as successor to UNITED STATES TRUST COMPANY OF NEW YORK, as Collateral Agent

By: /s/ Christopher J. Grell

Name: Christopher J. Grell
Title: Authorized Signer

SCHEDULE 1 to
Pledge and Collateral Agreement

NOTICE ADDRESSES

EDISON MISSION HOLDINGS CO.
MISSION ENERGY WESTSIDE, INC.

18101 Von Karman Avenue
Suite 1700
Irvine, CA 92612-1046
Attention: Treasurer
Telephone: 949-752-5588
Facsimile: 949-752-5624

SCHEDULE 2 to
Pledge and Collateral Agreement

DESCRIPTION OF INVESTMENT PROPERTY

Part A

Pledged Shares:

Issuer	Class of Stock	Stock Certificate No.	No. of Shares
Mission Energy Westside, Inc.	Common	2	100

SCHEDULE 3 to
Pledge and Collateral Agreement

FILINGS AND OTHER ACTIONS REQUIRED TO PERFECT SECURITY INTERESTS

Uniform Commercial Code Filings

Pledgor	UCC Filing Offices
Mission Energy Westside, Inc.	California Secretary of State Pennsylvania Secretary of State Indiana County, PA

Actions with Regard to Pledged Shares

1) Deliver stock certificates, accompanied by undated stock powers duly indorsed in blank, of Mission Energy Westside, Inc.

SCHEDULE 4 to
Pledge and Collateral Agreement

LOCATION OF JURISDICTION OF ORGANIZATION AND CHIEF EXECUTIVE OFFICE

Pledgor	Jurisdiction	Location
Mission Energy Westside, Inc.	CA	18101 Von Karman Avenue Suite 1700 Irvine, California 92612-1046

SCHEDULE 5 to
Pledge and Collateral Agreement

1. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL1, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

2. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL2, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

3. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL3, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

4. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL4, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

5. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL5, a

Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

6. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL6, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

7. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL7, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

8. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL8, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security

Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

QuickLinks

Exhibit 4.8

EXECUTION COPY

ASSUMPTION AND RELEASE AGREEMENT

ASSUMPTION AND RELEASE AGREEMENT, dated as of December 7, 2001 (this "Agreement"), made by Edison Mission Holdings Co., a California corporation ("Holdings"), Edison Mission Finance Co., a California corporation ("FinanceCo"), The Bank of New York, as successor in interest to United States Trust Company of New York, as Bondholder Trustee under the Indenture (as defined below), The Bank of New York, as successor in interest to United States Trust Company of New York, as Collateral Agent under the Guarantee and Collateral Agreement (as defined below) and EME Homer City Generation L.P., a Pennsylvania limited partnership ("EME Homer City").

RECITALS

WHEREAS, Edison Mission Holdings Co. ("Holdings") entered into the Indenture, dated as of May 27, 1999, between Holdings and the Bondholder Trustee (as amended from time to time, the "Indenture") pursuant to which Holdings issued $300,000,000 principal amount of 8.137% Senior Secured Bonds due 2019 and $530,000,000 principal amount of 8.734% Senior Secured Bonds due 2026 which it subsequently exchanged for a like amount of substantially similar bonds that had been registered under the Securities Act of 1933 (collectively, the "Bonds").

WHEREAS, the direct and indirect subsidiaries of Holdings, including EME Homer City (collectively, the "Subsidiary Guarantors") entered into the Guarantee and Collateral Agreement, dated as of March 18, 1999, among Holdings, each Subsidiary Guarantor and the Collateral Agent (as amended from time to time, the "Guarantee and Collateral Agreement") pursuant to which each Subsidiary Guarantor unconditionally guaranteed the obligations of Holdings under the Indenture and the Bonds.

WHEREAS, Holdings and FinanceCo entered into the Subordinated Loan Agreement, dated as of March 18, 1999 (the "Holdings Loan Facility"), pursuant to which Holdings loaned the proceeds of the issuance of the Bonds to FinanceCo.

WHEREAS, FinanceCo and EME Homer City entered into the Subordinated Loan Agreement, dated as of March 18, 1999 (the "FinanceCo Loan Facility"), pursuant to which FinanceCo loaned the proceeds of the loan under the Holdings Loan Facility to EME Homer City.

WHEREAS, EME Homer City used the proceeds of the loan under the FinanceCo Loan Facility to purchase (the "Purchase") certain coal-fired power generation and related assets (the "Facilities").

WHEREAS, pursuant to its Consent Solicitation Statement, dated November 21, 2001, as may be amended and supplemented prior to the expiration date of the Consent Solicitation described therein (the "Consent Solicitation Statement"), Holdings is soliciting consents of the holders of the Bonds to certain Proposals (as defined in the Consent Solicitation Statement), including the release of each Subsidiary Guarantor from its respective obligations under the Guarantee and Collateral Agreement and the amendment of and waiver to certain provisions of the Indenture, in order to effectuate a sale-leaseback transaction of the Facilities (the "Sale-Leaseback").

WHEREAS, the requisite number of consents to the Proposals has been received by the Bondholder Trustee in the Consent Solicitation.

WHEREAS, FinanceCo desires to expressly assume all obligations of Holdings under the Indenture and the Bonds, and Holdings desires to be released from all obligations under the Indenture and the Bonds.

WHEREAS, EME Homer City desires to expressly assume all obligations of FinanceCo under the Indenture and the Bonds, and FinanceCo desires to be released from all obligations under the Indenture and the Bonds.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein:

1. *Assumption of Obligations; Releases.*

(a) FinanceCo hereby unconditionally and irrevocably assumes all obligations of Holdings under the Indenture and the Bonds.

(b) After giving effect to the assumption set forth in clause (a) of this Section 1, EME Homer City hereby unconditionally and irrevocably assumes all obligations of FinanceCo under the Indenture and the Bonds, including, but not limited to, all accrued and unpaid interest on the Bonds to the date hereof.

(c) After giving effect to the assumption set forth in clause (b), Holdings and FinanceCo are hereby released from their respective obligations under the Indenture and the Bonds.

2. *Acceptances.*

(a) Holdings hereby accepts the assumption of all its obligations under the Indenture and the Bonds pursuant to Section 1(a).

(b) FinanceCo hereby accepts the assumption of all its obligations under the Indenture and the Bonds pursuant to Section 1(b).

3. *Acknowledgments.*

(a) The Bondholder Trustee acknowledges that, as a consequence of and after giving effect to the assignments and assumptions contained herein, each of Holdings and FinanceCo does not have any liability under the Indenture and the Bonds and the Bondholder Trustee agrees, and by its acceptance, each holder of a Bond agrees, that it will not look to Holdings or FinanceCo for payments of any amounts owed in respect of the Indenture or the Bonds including, but not limited to, all accrued and unpaid interest on the Bonds to the date hereof.

(b) The Collateral Agent acknowledges that the Subsidiary Guarantors have been released from their obligations under the Guarantee and Collateral Agreement pursuant to the terms thereof.

4. *Effectiveness.* The Agreement shall only become effective on the date of the consummation of the transactions contemplated by the Consent Solicitation Statement.

5. *Binding Obligation.* Each of Holdings, EME Homer City, FinanceCo, the Bondholder Trustee and the Collateral Agent hereby represents that its respective obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms.

6. *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon Holdings, EME Homer City, FinanceCo, the Bondholder Trustee and the Collateral Agent and their respective heirs, successors and assigns as permitted under the Indenture.

7. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

8. *Governing Law.* This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the date first written above.

EME HOMER CITY GENERATION L.P.

By: MISSION ENERGY WESTSIDE, INC., as General Partner

By: /s/ Steven D. Eisenberg
Name: Steven D. Eisenberg
Title: Vice President

EDISON MISSION HOLDINGS CO.

By: /s/ John P. Finneran
Name: John P. Finneran
Title: Vice President

EDISON MISSION FINANCE CO.

By: /s/ John P. Finneran
Name: John P. Finneran
Title: Vice President

THE BANK OF NEW YORK,
As Bondholder Trustee

By: /s/ Christopher Grell
Name: Christopher Grell
Title: Authorized Signer

THE BANK OF NEW YORK,
As Collateral Agent

By: /s/ Christopher Grell
Name: Christopher Grell
Title: Authorized Signer

QuickLinks

Exhibit 4.9

Execution Copy

THIS MORTGAGE CONSTITUTES A FIXTURE FILING
UNDER THE PENNSYLVANIA UNIFORM COMMERCIAL CODE

THIS IS AN OPEN-END MORTGAGE SECURING FUTURE ADVANCES
UP TO A MAXIMUM PRINCIPAL AMOUNT OF $330,000,000
PLUS ACCRUED INTEREST AND OTHER INDEBTEDNESS
AS DESCRIBED IN 42 Pa.C.S. §8143

OPEN-END MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

dated as of December 7, 2001

from

HOMER CITY OL1 LLC,
as the Owner Lessor

to

THE BANK OF NEW YORK,
as Security Agent and Mortgagee

When recorded return to:
The Bank of New York
c/o The United Sates Trust Company of New York
114 West 47th Street, 25th Floor
New York, New York 10036
Attention: Corporate Trust Administration

THIS IS AN OPEN-END MORTGAGE SECURING FUTURE ADVANCES UP TO A MAXIMUM PRINCIPAL AMOUNT OF $330,000,000 PLUS ACCRUED INTEREST AND OTHER INDEBTEDNESS AS DESCRIBED IN 42 Pa.C.S. §8143

OPEN-END MORTGAGE, SECURITY AGREEMENT

AND ASSIGNMENT OF RENTS

THIS OPEN-END MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (this "Mortgage"), dated as of December 7, 2001, is made by and between **HOMER CITY OL1 LLC**, a Delaware limited liability company ("*Owner Lessor*"), whose address is Wells Fargo Bank Minnesota, N.A., Corporate Trust Services, MAC; N2691-090, 213 Court Street, Middletown, CT 06457, as mortgagor, and **THE BANK OF NEW YORK** as Security Agent for the Lease Indenture Secured Parties as defined below (the "*Security Agent*").

WHEREAS, the Owner Lessor is the ground tenant of an undivided percentage interest (the "*Ground Interest*") in the land more particularly described on Schedule I hereto (the "*Site*") pursuant to the Facility Site Lease described on Schedule II hereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Facility Site Lease*"), a memorandum of which Facility Site Lease is recorded in Book , page in the Office of the Recorder of Deeds for Indiana County, Pennsylvania;

WHEREAS, the Owner Lessor has subleased the Ground Interest to EME Homer City Generation L.P. ("*Homer City*") pursuant to the Facility Site Sublease described on Schedule III hereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Facility Site Sublease*"), a memorandum of which Facility Site Sublease is recorded in Book , page in the Office of the Recorder of Deeds for Indiana County, Pennsylvania;

WHEREAS, the Owner Lessor is the fee owner of an undivided 30% interest in the generating facilities located on the Site (the "*Facility*") more particularly described in Schedule IV hereto (the "*Undivided Interest*").

WHEREAS, the Owner Lessor has leased the Undivided Interest in the Facility to Homer City pursuant to a Facility Lease described on Schedule V hereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Facility Lease*"), a memorandum of which Facility Lease is recorded in Book , page in the Office of the Recorder of Deeds for Indiana County, Pennsylvania;

WHEREAS, Owner Lessor, the Security Agent and The Bank of New York (the "*Lease Indenture Trustee*") have entered into an Indenture of Trust and Security Agreement, dated as of December 7, 2001 (as amended, restated, supplemented or otherwise modified from time to time, the "*Lease Indenture*"), to provide among other things for the issuance by the Owner Lessor of certain Lessor Notes as defined therein, and for the grant of this Mortgage;

WHEREAS, pursuant to the Lease Indenture, the Security Agent serves as a common representative and to hold the Indenture Estate for the benefit of the Lease Indenture Secured Parties;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure (i) the prompt payment of the principal of and interest on, and all other amounts due with respect to, the Lessor Notes from time to time outstanding, and all other amounts owing by Owner Lessor hereunder or under the Lease Indenture, and the performance and observance by Owner Lessor of all the agreements, covenants and provisions contained in the Operative Documents, and the prompt payment of all amounts from time to time due or to become due to any Lease Indenture Secured Party under the Operative Documents (collectively the "*Lessor Secured Obligations*"), Owner Lessor hereby grants, bargains, sells, conveys, aliens, enfeoffs, confirms, releases, assigns, transfers, pledges and mortgages unto the Security Agent acting for and on behalf of the Lease Indenture Secured Parties, a first priority security interest in and mortgage lien on all estate, right, title and interest now held or hereafter acquired by the Owner Lessor in, to and under the

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following described property, rights, interests and privileges, whether now or hereafter acquired, other than Excepted Payments (such property, rights, interests and privileges as are conveyed pursuant to this granting clause, but excluding Excepted Payments and the rights to enforce and collect the sums as set forth herein, being hereinafter referred to as the "*Indenture Estate*"):

(1) the Undivided Interest; the Owner Lessor's interest in all goods (as defined in the Uniform Commercial Code as in effect in the State of New York from time to time) constituting the Facility; all appliances, parts, instruments, appurtenances, accessories, furnishings, equipment or other property of whatever nature that may from time to time be incorporated in the Facility ("Components"), except to the extent constituting a modification, alteration, addition or improvement to the Facility ("Improvements"); the Owner Lessor's interest in any Improvements; the Facility Site Lease and the Ground Interest thereunder; the Facility Lease and all payments of any kind by the Facility Lessee thereunder (including Rent); the Facility Site Sublease and the Sublease Ground Interest thereunder and all payments of any kind by the Facility Lessee thereunder; Owner Lessor's interest in all tangible property located on or at or attached to the Facility Land that an interest in such tangible property arises under applicable real estate law ("*fixtures*"); the Facility Deed, the Bill of Sale, the Ownership and Operation Agreement, the Lessor LLC Agreement, and all and any interest in any property now or hereafter granted to the Owner Lessor pursuant to any provision of the Facility Site Lease, Facility Lease or the Facility Site Sublease; the Security Depositary Agreement, the Debt Service Reserve Letter of Credit, the Pledge and Collateral Agreement and each other Operative Document to which the Owner Lessor is a party (the Undivided Interest, the Owner Lessor's interest in any Components, the Owner Lessor's interest in any fixtures, Improvements and the Ground Interest are collectively referred to as the "*Property Interest*" and the documents, specifically referred to above in this paragraph (1) are collectively referred to as the "*Indenture Estate Documents*"), including, without limitation, (x) all rights of the Owner Lessor or the Facility Lessee (to the extent assigned by the Facility Lessee to the Owner Lessor) to receive any payments or other amounts or to exercise any election or option or to make any decision or determination or to give or receive any notice, consent, waiver or approval or to make any demand or to take any other action under or in respect of any such document, to accept surrender or redelivery of the Property Interest or any part thereof, as well as all the rights, powers and remedies on the part of the Owner Lessor or the Facility Lessee (to the extent assigned by the Facility Lessee to the Owner Lessor), whether acting under any such document or by statute or at law or in equity or otherwise, arising out of any Lease Default or Lease Event of Default and (y) any right to restitution from the Facility Lessee, any sublessee or any other Person in respect of any determination of invalidity of any such document;

(2) all rents, royalties, issues, profits, revenues, proceeds, damages, claims and other income from the property described in this Granting Clause, including, without limitation, all payments or proceeds payable to the Owner Lessor as the result of the sale of the Property Interest or the lease or other disposition of the Property Interest, and all estate, right, title and interest of every nature whatsoever of the Owner Lessor in and to such rents, issues, profits, revenues and other income and every part thereof (the "*Lease Revenues*");

(3) all condemnation proceeds with respect to the Property Interest or any part thereof (to the extent of the Owner Lessor's interest therein), and all proceeds (to the extent of the Owner Lessor's interest therein) of all insurance maintained pursuant to Section 11 of the Facility Lease or otherwise;

(4) all other property of every kind and description and interests therein now held or hereafter acquired by the Owner Lessor pursuant to the terms of any Operative Document, wherever located;

(5) all damages resulting from breach (including, without limitation, breach of warranty or misrepresentation) or termination of any of the Indenture Estate Documents or arising from bankruptcy, insolvency or other similar proceedings involving any party to the Indenture Estate Documents;

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(6) the Debt Service Reserve Account and all amounts on deposit therein; and

(7) all proceeds of the foregoing;

BUT EXCLUDING from the Indenture Estate all Excepted Payments, any and all rights to enforce and collect the same, and SUBJECT TO the rights of the Owner Lessor and the Owner Participant under the Lease Indenture.

TO HAVE AND TO HOLD the Indenture Estate unto the Security Agent, forever, provided that if Owner Lessor shall pay and otherwise observe and perform all of the Lessor Secured Obligations, then this Mortgage and the estate and interests hereby granted, shall cease and be void.

AND Owner Lessor covenants and agrees with Security Agent as follows:

1. Payment and Performance. THIS IS AN OPEN-END MORTGAGE SECURING FUTURE ADVANCES UP TO A MAXIMUM PRINCIPAL AMOUNT OF $330,000,000 PLUS ACCRUED INTEREST AND OTHER INDEBTEDNESS AS DESCRIBED IN 42 Pa.C.S. §8143. Subject to the terms and conditions of the Lease Indenture, Owner Lessor shall pay when due and shall observe and perform all of the Lessor Secured Obligations.

2. Default. Owner Lessor shall not be deemed in default hereunder unless and until a Lease Indenture Event of Default shall have occurred.

3. Remedies. Upon the occurrence and continuance of a Lease Indenture Event of Default, Mortgagee may forthwith exercise, separately, concurrently, successively or otherwise, but only in compliance with the Lease Indenture, any and all rights and remedies available to Mortgagee pursuant to this Mortgage or the Lease Indenture or available by law, equity or otherwise.

4. Mortgagee's Right to Perform Obligations. Upon the occurrence and continuance of any Lease Indenture Event of Default, and in addition to all other rights and remedies available to it, to the extent provided in the Lease Indenture the Security Agent shall have the right, but not the obligation, to perform the Obligation of Owner Lessor then in default, and to make all advances of funds in connection therewith as the Security Agent deems appropriate, including, without limitation, for the payment of taxes, assessments, and other charges and costs for the protection of the Indenture Estate or the lien of this Mortgage and expenses incurred by reason of the default of this Mortgage, all of which expenditures shall be secured by the lien of this Mortgage and payable on demand of Security Agent.

5. Invalidity. If any term, provision, or condition of the Lease Indenture, Facility Lease, the Facility Sublease, the Facility Site Lease and/or this Mortgage or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable in any respect, the remainder thereof shall be construed without such provision and the application of such term or provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, as the case may be, shall not be affected thereby, and each term and provision thereof shall be valid and enforced to the fullest extent permitted by law.

9. Governing Law. This Mortgage shall be governed by the laws of the Commonwealth of Pennsylvania.

10. Lease Indenture. This Mortgage is executed pursuant to the Lease Indenture, and is subject to the rights and obligations of the Owner Lessor, the Owner Participant and the Security Agent as set forth therein (except to the extent inapplicable by their nature to a mortgage). Capitalized terms used and not defined herein shall have the meaning given such terms in the Lease Indenture.

11. Future Advances, 42 Pa. C.S. §8143. This Mortgage shall secure any additional loans as well as any and all present or future advances and readvances under or in connection with the Lessor Secured Obligations, made pursuant to or in connection with the Lease Indenture to or for the benefit of Owner Lessor or the Indenture Estate, all of which shall be entitled to the benefits of an Open-End Mortgage under 42 Pa.C.S.A. §8143 and shall have the same lien priority as if the future loans, advances or readvances were made as of the date hereof including, without limitation: (i) principal,

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interest, late charges, fees and other amounts due under the Lease Indenture, the Lessor Notes, or this Mortgage; (ii) all advances made or costs incurred by Mortgagee for the payment of real estate taxes, and other charges and costs incurred by Security Agent for the enforcement and protection of the Indenture Estate or the lien of this Mortgage; and (ii) all legal fees, costs and other expenses incurred by the Security Agent by reason of any Lease Indenture Event of Default.

12. 42 Pa. C.S. §8144. In addition to any other indebtedness secured hereby, this Mortgage secures unpaid balances of advances made with respect to the Indenture Estate, for the payment of taxes, assessments, and other charges or costs incurred for the protection of the

Indenture Estate or the lien of this Mortgage, and expenses incurred by the Security Agent by reason of default by Owner Lessor under this Mortgage. This Mortgage shall be a lien on the Indenture Estate from the time the Mortgage is left for record, or the time of delivery to the Security Agent of a Purchase Money Mortgage which is recorded within ten days after its date, for the full amount of the unpaid balances of such advances that are made under this Mortgage, plus interest thereon, regardless of the time when such advances are or may be made.

IN WITNESS WHEREOF, Owner Lessor has executed this Mortgage as of the date first above written.

HOMER CITY OL1 LLC

WELLS FARGO BANK
NORTHWEST, NATIONAL
By: ASSOCIATION, not in its individual
capacity, but solely as Owner Manager
under the Lessor LLC Agreement

By: /s/ JOSEPH P. O'DONNELL
Name: Joseph P. O'Donnell
Title: Corporate Trust Officer

I certify that the precise address
of the within named mortgagee is:

The Bank of New York
c/o The United Sates Trust Company of New York
114 West 47th Street, 25th Floor
New York, New York 10036
Attention: Corporate Trust Administration

/s/ CHRISTOPHER J. GRELL
For the mortgagee

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

To wit, I, hereby certify, that on this 7 day of December, in the year 2001, before the subscriber, a Notary Public, personally appeared Joseph O'Donnell, the Corporate Trust Officer of Wells Fargo Bank Northwest, National Association and that he/she, as Corporate Trust Officer of such corporation, acknowledged the foregoing deed to be the act of said corporation as Owner Manager of Homer City OL1 LLC under the **Limited Liability Company Agreement** dated as of December 7, 2001.

In testimony whereof, I have affixed my official seal, this 7 day of December, A.D. 2001.

/s/ ANTHONY CIFRA
Notary Public

My commission expires: September 10, 2005

[ADD OWNER LESSOR ACKNOWLEDGEMENT]

[ADD SCHEDULE I–LEGAL DESCRIPTION OF SITE]

[ADD SCHEDULE II–DESCRIPTION OF FACILITY SITE LEASE

[ADD SCHEDULE III–DESCRIPTION OF FACILITY SITE SUBLEASE]

[ADD SCHEDULE IV–DESCRIPTION OF THE FACILITY]

[ADD SCHEDULE V–DESCRIPTION OF FACILITY LEASE]

QuickLinks

Exhibit 10.16.4
Execution Copy

AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT

made by

EME HOMER CITY GENERATION L.P.

in favor of

THE BANK OF NEW YORK
as successor to

UNITED STATES TRUST COMPANY OF NEW YORK,
as Collateral Agent

Dated as of December 7, 2001

TABLE OF CONTENTS

AMENDED AND RESTATED GUARANTEE AND COLLATERAL AGREEMENT, dated as of December 7, 2001, made by EME HOMER CITY GENERATION L.P., a Pennsylvania limited partnership (the "*Pledgor*") in favor of THE BANK OF NEW YORK, as successor to UNITED STATES TRUST COMPANY OF NEW YORK, as collateral agent for the Secured Parties (as defined below) (in such capacity, the "*Collateral Agent*").

RECITALS

A. Contemporaneously herewith, EME Homer City will enter into a transaction pursuant to the Participation Agreements listed on *Schedule 4* by and among EME Homer City, the Owner Lessor, Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager, the Owner Participant, Homer City Funding LLC, as Lender, the Lease Indenture Trustee, the Security Agent and The Bank of New York, not in its individual capacity but solely as Bondholder Trustee (as amended, modified and supplemented and in effect from time to time, collectively, the "*Participation Agreements*") whereby EME Homer City will sell undivided interests in its generating assets to the Owner Lessors and the Owner Lessors will lease such undivided interests in its generating assets to EME Homer City under the Facility Leases.

B. In consideration of the transactions contemplated by the Participation Agreements, the Pledgor will be obligated to pay to the Secured Parties the aggregate amount of all obligations owed by the Pledgor to the Secured Parties under the Operative Documents related thereto (the "*Leveraged Lease Obligations*").

C. In satisfaction of the requirements of the Secured Parties, the Pledgor desires by this Agreement and the other Security Documents (as defined below) to provide collateral as security for its obligations under each Participation Agreement and the other Operative Documents related thereto.

D. In order to simplify administration of such collateral and to provide for the orderly enforcement of their respective rights, the Secured Parties (as defined below) have appointed the Collateral Agent to serve as their common representative, to be the beneficiary under any pledge intended to benefit the Secured Parties, and to hold the liens created, or to be created, under the Operative Documents.

E. It is a condition precedent to the approval by the Secured Parties of the transactions contemplated by the Operative Documents that the Pledgor shall have executed and delivered this Agreement to the Collateral Agent for the benefit of the Secured Parties.

NOW, THEREFORE, in consideration of the premises, the Pledgor hereby agrees with the Collateral Agent, for the benefit of the Secured Parties, to amend and restate the Guarantee and Collateral Agreement, dated as of March 18, 1999 (the "*Guarantee and Collateral Agreement*"), among Edison Mission Holdings, Co., Edison Mission Finance Co., Homer City Property Holdings, Inc., Chestnut Ridge Energy Co., Mission Energy Westside, Inc., EME Homer City Generation, L.P. and Edison Mission Energy (the "*EME Parties*"), in favor of United States Trust Company of New York, in its entirety and terminate the guarantee and pledge under the Guarantee and Collateral Agreement and release the EME Parties from their obligations thereunder (except as set forth hereunder with respect to the Pledgor):

SECTION 1. DEFINED TERMS

1.1 *Definitions.* (a) Unless otherwise defined herein, terms defined in the Participation Agreement and used herein shall have the meanings given to them in each Participation Agreement.

(b) The following terms shall have the following meanings:

"*Agreement*": this Amended and Restated Guarantee and Collateral Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

"*Certificated Security*": the collective reference to (i) any "certificated security" as defined in Section 8-102(a)(4) of the New York UCC and (ii) all limited liability company certificates,

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partnership interest certificates and certificated options therefor that may be issued or granted by any issuer.

"*Collateral*": as defined in *Section 2*.

"*Collateral Account*": any collateral account established by the Collateral Agent as provided in *Section 5.1*.

"*Facility Lease*": as defined in each Participation Agreement.

"*General Intangibles*": all "general intangibles" as such term is defined in Section 9-102(a)(42) of the New York UCC excluding the following: all emissions allowances and credits allocated by the DEP to the extent credited to an account in the Partnership's name prior to termination of the Facility Lease, all insurance policies, and all contracts, agreements, instruments and indentures in any form, and portions thereof, to which the Pledgor is a party or under which the Pledgor has any right, title or interest or to which the Pledgor or any property of the Pledgor is subject, as the same may from time to time be amended, supplemented or otherwise modified.

"*Lease Event of Default*": as defined in each Participation Agreement.

"*Lease Indenture Trustee*": as defined in each Participation Agreement.

"*Leveraged Lease Obligations*": as defined in the recitals.

"*Lease Subordination Agreement*": the Lease Subordination Agreement, dated as of December 7, 2001, among the Owner Lessors, the Owner Participant and the Lease Indenture Trustee.

"*Majority in Interest of Owner Lessors*": the holders of at least 51% of all Undivided Interests (as defined in any Participation Agreement) still subject to a Facility Lease.

"*New York UCC*": the Uniform Commercial Code as from time to time in effect in the State of New York.

"*Person*": any natural person, corporation, partnership, limited liability company, firm, association, trust, government, governmental agency or other entity, whether acting in an individual, fiduciary or other capacity.

"*Pledgor*": as defined in the *preamble.*

"*Proceeds*": all "proceeds" as such term is defined in Section 9-102(a)(64) of the New York UCC.

"*Secured Parties*": the Collateral Agent, the Owner Lessors and the Owner Participant.

"*Securities Act*": the Securities Act of 1933, as amended.

1.2 *Other Definitional Provisions.* (a) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section, schedule, appendix and exhibit references are to this Agreement unless otherwise specified.

(b) Each reference in this Agreement to a Operative Document or other agreement shall be deemed to refer to such Operative Document or other agreement as the same may be amended, supplemented or otherwise modified from time to time.

(c) Any term defined by reference to an agreement, instrument or other document shall have the meaning so assigned to it whether or not such agreement, instrument or document is in effect.

(d) Each reference in this Agreement to a Person shall be deemed to include such Person's successors and assigns.

(e) Each reference in this Agreement to a Requirement of Law shall be deemed to refer to such Requirement of Law as the same may be amended, supplemented or otherwise modified from time to time.

(f) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

SECTION 2. PLEDGE; GRANT OF SECURITY INTEREST

The Pledgor hereby pledges and grants to the Collateral Agent, for the benefit of the Secured Parties, a security interest in all of the General Intangibles now owned or at any time hereafter acquired by the Pledgor or in which the Pledgor now has or at any time in the future may acquire any right, title or interest together with all Proceeds thereof (collectively, the "*Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Leveraged Lease Obligations.

SECTION 3. REPRESENTATIONS AND WARRANTIES

The Pledgor hereby represents and warrants, with respect to itself and its Collateral, to the Collateral Agent and each Secured Party that:

3.1 *Title; No Other Liens.* Except for the security interest granted to the Collateral Agent pursuant to this Agreement, the Pledgor owns each item of the Collateral free and clear of any and all Liens or claims of others except as are permitted by the Operative Documents. No financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Collateral Agent pursuant to this Agreement or as are permitted by the Operative Documents.

3.2 *Perfected First Priority Liens.* The security interests granted pursuant to this Agreement upon completion of the filings and other actions specified on *Schedule 2* (which, in the case of all filings and other documents referred to on said *Schedule*, have been delivered to the Collateral Agent in completed and duly executed form) will (a) constitute valid and enforceable perfected security interests in all of the Collateral in favor of the Collateral Agent as collateral security for the Leveraged Lease Obligations to the extent that a security interest may be perfected by filing and/or the other actions specified on *Schedule 2*, and (b) are prior to all other Liens on the Collateral in existence on the date hereof except for Liens permitted by the Operative Documents and which have priority over the Liens on the Collateral by operation of law.

3.3 *Chief Executive Office.* On the date hereof, the Pledgor's jurisdiction of organization and the location of the Pledgor's chief executive office or sole place of business are specified on *Schedule 3*.

SECTION 4. COVENANTS

The Pledgor covenants and agrees with the Collateral Agent and the Secured Parties that, from and after the date of this Agreement until the Leveraged Lease Obligations shall have been paid in full:

4.1 *Delivery of Instruments, Certificated Securities and Chattel Paper.* If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument, Certificated Security or Chattel Paper, such Instrument, Certificated Security or Chattel Paper shall be immediately delivered to the Collateral Agent, duly indorsed in a manner satisfactory to the Collateral Agent, to be held as Collateral pursuant to this Agreement.

4.2 *Maintenance of Perfected Security Interest Further Documentation.* (a) The Pledgor shall take any and all actions that may be necessary or, in the reasonable discretion of the Collateral Agent, prudent to maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in *Section 3.2* and shall defend such security interest against the claims and demands of all Persons whomsoever.

(b) The Pledgor will furnish to the Collateral Agent and the Secured Parties from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection therewith as the Collateral Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Collateral Agent, and at the sole expense of the Pledgor, the Pledgor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including (i) filing any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) taking any actions necessary to enable the Collateral Agent to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto.

4.3 *Changes in Locations, Name, etc.* The Pledgor will not, except upon 30 days' prior written notice to the Collateral Agent and delivery to the Collateral Agent of all additional executed financing statements and other documents reasonably requested by the Collateral Agent to maintain the validity, perfection and priority of the security interests provided for herein:

(i) change its jurisdiction of organization or the location of its chief executive office or sole place of business from that referred to in *Section 3.3*; or

(ii) change its name, identity or corporate structure to such an extent that any financing statement flied by the Collateral Agent in connection with this Agreement would become misleading.

4.4 *Notices.* The Pledgor will advise the Collateral Agent promptly, in reasonable detail, of:

(a) any Lien (other than security interests created hereby or Liens permitted under the Operative Documents) on any of the Collateral which could reasonably be expected to have a material adverse effect on the ability of the Collateral Agent to exercise any of its remedies hereunder; and

(b) of the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereby.

SECTION 5. REMEDIAL PROVISIONS

5.1 *Proceeds to be Turned Over To Collateral Agent.* If a Lease Event of Default shall occur and be continuing, all Proceeds received by the Pledgor consisting of cash, checks and other near-cash items shall be held by the Pledgor in trust for the Collateral Agent, segregated from other funds of the Pledgor, and shall, forthwith upon receipt by the Pledgor, be turned over to the Collateral Agent in the exact form received by the Pledgor (duly indorsed by the Pledgor to the Collateral Agent, if required). All Proceeds received by the Collateral Agent hereunder shall be held by the Collateral Agent in a Collateral Account maintained under its sole dominion and control. All Proceeds while held by the Collateral Agent in a Collateral Account (or by the Pledgor in trust for the Collateral Agent and the Secured Parties) shall continue to be held as collateral security for all the Leveraged Lease Obligations and shall not constitute payment thereof until applied as provided in *Section 5.2*.

5.2 *Deposits; Application of Proceeds.* Upon the creation of any Collateral Account, the Collateral Agent shall also establish 8 subaccounts of such Collateral Account, one subaccount with

respect to each Facility Lease and the other Operative Documents related thereto. All deposits into the Collateral Account shall be credited to each subaccount based upon such Owner Lessor's Percentage of such deposited amount. If a Lease Event of Default shall have occurred and be continuing, at any time thereafter at the Collateral Agent's election, the Collateral Agent may apply all or any part of Proceeds held in the applicable subaccount of any Collateral Account in payment of the Leveraged Lease Obligations in accordance with the applicable Participation Agreement and the other applicable Operative Documents, and any part of such funds which the Collateral Agent elects not so to apply and deems not required as collateral security for any Leveraged Lease Obligations shall be paid over from time to time by the Collateral Agent to the Pledgor or to whomsoever may be lawfully entitled to receive the same. Any balance of such Proceeds in a subaccount remaining after applicable Leveraged Lease Obligations shall have been paid in full shall be paid over to the Pledgor or to whomsoever may be lawfully entitled to receive the same. It is acknowledged and agreed that sums on deposit in any subaccount of the Collateral Account shall be held for the benefit of the applicable Owner Lessor (as collateral for the Leveraged Lease Obligations under the applicable Facility Lease and the applicable Operative Documents and shall not constitute collateral for, and shall not be applied to the repayment of, any obligations of the Facility Lessee owing to any other Owner Lessor under any other Facility Lease (or other applicable Operative Documents).

5.3 *Direction of Secured Parties.* The Majority in Interest of Owner Lessors shall be entitled to give and refrain from giving consents and directions to the Collateral Agent on behalf of all the Secured Parties (and all Secured Parties shall be bound by such action).

5.4 *Code and Other Remedies.* Subject to Article XIV of each Participation Agreement, if a Lease Event of Default shall occur and be continuing, the Collateral Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the applicable Leveraged Lease Obligations, all rights and remedies of a secured party under the New York UCC or any other applicable law. Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon the Pledgor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Collateral Agent or any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Collateral Agent or any Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in the Pledgor, which right or equity is hereby waived and released. The Pledgor further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at places which the Collateral Agent shall reasonably select, whether at the Pledgor's premises or elsewhere. The Collateral Agent shall apply the net proceeds of any action taken by it pursuant to this *Section 5.4*, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Collateral Agent and the Secured Parties hereunder (including, without limitation, reasonable attorneys' fees and disbursements) and after crediting such proceeds to the subaccounts of the Collateral Account in accordance with *Section 5.2*, to the payment in whole or in part of the applicable Leveraged Lease Obligations, in such order as the Collateral Agent may elect, and only after such application and after the payment by the Collateral Agent of any other amount required by any provision of law, including, without limitation, Section 9-615(a)(3) of the New York UCC, need the Collateral Agent account for

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the surplus, if any, to the Pledgor. To the extent permitted by applicable law, the Pledgor waives all claims, damages and demands it may acquire against the Collateral Agent or any Secured Party arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

5.5 *Waiver; Deficiency.* The Pledgor waives and agrees not to assert any rights or privileges which it may acquire under Section 9-112 of the New York UCC.

SECTION 6. THE COLLATERAL AGENT

6.1 *Collateral Agent's Appointment as Attorney-in-Fact, etc.* (a) The Pledgor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Pledgor and in the name of the Pledgor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, the Pledgor hereby gives the Collateral Agent the power and right, on behalf of the Pledgor, without notice to or assent by the Pledgor, to do any or all of the following:

(i) in the name of the Pledgor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Collateral and file any claim or take any other

action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any and all such moneys due under any Collateral whenever payable;

(ii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof,

(iii) execute, in connection with any sale provided for in *Section 5.3* or *5.4*, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(iv) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against the Pledgor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Collateral Agent may deem appropriate; and (7) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and do, at the Collateral Agent's option and the Pledgor's expense, at any time, or from time to time, all acts and things which the Collateral Agent deems necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's and the Secured Parties' security interests

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therein and to effect the intent of this Agreement, all as fully and effectively as the Pledgor might do.

Anything in this *Section 6.1(a)* to the contrary notwithstanding, the Collateral Agent agrees that it will not exercise any rights under the power of attorney provided for in this *Section 6.1(a)* unless a Lease Event of Default shall have occurred and be continuing.

(b) If a Lease Event of Default shall have occurred and be continuing, if the Pledgor fails to perform or comply with any of its agreements contained herein, the Collateral Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Collateral Agent incurred in connection with actions undertaken as provided in this *Section 6.1*, together with interest thereon at a rate per annum equal to the highest rate per annum at which interest would then be payable on any category of past due Leveraged Lease Obligations under the Participation Agreement and the other Operative Documents, from the date of payment by the Collateral Agent to the date reimbursed by the Pledgor, shall be payable by the Pledgor to the Collateral Agent on demand.

(d) The Pledgor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

6.2 *Duty of Collateral Agent.* The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the New York UCC or otherwise, shall be to deal with it with the same degree of care as the Collateral Agent deals with similar property for its own account. Neither the Collateral Agent, any Secured Party nor any of their

respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Pledgor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Collateral Agent and the Secured Parties hereunder are solely to protect the Collateral Agents and the Secured Parties' interests in the Collateral and shall not impose any duty upon the Collateral Agent or any Secured Party to exercise any such powers. The Collateral Agent and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to the Pledgor for any act or failure to act hereunder, except for (i) their own gross negligence or willful misconduct or (ii) breach of their obligations under this Agreement.

6.3 *Execution of Financing Statements.* Pursuant to Section 9-402 of the New York UCC and any other applicable law, the Pledgor authorizes the Collateral Agent to file or record financing statements and other filing or recording documents or instruments with respect to the Collateral without the signature of the Pledgor in such form and in such offices as the Collateral Agent determines appropriate to perfect the security interests of the Collateral Agent under this Agreement. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

6.4 *Authority of Collateral Agent.* The Pledgor and each Secured Party by accepting the benefits of this Agreement acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the Secured Parties, be governed by the Operative Documents and by such other agreements with respect

thereto as may exist from time to time among them, but, as between the Collateral Agent and the Pledgor, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and the Pledgor shall not be under any obligation, or entitlement, to make any inquiry respecting such authority.

6.5 *Resignation of Collateral Agent.* The Collateral Agent may resign at any time by giving ninety (90) days prior written notice thereof to the Pledgor and the Owner Lessors; *provided* that such resignation may not in any event take effect until a successor Collateral Agent accepts an appointment as set forth in this *Section 6.5*. Upon any such notice of resignation, the Pledgor and the Owner Lessors shall have the right, upon ten (10) days prior written notice to the Pledgor and the Owner Lessors, to appoint a successor Collateral Agent. Collateral Agent may be removed at any time with or without cause, by an instrument in writing delivered to Collateral Agent by the Pledgor and the Owner Lessors pursuant to the terms of this Agreement. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Collateral Agent (and the retiring or removed Collateral Agent shall reasonably cooperate in the transferring of such rights, powers and privileges to such successor Collateral Agent) and the retiring or removed Collateral Agent shall be discharged from its duties and obligations under this Agreement. If no successor Collateral Agent shall have been so appointed and shall have accepted such appointment within sixty (60) days after the retiring or removed Collateral Agent s giving of notice of resignation, then, upon five (5) days prior written notice to the Secured Parties and the Pledgor, the retiring or removed Collateral Agent may, on behalf of the Secured Parties, appoint a successor Collateral Agent. Any successor Collateral Agent shall be a bank, a banking cooperative or trust company organized under the laws of the United States of America or of any State thereof, or any Affiliate of such bank, having a combined capital and surplus of at least $100,000,000. After any retiring Collateral Agent s resignation or removal hereunder as Collateral Agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement and the other Operative Documents.

SECTION 7. MISCELLANEOUS

7.1 *Amendments in Writing.* None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in writing and in accordance with the Participation Agreement.

7.2 *Notices.* All notices and other communications to any party hereto shall be in writing or by facsimile and addressed, delivered or transmitted to such party at its address or facsimile number set forth on Schedule 1 or at such other address or facsimile number as may be designated by such party in a notice to the other parties.

7.3 *No Waiver by Course of Conduct; Cumulative Remedies.* Neither the Collateral Agent nor any Secured Party shall by any act (except by a written instrument pursuant to *Section 7.1*), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Lease Event of Default. No failure to exercise, nor any delay in exercising, on the part of the Collateral Agent or any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Collateral Agent or any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Collateral Agent or such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

7.4 *Successors and Assigns.* (a) This Agreement shall be binding upon the successors and assigns of the Pledgor and shall inure to the benefit of the Collateral Agent and the Secured Parties and their successors and assigns; *provided* that the Pledgor may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent.

(b) In order to secure the Lessor Notes of each Owner Lessor, such Owner Lessor will assign and grant a first priority security interest in favor of its applicable Lease Indenture Trustee in and to all of such Owner Lessor's right, title and interest in, to and under this Agreement (other than to the extent relating to Excepted Payments and the rights to enforce and collect the same). The Facility Lessee hereby consents to such assignment and to the creation of such Lien and security interest and acknowledges receipt of copies of the Lease Indenture, it being understood that such consent shall not affect any requirement or the absence of any requirement for any consent of the Facility Lessee under any other circumstances. Unless and until the Collateral Agent shall have received written notice from the Lease Indenture Trustee that the Lien of the applicable Lease Indenture has been fully discharged, the applicable Lease Indenture Trustee shall have the right to exercise the rights of such Owner Lessor under this Agreement (other than with respect to Excepted Payments and the rights to enforce and collect the same) to the extent set forth in and subject in each case to the exceptions set forth in the applicable Lease Indenture.

7.5 *Set-Off.* The Pledgor hereby irrevocably authorizes the Collateral Agent and each Secured Party at any time and from time to time (i) upon the occurrence of a Lease Event of Default of the kind described in clauses (a), (b), (g) and (h) of Article XVI of the Facility Lease or (ii) upon the occurrence and continuance beyond the applicable grace period, if any, of any other Lease Event of Default and with the consent of the Secured Parties, without notice to the Pledgor, any such notice being expressly waived by the Pledgor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Collateral Agent or such Secured Party to or for the credit or the account of the Pledgor, or any part thereof in such amounts as the Collateral Agent or such Secured Party may elect, against and on account of the obligations and liabilities of the Pledgor to the Collateral Agent or such Secured Party hereunder and claims of every nature and description of the Collateral Agent or such Secured Party against the Pledgor, in any currency, whether arising hereunder, under the Participation Agreement, any other Operative Document or otherwise, as the Collateral Agent or such Secured Party may elect, whether or not the Collateral Agent or any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. The Collateral Agent and each Secured Party shall notify the Pledgor promptly of any such set-off and the application made by the Collateral Agent or such Secured Party of the proceeds thereof, *provided* that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Collateral Agent and each Secured Party under this *Section 7.5* are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Collateral Agent or such Secured Party may have.

7.6 *Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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

7.8 *Section Headings.* The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

7.9 *Integration.* The Security Documents represent the agreement of the Pledgors, the Collateral Agent and the Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Collateral Agent or any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to in the Security Documents. The Security Documents supersede any and all prior agreements and understandings, oral or written, relative or with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by the Collateral Agent or any Secured Party relative to the subject matter hereof not expressly set forth or referred to herein or in the other Security Documents.

7.10 *GOVERNING LAW.* THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

7.11 *Submission To Jurisdiction; Waivers.* The Pledgor (and, with respect to paragraph (e) below only, the Collateral Agent and each of the Secured Parties) hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to the Operative Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Pledgor at its address referred to in *Section 7.2* or at such other address of which the Collateral Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

7.12 *Acknowledgements.* The Pledgor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of the Security Documents to which it is a party;

(b) neither the Collateral Agent nor any Secured Party has any fiduciary relationship with or duty to the Pledgor arising out of or in connection with any Security Documents, and the relationship between the Pledgor, on the one hand, and the Collateral Agent and Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created by any Security Document or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Pledgor and the Secured Parties.

7.13 *Releases.* (a) At such time as the Obligations shall have been paid in full, the Collateral shall automatically be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Collateral Agent and the Pledgor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Pledgors. At the request and sole expense of the Pledgor following any such termination, the Collateral Agent shall deliver to the Pledgor any Collateral held by the Collateral Agent hereunder, and execute and deliver to the Pledgor such documents as the Pledgor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by the Pledgor in a transaction permitted by the Participation Agreement, then the Collateral Agent, at the request and reasonable and sole expense of the Pledgor, shall execute and deliver to the Pledgor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral.

7.14 *Security Interest Absolute.*

(a) The obligations of the Pledgor under this Agreement are independent of the Obligations and a separate action or actions may be brought and prosecuted against the Pledgor to enforce this Agreement, irrespective of whether any action is brought against another pledgor or any guarantor of the Obligations or whether another pledgor or any guarantor of the Obligations is joined in any such action or actions. All rights of the Owner Lessor and the pledge, hypothecation and security interest hereunder, and all obligations of the Pledgor hereunder, shall be absolute and unconditional, to the extent permitted by Requirements of Law, irrespective of:

(i) any lack of validity or enforceability of any Operative Document or any other agreement or instrument relating thereto;

(ii) any change in the time, manner or place of payment of or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Operative Document, including, without limitation, any increase in the Obligations resulting from the extension of additional credit to the Pledgor;

(iii) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of, or consent to departure from any guaranty, for all or any of the Obligations;

(iv) any manner of application of the Collateral, or proceeds thereof, to all or any of the Obligations, or any manner of sale or other disposition of any other collateral for all or any of the Obligations;

(v) any change, restructuring or termination of the structure or existence of the Pledgor; or

(vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Pledgor or a third party grantor of a security interest.

The Pledgor hereby waives, to the maximum extent permitted by law (i) all rights under any law limiting remedies, including recovery of a deficiency, under an obligation secured by a mortgage or deed of trust on real property if the real property is sold under a power of sale contained in the mortgage, and all defenses based on any loss whether as a result of any such sale or otherwise, of Pledgor's right to recover

any amount, whether by right of subrogation or otherwise; (ii) all rights under any law to require the Owner Lessor to pursue the Pledgor, or any other Person, any security which Owner Lessor may hold, or any other remedy before proceeding against the Pledgor; (iii) all rights of reimbursement or subrogation, all rights to enforce any remedy that the Owner Lessor may have against the Pledgor, and all rights to participate in any security held by the Owner Lessor until the Obligations have been paid and performed in full; (iv) all rights to require the Owner Lessor to

give any notices of any kind, including, without limitation, notices of nonpayment, nonperformance, protest, dishonor, default, delinquency or acceleration, or to make any presentments, demands or protests, except as set forth herein or expressly provided in the Participation Agreement; (v) all rights to assert the bankruptcy or insolvency of the Pledgor as a defense hereunder or as the basis for rescission hereof; (vi) all rights under any law purporting to reduce the Pledgor's obligations hereunder if the Obligations are reduced; (vii) all defenses based on the disability or lack of authority of the Pledgor or any Person, the repudiation of the Operative Documents by the Pledgor or any Person, the failure by the Owner Lessor to enforce any claim against the Pledgor, or the unenforceability in whole or in part of any Operative Documents; (viii) all suretyship and guarantor's defenses generally; (ix) all rights to insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshalling of assets, redemption or similar law, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by the Pledgor of its obligations under, or the enforcement by the Owner Lessor of, this Agreement; (x) any requirement on the part of the Owner Lessor to mitigate the damages resulting from any default; and (xi) except as otherwise specifically set forth herein, all rights of notice and hearing of any kind prior to the exercise of rights by the Owner Lessor upon the occurrence and during the continuation of a Lease Event of Default to repossess with judicial process or to replevy, attach or levy upon the Collateral. To the extent permitted by law, the Pledgor waives the posting of any bond otherwise required of the Owner Lessor in connection with any judicial process or proceeding to obtain possession of, replevy, attach, or levy upon the Collateral, to enforce any judgment or other security for the Obligations, to enforce any judgment or other court order entered in favor of Owner Lessor, or to enforce by specific performance, temporary restraining order, preliminary or permanent injunction, this Agreement or any other agreement or document between the Pledgor and the Owner Lessor. The Pledgor further agrees that upon the occurrence and during the continuation of a Lease Event of Default, the Collateral Agent may elect to nonjudicially or judicially foreclose against any real or personal property security it holds for the Obligations or any part thereof, or to exercise any other remedy against the Pledgor, any security or any guarantor, even if the effect of that action is to deprive the Pledgor of the right to collect reimbursement for any sums paid by the Pledgor to the Collateral Agent.

7.15 *WAIVER OF JURY TRIAL.* EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER OPERATIVE DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered as of the date first above written.

EME HOMER CITY GENERATION L.P.,

By: MISSION ENERGY WESTSIDE, INC.,
its General Partner

By: /s/ STEVEN D. EISENBERG
Name: Steven D. Eisenberg
Title: Vice President

Acknowledged and Agreed as of the date hereof:
THE BANK OF NEW YORK, as successor to
UNITED STATES TRUST COMPANY OF NEW
YORK, as Collateral Agent

/s/ CHRISTOPHER GRELL

By: Name: Christopher Grell
Title: Authorized Signer

SCHEDULE 1 to
Amended and Restated Guarantee and Collateral Agreement

NOTICE ADDRESSES

EME HOMER CITY GENERATION L.P.

18101 Von Karman Avenue
Suite 1700
Irvine, CA 92612-1046
Attention: Treasurer
Telephone: 949-752-5588
Facsimile: 949-752-5624

SCHEDULE 2 to
Amended and Restated Guarantee and Collateral Agreement

FILINGS AND OTHER ACTIONS
REQUIRED TO PERFECT SECURITY INTERESTS

Uniform Commercial Code Filings

Pledgor	**UCC Filing Offices**
EME Homer City Generation L.P.	California Secretary of State Pennsylvania Secretary of State Indiana County, PA

SCHEDULE 3 to
Amended and Restated Guarantee and Collateral Agreement

LOCATION OF JURISDICTION OF ORGANIZATION AND CHIEF EXECUTIVE OFFICE

Pledgor	**Jurisdiction**	**Location**

EME Homer City Generation L.P.	PA	18101 Von Karman Avenue Suite 1700 Irvine, California 92612-1046

SCHEDULE 4 to
Amended and Restated Guarantee and Collateral Agreement

1. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL1, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

2. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL2, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

3. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL3, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

4. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL4, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

5. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL5, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware

corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust

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Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

6. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL6, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

7. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL7, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

8. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL8, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

QuickLinks

Exhibit 10.18.2

Execution Copy

AMENDED AND RESTATED SECURITY DEPOSIT AGREEMENT

between

EME HOMER CITY GENERATION L.P.

and

THE BANK OF NEW YORK

as Collateral Agent

Dated as of December 7, 2001

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AMENDED AND RESTATED SECURITY DEPOSIT AGREEMENT, dated as of December 7, 2001 (this "*Agreement*"), between EME HOMER CITY GENERATION L.P., a Pennsylvania limited partnership ("*EME Homer City*" or the "*Facility Lessee*"), and THE BANK OF NEW YORK, as collateral agent for the Secured Parties (as defined below) (in such capacity, the "*Collateral Agent*") and THE BANK OF NEW YORK, in its capacity as a "securities intermediary" as defined in Section 8-102 of the New York UCC (in such capacity, the "Securities Intermediary")

RECITALS

A. Contemporaneously herewith, EME Homer City will enter into a transaction pursuant to the Participation Agreements listed on *Schedule 1*, each by and among EME Homer City, the applicable Owner Lessor, Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager, the Owner Participant, Homer City Funding LLC, as Lender, the Lease Indenture Trustee, the Security Agent and The Bank of New York, not in its individual capacity but solely as Bondholder Trustee (as amended, modified and

supplemented and in effect from time to time, collectively, the "*Participation Agreements*") whereby EME Homer City will sell undivided interests in its generating assets to the Owner Lessors and the Owner Lessors will lease such undivided interests in its generating assets to EME Homer City under the Facility Leases.

B. In consideration of the transactions contemplated by the Participation Agreements, EME Homer City will be obligated to pay to the Secured Parties the aggregate amount of all obligations owed by EME Homer City to the Secured Parties under the Operative Documents (the "*Leveraged Lease Obligations*").

C. In satisfaction of the requirements of the Secured Parties, the Facility Lessee desires by this Agreement to provide interests in certain Accounts as security for EME Homer City's obligations under the Participation Agreements and the other Operative Documents.

D. In order to simplify administration of such Accounts and to provide for the orderly enforcement of their respective rights, the Secured Parties have appointed the Collateral Agent to serve as their common representative, to be the beneficiary under any security interest intended to benefit the Secured Parties, and to hold the liens created, or to be created, under the Operative Documents.

E. The parties hereto desire by this Agreement (as defined above) to provide for the receipt of Revenues and the application thereof to the payment of Operating Expenses (as defined below) and Leveraged Lease Obligations and for other purposes as described herein.

F. Pursuant to the Ownership and Operation Agreement, dated as of December , 2001 (as amended, supplemented or otherwise modified from time to time, the "*Ownership and Operation Agreement*"), among the Collateral Agent and the Secured Parties, the Collateral Agent has agreed to serve as a common collateral agent for all Secured Parties.

G. It is a condition precedent to the approval by the Secured Parties of the transactions contemplated by the Operative Documents that the Facility Lessee shall have executed and delivered this Agreement to the Collateral Agent for the benefit of the Secured Parties.

H. The parties hereto desire to amend and restate the Security Deposit Agreement, among Edison Mission Holdings Co., Edison Mission Finance Co., Homer City Property Holdings, Inc., Chestnut Ridge Energy Co., Mission Energy Westside, Inc., EME Homer City Generation L.P. and United States Trust Company of New York, as Collateral Agent, dated March 18, 1999 in its entirety and release the liens granted therein as provided herein.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, each of the parties hereto hereby agrees that the Security Deposit Agreement, dated March 18, 1999 is hereby amended and restated as follows:

ARTICLE I
Definitions

Section 1.1 *Defined Terms.* The following terms shall have the meanings indicated:

"*Accounts*" means all accounts established pursuant to *Section 2.2* of this Agreement.

"*Additional Reserve Account*" has the meaning specified in Section 2.2.

"*Additional Reserve Period*" means the period from and including the Additional Reserve Trigger Date to but excluding the Lien Release Date.

"*Additional Reserve Trigger Date*" means the first Restricted Payment Date on which the conditions set forth in Section 6.9(c)(i) of the Participation Agreement are not satisfied.

"*Amendment Date*" means the date the Operative Documents are executed.

"*Authorized Representative*" means those of officers and employees of the Facility Lessee whose signatures and incumbency shall have been certified by the Facility Lessee to the Collateral Agent and each Owner Lessor's Representative.

"*Collateral Agent*" has the meaning specified in the *Preamble*.

"*Component A Letter of Credit*" means a letter of credit that may be delivered to the Collateral Agent at the election of a Owner Lessor in total or partial satisfaction of the amount on deposit in the applicable subaccount of the Equity Account, the Supplemental Equity Account and the Additional Reserve Account in accordance with Section 4.7 hereof.

"*Default Period*" means the period commencing on the date the Collateral Agent receives a written notice from the Facility Lessee or any of the Secured Parties stating that a Lease Default or a Lease Event of Default has occurred and is continuing under any of the Facility Leases. Such notice shall be deemed to have been delivered if a voluntary petition of Bankruptcy has been filed under Title 11 of the United States Code (or any similar action has been taken under the laws of any other jurisdiction) with respect to the Facility Lessee.

"*Depositary*" means Bank of America NT&SA.

"*EME Homer City*" has the meaning specified in the *Preamble*.

"*Entitlement Order*" means "entitlement order" as defined in Article 8 of the New York UCC.

"*Equity Account*" has the meaning specified in *Section 2.2*.

"*Facility Lessee Provided Letter of credit*" has the meaning provided in *Section 4.7(b)(ii)*.

"*LD Account*" has the meaning specified in *Section 2.2.*

"*Letter of Credit Account*" has the meaning specified in *Section 4.7(b)(i)*.

"*Lien Release Date*" means the date on which all amounts payable in respect of the Lessor Notes have been paid in full and the Lien of the Lease Indenture has been released in accordance with the terms thereof.

"*Limitation Period*" means each period (a) commencing on a first Restricted Payment Date on which the condition contained in Section 6.9(c)(i) of the applicable Participation Agreement is not satisfied and which immediately succeeds a Restricted Payment Date on which such condition was

satisfied and (b) ending on the first subsequent Restricted Payment Date on which the condition contained in Section 6.9(c)(i) of the applicable Participation Agreement is satisfied.

"*Monthly Transfer Date*" means the last Business Day of each month.

"*Moody's*" means Moody's Investors Service, Inc.

"*New York UCC*" means the Uniform Commercial Code as from time to time in effect in the State of New York.

"*Notice of Action*" has the meaning for so long as the Lessor Notes are outstanding and the Lien of the Lease Indenture has not been discharged specified in the Lease Indenture; provided that after the Liens of the Indenture Trustee have been discharged and the Lease Indenture has been terminated, the applicable Owner Participant, during any Event of Default and upon the exercise of remedies pursuant to Section 17.1 of the Facility Lease, the applicable Owner Participant may deliver a "*Notice of Action*" to the Collateral Agent directing the Collateral Agent to take action pursuant to Section 4.13(b).

"*NOx Reserve Account*" has the meaning specified in *Section 2.2*.

"*NOx Reserve Period*" means the period commencing on the first Monthly Transfer Date after September 30, 2003 and ending on the first Monthly Transfer Date when the Homer City Generating Station Units 1,2 and 3 selective catalytic reduction (SCR) systems become Operational.

"*NOx Reserve Requirement*" means the amount equal to the expenditures incurred by the Facility Lessee for acquisition of emission allowances actually used (other than pursuant to the Permitted Trading Activities) during the prior fiscal year multiplied by three.

"*Obligations*" means all obligations and liabilities of the Facility Lessee which may arise under or in connection with the Operative Documents or any other Transaction Document whether on account of Rent payment obligations, reimbursement obligations, the unpaid principal of and interest on Permitted Indebtedness, fees, indemnities, costs, expenses or otherwise (including all fees and disbursements of counsel to the Collateral Agent and to the Secured Parties that are required to be paid by the Facility Lessee pursuant to the terms of any Transaction Document).

"*Operating Account*" has the meaning specified in *Section 2.2*.

"*Operating Expenses*" means, in respect of any period, all cash amounts paid by the Facility Lessee in the conduct of its business during such period, including premiums for insurance policies, fuel supply and transportation costs, utilities, costs of maintaining, renewing and amending Governmental Approvals, franchise, licensing, property, real estate and income taxes, sales and excise taxes, general and administrative expenses, employee salaries, wages and other employment-related costs, business management and administrative services fees and other fees, expenses and capital expenditures necessary for the continued operation and maintenance of the Facility and the conduct of business of EME Homer City.

"*Operative Documents*" has the meaning specified in each of the Participation Agreements.

"*Organic Document*" means, with respect to any Person that is a corporation, its certificate of incorporation, its by-laws and all shareholder agreements, voting trusts and similar arrangements applicable to any of its authorized shares of capital stock, and, with respect to any Person that is a limited partnership, its certificate of limited partnership and partnership agreement.

"*Owner Lessor's Representative*" means each Person designated as serving as indenture trustee, collateral agent, lenders' representative or in any similar capacity for an Owner Lessor, provided

however, that for as long as the Lessor Notes of such Owner Lessor are outstanding, this term shall refer to the Security Agent.

"*Payment Dates*" means Rent Payment Dates and Permitted Indebtedness Payment Dates.

"*Permitted Indebtedness Account*" has the meaning set forth in Section 2.2 hereof.

"*Permitted Indebtedness Payment Date*" means, with respect to any Permitted Indebtedness, any date on which amounts are payable on such Permitted Indebtedness.

"*Pledged Accounts*" means, collectively, the Revenue Account, the Senior Rent Payment Account, the Recovery Event Proceeds Account and the Equity Account.

"*Proceeds*" has the meaning specified in the New York UCC.

"*Recovery Event*" means any settlement of or payment of $5,000,000 or more in respect of (a) any property or casualty insurance claim relating to the Facility or any part thereof or (b) any seizure, condemnation, confiscation or taking of, or requisition of title or use of, the Facility or any part thereof by any Governmental Authority.

"*Recovery Event Proceeds*" means proceeds received in respect of a Recovery Event (regardless of whether the amount thereof is less than $5,000,000).

"*Recovery Event Proceeds Account*" has the meaning specified in Section 2.2.

"*Request Letter*" means each letter from time to time delivered by an Authorized Representative of the Facility Lessee or by the Facility Lessee to the Collateral Agent requesting the transfer and/or release of funds from one or more Accounts or subaccounts, as applicable to or on behalf of the Facility Lessee in accordance with the terms of this Security Deposit Agreement, each such letter to be in such form acceptable to the Collateral Agent.

"*Required Secured Parties*" has the meaning specified in the Ownership and Operation Agreement.

"*Restoration*" means the replacement or restoration of the Facility or any part thereof in respect of which the Facility Lessee or any of the Owner Lessors have received Recovery Event Proceeds.

"*Restricted Payment Blockage Date*" means any date on which the Facility Lessee would not be permitted to make a Component A Payment pursuant to Section 6.9 of the applicable Participation Agreement (other than as a result of the failure to satisfy the condition set forth in Section 6.9(a) of the applicable Participation Agreement).

"*Restricted Payment Blockage Period*" means each Limitation Period, provided that in no event shall any such period exceed eighteen months.

"*Restricted Payments*" has the meaning specified in each of the Participation Agreements.

"*Revenue Account*" has the meaning specified in *Section 2.2*.

"*S&P*" means Standard & Poor's Rating Group.

"*Secured Parties*" means the Collateral Agent and the Owner Lessors.

"*Securities Intermediary*" has the meaning specified in *Section 2.5*.

"*Senior Rent Reserve Amount*" means, on any date with respect to an applicable Facility Lease, the sum of the aggregate amount of Senior Rent due and unpaid on that date under such Facility Lease and the lesser of (i) the amount of the second succeeding payment of Senior Rent (other than of the type specified in clause (b) of the definition thereof) under such Facility Lease and

(ii) the aggregate of all amounts transferred into the applicable subaccount of the Equity Account pursuant to Section 4.1(a) during Limitation Periods (and regardless of whether any such amounts thereafter remain on deposit in such applicable subaccount of the Equity Account).

"*Special Reserve Balance*" means, with respect to the calculation of the Modified Senior Rent Service Coverage Ratio for any period, the sum of (a) the amount on deposit (or, in the case of the projected Modified Senior Rent Service Coverage Ratio, projected to be on deposit) in the applicable subaccount of the Supplemental Account on the last day of such period, (b) the amount deposited (or, in the case of the projected Modified Senior Rent Service Coverage Ratio, projected to be deposited) into the applicable subaccount of the Equity Account during the Limitation Period in which the last day of such calculation period occurs but only to the extent such amount remains (or is projected to remain) on deposit in the applicable subaccount of the Equity Account on the last day of such calculation period, (c) the amount deposited (or, in the case of the projected Modified Senior Rent Service Coverage Ratio, projected to be deposited) into the applicable subaccount of the Additional Reserve Account during the Limitation Period in which the last day of such calculation period occurs but only to the extent such amount remains (or is projected to remain) on deposit in the applicable subaccount of the Additional Reserve Account on the last day of such calculation period, (d) the amount on deposit (or, in the case of the projected Modified Senior Rent Service Coverage Ratio, projected to be on deposit) in the applicable subaccount of the Subordinated Rent Payment Account on the last day of such period and (e) the amount on deposit (or, in the case of the projected Modified Senior Rent Service Coverage Ratio, projected to be on deposit) in the applicable subaccount of the Subordinated Reserve Account on the last day of such period.

"*Transaction Documents*" means the Operative Documents and each indenture, loan agreement, underwriting agreement, security purchase agreement or other document entered into in connection with any Permitted Indebtedness.

Section 1.2 *Other Definitional Provisions.*

(a) Unless otherwise defined in *Section 1.1* hereof, each capitalized term used in this Agreement and not otherwise defined herein shall have the respective meaning set forth in Appendix A to the Participation Agreements unless the context hereof shall otherwise require. The general provisions of Appendix A to the Participation Agreements shall apply to terms used in this Agreement and specifically defined herein. References to applicable Operative Documents (or other agreements) shall mean Operative Documents (or other agreements) as such term is defined in the Participation Agreement to which the relevant Owner Lessor is a party.

ARTICLE II
Agreement of Collateral Agent;
Creation of Accounts; Grant of Security Interests

Section 2.1 *Agreement of Collateral Agent.* The Collateral Agent agrees to accept all cash, cash equivalents, instruments, investments and other securities to be delivered to or held by the Collateral Agent pursuant to the terms of this Agreement, and, from such cash, cash equivalents, instruments, investments and other securities, to make the releases and transfers contemplated by this Agreement as and when required in accordance with the terms hereof. The Collateral Agent shall hold and safeguard the Accounts (other than the Operating Account and the cash, cash equivalents, instruments, investments and other securities on deposit therein) during the term of this Agreement in accordance with the provisions hereof. The Collateral Agent shall treat the cash, cash equivalents, instruments, investments and other securities in each Pledged Account as pledged by the Facility Lessee to the Secured Parties, to be held by the Collateral Agent, as agent of the Secured Parties, in trust in accordance with the provisions hereof.

Section 2.2 *Creation of Accounts and Subaccounts.*

(a) On or prior to the Amendment Date, (i) the Collateral Agent shall establish in the corporate trust department of The Bank of New York, a special, segregated and irrevocable trust account designated the "Homer City Revenue Account" (the "*Revenue Account*") and (ii) EME Homer City shall establish with the Depositary a special and segregated account designated the "Homer City Operating Account" (the "*Operating Account*").

(b) On or prior to the Amendment Date, the Collateral Agent shall establish in the corporate trust department of The Bank of New York, special, segregated and irrevocable trust accounts as follows:

(i) one designated the "Homer City Recovery Event Proceeds Account" (the "*Recovery Event Proceeds Account*");

(ii) one designated the "Homer City Senior Rent Payment Account" (the "*Senior Rent Payment Account*");

(iii) one designated the "Homer City Subordinated Rent Payment Account" (the "*Subordinated Rent Payment Account*");

(iv) one designated the "Homer City Reserve Account" (the "*Reserve Account*");

(v) one designated the "Homer City Equity Account" (the "*Equity Account*");

(vi) one designated the "Homer City Supplemental Equity Account" (the "*Supplemental Account*");

(vii) one designated the "Homer City Suspended Distributions Account" (the "*Suspended Distributions Account*");

(viii) one designated the "Homer City Subordinated Reserve Account" (the "*Subordinated Reserve Account*");

(ix) one designated the "Homer City Distributions Account" (the "*Distributions Account*");

(x) one designated the "Homer City Permitted Indebtedness Account" (the "*Permitted Indebtedness Account*"); and

(xi) one designated the "Homer City Additional Debt Service Reserve Account" (the "*Additional Reserve Account*").

(c) On or prior to September 30, 2002, the Collateral Agent shall establish in the corporate trust department of The Bank of New York special, segregated and irrevocable trust accounts as follows:

(i) one designated the "Homer City Liquidated Damages Account" (the "*LD Account*");

(ii) one designated the "Homer City NOx Reserve Account" (the "*NOx Reserve Account*").

(d) Each of the Accounts (other than the Revenue Account, the Operating Account and the Permitted Indebtedness Account) shall be subdivided into eight subaccounts, one subaccount for each Facility Lease. The Collateral Agent shall maintain separate records for each subaccount. Amounts deposited into or debited from such Accounts shall be deposited or debited from the applicable subaccount as provided herein.

Section 2.3 *Delivery of Revenues, etc. to Collateral Agent.* The Facility Lessee shall cause all Revenues and Recovery Event Proceeds and all cash, cash equivalents, instruments, investments and

other securities in its possession (excluding amounts received by the Facility Lessee as transfers from the Operating Account or the Distributions Account in accordance with this Agreement) to be delivered immediately to the Collateral Agent for deposit into the Accounts

pursuant to Article III. All such Revenues, cash, cash equivalents, instruments, investments and other securities at any time on deposit in the Accounts shall be held in the exclusive custody of the Collateral Agent for the purposes and on the terms set forth in this Agreement.

Section 2.4 *Security Interests in the Lessee Accounts.* In order to secure the payment of the Obligations, and the performance and observance by the Facility Lessee of all of its covenants, agreements and obligations to the Secured Parties under the Transaction Documents, the Facility Lessee hereby pledges and assigns to the Collateral Agent, and hereby grants in favor of the Collateral Agent for the ratable benefit of the Secured Parties, a security interest in all of the Facility Lessee's right, title and interest, whether now owned or hereafter acquired and whether now existing or hereafter coming into existence, in, to and under (i) all Revenues, (ii) the Revenue Account, the Senior Rent Payment Account, the Recovery Event Proceeds Account, the Equity Account and all cash, cash equivalents, instruments, investments and other securities on deposit therein, (iii) all security entitlements with respect to any and/or all of the foregoing and all Proceeds of the foregoing. All Accounts (other than the Operating Account) and all cash, cash equivalents, instruments, investments and other securities on deposit therein and security entitlements with respect thereto shall, subject to the provisions of this Agreement, be subject to the exclusive dominion and control of the Collateral Agent, and the Collateral Agent shall have the sole and exclusive right to withdraw or order a transfer of funds from such Accounts, and the Facility Lessee hereby irrevocably appoints the Collateral Agent as its true and lawful attorney, with full power of substitution, for the purpose of making any such withdrawal or ordering any such transfer of funds from any such Account, which appointment is coupled with an interest and is irrevocable. The Facility Lessee shall not have any rights or powers with respect to any amounts in any of the Accounts (other than the Operating Account) or any part thereof except (i) as provided in the Investments section of this Security Deposit Agreement, (ii) the right to have such amounts applied in accordance with the provisions of this Security Deposit Agreement, and (iii) the right described in Section 4.7(b)(ii).

Section 2.5 *Securities Accounts.* The parties hereto hereby agree that:

(a) the Accounts (other than the Operating Account) shall be treated as "securities accounts" as such term is defined in Section 8-501 of the New York UCC;

(b) The Securities Intermediary shall, subject to the terms of this Agreement, treat the Facility Lessee as the person entitled to exercise the rights that comprise any financial assets credited to the Accounts;

(c) all property delivered to the Securities Intermediary, pursuant to the terms of this Agreement, will be promptly credited to the appropriate Account;

(d) all securities or other property underlying any financial assets credited to such Accounts shall be registered in the name of the Securities Intermediary, indorsed to the Securities Intermediary or in blank and in no case will any financial asset credited to any Account be registered in the name of the Facility Lessee, payable to the order of the Facility Lessee or specially indorsed to the Facility Lessee except to the extent the forgoing have been specially indorsed to the Securities Intermediary or in blank;

(e) each item of property (whether investment property, financial asset, security, instrument or cash) credited to such Accounts shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the New York UCC; and

(f) if at any time the Securities Intermediary shall receive an Entitlement Order issued by the Collateral Agent and relating to any of the Pledged Accounts, the Securities Intermediary shall

comply with such entitlement order without further consent by the Facility Lessee or any other person. In the event the Facility Lessee, if permitted to give any Entitlement Order with respect to any Pledged Account and such order conflicts with or contradicts an Entitlement Order issued by the Collateral Agent, the Securities Intermediary shall always follow the Entitlement Orders issued by the Collateral Agent.

ARTICLE III
Deposits into Accounts

Section 3.1 *Revenue Account.* The Facility Lessee agrees that there shall be deposited into the Revenue Account all Revenues and all proceeds of Permitted Indebtedness (including proceeds received pursuant to the SocGen Instrument) received by or on behalf of itself and any proceeds of liquidated damages or settlement proceeds arising out of contractual claims related to the Facility. If, notwithstanding the foregoing, the Facility Lessee receives any Revenues or proceeds of Permitted Indebtedness, it shall immediately deliver such Revenues in the exact form received (duly indorsed, if appropriate, in a manner satisfactory to the Collateral Agent) to the Collateral Agent for deposit into the Revenue Account. The Collateral Agent shall have the right to receive all Revenues directly from the Persons owing the same. All Revenue and proceeds of Permitted Indebtedness received by the Collateral Agent shall be deposited into the Revenue Account.

Section 3.2 *Recovery Event Proceeds Account.* The Facility Lessee agrees that there shall be deposited into the Recovery Event Proceeds Account all Recovery Event Proceeds *provided*, that if the aggregate amount of Recovery Event Proceeds with respect to a Recovery Event is less than $5 million, such proceeds shall be transferred to the Revenue Account if requested pursuant to a Request Letter. If, notwithstanding the foregoing, the Facility Lessee shall receive any such proceeds, it shall immediately deliver such proceeds in the exact form received (duly endorsed, if appropriate, in a manner satisfactory to the Collateral Agent) to the Collateral Agent for deposit into the Recovery Event Proceeds Account. The Collateral Agent shall have the right to receive all such proceeds directly from the Persons owing the same. All such proceeds received by or on behalf of the Collateral Agent shall be deposited into the Recovery Event Proceeds Account. Amounts deposited into the Recovery Event Proceeds Account shall be credited to each subaccount thereof based upon each Owner Lessor's Percentage of such deposited amounts.

Section 3.3 *Reserve Account.* The Facility Lessee agrees that on the Amendment Date there shall be deposited into the Reserve Account the proceeds from the sale of the Facility received pursuant to the Facility Deeds and the Bills of Sale, in a total amount of $[134] million. Such amount shall be credited to each subaccount of the Reserve Account based upon each Owner Lessor's Percentage of such deposited amount. No additional amounts shall be deposited into the Reserve Account.

Section 3.4 *Equity Account, Supplemental Account and Additional Reserve Account.* The Facility Lessee agrees that any Component A Letter of Credit or Facility Lessee Provided Letter of Credit (in each case with respect to the applicable Facility Lease) delivered to the Collateral Agent in accordance with the terms of Section 4.7(b) hereof shall be deposited in the applicable subaccounts of the Equity Account, the Additional Reserve Account or the Supplemental Account and all proceeds from a draw thereon shall be deposited in the applicable subaccounts of the Equity Account, the Additional Reserve Account or the Supplemental Account.

Section 3.5 *LD Account.* The Facility Lessee agrees that there shall be deposited into the LD Account all sums received by or on behalf of the Facility Lessee during the NOx Reserve Period on account of performance liquidated damages and similar payments pursuant to the SCR Construction Contract.

Section 3.6 *Deposits Irrevocable.* Any deposit made into the Accounts hereunder shall be irrevocable and all cash, cash equivalents, instruments, investments and other securities on deposit shall be held in trust by the Collateral Agent, and applied solely as provided herein.

ARTICLE IV
Transfers from Accounts

Section 4.1 *Revenue Account.*

(a) Subject to Section 4.13, on each Monthly Transfer Date the Collateral Agent shall transfer with respect to each Owner Lessor, such Owner Lessor's Percentage of the funds on deposit in the Revenue Account in the following amounts in the following order of priority:

first, to the Operating Account, the amount certified in such Request Letter to be such Owner Lessor's Percentage of the excess, if any, of the aggregate amount of Operating Expenses then due and payable or projected to become due and payable in the next succeeding month over the balance then on deposit in the Operating Account; *provided that* if the Annual Budget in effect for such Fiscal Year of the Facility Lessee was determined in accordance with Section 5.14(b) or 5.14(c) of any Participation Agreement, then the amount withdrawn from the Operating Account on any Monthly Transfer Date during such Fiscal Year shall not exceed the amount set forth in such Annual Budget for the immediately succeeding calendar month unless agreed to by the Majority in Interest of the Owner Lessors except with respect to fuel and emission allowance costs which shall not be subject to the consent or approval of the Owner Lessors;

second, to the Collateral Agent, the applicable Owner Lessor's Owner Manager, the Lease Indenture Trustee, the Security Agent and the Bondholder Trustee, the amount certified in the Request Letter delivered in connection with such Monthly Transfer Date to be the sum of the unpaid fees, indemnities, costs and expenses then due and payable to such Persons in respect of their respective services in such capacities; *provided that* in the case of the Collateral Agent and the Bondholder Trustee, such amount shall be such Owner Lessor's Percentage of the sum of the unpaid fees, indemnities, costs and expenses of the Collateral Agent and the Bondholder Trustee;

third, into the applicable subaccount of the Senior Rent Payment Account, an amount equal to (a) $1/6^{th}$ of the aggregate amount (except with respect to the first Rent Payment Date following the Closing Date, $1/3^{rd}$ of the aggregate amount) which is payable on or within six months following such Monthly Transfer Date on account of Senior Rent (other than of the type specified in clause (b) of the definition thereof) under such Owner Lessor's Facility Lease and (b) the aggregate amount of all Senior Rent of the type specified in clause (b) of the definition thereof, under such Owner Lessor's Facility Lease for which will become due and payable prior to the next Monthly Transfer Date together with the amount of all deficiencies, if any, with respect to deposits required to be made in the applicable subaccount of the Senior Rent Payment Account in all prior months, as certified in the Request Letter;

fourth, subject to Section 4.13 hereof and to Section 6.9 of the Participation Agreement, if applicable, and to the Operative Documents applicable to the Persons entitled thereto, an amount equal to all other Supplemental Rent (other than Excepted Payments) under the applicable Facility Lease then due and payable to such Persons as certified in the Request Letter;

fifth, into the Permitted Indebtedness Account, such Owner Lessor's Percentage of an amount equal to $1/6^{th}$ of the amounts due and payable in respect of Permitted Indebtedness on or within six months following such Monthly Transfer Date (including all unpaid fees,

indemnities, costs and expenses then due and payable with respect to such Permitted Indebtedness), as certified in the Request Letter; provided that, in the case of the SocGen Instrument, (A) in the event that no Early Termination Date (as defined in the SocGen Instrument) has occurred, there shall also be deposited into the Permitted Indebtedness Account $1/6^{th}$ of the amount (the "*Additional Amount*") required to be paid in accordance with the SocGen Instrument on or within six months following such Monthly Transfer Date in excess of the amount relating to the SocGen Instrument referred to in this clause *fifth* above; and (B) in the event that an Early Termination Date (as so defined) has occurred, there shall be deposited into the Permitted Indebtedness Account on such Monthly Transfer Date the full amount due under the SocGen Instrument (including unpaid fees, indemnities, costs and expenses then due and payable with respect to the SocGen Instrument);

sixth, into the applicable subaccount of the Equity Account, such Owner Lessor's Percentage of the balance remaining in the Revenue Account.

(b) If, on any Monthly Transfer Date, such Owner Lessor's Percentage of the funds on deposit in the Revenue Account are insufficient to make in full any transfer required pursuant to clause *first, second, third, fourth* or *fifth* of Section 4.1(a), the Collateral Agent shall make such transfer with funds then on deposit (in the following order of priority) (i) in the applicable subaccount of each of the Supplemental Account, the Subordinated Reserve Account (funds shall be transferred from the Subordinated Reserve Account only with respect to clause *first, second, third* and *fourth*), the Subordinated Rent Payment Account, the Suspended Distributions Account, the Additional Reserve Account (funds shall be transferred from the Additional Reserve Account only with respect to clause *first, second* and *third*), the Equity Account (funds shall be transferred from the Equity Account only with respect to clause *second* and *third*) or the Reserve Account (funds shall be transferred from the Reserve Account only with respect to clause *second* and *third*), as available.

Section 4.2 *Recovery Event Proceeds Account.*

(a) Except as otherwise provided in Section 4.2(b) and subject to Section 4.13, on each Monthly Transfer Date occurring after a Recovery Event and until Restoration with respect thereto is completed, the Collateral Agent shall transfer to the Facility Lessee, from the funds on deposit in each subaccount of the Recovery Event Proceeds Account, such Owner Lessor's Percentage of the amount certified in the Request Letter delivered in connection with such Monthly Transfer Date to be the aggregate amount then due and payable in respect of such Restoration.

(b) Subject to Section 4.13, on any Rent Payment Date or Termination Value Payment Date on which Rent or Termination Value under a Facility Lease is required to be paid with any Recovery Event Proceeds, the Collateral Agent shall transfer, from the funds on deposit in the applicable subaccount of the Recovery Event Proceeds Account, the following amounts in the following order of priority:

first, to the applicable Owner Lessor under such Facility Lease, the amount certified in the Request Letter delivered in connection with such Rent Payment Date or Termination Value Payment Date to be the amount then due and payable in respect of Senior Rent under such Facility Lease (including premium and interest, if any);

second, into the Permitted Indebtedness Account, the amount sufficient to pay in full the Permitted Indebtedness outstanding; and

third, to the applicable Owner Lessor, the amount certified in such Request Letter to be the amount of the Component A of Basic Lease Rent or the Component A of Termination Value then due and payable under such Facility Lease.

Section 4.3 *Senior Rent Payment Account.* Subject to Section 4.13 hereof, on any Rent Payment Date for a Facility Lease, the Collateral Agent shall transfer from funds on deposit in the applicable subaccount of the Senior Rent Payment Account to the Security Agent on behalf of the applicable Owner Lessor, the amount certified by the Facility Lessee in the Request Letter delivered in connection with such Rent Payment Date to be payable with respect to the Senior Rent and all Supplemental Rent (other than Excepted Payments) under such Facility Lease on such date.

Section 4.4 *Reserve Account.* Subject to Sections 4.13 and 4.1(b) hereof and so long as no Lease Event of Default (other than a Rent Default Event) then exists, on any Rent Payment Date for a Facility Lease, the Collateral Agent shall transfer to the applicable Owner Lessor from funds on deposit in the applicable subaccount of the Reserve Account the amount certified by the Facility Lessee to be equal to the difference, if positive, between the amounts payable with respect to the Component A of Basic Lease Rent under such Facility Lease on such Rent Payment Date and the amounts that would be available under Section 4.8, if any (and whether or not the conditions have been met under Section 6.9 of the applicable Participation Agreement), after giving effect to any transfers (with respect to such subaccount) to be made on

such date pursuant to Section 4.1 hereof for use in making payments with respect to the Component A of Basic Lease Rent in accordance with the applicable Operative Documents.

Section 4.5 *LD Account; NOx Reserve Account.* During the NOx Reserve Period, subject to Section 4.13 hereof, on each Business Day specified in the Request Letter, the Collateral Agent shall transfer to the Facility Lessee from the funds on deposit in the applicable subaccount of the LD Account and the NOx Reserve Account respectively, the amount certified in such Request Letter to be the aggregate amount then due and payable in respect of emission allowances required to be acquired by the Facility Lessee from time to time during such period. The transfers shall be made from the applicable subaccounts of the LD Account and the NOx Reserve Account in the following order of priority: first, the applicable subaccount of the LD Account and second, the applicable subaccount of the NOx Reserve Account. Subject to Section 4.13, on the first Monthly Transfer Date following the end of the NOx Reserve Period the balance remaining in each subaccount of the LD Account and the NOx Reserve Account shall be transferred into the Equity Account.

Section 4.6 *Permitted Indebtedness Account.* (a) Subject to Section 4.13 hereof, on any date on which any payment is due and payable in respect of Permitted Indebtedness, after giving effect to all transfers to be made on such date pursuant to Section 4.1, the Collateral Agent shall transfer to the Persons that provide each class of Permitted Indebtedness, from the funds on deposit in the Permitted Indebtedness Account, the aggregate amount of principal, premium, fees, indemnities, costs and expenses then due and payable to the Persons that provide each such class of Permitted Indebtedness, as certified in the Request Letters delivered in connection with such Monthly Transfer Date.

(b) Subject to Section 4.13 hereof, on any date on which an Additional Amount is required to be paid under the SocGen Instrument, after giving effect to all transfers to be made on such date pursuant to Section 4.1, the Collateral Agent shall transfer to the counterparty under the SocGen Instrument, from the funds on deposit in the Permitted Indebtedness Account, the amount required to be deposited on such date, as certified in the Request Letter delivered in connection with such deposit; *provided however*, that no funds shall be transferred on such date for making of a deposit under the SocGen Instrument unless after giving effect to such transfer there are sufficient funds remaining to make in full transfers required pursuant to clause *third* of Section 4.7 hereof, as certified in the Request Letter. If on any Rent Payment Date on which an Additional Amount is required to be paid under the SocGen Instrument the conditions set forth in the proviso immediately above are not satisfied, then an amount equal to the sum of deposits made into the Permitted Indebtedness Account since the immediately preceding Rent Payment Date pursuant to clause *fifth* (A) of Section 4.1(a) hereof in respect of Additional Amount shall be transferred from the Permitted Indebtedness Account into the Equity Account following the payment pursuant to clause (a) of this Section 4.6.

Section 4.7 *Equity Account.*

(a) Subject to Section 4.13, on the date specified below the Collateral Agent shall transfer, from the funds on deposit in each subaccount of the Equity Account, the amount certified by the Facility Lessee in the Request Letter delivered in connection with such date the following amounts in the following order of priority:

first, after giving effect to all transfers made pursuant to Section 4.1 hereof, on each Monthly Transfer Date either (a) which is also a Restricted Payment Blockage Date occurring prior to the Additional Reserve Period or (b) which occurs during the Additional Reserve Period, into the applicable subaccount of the Supplemental Account, the amount, if any, by which the sum of the balance in the applicable subaccount of the Senior Rent Payment Account and the balance in the applicable subaccount of the Equity Account (immediately prior to giving effect to the transfer contemplated by this clause *first*) exceeds the applicable Senior Rent Reserve Amount;

second, on each Monthly Transfer Date either (a) which is also a Restricted Payment Blockage Date occurring prior to the Additional Reserve Period or (b) which occurs during the Additional Reserve Period, into the applicable subaccount of the Additional Reserve Account the amount by which the sum of (1) the Owner Lessor's Percentage of the balance in the Revenue Account and (2) the balances in the applicable subaccounts of the Senior Rent Payment Account, the Equity Account (immediately prior to giving effect to the transfer contemplated by this clause *second*) and the Recovery Event

Proceeds Account exceeds the sum of all the Basic Lease Rent and Supplemental Lease Rent due and unpaid on that date and the average of the next two aggregate payments of the Basic Lease Rent, in each case, under the applicable Facility Lease minus the Owner Lessor's Percentage of $1 million, as certified in the Request Letter;

third, on each Restricted Payment Date which does not occur during the Additional Reserve Period if the conditions to the payments of the Component A of Basic Lease Rent are satisfied pursuant to Section 6.9 of the applicable Participation Agreement, into the applicable subaccount of the Subordinated Rent Payment Account, an amount payable with respect to the Component A of Basic Lease Rent plus all Excepted Payments, if any, due and payable under the applicable Facility Lease on the Restricted Payment Date, together with the amount of all deficiencies, if any, with respect to all payments required in all prior months, as certified in the Request Letter; *provided that* on each Restricted Payment Date that is not a Rent Payment Date if the SocGen Instrument is not in effect through the following two Restricted Payment Dates than the Collateral Agent shall deposit $^{1}/_{2}$ of the amount of Component A of Basic Lease Rent due and payable on the Rent Payment Date following such Restricted Payment Date;

fourth, on each Restricted Payment Date which does not occur during the Additional Reserve Period if the conditions to the payment of the Component A of Basic Lease Rent set forth in Section 6.9 of the applicable Participation Agreement are satisfied, into the applicable subaccount of the Subordinated Reserve Account, an amount equal to the difference, if positive, between the Reserve Requirement under the applicable Facility Lease and the sum of the balances on deposit in the applicable subaccounts of the Reserve Account and the Subordinated Reserve Account;

fifth, on each Restricted Payment Date which occurs during the NOx Reserve Period which is not also the Additional Reserve Period if the conditions to the payment of the Component A of Basic Lease Rent set forth in Section 6.9 of the applicable Participation Agreement are satisfied, the balance remaining in the applicable subaccount of the Equity

Account into the applicable subaccount of the NOx Reserve Account the amount equal to such Owner Lessor's Percentage of the NOx Reserve Requirement;

sixth, on each Restricted Payment Date which does not occur during the Additional Reserve Period if the conditions to the payment of the Component A of Basic Lease Rent set forth in Section 6.9 of the applicable Participation Agreement are satisfied, the balance remaining in the applicable subaccount of the Equity Account, either into the Distributions Account or any other account designated by the Facility Lessee for the making of Restricted Payments if the conditions to making these payments as set forth in Section 6.10 of the applicable Participation Agreement are satisfied or into the applicable subaccount of the Suspended Distributions Account if such conditions in Section 6.10 of the applicable Participation Agreement are not satisfied; and

seventh, on each Monthly Transfer Date either (a) which is not a Restricted Payment Blockage Date occurring prior to the Additional Reserve Period and (b) which does not occur during the Additional Reserve Period, into the applicable subaccount of the Supplemental Account the amount by which the sum of (1) the Owner Lessor's Percentage of the balance in the Revenue Account and (2) the balances in the applicable subaccounts of the Senior Rent Payment Account, the Equity Account and the Recovery Event Proceeds Account exceeds the sum of all the Basic Lease Rent and Supplemental Lease Rent due and unpaid on that date and the average of the next two aggregate payments of the Basic Lease Rent, in each case, under the applicable Facility Lease minus the Owner Lessor's Percentage of $1 million, as certified in the Request Letter.

(b) The amount withdrawn from the applicable subaccounts of the Equity Account, the Supplemental Account or the Additional Reserve Account shall be in the manner and priority provided herein:

(i) First, upon the occurrence and during the continuance of a Rent Default Event under a Facility Lease, the applicable Owner Lessor may from time to time request and the Collateral Agent shall transfer from the applicable subaccounts (in the following order of priority) of the Supplemental Account, the Equity Account and the Additional Reserve Account (the "Letter of Credit Accounts") to such Owner Lessor, to the extent then on deposit in such subaccount, an amount equal to the Component A of Basic Lease Rent under such Facility Lease then past due (the "*Overdue Rent*"); *provided*, that (i) as a condition to such transfer, such Owner Lessor shall cause to be delivered to the Collateral Agent a standby letter of credit with respect to such Facility Lease in form reasonably satisfactory to the parties hereto (the "*Component A Letter of Credit*") issued in favor of the Collateral Agent by an Acceptable Credit Provider for the account of a party other than Homer City or any of the Owner Lessors in the face amount equal the amount requested to be withdrawn, *provided*, *further*, that any transfer of funds from such subaccount of the relevant Letter of Credit Accounts pursuant to this Section 4.7(b) shall not be deemed to constitute any payment of Rent. If at any time after the delivery of a Component A Letter of Credit the amount the Collateral Agent is then directed to transfer from such subaccount of the Equity Account pursuant to the terms of this Agreement exceeds cash then on deposit in such subaccount of the Letter of Credit Account (such excess amount, the "*Shortfall Amount*"), then the Collateral Agent shall draw on the Component A Letter of Credit in an amount equal to the lesser of the Shortfall Amount and the undrawn face amount of the Component A Letter of Credit and shall deposit the proceeds of such drawing into the applicable subaccounts of the relevant Letter of Credit Account (for application in accordance with the terms of this Security Deposit Agreement). If pursuant to the terms thereof the Component A Letter of Credit becomes drawable as a result of the failure of such Component A Letter of Credit to be extended or failure to provide a replacement letter of credit within 30 days of a downgrade

of the applicable Acceptable Credit Provider, the Collateral Agent shall draw on the Component A Letter of Credit in an amount equal to the undrawn face amount of the Component A Letter of Credit and shall deposit the proceeds of such drawing into the applicable subaccount of the relevant Letter of Credit Accounts (for application in accordance with the terms of this Security Deposit Agreement).

(ii) Second, so long as no Lease Event of Default has occurred and is continuing and distributions are not blocked pursuant to Section 6.10 (b)(ii) or (iii) of each Participation Agreement, the Facility Lessee may from time to time request and the Collateral Agent shall transfer from the applicable subaccount of the Equity Account to the Facility Lessee, to the extent cash is then on deposit in such subaccount, an amount equal to the funds specified in such request; *provided*, that (i) as a condition to such transfer, the Facility Lessee shall cause to be delivered to the Collateral Agent a standby letter of credit in form reasonably satisfactory to the Collateral Agent (the "*Facility Lessee Provided Letter of Credit*") issued in favor of the Collateral Agent by an Acceptable Credit Provider for the account of a party other than the Facility Lessee or any of the Owner Lessors in the face amount equal to the amount requested to be withdrawn. If at any time after the delivery of a Facility Lessee Provided Letter of Credit the amount the Collateral Agent is then directed to transfer from such subaccount of the Equity Account pursuant to the terms of this Security Deposit Agreement exceeds cash then on deposit in such subaccount of the Equity Account, as applicable (such excess amount, the "*Facility Lessee Provided Shortfall Amount*"), then the Collateral Agent shall draw on the Facility Lessee Provided Letter of Credit in an amount equal to the lesser of the Facility Lessee Provided Shortfall Amount and the undrawn face amount of the Facility Lessee Provided Letter of Credit and shall deposit the proceeds of such drawing into such subaccount of the Equity Account, as required (for application in accordance with the terms of this Security Deposit Agreement). If pursuant to the terms thereof the Facility Lessee Provided Letter of Credit becomes drawable as a result of the failure of such Facility Lessee Provided Letter of Credit to be extended or failure to provide a replacement letter of credit within 30 days of a downgrade of the applicable Acceptable Credit Provider, the Collateral Agent shall draw on the Facility Lessee Provided Letter of Credit in an amount equal to the undrawn face amount of the Facility Lessee Provided Letter of Credit and shall deposit the proceeds of such drawing into such applicable subaccount of the Equity Account or in such applicable subaccount of the Equity Account (for application in accordance with the terms of this Security Deposit Agreement).

(c) In addition, the Collateral Agent shall make transfers from the funds on deposit in each subaccount of the Equity Account in accordance with Sections 4.1(b) and 4.13(b).

(d) If, on any Restricted Payment Date the funds on deposit in the applicable subaccount of the Equity Account are insufficient to make in full any transfer required pursuant to clause *third* of Section 4.7(a) and the conditions to the payments of Component A of Basic Rent are satisfied pursuant to Section 6.9 of the applicable Participation Agreement, the Collateral Agent shall transfer into the applicable subaccount of the Subordinated Rent Account the amount of such shortfall after giving effect to any transfer pursuant to Section 4.4 from funds then on deposit (in the following order of priority) in the applicable subaccount of each of the Supplement Account, the Subordinated Reserve Account or the Suspended Distributions Account, as available.

(f) The Reserve Requirement may be satisfied by Qualifying Credit Support.

Section 4.8 *Supplemental Account and Additional Reserve Account.* (a) Subject to Sections 4.13 and 4.1(b) hereof, on each Monthly Transfer Date or Restricted Payment Date as applicable, the Collateral Agent shall make transfers from the funds on deposit in the applicable subaccount of each of

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the Supplemental Account and the Additional Reserve Account in accordance with Sections 4.1(b) and 4.7(d).

(b) On each Monthly Transfer Date and immediately prior to making the transfers contemplated by Section 4.7, the Collateral Agent shall transfer all funds on deposit in each subaccount of the Supplemental Account and the Additional Reserve Account into the applicable subaccount of the Equity Account.

(c) On the Lien Release Date, all amounts on deposit in the subaccounts of the Additional Reserve Account shall be transferred to the Equity Account.

(d) After giving effect to all transfers contemplated by Section 4.7, on each Restricted Payment Date which occurs during the Additional Reserve Period, from funds on deposit in the applicable subaccount of the Supplemental Account, the amount certified by the Facility Lessee in the Request Letter delivered in connection with such date the following amounts in the following order of priority:

first, on each Restricted Payment Date if (a) such Restricted Payment Date does not occur during a Restricted Payment Blockage Period and (b) the conditions to the payments of Component A of Basic Lease Rent are satisfied pursuant to Section 6.9 of the applicable Participation Agreement, into the applicable subaccount of the Subordinated Rent Payment Account, an amount payable with respect to the Component A of Basic Lease Rent plus all Excepted Payments, if any, due and payable under the applicable Facility Lease on the Restricted Payment Date, together with the amount of all deficiencies, if any, with respect to all payments required in all prior months, as certified in the Request Letter;

second, on each Restricted Payment Date if (a) such Restricted Payment Date does not occur during a Restricted Payment Blockage Period and (b) the conditions to the payment of Component A of Basic Lease Rent set forth in Section 6.9 of the applicable Participation Agreement are satisfied, into the applicable subaccount of the Subordinated Reserve Account, an amount equal to the difference, if positive, between the Reserve Requirement under the applicable Facility Lease and the sum of the balances on deposit in the applicable subaccounts of the Reserve Account and the Subordinated Reserve Account; and

third, on each Restricted Payment Date if (a) such Restricted Payment Date does not occur during a Restricted Payment Blockage Period and (b) the conditions to the payment of Component A of Basic Lease Rent set forth in Section 6.9 of the applicable Participation Agreement are satisfied, the balance remaining in the applicable subaccount of the Equity Account, either into the applicable subaccount of the Distributions Account for the making of Restricted Payments if the conditions to making these payments as set forth in Section 6.10 of the applicable Participation Agreement

are satisfied or into the applicable subaccount of the Suspended Distributions Account if such conditions in Section 6.10 of the applicable Participation Agreement are not satisfied.

Section 4.9 *Subordinated Rent Payment Account.* Subject to Sections 4.13 and 4.1(b) hereof, if the conditions to the payments of Component A Portion of the Basic Lease Rent are satisfied pursuant to Section 6.9 of the applicable Participation Agreement, on each Restricted Payment Date under such Participation Agreement, after giving effect to all transfers to be made on such date pursuant hereto, the Collateral Agent shall transfer to the applicable Owner Lessor, from funds on deposit in the applicable subaccount of the Subordinated Rent Payment Account, the amount certified by the Facility Lessee in the Request Letter delivered in connection with such payment to be (i) payable with respect to the Component A of the Basic Lease Rent and all Excepted Payments under the applicable Facility Lease and (ii) available for use in making such payments on account of the Component A of Basic

Lease Rent and Excepted Payments in accordance with the terms of the applicable Operative Documents.

Section 4.10 *Subordinated Reserve Account.* Subject to Sections 4.13 and 4.1(b) hereof and so long as no Lease Event of Default (other than a Rent Default Event) then exists on each Restricted Payment Date under such Participation Agreement, following a distribution in accordance with the terms of Sections 4.8 and 4.4 hereof, if any (and whether or not the conditions have been met under Section 6.9 of the applicable Participation Agreement), the Collateral Agent shall transfer to the applicable Owner Lessor, from funds on deposit in the applicable subaccount of the Subordinated Reserve Account, the amount certified by the Facility Lessee in the Request Letter delivered in connection with such Restricted Payment Date to be equal to the difference, if positive, between the aggregate amount of the Component A of Basic Lease Rent and Excepted Payments under the applicable Facility Lease due and the aggregate amount of payments, if any, made on such Restricted Payment Date pursuant to Sections 4.8 and 4.4 hereof.

Section 4.11 *Suspended Distributions Account.* Subject to Section 4.13 hereof, on each Monthly Transfer Date or Restricted Payment Date (as applicable), the Collateral Agent shall make transfers from the funds on deposit in the applicable subaccount of the Suspended Distributions Account in accordance with Sections 4.1(b) and 4.7(d). Following the end of the Lease Term of the applicable Facility Lease and the payment in full of all Rent, Termination Value and other amounts due and owing from the Facility Lessee under such Facility Lease and the other Operative Documents, the Collateral Agent shall transfer, all the funds on deposit in the applicable subaccount of the Suspended Distributions Account to the Facility Lessee.

Section 4.12 *Delivery of Request Letters.* Each Request Letter to be delivered by the Facility Lessee pursuant to this Article IV shall be delivered to the Collateral Agent not later than one day prior to the date that the Collateral Agent is required to make any transfer specified therein. At the time the Facility Lessee delivers to the Collateral Agent any Request Letter or other written communication relating to any Account or subaccount of the Accounts, the Facility Lessee shall deliver a copy thereof to each Owner Lessor and its applicable Lease Indenture Trustee, Owner Participant and such Owner Lessor's Representative.

Section 4.13 *Shortfall Notices.* Not later than the Business Day preceding each date on which any transfer is to be made pursuant to this Article IV, the Collateral Agent shall notify the applicable Owner Lessor and its applicable Owner Participant if the amounts requested to be transferred on such date in the Request Letter delivered in connection therewith exceed the funds available in the applicable subaccounts of the relevant Accounts.

Section 4.14 *Transfers from Accounts During a Default Period.*

(a) During a Default Period under a Facility Lease, the Facility Lessee shall be entitled to issue Request Letters and otherwise direct the transfer of funds from the applicable Accounts or subaccounts of the Accounts pursuant to the other provisions of this Article IV until the Collateral Agent receives a Notice of Action directing that action be taken pursuant to Section 4.13(b).

(b) At any time after the Collateral Agent receives a Notice of Action specifying that action be taken pursuant to this Section 4.13(b), the Collateral Agent shall transfer (from the Accounts or applicable subaccounts in the order set forth in Section 4.13(c)) the following amounts in the following order of priority:

first, to the Collateral Agent, the amount certified by the Collateral Agent to be the sum of the unpaid fees, indemnities, costs and expenses then due and payable for its services in such capacity;

second, pro rata to (i) the applicable Owner Lessor, the amount certified by such Owner Lessor to be the aggregate amount (including premium and interest, if any) then due and payable in respect of Senior Rent and Supplemental Lease Rent (other than Excepted Payments) under the applicable Operative Documents and (ii) to extent that the applicable Owner Lessor's Percentage of amounts then on deposit in the Permitted Indebtedness Account are insufficient to pay such amounts, to any Person who has provided Permitted Indebtedness in the aggregate amount of the applicable Owner Lessor's Percentage of such Permitted Indebtedness (including premium and interest, if any) then due and payable;

third, to the applicable Owner Lessor, the amount certified by such Owner Lessor to be the aggregate amount of the Component A of Basic Lease Rent, Component A of Termination Value and all other fees and indemnities in respect thereof then due and payable in respect of such Component A of Basic Lease Rent or Component A of Termination Value under the applicable Facility Lease;

fourth, pro rata, to the Persons entitled thereto, an amount equal to all other Supplemental Rent under the applicable Facility Lease then due and payable to such Persons and all other sums due and owing by the Facility Lessee to such Persons under any of the applicable Operative Documents (as certified in writing by such Persons); and

fifth, any surplus then remaining after the termination of the applicable Facility Lease in accordance with its terms and the satisfaction of all rents and fees thereunder, shall be paid to the Facility Lessee or its successors or assigns or to whomsoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

(c) The amounts to be distributed pursuant to Section 4.13(b) with respect to any Facility Lease shall be debited from the subaccounts in the following order of priority:

first, from the applicable subaccount of the Suspended Distributions Account;

second, from the applicable subaccount of the Subordinated Reserve Account;

third, from the applicable subaccount of the Supplemental Account;

fourth, from the applicable subaccount of the Subordinated Rent Payment Account;

fifth; from the applicable subaccount of the Reserve Account;

sixth, from the applicable subaccount of the Additional Reserve Account;

seventh, from the applicable subaccount of the Equity Account;

eighth, from the applicable subaccount of the Senior Rent Payment Account;

ninth, solely with respect to amounts distributed pursuant to clauses *first* through *fourth* of Section 4.13(b) above, up to an amount equal to the amount then on deposit therein, from the applicable subaccount of the Recovery Event Proceeds Account; and

tenth, solely with respect to amounts distributed pursuant to clauses *first* through *fourth* of Section 4.13(b) above, up to an amount equal to such Owner Lessor's Percentage of the amount then on deposit therein, from the Revenue Account.

It is understood and agreed that no amount on deposit in any other subaccount of any of the Accounts (nor, except as provided in clauses seventh and eighth above, amounts on deposit in the Revenue Account or the applicable subaccount of the Recovery Event Proceeds Account) shall be available for distributions to be made pursuant to Section 4.13(b) with respect to such Facility Lease and the applicable Operative Documents.

Section 4.15 *Collateral Agent's Calculations.* In making the determinations and allocations required by Section 4.13, the Collateral Agent may rely upon information specified in any Request Letter and any certificate of the applicable Owner Lessor delivered to it, as applicable, and the Collateral Agent shall have no liability to any of the Secured Parties for actions taken in reliance on such information. All transfers and releases made by the Collateral Agent pursuant to Section 4.13 shall be (subject to any decree of any court of competent jurisdiction) final, and the Collateral Agent shall have no duty to inquire as to the application by any Secured Party of any amounts distributed to them.

Section 4.16 *Insufficient Amounts.* Except as provided in Sections 4.1(b) and 4.7(d) hereof, to the extent the applicable Owner Lessor Percentage of the amounts on deposit in any Account (or, if the Account has subaccounts, in the applicable subaccount) are insufficient to fully satisfy any transfer requirement from such Account (or, if the Account has subaccounts, the applicable subaccount) under this Article IV, such transfer shall be made to the extent of the amounts on deposit in such Account (or, if the Account has subaccounts, the applicable subaccount). In addition, if (i) any transfer requirements from any Account (or, if the Account has subaccounts, the applicable subaccount) in this Article IV share the same level of priority and (ii) the funds equal to the applicable Owner Lessor Percentage of the funds in such Account (or, if the Account has subaccounts, the funds in the applicable subaccount) are insufficient to satisfy in full all such transfer requirements which share such level of priority, such transfers shall be made on a pro rata basis to the extent of the amounts on deposit in such Account (or, if the Account has subaccounts, the funds in the applicable subaccount).

ARTICLE V
Investment

Cash held by the Collateral Agent in the Accounts shall not be invested or reinvested except as provided below:

(a) cash held in the Accounts or applicable subaccounts shall be invested and reinvested in Permitted Investments by the Collateral Agent who shall make such Permitted Investments (i) except during a Default Period, at the written direction of the Facility Lessee and (ii) during a Lease Default or Lease Event of Default under a Facility Lease, in Permitted Investments selected by the Collateral Agent unless specific investment instructions are given to the Collateral Agent by the applicable Owner Lessor and in such case, to the extent of amounts credited to applicable subaccounts;

(b) the Collateral Agent shall sell or liquidate all or any designated part of the Permitted Investments held in any Account to the extent credited to any subaccount at any time the proceeds thereof are required to make a release from any such subaccount or any transfer between subaccounts pursuant to Article IV hereof; and

(c) all such Permitted Investments, the interest thereon, and the net proceeds of the sale, liquidation or payment thereof, shall be held in the appropriate Account and credited to the applicable subaccounts for the same purposes as the cash used to purchase such Permitted Investments.

The Collateral Agent shall take such action as may be necessary to perfect the security interest created by this Agreement in all Permitted Investments held in any Pledged Account.

ARTICLE VI
Collateral Agent

Section 6.1 *Rights, Duties, etc.* The acceptance by the Collateral Agent of its respective duties hereunder is subject to the following terms and conditions which the parties to this Agreement hereby

agree shall govern and control with respect to the rights, duties, liabilities and immunities of the Collateral Agent:

(a) it shall not be responsible or liable in any manner whatever for soliciting any funds or for the sufficiency, correctness, genuineness or validity of any funds or securities deposited with or held by it;

(b) it shall be protected in acting or refraining from acting upon any written notice, certificate, instruction, request or other paper or document, as to the due execution thereof and the validity and effectiveness of the provisions thereof and as to the truth of any information therein contained, which it in good faith believes to be genuine;

(c) it shall not be liable for any error of judgment or for any act done or step taken or omitted except in the case of its gross negligence, willful misconduct or bad faith;

(d) it may consult with and obtain advice from counsel of its own choice in the event of any dispute or question as to the construction of any provision hereof;

(e) it shall have no duties hereunder, except those which are expressly set forth herein and in any modification or amendment hereof; provided, however, that no such modification or amendment hereof shall affect its duties unless it shall have given its prior written consent thereto;

(f) it may execute or perform any duties hereunder either directly or through administrative agents or attorneys selected with reasonable care;

(g) it may engage or be interested in any financial or other transactions with any party hereto and may act on, or as depositary, collateral agent or administrative agent for, any committee or body of holders of obligations of such Persons as freely as if it were not Collateral Agent hereunder; and

(h) it shall not be obligated to take any action which in its reasonable judgment would involve it in expense or liability unless it has been furnished with reasonable indemnity.

Section 6.2 *Resignation or Removal.* The Collateral Agent may resign or be removed as set forth in Section 6.5 of the Amended and Restated Guarantee and Collateral Agreement.

ARTICLE VII
Determinations

In the event of any dispute as to any amount to be distributed or paid by the Collateral Agent from the Accounts (or subaccounts), the Collateral Agent is authorized and directed to retain in its possession without liability to anyone all or any part of the amounts then on deposit in the Accounts or subaccounts, until such dispute shall have been settled by mutual agreement of the disputing parties or by a final order, decree or judgment of a Federal or State court of competent jurisdiction located in the State of New York (with respect to disputes in connection with amounts on deposit in the Accounts or subaccounts), and time for an appeal has expired and no appeal has been perfected, but the Collateral Agent shall be under no duty whatsoever to institute or defend any such proceedings.

ARTICLE VIII
Miscellaneous

Section 8.1 *Indemnification of Collateral Agent.* The Facility Lessee assumes liability for, and agrees to indemnify, protect, save and keep harmless each Owner Lessor, each Owner Lessor's Representative, each Owner Participant, the Security Agent and the Collateral Agent and their respective successors, assigns, agents and servants from and against, any and all claims, liabilities, obligations, losses, damages, taxes, penalties, costs and expenses (including reasonable attorneys' fees)

that may be imposed on, incurred by, or asserted against, at any time, such Owner Lessor, such Owner Lessor's Representative, such Owner Participant, the Security Agent or the Collateral Agent and in any way relating to or arising out of the execution and delivery of this Agreement, the establishment of the Accounts and subaccounts, the acceptance of deposits, the purchase or sale of Permitted Investments, the retention of cash and Permitted Investments or the proceeds thereof and any payment, transfer or other application of cash or Permitted Investments in accordance with the provisions of this Agreement, or as may arise by reason of any act, omission or error of the Collateral Agent made in good faith in the conduct of its duties; except that the Facility Lessee shall not be required to indemnify, protect, save and keep harmless the Collateral Agent or any Owner Lessor, against its own gross negligence or willful misconduct. The indemnities contained in this Section 8.1 shall survive the termination of this Agreement.

Section 8.2 *Waiver of Right of Set-Off.* The Collateral Agent waives, with respect to all of its existing and future claims against the Facility Lessee, all existing and future rights of set-off and banker's liens against the Accounts and subaccounts and all items (and proceeds thereof) that come into its possession in connection with the Accounts.

Section 8.3 *Termination.* The provisions of Articles III and IV with respect to the applicable Accounts or subaccounts shall terminate on the date on which the applicable Facility Lease shall terminate in accordance with its terms and the Obligations under the applicable Transaction Documents shall have been paid in full. Promptly after such termination, the applicable Owner Lessor shall notify the Collateral Agent of such termination and the Collateral Agent hereby agrees that at the time of such termination (x) the Owner Lessor's Percentage of amounts or Permitted Investments in the Accounts or amounts and Permitted Investments in the applicable subaccounts, as applicable, shall be liquidated as soon as commercially prudent, (y) a reconciliation shall be made of the distributions made from the applicable Accounts or subaccounts and any necessary adjustments to the balances of such applicable Accounts or subaccounts as a result of such reconciliation shall be made and (z) the applicable portion of Owner Lessor's Percentage of the moneys in the applicable Accounts, subject to the other Transaction Documents, or subaccounts (after giving effect to such liquidation and such adjustments) shall, subject to other Transaction Documents, be distributed to the Facility Lessee or as it may direct.

Section 8.4 *Severability.* If any one or more of the covenants or agreements provided in this Agreement on the part of the parties hereto to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 8.5 *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 8.6 *Amendments.* The provisions of this Agreement and other Transaction Documents may be amended, modified or waived if such amendment, modification or waiver is in writing and is entered into in accordance with the provisions of the Participation Agreement.

Section 8.7 *APPLICABLE LAW.* THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK REGARDLESS OF ANY OTHER PROVISION IN ANY OTHER AGREEMENT, FOR PURPOSES OF THE NEW YORK UCC, NEW YORK SHALL BE DEEMED TO BE THE SECURITIES INTERMEDIARY'S JURISDICTION AND THE ACCOUNTS (AS WELL AS THE SECURITIES ENTITLEMENTS RELATED THERETO) SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

Section 8.8 *Notices.* Except as otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be in writing and shall be deemed to have been duly given or made when delivered if delivered by hand or courier or when received if sent by mail or telecopy, in each case addressed to the party to which such notice is required or permitted to be given or made hereunder set forth below its signature hereto, or such other address as may be specified from time to time by such party in a notice to the other parties hereto.

Section 8.9 *Benefit of Security Deposit Agreement*

(a) This Security Deposit Agreement shall inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns, and no other Person shall be entitled to any of the benefits of this Security Deposit Agreement.

(b) Notwithstanding the foregoing, in order to secure the Lessor Notes of each Owner Lessor, such Owner Lessor will assign and grant a first priority security interest in favor of its applicable Lease Indenture Trustee in and to all of such Owner Lessor's right, title and interest in, to and under this Security Deposit Agreement (other than to the extent relating to Excepted Payments and the rights to enforce and collect the same). The Facility Lessee hereby consents to such assignment and to the creation of such Lien and security interest and acknowledges receipt of copies of the Lease Indenture, it being understood that such consent shall not affect any requirement or the absence of any requirement for any consent of the Facility Lessee under any other circumstances. Unless and until the Collateral Agent shall have received written notice from the Lease Indenture Trustee that the Lien of the applicable Lease Indenture has been fully discharged, the applicable Security Agent shall have the right (i) to directly receive for application in accordance with the terms of the applicable Lease Indenture all amounts payable or otherwise distributable under this Agreement to the applicable Owner Lessor (other than in respect of the Excepted Payments) and (ii) to exercise the rights of such Owner Lessor under this Security Deposit Agreement (other than with respect to Excepted Payments and the rights to enforce and collect the same) to the extent set forth in and subject to the exceptions set forth in the applicable Lease Indenture.

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

EME HOMER CITY GENERATION L.P.

By: MISSION ENERGY WESTSIDE, INC., its General Partner

/s/ STEVEN D. EISENBERG

By: Name: Steven D. Eisneberg
Title: Vice President

Address for Notices:

18101 Von Karman Avenue
Suite 1700
Irvine, California 92612-1046

THE BANK OF NEW YORK, as Collateral Agent

/s/ CHRISTOPHER J. GRELL

By: Name: Christopher J. Grell
Title: Authorized Signer

THE BANK OF NEW YORK, as Securities Intermediary

/s/ CHRISTOPHER J. GRELL

By: Name: Christopher J. Grell
Title: Authorized Signer

Address for Notices:

114 West 47th Street
25th Floor
New York, New York 10036

QuickLinks

Exhibit 10.23.1

Execution Copy

AMENDED AND RESTATED INTERCOMPANY LOAN SUBORDINATION AGREEMENT

AMENDED AND RESTATED INTERCOMPANY LOAN SUBORDINATION AGREEMENT (this "*Agreement*"), dated as of December 7, 2001, among (i) EDISON MISSION HOLDINGS CO., a California corporation ("*EME Holdings*"), (ii) EDISON MISSION FINANCE CO., a California corporation ("*Edison Mission Finance*"), (iii) HOMER CITY PROPERTY HOLDINGS, INC., a California corporation ("*Homer City Holdings*"), (iv) CHESTNUT RIDGE ENERGY CO., a California corporation ("*Chestnut Ridge*"), (v) MISSION ENERGY WESTSIDE, INC., a California corporation ("*MEW*"), (vi) EME HOMER CITY GENERATION L.P., a Pennsylvania limited partnership ("*Homer City*" or the "*Facility Lessee*" and, together with EME Holdings, Edison Mission Finance, Homer City Holdings, Chestnut Ridge and MEW, the "*Loan Parties*"), and (vii) THE BANK OF NEW YORK, as successor to UNITED STATES TRUST COMPANY OF NEW YORK, as collateral agent for the holders of the Initial Lessor Notes (as such term is defined in the Participation Agreement) (in such capacity, the "*Collateral Agent*").

RECITALS

WHEREAS, contemporaneously herewith Homer City, a wholly owned subsidiary of Edison Mission Midwest Holdings Co. ("*Holdings*"), will enter into a transaction pursuant to the eight Participation Agreements, in each case, by and among Homer City, the Owner Lessor (as defined therein), Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager, the Owner Participant (as defined therein), Homer City Funding LLC, as Lender and the Collateral Agent, as Indenture Trustee, Bondholder Trustee and Security Agent (as amended, modified and supplemented and in effect from time to time, each a "*Participation Agreement*") whereby Homer City shall sell certain of its generating assets to the Owner Lessors and the Owner Lessors shall lease such generating assets to Homer City under each Facility Lease;

WHEREAS, the holders of the Initial Lessor Notes (as such term is defined in the Participation Agreement) have purchased the Initial Lessor Notes from the Owner Lessor and have been granted a security interest in the Facility Lease as collateral for the Initial Lessor Notes;

WHEREAS, Edison Mission Finance has entered into a Subordinated Loan Agreement, dated as of March 18, 1999 (the "*Holdings Loan Agreement*"), with EME Holdings, pursuant to which EME Holdings has agreed to make loans ("*Holdings Loans*") to Edison Mission Finance from time to time with the proceeds of the Holdings Loans on the terms and subject to the conditions contained in the Holdings Loan Agreement.

WHEREAS, EME Homer City has entered into the Subordinated Loan Agreement, dated as of March 18, 1999 (the "*Finance Loan Agreement*"), with Edison Mission Finance, pursuant to which Edison Mission Finance has agreed to make loans ("*Finance Loans*") to EME Homer City from time to time with the proceeds of the Holdings Loans on the terms and subject to the conditions contained in the Finance Loan Agreement.

WHEREAS, EME Homer City has entered into the Subordinated Revolving Loan Agreement, dated as of March 18, 1999 (the "*Revolving Loan Agreement*"), with Edison Mission Finance, pursuant to which Edison Mission Finance has agreed to make loans ("*Revolving Loans*") to EME Homer City from time to time on the terms and subject to the conditions contained in the Revolving Loan Agreement.

WHEREAS, in connection with the transactions contemplated by the Participation Agreements, the parties hereto will agree to subordinate certain claims against Homer City under the Holdings

Loans, Finance Loans and Revolving Loans to the rights of holders of the Obligations (as defined herein); and

WHEREAS, the execution and delivery of this Agreement is a condition precedent to each of the Participation Agreements.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, each of the parties hereto hereby agrees to amend and restate the Intercompany Loan Subordination Agreement between the Loan Parties and the Collateral Agent, dated as of March 18, 1999 (the "*Intercompany Loan Subordination Agreement*") in its entirety as follows:

ARTICLE I
DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 *Definitions.* (a) Unless otherwise expressly provided herein, capitalized terms used but not defined in this Agreement, including in the Preamble and the Recitals, shall have the meanings given to such terms in each Participation Agreement.

(b) *Other Defined Terms.* The following terms, when used herein, shall have the following meanings:

"Intercompany Borrower" shall mean any Loan Party in its capacity as borrower under any Intercompany Loan Agreement.

"Intercompany Loans" shall mean any indebtedness by any Loan Party relating to an Intercompany Loan Agreement.

"Intercompany Loan Agreement" shall mean the Holdings Loan Agreement, the Finance Loan Agreement, the Revolving Loan Agreement and any other loan agreement to be entered into from time to time by an Intercompany Borrower and a Subordinated Party.

"Obligations" shall mean (i) all obligations of Homer City owed now or hereafter under each of the Participation Agreements, and related Operative Documents, including without limitation Basic Lease Rent, Termination Value, any Supplemental Rent (whether for indemnities, costs, expenses or otherwise) now or hereafter owed by Homer City to the Owner Lessor, the Security Agent, the Lease Indenture Trustee, the Lender or the Bondholder Trustee under the Operative Documents and (ii) obligations owed now or hereafter by Homer City with respect to or on account of Permitted Indebtedness.

"Proceeding" shall have the meaning given to such term in Section 3.2.

"Secured Party" shall mean any party to whom Homer City owes an Obligation.

"Senior Claims" shall have the meaning given to such term in Section 2.1(a).

"Subordinated Claims" shall have the meaning given to such term in Section 2.1(a).

"Subordinated Notes" shall have the meaning given to such term in Section 2.1(c).

"Subordinated Party" shall mean any Loan Party in its capacity as lender under an Intercompany Loan Agreement.

Section 1.2 *Principles of Construction.* Unless otherwise expressly provided herein, the principles of construction set forth in the Participation Agreement shall apply to this Agreement.

ARTICLE II
SUBORDINATION PROVISIONS

Section 2.1 *Subordination of Intercompany Loans.* Until all Obligations shall have been indefeasibly paid in full and the Facility Lease, the other Operative Documents and any agreement relating to Permitted Indebtedness have terminated in accordance with their terms:

(a) (i) all principal of, premium, if any, interest and any other amounts owing on any Intercompany Loan made by any Loan Party, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred or created ("*Subordinated Claims*") shall be subordinate to the prior payment of and junior in right of payment to all principal of, premium, if any, and interest (including default interest and interest accruing after the initiation of any Proceeding whether or not allowed as a claim in such a Proceeding) owing in respect of all other Obligations owed by Homer City under the Operative Documents and under any Permitted Indebtedness (collectively, "*Senior Claims*")

(b) no Loan Party shall, directly or indirectly, make any payment of principal or interest on account of, or transfer any collateral for any part of, any Subordinated Claims; provided, however, that the Loan Parties may make regularly scheduled payments of interest and principal on account of Subordinated Claims so long as at such time Restricted Payments are permitted to be made pursuant to the terms of the Amended and Restated Security Deposit Agreement;

(c) the Subordinated Parties shall not demand, sue for or accept any payment or collateral in respect of any Subordinated Claims, or take any other action to enforce their rights or exercise any remedies in respect of any Subordinated Claims (whether upon the occurrence or during the continuation of an event of default under the related Intercompany Loan Agreement or an event of default under any promissory notes evidencing Subordinated Claims (collectively, "*Subordinated Notes*" or otherwise), or cancel, set off or otherwise discharge any part of any Subordinated Claims; and

(d) no Intercompany Borrower or Subordinated Party shall otherwise take any action prejudicial to or inconsistent with the priority position of the Secured Parties over the Subordinated Parties created by this Section 2.1.

Section 2.2 *Reliance.* All Senior Claims shall conclusively be deemed to have been created, contracted or incurred in reliance on the subordination provisions contained in this Agreement and all dealings between the Loan Parties and each of the holders of Senior Claims shall be deemed to have been consummated in reliance upon the subordination provisions contained herein.

Section 2.3 *Other Holders.* The subordination provisions set forth in this Agreement shall be binding upon transferees or assignees of the Subordinated Parties and upon each other holder of Subordinated Claims and shall inure to the benefit of transferees or assignees of the holders of the Initial Lessor Notes and every other holder of Senior Claims.

ARTICLE III
WRONGFUL COLLECTIONS

Section 3.1 *Turnover.* Should any payment on account of, or any collateral for any part of, any Subordinated Claims be received by the Subordinated Parties in violation of this Agreement, such payment or collateral shall be delivered forthwith to the Collateral Agent for application in accordance with the Amended and Restated Security Deposit Agreement and the other Security Documents. The Collateral Agent is irrevocably authorized to supply any required endorsement or assignment which may have been omitted. Until so delivered, any such payment or collateral shall be held by the Subordinated Parties in trust for the Secured Parties and shall not be commingled with other funds or property of the Subordinated Parties.

Section 3.2 *Survival of Obligation.* The obligation of the Subordinated Parties to deliver to the Collateral Agent any payment or collateral received in connection with any Subordinated Claims, set forth in Section 3.1, shall survive and shall not be in any way affected by the result of any (a) insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding relating to any Intercompany Borrower, its property or its creditors as such, (b) proceeding for any liquidation, dissolution or other winding-up

of any Intercompany Borrower, voluntary or involuntary, whether or not involving insolvency or bankruptcy proceedings, (c) assignment for the benefit of creditors, (d) other marshalling of the assets of any Intercompany Borrower or (e) general meeting of creditors of any Intercompany Borrower, in each case, under the laws of the United States or any other jurisdiction (any such event, a "*Proceeding*").

ARTICLE IV
PROCEEDINGS

Section 4.1 *Commencement of Proceedings.* No Subordinated Party shall commence, or join with any other creditor or creditors of any Intercompany Borrower in commencing, any Proceeding against such Intercompany Borrower.

Section 4.2 *Payments and Distributions.* In the event of any Proceeding, until all Obligations shall have been indefeasibly paid in full, any payment or distribution of any kind or character, whether in cash, property or securities, which, but for the subordination provisions of this Agreement would otherwise be payable or deliverable upon or in respect of Subordinated Claims, shall instead be paid over or delivered to the Collateral Agent in accordance with Article III and no holder of Subordinated Claims shall receive any such payment or distribution or any benefit therefrom.

Section 4.3 *Enforcement of Subordinated Claims.* (a) Enforcement by the Secured Parties. At any Proceeding, until all Obligations shall have been indefeasibly paid in full, the Secured Parties (or the Collateral Agent on behalf of the Secured Parties) are hereby irrevocably authorized (but not required) to:

(i) enforce claims comprising Subordinated Claims in the name of the Subordinated Parties by proof of debt, proof of claim, suit or otherwise;

(ii) collect any assets of any Intercompany Borrower distributed, divided or applied by way of dividend or payment, and any securities issued, in each case, on account of Subordinated Claims and apply the same, or the proceeds of any realization upon the same that the Secured Parties in their discretion elect to effect, to Senior Claims until all Obligations shall have been indefeasibly paid in full, *provided, however*, that the Secured Parties shall render any surplus to the Subordinated Parties or their Affiliates, as their interests appear, or interplead such surplus with a court of competent jurisdiction;

(iii) vote claims comprising Subordinated Claims to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition or extension; and

(iv) take generally any action in connection with any such Proceeding which the Subordinated Parties might otherwise take.

(b) *Cooperation.* The Subordinated Parties shall cooperate fully with the Secured Parties and perform all acts requested by the Secured Parties to enable the Secured Parties to enforce any Subordinated Claims pursuant to clause (a) above, including, without limitation, filing appropriate proofs of claim and executing and delivering all necessary powers of attorney, assignments or other instruments.

(c) *Enforcement by the Subordinated Parties.* After the commencement of any Proceeding, the Subordinated Parties may inquire in writing of the Secured Parties whether the Secured Parties

intend to exercise their rights set forth in clause (a) above with respect to any Subordinated Claims. Should the Secured Parties fail, within a reasonable time after receipt of such inquiry, either to file a proof of claim with respect to any Subordinated Claims and to furnish a copy thereof to the Subordinated Parties, or to inform the Subordinated Parties in writing that the Secured Parties intend to exercise their rights to assert such Subordinated Claims in the manner provided in clause (a) above, the Subordinated Parties may (but shall not be required to) proceed to file a proof of claim with respect to such Subordinated Claims and take such further steps with respect thereto, not inconsistent with this Agreement, as the Subordinated Parties may deem proper.

(d) *Subrogation.* The Subordinated Parties shall not have any subrogation or other rights as holders of Senior Claims, and each Subordinated Party hereby irrevocably waives all such rights of subrogation and all rights of reimbursement or indemnity whatsoever and all rights of recourse to any security for any Senior Claims, until such time as all Obligations shall have been indefeasibly paid in full. Subject to and from and after the indefeasible payment in full of all Obligations, the Subordinated Parties shall be subrogated to any rights of the Secured Parties to receive payments or distributions of cash, property or securities of any Intercompany Borrower applicable to any Subordinated Claims until all amounts owing on such Subordinated Claims shall be paid in full.

ARTICLE V
LIMITATION ON ACTIONS

Section 5.1 *Actions Prohibited.* Until all Obligations shall have been indefeasibly paid in full, the Subordinated Parties shall not, without the prior written consent of the Secured Parties:

(a) take, obtain or hold (or permit anyone acting on its behalf to take, obtain or hold) any assets of any Intercompany Borrower, whether as a result of any administrative, legal or equitable action, or otherwise, in violation of the subordination provisions contained in this Agreement;

(b) accelerate payment of any Subordinated Claims or otherwise require such Subordinated Claims to be paid prior to their stated or scheduled maturity date;

(c) commence, prosecute or participate in (i) any administrative, legal or equitable action against or involving any Intercompany Borrower relating to any Subordinated Claims, including, without limitation, any Proceeding, or (ii) any administrative, legal or equitable action to (a) enforce or collect any judgment obtained in respect of any Subordinated Claims, (b) enforce or exercise remedies arising under or pursuant to any Subordinated Claims, (c) enforce or exercise remedies under or pursuant to any lien or other security interest securing any Subordinated Claims or (d) enforce or exercise remedies with respect to any covenant, agreement, representation or other undertaking contained in any Subordinated Notes; or

(d) exercise any other rights or remedies to enforce any Subordinated Claims, any collateral security provided with respect to such Subordinated Claims or any covenant, agreement, representation or other undertaking contained in any Subordinated Notes.

Section 5.2 *Defense in Action.* If the Subordinated Parties, in violation of the provisions herein set forth, shall commence, prosecute or participate in any suit, action, case or Proceeding referred to in Section 5.1, the related Intercompany Borrower may interpose as a defense or plea the provisions set forth herein, and any holder of any Senior Claims may intervene and interpose such defense or plea in its own name or in the name of such Intercompany Borrower, and shall, in any event, be entitled to restrain the enforcement of the provisions of any Subordinated Claims in its own name or in the name of such Intercompany Borrower, as the case may be, in the same suit, action, case or Proceeding or in any independent suit, action, case or Proceeding.

ARTICLE VI
SUBORDINATION ABSOLUTE

Section 6.1 *Survival of Rights.* The rights under this Agreement of the holders of Senior Claims as against the Subordinated Parties shall remain in full force and effect without regard to, and shall not be impaired or affected by:

(a) any act or failure to act on the part of any Intercompany Borrower;

(b) any extension or indulgence in respect of any payment or prepayment of any Senior Claims or any part thereof or in respect of any other amount payable to any holder of any Senior Claims;

(c) any amendment, modification or waiver of, or addition or supplement to, or deletion from, or compromise, release, consent or other action in respect of, any of the terms of any Senior Claims or the Financing Documents;

(d) (i) any exercise or non-exercise by the holder of any Senior Claims of any right, power, privilege or remedy under or in respect of such Senior Claims, the Financing Documents or the subordination provisions contained herein, (ii) any waiver by the holder of any Senior Claims of any right, power, privilege or remedy or of any default in respect of such Senior Claims, the Financing Documents or the subordination provisions contained herein or (iii) any receipt by the holder of any Senior Claims or any failure by such holder to perfect a security interest in, or any release by such holder of, any security for the payment of such Senior Claims;

(e) any merger or consolidation of any Intercompany Borrower or any of its subsidiaries into or with any other Person, or any sale, lease or transfer of any or all of the assets of any Intercompany Borrower or any of its subsidiaries to any other Person;

(f) any payment or other distribution to any holder of any Senior Claims in any Proceeding;

(g) absence of any notice to, or knowledge by, the Subordinated Parties of the existence or occurrence of any of the matters or events set forth in the foregoing clauses (a) through (f); or

(h) any other circumstance.

Section 6.2 *Waivers.* (a) *Waiver of Defenses.* Each Subordinated Party hereby irrevocably waives, in any proceeding by the Secured Parties to enforce their rights under this Agreement, (i) any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance of this Agreement and (ii) the defense that claims asserted by the holders of the Initial Lessor Notes pursuant to this Agreement are res judicata as a result of any decision rendered in any prior Proceeding.

(b) *Other Waivers.* Each Subordinated Party hereby irrevocably waives (i) notice of any of the matters referred to in Section 6.1, (ii) all notices which may be required, whether by statute, rule of law or otherwise, to preserve intact any rights of any holder of any Senior Claims against any Intercompany Borrower, including, without limitation, any demand, presentment and protest, or any proof of notice of nonpayment under any document evidencing such Senior Claims or under the Financing Documents, (iii) notice of the acceptance of or reliance on this Agreement by the Secured Parties, (iv) notice of any renewal, extension or accrual of any Senior Claims, or any loans made or other action taken in reliance on this Agreement, (v) any right to the enforcement, assertion or exercise by any holder of any Senior Claims of any right, power, privilege or remedy conferred in any document evidencing such Senior Claims or in the Financing Documents, or otherwise, (vi) any requirement of diligence on the part of any holder of any Senior Claims, (vii) any requirement on the part of any holder of any Senior Claims to mitigate damages resulting from any default under any documents evidencing such Senior Claims or under the Financing

Documents and (viii) any notice of any sale, transfer or other disposition of any Senior Claims by any holder thereof.

Section 6.3 *Assent.* Each Subordinated Party hereby irrevocably assents to (a) any renewal, extension or postponement of the time of payment of any Senior Claims or any other indulgence with respect thereto, (b) any increase in the amount of any Senior Claims, (c) any substitution, exchange or release of collateral for any Senior Claims, (d) the addition or release of any Person primarily or secondarily liable for any Senior Claims and (e) the provisions of any instrument, security or other writing evidencing any Senior Claims.

ARTICLE VII
INTERCOMPANY BORROWER OBLIGATIONS

The provisions of this Agreement are intended solely for the purpose of defining the relative rights and obligations of the Subordinated Parties and the Secured Parties. Nothing contained herein (a) is intended to or shall impair, as among any Intercompany Borrower, its creditors and the related Subordinated Party, the obligation of such Intercompany Borrower, which is absolute and unconditional, to pay to such

Subordinated Party, as and when the same shall become due and payable in accordance with its terms, all amounts payable in respect of any Subordinated Claims, or (b) is intended to affect the relative rights of such Subordinated Party and creditors of such Intercompany Borrower other than the Secured Parties.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

Section 8.1 *Waivers, Amendments.* (a) The provisions of this Agreement may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by each of the parties hereto, the holders of the Initial Lessor Notes, each of the Owner Lessors and each of the Owner Participants.

(b) No failure or delay in exercising any power or right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on any party in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval under this Agreement shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

Section 8.2 *Notices.* Except as otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be in writing and shall be deemed to have been duly given or made when delivered if delivered by hand or courier or when received if sent by mail or telecopy, in each case addressed to the party to which such notice is required or permitted to be given or made hereunder set forth below its signature hereto, or such other address as may be specified from time to time by such party in a notice to the other parties hereto.

Section 8.3 *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 8.4 *Headings.* The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provisions hereof or thereof.

Section 8.5 *Execution in Counterparts, Effectiveness.* This Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

Section 8.6 *Governing Law; Entire Agreement.* **THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK**. This Agreement constitutes the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any prior agreements, written or oral, with respect thereto.

Section 8.7 *Successors and Assigns.* (a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Notwithstanding the foregoing, in order to secure the Lessor Notes of each Owner Lessor, such Owner Lessor will assign and grant a first priority security interest in favor of its applicable Lease Indenture Trustee in and to all of such Owner Lessor's right, title and interest in, to and under this Agreement (other than to the extent relating to Excepted Payments and the rights to enforce and collect the same). Each of the parties hereto hereby consents to such assignment and to the creation of such Lien and security interest and acknowledges receipt of copies of the Lease Indenture, it being understood that such consent shall not affect any requirement or the absence of any requirement for any consent of such party under any other circumstances. Unless and until the

Collateral Agent shall have received written notice from the Lease Indenture Trustee that the Lien of the applicable Lease Indenture has been fully discharged, the applicable Security Agent shall have the right (i) to directly receive for application in accordance with the terms of the applicable Lease Indenture all amounts payable or otherwise distributable under this Agreement to the applicable Owner Lessor (other than in respect of the Excepted Payments) and (ii) to exercise the rights of such Owner Lessor under this Agreement (other than with respect to Excepted Payments and the rights to enforce and collect the same) to the extent set forth in and subject to the exceptions set forth in the applicable Lease Indenture.

Section 8.8 *Forum Selection and Consent to Jurisdiction.* ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. EACH PARTY HERETO FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY PARTY

HERETO HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OF FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, SUCH PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

Section 8.9 *Waiver of Jury Trial.* EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH PARTY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OTHER PARTIES ENTERING INTO THIS AGREEMENT.

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

EDISON MISSION HOLDINGS CO.

By: /s/ JOHN P. FINNERAN

Name: John P. Finneran

Title: Vice President

Address for Notices:

18101 Von Karman Avenue
Suite 1700
Irvine, California 92612-1046

EDISON MISSION FINANCE CO.

By: /s/ JOHN P. FINNERAN
Name: John P. Finneran
Title: Vice President

Address for Notices:

18101 Von Karman Avenue
Suite 1700
Irvine, California 92612-1046

HOMER CITY PROPERTY HOLDINGS, INC.

By: /s/ STEVEN D. EISENBERG
Name: Steven D. Eisenberg
Title: Vice President

Address for Notices:

18101 Von Karman Avenue
Suite 1700
Irvine, California 92612-1046

CHESTNUT RIDGE ENERGY CO.

By: /s/ JOHN P. FINNERAN
Name: John P. Finneran
Title: Vice President

Address for Notices:

18101 Von Karman Avenue
Suite 1700
Irvine, California 92612-1046

MISSION ENERGY WESTSIDE, INC.

By: /s/ JOHN P. FINNERAN
Name: John P. Finneran
Title: Vice President

Address for Notices:

18101 Von Karman Avenue
Suite 1700
Irvine, California 92612-1046

EME HOMER CITY GENERATION L.P.

By: Mission Energy Westside, Inc.,
its General Partner

By: /s/ STEVEN D. EISENBERG

Name: Steven D. Eisenberg
Title: Vice President

Address for Notices:

18101 Von Karman Avenue
Suite 1700
Irvine, California 92612-1046

UNITED STATES TRUST COMPANY
OF NEW YORK, as Collateral Agent

By: /s/ CHRISTOPHER J. GRELL

Name: Christopher J. Grell
Title: Authorized Signer

Address for Notices:

114 West 47th Street
25th Floor
New York, New York 10036

QuickLinks

Exhibit 10.27

Execution Copy

DESIGNATED ACCOUNT REPRESENTATIVE AGREEMENT
Relating to the NO_x Allowance Program

This DESIGNATED ACCOUNT REPRESENTATIVE AGREEMENT ("Agreement") is entered into as of December 7, 2001, by and between EME HOMER CITY GENERATION L.P., a Pennsylvania limited partnership ("EMEHC"), and Homer City OL1 LLC, a Delaware limited liability company, Homer City OL2 LLC, a Delaware limited liability company, Homer City OL3 LLC, a Delaware limited liability company, Homer City OL4 LLC, a Delaware limited liability company, Homer City OL5 LLC, a Delaware limited liability company, Homer City OL6 LLC, a Delaware limited liability company, Homer City OL7 LLC, a Delaware limited liability company, and Homer City OL8 LLC, a Delaware limited liability company (together, the "Owner Lessors").

WITNESSETH

WHEREAS, as a result of EMEHC's sale of eight undivided interests in Homer City Electric Generating Station located near Indiana, Pennsylvania (the "Homer City Station") to the Owner Lessors, Owner Lessors are the owners of eight undivided interests (totaling a 100% interest) in the Homer City Station (the "Undivided Interests").11

WHEREAS, pursuant to eight facility leases between the Owner Lessors and EMEHC, dated as of the date hereof (the "Facility Leases"), EMEHC has leased back the Undivided Interests from the Owner Lessors.

WHEREAS, Boiler Nos. 1, 2 and 3 at the Homer City Station are NO_x affected sources that are subject to the NO_x budget and allowance trading requirements promulgated by the Pennsylvania Department of Environmental Protection ("PaDEP") at 25 Pa. Code § 123.101 *et seq.* ("NO_x Allowance Program"), pursuant to the Air Pollution Control Act, as amended, 35 P.S. § 4001 *et seq.*

WHEREAS, pursuant to the NO_x Allowance Program, the Owner Lessors, as the new owners of the Homer City Station, are required to designate an authorized account representative for the NO_x affected sources at the Homer City Station subject to PaDEP's NO_x Allowance Program (a "NO_x Designated Representative").

WHEREAS, the Owner Lessors have not purchased nor paid for emission allowances from EMEHC as part of the purchase of Undivided Interests in the Homer City Station, and wish to provide authority to EMEHC to appoint a NO_x Designated Representative for purposes of controlling disposition of such allowances at all times and for so long as the Facility Leases are in effect.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the parties hereto covenant and agree as follows:

1. *Appointment.* Each Owner Lessor hereby irrevocably grants to EMEHC the right to appoint a NO_x Designated Representative and any successors thereto for the Homer City Station, including, but not limited to Homer City Station Boiler Nos. 1, 2 and 3, as required under the NO_x Allowance Program, and EMEHC hereby accepts the right to so appoint a NO_x Designated Representative unless and until the applicable Facility Lease expires or is terminated in accordance with its terms.

2. *Scope of Appointment.* EMEHC and each Owner Lessor agree that EMEHC's chosen NO_x Designated Representative's duties and responsibilities as NO_x Designated Representative shall be as required under the NO_x Allowance Program.

3. *Termination of Appointment.* EMEHC and each Owner Lessor agree that EMEHC's right to appoint a NO_x Designated Representative under this Agreement shall be terminated upon termination of the applicable Facility Lease pursuant to an Event of Default (as defined in such Facility Lease) in accordance with the terms of such Facility Lease, and upon submission to PaDEP of a superseding Account Certificate of Representation pursuant to 25 Pa. Code § 123.104, which superseding certificate is sufficient if signed by the Owner Lessors, only.

4. *Acknowledgment of Powers of NO_x Designated Representative.* EMEHC and each Owner Lessor hereby acknowledge that (i) for the duration of its appointment, the NO_x Designated Representative shall have full power and authority to sell, assign and otherwise dispose of NO_x allowances allocated to the Homer City Station on behalf of and at the direction of EMEHC, or to transfer such allowances from the account maintained for the Homer City Station to any other account maintained by EMEHC or its affiliates (which allowances so transferred shall remain the property of EMEHC or other transferee notwithstanding the termination of this Agreement or any other Operative Document (as defined in each of the Participation Agreements)), without compensation to the Owner Lessors, in each case in accordance with the provisions of each of the Participation Agreements by and among Homer City, the Owner Lessor, Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager, General Electric Capital Corporation, as the Owner Participant, Homer City Funding LLC, as Lender, the Lease Indenture Trustee and United States Trust Company of New York, not in its individual capacity but solely as Bondholder Trustee (as amended, modified and supplemented and in effect from time to time) (the "*Participation Agreements*"); and (ii) the termination of EMEHC's right to appoint a NO_x Designated Representative Agreement as described in Section 3 hereof shall not obligate the Designated Representative, EMEHC or any Owner Lessor to pay additional consideration to the other parties hereto to effectuate the filing and acceptance by PaDEP of a superceding Account Certificate of Representation pursuant to 25 Pa. Code § 123.104.

5. *Further Assurances.* The parties hereto agree to promptly perform or cause to be performed any and all acts and execute or cause to be executed any and all documents (including financing statements and continuation statements) as may be necessary in order to carry out the intent and purposes of this Agreement and the appointments contemplated hereby and to take any and all steps necessary to effectuate the intent of the foregoing and the other Operative Documents, including without limitation, taking all actions, making all filings, or taking such other steps as may be necessary to maintain the NO_x Designated Representative chosen by EMEHC in its sole discretion as the Designated Representative unless and until any Facility Lease is terminated in accordance with its terms, and thereafter, to appoint and maintain as successor designated representative the designee of the Owner Lessors.

6. *Counterparts; Effectiveness.* This Agreement may be executed in any number of counterparts each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

EME HOMER CITY GENERATION L.P.,

By: Mission Energy Westside, Inc.,
a California Corporation, its
General Partner

By: /s/ STEVEN D. EISENBERG

Name: Steven D. Eisenberg
Title: Vice President

HOMER CITY OL1 LLC

By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ FRANK MCDONALD
Name: Frank McDonald
Title: Vice President

HOMER CITY OL2 LLC

By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ FRANK MCDONALD
Name: Frank McDonald
Title: Vice President

HOMER CITY OL3 LLC

By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ FRANK MCDONALD
Name: Frank McDonald
Title: Vice President

HOMER CITY OL4 LLC

By: Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager

By: /s/ FRANK MCDONALD
Name: Frank McDonald
Title: Vice President

HOMER CITY OL5 LLC

By: Wells Fargo Bank Northwest,

National Association, not in its individual capacity but solely as Owner Manager

By: /s/ FRANK MCDONALD

Name: Frank McDonald
Title: Vice President

HOMER CITY OL6 LLC

Wells Fargo Bank Northwest,
By: National Association, not in its individual capacity but solely as Owner Manager

By: /s/ FRANK MCDONALD

Name: Frank McDonald
Title: Vice President

HOMER CITY OL7 LLC

Wells Fargo Bank Northwest,
By: National Association, not in its individual capacity but solely as Owner Manager

By: /s/ FRANK MCDONALD

Name: Frank McDonald
Title: Vice President

HOMER CITY OL8 LLC

Wells Fargo Bank Northwest,
By: National Association, not in its individual capacity but solely as Owner Manager

By: /s/ FRANK MCDONALD

Name: Frank McDonald
Title: Vice President

QuickLinks

Exhibit 10.28

Execution Copy

DESIGNATED ACCOUNT REPRESENTATIVE AGREEMENT
Relating to the Acid Rain Program

This DESIGNATED ACCOUNT REPRESENTATIVE AGREEMENT ("Agreement") is entered into as of December 7, 2001, by and between EME HOMER CITY GENERATION L.P., a Pennsylvania limited partnership ("EMEHC"), and Homer City OL1 LLC, a Delaware limited liability company, Homer City OL2 LLC, a Delaware limited liability company, Homer City OL3 LLC, a Delaware limited liability company, Homer City OL4 LLC, a Delaware limited liability company, Homer City OL5 LLC, a Delaware limited liability company, Homer City OL6 LLC, a Delaware limited liability company, Homer City OL7 LLC, a Delaware limited liability company, and Homer City OL8 LLC, a Delaware limited liability company (together, the "Owner Lessors").

WITNESSETH

WHEREAS, as a result of EMEHC's sale of eight undivided interests in Homer City Electric Generating Station located near Indiana, Pennsylvania (the "Homer City Station") to the Owner Lessors, Owner Lessors are the owners of eight undivided interests (totaling a 100% interest) in the Homer City Station (the "Undivided Interests").

WHEREAS, pursuant to eight facility leases between the Owner Lessors and EMEHC, dated as of the date hereof (the "Facility Leases"), EMEHC has leased back the Undivided Interests from the Owner Lessors.

WHEREAS, the Homer City Station is an affected source and Homer City Station Units 1, 2 and 3 are affected units that are subject to the acid disposition control requirements of Title IV-A of the Clean Air Act, as amended, and the rules promulgated thereunder by the United States Environmental Protection Agency ("U.S. EPA") at 40 C.F.R. Parts 72-78 (collectively, "Acid Rain Program").

WHEREAS, as a result of the purchase of the Homer City Station, the Owner Lessors are undertaking to transfer certain environmental permits for the Homer City Station, including the acid rain permit issued by U.S. EPA.

WHEREAS, pursuant to the Acid Rain Program, the Owner Lessors, as the new owners of the Homer City Station, are required to designate an authorized account representative (a "SO_x Designated Representative") for the units at the Homer City Station subject to the U.S. EPA's Acid Rain Program.

WHERAS, the Owner Lessors have not purchased nor paid for emission allowances from EMEHC as part of the purchase of Undivided Interests in the Homer City Station, and wish to provide authority to EMEHC to appoint a SO_x Designated Representative for purposes of controlling disposition of such allowances at all times and for so long as the Facility Leases are in effect.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the parties hereto covenant and agree as follows:

1. *Appointment.* Each Owner Lessor hereby irrevocably grant to EMEHC the right to appoint a SO_x Designated Representative and any successors thereto for the Homer City Station, including, but not limited to Homer City Station Units 1, 2 and 3, as required under the

Acid Rain Program, and EMEHC hereby accepts the right to so appoint a SO_X Designated Representative unless and until the applicable Facility Lease expires or is terminated in accordance with its terms.

2. *Scope of Appointment.* EMEHC and each Owner Lessor agree that EMEHC's chosen SO_X Designated Representative's duties and responsibilities as SO_X Designated Representative shall be as required under the Acid Rain Program.

3. *Termination of Appointment.* EMEHC and each Owner Lessor agree that EMEHC's right to appoint a SO_X Designated Representative under this Agreement shall be terminated upon termination of the applicable Facility Lease pursuant to an Event of Default (as defined in such Facility Lease) in accordance with the terms of such Facility Lease, and upon submission to U.S. EPA of a superseding Certificate of Representation pursuant to 40 C.F.R. §72.23, which superseding certificate is sufficient if signed by the Owner Lessors, only.

4. *Acknowledgement of Powers of SO_X Designated Representative.* EMEHC and each Owner Lessor hereby acknowledge that (i) for the duration of this appointment, the SO_X Designated Representative shall have full power and authority to sell, assign and otherwise dispose of SO_X allowances allocated to the Homer City Station, or to transfer such allowances from the account maintained for the Homer City Station to any other account maintained by EMEHC or its affiliates (which allowances so transferred shall remain the property of EMEHC or other transferee notwithstanding the termination of this Agreement or any other Operative Document (as defined in each of the Participation Agreements)), on behalf of and at the direction of EMEHC, without compensation to the Owner Lessors, in each case in accordance with the provisions of each of the Participation Agreements by and among Homer City, the Owner Lessor, Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager, General Electric Capital Corporation, as the Owner Participant, Homer City Funding LLC, as Lender, the Lease Indenture Trustee and United States Trust Company of New York, not in its individual capacity but solely as Bondholder Trustee (as amended, modified and supplemented and in effect from time to time) (the "*Participation Agreements*"); and (ii) the termination of EMEHC's right to appoint a SO_X Designated Representative as described in Section 3 hereof shall not obligate the SO_X Designated Representative, EMEHC or any Owner Lessor to pay additional consideration to the other parties hereto to effectuate the filing and acceptance by U.S. EPA of a superseding Certificate of Representation pursuant to 40 C.F.R. §72.23.

5. *Further Assurances.* The parties hereto agree to promptly perform or cause to be performed any and all acts and execute or cause to be executed any and all documents (including financing statements and continuation statements) as may be necessary in order to carry out the intent and purposes of this Agreement and the appointments contemplated hereby and to take any and all steps necessary to effectuate the intent of the foregoing and the other Operative Documents, including without limitation, taking all actions, making all filings, or taking such other steps as may be necessary to maintain the SO_XDesignated Representative chosen by EMEHC in its sole discretion as the SO_X Designated Representative unless and until any Facility Lease is terminated in accordance with its terms, and thereafter, to appoint and maintain as successor designated representative the designee of the Owner Lessors.

6. *Counterparts; Effectiveness.* This Agreement may be executed in any number of counterparts each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

EME HOMER CITY GENERATION L.P.,
Mission Energy Westside, Inc.,
By: a California corporation, its General Partner

By: /s/ STEVEN D. EISENBERG

Name: Steven D. Eisenberg
Title: Vice President

HOMER CITY OL1 LLC

By: Wells Fargo Bank Northwest,
National Association,
not in its individual capacity but as
Owner Manager

By: /s/ FRANK MCDONALD
Name: Frank McDonald
Title: Vice President

HOMER CITY OL2 LLC

By: Wells Fargo Bank Northwest,
National Association,
not in its individual capacity but as
Owner Manager

By: /s/ FRANK MCDONALD
Name: Frank McDonald
Title: Vice President

HOMER CITY OL3 LLC

By: Wells Fargo Bank Northwest,
National Association,
not in its individual capacity but as
Owner Manager

By: /s/ FRANK MCDONALD
Name: Frank McDonald
Title: Vice President

HOMER CITY OL4 LLC

By: Wells Fargo Bank Northwest,
National Association,
not in its individual capacity but as
Owner Manager

By: /s/ FRANK MCDONALD
Name: Frank McDonald
Title: Vice President

HOMER CITY OL5 LLC

By: Wells Fargo Bank Northwest,
National Association,
not in its individual capacity but as
Owner Manager

By: /s/ FRANK MCDONALD

Name: Frank McDonald
Title: Vice President

HOMER CITY OL6 LLC

By: Wells Fargo Bank Northwest,
National Association,
not in its individual capacity but as
Owner Manager

By: /s/ FRANK MCDONALD

Name: Frank McDonald
Title: Vice President

HOMER CITY OL7 LLC

By: Wells Fargo Bank Northwest,
National Association,
not in its individual capacity but as
Owner Manager

By: /s/ FRANK MCDONALD

Name: Frank McDonald
Title: Vice President

HOMER CITY OL8 LLC

By: Wells Fargo Bank Northwest,
National Association,
not in its individual capacity but as
Owner Manager

By: /s/ FRANK MCDONALD

Name: Frank McDonald
Title: Vice President

Exhibit 10.29

Execution Copy

ASSIGNMENT AGREEMENT

ASSIGNMENT, dated as of December 7, 2001, between THE BANK OF NEW YORK (as successor to United States Trust Company), not in its individual capacity but solely as Collateral Agent for the Owner Lessors (as defined below), as assignee ("*Collateral Agent*"); EME HOMER CITY GENERATION L.P., a Pennsylvania limited partnership, as assignor ("*Homer City*"); EDISON MISSION MARKETING & TRADING, INC., a California corporation ("*EMMT*"), as consenting party; EDISON MISSION ENERGY FUEL SERVICES, INC., a California corporation as consenting party ("*EMEFS*", and together with EMMT, the "*Consenting Parties*").

W I T N E S S E T H

WHEREAS, contemporaneously herewith, Homer City will enter into a transaction pursuant to the Participation Agreements listed on *Exhibit A* by and among EME Homer City, each of the Owner Lessors party thereto (the "*Owner Lessors*"), Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager, the Owner Participant, Homer City Funding LLC, as Lender, the Lease Indenture Trustee, the Security Agent and The Bank of New York, not in its individual capacity but solely as Bondholder Trustee (as amended, modified and supplemented and in effect from time to time, collectively, the "*Participation Agreements*") whereby Homer City will sell undivided interests in its generating assets to the Owner Lessors and the Owner Lessors will lease such undivided interests in its generating assets back to Homer City under the Facility Leases. Capitalized terms used but not defined herein shall have the meanings assigned to them in Appendix A to the Participation Agreements.

WHEREAS, in consideration of the transactions contemplated by the Participation Agreements, Homer City will be obligated to pay to the Secured Parties (as defined in the Amended and Restated Guarantee and Collateral Agreement) the aggregate amount of all obligations owed by Homer City to the Secured Parties under the Operative Documents related thereto.

WHEREAS, pursuant to the Ownership and Operation Agreement, the Collateral Agent has agreed to serve as a common collateral agent for the Owner Lessors.

WHEREAS, it is a condition precedent to the consummation of the transactions contemplated by the Operative Documents that Homer City shall have executed and delivered this Assignment Agreement to the Collateral Agent for the benefit of the Owner Lessors.

WHEREAS, in consideration thereof, Homer City has agreed to assign all of its rights, title and interest in and to certain Material Project Agreements described on *Exhibit B* hereto (the "*Assigned Agreements*") to the Collateral Agent acting on behalf of the Owner Lessors;

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

1. Homer City hereby unconditionally and irrevocably assigns, transfers and conveys to Collateral Agent all of Homer City's rights, title and interests in, to and under the Assigned Agreements. Notwithstanding such assignment, Homer City shall remain solely and exclusively liable for all duties and obligations under or with respect to the Assigned Agreements subject to the provisions of Section 2 below.

2. (a) Subject to paragraphs (b) and (c) of this Section 2, the Collateral Agent, solely on behalf of the Owner Lessors, hereby assumes and agrees to perform, effective as of the earliest date on which all of the Facility Leases have terminated in accordance with their respective terms (the "*Lessor*

Possession Date"), all of the duties and obligations of Homer City under the Assigned Agreement incurred on or after the Lease Possession Date.

(1) (i) Prior to the Lessor Possession Date, the Collateral Agent shall have no obligation or liability under the Assigned Agreement and (ii) in no event shall the Collateral Agent have any liability for liabilities accruing prior to the Lessor Possession Date.

(2) The provisions of this Section 2 notwithstanding, upon the occurrence of the Lessor Possession Date, the Owner Lessors shall have the option to terminate any Assigned Agreement in accordance with its terms, whereupon such agreement shall terminate and any and all liabilities thereunder (including, without limitation, with respect to such termination) shall remain the sole obligation of Homer City, other than liabilities that are attributable to the actions or omissions of the Collateral Agent or the Owner Lessors taken in connection with such termination or this Assignment Agreement. The Owner Lessors may exercise such option by written notice to Homer City, EMEFS, and/or EMMT, as applicable, at any time prior to the 30th day after the Lessor Possession Date.

3. This Assignment Agreement shall remain in effect unless and until each of the Facility Site Leases have been terminated in accordance with their terms, whereupon each of the assignments provided for in Section 1 above shall terminate.

4. The Consenting Parties hereby consent to the assignment of the Assigned Agreements and approve the execution by Homer City of the Assignment Agreement, and acknowledge that no further consents, acknowledgments, or approvals of any kind shall be required for the effectiveness of the assignments contemplated hereby.

5. The parties hereto expressly acknowledge and approve the sub-assignment agreement executed by the Collateral Agent and Homer City simultaneously herewith whereby the Collateral Agent will sub-assign of all its rights, title, and interest in the Assigned Agreements to Homer City for so long as any of the Facility Leases are in effect, such term to be extended in accordance with the provisions governing extension of the term of the Facility Leases, and remaining in effect unless and until all of the Facility Leases may be terminated in accordance with their terms.

6. All of the terms of this Assignment Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including without limitation each of the Owner Lessors. The rights and duties of the Owner Lessors hereunder shall be determined based upon their respective Owner Lessor's Percentages.

Notwithstanding the foregoing, in order to secure the Lessor Notes of each Owner Lessor, such Owner Lessor will assign and grant a first priority security interest in favor of its applicable Lease Indenture Trustee in and to all of such Owner Lessor's right, title and interest in, to and under this Agreement (other than to the extent relating to Excepted Payments and the rights to enforce and collect the same). Each of the parties hereto hereby consents to such assignment and to the creation of such Lien and security interest and acknowledges receipt of copies of the Lease Indenture, it being understood that such consent shall not affect any requirement or the absence of any requirement for any consent of such party under any other circumstances. Unless and until the Collateral Agent shall have received written notice from the Lease Indenture Trustee that the Lien of the applicable Lease Indenture has been fully discharged, the applicable Security Agent shall have the right (i) to directly receive for application in accordance with the terms of the applicable Lease Indenture all amounts payable or otherwise distributable under this Agreement to the applicable Owner Lessor (other than in respect of the Excepted Payments) and (ii) to exercise the rights of such Owner Lessor under this Agreement (other than with respect to Excepted Payments and the rights to enforce and collect the same) to the extent set forth in and subject to the exceptions set forth in the applicable Lease Indenture.

7. The Collateral Agent is executing this Agreement on behalf of the Owner Lessors solely in its capacity as collateral agent under the Ownership and Operation Agreement and not in its individual capacity and in no case shall the Collateral Agent (or any successor entity

acting as collateral agent under the Ownership and Operation Agreement) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations hereunder, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through, or under such party.

8. This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to choice of law principles (except Section 5-1401 of the New York General Obligations Law), including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the parties have signed this Assignment Agreement as of the date first above written.

EME HOMER CITY GENERATION L.P.

By: Mission Energy Westside, Inc.
as General Partner

By: /s/ Steven D. Eisenberg
Name: Steven D. Eisenberg
Title: Vice President

THE BANK OF NEW YORK
not in its individual capacity, but solely as
Collateral Agent for the Owner Lessors

By: /s/ Christopher J. Grell
Name: Christopher J. Grell
Title: Authorized Signor

EDISON MISSION MARKETING
& TRADING, INC., a California
corporation (with respect to the Energy
Sales Agreement and NOx Agreement only)

By: /s/ David C. Goss
Name: David C. Goss
Title: Vice President

EDISON MISSION ENERGY FUEL
SERVICES, INC., a California corporation
(with respect to the Fuel Supply Agreement only)

By: /s/ Steven D. Eisenberg
Name: Steven D. Eisenberg
Title: Vice President

Exhibit A
Participation Agreements

1. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL1 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

2. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL2 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

3. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL3 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

4. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL4 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

5. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL5 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust

Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

6. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL6 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

7. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL7 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation., a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

8. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL8 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

Exhibit B
Assigned Agreements

1. Energy Sales Agreement

2. NOx Agreement

3. Fuel Supply Agreement

4. The Power Sales Agreements

5. The SCR Construction Contract

QuickLinks

Exhibit 10.30

Execution Copy

DEBT SERVICE RESERVE LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT

among

HOMER CITY OL1 LLC,
as Borrower

and

WESTDEUTSCHE LANDESBANK GIROZENTRALE,
NEW YORK BRANCH
as Issuing Bank and as Agent

and

THE BANKS NAMED HEREIN

Dated as of December 7, 2001

Table of Contents

DEBT SERVICE RESERVE LETTER OF CREDIT
AND REIMBURSEMENT AGREEMENT

This Debt Service Reserve Letter of Credit and Reimbursement Agreement (this "*Agreement*"), dated as of December 7, 2001, is entered into by and among (1) HOMER CITY OL1 LLC, a Delaware limited liability company (the "*Borrower*"), (2) WESTDEUTSCHE LANDESBANK GIROZENTRALE, NEW YORK BRANCH, as the issuer of the Debt Service Reserve Letter of Credit referred to herein (in such capacity, the "*Issuing Bank*") and as a Bank (as defined below), (3) CREDIT SUISSE FIRST BOSTON, NEW YORK BRANCH, as a Bank (as defined below), (4) each bank or other entity that is, or becomes pursuant to *Section 9.9*, a party hereto (individually, a "*Bank*" and collectively, the "Banks") and (5) WESTDEUTSCHE LANDESBANK GIROZENTRALE, NEW YORK BRANCH, as agent (in such capacity, together with its successors in such capacity, the "*Agent*") for the Banks.

RECITALS

A. Pursuant to the Lease Indenture of Trust and Security Agreement, dated as of December 7, 2001 (the "*Lease Indenture*"), among the Borrower, The Bank of New York, as successor to the United States Trust Company of New York, as Security Agent (the "*Security Agent*") and The Bank of New York, as successor to the United States Trust Company of New York, as trustee (in such capacity, together with its successors in such capacity, the "*Lease Indenture Trustee*"), the Borrower issued two series of lessor notes in respect thereof (collectively, the "*Lessor Notes*").

B. The Borrower has requested that the Issuing Bank issue and the Banks participate in, and the Issuing Bank is willing to issue and the Banks are willing to participate in, the Debt Service Reserve Letter of Credit (as defined below) upon the terms and conditions hereinafter set forth.

AGREEMENT

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

ARTICLE I

DEFINITIONS; CONSTRUCTION

SECTION 1.1 *Definitions.* (a) Terms defined in the Participation Agreement (in the form of such terms as they exist on the date of this Agreement and as they may hereafter be amended from time to time, but only to the extent that the incorporation of any such amendments into this Agreement has been consented to by the Required Banks in writing) have, unless the same are defined herein or the context otherwise requires, the same meaning when used herein (with appropriate substitutions).

(b) The following terms are used in this Agreement with the following respective meanings:

"*Adjusted Base Rate*" means the higher of (i) the Federal Funds Rate plus .50% and (ii) the Prime Rate.

"*Adjusted Base Rate Loan*" means a DSR Loan bearing interest at the Adjusted Base Rate.

"*Amended and Restated Security Deposit Agreement*" means the Amended and Restated Security Deposit Agreement, dated as of December 7, 2001, among EME Homer City Generation, L.P. and The Bank of New York, as Collateral Agent.

"*Applicable Law*" shall mean, with respect to any Person, property or matter, any of the following applicable thereto: any statute, law, regulation, ordinance, rule, judgment, rule of common law, order, decree, arbitral decision, governmental approval, approval, concession, grant, franchise, license, agreement or other governmental restriction, or any voluntary restraint, policy or

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guideline with which such Person has formally agreed to comply, whether in effect as of the date of this Agreement or thereafter and in each case as amended.

"*Bank*" has the meaning set forth in the Preamble hereto.

"*Borrower*" has the meaning set forth in the Preamble hereto.

"*Business Day*" means a day (other than a Saturday or Sunday) on which banks are open for business in New York, New York, and, in matters relating to the determination of a LIBOR Rate or Interest Period, a day on which the London interbank market deals in U.S. Dollar deposits.

"*Closing Date*" means the date on which the conditions precedent set forth in *Section 3.1* have been fulfilled and the Debt Service Reserve Letter of Credit is issued.

"*Collateral*" has the meaning set forth in the Lease Indenture.

"*Collateral Agent*" means The Bank of New York, as successor to the United States Trust Company of New York, as collateral agent under the Amended and Restated Security Deposit Agreement, or any successor thereto pursuant to the terms thereof.

"*Commitment*" has the meaning set forth in *Section 2.1*.

"*Commitment Transfer Supplement*" means a Commitment Transfer Supplement entered into by a Bank and another Person substantially in the form of *Exhibit C*.

"*Damages*" shall have the meaning set forth in *Section 9.10*.

"*Debt Service Reserve Account*" has the meaning set forth in *Section 5.4* of the Lease Indenture.

"*Debt Service Reserve Amount*" means the amount required to be on deposit from time to time in the Debt Service Reserve Account.

"*Debt Service Reserve Letter of Credit*" means a letter of credit substantially in the form of *Exhibit A*, issued or to be issued by the Issuing Bank, or any letter of credit issued by the Issuing Bank in replacement thereof.

"*Debt Service Reserve Letter of Credit Promissory Note*" shall mean a promissory note substantially in the form of *Exhibit B* attached hereto.

"*Default*" means an event that with the giving of any required notice and/or the lapse of any required time would constitute an Event of Default.

"*Drawing*" means a drawing under the Debt Service Reserve Letter of Credit.

"*DSR Loan*" has the meaning set forth in *Section 2.4*.

"*DSR Note*" has the meaning set forth in *Section 2.14(a)*.

"*DSR Noteholder*" means Westdeutsche Landesbank Girozentrale, New York Branch.

"*Event of Default*" has the meaning set forth in *Section 6.1*.

"*Expiration Date*" means the earlier of April 1, 2002 and the date on which the Debt Service Reserve Letter of Credit is earlier terminated in accordance with the provisions hereof.

"*Federal Funds Rate*" means, for any period, a fluctuating interest rate *per annum* equal for each day during such period to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York or, if such rate is not so published for any day that is a

Business Day, the average of the quotations for such day on such transactions received by the Agent from three federal funds brokers of recognized standing selected by it.

"*Governmental Authority*" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"*Indemnified Party*" has the meaning set forth in *Section 9.10*.

"*Interest Payment Date*" means, with respect to (i) any Adjusted Base Rate Loan, the first Business Day of each April and October, and (ii) any LIBOR Rate Loan, the last day of each Interest Payment with respect thereto, in each case, commencing on the first such date after the applicable Drawing giving rise to such DSR Loan, and any date on which interest on such DSR Loan becomes due and payable upon the prepayment thereof, the final maturity date thereof, the declaration of acceleration with respect thereto, or otherwise.

"*Interest Period*" means, with respect to any LIBOR Rate Loan, an interest period of one (1), two (2), three (3) or six (6) months (or, such other period as may be mutually agreed to among the Borrower and the Banks); *provided, however,* that such Interest Period shall, in all events, end no later than the next Principal Payment Date to occur.

"*Issuer of the Debt Service Reserve Letter of Credit*" means Westdeutsche Landesbank Girozentrale, New York Branch.

"*Issuing Bank*" has the meaning set forth in the Preamble hereto.

"*Lease Indenture*" has the meaning set forth in *Recital A*.

"*Lease Indenture Trustee*" has the meaning set forth in *Recital A*.

"*Lessor Notes*" has the meaning set forth in *Recital A*.

"*Letter of Credit Documents*" means this Agreement, the DSR Notes and the Debt Service Reserve Letter of Credit.

"*LIBOR Rate*" means, for any DSR Loan bearing interest at the LIBOR Rate, a rate *per annum* equal to the offered rate for deposits in United States dollars (in the approximate amount and having approximately the same maturity as the LIBOR Rate Loan to be made) which appears on the Telerate LIBOR screen as of 11:00 a.m. (London time), two (2) Business Days prior to the first day of the Interest Period for such LIBOR Rate Loan, and in case of variations in rates, the arithmetic average thereof rounded upwards, if necessary, to the nearest 1/100 of 1%, calculated by the Agent.

"*LIBOR Rate Loan*" means a DSR Loan bearing interest at the LIBOR Rate.

"*Material Adverse Effect*" shall mean any event, development or circumstance that has had or could reasonably be expected to have a material adverse effect on (a) the business, assets, results of operations or financial condition of the Borrower, (b) the ability of the Borrower to perform or comply with its obligations under any of the Operative Documents, (c) the validity or enforceability of any of the Operative Documents, the Liens granted thereunder or the material rights and remedies of the parties thereto, or (d) with respect to the Owner Participant's interest in the Facility, the residual value or remaining useful life of the Facility.

"*Monthly Transfer Date*" has the meaning given such term in the Amended and Restated Security Deposit Agreement.

"*Non-U.S. Bank*" shall have the meaning set forth in *Section 2.17(c)*.

"*Obligations*" means all of the obligations of the Borrower to the Banks and the Agent under this Agreement and the DSR Notes, whether for principal (including reimbursement of amounts drawn under the Debt Service Reserve Letter of Credit), interest, fees, expenses, indemnification or otherwise.

"*Outstanding Amount*" means an amount not in excess of $10,605,180 at any time as the same may be reduced, increased or reinstated from time to time in accordance with the terms and provisions hereof and of the Debt Service Reserve Letter of Credit.

"*Participant*" has the meaning set forth in *Section 9.9(b)*.

"*Participation Agreement*" means the Participation Agreement by and among Homer City, the Owner Lessor, Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager, General Electric Capital Corporation, as the Owner Participant, Homer City Funding LLC, as Lender, the Lease Indenture Trustee and United States Trust Company of New York, not in its individual capacity but solely as Bondholder Trustee (as amended, modified and supplemented and in effect from time to time).

"*Prime Rate*" means the variable rate of interest *per annum* officially announced or published by the Agent from time to time as its "prime rate," such rate being set by the Agent as a general reference rate of interest, taking into account such factors as the Agent may deem appropriate, it being understood that many of the Agent's commercial or other loans are priced in relation to such rate, that it is not necessarily the lowest or best rate actually charged to any customer and that the Agent may make various commercial or other loans at rates of interest having no relationship to such rate. For purposes of this Agreement, each change in the Prime Rate shall be effective as of the opening of business on the date announced as the effective date of the change in such "prime rate."

"*Principal Payment Date*" means, with respect to any DSR Loan, the first Business Day of each April and October, commencing on the first such date after the applicable Drawing giving rise to such DSR Loan, and any date on which all or a portion of the principal of any DSR Loan becomes due and payable upon the prepayment thereof, the final maturity date thereof, the declaration of acceleration with respect thereto, or otherwise.

"*Purchasing Bank*" has the meaning set forth in *Section 9.9(a)*.

"*Ratable Share*" shall have the meaning set forth in *Section 2.3*.

"*Regulations T, U and X*" shall mean Regulations T, U and X of the Federal Reserve System of the United States (or any successors thereto).

"*Regulatory Change*" means, subsequent to the date of this Agreement, any adoption or change in United States Federal, state or municipal or foreign law or regulations (including without limitation Regulation D) or the adoption or change or making of any application, interpretation, directive, request or guideline of or under any United States federal, state or municipal or foreign law or regulations by any court, central bank or Governmental Authority.

"*Required Banks*" means, at any time, Banks (one of which shall be the Agent) owed at least $66^{2}/_{3}\%$ of the sum of the Obligations then outstanding and/or the Commitments; *provided, however,* that, if and so long as there are only two Banks, then "Required Banks" shall mean both of such Banks.

"*Required Lease Indenture Secured Parties*" has the meaning set forth in the Lease Indenture.

"*Reserve Requirement*" means, for DSR Loans bearing interest at the LIBOR Rate, the rate (expressed as a percentage) at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during the Interest Period therefor under Regulation D by

member banks of the Federal Reserve System in New York City with deposits exceeding one billion U.S. dollars against "Eurocurrency liabilities" (as such term is used in Regulation D).

"*Security Agent*" has the meaning set forth in *Recital A*.

"*Taxes*" has the meaning set forth in *Section 2.17(a)*.

"*Termination Notice*" has the meaning set forth in *Section 2.2(d)*.

"*Trustee*" has the meaning set forth in *Recital A*.

SECTION 1.2 *Construction.* In this Agreement, unless expressly specified to the contrary: the singular includes the plural and the plural the singular; words importing any gender include the other gender; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; references to "writing" include printing, typing, lithography and other means of reproducing words in a tangible, visible form; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections), recitals, appendices, exhibits, annexes or schedules are to those of this Agreement; references to agreements and other instruments shall be deemed to include all amendments and other modifications to such agreements and instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Authorities, Persons succeeding to their respective functions and capacities; and all accounting terms used in this Agreement shall be interpreted, all accounting determinations under this Agreement shall be made and all financial statements required to be delivered under this Agreement shall be prepared in accordance with generally accepted accounting principles as in effect from time to time.

ARTICLE II

DEBT SERVICE RESERVE LETTER OF CREDIT

SECTION 2.1 *Commitments.* Each Bank irrevocably agrees severally, on the terms and conditions contained in this Agreement, to participate in the Debt Service Reserve Letter of Credit in an aggregate amount not to exceed at any time outstanding the amount set forth opposite such Bank's name on the signature pages hereof or, if such Bank has entered into one or more Commitment Transfer Supplements, set forth for such Bank in the register maintained by the Agent (such agreement by such Bank, as the same may be reduced from time to time pursuant to the terms of this Agreement, herein called such Bank's "*Commitment*").

SECTION 2.2 *Amount and Term of Debt Service Reserve Letter of Credit.* (a) Subject to the terms and conditions contained in this Agreement, the Issuing Bank irrevocably agrees to issue the Debt Service Reserve Letter of Credit on the Closing Date for the account of the Borrower in favor of the Lease Indenture Trustee, for the benefit of the holders of the Lessor Notes, in the face amount of $10,605,180, subject to reduction, increase and reinstatement as provided hereinafter and in the Debt Service Reserve Letter of Credit. The Debt Service Reserve Letter of Credit shall expire and all obligations of the Issuing Bank and any Bank in respect thereof shall terminate on the Expiration Date.

(b) If the Debt Service Reserve Amount shall reduce or increase in accordance with the Lease Indenture, the Outstanding Amount of the Debt Service Reserve Letter of Credit shall be reduced or increased, as the case may be, by an amount equal to the amount of such reduction or increase in the Debt Service Reserve Amount; *provided, however,* that in no event shall the Outstanding Amount exceed $10,605,180 at any time. Subject to *Section 2.2(d)* and *Article VI*, the Outstanding Amount of the Debt Service Reserve Letter of Credit, as so reduced or increased, shall be reduced to the extent that Drawings are made and shall be reinstated to the extent that DSR Loans are repaid, *provided* that any

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such reinstatement shall not cause the Outstanding Amount (when added to the balance in the Debt Service Reserve Account) to exceed the Debt Service Reserve Amount.

(c) The Borrower shall deliver, or cause to be delivered, (i) to each of the Agent and the Lease Indenture Trustee prompt notice of the occurrence of any event resulting in an adjustment to the Debt Service Reserve Amount and (ii) to each of the Agent and the Lease Indenture Trustee the calculation of the Outstanding Amount resulting from the adjustment referred to in clause (i), together with all information reasonably necessary to make such calculation. The Issuing Bank shall deliver to the Lease Indenture Trustee a notice in the form of *Annex 5* to the Debt Service Reserve Letter of Credit to effect a change in the Outstanding Amount of the Debt Service Reserve Letter of Credit.

(d) The Issuing Bank shall have the right, upon the occurrence and during the continuation of an Event of Default, to deliver a notice in the form of *Annex 2* to the Debt Service Reserve Letter of Credit (a "*Termination Notice*"), whereupon the Expiration Date shall occur on the date specified in such notice. The Outstanding Amount shall not be reinstated upon repayment of any DSR Loans after the delivery by the Issuing Bank of a Termination Notice.

(e) The Agent shall, solely for informational purposes, deliver to the Borrower a copy of any termination notice given to the beneficiary under the Debt Service Reserve Letter of Credit, *provided, however,* that the Banks' ability to terminate the Debt Service Reserve Letter of Credit shall not be contingent upon the Agent's delivery to the Borrower of such notice and that neither the Agent nor the Banks shall incur any liability whatsoever as a result of the Agent's failure to deliver such notice to the Borrower.

SECTION 2.3 *Participations in Debt Service Reserve Letter of Credit.* Immediately upon the issuance of the Debt Service Reserve Letter of Credit, the Issuing Bank shall be deemed to have sold and transferred to each Bank, and each Bank shall be deemed to have purchased and received from the Issuing Bank, in each case irrevocably and without any further action by any party, an undivided interest and participation in the Debt Service Reserve Letter of Credit, each Drawing and the other Obligations in respect thereof in an amount equal to the product of (a) a fraction the numerator of which is the amount of the Commitment of such Bank and the denominator of which is the aggregate

amount of all of the Commitments (the "*Ratable Share*") and (b) the maximum amount available to be drawn under the Debt Service Reserve Letter of Credit plus the amount of all outstanding DSR Loans. The Agent shall promptly advise each Bank of any change in the Outstanding Amount or the Expiration Date in respect of the Debt Service Reserve Letter of Credit, the cancellation or other termination of the Debt Service Reserve Letter of Credit and any Drawing, *provided, however,* that failure to provide such notice shall not limit or impair the rights of the Agent hereunder or under the Financing Documents.

SECTION 2.4 *Drawing and Reimbursement.* The payment by the Issuing Bank of a Drawing shall constitute the making by the Issuing Bank of a loan in the amount of such payment. In the event that a Drawing is not repaid by the Borrower by 12:00 noon, New York City time, on the day of such Drawing, the Agent shall promptly notify each other Bank. Each such Bank shall deliver to the Agent for the Issuing Bank's account, on the day of such notification and in immediately available funds, an amount equal to such Bank's Ratable Share of the payment made by the Issuing Bank and not reimbursed or paid by the Borrower pursuant to this *Section 2.4*. In the event that any Bank fails to make available to the Agent for the account of the Issuing Bank the amount of such loan, the Issuing Bank shall be entitled to recover such amount on demand from such Bank together with interest thereon at (i) for the first three (3) days of nonpayment, the Federal Funds Rate and (ii) thereafter, the Federal Funds Rate plus 2.50%. Each payment by a Bank pursuant to this *Section 2.4* shall constitute a "DSR Loan" under this Agreement.

SECTION 2.5 *Fees.* The Borrower shall pay the following fees to the Agent for the respective accounts of the Persons specified below:

(a) for the account of the Agent, an administration fee of the Owner Lessor's percentage of $25,000, payable on the Closing Date; and

(b) for the account of the Issuing Bank, such additional administrative fees and charges (including cable charges) as are generally associated with letters of credit, in accordance with the Issuing Bank's standard internal charge guidelines, payable on the next Monthly Transfer Date.

SECTION 2.6 *Interest.* (a) The Borrower shall pay interest on the unpaid principal amount of each DSR Loan resulting from a Drawing on each applicable Interest Payment Date, from the date of such DSR Loan until such principal amount has been repaid in full. Such interest shall be paid at a rate *per annum* equal to (i) so long as no Event of Default has occurred and is continuing, either (x) with respect to Adjusted Base Rate Loans, the sum of the Adjusted Base Rate in effect from time to time plus 1.50% *per annum* or (y) with respect to LIBOR Rate Loans, the sum of the LIBOR Rate in effect from time to time plus 2.50% *per annum,* and (ii) so long as an Event of Default has occurred and is continuing, the Adjusted Base Rate plus 4.00% *per annum.*

(b) Each Drawing and each DSR Loan made pursuant to *Section 2.4* shall initially bear interest based on the Adjusted Base Rate as in effect from time to time plus 1.50% *per annum; provided, however,* that prior to the making of any DSR Loan, the Borrower may give the Agent written notice of the Borrower's election that such DSR Loan shall bear interest based on the LIBOR Rate. Such notice shall be irrevocable and shall be effective only if received by the Agent not later than 12:00 noon, New York City time, three (3) Business Days prior to the occurrence of the Drawing giving rise to such DSR Loan. The Agent shall promptly notify the Banks of the contents of each such notice. Subject to *Sections 2.6(d), 2.19* and *2.23*, such DSR Loan shall then bear interest based on the LIBOR Rate from the date of such DSR Loan.

(c) Subject to *Sections 2.6(d)*, *2.19* and *2.23*, unless an Event of Default shall have occurred, the Borrower may at any time, upon three Business Days' irrevocable written notice to the Agent, (x) convert (i) any Adjusted Base Rate Loan to a LIBOR Rate Loan or (ii) any LIBOR Rate Loan to an Adjusted Base Rate Loan, *provided* that a LIBOR Rate Loan may be converted only on the last day of the applicable Interest Period or (y) continue any LIBOR Rate Loan as a LIBOR Rate Loan with the same or a different Interest Period on the last day of the applicable Interest Period. The Agent shall promptly notify the Banks of the contents of each such notice. In the event the Borrower fails to select the applicable interest rate, within the time period and otherwise as provided in this *Section 2.6(c)*, such DSR Loan (if outstanding as a LIBOR Rate Loan) will be automatically converted into an Adjusted Base Rate Loan on the last day of the then current Interest Period for

such DSR Loan or (if outstanding as an Adjusted Base Rate Loan) will remain as, or (if not then outstanding) will be made as, an Adjusted Base Rate Loan.

(d) The Borrower shall pay to the Agent for the account of each Bank, upon the request of such Bank through the Agent, such amount or amounts as shall be sufficient (in the reasonable opinion of such Bank) to compensate it for any loss, cost or expense which such Bank determines is attributable to any failure for any reason (i) of any LIBOR Rate Loan, pursuant to a notice given under *Section 2.6(b)*, to occur or (ii) of the Borrower to convert an Adjusted Base Rate Loan from such Bank to a LIBOR Rate Loan, or to continue a LIBOR Rate Loan, as and when specified in the relevant notice given pursuant to *Section 2.6(b)* or *2.6(c)*.

SECTION 2.7 *Repayment.* (a) The Borrower shall repay the principal amount of the DSR Loans in full on the Expiration Date.

(b) Subject to *Section 2.7(c)*, the Issuing Bank shall reduce the Outstanding Amount by the outstanding principal amount of each DSR Loan.

(c) Subject to *Sections 2.2* and *6.1*, the Issuing Bank shall, upon receipt of written notice from the Borrower, reinstate the Outstanding Amount to the extent of any repayment or prepayment of the principal amount of any DSR Loan.

SECTION 2.8 *Prepayments.* (a) The Borrower may, at any time and from time to time on any Business Day, irrevocably notify the Agent in writing that the Borrower intends to prepay all or any portion (and so stating the aggregate principal amount to be prepaid) of the DSR Loans then outstanding on a day which is at least three (3) Business Days after the date of such notice. If the Borrower delivers any such notice, the Borrower shall, not later than 12:00 noon, New York City time, on the prepayment date set forth in such notice, prepay without premium or penalty the outstanding principal amount of the DSR Loans so indicated in such notice, together with accrued interest to the date of such prepayment on the principal amount so prepaid.

(b) The Borrower agrees to indemnify each Bank and hold each Bank harmless from any direct loss (but excluding any indirect, consequential or incidental loss or damage), cost or reasonable out-of-pocket expense which such Bank incurs as a result of a prepayment of any DSR Loan bearing interest at the LIBOR Rate on a date which is not the last day of an Interest Period applicable thereto.

(c) All prepayments made hereunder shall be applied by the Agent and the Banks against the principal amount of outstanding DSR Loans (i) as long as no Event of Default has occurred and is continuing, in the order as specified by Borrower or, in the absence of such specification, in the order such DSR Loans were made, and (ii) if an Event of Default has occurred and is continuing, in the order as specified by the Agent or, in the absence of such specification, in the order such DSR Loans were made.

SECTION 2.9 *Security.* The Obligations shall be secured by the Security Documents, the rights and remedies in respect of which shall be exercised pursuant to the Lease Indenture.

SECTION 2.10 *Payments.* (a) The Borrower shall make each payment hereunder and under the DSR Notes not later than 12:00 noon, New York City time, on the day when due in United States dollars to the Agent at its address set forth in *Section 9.2*, in immediately available funds. The Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal (including reimbursement of Drawings), interest or fees ratably (other than amounts payable for the account of the Agent or the Issuing Bank pursuant to *Section 2.5(a), (c)* or *(d)* or payable pursuant to *Section 9.4*) to the Banks and like funds relating to the payment of any other amount payable to any Bank to such Bank, in each case to be applied in accordance with the terms of this Agreement.

(b) Unless the Agent receives notice from the Borrower before the date on which any payment is due to the Banks hereunder that the Borrower will not make such payment in full, the Agent may assume that the Borrower has made such payment in full to the Agent on such date, and the Agent may, in reliance upon such assumption, cause to be distributed to each Bank on such due date an amount equal to the amount then due to such Bank. If and to the extent that the Borrower has not so made such payment in full to the Agent, each Bank shall repay to the Agent forthwith on demand such amount distributed to such Bank together with interest thereon, for each day from the date such

amount is distributed to such Bank until the date on which such Bank repays such amount to the Agent (i) for the first three (3) days of non-repayment, at the Federal Funds Rate and (ii) thereafter, at the Federal Funds Rate plus 2.50%.

SECTION 2.11 *Computation of Interest and Fees.* All computations of interest and fees hereunder shall be made on the basis of a year of three hundred sixty (360) days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees are payable. Each calculation and each determination by the Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.12 *Payments on Non-Business Days.* Whenever any payment hereunder or under any DSR Note is stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fees, as the case may be. If no due date is specified for the payment of any amount payable by the Borrower hereunder, such amount shall be due and payable not later than ten (10) Business Days after receipt by the Borrower of written demand from the Agent for the payment thereof. In connection with a LIBOR Rate Loan, if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that, if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day.

SECTION 2.13 *Sharing of Payments, Etc.* If any Bank obtains any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of its Commitment or the DSR Loans made by it (other than pursuant to *Section 9.4*) in excess of its ratable share of such payments obtained by all of the Banks, then such Bank shall be deemed to have received such payment as agent for and on behalf of all the Banks and shall immediately advise the Agent of the receipt of such funds and promptly transmit the entire amount thereof to the Agent for prompt distribution among the Banks as provided for in this Agreement and such funds transmitted to the Agent shall be credited as a payment by the Borrower under this Agreement; *provided* that such Bank so transmitting funds to the Agent shall not be deemed to have received, and the Borrower shall be deemed not to have made to such Bank (to the extent funds are transmitted to the Agent) any payment transmitted to the Agent by such Bank pursuant to this *Section 2.13*.

SECTION 2.14 *Evidence of Debt.* (a) The indebtedness of the Borrower resulting from all DSR Loans made by each Bank from time to time shall be evidenced by an appropriate notation on the schedule, or a continuation thereof, to the Debt Service Reserve Letter of Credit Promissory Note substantially in the form of *Exhibit B* (each a "*DSR Note*"), delivered by the Borrower to such Bank.

(b) The books and accounts of the Agent shall be conclusive evidence, absent manifest error, of the amounts of all Drawings, DSR Loans, fees, interest and other amounts advanced, due, outstanding, payable or paid pursuant to this Agreement or any DSR Note.

SECTION 2.15 *Increased Debt Service Reserve Letter of Credit Costs.* If, after the date hereof, any introduction of or change in any Applicable Law (including for purposes hereof, any directive, guideline or requirement of any Governmental Authority (whether or not having the force of law)) or in the interpretation thereof by any Governmental Authority charged with the administration thereof either (a) imposes, modifies or makes applicable any reserve, special deposit or similar requirement against letters of credit issued by, or assets held by, or deposits or other liabilities in or for the account of, the Agent or any Bank or (b) imposes on the Agent or any Bank any other condition regarding this Agreement, the Agent, such Bank, the Debt Service Reserve Letter of Credit or the DSR Loans, and the result of any event referred to in the preceding clause (a) or (b) is to increase the cost to the Agent or such Bank of issuing or maintaining the Debt Service Reserve Letter of Credit or the DSR Loans, reduce the amount of any payment receivable by the Agent or such Bank hereunder or reduce the rate of return on any Bank's capital as a consequence of its obligations hereunder below that which such Bank would have achieved but for such circumstance, then, in each such case, upon demand by the Agent or such Bank, the Borrower shall pay to the Agent or such Bank, from time to time as specified thereby on the Monthly Transfer Date, additional amounts sufficient to compensate the Agent or such Bank for such increased costs, reduction in payments receivable or reduction in rate of return. A certificate as to any such additional amount or amounts submitted by a Bank, through the Agent, to the Borrower and the other Banks shall certify that similar demands have been made to other

customers of such Bank which are subject to similar provisions and shall, in the absence of manifest error, be final and conclusive. In determining such amount, a Bank may use any reasonable averaging

and attribution methods. Notwithstanding the foregoing, the Borrower shall only be obligated to compensate any Bank or Agent for any amount described in this *Section 2.15* arising or occurring during (i) any time period commencing not more than 90 days prior to the date on which such Bank notifies the Agent and the Borrower that such Bank or the Agent proposes to demand such compensation and (ii) any time period during which, because of the unannounced retroactive application of such statute, regulation or other basis, such Bank could not have known that such amount might arise or accrue.

SECTION 2.16 *Capital Adequacy.* If the Agent or any Bank reasonably determines that compliance with any Applicable Law (including for purposes hereof, any directive, guideline or requirement of any Governmental Authority (whether or not having the force of law)) affects or would affect the amount of capital required or expected to be maintained by the Agent or such Bank or any Person controlling the Agent or such Bank and that the amount of such capital is increased by or based upon the existence of such Bank's Commitment or the issuance of the Debt Service Reserve Letter of Credit or outstanding DSR Loans, then, upon demand by the Agent or such Bank, the Borrower shall pay to the Agent or such Bank, from time to time as specified thereby, additional amounts sufficient to compensate the Agent or such Bank in light of such circumstances, to the extent that the Agent or such Bank reasonably determines such increase in capital to be allocable to the existence of such Bank's Commitment or the issuance of the Debt Service Reserve Letter of Credit or such DSR Loans. A certificate as to any such additional amount or amounts submitted by a Bank, through the Agent, to the Borrower and the other Banks shall certify that similar demands have been made to other customers of such Bank which are subject to similar provisions and shall, in the absence of manifest error, be final and conclusive. In determining such amount, a Bank may use any reasonable averaging and attribution methods. Notwithstanding the foregoing, the Borrower shall only be obligated to compensate any Bank or the Agent for any amount described in this *Section 2.16* arising or occurring during (i) any time period commencing not more than 90 days prior to the date on which such Bank notifies the Agent and the Borrower that such Bank or the Agent proposes to demand such compensation and (ii) any time period during which, because of the unannounced retroactive application of such statute, regulation or other basis, such Bank could not have known that such amount might arise or accrue.

SECTION 2.17 *Taxes.* (a) All payments, except as otherwise provided in *Section 2.17(c)*, by the Borrower of principal of, and interest on, the DSR Notes and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp or franchise taxes and other taxes, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority, but excluding franchise taxes and taxes imposed on or measured by any Bank's net income, in each case, imposed as a result of a connection between the Bank and the jurisdiction imposing the tax (other than a connection arising solely from the Bank having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement) (such non-excluded items being called "*Taxes*"). In the event that any withholding or deduction from any payment to be made by the Borrower hereunder is required in respect of any Taxes pursuant to any Applicable Law, then the Borrower will:

(i) pay directly to the relevant authority the full amount required to be so withheld or deducted;

(ii) within 30 days after such payment forward to the Agent an official receipt or other documentation satisfactory to the Agent evidencing such payment to such authority; and

(iii) pay to the Agent for the account of the Banks such additional amount or amounts as is necessary to ensure that the net amount actually received by each Bank will equal the full amount such Bank would have received had no such withholding or deduction been required.

Moreover, if any Taxes are directly asserted against the Agent or any Bank with respect to any payment received by the Agent or such Bank hereunder, the Agent or such Bank may pay such Taxes and, upon receipt of notice from such Bank within 30 days after such payment, the Borrower will promptly pay such additional amounts (including any penalties, interest or expenses) as is necessary in order that the net amount received by such person after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount such person would have received had no such Taxes been asserted.

(b) If the Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Agent, for the account of the respective Banks, the required receipts or other required documentary evidence, the Borrower shall indemnify the Banks for any incremental Taxes, interest or penalties that may become payable by any Bank as a result of any such failure.

(c) Each Bank that is not a United States person as defined in Section 7701(a)(3) of the Code (a "*Non-U.S. Bank*") shall deliver to the Borrower and the Agent two copies of either U.S. Internal Revenue Service Form W-8 BEN or Form W-8 ECI, or any subsequent versions thereof or successors thereto properly completed and duly executed by such Non-U.S. Bank claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the Borrower under this Agreement and the DSR Notes. Such forms shall be delivered by each Non-U.S. Bank on or before the date it becomes a party to this Agreement. In addition, each Non-U.S. Bank shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Bank. Each Non-U.S. Bank shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). The Borrower shall not be required to increase any such amounts payable to any Non-U.S. Bank with respect to any Taxes (i) that are attributable to such Non-U.S. Bank's failure to comply with the requirements of this Section 2.17(c) or (ii) that are United States withholding taxes imposed on amounts payable to such Bank at the time the Bank becomes a party to this Agreement, except to the extent that such Bank's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower with respect to such Taxes pursuant to Section 2.17(a). Notwithstanding any other provision of this Section 2.17(c), a Non-U.S. Bank shall not be required to deliver any form pursuant to this Section 2.17(c) that such Non-U.S. Bank is not legally able to deliver.

SECTION 2.18 *Change of Law.* (a) Notwithstanding any other provision of this Agreement, if any Regulatory Change, or compliance by any Bank with any Regulatory Change, makes it unlawful or impossible for any Bank to make, maintain or continue its proportionate interest in any Debt Service Reserve Letter of Credit or DSR Loan (or commitments therefor), then such Bank shall promptly give notice together with evidence thereof to the Borrower and the Agent, and the Borrower shall pay forthwith all amounts outstanding, accrued or payable under this Agreement to such Bank and cause such Bank to be released from all obligations of such Bank under this Agreement.

(b) A Bank shall (consistent with legal and regulatory restrictions) designate a different lending office for the DSR Loans (or commitments therefor) or its participation in the Debt Service Reserve Letter of Credit affected pursuant to this *Section 2.18* before giving any notice to the Borrower and the Agent pursuant to this *Section 2.18* if such designation will avoid the need for giving such notice and will not, in the sole opinion of such Bank, be disadvantageous to such Bank, except that such Bank shall have no obligation to designate a lending office located in the United States of America. If Borrower so requests within ten (10) days of receipt of the notice referred to above (which notice is based on circumstances not generally applicable to United States or foreign lenders making loans of the types contemplated hereunder), such Bank shall (consistent with legal and regulatory restrictions) comply with *Section 2.20* hereof.

SECTION 2.19 *Non-Availability.* (a) If at any time dollar deposits in the principal amount of any Bank's proportionate interest in, or obligation under, any DSR Loan bearing interest at the LIBOR Rate are not available to such Bank in the London interbank market for the next Interest Period, such Bank shall so notify the Agent, who shall so notify the Borrower, and the obligation of such affected Bank to make or continue or to convert DSR Loans into DSR Loans bearing interest based on the LIBOR Rate shall be immediately suspended and during such suspension be converted into an obligation to do the same with respect to DSR Loans bearing interest at the Adjusted Base Rate; *provided, however,* that outstanding DSR Loans bearing interest at the LIBOR Rate shall be converted into DSR Loans bearing interest at the Adjusted Base Rate on the last day of the then current Interest Period applicable to such DSR Loans.

(b) If at any time the Interest Rate then in effect based on the LIBOR Rate does not adequately and fairly reflect, in the reasonable judgment of any Bank, the cost for such Bank of advancing or maintaining its respective proportionate interest in any DSR Loan bearing interest at the LIBOR Rate during any Interest Period, then such Bank shall notify the Agent, who shall so notify the Borrower, and interest on such Bank's proportionate share of the DSR Loans shall for any subsequent Interest Period accrue at the Adjusted Base Rate.

(c) If the Borrower so requests after the suspension of a Bank's obligation to make DSR Loans bearing interest at the LIBOR Rate under this *Section 2.19* for at least ten (10) consecutive Business Days based on circumstances not generally applicable to United States or foreign lenders making loans of the types contemplated hereunder, such Bank shall (consistent with legal and regulatory restrictions) comply with *Section 2.20* hereof.

SECTION 2.20 *Assignments by Banks.* (a) If (i) a Bank is required to comply with this *Section 2.20* after a request from the Borrower pursuant to *Section 2.17, 2.18* or *2.19* or (ii) the Borrower requests that the provisions of this *Section 2.20* apply to a Bank within ten (10) days after it receives a notice from the Agent that (A) such Bank has failed to make available to the Agent its portion of any DSR Loan on the date required to be made available to the Agent pursuant to this Agreement after the Agent has made written demand upon such Bank for such payment or (B) such Bank has provided the Agent with notice that such Bank shall not make available to the Agent such portion of any DSR Loan required to be made available to the Agent pursuant to this Agreement or (C) such Bank has failed to reimburse the Agent pursuant to the terms of this Agreement, such Bank shall assign all or a part of its proportionate share of the DSR Loans and its commitment to make DSR Loans to a replacement Bank (which may be, but is not required to be, one of the other Banks) designated by the Borrower; *provided* that any assignment or transfer made by a Bank to a replacement Bank shall satisfy the following conditions: (i) the Borrower shall promptly pay when due all reasonable fees and expenses which such Bank incurs in connection with such transfer or assignment and (ii) any assignment of all or part of the DSR Loans or obligations shall be made without recourse, representation or warranty, and the Borrower shall cause the replacement Bank to pay to the Agent for the account of the assigning Bank in immediately available funds all amounts outstanding or payable under this Agreement to each Bank assigning its interest in the DSR Loans.

(b) Each Bank agrees that as promptly as practicable after it has made a determination to make a claim for amounts under *Section 2.8(b), 2.15, 2.16* or *2.17* with respect to events or conditions arising after the date hereof, it shall notify the Borrower of the same and use commercially reasonable efforts (consistent with legal and regulatory restrictions and such Bank's internal policies) to mitigate the effect of such provisions on the Borrower, including (i) in the case of *Section 2.15, 2.16* or *2.17*, efforts to make, fund, issue or maintain its DSR Loans or the Debt Service Reserve Letter of Credit, as relevant, through another office of such Bank and (ii) in the case of *Section 2.8(b)*, efforts to reemploy amounts held by such Bank, (x) if as a result thereof the additional moneys which would otherwise be required to be paid to such Bank pursuant to any of such provisions of this Agreement would be reduced, or the illegality or other adverse circumstances which would otherwise require a prepayment of such DSR

Loans or the suspension of the issuance of, or of drawings under, the Debt Service Reserve Letter of Credit pursuant to any of such provisions would cease to exist, and (y) if, as determined by such Bank in good faith, the making, funding, issuing or maintaining of such DSR Loan or the Debt Service Reserve Letter of Credit, or the making of drawings under the Debt Service Reserve Letter of Credit through such other office would not otherwise adversely affect such Bank.

SECTION 2.21 *Reduction in Commitments/DSR Loans.* The Borrower shall have the right to refinance all Commitments and all of the outstanding DSR Loans, if any, in whole but not in part, without premium or penalty upon at least ten (10) days' prior written notice to the Agent; *provided, however,* that the Borrower agrees to indemnify each Bank and hold each Bank harmless from any direct loss (but excluding any indirect, consequential or incidental loss or damage), cost or reasonable out-of-pocket expense which such Bank incurs as a result of a refinancing pursuant to this *Section 2.21* of any DSR Loan bearing interest at the LIBOR Rate on a date which is not the last day of an Interest Period applicable thereto. In any refinancing of such Commitments, the Borrower shall cause the Debt Service Reserve Letter of Credit to be released and returned to the Issuing Bank.

SECTION 2.22 *Right of Set-off.* The Borrower hereby authorizes each Bank, upon the occurrence and during the continuance of any Event of Default, at any time and from time to time, without notice to the Borrower or any Person other than the Lease Indenture Trustee (any such notice being hereby expressly waived by the Borrower to the extent it may legally do so) to set off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and other indebtedness at any time owing, by such Bank in any of its offices, wherever located (whether such deposits or indebtedness be in dollars or in any other currency), to or for the credit or the account of the Borrower against any and all of the Obligations and liabilities of the Borrower now or hereafter existing under this Agreement, irrespective of whether or not the Agent shall have made any demand hereunder or thereunder and although such Obligations may be contingent or unmatured. The Banks agree to promptly notify the Borrower of such set-off and application.

SECTION 2.23 *Minimum Amounts.* (a) Anything in this Agreement to the contrary notwithstanding, the aggregate principal amount of DSR Loans bearing interest based on the LIBOR Rate shall be in an amount at least equal to $1,000,000 or in multiples of $1,000,000 in excess thereof and, if any DSR Loans bearing interest based on the LIBOR Rate would otherwise be in a lesser principal amount for any period, such DSR Loans shall bear interest based on the Adjusted Base Rate during such period.

(b) Not more than six (6) DSR Loans bearing interest at the LIBOR Rate may be outstanding at one time.

ARTICLE III

CONDITIONS PRECEDENT

SECTION 3.1 *Conditions Precedent to Issuance of Debt Service Reserve Letter of Credit.* The obligation of the Issuing Bank to issue the Debt Service Reserve Letter of Credit is subject to the follow conditions precedent:

(a) the Agent shall have received the following, each dated on or before the Closing Date unless otherwise specified below, in form and substance satisfactory to the Agent and in the number of originals or photostatic copies reasonably required by the Agent:

(i) this Agreement and the DSR Notes duly executed by the Borrower; and

(ii) a certificate of the Lease Indenture Trustee as to the incumbency and specimen signatures of the officers of the Lease Indenture Trustee authorized to make drawings, to

execute and present certificates under the Debt Service Reserve Letter of Credit, and otherwise to communicate with the Agent with respect thereto;

(b) concurrently with the issuance of the Debt Service Reserve Letter of Credit, the Lease Indenture and the Security Documents shall be in full force and effect;

(c) the Borrower shall have paid all accrued fees and expenses (as provided in *Sections 2.5* and *9.4*) of the Agent and the Banks (including the reasonable accrued fees and disbursements of counsel to the Agent and the Banks), to the extent that one or more statements for such fees and expenses have been presented for payment;

(d) the Agent shall have received such other approvals, opinions, evidence and documents (including financial statements of the Borrower) as it may reasonably request and which are customary for transactions of the type contemplated by this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

(a) The Borrower hereby makes for the benefit of the Agent and the Banks all of the representations and warranties of the Borrower made in Section 3.2 of the Participation Agreement (unless stated to be given as of an earlier date, in which case such representation and warranty shall be true and correct only as of such earlier date), in the form of such representations and warranties as they exist on the date of this Agreement and as they may hereafter be amended from time to time, but only to the extent that the incorporation of any such amendments into this Agreement has been consented to in accordance with *Section 9.1*. Such representations and warranties are incorporated herein by reference as if set forth at length in this Agreement; *provided* that each reference to the term "Agreement" therein shall be deemed to be a reference to this Agreement; and with any other appropriate substitutions designed to bestow upon the Agent and the Banks the benefit of such representations and warranties in the same manner and to the same extent bestowed upon the other parties under the Credit Agreement.

(b) *Financial Information.*

(i) The balance sheet of the Borrower as at Closing Date, and the related statements of income and cash flows of the Borrower, copies of which have been furnished to the Agent and the Banks, present fairly the consolidated financial condition of the Borrower as at the dates thereof and the results of their operations for the periods then ended.

(c) *Regulations T, U and X.* No Borrower is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Debt Service Reserve Letter of Credit will be used for a purpose which violates, or would be inconsistent with, F.R.S. Board Regulation T, U or X. Terms for which meanings are provided in F.R.S. Board Regulation T, U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

(d) *Investment Company Act.* The Borrower is not subject to any regulation as an "investment company" subject to the Investment Company Act of 1940, as amended.

(d) *The Obligations.* The Obligations are senior secured Indebtedness of the Borrower ranking at least *pari passu* with all other secured Indebtedness of the Borrower.

(e) *Pension and Welfare Plans.* The Borrower has no Pension Plans.

(f) *Subsidiaries.* The Borrower has no Subsidiaries or investments in other Persons (other than the Lessor Estate).

ARTICLE V

COVENANTS

So long as any Commitment is in effect, the Debt Service Reserve Letter of Credit is outstanding or the Obligations remain unpaid, unless compliance has been waived in accordance with *Section 9.1*:

(a) all of the covenants of the Borrower contained in *Article VII* of the Participation Agreement and *Article V* and *Article VI* of the Lease Indenture, in the form of such covenants as they exist as of the date of this Agreement and as they may hereafter be amended from time to time, but only to the extent that the incorporation of any such amendments into this Agreement

has been consented to in accordance with *Section 9.1*, are hereby incorporated and made applicable by reference as if set forth at length in this Agreement; *provided* that each reference to the term "Participation Agreement" or "Lease Indenture" therein shall be deemed to be a reference to this Agreement; each reference to the Lease Indenture Trustee or Security Agent therein shall be deemed to be a reference to the Agent and the Banks; and with any other appropriate substitutions designed to bestow upon the Agent and the Banks the benefit of such covenants in the same manner and to the same extent as in the Participation Agreement and the Lease Indenture, and the Borrower shall observe and perform all of such incorporated covenants; and

(b) the Borrower will not, without the prior written approval of the Required Banks, terminate, amend or otherwise modify any provision of any Operative Document if such termination, amendment or other modification would affect the priority of payments from the Revenue Account under the Amended and Restated Security Deposit Agreement in a manner adverse to the Agent or any Bank, amend the Rent Payment Dates in a manner adverse to the Agent or any Bank, or change the voting requirements under the Lease Indenture in a manner adverse to the Agent or any Bank.

ARTICLE VI

DEFAULTS AND REMEDIES

SECTION 6.1 *Events of Default.* Each of the following shall constitute an "Event of Default" hereunder:

(a) any amount in respect of costs and expenses due by the Borrower under this Agreement shall not be paid in full within thirty (30) Business Days following delivery of notice thereof to the Borrower

(b) any amount in respect of fees due by the Borrower under this Agreement shall not be paid in full within five (5) Business Days following delivery of notice thereof to the Borrower; or

(c) any amount due by the Borrower in respect of interest on any DSR Loan shall not be paid in full within five (5) Business Days after its due date; or

(d) any amount due by the Borrower in respect of principal of any DSR Loan shall not be paid to the Agent in full within five (5) Business Days after its due date; or

(e) any representation or warranty made by or on behalf of the Borrower in this Agreement (including by incorporation by reference) or in any certificate furnished to the Agent or the Banks shall prove to have been false or misleading in any respect as of the time made, confirmed or furnished and the inaccuracy has had or is reasonably expected to have a Material Adverse Effect and such misrepresentation shall continue uncured for thirty (30) or more days from the date an Authorized Officer of the Borrower obtains actual knowledge thereof;

(f) the Borrower shall fail to perform or observe any covenant or agreement contained in (i) *Section 7.2, 7.4, 7.6* or *7.11* of the Participation Agreement and Section 6.1 of the Lease Indenture (as incorporated into paragraph (a) of *Article V* of this Agreement) or (ii) paragraph (b) of *Article V* of this Agreement, and such failure shall continue uncured for thirty (30) or more days after an Authorized Officer of the Borrower has actual knowledge of such failure; or

(g) the Borrower shall fail to perform or observe any of its covenants contained (including by incorporation by reference) in any other provision of this Agreement (other than those referred to in paragraphs (a), (b), (c) and (e), above) and such failure shall continue uncured for sixty (60) or more days after an Authorized Officer of the Borrower has actual knowledge of such failure;

provided that if the Borrower commences and diligently pursues efforts to cure such default within such sixty (60) day period, the Borrower may continue to effect such cure of the default (and such default shall not be deemed as "Event of Default" hereunder) for an additional thirty (30) days so long as the Borrower is diligently pursuing such cure; or

(h) an "Event of Default" under any of paragraphs (a), (b), (c), (d) or (g) of *Section 7.1* of the Lease Indenture shall occur and be continuing; or

(i) an "Event of Default" under any of paragraphs (e) or (f) of *Section 7.1* of the Lease Indenture shall occur and be continuing.

SECTION 6.2 *Remedies.* If any Event of Default (other than an Event of Default specified in *Section 6.1(h)*) hereof shall have occurred and be continuing, then the Agent shall at the request of the Required Banks take one or more of the following actions: (i) by notice to the Borrower and the Lease Indenture Trustee, declare the Commitments to be terminated, whereupon the same shall forthwith terminate, and, after giving thirty (30) days' written notice to the beneficiary of the outstanding Debt Service Reserve Letter of Credit, terminate the Debt Service Reserve Letter of Credit; or (ii) declare the Obligations and all other amounts payable under this Agreement and the DSR Notes to be immediately due and payable, whereupon the Obligations, all such interest and all such amounts shall become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; or (iii) terminate the ability of the Borrower to cause reinstatement of the Outstanding Amount through the reimbursement of Drawings, as contemplated by the terms hereof. If any Event of Default specified in *Section 6.1(h)* hereof shall have occurred and be continuing, the Commitments shall terminate automatically, the full unpaid amount of any outstanding Obligations and any other amounts payable under this Agreement and the DSR Notes shall be immediately due and payable, and the ability of the Borrower to cause reinstatement of the Outstanding Amount through reimbursement of Drawings shall terminate automatically, in each case without any further action, notice, demand or presentment.

ARTICLE VII

CHARACTER OF OBLIGATIONS

SECTION 7.1 *Obligations Absolute.* The Obligations shall be absolute, unconditional and irrevocable and shall not be affected or impaired under any circumstances whatsoever, including the following circumstances:

(a) any lack of validity or enforceability of any provision of any Operative Document;

(b) any amendment or waiver of, or any consent to departure from, any provision of any Operative Document;

(c) the existence of any claim, setoff, defense or other right that the Borrower may have at any time against the Lease Indenture Trustee, any other beneficiary of the Debt Service Reserve Letter of Credit (or any Person for whom the Lease Indenture Trustee or any such beneficiary may be acting), any Bank, the Agent or any other Person, whether in connection with any Financing Document, the transactions contemplated thereby or any unrelated transaction;

(d) any statement or signature in any certificate or other document presented under the Debt Service Reserve Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect, or any such statement being untrue or inaccurate in any respect whatsoever;

(e) any exchange, release or nonperfection of any Collateral or other collateral, or any release, amendment or waiver of or consent to departure from any Financing Document or any guaranty for any of the Obligations;

(f) payment by a Bank under the Debt Service Reserve Letter of Credit against presentation of a draft or certificate that does not comply with the terms of the Debt Service Reserve Letter of Credit;

(g) any issuance of additional Permitted Indebtedness; and

(h) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

SECTION 7.2 *No Personal Liability; Termination.* Except as may otherwise specifically be provided in the Lease Indenture or in the Participation Agreement, all payments to be made in respect of the Debt Service Reserve Letter of Credit, the DSR Notes or under this Agreement shall be made only from the Indenture Estate, and the Owner Lessor shall have no obligation for the payment thereof except to the extent that there shall be sufficient income or proceeds from the Indenture Estate to make such payments in accordance with the terms of

Section 3 of the Lease Indenture, and the Owner Participant shall not have any obligation for payments in respect of the Debt Service Letter of Credit, the DSR Notes or under this Agreement. The Issuing Bank, the Agent, and each Bank hereby each agree that it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to the Issuing Bank, the Agent or such Bank, as the case may be, as herein provided and that, except as expressly provided in the Lease Indenture or the Participation Agreement, (x) none of the Owner Participant, the Trust Company, the Security Agent, or the Lease Indenture Trustee, or any Affiliate of any thereof, shall be personally liable to the Issuing Bank, the Agent or such Bank for any amounts payable hereunder, under such DSR Note or for any performance to be rendered under this Agreement, any DSR Note or any Indenture Estate Document or for any liability under this Agreement, any DSR Note or any Indenture Estate Document, and (y) such amounts shall be non-recourse to the assets of each of the Owner Participant, the Security Agent, the Trust Company or the Lease Indenture Trustee, or any Affiliate of any thereof. Nothing contained in this *Section 7.2* limiting the liability of the Owner Lessor shall derogate from the right of the Issuing Bank, the Agent or the Banks to proceed against the Indenture Estate in accordance with the Lease Indenture to secure and enforce all payments and obligations due hereunder and under DSR Notes.

In furtherance of the foregoing, to the fullest extent permitted by law, the Issuing Bank, the Agent and each Bank (and each assignee of such Person), by their acceptance thereof agrees, as a condition to its being secured under the Lease Indenture, that neither they nor the Lease Indenture Trustee will exercise any statutory right to negate the agreements set forth in this *Section 7.2*.

Nothing herein contained shall be interpreted as affecting the representations, warranties or agreements of the Owner Lessor expressly made set forth in the Participation Agreement or the Lessor LLC Agreement.

The Issuing Bank, the Agent and each Bank acknowledge and agree that this Agreement (and the DSR Notes) shall terminate and shall be of no further force or effect upon the termination of the Lease Indenture in accordance with the proviso to Section 12.1 thereof (including, without limitation, upon any sale or other final disposition by the Security Agent of all property constituting part of the Indenture Estate and the final distribution by the Security Agent of all moneys or other property or proceeds constituting part of the Indenture Estate in accordance with the terms thereof).

SECTION 7.3 *Limited Liability of Agent and Banks.* As among the Borrower, the Agent and the Banks, the Borrower assumes all risks of the acts or omissions of the beneficiaries of the Debt Service Reserve Letter of Credit with respect to the use of the Debt Service Reserve Letter of Credit. Neither the Agent nor any Bank nor any of their respective officers, directors, employees or agents shall be liable or responsible for: (a) the use that may be made of the Debt Service Reserve Letter of Credit or any acts or omissions of any beneficiaries of the Debt Service Reserve Letter of Credit in connection with the Debt Service Reserve Letter of Credit; (b) the form, validity, sufficiency, accuracy, genuineness

or legal effect of any document submitted in connection with the Debt Service Reserve Letter of Credit or of any endorsement thereon, even if such document or endorsement should prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (c) payment by the Issuing Bank against presentation of any document that does not comply with the terms of the Debt Service Reserve Letter of Credit, including failure of any document to bear any reference or adequate reference to the Debt Service Reserve Letter of Credit; or (d) any other circumstance whatsoever in making, delaying to make or failing to make payment under the Debt Service Reserve Letter of Credit; *provided, however,* that the Borrower shall have a claim against the Issuing Bank, and the Issuing Bank shall be liable to the Borrower, to the extent of any direct, as opposed to consequential, damages suffered by the Borrower that the Borrower proves were the result of the Issuing Bank's willful misconduct or gross negligence in paying under the Debt Service Reserve Letter of Credit or the Issuing Bank's willful or grossly negligent failure to pay under the Debt Service Reserve Letter of Credit after the presentation to it by the beneficiary of a draft and certificate strictly complying with the terms and conditions of the Debt Service Reserve Letter of Credit (unless the Issuing Bank in good faith believed itself (based upon an opinion of counsel) to be prohibited by law or legal authority from making such payment). In furtherance and not in limitation of the foregoing, the Issuing Bank may accept any document that appears on its face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

ARTICLE VIII

SECTION 8.1 *Authorization and Action.* Each Bank hereby appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Agent by the terms hereof, together with such powers as are reasonably incidental thereto. As to any matters not expressly provided for by the Letter of Credit Documents (including enforcement of and collection under any Letter of Credit Document), the Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Banks, and such instructions shall be binding upon all Banks and all holders of DSR Notes; *provided, however,* that the Agent shall not be required to take any action that exposes the Agent to personal liability or that is contrary to any Letter of Credit Document or Applicable Law. In performing its function and duties hereunder, Agent shall act solely as the agent of the Banks and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower or any other party to any Financing Document.

SECTION 8.2 *Agent's Reliance, Etc.* Neither the Agent nor any of its directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with any Letter of Credit Document, except for its or their own gross negligence or willful misconduct. Without limitation of the generality of the foregoing, the Agent (a) may treat any Bank that has signed a Commitment Transfer Supplement as the holder of the applicable portion of the Obligations; (b) may consult with legal counsel (including counsel for the Borrower or any Affiliate thereof), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (c) makes no warranty or representation to any Bank and shall not be responsible to any Bank for any statements, warranties or representations made in or in connection with any Financing Document; (d) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Financing Document on the part of the Borrower or any Affiliate or to inspect the property (including the books and records) of the Borrower or any Affiliate thereof; (e) shall not be responsible to any Bank for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of any Financing Document

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or any other instrument or document furnished pursuant hereto or thereto; and (f) shall incur no liability under or in respect of any Financing Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopier or otherwise) believed by it to be genuine and signed or sent by the proper party or parties.

SECTION 8.3 *Issuing Bank and Affiliates.* With respect to its Commitment and participation in the Debt Service Reserve Letter of Credit, the Issuing Bank shall have the same rights and powers under this Agreement as any other Bank and may exercise the same as though it were not the Issuing Bank or the Agent; and the term "Bank" or "Banks" shall, unless otherwise expressly indicated, include the Issuing Bank in its individual capacity. The Issuing Bank and the Agent and their Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with, the Borrower, any Affiliate thereof and any Person that may do business with or own securities of the Borrower or any Affiliate thereof, all as if the Issuing Bank and the Agent were not the Issuing Bank and the Agent and without any duty to account therefor to the Banks.

SECTION 8.4 *Bank Credit Decision.* Each Bank acknowledges that it has, independently and without reliance on the Agent or any other Bank or the Issuing Bank and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Bank also acknowledges that it will, independently and without reliance on the Agent or any other Bank or the Issuing Bank and based on such documents and information as it deems appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

SECTION 8.5 *Indemnification.* The Banks agree to indemnify the Agent (to the extent not promptly reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to the respective principal amounts of the Obligations then held by each of them and/or the respective amounts of their Commitments, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever that may at any time (including

without limitation at any time following the payment of any Obligations or termination of this Agreement) be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of any Financing Document or any action taken or omitted by the Agent under any Financing Document; *provided, however,* that no Bank shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from the Agent's gross negligence or willful misconduct. Without limitation of the foregoing, each Bank agrees to reimburse the Agent promptly upon demand for its ratable share of any costs and expenses payable by the Borrower under *Section 9.4*, to the extent that the Agent is not reimbursed for such costs and expenses by the Borrower.

SECTION 8.6 *Successor Agent.* The Agent may resign at any time by giving written notice thereof to the Banks and the Borrower and may be removed at any time with or without cause with the written approval of the Required Banks. Upon any such resignation or removal, the Required Banks shall have the right to appoint a successor Agent with the consent of the Borrower, which shall not be unreasonably withheld. If no successor Agent has been so appointed by the Required Banks, and has accepted such appointment, within thirty (30) days after the retiring Agent's giving of notice of resignation or the Required Banks' removal of the retiring Agent, then the retiring Agent may, on behalf of the Banks, appoint a successor Agent with the consent of the Borrower (which shall not be unreasonably withheld), which successor Agent shall be a commercial bank organized under the laws of the United States of America or of any state thereof and having a combined capital and surplus of at least five hundred million dollars ($500,000,000). Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under the Financing Documents. After any retiring Agent's

resignation or removal hereunder as Agent, the provisions of this *Article VIII* shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement.

SECTION 8.7 *Collateral.* (a) Except as expressly provided herein, the Agent shall have no duty to take any affirmative steps with respect to the collection of amounts payable in respect of the Collateral. The Agent shall incur no liability as a result of any private sale of the Collateral.

(b) The Banks hereby consent, and agree upon written request by the Agent to execute and deliver such instruments and other documents as the Agent may deem desirable to confirm such consent, to the release of the Lien of the Lease Indenture, including any release in connection with any sale, transfer or other disposition of the Collateral or any part thereof, in accordance with the Financing Documents.

ARTICLE IX

MISCELLANEOUS

SECTION 9.1 *Amendments, Etc.* No amendment or waiver of any provision of this Agreement or any DSR Note, or consent to any departure by the Borrower therefrom, shall be effective unless in writing and signed or consented to (in writing) by the Required Banks (and, in the case of amendments, the Borrower), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no amendment, waiver or consent shall, unless in writing and signed or consented to (in writing) by all of the Banks, do any of the following: (a) waive any of the conditions specified in *Article III*; (b) increase the Commitments of the Banks or subject the Banks to any additional obligations; (c) reduce the principal of, or interest on, the DSR Loans or any fees or other amounts payable hereunder; (d) postpone any date fixed for (i) payment of principal of, or interest on, the DSR Loans, (ii) reimbursement of Drawings under the Debt Service Reserve Letter of Credit or (iii) payment of fees or other amounts payable hereunder; (e) change the percentage of the Commitments or of the DSR Loans outstanding, or the number of Banks, required for the Banks or any of them to take any action hereunder or (f) amend this *Section 9.1*; and *provided further, however*, that no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Persons required above to take such action, affect the rights or duties of the Agent under this Agreement or any other Letter of Credit Document.

SECTION 9.2 *Notices, Etc.* All notices and other communications provided for hereunder shall be in writing (including by telecopier) and shall be mailed, telecopied or delivered, if to the Borrower, to it c/o Wells Fargo Bank Northwest, National Association, 213 Court Street, Middletown, CT 06457, Attention: Corporate Trust Services, telephone (860) 704-6216, telecopy (860) 704-6219 with a copy to: 79 South Main Street, Third Floor, Salt Lake City, UT 84111, Attention: Corporate Trust Services, telephone (801) 246-5630, telecopy (801) 246-5053; if to Westdeutsche Landesbank Girozentrale, New York Branch, in its capacity as the Agent, the Issuing Bank or a Bank, to it at 1211 Avenue of the Americas, New York, New York 10036, telephone (212) 852-6331, telecopy (212) 597-8388, Attention: Structural Finance/Energy; if to Credit Suisse First Boston, New York Branch, in its capacity as a Bank, to it at Eleven Madison Avenue, New York, New York 10010, telephone (212) 325-9126, telecopy (212) 325-8321, Attention: Peter Ryan; if to any other Bank, to it at the address or telecopy number set forth below its name in the Commitment Transfer Supplement by which it became a party hereto; or, as to each party, to it at such other address or telecopy number as designated by such party in a written notice to the other parties. All such notices and communications shall be deemed received, (a) if personally delivered, upon delivery, (b) if sent by first-class mail, on the third Business Day following deposit into the mails and (c) if sent by telecopier, upon acknowledgment of receipt thereof by the recipient, except that notices and communications to the Agent pursuant to *Article II* or *VIII* shall not be effective until received by the Agent.

SECTION 9.3 *No Waiver; Remedies.* No failure on the part of any Bank or the Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, and no

single or partial exercise of any such right shall preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

SECTION 9.4 *Costs and Expenses.* The Borrower agrees to pay on demand on the Monthly Transfer Date immediately following such demand (provided such demand is made at least five (5) Business Days thereto, if not, on the next Monthly Transfer Date) (a) all reasonable costs and expenses of the Agent and the Banks in connection with the preparation, execution, delivery, syndication, administration, modification and amendment of this Agreement, the DSR Notes and the other documents to be delivered hereunder, including (i) the reasonable fees and out-of-pocket expenses of one counsel for the Banks with respect thereto and with respect to advising the Agent and the Banks as to their rights and responsibilities, or the perfection, protection or reservation of rights or interests, under this Agreement, the other Financing Documents and the other documents to be delivered hereunder and (ii) the reasonable fees and expenses of any consultants, auditors or accountants engaged by the Agent with the written consent (which shall not be unreasonably withheld) of the Borrower pursuant hereto and (b) all reasonable costs and expenses of the Agent and the Banks (including reasonable counsel fees and expenses of the Agent and the Banks) in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement, the other Financing Documents and the other documents to be delivered hereunder, whether in any action, suit or litigation, any bankruptcy, insolvency or similar proceeding or otherwise. In addition, the Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of the aforementioned documents, and the Borrower agrees to indemnify and hold the Agent and the Banks harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay any of the foregoing to the extent the Borrower had notice thereof.

SECTION 9.5 *Application of Moneys.* If any sum paid or recovered in respect of the Obligations is less than the amount then due, the Agent may apply that sum to principal, interest, fees or any other amount due under this Agreement in such proportions and order and generally in such manner as the Agent shall reasonably determine.

SECTION 9.6 *Severability.* Any provision of this Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions of this Agreement or affecting the validity, enforceability or authorization of such provision in any other jurisdiction.

SECTION 9.7 *Limitation of Liability.* (a) Notwithstanding anything to the contrary contained in this Agreement and the Financing Documents, the liability and obligation of the Borrower to perform and observe and make good the obligations contained in this Agreement and the Security Documents shall not be enforced by any action or proceeding wherein damages or any money judgment or any deficiency

judgment or any judgment establishing any personal obligation or liability shall be so sought, collected or otherwise obtained, in each such case, against any officer, director, member, or shareholder or related Person of the Borrower or any Secured Party, and the Agent, for itself and its successors and assigns, and on behalf of the Banks, irrevocably waives any and all right to sue for, seek or demand any such damages, money judgment, deficiency judgment or personal judgment against any officer, director, member, or shareholder or related Person of the Borrower under or by reason of or in connection with this Agreement and agrees to look solely to the Indenture Estate (as provided in *Section 7.2*) for the enforcement of such liability and obligation of the Borrower.

(b) Further, no director, officer, employee, incorporator, member, shareholder or Affiliate of the Owner Lessor, as such, shall have any liability for any obligations of the Owner Lessor under the Debt Service Letter of Credit, the DSR Notes, this Agreement or for any claim based on, in respect of, or by reason of, such obligations or their creation. The Issuing Bank, the Agent and each Bank hereby waives

and releases all such liability. The waiver and release are part of the consideration for the Owner Lessor entering into this Agreement. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Commission that such a waiver is against public policy.

(c) The Owner Manager is executing this Agreement and each DSR Note on behalf of the Owner Lessor solely in its capacity as Owner Manager under the Lessor LLC Agreement and not in its individual capacity and in no case shall the Trust Company (or any successor entity acting as Owner Manager under the Lessor LLC Agreement) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of the Owner Lessor or the Owner Manager hereunder, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through, or under such party; *provided, however*, that the Trust Company (or any such successor Owner Manager) shall be personally liable hereunder for its own gross negligence or willful misconduct or for its breach of its covenants, representations and warranties contained herein, to the extent covenanted or made in its individual capacity.

SECTION 9.8 *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the Borrower, the Agent and the Banks and their respective successors and assigns, except that the Borrower shall not have the right to assign any of its rights and obligations hereunder without the prior written consent of the Required Banks, and, except as provided in *Section 9.9*, no Bank other than the Issuing Bank shall have the right to assign any of its rights and obligations hereunder.

SECTION 9.9 *Assignments and Participations.* (a) Any Bank may at any time (with the consent of the Agent, such consent not to be unreasonably withheld or delayed, and the consent of the Issuing Bank, such consent not to be unreasonably withheld or delayed) sell to one or more banks or other entities (a "*Purchasing Bank*") all or any part of its rights and obligations under this Agreement and the DSR Notes (which, except in the case of an assignment to a Person that, immediately before such assignment, was a Bank, shall be equal to at least $1,000,000) pursuant to a Commitment Transfer Supplement executed by such Purchasing Bank, such transferor Bank, the Agent and the Issuing Bank. Upon (x) such execution of such Commitment Transfer Supplement, and (y) delivery of a copy thereof to the Borrower and payment of the amount of its participation to the Agent or such transferor Bank, such Purchasing Bank shall for all purposes be a Bank party to this Agreement and shall have all the rights and obligations of a Bank under this Agreement, to the same extent as if it were an original party hereto with the commitment percentage as set forth in such Commitment Transfer Supplement, which shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing Bank and the resulting adjustment of commitment percentages arising from the purchase by such Purchasing Bank of all or a portion of the rights and obligations of such transferor Bank under this Agreement and the DSR Notes. Upon the consummation of any transfer pursuant to this *Section 9.9*, the transferor Bank, the Agent and the Borrower shall make appropriate arrangements so that, if required, replacement DSR Notes are issued to such transferor Bank and new DSR Notes or, as appropriate, replacement DSR Notes, are issued to such Purchasing Bank, in each case, in principal amounts reflecting their Commitments.

(b) Any Bank may, from time to time, sell or offer to sell participating interests in any DSR Loans owing to such Bank, any DSR Notes held by such Bank, any Commitment of such Bank or any other interests and obligations of such Bank hereunder, to one or more banks or other entities (each, a "*Participant*"), on such terms and conditions as may be determined by the selling Bank, without the consent of or notice

to the Borrower, and the grant of such participation shall not relieve any Bank of its obligations, or impair the rights of any Bank, hereunder. In the event of any such sale by a Bank of a participating interest to a Participant, such Bank shall remain solely responsible for the performance of such Bank's obligations under this Agreement, such Bank shall remain the holder of any such DSR Notes for all purposes under this Agreement, the Borrower, the Agent and the Issuing Bank will continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations under this Agreement and such Bank shall retain the sole right and responsibility to exercise the rights of such Bank, and enforce the obligations of the Borrower, including, without

limitation, the right to approve any amendment, modification, supplement or waiver of any provision of any Letter of Credit Document and the right to take action under *Article VI* hereof, and such Bank shall not grant any such Participant any voting rights or veto power over any such action by such Bank under this Agreement (*provided* that such Bank may agree not to consent to any modification, amendment or waiver of this Agreement, without the consent of the Participant, that would alter the principal of or interest on the DSR Loans, postpone the date fixed for any payment of principal of or interest thereon or extend the term of any Commitment; *provided further* that if any Participant refuses to consent to any such modification, amendment or waiver of this Agreement, such Bank may purchase the participating interests from such non-consenting Participant). No Participant shall have any rights under this Agreement to receive payment of principal of or interest on any DSR Loan except through a Bank and as provided in this *Section 9.9*. The Borrower agrees that, upon the occurrence and during the continuance of any Event of Default, each Participant shall have the right of set-off in respect of its participating interest in amounts owing under this Agreement and any DSR Notes as set forth in *Section 2.22* hereof to the same extent as if the amount of its participating interest was owing directly to it as a Bank under this Agreement or any DSR Notes. The Borrower also agrees that each Participant shall be entitled to the benefits of *Sections 2.15, 2.16* and *2.17* hereof with respect to its participation granted hereunder; *provided* that no Participant shall be entitled to receive any greater amount pursuant to such Sections than the Bank transferring such participation would have been entitled to receive in respect of the amount of the participation transferred to such Participant had no such transfer occurred.

(c) Any Bank may, in connection with any assignment or participation or proposed assignment or participation pursuant to this *Section 9.9*, disclose to the Purchasing Bank or Participant or proposed Purchasing Bank or Participant any information relating to the Borrower furnished to such Bank by or on behalf of the Borrower; *provided, however*, that prior to any such disclosure, the Person receiving such disclosure shall sign such confidentiality agreements as is customary for financings of this kind.

SECTION 9.10 *Indemnification.* The Borrower agrees to indemnify and hold harmless the Agent and each Bank and, in their capacity as such, each of their respective officers, directors, shareholders, controlling persons, employees, agents and servants (each an "*Indemnified Party*") from and against any and all claims, damages, losses, liabilities, obligations, penalties, actions, causes of action, judgments, suits, costs, expenses or disbursements (including, without limitation, reasonable attorneys' and consultants' fees and expenses) (collectively, "*Damages*") whatsoever that such Indemnified Party may incur (or that may be claimed against such Indemnified Party by any Person) by reason of (a) any untrue statement or alleged untrue statement of any material fact concerning the Borrower or the Collateral, or the omission or alleged omission to state any fact concerning the Borrower or the Collateral necessary to make any such statement, in light of the circumstances under which it was made, not misleading; (b) the issuance and delivery of the DSR Notes; (c) the use of the proceeds of any Drawing; (d) any reasonable action taken by such Indemnified Party in protecting and enforcing the rights and remedies of the Agent and the Banks under the Financing Documents; (e) subject to *Section 7.3*, the execution, delivery or transfer of, or payment or failure to pay under, the Debt Service Reserve Letter of Credit; (f) any claim of any Person with respect to any finder's fee, brokerage commission or other similar sum due in connection with any Financing Document; or (g) any failure by the Borrower to comply with any environmental laws; *provided, however*, that the Borrower shall not be required to indemnify an Indemnified Party for any Damages to the extent caused by such Indemnified Party's willful misconduct or gross negligence or breach of such Indemnified Party's obligations under any of the Letter of Credit Documents. If any action, suit or proceeding arising from any of the foregoing is brought against any Indemnified Party, such Indemnified Party shall promptly notify the Borrower in writing, enclosing a copy of all papers served, but the omission so to notify the Borrower of any such action shall not relieve the Borrower of any liability that it may have to any Indemnified Party otherwise than under this *Section 9.10 provided, however,* that the Borrower shall not be liable for any settlement of any such action effected without the Borrower's prior written consent. In case any such action shall be brought against any Indemnified

Party and it shall notify the Borrower of the commencement thereof, the Borrower shall be entitled to participate in and, to the extent that it shall wish, to assume the defense thereof with counsel reasonably satisfactory to such Indemnified Party, and after notice from the Borrower to such Indemnified Party of the Borrower's election so to assume the defense thereof. The Borrower shall not be liable to such Indemnified Party for any subsequent legal or other expenses attributable to such defense, except as provided below, other than reasonable costs of investigation subsequently incurred by such Indemnified Party in connection with the defense thereof. The Indemnified Party shall have the right to employ its own counsel in any such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the employment of counsel by such Indemnified Party has been authorized by the Borrower, (ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Borrower and the Indemnified Party in the conduct of the defense of such action (in which case the Borrower shall not have the right to direct the defense of such action on behalf of the Indemnified Party) or (iii) the Borrower shall not in fact have employed counsel reasonably satisfactory to the Indemnified Party to assume the defense of such action.

SECTION 9.11 *Further Assurances.* The Borrower agrees to take all actions as the Agent shall reasonably request in order to enable the Issuing Bank, the Banks and the Agent to be entitled to all of the benefits as Lease Indenture Secured Parties under the Lease Indenture and the Mortgage.

SECTION 9.12 *Governing Law.* THIS AGREEMENT AND THE DSR NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE CONFLICTS OF LAW PRINCIPLES THEREOF.

SECTION 9.13 *Consent to Jurisdiction and Venue.* Each of the parties hereto irrevocably (i) agrees that any suit, action or other legal proceeding arising out of or relating to this Agreement may be brought in any court of the State of New York or any court of the United States of America located in the State of New York, (ii) consents, for itself and in respect of its property, to the jurisdiction of each such court in any such suit, action or proceeding and (iii) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the parties agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this *Section 9.13* shall affect the right of any party hereto to serve legal process in any other manner permitted by law.

SECTION 9.14 *Headings.* The section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

SECTION 9.15 *Execution in Counterparts.* This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 9.16 *Waiver of Jury Trial.* THE BORROWER, THE AGENT THE ISSUING BANK AND THE BANKS HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO ANY OF THE CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY.

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

HOMER CITY OL1 LLC

By: WELLS FARGO BANK NORTHWEST,

NATIONAL ASSOCIATION, not in its individual capacity, except as expressly provided herein, but solely as Owner Manager

By: /s/ FRANK MCDONALD
Name: Frank McDonald
Title: Vice President

Commitment

WESTDEUTSCHE LANDESBANK GIROZENTRALE, NEW YORK BRANCH
as Agent, Issuing Bank and as a Bank

$5,302,590

By: /s/ JONATHAN BERMAN
Name: Jonathan Berman
Title: Managing Director

By: /s/ JARED BRENNER
Name: Jared Brenner
Title: Director

CREDIT SUISSE FIRST BOSTON, NEW YORK BRANCH, as a Bank

$5,302,590

By: /s/ PETER A. RYAN
Name: Peter A. Ryan
Title: Vice President

By: /s/ STEPHEN HUGHES
Name: Stephen Hughes
Title: Associate

EXHIBIT A

Form of Debt Service Reserve Letter of Credit

Westdeutsche Landesbank
Girozentrale, New York Branch
1211 Avenue of the Americas
New York, New York 10036

Letter of Credit No.22703100101WLB
Irrevocable Standby Credit

Date and Place of Issue:
New York, New York
December 7, 2001

Date and Place of Expiry:
Westdeutsche Landesbank
Girozentrale, New York Branch

New York, New York
April 1, 2002

Applicant:
Homer City OL1 LLC
Wells Fargo Bank Minnesota, N.A.
Corporate Trustee Services
MAC; N2691-090
213 Court Street
Middletown, CT 06457

Beneficiary:

The Bank of New York, as successor to
The United States Trust Company of
New York, as Lease Indenture Trustee
114 West 47th Street
25th Floor
New York, New York 10036
Attn: Christopher J. Grell

Amount: Up to an aggregate of Ten Million
Six Hundred Five Thousand One
Hundred Eighty United States Dollars
(US$ 10,605,180)

Credit Available With:
Westdeutsche Landesbank Girozentrale,
New York Branch

By: Against Presentation of the
Documents Detailed Herein Drawn
on Westdeutsche Landesbank
Girozentrale, New York Branch

Ladies and Gentlemen:

We irrevocably authorize you to draw on us for the account of the Applicant in any amount up to an aggregate amount not to exceed TEN MILLION SIX HUNDRED FIVE THOUSAND ONE HUNDRED EIGHTY UNITED STATES DOLLARS (US$10,605,180) (as reduced or reinstated from time to time as set forth in this Letter of Credit, the "*Outstanding Amount*") available against presentation of a dated drawing request drawn on Westdeutsche Landesbank Girozentrale, New York Branch, manually signed by an authorized officer of the Beneficiary (who is identified or purported to be as such) appropriately completed in the form of *Annex I* hereto and sent by such authorized officer.

The above drawing request and all communications with respect to this Letter of Credit shall be in writing, addressed to us at 1211 Avenue of Americas, New York, New York 10036, telephone (212) 852-6331, telecopy (212) 597-8388, Attention: Structured Finance/ Energy, referencing this Letter of Credit No. 22703100101WLB and presented to us by tested telex, delivery in person or facsimile transmission at such address, *provided* that the original of the above drawing request or such communications, as the case may be, shall be sent to us at such address by overnight courier for receipt by us within three (3) Business Days of the date of any such facsimile transmission.

If the drawing request is presented in compliance with the terms of this Letter of Credit to us at such address by 12:00 noon, New York City time, on any Business Day, payment will be made not later than 3:00 p.m., New York City time, on such day, and if such drawing request is so presented to us after 12:00 noon, New York City time, on any Business Day, payment will be made on the following Business Day not

later than 1:00 p.m., New York City time. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as may be designated by the Beneficiary in the applicable drawing request.

As used in this Letter of Credit, "Business Day" means any day on which commercial banks located in New York, New York are not required or authorized to remain closed.

This Letter of Credit shall expire on the date of expiry set forth above (the "*Stated Expiration Date*").

Notwithstanding the foregoing, we may at any time, subject to the provisions of the Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001, among the Applicant, the Banks party thereto and Westdeutsche Landesbank Girozentrale, New York Branch, as the Agent and the Issuing Bank (the "*Reimbursement Agreement*"), terminate this Letter of Credit by giving The Bank of New York, as successor to the United States Trust Company of New York, as Lease Indenture Trustee (in such capacity, the "*Lease Indenture Trustee*") under the Lease Indenture referred to in the Reimbursement Agreement, written notice thereof in the form of *Annex 2* hereto by delivery in person or facsimile transmission (with written confirmation by overnight courier for receipt by the Beneficiary within two (2) Business Days) addressed to The Bank of New York, as successor to the United States Trust Company of New York, at 114 West 47th Street, New York, New York 10036, Attn: Corporate Trust Department, 25th Floor, telephone (212) 852-1034, telecopy (212) 852-1625, at least thirty (30) days prior to termination, whereupon the Beneficiary is authorized to draw on us prior to such termination the Outstanding Amount of this Letter of Credit by presentation to us, in the manner and at the address specified in the fourth preceding paragraph, of a drawing request appropriately completed in the form of *Annex I* hereto and sent and signed by the Beneficiary's authorized officer.

This Letter of Credit is effective immediately.

In the event that a drawing request fails to comply with the terms of this Letter of Credit we shall provide the Beneficiary prompt notice of same stating the reasons therefor and shall upon your instructions hold any non-conforming drawing request and other documents at your disposal or return any non-conforming drawing request and other documents to the Beneficiary at the address set forth above. Upon being notified that the drawing was not effected in compliance with this Letter of Credit,

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the Beneficiary may attempt to correct such noncomplying drawing request in accordance with the terms of this Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, except for the drawing requests and certificates referred to herein.

This Letter of Credit may be transferred upon presentation to us of a signed transfer certificate in the form of *Annex 3* accompanied by this Letter of Credit, in which the Beneficiary irrevocably transfers to such transferee all of its rights hereunder, whereupon we agree to either issue a substitute letter of credit to such successor or endorse the reverse of this Letter of Credit.

Partial drawings under this Letter of Credit are allowed and each such partial drawing shall reduce the amount thereafter available hereunder for drawings under this Letter of Credit. This Letter of Credit shall be reinstated as provided in *Sections 2.2(b)* and *2.7(b)* of the Reimbursement Agreement and we shall so advise the Beneficiary in a certificate in the form of *Annex 4* hereto. The Outstanding Amount shall be reduced or increased as provided in *Sections 2.7(b)* and *2.7(c)* of the Reimbursement Agreement, subject to reinstatement as provided in the Reimbursement Agreement. In addition, the Outstanding Amount shall be reduced increased as provided in *Sections 2.2(b)* and *2.2(c)* of the Reimbursement Agreement to the extent that we so advise the Beneficiary pursuant to a certificate in the form of *Annex 5* hereto.

All banking charges, including any advising and negotiating bank charges, are for the account of the Applicant.

All drawing requests under this Letter of Credit must bear the clause:

"Drawn under Westdeutsche Landesbank Girozentrale, New York Branch, Letter of Credit Number 22703100101WLB dated December 7, 2001."

This Letter of Credit shall not be amended except with the written concurrence of Westdeutsche Landesbank Girozentrale, New York Branch, the Applicant and the Beneficiary.

We hereby engage with you that a drawing request drawn strictly in compliance with the terms of this Letter of Credit and amendments thereto shall meet with due honor upon presentation.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication Number 500 (the "*Uniform Customs*"). This Letter of Credit shall be deemed to be a contract made under the laws of the State of New York and shall, as to matters not governed by the Uniform Customs, be governed by and construed in accordance with the laws of such State.

We irrevocably agree with you that any legal action or proceeding with respect to this Letter of Credit shall be brought in the courts of the State of New York in the County of New York or of the United States of America in the Southern District of New York. By signing this Letter of Credit, we irrevocably submit to the jurisdiction of such courts solely for the purposes of this Letter of Credit. We hereby waive, to the fullest extent permitted by law, any objection we may now or hereafter have to the laying of venue in any such action or proceeding in any such court.

[*Signature Page to Letter of Credit*]

WESTDEUTSCHE LANDESBANK GIROZENTRALE,
NEW YORK BRANCH

Authorized signature

Authorized signature

ANNEX 1

Drawn under Westdeutsche Landesbank Girozentrale, New York Branch
Letter of Credit Number 22703100101WLB

dated December 7, 2001

DRAWING REQUEST

[Date]

Westdeutsche Landesbank Girozentrale,
New York Branch
1211 Avenue of the Americas
New York, New York 10036

Attention:

Ladies and Gentlemen:

The undersigned hereby draws on Westdeutsche Landesbank Girozentrale, New York Branch, Letter of Credit No. 22703100101WLB Irrevocable Standby Letter of Credit (the "*Letter of Credit*") dated December 7, 2001, issued by you in favor of us in connection with that certain Lease Indenture, dated as of December 7, 2001 (as amended, supplemented or modified from time to time, the "*Lease Indenture*"), among Homer City OL1 LLC and The Bank of New York, as successor to the United States Trust Company of New York, as the Lease Indenture Trustee. Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit or the Lease Indenture, as applicable.

In connection with this drawing, we hereby certify that:

A) This drawing in the amount of US$ is being made pursuant to Westdeutsche Landesbank Girozentrale, New York Branch, Letter of Credit No. Irrevocable Standby Letter of Credit issued to the Lease Indenture Trustee pursuant to the Reimbursement Agreement;

[Use at least one or more of the following forms of paragraph B, as applicable]

B) After the transfer of monies on deposit in the Debt Service Reserve Account in respect of the Lessor Notes and the application of funds pursuant to Section 3.1 of the Lease Indenture, there are insufficient monies to pay the [interest] [and] [principal] due on the Lessor Notes pursuant to the Lease Indenture on such date (whether due at stated maturity, at acceleration or otherwise);

or

B) The long-term debt rating of Westdeutsche Landesbank Girozentrale, New York Branch, has fallen below "A" as determined by Standard & Poor's Ratings Group or "A2' as determined by Moody's Investor Services, Inc. and Homer City OL1 LLC has failed to provide us with a substitute letter of credit from another Acceptable Credit Provider or other Acceptable Credit Support within thirty (30) days of such downgrade.

or

B) We have received a Notice of Action and an Event of Default exists and is continuing (as each such term is defined in the Lease Indenture), and such notice remains in effect on the date of this drawing and we have been directed by the Required Lease Indenture Secured Parties to draw on this Letter of Credit;

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or

B) The Stated Expiration Date will occur within thirty (30) days of the date hereof and Homer City OL1 LLC has failed to deliver a replacement or renewal letter of credit letter of from another Acceptable Credit Provider or other Acceptable Credit Support and security is still required under the terms of the Lease Indenture.

or

B) You have delivered to us a Notice of Termination of Letter of Credit in the form of Annex 2 to the Letter of Credit stating that the Letter of Credit will terminate prior to the Stated Expiration Date and Homer City OL1 LLC has failed to deliver a replacement or renewal letter of credit from another Acceptable Credit Provider or other Acceptable Credit Support prior to such termination date and security is still required under the terms of the Lease Indenture.

C) The amount requested to be drawn does not exceed the Outstanding Amount; and

D) You are directed to make payment of the requested drawing to account no. at [insert bank name, address and account number].

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this day of , .

THE BANK OF NEW YORK, as successor to the
UNITED STATES TRUST COMPANY OF NEW YORK,
as Lease Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

ANNEX 2

NOTICE OF TERMINATION OF LETTER OF CREDIT

[Date]

The Bank of New York, as successor to
The United States Trust Company
of New York, as Lease Indenture Trustee
114 West 47th Street
25th Floor
New York, New York 10036

Attn: Corporate Trust Department

Ladies and Gentlemen:

Reference is made to Westdeutsche Landesbank Girozentrale, New York Branch, Letter of Credit No. 22703100101WLB Irrevocable Standby Letter of Credit (the "*Letter of Credit*") dated December 7, 2001, issued by us in your favor.

This constitutes our notice to you pursuant to the Letter of Credit that the Letter of Credit shall terminate on , [insert a date which is 30 or more days after the date of this notice of termination] (the "*Termination Date*").

Pursuant to the terms of the Letter of Credit, you are authorized to draw (pursuant to one or more drawings), prior to the Termination Date, on the Letter of Credit in an aggregate amount that does not exceed the Outstanding Amount (as defined in the Letter of Credit).

Very truly yours,

WESTDEUTSCHE LANDESBANK
GIROZENTRALE, NEW YORK BRANCH

By: _____

By: _____

ANNEX 3

TRANSFER OF LETTER OF CREDIT

[Date]

Westdeutsche Landesbank Girozentrale.
New York Branch
1211 Avenue of the Americas
New York, New York 10036

Attention:

Ladies and Gentlemen:

Reference is made to Westdeutsche Landesbank Girozentrale, New York Branch, Letter of Credit No. 22703100101WLB Irrevocable Standby Letter of Credit dated December 7, 2001 originally issued by you in favor of The Bank of New York, as successor to the United States Trust Company of New York, as Lease Indenture Trustee (the "*Letter of Credit*") in connection with that certain Lease Indenture, dated as of December 7, 2001 (as amended, supplemented or modified from time to time, the "*Lease Indenture*"), among Homer City OL1 LLC, The Bank of New York, as successor to the United States Trust Company of New York, as Security Agent and The Bank of New York, as successor to the United States Trust Company of New York, as Lease Indenture Trustee. Any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit or in the Lease Indenture, as applicable.

For value received, the undersigned, as beneficiary under the Letter of Credit, hereby irrevocably transfers to (the "*Transferee*") all rights of the undersigned to draw under the Letter of Credit in their entirety.

By this transfer, all rights of the undersigned, as beneficiary under the Letter of Credit, are transferred to the Transferee, and the Transferee shall have the sole rights with respect to the Letter of Credit relating to any amendments thereof and any notices thereunder. All amendments to the Letter of Credit are to be consented to by the Transferee without necessity of any consent of or notice to the undersigned.

Simultaneously with the delivery of this notice to you, copies of this notice are being transmitted to the Transferee.

The Letter of Credit is returned herewith, and we ask you to either issue a substitute letter of credit for the benefit of the Transferee or endorse the transfer on the reverse thereof, and forward it directly to the Transferee with your customary notice of transfer.

Very truly yours,

THE BANK OF NEW YORK, as successor to the UNITED STATES TRUST COMPANY OF NEW YORK, as Lease Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

CONSENTED AND ACKNOWLEDGED BY:

[TRANSFEREE]

By: _____
Name:
Title:

ANNEX 4

CERTIFICATE OF REINSTATEMENT OF OUTSTANDING AMOUNT

[Date]

The Bank of New York, as successor to
the United States Trust Company
of New York, as Lease Indenture Trustee
114 West 47th Street

25th Floor
New York, New York 10036

Attn: Corporate Trust Department

Ladies and Gentlemen:

Reference is made to Westdeutsche Landesbank Girozentrale, New York Branch, Letter of Credit No. 22703100101WLB Irrevocable Standby Letter of Credit (the "*Letter of Credit*") dated December 7, 2001, issued by us in your favor. Any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit.

This constitutes our notice to you pursuant to the Letter of Credit that:

We have received repayment of a DSR Loan in accordance with the provisions of the Reimbursement Agreement in the amount of $, and, pursuant to *Section 2.7(c)* of the Reimbursement Agreement, the Outstanding Amount is therefore increased by such amount to $.

Very truly yours,

WESTDEUTSCHE LANDESBANK
GIROZENTRALE, NEW YORK BRANCH

By: _____

By: _____

ANNEX 5

CERTIFICATE OF CHANGE OF OUTSTANDING AMOUNT

[Date]

The Bank of New York, as successor to
the United States Trust Company
of New York, as Lease Indenture Trustee
114 West 47th Street
25th Floor
New York, New York 10036

Attn: Corporate Trust Department

Ladies and Gentlemen:

Reference is made to Westdeutsche Landesbank Girozentrale, New York Branch, Letter of Credit No. 22703100101WLB Irrevocable Standby Letter of Credit (the "*Letter of Credit*") dated December 7, 2001 issued by us in your favor in connection with that certain Lease

Indenture, dated as of December 7, 2001 (as amended, supplemented or modified from time to time, the "*Lease Indenture*"), among Homer City OL1 LLC and The Bank of New York, as successor to the United States Trust Company of New York, as the Lease Indenture Trustee. Any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit or the Lease Indenture, as applicable.

This constitutes our notice to you pursuant to the Letter of Credit that we have been advised by the Applicant that:

The Debt Service Reserve Requirement has been [reduced/increased] by the amount of $. Accordingly, pursuant to *Section 2.2(b)* of the Reimbursement Agreement, the Outstanding Amount is [reduced/increased] by $ to $.

Very truly yours,

WESTDEUTSCHE LANDESBANK
GIROZENTRALE, NEW YORK BRANCH

By: _____

By: _____

EXHIBIT B

DEBT SERVICE RESERVE LETTER OF CREDIT PROMISSORY NOTE

$5,302,590

New York, New York
December 7, 2001

FOR VALUE RECEIVED, the undersigned, HOMER CITY OL1, a Delaware corporation (the "*Borrower*"), hereby unconditionally promises to pay to the order of [ ] (the "*Bank*") the lesser of (i) the principal sum of ($) and (ii) the aggregate unpaid principal amount of the DSR Loans made by the Bank to the Borrower under the Reimbursement Agreement referred to below, on the dates and in the amounts specified therein.

The Borrower further promises to pay interest on the unpaid principal amount hereof from time to time outstanding on the dates and at the rates specified in the Reimbursement Agreement (as herein defined). This DSR Note is hereby expressly limited so that in no contingency or event, whether by reason of acceleration of the maturity of any indebtedness evidenced hereby or otherwise, shall the interest contracted for or charged or received by the Bank exceed the maximum amount permissible under Applicable Law. If, due to any circumstance whatsoever, interest would otherwise be payable to the Bank in excess of the maximum lawful amount, the interest payable to the Bank shall be reduced to the maximum amount permitted under Applicable Llaw, and the amount of interest for any subsequent period, to the extent less than that permitted by Applicable Law, shall to that extent be increased by the amount of such reduction.

Each holder hereof is irrevocably authorized to endorse on the schedule attached hereto, or on a continuation thereof, the date each such interest payment is due and the amount of each such interest payment determined in accordance with the Reimbursement Agreement. All such notations shall constitute *prima facie* evidence of the accuracy of the information so recorded and be enforceable against the Borrower with the same force and effect as if such amounts were each set forth in a separate note executed by the Borrower.

All payments due hereunder shall be made without setoff, counterclaim or deduction of any nature to Westdeutsche Landesbank Girozentrale, New York Branch, as the Agent, at 1211 Avenue of the Americas, New York, New York 10036, in lawful money of the United States of America and in immediately available funds, or at such other place and in such other manner as may be specified by the Agent pursuant to the Reimbursement Agreement.

Each holder hereof is irrevocably authorized to endorse on the schedule attached hereto, or on a continuation thereof, the date and amount of each DSR Loan made to the Borrower and each payment or prepayment of principal thereof, *provided* that the failure of such holder to make, or any error in making, any such recordation or endorsement shall not affect the obligations of the Borrower hereunder or under the Reimbursement Agreement. All such notations shall constitute *prima facie* evidence of the accuracy of the information so recorded and be enforceable against the Borrower with the same force and effect as if such amounts were each set forth in a separate note executed by the Borrower.

This DSR Note is one of the "DSR Notes" of the Borrower to the Bank referred to in, evidences each DSR. Loan made by the Bank to the Borrower under, is subject to the provisions of, and entities its holder to the benefits of, the Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001 (the "*Reimbursement Agreement*"), among the Borrower, the Bank and the other banks party thereto, and Westdeutsche Landesbank Girozentrale, New York Branch, as the Issuing Bank and as the Agent for the Bank and such other banks, as the same may be amended, supplemented or otherwise modified from time to time and to which reference is hereby made for a

more complete statement of the terms and conditions under which each DSR Loan evidenced hereby is to be made and repaid. Capitalized terms in this DSR Note that are not specifically defined herein shall have the meanings ascribed to them in the Reimbursement Agreement.

The Reimbursement Agreement provides for, among other things, the acceleration of the maturity of the unpaid principal amount hereof upon the occurrence of certain stated events and for voluntary prepayments in certain circumstances and upon certain terms and conditions. The obligations of the Borrower under the Reimbursement Agreement and this DSR Note are secured by, and the holder hereof is entitled to the benefit of, the Collateral as provided in the Security Documents.

In addition to any and all costs, fees and expenses for which the Borrower is liable under the Reimbursement Agreement, the Borrower promises to pay all reasonable costs and expenses, including reasonable attorneys' fees and disbursements, incurred in the collection and enforcement hereof or any appeal of any judgment rendered hereon.

The Borrower hereby expressly waives presentment, protest, demand and dishonor to the fullest extent permitted by applicable law. No failure or delay by any holder of this DSR Note to exercise any right or remedy under this DSR Note or any other document or instrument entered into pursuant to the Reimbursement Agreement shall operate or be construed as a waiver or modification hereof or thereof.

This DSR Note shall be binding upon the successors and assigns of the Borrower and shall inure to the Bank and its successors, endorsees and assigns. If any term or provision of this DSR Note shall be held invalid, illegal or unenforceable, the validity of all other terms and provisions hereof shall in no way be affected thereby.

Except as may otherwise specifically be provided in the Lease Indenture of the Participation Agreement, the Borrower's obligation to make payments in respect of the DSR Notes shall be limited as set forth in *Section 7.2* and *Section 9.7 (b)* and *(c)* of the Reimbursement Agreement.

All payments of principal and interest and all other amounts to be made by the Owner Lessor hereunder or under the Reimbursement Agreement (or the Lease Indenture) shall be made only from the income and proceeds from the Indenture Estate and the Owner Lessor and Lease Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Lease Indenture Trustee shall have sufficient income or proceeds from the Indenture Estate to enable such payments to be made in accordance with the terms of the Lease Indenture. Each holder hereof, by its acceptance of this DSR Note, agrees that (a) it will look solely to the income and proceeds from the

Indenture Estate to the extent available for distribution to the holder hereof as above provided, (b) none of the Lease Indenture Trustee, Owner Participant any OP Guarantor, the Owner Manager or the Trust Company, or any Affiliate of any thereof, is, or shall be, personally liable to the holder hereof for any amounts payable under this DSR Note or under the Reimbursement Agreement (or the Lease Indenture), except as expressly provided in the Lease Indenture and (c) any such amounts shall be non-recourse to the assets of each of the Lease Indenture Trustee, the Owner Participant, any OP Guarantor, the Owner Manager or the Trust Company, or any Affiliate of any thereof.

By its acceptance hereof, the holder of this DSR Note agrees that the Owner Manager is executing this DSR Note on behalf of the Owner Lessor solely in its capacity as Owner Manager under the Lessor LLC Agreement and not in its individual capacity and in no case shall the Trust Company (or any entity acting as Owner Manager under the Lessor LLC Agreement) be personally liable in respect of the obligations stated to be those of the Owner Lessor or the Owner Participant hereunder.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE CONFLICTS OF LAW PRINCIPLES THEREOF.

The Borrower hereby expressly and irrevocably agrees and consents that any suit, action or proceeding arising out of or related to this DSR Note may be instituted in any state or federal court (at the Bank's option) sitting in the County of New York, State of New York, and, by the execution and delivery of this DSR Note, the Borrower expressly waives any objection which it may have now or hereafter to the venue or to the jurisdiction of any such suit, action or proceeding, and irrevocably submits generally and unconditionally to the jurisdiction of any such court in any such suit, action or proceeding.

HOMER CITY OL1 LLC

By: _____

Name:

Title:

SCHEDULE

Date	Principal Amount of DSR Loan	Amount and Date of Principal Paid or Prepaid	Unpaid Principal Balance	Date Interest Payment is Due	Amount of Interest Due	Total Principal Amount of DSR Loans Outstanding	Notation Made By

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EXHIBIT C

Form of Commitment Transfer Supplement

COMMITMENT TRANSFER SUPPLEMENT, dated as of the date set forth in *Item I* of *Schedule I* hereto, among each Transferor Bank set forth in *Item 2* of *Schedule I* hereto (each, a "*Transferor Bank*"), each Purchasing Bank set forth in *Item 3* of *Schedule I* hereto (each a "*Purchasing Bank*"), and Westdeutsche Landesbank Girozentrale, New York Branch, as the Issuing Bank and as the Agent under the Reimbursement Agreement described below.

WITNESSETH

WHEREAS, this Commitment Transfer Supplement is being executed and delivered in accordance with *Section 9.9* of the Reimbursement Agreement, dated as of December 7, 2001, by and among (i) Homer City OL1 LLC, a Delaware limited liability corporation (the "*Borrower*"), (ii) Westdeutsche Landesbank Girozentrale, New York Branch, in its capacity as Issuing Bank (the "*Issuing Bank*") and as a Bank (as defined below), (iii) Credit Suisse First Boston, New York Branch, as a Bank (as defined below), (iv) each bank or other entity that is, or becomes pursuant to *Section 9.9* of the Reimbursement Agreement, a party thereto (collectively, the "*Banks*") and (v) Westdeutsche Landesbank Girozentrale, New York Branch, as agent (in such capacity, together with its successors in such capacity, the "*Agent*") (as amended, supplemented or otherwise modified in accordance with the terms thereof from time to time, the "*Reimbursement Agreement*"; terms defined therein being used herein as therein defined); and

WHEREAS, each Purchasing Bank (if it is not already a Bank party to the Reimbursement Agreement) desires to become a Bank party to the Reimbursement Agreement; and

WHEREAS, each Transferor Bank is selling and assigning to its respective Purchasing Bank, certain rights, obligations and commitments under the Reimbursement Agreement;

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Upon receipt by the Agent of [ ] ([ ]) fully executed originals of this Commitment Transfer Supplement, to each of which is attached a fully completed *Schedule I, Schedule II* and *Schedule III*, and each of which has been executed by each Transferor Bank, each Purchasing Bank and any other Person required by the Reimbursement Agreement to execute this Commitment Transfer Supplement, the Agent will transmit to the Borrower, each Transferor Bank and each Purchasing Bank a Transfer Effective Notice, substantially in the form of *Schedule IV* hereto (a "*Transfer Effective Notice*"). Such Transfer Effective Notice shall set forth, *inter alia*, the date on which the transfer effected by this Commitment Transfer Supplement shall become effective (the "*Transfer Effective Date*"), which date shall be the date hereof. From and after the Transfer Effective Date, each Purchasing Bank shall be a Bank party to the Reimbursement Agreement for all purposes thereof.

2. Each Purchasing Bank shall pay to each of its respective Transferor Banks an amount equal to the purchase price, as agreed between such Transferor Bank and each such Purchasing Bank and as set forth on *Schedule II* hereto (the "*Purchase Price*"), of the portion being purchased (such Purchasing Bank's "*Purchased Percentage*") by such Purchasing Bank of the outstanding DSR Loans and other amounts owing to the respective Transferor Bank under the Reimbursement Agreement and the DSR Notes (the "*Outstanding Obligations*"). Each Purchasing Bank shall pay the appropriate Purchase Price to each of its respective Transferor Banks, in immediately available funds, at or before 12:00 noon, local time of the appropriate Transferor Bank, on the first Business Day of the month in which the Transfer Effective Date occurs. Effective upon the Transfer Effective Date, each Transferor Bank hereby irrevocably sells, assigns and transfers to each of its respective Purchasing Banks, without recourse, representation or warranty other than as set forth

in *Section 8* hereof, and each such Purchasing Bank hereby irrevocably purchases, takes and assumes from each of its respective Transferor Banks, such Purchasing Bank's Purchased Percentage of the Commitment, presently outstanding DSR Loans and other amounts owing to each such Transferor Bank under the Reimbursement Agreement and the DSR Notes, together with all instruments, documents and collateral security pertaining thereto.

3. Each Transferor Bank has made arrangements with each of its respective Purchasing Banks with respect to (a) the portion, if any, to be paid, and the date or dates for payment, by such Transferor Bank to each of its respective Purchasing Banks of any fees heretofore received by such Transferor Bank pursuant to the Reimbursement Agreement prior to the Transfer Effective Date and (b) the portion, if any, to be paid, and the date or dates for payment, by each such Purchasing Bank to each Transferor Bank, or by each such Transferor Bank to each Purchasing Bank, of fees or interest received by each such Purchasing Bank or each such Transferor Bank, as the case may be, pursuant to the Reimbursement Agreement from and after the Transfer Effective Date. Any interest, accrued from and after the Transfer Effective Date, with respect to principal of the DSR Loans for which the Purchase Price has yet to be paid under *Section 2* above, shall accrue for the benefit of the appropriate Transferor Bank to the extent of the Adjusted Base Rate and shall accrue for the benefit of the appropriate Purchasing Bank to the extent of the applicable interest rate less the Adjusted Base Rate.

4. (a) All principal payments that would otherwise be payable from and after the Transfer Effective Date to or for the account of any Transferor Bank pursuant to the Reimbursement Agreement and the DSR Notes shall, instead, be payable to or for the account of the appropriate Transferor Banks and the appropriate Purchasing Banks, as the case may be, in accordance with their respective interests as reflected in this Commitment Transfer Supplement.

(b) Except as otherwise agreed as set forth in *Section 3* hereof, all interest, fees and other amounts that would otherwise accrue for the account of any Transferor Bank from and after the Transfer Effective Date pursuant to the Reimbursement Agreement and the DSR Notes shall, instead, accrue for the account of, and be payable to, the appropriate Transferor Banks and the appropriate Purchasing Banks, as the case may be, in accordance with their respective interests as reflected in this Commitment Transfer Supplement. In the event that any amount of interest, fees, or other amounts accruing prior to the Transfer Effective Date was included in the Purchase Price paid by any Purchasing Bank, the appropriate Transferor Bank and such Purchasing Bank will make appropriate arrangements for payment by such Transferor Bank to such Purchasing Bank of such amount upon receipt thereof from the Borrower.

5. On or prior to the Transfer Effective Date, each Transferor Bank will deliver to the Agent its DSR Note[s]. On or prior to the Transfer Effective Date, the Borrower will deliver to the Agent new DSR Notes for each Purchasing Bank and each Transferor Bank, in each case in principal amounts reflecting, in accordance with the Reimbursement Agreement, their respective "Revised Commitment Percentage" or "New Commitment Percentage," as the case may be and as set forth in *Schedule III* hereto, of the Commitment or, as appropriate, their then outstanding shares of the Outstanding Obligations (as adjusted pursuant to this Commitment Transfer Supplement). Promptly after the Transfer Effective Date, the Agent will send to each Transferor Bank and Purchasing Bank its new DSR Notes[s]with the superseded DSR Note[s] of each Transferor Bank attached to the new DSR Note[s] (or if more than one new DSR Note, the superseded DSR Note[s] attached to one of such new DSR Note[s] and copies thereof attached to all other new DSR Note).

6. Concurrently with the execution and delivery hereof, the Transferor Banks will provide to each Purchasing Bank (if it is not already a Bank party to the Reimbursement Agreement) copies

of all documents delivered to the Transferor Banks evidencing satisfaction of the conditions precedent set forth in the Reimbursement Agreement.

7. Each of the parties to this Commitment Transfer Supplement agrees that at any time and from time to time upon the written request of any other party, it will execute and deliver such further documents and do such further acts and things as such other party may reasonably request in order to effect the purposes of this Commitment Transfer Supplement.

8. By executing and delivering this Commitment Transfer Supplement, each Transferor Bank and each of its respective Purchasing Banks confirm to and agree with each other, the Agent, the Issuing Bank and the Banks as follows: (a) other than the representation and warranty that it is the legal and beneficial owner of the interest being assigned hereby free and clear of any adverse claim, each such Transferor Bank makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Reimbursement Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Reimbursement Agreement, the DSR Notes or any other instrument or document furnished pursuant thereto, (b) each such Transferor Bank makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or the performance or observance by the Borrower of any of its obligations under the Reimbursement Agreement, the DSR Notes or any other instrument or document furnished pursuant hereto, (c) each such Purchasing Bank confirms that it has received a copy of the Reimbursement Agreement, together with copies of such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Commitment Transfer Supplement, (d) each such Purchasing Bank will, independently and without reliance upon the Agent, its respective Transferor Banks or any other Bank or the Issuing Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Reimbursement Agreement, (e) each such Purchasing Bank appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under the Reimbursement Agreement as are delegated to the Agent by the terms thereof together with such powers as are reasonably incidental thereto and (f) each such Purchasing Bank agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Reimbursement Agreement are required to be performed by it as a Bank and that it will be bound by the terms and provisions thereof as a Bank.

9. *Schedule III* hereto sets forth for each Transferor Bank and each Purchasing Bank the revised Commitment, and/or Commitment Percentage, as the case may be, of each Transferor Bank and each Purchasing Bank, as well as certain administrative information with respect to each Purchasing Bank.

10. Notwithstanding anything to the contrary in this Commitment Transfer Supplement, if the long-term debt rating of any Purchasing Bank shall, at any time, be less than a rating of A or the equivalent thereof by S&P or A2 or the equivalent thereof by Moody's, then the Issuing Bank may, in its sole and absolute discretion, purchase all or any part (as designated by the Issuing Bank) of such Purchasing Bank's participating interest hereunder (the "*Purchased Interests*") (which, if in part, may be limited to the Purchasing Bank's participating interest in the rights and obligations of the Issuing Bank under, and in connection with, one or more Debt Service Reserve Letters of Credit, including, without limitation, the obligations to pay the Issuing Bank if it is not reimbursed by the Borrower in immediately available funds for any drawings under such Debt Service Reserve Letter of Credit and to make certain loans, if any, provided to be made under the Reimbursement Agreement in the event of certain drawings under such Debt Service Reserve Letter of Credit, all in accordance with the Reimbursement Agreement) by providing such Purchasing Bank with at least two Banking Days' prior notice of such purchase and making a payment to such Purchasing

Bank for all outstanding amounts owing to it hereunder or pursuant to the Reimbursement Agreement in respect of the Purchased Interests on the date of such purchase as set forth in such notice. Upon any such purchase of all of a Purchasing Bank's participating interest hereunder, such Purchasing Bank shall no longer have any rights or obligations as a Purchasing Bank hereunder or as a Bank under the Reimbursement Agreement or under any other instruments or documents furnished pursuant thereto. The Issuing Bank may, in its sole and absolute discretion, retain for its own account and/or sell its interest in all or any portion of the Purchased Interests.

11. THIS COMMITMENT TRANSFER SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE CONFLICTS OF LAW PRINCIPLES THEREOF.

12. This Commitment Transfer Supplement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

13. Execution of this Commitment Transfer Supplement by the Agent as set forth below shall constitute the consent of such Person required pursuant to *Section 9.9* of the Reimbursement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Commitment Transfer Supplement to be executed by their respective duly authorized officers on *Schedule I* hereto as of the date set forth in *Item I* of *Schedule I* hereto.

SCHEDULE I TO COMMITMENT TRANSFER SUPPLEMENT

COMPLETION OF INFORMATION AND SIGNATURES FOR COMMITMENT TRANSFER SUPPLEMENT

Re: Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001, with HOMER CITY OL1 LLC, as the Borrower.

Item 1	Date of Commitment Transfer Supplement:	[Insert date of Commitment Transfer Supplement]
Item 2	Transferor:	[Insert names of Transferor Banks]
Item 3	Purchasing Banks:	[Insert names of Purchasing Banks]
Item 4	Signatures of Parties to Commitment Transfer Supplement:	

_____ ,
as a Transferor Bank

By: _____
Name:
Title:

_____ ,
as a Purchasing Bank

By: _____
Name:
Title:

Westdeutsche Landesbank Girozentrale, New York Branch, as the Issuing Bank and the Agent

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE II TO COMMITMENT TRANSFER SUPPLEMENT

PURCHASE PRICES

Names of Transfer Banks

Names of Purchaser Banks	[Insert name of Transferor Bank]	[Insert name of Transferor Bank]	[Insert name of Transferor Banks]
[Insert name of Purchasing Bank]	$[Insert Purchase Price]	$[Insert Purchase Price]	$[Insert Purchase Price]

SCHEDULE III TO COMMITMENT TRANSFER SUPPLEMENT

LIST OF LENDING OFFICES, ADDRESSES FOR NOTICES, COMMITMENT AMOUNTS, AND PROPORTIONATE SHARES

Names of Transferor Banks	Revised Maximum Commitment
[ ]	$
[ ]	$

Names of Transferor Banks	Revised Commitment Percentage
[ ]	%
[ ]	%

Names of Purchasing Banks	New Maximum Commitment
[ ]	%

Names of Purchasing Banks	Commitment Percentage

[ ] %

[NAME OF PURCHASING BANK(S)]
Address for Notices:
Attention:
Telex:
Answerback:
Telephone:
Telecopier:

Clearing Account:

[Insert Acct. #1]

Eurodollar Lending Office:

[Insert Address]

Domestic Lending Office:

[Insert Address]

SCHEDULE IV TO COMMITMENT TRANSFER SUPPLEMENT

TRANSFER EFFECTIVE NOTICE

,

Transferor Banks: [ ]

Purchasing Banks: [ ]

Borrower: HOMER CITY OL1 LLC

The undersigned, as the Agent under the Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001 by and among (i) Homer City OL1 LLC, a Delaware limited liability corporation (the "*Borrower*"), (ii) Westdeutsche Landesbank Girozentrale, New York Branch, as Issuing Bank (the "*Issuing Bank*"), and the other Banks named therein (collectively, the "*Banks*"), and (iii) Westdeutsche Landesbank Girozentrale, New York Branch, as agent for the Banks (the "*Agent*") (as amended, supplemented or otherwise modified in accordance with the terms thereof from time to time, the "*Reimbursement Agreement*") acknowledge receipt of [ ] ([ ]) copies of the Commitment Transfer Supplement as described in *Annex I* hereto, each fully executed. Terms defined in such Commitment Transfer Supplement are used herein as therein defined.

1. Pursuant to such Commitment Transfer Supplement, you are advised that the Transfer Effective Date will be the date hereof.

2. Pursuant to such Commitment Transfer Supplement, each Transferor Bank is required to deliver to the Agent on or before the Transfer Effective Date its DSR Note[s].

3. Pursuant to such Commitment Transfer Supplement, the Borrower is required to deliver to the Agent on or before the Transfer Effective Date the following DSR Notes:

[Describe each new DSR Note for Transferor Bank and Purchasing Bank as to principal amount and payee.]

4. Pursuant to such Commitment Transfer Supplement, each Purchasing Bank is required to pay its Purchase Price, in immediately available funds, to the appropriate Transferor Bank at or before 12:00 noon, local time of the appropriate Transferor Bank, on [the first Business Day of the month in which the Transfer Effective Date occurs]).

Very truly yours,

Westdeutsche Landesbank Girozentrale, New York Branch, as the Agent:

By: _____
Name:
Title:

By: _____
Name:
Title:

ANNEX I

INFORMATION FOR COMMITMENT TRANSFER SUPPLEMENT

Re: Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001, with Homer City OL1 LLC, as the Borrower

Item 1	Date of Commitment Transfer Supplement:	,
Item 2	Transferor:	[ ]
Item 3	Purchasing Banks:	[ ]

QuickLinks

Exhibit 10.30.1

Schedule identifying substantially identical agreements to Debt Service Reserve Letter of Credit and Reimbursement Agreement.

1. The Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001 by and among Homer City OL1 LLC, Westdeutsche Landesbank Girozentrale, New York Branch, Credit Suisse First Boston, New York Branch, and Westdeutsche Landesbank Girozentrale, New York Branch, as agent, in an amount of up to $10,605,180.

2. The Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001 by and among Homer City OL2 LLC, Westdeutsche Landesbank Girozentrale, New York Branch, Credit Suisse First Boston, New York Branch, and Westdeutsche Landesbank Girozentrale, New York Branch, as agent, in an amount of up to $7,070,120.

3. The Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001 by and among Homer City OL3 LLC, Westdeutsche Landesbank Girozentrale, New York Branch, Credit Suisse First Boston, New York Branch, and Westdeutsche Landesbank Girozentrale, New York Branch, as agent, in an amount of up to $3,535,060.

4. The Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001 by and among Homer City OL4 LLC, Westdeutsche Landesbank Girozentrale, New York Branch, Credit Suisse First Boston, New York Branch, and Westdeutsche Landesbank Girozentrale, New York Branch, as agent, in an amount of up to $3,535,060.

5. The Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001 by and among Homer City OL5 LLC, Westdeutsche Landesbank Girozentrale, New York Branch, Credit Suisse First Boston, New York Branch, and Westdeutsche Landesbank Girozentrale, New York Branch, as agent, in an amount of up to $3,535,060.

6. The Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001 by and among Homer City OL6 LLC, Westdeutsche Landesbank Girozentrale, New York Branch, Credit Suisse First Boston, New York Branch, and Westdeutsche Landesbank Girozentrale, New York Branch, as agent, in an amount of up to $3,535,060.

7. The Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001 by and among Homer City OL7 LLC, Westdeutsche Landesbank Girozentrale, New York Branch, Credit Suisse First Boston, New York Branch, and Westdeutsche Landesbank Girozentrale, New York Branch, as agent, in an amount of up to $1,767,530.

8. The Debt Service Reserve Letter of Credit and Reimbursement Agreement, dated as of December 7, 2001 by and among Homer City OL8 LLC, Westdeutsche Landesbank Girozentrale, New York Branch, Credit Suisse First Boston, New York Branch, and Westdeutsche Landesbank Girozentrale, New York Branch, as agent, in an amount of up to $1,767,530.

Exhibit 10.30.1

Exhibit 10.31

Execution Copy

SUB-ASSIGNMENT AGREEMENT

SUB-ASSIGNMENT, dated as of December 7, 2001, between THE BANK OF NEW YORK (as successor to United States Trust Company), not in its individual capacity but solely as Collateral Agent for the Owner Lessors (as defined below), as assignee ("*Collateral Agent*"); EME HOMER CITY GENERATION L.P., a Pennsylvania limited partnership, as assignor ("*Homer City*"); EDISON MISSION MARKETING & TRADING, INC., a California corporation ("*EMMT*"), as consenting party; and EDISON MISSION ENERGY FUEL SERVICES, INC., a California corporation as consenting party; ("EMEFS", and together with EMMT, the "*Consenting Parties*").

W I T N E S S E T H

WHEREAS, contemporaneously herewith, Homer City will enter into a transaction pursuant to the Participation Agreements listed on *Exhibit A* by and among EME Homer City, each of the Owner Lessors party thereto (the "*Owner Lessors*"), Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as Owner Manager, the Owner Participant, Homer City Funding LLC, as Lender, the Lease Indenture Trustee, the Security Agent and The Bank of New York, not in its individual capacity but solely as Bondholder Trustee (as amended, modified and supplemented and in effect from time to time, collectively, the "*Participation Agreements*") whereby Homer City will sell undivided interests in its generating assets to the Owner Lessors and the Owner Lessors will lease such undivided interests in its generating assets back to Homer City under the Facility Leases. Capitalized terms used but not defined herein shall have the meanings assigned to them in Appendix A to the Participation Agreements.

WHEREAS, pursuant to the Ownership and Operation Agreement, the Collateral Agent has agreed to serve as a common collateral agent for the Owner Lessors.

WHEREAS, in consideration of the transactions contemplated by the Participation Agreements, Homer City has agreed to, and simultaneously herewith will, assign, for the term of the Facility Site Leases, all of its rights and interest in, to and under those certain Material Project Agreements more fully described on *Exhibit B* hereto (the "*Assigned Agreements*") to the Collateral Agent for the benefit of the Owner Lessors pursuant to an assignment agreement (the "*Assignment Agreement*").

WHEREAS, for the term of the Facility Leases, the Owner Lessors have agreed to subassign all their right, title and interest in, to and under the Assigned Agreements back to Homer City.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

1. The Collateral Agent acting on behalf of and as instructed by the Owner Lessors hereby unconditionally and irrevocably assigns, transfers and conveys to Homer City, and Homer City hereby accepts and assumes, all of the Collateral Agent's rights, title and interest in, to and under the Assigned Agreements.

2. This Sub-Assignment Agreement shall remain in effect unless and until all of the Facility Leases are terminated in accordance with their terms. The provisions of this Sub-Assignment Agreement and the subassignment to Homer City accomplished hereunder of all right, title and interest in the SCR Construction Contract shall not terminate unless and until the consent of ABB Environmental Systems, division of ABB Flakt, Inc., a corporation duly organized and existing under the laws of Delaware, to the Assignment Agreement and this Sub-Assignment Agreement shall have been obtained.

3. Homer City shall perform and comply with all terms and provisions of each of the Assigned Agreements to be performed or complied with by it and shall maintain each of the Assigned Agreements in full force and effect in accordance with their terms and in accordance with the terms of the Assignment Agreement.

4. The parties hereto expressly agree that (i) subject to the terms of the Participation Agreement, Homer City may enter into amendments, supplements or any other modifications to any of the Assigned Agreements or enter into any consensual cancellation or termination of any of the Assigned Agreements and (ii) the consent or approval of the Collateral Agent and the Owner Lessors shall not be required for such amendments, supplements, modifications, cancellations or termination, which shall be binding upon and inure to the benefit of the Collateral Agent acting on behalf of the Owner Lessors as successor to Homer City if and when this Sub-Assignment Agreement should terminate in accordance with its terms.

5. The Consenting Parties hereby (i) consent to the sub-assignment of the Assigned Agreements and approve the execution by Homer City of the Assignment Agreement and this Sub-Assignment Agreement, and acknowledge that no further consents, acknowledgments, or approvals of any kind shall be required for the effectiveness of the assignments contemplated hereby and (ii) agree that for so long as this Sub-Assignment Agreement shall continue in effect, the Consenting Parties shall make any payments due to Homer City under the Assigned Agreements directly into the Revenue Account.

6. All of the terms of this instrument shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7. This Sub-Assignment Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to choice of law principles (except Section 5-1401 of the New York General Obligations Law), including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the parties have signed this Sub-Assignment Agreement as of the date first above written.

EME HOMER CITY GENERATION L.P.

By: Mission Energy Westside, Inc.
as General Partner

By: /s/ John P. Finneran
Name: John P. Finneran
Title: Vice President

THE BANK OF NEW YORK,
not in its individual capacity, but solely as
Collateral Agent for the Owner Lessors

By: /s/ Christopher J. Grell
Name: Christopher J. Grell
Title: Authorized signer

EDISON MISSION MARKETING & TRADING,
INC., a California corporation (with respect to the

Energy Sales Agreement and NOx Agreement only)

By: /s/ David C. Goss

Name: David C. Goss
Title: Vice President

EDISON MISSION ENERGY FUEL SERVICES, INC., a California corporation (with respect to the Fuel Supply Agreement only)

By: /s/ Steven D. Eisenberg

Name: Steven D. Eisenberg
Title: Vice President

Exhibit A

Participation Agreements

1. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL1 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

2. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL2 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

3. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL3 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

4. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL4 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

5. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL5 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust

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Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

6. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL6 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

7. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL7 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

8. The Participation Agreement dated as of December 7, 2001 by and among EME Homer City Generation, L.P., a Pennsylvania limited partnership, as Facility Lessee; Homer City OL8 LLC, a Delaware limited liability company, as Owner Lessor; Wells Fargo Bank Northwest, National Association, both in its individual capacity and solely as Owner Manager; General Electric Capital Corporation, a Delaware corporation, as Owner Participant; Homer City Funding LLC, a Delaware limited liability company, as Lender; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Lease Indenture Trustee; The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Security Agent; and The Bank of New York (as successor to United States Trust Company of New York), both in its individual capacity and solely as Bondholder Trustee.

Exhibit B
Assigned Agreements

1. Energy Sales Agreement

2. NOx Agreement

3. Fuel Supply Agreement

4. The Power Sales Agreements

5. The SCR Construction Contract

QuickLinks

Exhibit 21

EME Homer City Generation L.P.
List of Subsidiaries

As of March 28, 2002

Registrant has no subsidiaries.

Exhibit 99

EME Homer City Generation, L.P.
1750 Power Plant Road
Homer City, Pennsylvania 15748

March 25, 2002

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Ladies and Gentlemen:

This will confirm that EME Homer City Generation L.P. (the "Partnership") has received a letter from Arthur Andersen LLP ("Arthur Andersen") with respect to Arthur Andersen's audit of the Partnership's financial statements for the year ended December 31, 2001. Arthur Andersen's letter certifies that the audit was subject to Arthur Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards, and that there was appropriate continuity of Arthur Andersen personnel working on the audit, availability of national office consultation, and availability of personnel at foreign affiliates of Arthur Andersen to conduct the relevant portions of the audit.

Very truly yours,

/s/ KEVIN M. SMITH

Kevin M. Smith
Vice President, Treasurer and Director