

**LEASE AGREEMENT**

**between**

**[OWNER]**

**and**

**[ISSUER]**

## TABLE OF CONTENTS

ARTICLE 1	DEFINITIONS; INTERPRETATION.....	2
1.1.	Definitions.....	2
1.2.	Conventions .....	4
ARTICLE 2	LEASE; BOND PROCEEDS; LEASE PAYMENTS .....	4
2.1.	Lease .....	4
2.2.	Bond Proceeds .....	5
2.3.	Lease Payments.....	5
2.4.	Nature of Owner’s Obligations.....	5
2.5.	No Set-Off.....	5
2.6.	Transfer of Title .....	5
ARTICLE 3	MATTERS RELATING TO THE BONDS .....	6
3.1.	Consent to Assignment .....	6
3.2.	Additional Bonds .....	6
3.3.	Redemption of Bonds .....	7
3.4.	Excess Proceeds .....	7
3.5.	Tax Matters .....	7
ARTICLE 4	COVENANTS .....	8
4.1.	The Project .....	8
4.2.	Inspection; Information; Annual Statements .....	8
4.3.	Final Completion .....	8
4.4.	Notice of Contractor Default; Termination.....	8
4.5.	Fees and Expenses .....	8
4.6.	Continuing Disclosure .....	9
4.7.	Hazardous Materials .....	9
4.8.	Mechanics’ Liens.....	9
ARTICLE 5	INSURANCE; INDEMNIFICATION.....	10
5.1.	Insurance .....	10
5.2.	Indemnification .....	10
5.3.	Agreements with Other Participants .....	12
ARTICLE 6	REPRESENTATIONS .....	12
6.1.	Representations and Warranties.....	12
ARTICLE 7	DEFAULT; REMEDIES .....	13
7.1.	Default.....	13
7.2.	Remedies.....	13
ARTICLE 8	MISCELLANEOUS .....	13
8.1.	No Personal Recourse .....	13
8.2.	Amendment of the Indenture .....	13
8.3.	Notices, Etc .....	13
8.4.	Assignment .....	14
8.5.	Complete Agreement; Amendments.....	14
8.6.	Governing Law .....	14

8.7.	WAIVER OF JURY TRIAL.....	14
8.8.	Counterparts .....	14

**EXHIBITS**

Exhibit 1	Lease Payments
Exhibit 2	Tax Representations, Covenants and Agreements

## LEASE AGREEMENT

This Lease Agreement (this “**Agreement**”) is entered into as of [\_\_\_\_\_, \_\_\_\_] by [\_\_\_\_\_, \_\_\_\_\_], a [\_\_\_\_\_] (the “**Owner**”) and the Pennsylvania Economic Development Financing Authority (the “**Issuer**”).

### Background

A. The Owner is [a “governmental unit” as defined in the Guaranteed Energy Savings Act (62 Pa C.S. §3751) (the “**Act**”) / [a non-profit organization under Section 501(c)(3) of the Internal Revenue Code].

B. The Owner is undertaking a project (the “**Project**”) consisting of the implementation of certain energy and water conservation measures at the Owner Facilities and has entered into a Guaranteed Savings Agreement dated as of [\_\_\_\_\_, \_\_\_\_] (the “**Guaranteed Savings Agreement**”) with [\_\_\_\_\_, \_\_\_\_\_], a [\_\_\_\_\_] (the “**Contractor**”) pursuant to which the Contractor will (i) implement such conservation measures, (ii) guarantee that the Owner will realize a certain level of monetary savings resulting from such measures and (iii) provide certain measurement and verification services.

C. The Owner is initially financing the cost of the Project by participating in an energy efficiency financing program (the “**Program**”) administered by Foundation for Renewable Energy and Environment (“**FREE**”). As part of the Program, the Issuer is issuing its [\_\_\_\_\_] (the “**Series [ ] Bonds**”) pursuant to a Trust Indenture of even date herewith (the “**Indenture**”) between the Issuer and [\_\_\_\_\_] (the “**Trustee**”) and depositing the net proceeds thereof into various accounts established under the Indenture to fund the Project and similar projects being undertaken by certain other “program participants” (“**Other Participants**”).

D. In consideration of the undertaking of the Issuer to fund the cost of the Project, the Owner is entering into this Agreement, pursuant to which the Owner will make the Lease Payments described herein. The Lease Payments, in aggregation with similar payments from the Other Participants, will be applied to pay (i) the principal or redemption price of, and interest on, the Bonds, (ii) the annual fees of the Trustee and the Issuer and (iii) the program fees of FREE.

E. On [\_\_\_\_\_, \_\_\_\_], the Owner adopted [Resolution No. \_\_\_\_] in which the Owner (i) determined that it would be in its best interest to enter into this Agreement and (ii) made the finding that funds to make the Lease Payments are projected to be available from funding that otherwise would have been used for the purchase of electrical, thermal, or other energy required by the Owner in the absence of the energy conservation measures to be implemented under the Guaranteed Savings Agreement.

### Agreement

In consideration of the Background and the mutual covenants, undertakings and conditions set forth below, the parties, intending to be legally bound agree as follows:

**ARTICLE 1**  
**DEFINITIONS; INTERPRETATION**

**1.1. Definitions.** Unless otherwise expressly defined herein, each capitalized term in this Agreement has the meaning given to it in this Section 1.1.

**Act** is defined in the Background.

**Additional Bonds** means bonds issued under the Indenture other than the Series [\_\_] Bonds.

**Administrative Expense Fund** is defined in the Indenture.

**Administrative Expense Payments** is defined in Section 2.3(b)(ii).

**Agreement** is defined in the Preamble.

**Bond Fund** is defined in the Indenture.

**Bond Payments** is defined in Section 2.3(b)(i).

**Bonds** means the Series [\_\_] Bonds and Additional Bonds, collectively.

**Business Day** is defined in the Indenture.

**Commonwealth** means the Commonwealth of Pennsylvania.

**Construction Price** is defined in the Guaranteed Savings Agreement.

**Contractor** is defined in the Background.

**Dissemination Agent** means [\_\_\_\_\_].

**Guaranteed Savings Agreement** is defined in the Background.

**Final Completion** is defined in the Guaranteed Savings Agreement.

**Financial Advisor** is defined in the Indenture.

**FREE** is defined in the Background.

**Indemnitee** is defined in Section 5.1(a).

**Indenture** is defined in the Background.

**Initial Allocated Proceeds Amount** means \$[\_\_\_\_\_].

**Issuer** is defined in the Preamble.

**Issuer Expenses** means (a) the expenses incurred by the Issuer in connection with its performance under the Indenture, this Agreement and the lease payment agreements between the Issuer and Other Participants, including reasonable attorneys' fees and expenses, amounts payable to a rebate agent, if any, and (b) the costs of the issuance of the Bonds.

**Lease Payment** is defined in Section 2.3(a).

**Losses** is defined in Section 5.1(a).

**Other Participants** is defined in the Background.

**Owner** is defined in the Preamble.

**Owner Agreements** is defined in Section 6.1(a).

**Owner Allocable Bonds Amount** means, at any time, the principal amount of outstanding Bonds at such time relating to the funding of the Project, calculated as follows:

- (a) the Initial Allocated Proceeds Amount; plus
- (b) for each issue of Additional Bonds, the principal amount of such Additional Bonds allocable to the funding of the Project as set forth in an Officer's Certificate (as defined in the Indenture) of the Issuer and the Owner; minus
- (c) the amount of principal repayments of the Bonds (including Additional Bonds) funded by Lease Payments made by the Owner; minus
- (d) the aggregate principal amounts of Bonds (including Additional Bonds) redeemed or defeased with funds deposited with the Trustee by the Owner other than funds constituting Lease Payments.

**Owner Project Account** means account established under the Indenture in the name of the Owner.

**Owner Property** is defined in the Guaranteed Savings Agreement.

**Owner Proportionate Share** means, on any date, the percentage determined by dividing (a) the Owner Allocable Bonds Amount on such date by (b) the aggregate principal amount of all Bonds (including any Additional Bonds) outstanding under the Indenture on such date.

**Program** is defined in the Background.

**Project** is defined in the Background.

**Rebate Fund** is defined in the Indenture.

**Retained Rights** means (i) the Issuer's right to obtain notices, reports, and indemnification, (ii) the Issuer's right to provide approvals and consents, (iii) the Issuer's right to receive payments under Section 4.5 below and (iv) the Issuer's nonexclusive right to enforce the

provisions of Section 3.5 below, provided that the Issuer will retain the exclusive right, as the taxpayer pursuant to the Internal Revenue Service Form 8038, which shall be completed by or on behalf of the Issuer in connection with the issuance of the Bonds, to communicate with the Internal Revenue Service in any investigation of the Bonds by the Internal Revenue Service.

**Series [\_\_\_] Bonds** is defined in the Background.

**Trustee** is defined in the Background.

**Trustee Expenses** means the expenses incurred by the Trustee in connection with the performance of its duties under the Indenture, including attorney fees and expenses.

**1.2. Conventions.** Unless otherwise expressly provided in this Agreement:

- (a) references to Persons include their successors and permitted assigns;
- (b) the term “include,” “includes” or “including” means, include, includes or including without limitation (as the case may be);
- (c) references to the Articles and Sections and Exhibits mean the articles and sections of, and the exhibits to, this Agreement;
- (d) the term “day” means a calendar day and includes Saturdays, Sundays and holidays, except that, if any obligation for the payment of money under this Agreement falls due on a Saturday, Sunday or a holiday on which State banks are not open for business, the payment will be due on the next Business Day thereafter;
- (e) all references to a statute, regulation, law, agreement or instrument mean such statute, regulation, law, agreement or instrument as it may be amended, amended and restated or supplemented from time to time, including (in the case of statutes, regulations or laws) by successor statutes, regulations or laws and (in the case of agreements or instruments) by waiver or consent;
- (f) references to a party means a party to this Agreement; and
- (g) a reference to a governmental agency, department, board, commission or other public body or to a public officer includes an entity or officer that or who succeeds to or performs substantially the same functions as those performed by such governmental agency, authority, department, board, commission or other public body or to a public officer.

## **ARTICLE 2**

### **LEASE; BOND PROCEEDS; LEASE PAYMENTS**

**2.1. Lease.** The Issuer agrees to lease to Owner, and Owner agrees to lease from the Issuer, the Project. The term of this Agreement shall commence on the date hereof and shall continue unless earlier terminated in accordance with its terms on the date of the last scheduled Lease Payment.

**2.2. Bond Proceeds.** The Issuer will cause the Trustee to deposit into the Owner Project Account the Initial Allocated Proceeds Amount less the Owner's Proportionate Share of the costs of issuance of the Series [ ] Bonds.

**2.3. Lease Payments.**

(a) Subject to Sections 2.4 and 2.7 below, the Owner shall make payments in the amounts and at the times set forth in Exhibit 1 (Lease Payments) (each, a "**Lease Payment**"). The Owner shall make the Lease Payments without the need for presentation by the Issuer of an invoice therefor. Notwithstanding any dispute between Owner and Contractor or Trustee or any other person, Owner shall make all payments when due and shall not withhold any payments, or portions thereof, for any reason whatsoever.

(b) The Lease Payments shall be paid directly to Trustee, as assignee of the Issuer's rights hereunder, as follows:

(i) the amounts described in column A shown in Exhibit 1 (Lease Payments) (the "**Bond Payments**") shall be paid to the Trustee for deposit into the Bond Fund held under the Indenture for application to the payment of the principal or redemption price of, and the interest on, the Bonds; and

(ii) the amounts described in column B shown in Exhibit 1 (Lease Payments) (the "**Administrative Expense Payments**") shall be paid to the Trustee for deposit in the Administrative Expense Fund under the Indenture for application to the payment of the annual fees of the Trustee and the Issuer and the program fee of FREE.

(c) The Owner shall pay, when due, to the Issuer, as additional rent, all governmental taxes, fees, assessments and charges paid, payable or required to be collected by Issuer, however designated, which are levied or based on the Lease Payments or other payment due under this Agreement, or on the possession, use, operation, lease, rental, sale, purchase, control or value of the Project, including without limitation, registration and license fees and assessments, recycling fees, appraisal fees, state and local privilege or excise taxes, documentary stamp taxes or assessments, sales and use taxes, personal and other property taxes.

(d) Upon thirty (30) days' prior written notice from the Owner to the Issuer, and provided that there is no Event of Default, or an event with which notice or lapse of time, or both, could become an Event of Default, then existing, the Owner will have the right to terminate the Owner's continued obligation to make Lease Payments as specified in Exhibit 1 (Lease Payments) to Issuer or its assignee on the purchase of the Project by payment to Issuer or its assigns of the Concluding Payment (as set forth on Exhibit 1 (Lease Payments) hereto) and any accrued outstanding payments. Upon satisfaction by Owner of such purchase conditions, Issuer shall henceforth have no rights, title and interest in the Project.

**2.4. Nature of Owner's Obligations.** The Owner's obligations under this Agreement are absolute and unconditional and will remain in full force and effect until all Lease Payments have been paid in full and will not be affected, modified or impaired by the occurrence of any event or circumstance, including termination of the Guaranteed Savings Agreement for any reason, including the default or failure of the Contractor fully to perform any of its obligations



under the Guaranteed Savings Agreement. Notwithstanding the foregoing, any Lease Payments owed by the Owner pursuant to this Agreement are subject to the annual appropriation of funds for such purpose by the [Pennsylvania General Assembly/Owner<sup>1</sup>], and there can be no assurance that such funds will be appropriated in any fiscal year of the [Commonwealth/Owner]. The [Commonwealth/Owner] may choose not to appropriate funds necessary to make Lease Payments under this Agreement and thereby terminate the Owner's obligations under this Agreement as described in Section 2.7 below.

**2.5. No Set-Off.** The Owner shall pay all Lease Payments without set-off, reduction, counterclaim, abatement or recoupment, notwithstanding any obligation owed by the Contractor to the Owner under the Guaranteed Savings Agreement or otherwise.

**2.6. Transfer of Title.** Title to the Project will at all times remain in the Issuer unless and until the Owner pays all Lease Payments and other amounts due in full. Upon payment in full of the Lease Payments, whether as and when due or by prepayment to the extent permitted by Section 3.3 below, and any additional amounts due hereunder, title to the Project will vest in the Owner without the requirement of further action or payment.

**2.7. Nonappropriation of Funds.**

(a) In the event no funds or insufficient funds are appropriated and budgeted for any [Commonwealth/Owner] fiscal period for payments due under this Agreement, then, as more fully set out in clause (b) of this Section, Owner will notify Issuer and Trustee or their assignees of such occurrence and this Agreement shall terminate as of the last day of [Commonwealth's/Owner's] fiscal period for which appropriations were received without penalty or expense to the [Commonwealth or the Owner/Owner] of any kind whatsoever. In the event of such termination, Owner agrees to peaceably surrender possession of the Project in good operating condition, subject to normal wear and tear, to the Issuer or its assignee on the date of such termination. Issuer or its assignee will have all legal and equitable rights and remedies to take possession of the Project

(b) If, on the thirtieth (30th) day after the commencement of any fiscal period of the [Commonwealth/Owner], sufficient funds have not been appropriated for the purpose of making all of the Lease Payments scheduled to be paid in such fiscal period, Owner shall cause to be delivered written notice thereof (a "notice of nonappropriation") to the Issuer and the Trustee or their assignees within ten (10) calendar days after such thirtieth (30th) day. Upon Issuer's receipt of a notice of nonappropriation, this Agreement shall terminate as of the end of the [Commonwealth's/Owner's] fiscal period just ended with the effect set forth in clause (a) of this Section; provided, however, such termination shall not become effective as of the end of such [Commonwealth/Owner] fiscal period just ended if, within ten (10) calendar days of the thirtieth (30th) day after the end of such fiscal period just completed, Owner shall cause to be

---

<sup>1</sup> In Sections 2.4 and 2.7 bracketed references should be to the Commonwealth for state agencies and to Owner for governmental units that do not receive state appropriations. Governmental units that receive state appropriations and also have independent revenue sources should consult with the PennSEF Program as to the appropriate approach to completing these Sections.

delivered to the Issuer and the Trustee or their assignees a written statement to the effect that it reasonably expects sufficient funds for the then-current [Commonwealth/Owner] fiscal period to be appropriated for this Agreement, and in such event the term shall continue into the then-current [Commonwealth/Owner] fiscal period so long, but only so long, as an appropriation becomes available for which to make the payments.

(c) Notwithstanding the foregoing, Owner agrees that (i) it will not cancel this Agreement under the provisions of this Section 2.7 if any funds are appropriated to it, or by it, for the acquisition, retention, or operation of the Project or other equipment and property performing functions similar to the Project for the fiscal period following the fiscal period in which funds were appropriated; and (ii) it will not during the term of this Agreement give priority in the application of funds to any other functionally similar project.

### **ARTICLE 3 MATTERS RELATING TO THE BONDS**

**3.1. Consent to Assignment.** In consideration of the Issuer issuing the Bonds and making a portion of the proceeds thereof available to the Owner to fund the Project, the Owner hereby:

(a) consents to the pledge to the Trustee by the Issuer of the Issuer's right, title and interest in and to this Agreement, including the right to receive the Lease Payments but excluding the Retained Rights;

(b) acknowledges that the Trustee and Issuer have entered into the Indenture and related documents in reliance on, among other things, the execution, delivery and performance by the Owner of this Agreement;

(c) acknowledges the right of the Trustee to exercise its rights and remedies under the Indenture if an event of default occurs thereunder, to make all demands, give all notices, take all actions and exercise all rights and obligations of the Issuer under this Agreement (except the Retained Rights);

(d) agrees that it will not, without the prior written consent of the Trustee and the Issuer, assign or delegate its obligations under this Agreement;

(e) agrees that it will pay all amounts payable by it under this Agreement (except the Retained Rights) directly to the Trustee at an address and account number to be specified by the Trustee to the Owner in writing, or to such other person at such other address and account number as may be specified by the Trustee in writing; and

(f) agrees to deliver, on the date on which the Bonds are issued, an opinion of its counsel covering the enforceability of this Agreement against the Owner and such other matters as the Issuer or the underwriter of the Bonds may reasonably request.

**3.2. Additional Bonds.** If the proceeds of the Bonds deposited into the Owner Project Account are insufficient to complete the Project and the Issuer determines that Additional Bonds can be marketed on terms acceptable to the Owner, then, at the request of the Owner, the Issuer

shall use commercially reasonable efforts to issue Additional Bonds subject to the following conditions:

(a) the Owner executes and delivers to the Issuer an amendment to this Agreement, in form and substance satisfactory to the Issuer and the Trustee, by which Exhibit 1 (Lease Payments) is revised to increase the amounts and timing of the Lease Payments such that the Lease Payments will be sufficient to pay the principal or redemption price of, and interest on, the Owner Proportionate Share of all outstanding Bonds (after giving effect to the issuance of such Additional Bonds) when due, as confirmed by a certificate of a Financial Advisor;

(b) the Contractor and the Owner enter into an amendment to the Guaranteed Savings Agreement to increase the Construction Price accordingly;

(c) the requirements in the Indenture for the issuance of Additional Bonds are met;

(d) the Owner pays all costs of issuance of the Owner Proportionate Share of such costs to the extent not paid out of the proceeds of the Additional Bonds;

(e) the Owner delivers to the Issuer and the Trustee an instrument executed by an authorized representative of FREE in which FREE consents to the issuance of Additional Bonds; and

(f) if the proceeds of such Additional Bonds also will be used to fund the projects of Other Participants, the foregoing conditions are satisfied by each such Other Participants.

### **3.3. Redemption of Bonds.**

(a) At the request of the Owner, the Issuer shall cause the Trustee to redeem or defease Bonds as and when permitted under the terms of the Indenture in such principal amount as the Owner may request, provided that the Owner delivers funds to the Trustee in the amount necessary to make such redemption or defeasance.

(b) Following any such redemption or defeasance, the Issuer and the Owner shall amend this Agreement to reduce the amount of the Lease Payments to an amount that, after giving effect to such amendment, will be sufficient to pay the principal or redemption price of, and interest on, the Owner Proportionate Share of all outstanding Bonds (after giving effect to the redemption or defeasance of Bonds pursuant to subsection (a) above), when due, as confirmed by a certificate of a Financial Advisor.

**3.4. Excess Proceeds.** If any funds remain in the Owner Project Account after Final Completion, the Owner may instruct the Trustee to disburse such funds to the Owner to pay costs of an eligible project (with a favorable opinion of bond counsel) as provided in Section [●] of the Indenture.

### **3.5. Tax Matters.**

(a) The Trustee shall deliver to the Owner a statement setting forth the amount of the Owner Proportionate Share of any “arbitrage rebate” under the Internal Revenue Code, if any. The Owner shall deposit such amount with the Trustee for deposit into the Rebate Fund established under the Indenture within five Business Days after the Owner’s receipt of such invoice.

(b) For the purpose of ensuring the exclusion from gross income for federal income tax purposes of the interest on the Bonds, the Owner hereby makes the further representations, covenants and agreements set forth in Exhibit 2 (Tax Representations, Covenants and Agreements). Such representations, covenants and agreements are made for the sole benefit of the Issuer and may be waived by the Issuer or modified by agreement of the Owner and the Issuer, provided that such waiver or agreement is accompanied by a written opinion of nationally recognized bond counsel to the effect that such waiver or agreement will not adversely affect the exclusion from gross income for federal income taxes of the interest on the Bonds.

## **ARTICLE 4 COVENANTS**

**4.1. The Project.** The Owner shall proceed with commercially reasonable diligence with the acquisition, installation and construction of the Project in accordance with the Guaranteed Savings Agreement. Except as contemplated by Section 3.4 above with respect to excess funds in the Owner Project Account, the Owner shall use amounts on deposit in the Owner Project Account (including amounts on deposit in the Capitalized Interest Subaccount thereof) only to pay (a) the Construction Price, (b) costs incurred by the Owner in connection with the financing of the Project, (c) Lease Payments due in respect of interest on the Bonds prior to Final Completion, (d) any other amounts required to be paid by the Owner under this Agreement prior to Final Completion other than pursuant to Section 5.1 below and (e) the program fees of FREE. The Owner shall operate and maintain the Project in accordance with the requirements of the Guaranteed Savings Agreement and comply with its other obligations thereunder at all times.

### **4.2. Inspection; Information; Annual Statements.**

(a) The Owner shall permit the Issuer and the Trustee and their respective invitees to inspect the Project and Construction Work, at reasonable times and in a reasonable manner, so long as they do not unreasonably interfere with the performance of the Contractor’s work under the Guaranteed Savings Agreement. Neither the Issuer nor the Trustee will have any duty or obligation to inspect the Project or Construction Work.

(b) The Owner shall make available to the Issuer and the Trustee current financial statements, budgets, proof of appropriation for the ensuing fiscal period, and such other financial information as may be requested by the Issuer or the Trustee or any assignee relating to the ability of the Owner to continue to make Lease Payments and other sums due under this Agreement.

(c) The Owner shall provide to the Issuer and the Trustee any information relating to the Project as they may reasonably request.

**4.3. Final Completion.** The Owner shall give notice to the Trustee when Final Completion has been determined to have been achieved.

**4.4. Notice of Contractor Default; Termination.** The Owner shall give notice to the Issuer and the Trustee of (i) an occurrence of an event of default by the Contractor under the Guaranteed Savings Agreement and the cessation of such event of default, (ii) any subsequent termination of the Guaranteed Savings Agreement, (iii) the Owner having entered into a replacement Guaranteed Savings Agreement, (iv) any nonappropriation of funds in accordance with Section 2.7 above, and (v) the institution of any dispute resolution procedures under the Guaranteed Savings Agreement and the resolution thereof, in each case, concurrently with the delivery of any such notice to the Contractor.

**4.5. Fees and Expenses.** The Owner shall pay to the Trustee or the Issuer (as applicable) the Owner Proportionate Share of all Trustee Expenses and Issuer Expenses.

**4.6. Continuing Disclosure.** Within six months following the end of the Owner's fiscal year, the Owner shall provide to the Dissemination Agent an update of the type of information included in [Appendix \_\_ to the Official Statement in the text and tables under the heading "[NAME OF OWNER]."]

**4.7. Hazardous Materials.**

(a) Owner shall not engage in operations at the Owner Property which involve the unlawful generation, manufacture, refining, treatment, usage or disposal of "hazardous substances" or "hazardous waste" including in particular but without limitation as such terms are defined in 42 U.S.C. Section 9601 (14) or 35 P.S. section 6018.103 or 25 Pa. Code Section 75.260 and 75.261 as amended from time to time (collectively, "**Hazardous Materials**") in violation of any and all federal, state or local laws, statutes, ordinances, rules, regulations, standards, policies or other requirements relating to pollution or protection of human health and safety and the environment ("**Environmental Laws**"). Owner further covenants that it will not cause or permit to exist as the result of an intentional or unintentional action or omission on its part, the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping from, on or about the Owner Property of any Hazardous Materials in violation of Environmental Laws. Notwithstanding the foregoing, Owner shall be permitted to use and dispose of any Hazardous Materials customarily used in Owner's business operations from the Owner Property in accordance with Environmental Laws.

(b) In the event of Owner's failure to comply in full with this Section, Issuer may, at its option, without limiting Issuer's remedies otherwise provided herein, perform any and all of Owner's obligations upon thirty (30) days prior written notice to Owner, except in the case of emergency in which case no prior notice shall be required, and all reasonable costs and expenses incurred by Owner in the exercise of this right shall be deemed to be additional rent payable on demand and with interest until payment in full at the lesser of five percent (5%) or the maximum amount allowed by applicable law. Further, Owner shall indemnify, defend and hold

Issuer harmless from and against any and all claims, causes of action, losses, damages, liabilities, costs and expenses, including attorney's fees and the cost to cure, arising by reason of Owner's violation of this Section 4.7(b).

(c) This Section 4.7 shall survive the expiration or sooner termination of this Agreement.

**4.8. Liens.** Owner will not cause or permit any levies, liens or encumbrances to be filed against the Project and will promptly discharge the same if any charge, claim or any proceeding for the enforcement thereof is filed or commenced; provided, however, that Owner shall have the right to contest in good faith and with due diligence the validity of any such charge, lien or claim if (a) such contest (or the posting of statutory security) prevents the foreclosure of such lien, or (b) Owner deposits security in form and amount reasonably satisfactory to Issuer. If Owner fails to pay said charges when due, Issuer shall have the right, but shall not be obligated, to pay said charges. If Issuer pays any charges for which Owner is responsible or liable under this Agreement, Owner shall reimburse Issuer therefor.

**4.9. Payment.** Owner reasonably believes that funds can be obtained sufficient to make all Lease Payments during the term of this Agreement and hereby covenants that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which the payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funds, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved.

## **ARTICLE 5 INSURANCE; INDEMNIFICATION**

### **5.1. Insurance.**

(a) During the term of this Agreement, Owner shall obtain and maintain and promptly pay all premiums for the following types of insurance in the amounts specified and in the form provided herein: (i) any insurance required pursuant to the Guaranteed Savings Agreement; and (ii) "All-risk" fire and extended coverage casualty insurance including flood, earthquake and riot, insuring the Project, the building(s) in which the Project (or any part thereof) is installed, and all trade fixtures, merchandise and personal property from time to time in, on or upon the Owner Property. All such insurance coverage shall be in amounts not less than one hundred percent (100%) of the full replacement cost from time to time during the Term of this Agreement, providing protection against perils included within the standard state form of fire and extended coverage insurance policy, together with insurance against sprinkler damage, vandalism and malicious mischief. Owner assumes all risk of loss of any or all of the Owner Property, Owner's personal property, and the Project.

(b) Accord 27 Certificates (or comparable certificates, as reasonably determined by Issuer) of all policies of insurance shall be delivered to Issuer within five (5) business days after request therefor and shall provide that the coverage of such policies may not be canceled, modified or reduced without thirty (30) days prior written notice to Trustee. Each

policy of insurance Owner is required to maintain shall be written as a primary policy which does not contribute to and is not in excess of coverage which Owner may carry. If Owner fails to maintain such insurance or to deliver any of the certificates as required in this Lease, Issuer, in addition to any other remedies, may upon thirty (30) days prior written notice to Owner, procure such insurance at the expense of Owner and Owner shall immediately reimburse to Issuer the cost thereof. Such cost shall be deemed additional rent and shall be payable by Owner to Issuer immediately upon demand. The proceeds from any insurance of Owner shall be used to repair the damage to the Project.

(c) All policies of insurance required hereunder shall be issued by an insurance company qualified to do business in the Commonwealth and reasonably satisfactory to Trustee, and each and every policy shall name Trustee as an additional insured.

## **5.2. Indemnification.**

(a) The Owner shall indemnify the Issuer, the Trustee and each of their respective officers, employees, agents or any other party acting for or on behalf of either of them (each, an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee (collectively, “**Losses**”), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of:

(i) the Project;

(ii) any untrue statement or alleged untrue statement by the Owner of any material fact or omission or alleged omission by the Owner to state a material fact necessary to make the statements made, in light of the circumstances under which it was made, not misleading, in the preliminary or final official statement used in connection with the offer or sale of the Bonds;

(iii) any actual or alleged presence or release of hazardous materials on, at, to or from the Owner Property;

(iv) the use of the proceeds from the sale of the Bonds that were deposited into the Owner Project Account;

(v) the execution and delivery of, or the performance under, this Agreement or any agreement or instrument contemplated hereby or thereby (other than the Indenture);

(vi) the execution and delivery of, or the performance under, the Indenture or any agreement or instrument contemplated thereby (other than this Agreement); or

(vii) any amount owed or alleged to be owed to a taxing agency or a holder of a Bond because of a determination or allegation that any of the Bonds are not exempt from federal [**or State**] taxation;

provided that:

(A) in each case, such indemnity will not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee; and

(B) with respect to clauses (vi) and (vii), such indemnity will only be available to the extent that (I) the events described therein resulted from an action or omission of, or is otherwise related to the Owner or (II) if such event did not result from an action or omission of, or is otherwise unrelated to the Owner and cannot be attributed to an Other Participants, the indemnity will only cover the Owner Proportionate Share of the related Losses.

(b) To the fullest extent permitted by applicable law, the Owner shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, the Program Agreement or any agreement or instrument contemplated hereby or the use of the proceeds of the Bonds.

(c) All amounts due under this Section 5.2 will be payable not later than five Business Days after written demand therefor.

**5.3. Agreements with Other Participants.** The Issuer agrees that it will include the provisions of this Article 5 in the lease agreements that the Issuer enters into with Other Participants in connection with the Bonds.

## **ARTICLE 6 REPRESENTATIONS**

**6.1. Representations and Warranties.** The Owner represents and warrants that:

(a) it is a [\_\_\_\_\_] and has all requisite power and authority to enter into and perform its obligations under this Agreement, the Guaranteed Savings Agreement and the Program Agreement (the “**Owner Agreements**”) and to carry out the terms thereof and the transactions contemplated thereby;

(b) the execution, delivery and performance by Owner of the Owner Agreements have been duly authorized by all necessary action on the part of Owner and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of the Owner, except as has been obtained;

(c) each Owner Agreement (i) has been duly executed and delivered on behalf of Owner by authorized officers of Owner, and constitutes the legal, valid and binding obligation of Owner, enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, moratorium, and other similar laws applicable to creditors’ rights generally and also subject to



any limitations on enforceability which may be imposed by application of equitable principles, (ii) is in full force and effect and (iii) has not been assigned by the Owner;

(d) to knowledge of Owner, there is no action, suit, proceeding or investigation pending or threatened against the Owner or its properties before or by any court, administrative agency, environmental council, arbitrator or governmental authority, body or agency that could adversely affect the performance by Owner of its obligations under any Owner Agreement or that questions the validity, binding effect or enforceability of any Owner Agreement, any action taken or to be taken pursuant thereto or any of the transactions contemplated thereby;

(e) the execution, delivery and performance by Owner of the Owner Agreements and the consummation of the transactions contemplated thereby, do not and will not conflict with, or result in any violation of, any term of its organizational documents, or of any contract or agreement applicable to it or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation presently applicable to it or any of its properties or by which it or its properties may be bound or affected;

(f) no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any federal, state or local government or public body, authority or agency is required in connection with the valid authorization, execution and delivery by the Owner of the Owner Agreements, except those that have been obtained; and

(g) neither the Owner nor, to the knowledge of the Owner, the Contractor has declared a default under the Guaranteed Savings Agreement.

## **ARTICLE 7 DEFAULT; REMEDIES**

**7.1. Default.** Each of the following will constitute an “Event of Default” under this Agreement:

(a) failure to pay any Lease Payment on or before the date specified therefor in Exhibit 1 (Lease Payments); or

(b) failure of the Owner to perform any other covenant to be performed hereunder which failure goes unremedied for 30 days.

**7.2. Remedies.** Upon the occurrence of any Event of Default, the Trustee and the Issuer (with respect to the Retained Rights) may take any available action at law or in equity to enforce its rights hereunder but may not accelerate the remaining Lease Payments or terminate this Agreement.

**ARTICLE 8  
MISCELLANEOUS**

**8.1. No Personal Recourse.** No covenant, obligation or agreement of a party hereunder will be deemed to be a covenant, stipulation, obligation or agreement of any past, present or future member, officer, agent, attorney or employee of such party in other than his or her official capacity, and none of the members, officers, agents, attorneys or employees, past, present or future of a party will be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of such party in this Agreement.

**8.2. Amendment of the Indenture.** The Issuer covenants that, except as may be necessary to protect the tax-exempt status of the Bonds, it will take no action to amend or supplement the Indenture in any manner that would adversely affect the interests of the Owner without obtaining the prior consent of the Owner.

**8.3. Notices, Etc.** All notices, consents, authorizations and approvals given under this Agreement must be in writing and may be telecopied, delivered by hand, mailed by first class, registered mail (return receipt requested) or sent by FedEx or similar courier service and addressed as follows:

If to the Issuer:	With a copy to:
If to the Owner:	With a copy to:

Each party may change the address to which its communications are delivered by giving notice to the other parties. Any communication given in accordance with this Section 8.3 will be deemed to have been given to a party upon its receipt thereof.

**8.4. Assignment.** Neither party may assign this Agreement directly or by merger or otherwise by operation of law without the prior consent of the other party, except that, without such consent, the Issuer may assign this Agreement to the Trustee as security for the payment of the Bonds with the current right to all payments and rights to enforcement under the Agreement. Any purported assignment of this Agreement in violation of this Section 8.4 will be null and void.

**8.5. Complete Agreement; Amendments.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties as to the subject matter hereof. This Agreement may not be amended or modified except by a written instrument signed by the parties.

**8.6. Governing Law.** This Agreement will be governed by, and interpreted and enforced in accordance with, the laws of the Commonwealth (excluding any conflict of laws rule or principle that might refer such interpretation to the laws of another jurisdiction). Each party consents to jurisdiction and venue in courts of the Commonwealth in jurisdictions in which the Owner is located.

**8.7. WAIVER OF JURY TRIAL.** OWNER AND ISSUER EACH HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT DOCUMENT RELATING THERETO OR ARISING FROM THE RELATIONSHIP WHICH IS THE SUBJECT OF THIS AGREEMENT AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.

**8.8. Counterparts.** This Agreement may be executed in counterparts that, taken together, will constitute one and the same agreement.

[Signature Page to Follow]

As evidence of their intent to be legally bound, the Owner and the Issuer have each caused this Lease Agreement to be duly executed by their duly authorized representatives as of the day and year first written above.

[ISSUER]

By: \_\_\_\_\_  
Name:  
Title:

[OWNER]

By: \_\_\_\_\_  
Name:  
Title:

[SIGNATURE PAGE TO THE LEASE PAYMENT AGREEMENT]

**EXHIBIT 1  
LEASE PAYMENTS**

<b>Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Capitalized Interest</b>	<b>Trustee Fee</b>	<b>Issuer Fee</b>	<b>Program Fee</b>	<b>Semi-Annual Payments</b>	<b>Lease Payment Obligations</b>
<b>Totals</b>								

**EXHIBIT 2**

**TAX REPRESENTATIONS, COVENANTS AND AGREEMENTS**