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 AUTH. NAME AUTHOR AFFILIATION  
 MOORE, C. L. Kelehar & McLeod  
 RECIP. NAME RECIPIENT AFFILIATION  
 KNIGHTON, G. W. PWR Project Directorate 7

SUBJECT: Forwards documents re sale & leaseback of undivided interest  
 in facility by PSC of NM & common facilities, including  
 outline of differences between transaction as consummated  
 on 851231 & as indicated in documents filed w/NRC.

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January 29, 1986

\*ADMITTED IN DISTRICT OF COLUMBIA  
\*\*ADMITTED IN DISTRICT OF COLUMBIA AND NEW MEXICO

Director of Nuclear Reactor Regulation  
Attention: Mr. George W. Knighton, Project Director  
PWR Project Directorate #7  
Division of Pressurized Water Reactor Licensing - B  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Sale and Leaseback Financing Transaction  
by Public Service Company of New Mexico -  
NRC Docket No. STN 50-528

Gentlemen:

Pursuant to your discussions with Art Gehr, enclosed  
herewith on behalf of Public Service Company of New Mexico are  
the following documents:

- (1) Enclosure A: "Outline of Differences Between  
Transaction as Consummated and as Indicated in  
the Referenced Filing". This document outlines  
the differences between the transaction as  
consummated on December 31, 1985, and as  
indicated in documents filed with the NRC. With  
minor exceptions, this information is sub-  
stantially the same as that provided to you by  
telephone by Art Gehr prior to consummation of  
the transaction. The exceptions are that  
information pertaining to Supplemental Financ-  
ings (with reference to page 10 of the  
Memorandum, line 8 under Section 4.7) is now  
included; previously, at the time of Art  
Gehr's telephone conversation with you, the  
subject was still under discussion with the  
equity investors. Also, after your conversation  
with Art Gehr, and as reflected in Enclosure A  
hereto, one of the equity investors increased  
its commitment to \$165 million. As was  
indicated by Art Gehr, none of the changes was

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KELEHER & McLEOD, P. A.

January 29, 1986

Page 2.

or is considered material in the context of the NRC filing and decision by the NRC.

- (2) Enclosure B: Transaction Documents.  
There are four volumes included, which reflect the December 31, 1985, closing. Indexes are attached to each volume. One volume pertains to the interim debt portion of the transaction, while the other three volumes pertain to the equity portion, there being one volume to correspond to each equity investor.
- (3) Enclosure C: Amendment No. 10 to Arizona Nuclear Power Project Participation Agreement, dated November 21, 1985.
- (4) Enclosures D and E: Amendments 1 and 2 to the Application of First PV Funding Corporation, dated September 20, 1985, filed with the Securities & Exchange Commission.

We sincerely appreciate the responsiveness and cooperation which you and the other NRC personnel displayed in connection with this extremely complex transaction.

Yours very truly,

KELEHER & McLEOD, P.A.

By Charles L. Moore  
Charles L. Moore

CLM/mu  
Encl.

cc: Edward S. Christenbury, Esq. (W/encl.)  
Arthur C. Gehr, Esq. (w/encl.-Encl.A only)  
Timothy M. Toy, Esq. " "  
Mr. A. J. Robison " "



ENCLOSURE A: OUTLINE OF DIFFERENCES BETWEEN TRANSACTION  
AS CONSUMMATED AND AS INDICATED IN THE  
REFERENCED FILING

I. MEMORANDUM IN SUPPORT OF THE APPLICATION IN  
RESPECT OF A SALE AND LEASEBACK FINANCING  
TRANSACTION BY PUBLIC SERVICE COMPANY OF  
NEW MEXICO

<u>Page</u>	<u>Line</u>	<u>Comment</u>
2	line 12 of Section 2.1	The basic lease term of approximately 28-1/2 years is now approximately 29 years.
4	lines 6-7 of Section 2.2.4	The final Amendment No. 10 (a copy of which is enclosed as Enclosure C) differs as to certain details from the form appearing as Appendix E to the Memorandum. None of such differences alter the basic precepts expressed in Sections 4.5, 4.6 and 4.7 and Memorandum and Sections 3 and 9 of the Application.
7	lines 10-12 from top of page	It was originally anticipated that the ownership interest in land, easements and certain "Section 1250" property would be retained by PNM; however, in order to facilitate the transaction, it was determined that a proportionate undivided ownership interest in certain real property and property rights would be transferred to the lessors. Representations respecting transmission facilities and nuclear fuel remain unchanged.
7	lines 16-22	It is now anticipated that, if New Mexico Public Service Commission approval is obtained, one of PNM's affiliates may participate as an equity investor at some time in 1986.



8	line 3 under Section 4.2	The purchase price (assuming sale and leaseback of PNM's entire interest in PVNGS Unit 1), which had originally been estimated at \$400 million, was \$450 million, of which amount approximately \$325 million was closed on December 31, 1985.
---	-----------------------------	--

<u>Page</u>	<u>Line</u>	<u>Comment</u>
9	line 2 under Section 4.3	As indicated above, the basic lease term is approximately 29 years.
9	lines 7-9 under Section 4.3	There is a reference here to fair market renewals. PNM's option for fair market renewals was eliminated from the transaction in negotiations with the equity investors. PNM will, however, have the option to renew the leases at a fixed rental (i.e., 50% of the original rent) for a minimum of 2 years and a maximum of 8 years.
10	line 8 under Section 4.7	The availability of Supplemental Financings will require mutual agreement. Supplemental Financings are subject to a \$100 million aggregate limit over the life of the transaction.
11	line 8 under Section 4.10	The reference to "will be indirectly secured by a security interest in the facilities" should be stricken. In discussions with the equity, the requirement of a security interest was deleted.
12	lines 1-6	The application to the SEC under the Investment Company Act has been amended from that appearing as Appendix C. Copies of Amendments 1 and 2 are enclosed herewith as Enclosures D and E, respectively. The principal reason for amendment was to reflect the deletion of the requirement for a security interest in the facilities. A copy of Amendment 2 explaining this matter





was provided by Art Gehr in his letter dated November 26, 1985.

II. APPLICATION IN RESPECT OF A SALE AND LEASEBACK  
FINANCING TRANSACTION BY PUBLIC SERVICE COMPANY  
OF NEW MEXICO

- |   |                            |  |
|---|----------------------------|--|
| 2 | lines 1-3 of<br>Footnote 1 | As discussed with reference to the Memorandum, an undivided ownership interest in certain real property was conveyed to the lessors. |
| 4 | line 7 of<br>Section 3     | The basic lease term was changed to approximately 29 years, as discussed with reference to the Memorandum.                           |

<u>Page</u>	<u>Line</u>	<u>Comment</u>
7	last 2 lines of Section 5.1	Because of scheduling problems with the SEC, the public debt was delayed and will be offered after the first of the year (although the sale and leaseback itself closed on December 31). Private interim financing (as mentioned at the bottom of page 11 of the Memorandum) was used in the interim for the December 31, 1985 closing.

III. RESPONSE BY PUBLIC SERVICE COMPANY OF NEW MEXICO  
TO REQUEST FOR ADDITIONAL FINANCIAL INFORMATION

- |   |                         |   |
|---|-------------------------|---|
| 4 | All of 3rd<br>paragraph | The schedule for filing a PVNGS decommissioning cost recovery plan has been changed. A revised schedule is expected to be determined with the New Mexico Public Service Commission in the first quarter of 1986.  |
| 6 | All of the<br>table     | Two of the identified equity investors increased their commitments. Chrysler committed a total of \$165 million of equipment costs (composed of both debt and equity), and Mellon committed to \$60 million in equipment costs. Total estimated asset value for the entire interest |



was \$450 million (rather than \$446 million) of which \$325 million was closed on December 31, 1985.

0254D



ENCLOSURE B



**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**Sale and Leaseback of an Undivided Interests in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities**

**MFS Leasing Corp.  
December 31, 1985**

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**TRANSACTION DOCUMENTS**

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Letter with Respect to Tab 5	15
Owner Participant Escrow Letter	16





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PARTICIPATION AGREEMENT

dated as of December 16, 1985

among

MFS LEASING CORP.  
as Owner Participant

FIRST PV FUNDING CORPORATION,  
as Loan Participant

THE FIRST NATIONAL BANK OF BOSTON,  
in its individual capacity and as Owner Trustee  
under a Trust Agreement,  
dated as of December 16, 1985,  
with the Owner Participant, as Owner Trustee

CHEMICAL BANK  
in its individual capacity and as Indenture Trustee  
under a Trust Indenture, Mortgage, Security Agreement  
and Assignment of Rents, dated as of December 16,  
1985,  
with the Owner Trustee, as Indenture Trustee

and

PUBLIC SERVICE COMPANY OF NEW MEXICO,  
as Lessee

---

Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities

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- APPENDIX

Appendix A	- Definitions
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## PARTICIPATION AGREEMENT

PARTICIPATION AGREEMENT, dated as of December 16, 1985, among the Owner Participant identified in Schedule 2 (the Owner Participant), FIRST PV FUNDING CORPORATION, a Delaware corporation (the Loan Participant), THE FIRST NATIONAL BANK OF BOSTON, a national banking association, in its individual capacity (FNB) and as Owner Trustee (the Owner Trustee) under a Trust Agreement, dated as of December 16, 1985, with the Owner Participant, CHEMICAL BANK, a New York banking corporation, in its individual capacity (Chemical Bank) and as Indenture Trustee (the Indenture Trustee) under a Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 16, 1985, with the Owner Trustee, and PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the Lessee).

### W I T N E S S E T H :

WHEREAS, the Owner Participant desires to cause the Trust to acquire the Undivided Interest and the Real Property Interest and to lease the Undivided Interest and the Real Property Interest to the Lessee under the Facility Lease;

WHEREAS, the Lessee desires to sell the Undivided Interest and the Real Property Interest to the Trust and lease the Undivided Interest and the Real Property Interest back from the Trust under the Facility Lease;

WHEREAS, the Owner Trustee and the Lessee will enter into the Purchase Documents with respect to the sale and purchase of the Undivided Interest and the Real Property Interest;

WHEREAS, pursuant to the terms and provisions of the Indenture, the Owner Trustee will authorize the creation, issuance and sale and delivery of the Initial Series Note and the granting of the security therefor, and the Indenture Trustee will authenticate the Initial Series Note; and

WHEREAS, the Loan Participant is willing to purchase the Initial Series Note on the terms and conditions set forth herein;

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

SECTION 1. Definitions.

For the purposes hereof, capitalized terms used herein shall have the meanings assigned to such terms in Appendix A and Schedule 2. References in this Participation Agreement to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Participation Agreement unless otherwise indicated.

SECTION 2. Participation by the Loan Participant; Releveraging; Refunding.

(a) Loan Participant's Commitment. Subject to the satisfaction of the conditions in Sections 5(a) and 11(a), on the Closing Date the Loan Participant agrees to lend to the Owner Trustee, on a non-recourse basis, an amount (the Loan) equal to the Loan Percentage of the Purchase Price.

(b) Payment; Terms of the Initial Series Note.

(1) Payment. Proceeds of the Loan shall be paid directly to the Indenture Trustee, for the account of the Owner Trustee, in immediately available funds, at the Indenture Trustee's Office.

(2) Terms of the Initial Series Note. The Loan shall be evidenced by the Initial Series Note. The Initial Series Note shall be issued by the Owner Trustee under and pursuant to the Indenture and shall be in the principal amount of the Loan and shall bear interest at the rates per annum and shall be payable as set forth in the Indenture.

(c) Releveraging of the Debt. Upon the occurrence of an adjustment of Basic Rent and the schedules of Casualty Values, Special Casualty Values, and Termination Values, under Section 3(d) of the Facility



Lease, subject to the conditions set forth in Section 11(c), on the Releveraging Date the Loan Participant agrees to lend to the Owner Trustee, on a non-recourse basis, an amount (the Releveraging Loan) equal to the Releveraging Amount. There shall be up to two Releveraging Loans under this Section 2(c), the date or dates of which shall be mutually acceptable to the Lessee, the Owner Participant and the Loan Participant. Proceeds of the Releveraging Loan shall be paid directly to the Indenture Trustee, for the account of the Owner Trustee as a partial refund of the Investment, in immediately available funds, at the Indenture Trustee's Office. The Releveraging Loan shall be represented by the Releveraging Note, which Note shall be issued by the Owner Trustee under and pursuant to the Indenture and shall be in the principal amount of the Releveraging Loan and shall bear interest at the rates per annum and shall be payable as set forth in the Indenture.

(d) Refunding of the Initial Series Note and the Releveraging Note. Subject to the satisfaction of the conditions set forth in Section 11(d), on the Refunding Date the Loan Participant agrees to lend to the Owner Trustee, on a non-recourse basis, an amount (the Refunding Loan) equal to the sum of (i) the amount necessary to refund the Initial Series Note and the Releveraging Note (if theretofore issued) and (ii) an amount equal to the Releveraging Amount. Proceeds of the Refunding Loan shall be paid directly to the Indenture Trustee (i) to the extent necessary to refund the Initial Series Note and the Releveraging Note (if theretofore issued), for such purpose, and (ii) to the extent of such Releveraging Amount, for the account of the Owner Trustee as a partial refund of the Investment, in each case in immediately available funds, at the Indenture Trustee's Office. The Refunding Loan shall be represented by the Fixed Rate Note, which Note shall be issued by the Owner Trustee under and pursuant to the Indenture and shall be in the principal amount of the Refunding Loan and shall bear interest at the rates per annum and shall be payable as set forth in the Indenture. On the Refunding Date the Fixed Rate Note shall be exchanged by the Owner Trustee for the Initial

Series Note and the Releveraging Note (if theretofore issued). Not less than 5 Business Days prior to the Refunding Date, the Loan Participant shall deliver to the Owner Participant and the Lessee a certificate setting forth the information necessary to complete the form of Fixed Rate Note (including the schedules thereto) set forth in the Indenture. Upon such delivery, and upon approval by the Lessee and the Owner Participant of the terms thereof, the Owner Participant and the Lessee shall cause the form of Fixed Rate Note to be completed. The parties hereto shall make a good faith effort to cooperate to effect such amendments of the Transaction Documents as may be necessary or appropriate to effect such refunding. The refunding contemplated by this Section 2(d) shall be effected at the request of the Lessee given in writing at least 10 Business Days prior to the Refunding Date; provided, however, that (i) no such request shall be made or refunding occur while an Event of Default shall have occurred and be continuing; (ii) Net Economic Return shall not be adversely affected thereby (or appropriate adjustments shall have been made or shall be made on the Refunding Date pursuant to Section 3(e) of the Facility Lease to preserve Net Economic Return); (iii) any modifications of the Transaction Documents shall satisfy the provisions of Revenue Procedure 75-21, Revenue Procedure 75-28 and any other applicable statute, regulation, revenue procedure, revenue ruling or technical information release relating to the subject matter of such revenue procedures; and (iv) such modifications (after giving effect to any adjustments pursuant to clause (ii) above) shall not, in the opinion of the Owner Participant's Special Counsel, adversely affect the tax benefits contemplated by the Owner Participant in entering into the transactions contemplated by this Participation Agreement and the other Transaction Documents.

### SECTION 3. Participation by the Owner Participant; Partial Refund.

(a) Owner Participant's ~~Commitment~~. Subject to the satisfaction of the conditions in Sections 5(a) and 11(a), on the Closing Date the Owner Participant

10 agrees to make an investment with respect to the Undivided Interest in an amount (the Investment) equal to the Investment Percentage of the Purchase Price. The Owner Participant's Investment is subject to adjustment as provided in paragraph (b) below. Proceeds of the Investment shall be paid directly to the Indenture Trustee, for the account of the Owner Trustee, in immediately available funds, at the Indenture Trustee's Office.

(b) Partial Refund. In the event that the Indenture Trustee shall have received the proceeds of the Releveraging Loan or that portion of the Refunding Loan equal to the Releveraging Amount used in calculating the amount of such Releveraging Loan, (as evidenced by an officer's certificate of the Loan Participant) the Indenture Trustee shall as soon as practicable return the same to the Owner Participant as a partial refund of the Investment, which Investment shall thereupon be reduced accordingly.

SECTION 4. Purchase, Sale, Financing and Lease of the Undivided Interest; Purchase, Sale and Lease of the Real Property Interest.

(a) The Undivided Interest. Subject to (x) the satisfaction of the conditions in Sections 5(a) and 11(a), (y) receipt from the Owner Participant of the Investment and (z) receipt from the Loan Participant of the proceeds of the Loan, on the Closing Date the Owner Trustee shall (i) cause the Trust to purchase the Undivided Interest from the Lessee for the purchase price (the Purchase Price) specified on Schedule 2 and (ii) disburse an amount equal to the Estimated Transaction Expenses in accordance with the payment instructions set forth in the Notice of Closing. Subject to the satisfaction of the conditions in Section 11(b), on the Closing Date the Lessee shall sell the Undivided Interest to the Trust for the Purchase Price. Concurrently with such purchase and sale, the Trust shall lease the Undivided Interest to the Lessee, and the Lessee shall lease the Undivided Interest from the Owner Trustee, pursuant to the Facility Lease.

(b) The Real Property Interest. Subject to (x) the satisfaction of the conditions in Sections 5(a) and 11(a) and (y) receipt from the Owner Participant of the Real Estate Investment on the Closing Date, the Owner Participant shall cause the Trust to purchase the Real Property Interest from the Lessee for a purchase price equal to the Real Estate Investment specified on Schedule 2. Subject to the satisfaction of the conditions in Section 11(b), on the Closing Date the Lessee shall sell the Real Property Interest to the Trust for such purchase price. Concurrently with such purchase and sale, the Trust shall lease the Real Property Interest to the Lessee, and the Lessee shall lease the Real Property Interest from the Trust, pursuant to the Facility Lease.

#### SECTION 5. Notice of Closing; Closing.

(a) Notice of Closing. Not later than 1 Business Day prior to the Closing Date, the Lessee shall deliver to the Owner Participant, the Owner Trustee, the Loan Participant, the Collateral Trust Trustee and the Indenture Trustee a notice, substantially in the form of Schedule 1 (the Notice of Closing), which shall (i) state that the Closing Date shall occur on the date specified therein, (ii) set forth the Purchase Price and a list of the then known Transaction Expenses payable by the Owner Trustee pursuant to Section 14(a) (the Estimated Transaction Expenses), (iii) provide payment instructions in respect of the disposition of the Purchase Price, (iv) set forth Real Estate Investment and (v) provide payment instructions in respect of the Real Estate Investment.

(b) Closing. Upon satisfaction of the conditions in Section 5(a) and Section 11(a) and upon receipt from the Owner Participant of the Investment, the Real Estate Investment and the amount of Estimated Transaction Expenses and from the Loan Participant of the Loan, on the Closing Date the Owner Trustee shall (i) cause the Indenture Trustee to pay to the Lessee an amount equal to the Purchase Price and disburse the Estimated Transaction Expenses, in immediately available

funds, pursuant to payment instructions of the Lessee set forth in the Notice of Closing and (ii) pay to the Lessee an amount equal to the Real Estate Investment, in immediately available funds, pursuant to payment instructions of the Lessee set forth in the Notice of Closing. Upon satisfaction of the conditions in Section 11(b), on the Closing Date, the Lessee shall deliver to the Owner Trustee the Bill of Sale, the Deed and the Assignment of Beneficial Interest.

**SECTION 6. Representations, Warranties and Agreements of the Loan Participant; Direction to the Indenture Trustee.**

(a) The Loan Participant represents and warrants that:

(1) **Due Organization.** The Loan Participant is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has the corporate power and authority to carry on its business as presently conducted, own its properties, and enter into and perform its obligations under this Participation Agreement and each other Transaction Document and each Financing Document to which it is, or is to become, a party.

(2) **Due Authorization; Enforceability.** The execution, delivery and performance by the Loan Participant of this Participation Agreement, each other Transaction Document and each Financing Document to which it is, or is to become, a party, have been duly authorized by all necessary corporate action on the part of the Loan Participant and do not require the consent or approval of the stockholder of the Loan Participant. This Participation Agreement, each other Transaction Document and each Financing Document to which the Loan Participant is, or is to become, a party, have been, or on or before the Closing Date will have been, duly executed and delivered by the Loan Participant and constitute, or upon execution and delivery thereof will constitute, legal, valid and binding agreements of the Loan

Participant enforceable against it in accordance with their respective terms.

(3) No Violation. Neither the execution, delivery or performance by the Loan Participant of this Participation Agreement, any other Transaction Document or any Financing Document to which it is, or is to become, a party, nor the consummation by the Loan Participant of the transactions contemplated hereby or thereby, nor compliance by the Loan Participant with the provisions hereof or thereof conflicts or will conflict with, or results or will result in the breach of any provision of, the Certificate of Incorporation or By-Laws of the Loan Participant or any Applicable Law or any indenture, mortgage or agreement to which the Loan Participant is a party or by which it or its property is bound or requires any Governmental Action, except such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished.

(4) No Other Business. Except as contemplated by this Participation Agreement, the other Transaction Documents and the Financing Documents and except as otherwise contemplated by the Section 6(c) Application, the Loan Participant has not engaged, and will not engage, in any business or activity of any type or kind whatever.

(5) ERISA. The Loan Participant is not acquiring any Note with the "plan assets" of any "employee benefit plan" within the meaning of section 3(3) of ERISA or any "plan" within the meaning of section 4975(e)(1) of the Code.

(6) Investment Representation. The Loan Participant is acquiring the Note to be acquired by it for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of Section 5 of the Securities Act. The Loan Participant understands that the Note to be acquired by it has not been

registered under the Securities Act and will bear the legend set forth in the form of such Note.

(b) Agreements of the Loan Participant. The Loan Participant agrees that:

(1) Transfers of the Notes. Any transfer or assignment of any Note or of all or any part of the Loan Participant's interest hereunder or under any other Transaction Document or any Financing Document shall be effected in a transaction constituting an exempted transaction under the Securities Act and on the express condition that the transferee, assignee or participant shall agree to be bound by the terms and provisions hereof and thereof. Neither the Loan Participant nor any subsequent Holder of a Note may sell, exchange or transfer any Note to any other Person (other than the Collateral Trust Trustee) unless such transferee delivers to the other parties hereto a representation and warranty (and an opinion of counsel satisfactory to each of the other parties hereto) to the effect that neither the transfer of such Note to, nor the ownership of such Note by, such transferee will cause such transferee, or any other party hereto, to be engaged in a "prohibited transaction", as defined in section 406 of ERISA or section 4975 of the Code, which is not at such time subject to an exemption contained in ERISA or in the rules, regulations, releases or bulletins adopted thereunder.

(2) Quiet Enjoyment. The Loan Participant acknowledges Section 6(a) of the Facility Lease.

(3) No Other Business. During such time as any Note is outstanding and held by the Loan Participant or the Collateral Trust Trustee, the Loan Participant will not (i) engage in any business or activity other than (1) in connection with the Transaction Documents or the Financing Documents or (2) as otherwise contemplated by the Section 6(c) Application or (ii) amend or engage in any activity or take any action not permitted by Article THIRD,

FOURTH or SIXTH of its Certificate of Incorporation, as in effect on the date of execution and delivery hereof, without, in each case, the consent of the other parties hereto.

(c) Direction to the Indenture Trustee. The Loan Participant, as purchaser of each Note, (i) hereby authorizes and directs the Indenture Trustee to execute, deliver and perform this Participation Agreement, (ii) hereby authorizes and directs the Indenture Trustee to register such Note in the name of the Collateral Trust Trustee and, upon authentication and delivery thereof pursuant to this Participation Agreement and the Indenture, to deliver such Note to the Loan Participant pursuant to the Collateral Trust Indenture, (iii) acknowledges and agrees that, in connection with this Participation Agreement, the Indenture Trustee shall have the benefits and protections of Article VIII of the Indenture and (iv) agrees that, in the event of a conflict between the provisions of this Participation Agreement and the Indenture, the Indenture Trustee shall, as between the Indenture Trustee and the Loan Participant, be fully protected in relying on the express terms of the Indenture.

#### SECTION 7. Representations, Warranties and Agreements of the Owner Participant.

(a) Representations and Warranties. The Owner Participant represents and warrants that:

(1) Due Organization. The Owner Participant is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has the corporate power and authority to enter into and perform its obligations under this Participation Agreement and each other Transaction Document to which it is, or is to become, a party.

(2) Due Authorization. This Participation Agreement and each other Transaction Document to which the Owner Participant is, or is to become on



or before the Closing Date, a party have been duly authorized by all necessary corporate action on the part of the Owner Participant and do not require the consent or approval of its stockholders or any trustee or holder of any of its indebtedness or other obligations, except such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished.

(3) Execution. This Participation Agreement and each other Transaction Document to which the Owner Participant is, or is to become on or before the Closing Date, a party have been, or on or before the Closing Date will have been, duly executed and delivered by the Owner Participant and constitute, or upon execution and delivery thereof will constitute, its legal, valid and binding agreements, enforceable against it in accordance with their respective terms.

(4) No Violation. Neither the execution, delivery or performance by the Owner Participant of this Participation Agreement or any other Transaction Document to which it is, or is to become on or prior to the Closing Date, a party, nor the consummation by the Owner Participant of the transactions contemplated hereby or thereby, nor compliance by the Owner Participant with the provisions hereof or thereof, conflicts with, or results in the breach of any provision of, or is inconsistent with, its documents of incorporation or By-Laws or contravenes any Applicable Law applicable to it, or any indenture, mortgage or agreement for borrowed money to which the Owner Participant is a party or any other agreement or instrument to which the Owner Participant is a party or by which it or its property is bound or requires any Governmental Action with respect to the Owner Participant under Federal or New York law or the law of the jurisdiction of its incorporation on or before the Closing Date, except such as are contemplated by the Transaction Documents or the Financing Documents or such as have been, or on or before the Closing Date will have

been, duly obtained, given or accomplished; provided, however, that the Owner Participant makes no representation or warranty as to any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Holding Company Act, the New Mexico Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 1.

(5) No Owner Participant's Liens. Neither the execution and delivery by the Owner Participant of this Participation Agreement or any other Transaction Document to which the Owner Participant is, or is to become on or before the Closing Date, a party, nor the performance by the Owner Participant of its obligations hereunder or thereunder, will subject the Trust Estate or the Lease Indenture Estate, or any portion of either thereof, to any Owner Participant's Lien.

(6) Acquisition for Investment. The Owner Participant is acquiring the beneficial interest in the Trust Estate for its own account, for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of Section 5 of the Securities Act, but subject, nevertheless, to any requirement of law that the disposition of the Owner Participant's property shall at all times be within its control.

(7) No Prior Security Interest. There exists no security interest in or other Lien on the Lease Indenture Estate in the state of the chief place of business of the Owner Participant, the State of New Mexico or the State of Arizona arising as a result of claims against the Owner Participant unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents which is prior to the Indenture Trustee's security interest in the Lease Indenture Estate.

(8) Securities Act. Except as contemplated by the Financing Documents, neither the Owner Participant nor anyone authorized to act on its behalf has directly or indirectly offered or sold any security issued or to be issued to finance Unit 1 or any security the offering of which for the purposes of the Securities Act would be deemed to be part of the offerings contemplated by the Transaction Documents and the Financing Documents or solicited any offer to acquire any such security from any Person in violation of Section 5 of the Securities Act.

(9) ERISA. The Owner Participant is not acquiring its interests in the Trust with the "plan assets" of any "employee benefit plan" within the meaning of section 3(3) of ERISA or any "plan" within the meaning of section 4975(e)(1) of the Code.

(b) Agreements of the Owner Participant. The Owner Participant agrees that:

(1) No Owner Participant's Liens. The Owner Participant will not create or permit to exist, and, at its own cost and expense, will promptly take such action as may be necessary duly to discharge, all Owner Participant's Liens.

(2) Quiet Enjoyment. The Owner Participant acknowledges the provisions of Section 6(a) of the Facility Lease and Section 8(c) of this Participation Agreement.

(3) No-Petition Agreement. Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, 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 Loan Participant under the

Bankruptcy Code, or any other applicable Federal or state law or the law of the District of Columbia.

(4) Transfer of Interest in the Trust Estate. Unless the Lessee shall have assumed the Notes as contemplated by Section 3.9(b) of the Indenture, upon receipt by the Lessor of the payments specified in Section 9(c), 9(d) or 16(e) of the Facility Lease and, if applicable, compliance in full by the Lessee with Section 9(f) of the Facility Lease, the Owner Participant shall, and at any time following the occurrence of an Event of Loss or Deemed Loss Event, the Owner Participant may, assign, convey and otherwise transfer to the Lessee all of the Owner Participant's right, title and interest in, to and under the Trust Estate (except the right to receive Excepted Payments), such transfer (i) to be free and clear of Owner Participant's Liens but otherwise without recourse, representation or warranty and (ii) to be accompanied by the assumption by the Lessee of, and due release of the Owner Participant from, all obligations under the Trust Agreement (such transfer, assumption and release to be accomplished by an instrument or instruments in form and substance satisfactory to the Lessee, the Owner Trustee and the Owner Participant).

#### SECTION 8. Representations, Warranties and Agreements of the Owner Trustee and FNB.

(a) Representations and Warranties. FNB as Owner Trustee and (except as otherwise provided in the last sentence of this Section 8(a)) in its individual capacity, represents and warrants that:

(1) Due Organization. FNB is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has all requisite corporate power and authority to enter into and perform its obligations under (x) the Trust Agreement and, to the extent it is a party hereto in its individual capacity, this Participation Agreement and (y) acting as Owner

Trustee, this Participation Agreement and each other Transaction Document to which FNB is, or is to become on or before the Closing Date, a party as Owner Trustee.

(2) Due Authorization; Enforceability; etc. This Participation Agreement and each other Transaction Document to which FNB is, or is to become on or before the Closing Date, a party have been duly authorized by all necessary corporate action of FNB (in its individual capacity or as Owner Trustee, as the case may be) and, upon execution and delivery hereof and thereof, this Participation Agreement and each such other Transaction Document will be duly executed and delivered and will be legal, valid and binding agreements of FNB (in its respective capacities), enforceable against it (in its respective capacities) in accordance with their respective terms; it being understood that FNB is not making any representation or warranty as to the priorities of the Liens created or to be created under any Transaction Document, title to the Trust Estate or recordings or filings necessary in connection therewith.

(3) Notes. Upon execution of the Note to be issued by the Owner Trustee hereunder and under the Indenture, authentication thereof by the Indenture Trustee pursuant to the Indenture and delivery thereof against payment therefor in accordance with this Participation Agreement and such Note will be a legal, valid and binding obligation of the Owner Trustee, enforceable against the Owner Trustee in accordance with its terms.

(4) No Violation. Neither the execution and delivery by (x) FNB of the Trust Agreement and, to the extent FNB is a party hereto in its individual capacity, this Participation Agreement and (y) the Owner Trustee of this Participation Agreement and each other Transaction Document (other than the Trust Agreement) to which the Owner Trustee is, or

is to become on or before the Closing Date, a party, nor the performance by FNB, in its individual capacity or as Owner Trustee, as the case may be, of its obligations under each, conflicts with, or results in the breach of any provision of, its Articles of Association or By-Laws and does not contravene any Applicable Law of the United States of America or The Commonwealth of Massachusetts governing the banking or trust powers of FNB, and does not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which FNB is a party or by which it is bound or require any Governmental Action with respect to the Owner Trustee under any Federal or Massachusetts law, except such as are contemplated by the Transaction Documents or the Financing Documents or such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished; provided, however, that no representation or warranty is made with respect to the right, power or authority of FNB or the Owner Trustee to act under the ANPP Participation Agreement or the License in respect of the Undivided Interest or Unit 1, and the Owner Trustee makes no representation or warranty as to any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Holding Company Act, the New Mexico Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 1.

(5) Defaults. To the best knowledge of the Owner Trustee, no Indenture Default or Indenture Event of Default has occurred and is continuing. The Owner Trustee is not in violation of any of the terms of this Participation Agreement or any other Transaction Document to which it is, or is to become on or before the Closing Date, a party.

(6) Litigation. There is no action, suit, investigation or proceeding pending or, to the

knowledge of FNB, threatened against FNB (in any capacity) before any court, arbitrator or administrative or governmental body and which relates to its banking or trust powers which, individually or in the aggregate, if decided adversely to the interests of FNB in such capacity, would have an adverse effect upon the ability of FNB (in any capacity) to perform its obligations under this Participation Agreement or any other Transaction Document to which it is, or is to become on or before the Closing Date, a party (in any capacity).

(7) Location of the Chief Place of Business and Chief Executive Office, etc. The chief place of business and chief executive office of the Owner Trustee and the office where its records concerning the accounts or contract rights relating to the transactions contemplated hereby are kept is located in Boston, Massachusetts.

(8) No Prior Security Interest. There exists no security interest in the Lease Indenture Estate in the States of New Mexico, New York or Arizona or in The Commonwealth of Massachusetts arising as a result of any claim against FNB unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents which is prior to the Indenture Trustee's security interest in the Lease Indenture Estate.

(9) No Owner Trustee's Liens. Neither the execution by FNB (in any capacity) of this Participation Agreement or any other Transaction Document to which it (in any capacity) is, or is to become on or before the Closing Date, a party, nor the performance in such capacity by it of its obligations hereunder or thereunder, will subject the Trust Estate or the Lease Indenture Estate, or any portion thereof, to any Owner Trustee's Lien.

The representations and warranties in Section 8(a)(2) and Section 8(a)(3), as to Transaction Documents and the Note issued thereby being legal, valid and binding

obligations enforceable in accordance with their respective terms, are given only by FNB in its capacity as Owner Trustee and not in its individual capacity, except that FNB does represent in its individual capacity that it is authorized under the laws of The Commonwealth of Massachusetts to execute and deliver the Transaction Documents to which it is a party.

(b) Agreements of FNB. FNB agrees, in its individual capacity, that:

(1) Discharge of Liens. FNB will not create or permit to exist, and will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, all Owner Trustee's Liens.

(2) Certain Amendments. Unless a Default or an Event of Default has occurred and is continuing or an Event of Loss or Deemed Loss Event has occurred, FNB will not amend any of the payment terms of any of the Notes, or take any action to refund any of the Notes after the date of issue thereof pursuant to the terms of this Participation Agreement and the Indenture without the prior written consent of the Lessee. Except for amendments or supplements made pursuant to Article X of the Trust Agreement or contemplated by Section 7(b)(4), FNB will not amend or supplement, or consent to any amendment of or supplement to, the Trust Agreement without the prior written consent of the Lessee unless a Default or an Event of Default has occurred and is continuing or the Lease Termination Date has occurred, if such amendment would materially and adversely affect the rights of the Lessee under the Facility Lease and this Participation Agreement.

(3) Change in Location of Chief Place of Business and Chief Executive Office, etc. FNB shall notify the Lessee, the Loan Participant and the Indenture Trustee promptly after any change in its chief executive office, principal and chief place of business or place where its records concerning the



accounts or contract rights relating to the transactions contemplated hereby are kept.

(4) No Petition Agreement. Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, FNB (in any capacity) 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 Loan Participant under the Bankruptcy Code or any other applicable Federal or state law or the law of the District of Columbia.

(5) Quiet Enjoyment. FNB acknowledges Section 6(a) of the Facility Lease.

(c) Agreements of the Owner Trustee. The Owner Trustee agrees that:

(1) Subject and Subordinate. The rights and remedies of the Owner Trustee and the Owner Participant in the Undivided Interest and the related Generation Entitlement Share are subject and subordinate to the rights and remedies of the ANPP Participants (other than (i) the Lessee or (ii) any Person who shall become an ANPP Participant in respect of the Lessor's Interest (as defined in Section 8(c)(3)) under the ANPP Project Agreements.

*, the Real  
Property  
Interest*

(2) Lessee to be Participant. Except as provided in Sections 15.2.2, 15.6.4 and 15.10 (or any comparable successor provisions) of the ANPP Participation Agreement, the Lessee shall be and remain the sole "Participant" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind the Lessor and the Indenture Trustee) in all dealings with the other ANPP Participants in relation to the property, rights, titles and interests of the Lessee transferred to the Lessor pursuant to the Transaction Documents; provided, however, that the foregoing shall not limit in any way any liability or

obligation that the Lessee may incur to the Owner Trustee or the Owner Participant under any Transaction Document as a result thereof.

(3) Cash Bids. Upon the expiration of the Facility Lease and upon the Lessee failing to purchase or otherwise reacquire all the right, title and interest in PVNGS and contractual rights related thereto necessary for the operation of the interest (the Lessor's Interest) acquired by the Lessor pursuant to the Transaction Documents, the Lessor shall entertain cash bids from each ANPP Participant for the Lessor's Interest.

(4) Survival. The provisions of this paragraph (4) and Sections 8(c)(1), (2) and (3) shall remain in full force and effect until such time as the ANPP Administrative Committee or the ANPP Participants shall otherwise consent.

(5) License Matters. The Owner Trustee acknowledges that before taking possession of the Undivided Interest or any part thereof or of any other interest in PVNGS, there may be required (i) the issuance of an appropriate license from the NRC, whether by amendment to the License or otherwise, or (ii) a partial transfer of the License authorizing the Lessor to possess its interest in PVNGS, to the extent of the Undivided Interest, upon application for partial transfer of such License to such extent filed pursuant to Applicable Law.

#### SECTION 9. Representations, Warranties and Agreements of Chemical Bank.

(a) Representations and Warranties. Chemical Bank represents and warrants that:

(1) Due Organization. Chemical Bank is a banking corporation duly organized and validly existing in good standing under the laws of the State of New York and has the corporate power and authority and legal right to enter into and perform its

obligations under the Indenture, this Participation Agreement and each other Transaction Document to which it is, or is to become on or before the Closing Date, a party.

(2) Due Authorization. This Participation Agreement and each other Transaction Document to which Chemical Bank is, or is to become on or before the Closing Date, a party have been or will be duly authorized by all necessary corporate action of Chemical Bank and each has been or will have been duly executed and delivered by Chemical Bank.

(3) Authentication of Initial Series Note. The officer of Chemical Bank who shall authenticate the Note to be issued pursuant to the Indenture shall be, at the time of such authentication, an Authorized Officer.

(4) No Violation. Neither the execution and delivery by Chemical Bank of this Participation Agreement or the Indenture, nor the authentication by it of the Initial Series Note, nor the consummation by it of the transactions contemplated hereby or thereby, nor the compliance by it with the provisions hereof or thereof will contravene any Applicable Law governing its banking or trust powers, or contravene or result in a breach of, or constitute a default under, its Articles of Incorporation or By-laws, or require any Governmental Action under any Federal or New York law, except such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished; provided, however, that no representation or warranty is made as to (i) any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Holding Company Act, the New Mexico Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 1 or (ii) the Lease Indenture Estate

to the extent it may constitute real property under Applicable Law.

(b) ~~Agreements~~. The Indenture Trustee agrees that:

(1) Agreement to Discharge Liens. The Indenture Trustee will not create or permit to exist, and will promptly take such action as may be necessary duly to discharge, all Indenture Trustee's Liens.

(2) No Petition ~~Agreement~~. Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, the Indenture Trustee 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 Loan Participant under the Bankruptcy Code or any other applicable Federal or state law or the law of the District of Columbia.

(3) Quiet Enjoyment. The Indenture Trustee agrees to be bound by Section 6(a) of the Facility Lease.

#### SECTION 10. Representations, Warranties and Agreements of the Lessee.

(a) Representations and Warranties. The Lessee represents and warrants that:

(1) Due Organization. The Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of New Mexico and has the corporate power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Participation Agreement, each other Transaction Document and Financing Document to which it is, or is to become, a party. The Lessee is duly qualified and in good

standing to do business as a foreign corporation in the State of Arizona and has not failed to qualify to do business or to be in good standing in any other jurisdiction where failure so to qualify or be in good standing would materially and adversely affect the financial condition of the Lessee or its ability to perform any obligations under this Participation Agreement, any other Transaction Document or any Financing Document to which it is, or is to become, a party. The Lessee does not legally or beneficially or constructively own (within the meaning of section 318 of the Code) any capital stock of the Loan Participant.

(2) Due Authorization. The execution, delivery and performance by the Lessee of this Participation Agreement, each other Transaction Document and each Financing Document to which it is, or is to become on or before the Closing Date, a party, have been duly authorized by all necessary corporate action on the part of the Lessee and do not, and will not, require the consent or approval of the stockholders of the Lessee or any trustee or holder of any indebtedness or other obligation of the Lessee, other than (i) the Mortgage Release, (ii) the finding of the ANPP Administrative Committee described in Section 15.6.2 of the ANPP Participation Agreement and (iii) such other consents and approvals as have been, or on or before the Closing Date will have been; duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant.

(3) Execution. This Participation Agreement, each other Transaction Document and each Financing Document to which the Lessee is, or is to become on or before the Closing Date, a party, will have been duly executed and delivered by the Lessee, and this Participation Agreement constitutes, and upon execution and delivery thereof, each such Transaction Document and each such Financing Document will constitute, the legal, valid and binding agreement

of the Lessee, enforceable against the Lessee in accordance with its terms.

(4) No Violation, etc. Neither the execution, delivery or performance by the Lessee of this Participation Agreement, any other Transaction Document or any Financing Document to which it is, or is to become on or before the Closing Date, a party, nor the consummation by the Lessee of the transactions contemplated hereby or thereby, nor compliance by the Lessee with the provisions hereof or thereof, conflicts or will conflict with, or results or will result in a breach or contravention of any of the provisions of, the Articles of Incorporation or By-Laws of the Lessee or any Affiliate of the Lessee, or any Applicable Law, or any indenture, mortgage, lease or any other agreement or instrument to which the Lessee or any Affiliate of the Lessee is a party or by which the property of the Lessee or any Affiliate of the Lessee is bound, or results or will result in the creation or imposition of any Lien (other than Permitted Liens) upon any property of the Lessee or any Affiliate of the Lessee. There is no provision of the Articles of Incorporation or By-Laws of the Lessee or any Affiliate of the Lessee, or any Applicable Law, or any such indenture, mortgage, lease or other agreement or instrument which materially adversely affects or in the future is likely (so far as the Lessee can now foresee) to materially adversely affect the business, operations, affairs, condition, properties or assets of the Lessee, or its ability to perform its obligations under this Participation Agreement, any other Transaction Document or any Financing Document to which it is, or is to become, a party.

(5) Governmental Actions. No Governmental Action is or will be required in connection with the execution, delivery or performance by the Lessee of, or the consummation by the Lessee of the transactions contemplated by, this Participation Agreement, any other Transaction Document or any

Financing Document, except such Governmental Actions (i) as have been, or on or before the Closing Date (the Refunding Date, in the case of the Registration Statement) will have been, duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant and the Loan Participant, (ii) as may be required under existing Applicable Law to be obtained, given or accomplished from time to time after the Closing Date in connection with the maintenance, use, possession or operation of Unit 1 or otherwise with respect to Unit 1 and the Lessee's or the Operating Agent's involvement therewith and which are, for PVNGS, routine in nature and which the Lessee has no reason to believe will not be timely obtained and (iii) as may be required under Applicable Law not now in effect. No Governmental Action (except Governmental Action as may be required by any Governmental Authority of or in the Excluded State or States identified on Schedule 2 hereto) is or will be required (a) in connection with the participation by the Owner Trustee, the Indenture Trustee, the Owner Participant or the Loan Participant in the consummation of the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document or (b) to be obtained by any of such Persons during the term of the Facility Lease with respect to Unit 1 except such Governmental Actions (i) as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant and the Loan Participant, (ii) as may be required by Applicable Law not now in effect, (iii) as may be required in consequence of any transfer of ownership of the Undivided Interest or the Real Property Interest by the Owner Trustee, (iv) as would be required by existing Applicable Law upon termination or expiration of the Facility Lease in connection with taking possession of an interest in Unit 1, (v) as may be required by existing Applicable Law if, after termination or expiration of the Facility Lease, the Lessee should provide transmission services for the Owner Trustee or cease

to be agent for the Owner Trustee as provided under the Assignment and Assumption, or (vi) as may be required in consequence of any exercise of remedies or other rights by any such Person in connection with taking possession of an interest in Unit 1.

(6) Securities Act. Neither the Lessee nor anyone acting on its behalf has directly or indirectly offered or sold any Bond, any interest in any Note, any note issued with respect to any other undivided interest in Unit 1, the Undivided Interest or any other undivided interest in Unit 1, the Facility Lease or any other lease of an undivided interest in Unit 1, or any similar security or lease, or any interest in any security or lease the offering of which, for purposes of the Securities Act, would be deemed to be part of the same offering as the offering of the aforementioned securities or leases, or solicited any offer to acquire any of the aforementioned securities or leases in violation of Section 5 of the Securities Act, and except as contemplated by this Participation Agreement, neither the Lessee nor any one authorized to act on its behalf will take any action which would subject the issuance or sale of any Note or any interest in the Facility Lease or any other debt instrument (other than the Refunding Bonds) issued or to be issued to finance the Undivided Interest to the registration requirements of such Section 5.

(7) Title to the Undivided Interest and Real Property Interest; Security Interest. On the Closing Date, (A) good and marketable title to the Undivided Interest and the Related Generation Entitlement Share will be duly, validly and effectively conveyed and transferred to the Owner Trustee, free and clear of all Liens, except Permitted Liens (other than those described in clause (ii) of the definition of such term and that portion of clause (iv) of such definition relating to Liens for taxes being contested), (B) good and marketable title to the Real Property Interest will be duly, validly and effectively conveyed and transferred to the Owner



Trustee, as provided in the Deed and the Assignment of Beneficial Interest, (C) the Lessee will have good and marketable title to its ownership interest in the Retained Assets, free and clear of all Liens except Permitted Liens, the Lien of the Existing Mortgage and matters disclosed in the title report referred to in Section 11(a)(34), (D) the Lessee will have good and valid title to its ownership interest in the PVNGS Site, (E) Unit 1 will be wholly located on the PVNGS Site without any material encroachments by any portion thereof on any other property, (F) all filings and recordings necessary or advisable to perfect the Owner Trustee's right, title and interest in and to the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest, and to perfect for the benefit of the Indenture Trustee and the holders of the Notes the first priority security interest, mortgage and assignment of rents provided for in the Indenture, will have been duly made and (G) no other action, including any action under any fraudulent conveyance statute, will be required to protect the title and interests of the Owner Trustee in and to the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest against the claims of all Persons whomsoever or to perfect such first priority security interest, mortgage and assignment of rents in favor of the Indenture Trustee.

(8) Non-Interference. None of the Permitted Liens will, on and after the Closing Date, materially interfere with the use or possession of the Undivided Interest, the related Generation Entitlement Share or the Real Property Interest or the use of or the exercise by the Owner Trustee of its rights under the Bill of Sale, the Deed, the Assignment of Beneficial Interest and the Assignment and Assumption with respect to, the interests in PVNGS granted or to be granted under the Bill of Sale, the Deed, the Assignment of Beneficial Interest and the Assignment and Assumption.

(9) Personal Property. Unit 1, based on the agreements of the Lessee and the other ANPP Participants in the ANPP Participation Agreement and of the Lessee and the Owner Trustee herein and in the other Transaction Documents, is to the full extent permitted by Applicable Law personal property under the laws of the State of Arizona.

(10) Location of Chief Executive Office. The chief executive office and place of business of the Lessee and the office where it keeps its records concerning its accounts or contract rights is located at Alvarado Square, Albuquerque, Bernalillo County, New Mexico 87158.

(11) Financial Statements. The consolidated balance sheets of the Lessee and subsidiaries (A) as of December 31, 1984 and 1983, respectively, and the related consolidated statements of earnings, retained earnings and changes in financial position for each of the years in the three-year period ended December 31, 1984, together with the notes accompanying such financial statements, all certified by Peat, Marwick, Mitchell & Co., and (B) as of September 30, 1985 and 1984, respectively, and the related consolidated statements of earnings, retained earnings and changes in financial position for the nine-months period ended September 30, 1985 and September 30, 1984, respectively, all certified by the Controller or an Assistant Controller of the Lessee, as furnished to the Owner Participant, fairly present the financial position of the Lessee and its subsidiaries taken as a whole at each such date and the results of their operations for each of the periods then ended, in conformity with generally accepted accounting principles applied on a consistent basis and in conformity with applicable Accounting Practice.

(12) Disclosure. None of the financial statements to which reference is made in paragraph 11 above nor the reports to which reference is made in this paragraph 12 nor any certificate, written

statement or other document furnished to the Owner Participant by the Lessee in connection with the transactions contemplated hereby (under the circumstances at the time and for the purposes for which any statement made therein was made) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. There is no fact known to the Lessee that materially and adversely affects or, so far as the Lessee can now reasonably foresee, is likely to materially and adversely affect, the business or financial condition of the Lessee or any material portion of its properties or its ability to perform its obligations under this Participation Agreement, any other Transaction Document or any Financing Document to which the Lessee is, or is to become, a party. The Lessee has heretofore delivered to the Owner Participant the Lessee's Annual Report on Form 10-K for the year ended December 31, 1984, the Lessee's Quarterly Reports on Form 10-Q for the quarters ended March 31, 1985, June 30, 1985 and September 30, 1985, respectively, and the Current Reports on Form 8-K filed on January 14, 1985, February 12, 1985 (as amended by Form 8 filed April 12, 1985), July 3, 1985, October 8, 1985, December 9, 1985 and December 24, 1985.

(13) Litigation. Except as disclosed in the reports to which reference is made in paragraph 12, there is no action, suit, investigation or proceeding pending or, to the knowledge of the Lessee, threatened against the Lessee before any court, arbitrator or administrative or governmental body which questions the validity or enforceability of this Participation Agreement, any other Transaction Document or any Financing Document to which the Lessee is, or is to become, a party, or which, individually or in the aggregate, if decided adversely to the interests of the Lessee, would have a material adverse effect on the business or financial condition of the Lessee or materially and adversely affect the ability of the Lessee to perform its

obligations under this Participation Agreement or any other Transaction Document or any Financing Document to which it is or is to become a party.

(14) Tax Returns. The Lessee has filed all Federal, state, local and foreign, if any, tax returns which were required to be filed, and has paid all Taxes shown to be due and payable on such returns and has paid all other Taxes in respect of the Lessee's interest in Unit 1 and in the PVNGS Site which are payable by the Lessee to the extent the same have become due and payable and before they have become delinquent, except (i) for any Taxes the amount, applicability or validity of which may be in dispute and which are currently being contested in good faith by appropriate proceedings and with respect to which the Lessee has set aside on its books reserves (segregated to the extent required by generally accepted accounting principles) deemed by it to be adequate and (ii) for any Taxes relating to PVNGS in respect of which the Operating Agent has not given notice to the Lessee that the same are due and payable. The Federal income tax returns of the Lessee have been audited by the IRS for taxable years through 1980.

(15) ERISA. In reliance upon, and subject to the accuracy of the representations made by the Loan Participant in Section 6(a)(5) and the Owner Participant in Section 7(a)(9), the execution and delivery of this Participation Agreement, the other Transaction Documents and the Financing Documents by the Lessee will not involve any prohibited transaction within the meaning of ERISA or section 4975 of the Code.

(16) Regulation. So long as the Facility Lease is in effect, assuming the proper filing of Form U-7D with the SEC on or within 30 days after the Closing Date, under Applicable Law now in effect, neither the Loan Participant, the Owner Participant, FNB nor the Owner Trustee will be or become, solely by reason of either its entering into this

Participation Agreement or any other Transaction Document to which any of them is, or is to become, a party, or the transactions contemplated hereby or thereby, subject to regulation (i) as an "electric utility", a "public utility" or a "public utility holding company" by any Federal, state (other than the Excluded State or States identified on Schedule 2 hereto as to which no representation or warranty is given) or local public utility commission or other regulatory body, authority or group (including, without limitation, the SEC, the FERC or the NMPSC) or (ii) in any manner by the NRC. The Lessee is not, and covenants that (except in connection with a transaction permitted by Section 10(b)(3)(ii) hereof) it will not become, a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of a "holding company" within the meaning of the Holding Company Act. The Lessee is not subject to regulation by the Arizona Corporation Commission as a public utility or a public service corporation.

(17) Authorizations, etc. The Lessee has not failed to obtain any Governmental Action or other authorization, license, approval, permit, consent, right or interest, where a failure to obtain such would materially and adversely affect the ability of the Lessee to carry on its business as presently conducted or as described in the Registration Statement.

(18) No Default, etc. The Lessee is not in default, and no condition exists that, with the giving of notice or lapse of time or both, would constitute a default by the Lessee, under any material mortgage, deed of trust, indenture, lease, contract or other instrument or agreement to which the Lessee is a party or by which it or any of its properties or assets may be bound.

(19) Certain Documents. True and correct copies of the ANPP Participation Agreement, the Material Project Agreements and the Existing

Mortgage have been delivered to the Owner Participant's Special Counsel for and on behalf of the Owner Participant prior to the date of execution hereof. No ANPP Project Agreement will, on and after the Closing Date, materially and adversely interfere with (i) (except for the ANPP Participation Agreement in the case of the Generation Entitlement Share only) the title of the Owner Trustee to the Undivided Interest, the related Generation Entitlement Share or the Real Property Interest or (ii) except for the ANPP Participation Agreement, the use of, or the exercise by the Owner Trustee of its rights under the Facility Lease, the Deed, the Assignment of Beneficial Interest and the Assignment and Assumption with respect to, the Undivided Interest, the related Generation Entitlement Share, and the interests in the PVNGS Site (including the Real Property Interest) granted or to be granted under the Deed, the Assignment of Beneficial Interest and the Assignment and Assumption. No payment default or other default of a material nature by the Lessee has occurred and is continuing under the Existing Mortgage or any ANPP Project Agreement. The ANPP Participation Agreement and each other ANPP Project Agreement are in full force and effect and no breach of any thereof, to the Lessee's knowledge, by any other party thereto has occurred and is continuing, except where the failure to be in force and effect or such breach would not have a material and adverse effect on the Undivided Interest, the related Generation Entitlement Share, the Real Property Interest, Unit 1 or the rights and benefits of the Owner Trustee or the Owner Participant under any Transaction Document. . Upon execution and delivery of the Mortgage Release and the recordation thereof or of UCC-3 releases in respect thereof, (i) the mortgagee and secured party thereunder will have released the lien of the Existing Mortgage on the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest and (ii) the rights of the Owner Trustee in the Undivided Interest and the Real Property Interest

and the related Generation Entitlement Share will not be, and will not become, subject or subordinate to the rights of any Person, except the Indenture Trustee under the Indenture and the ANPP Participants to the extent expressly set forth in the ANPP Participation Agreement (as in effect on the Closing Date) and except as may otherwise expressly be permitted by the Facility Lease. The lien of the Existing Mortgage does not extend to rights of PNM under Transaction Documents (other than the Lessee's leasehold interest under the Facility Lease) or to the Generation Entitlement Share related to the Undivided Interest.

(20) Unit 1. The description of Unit 1 set forth in Exhibit B to the Bill of Sale is correct and sufficiently complete to identify such property.

(21) Investment Company Act. The Lessee is not an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act.

(b) Agreements of Lessee.

(1) Delivery of Documents. The Lessee agrees that it will deliver to the Owner Participant and the Loan Participant:

(i) Financial Statements: (A) as soon as practicable, and in any event within 120 days, after the end of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee and subsidiaries as of the end of such fiscal year and related consolidated statements of earnings, retained earnings and changes in financial position for such year, all in reasonable detail and certified in an opinion by a nationally recognized firm of independent public accountants, and the annual and interim reports of the Lessee to its stockholders as soon as the same have been

mailed to such stockholders, (B) as soon as practicable, and in any event within 60 days, after the end of each fiscal quarter (other than the last fiscal quarter) of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee and subsidiaries as of the end of said period and a related consolidated statement of earnings, retained earnings and changes in financial position for said period, all in reasonable detail, and certified by the Controller or an Assistant Controller or the Chief Financial Officer of the Lessee and (C) as soon as practicable after the same have been filed, a copy of all documents filed by the Lessee with the SEC pursuant to the reporting requirements of the Securities Exchange Act;

(ii) Other Reports: promptly upon their becoming available, any registration statement, offering statement, investment memorandum or prospectus prepared by the Lessee in connection with the public offering of securities (other than public offerings of securities under employee stock option, consumer stock or dividend reinvestment plans);

(iii) Notice of Default: promptly upon the Lessee becoming aware of the existence thereof, written notice specifying any condition which constitutes a Default or an Event of Default or a default by any ANPP Participant under the ANPP Participation Agreement and the nature and status thereof;

(iv) Annual Certificate: within 120 days after the end of each fiscal year of the Lessee, a certificate of the Lessee, signed by the Controller or an Assistant Controller or the Chief Financial Officer of the Lessee, to the effect that such officer has reviewed, or caused to be reviewed by individuals under his supervision, this Participation Agreement and



each other Transaction Document and each Financing Document to which the Lessee is a party and has made, or caused to be made under his supervision, a review of the transactions contemplated hereby and thereby and the condition of the Lessee during such preceding fiscal year, and such review has not disclosed the existence during such fiscal period, nor does such officer have knowledge of the existence as at the date of such certificate, of any condition or event that constitutes a Default or Event of Default or, if any such condition or event exists, specifying the nature and period of existence thereof and any action the Lessee has taken, is taking, or proposes to take with respect thereto;

(v) Opinion of Counsel: within 120 days after the end of each fiscal year of the Lessee, an opinion or opinions, satisfactory to the Owner Participant, the Owner Trustee, the Collateral Trust Trustee and the Indenture Trustee, of the Lessee's General Counsel, the Lessee's Special Arizona Counsel and/or other counsel acceptable to the Owner Participant (A) either to the effect that (1) all filings and recordations required for compliance with Section 10(b)(2) (or refilings and rerecordations) have been duly made, and all other action has been taken, as is necessary, or (2) no such additional filings, recordings, refilings, rerecordings or other actions are necessary, to comply with the requirements of Section 10(b)(2) and (B) specifying the particulars of all action required for compliance with Section 10(b)(2) during the period from the date of such opinion through the last day of the next succeeding calendar year, including in the case of each UCC continuation statement required to be filed during such period, the office in which each such continuation statement is to be filed and the filing date and filing number of the original.

financing statement or fixture filing to be continued, and the dates within which such continuation statement may be filed under applicable law;

(vi) ANPP Information: upon receipt by the Lessee, copies of all material notices, data, information and other written communications received by the Lessee under or pursuant to any ANPP Project Agreement or with respect to Unit 1, PVNGS or the PVNGS Site, subject in each case to applicable confidentiality undertakings with respect thereto, unless prohibited by Applicable Law; and

(vii) Requested Information: with reasonable promptness, such other data and information as to the business and properties of the Lessee or as to Unit 1, PVNGS or the PVNGS Site as from time to time may be reasonably requested by the Owner Participant, subject in each case to applicable confidentiality undertakings with respect thereto, unless prohibited by Applicable Law.

(2) Further Assurances. The Lessee will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as the Owner Participant may from time to time reasonably request in order to carry out more effectively the intent and purposes of this Participation Agreement, the other Transaction Documents and the Financing Documents, and the transactions contemplated hereby and thereby. The Lessee will cause the financing statements (and continuation statements with respect thereto) and the documents enumerated and described in Schedule 3, and all other documents necessary or advisable in that connection, to be recorded or filed at such places and times, and in such manner, and will take all such other actions or cause such actions to be taken, as may be necessary or reasonably requested by the Owner Participant, the Collateral Trust

Trustee, the Owner Trustee or the Indenture Trustee, in order to establish, preserve, protect and perfect the title of the Owner Trustee to the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest, and the Owner Trustee's rights and interests under this Participation Agreement and the other Transaction Documents and, so long as any Note is Outstanding, the first and prior security interest of the Indenture Trustee in the Lease Indenture Estate and the Indenture Trustee's rights under this Participation Agreement and the other Transaction Documents, all referred to and included under the granting clause of the Indenture.

(3) Covenants. The Lessee covenants and agrees as follows:

(i) Maintenance of Corporate Existence, etc. The Lessee shall at all times maintain its existence as a corporation under the laws of the State of New Mexico, except as permitted by paragraph (ii) below. The Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its rights (charter and statutory) and franchises; provided, however, that the Lessee may discontinue any right or franchise if its board of directors shall determine that such discontinuance is necessary or desirable in the conduct of its business and does not materially and adversely affect or diminish any right of the Owner Participant or the Loan Participant.

(ii) Merger, Sale, etc.: Owner Participant. Without the consent of the Owner Participant, the Lessee shall not (1) consolidate with any Person; (2) merge with or into any Person; or (3) except in connection with normal dividend policy of the Lessee, convey, transfer, lease, or dividend to any Person more than 5% of its assets, including

cash, in any single transaction or series of related transactions; unless, immediately after giving effect to such transaction:

(A) the Person who is the Lessee immediately following such consolidation, merger, conveyance, transfer or lease (the Surviving Lessee) shall be a corporation which (i) is organized under the laws of the United States of America, a state thereof or the District of Columbia, (ii) is a "public utility" under applicable state and Federal laws, (iii) is an ANPP Participant under the ANPP Participation Agreement with respect to Unit 1 (including the Undivided Interest), (iv) shall have assumed each covenant and condition of the Lessee under the ANPP Participation Agreement and each other ANPP Project Agreement and (v) holds a valid and subsisting license from the NRC to possess Unit 1 (including the Undivided Interest);

(B) the Surviving Lessee, if other than the Lessee immediately prior to such transaction, shall execute and deliver to the Owner Participant an agreement, in form and substance reasonably satisfactory to the Owner Participant, containing the assumption by the Surviving Lessee of each covenant and condition of this Participation Agreement, each other Transaction Document and each Financing Document to which the Lessee immediately prior to such transaction was a party immediately preceding such transaction;

(C) no Default (other than a failure to deliver documents and other information specified in Section 10(b)(1)(vi) hereof), Event of Default,

Event of Loss or Deemed Loss Event shall have occurred and be continuing;

(D) the Bonds (or, if the Bonds are not then rated, the preferred stock of the Lessee) after giving effect to such transaction, (1) shall be rated at least "investment grade" by Standard & Poor's Corporation and Moody's Investors Service, Inc. and (2) shall have an investment rating by Standard & Poor's Corporation and Moody's Investors Service, Inc. not less than one "smallest notch" below the rating assigned to the Bonds (or, if the Bonds are not then rated, the preferred stock of the Lessee) immediately prior to such transaction (or, if neither of such rating organizations shall rate the Bonds (or, if applicable, the preferred stock of the Lessee) at the time, by any nationally recognized rating organization in the United States of America);

(E) the Surviving Lessee shall have a Minimum Net Worth;

(F) the Surviving Lessee shall have delivered to the Owner Participant and the Indenture Trustee an Officers' Certificate and an opinion, reasonably satisfactory to the Owner Participant, of counsel to the Surviving Lessee, each stating that (1) such transaction complies with this subparagraph (ii) and (2) all conditions precedent to the consummation of such transaction have been satisfied and any Governmental Action required in connection with such transaction has been obtained, given or accomplished;

(G) the Surviving Lessee shall have delivered to the Owner Participant an

opinion, reasonably satisfactory to the Owner Participant, of independent counsel to the Surviving Lessee stating that such transaction does not and will not cause a Tax Loss;

(H) such transaction is otherwise permitted by and in accordance with the ANPP Participation Agreement; and

(I) the Coverage Ratio of the Surviving Lessee shall be at least 1.6 to 1.

Upon the consummation of such transaction the Surviving Lessee, if other than the Lessee immediately prior to such transaction, shall succeed to, and be substituted for, and may exercise every right and power of, the Lessee immediately prior to such transaction under this Participation Agreement, each other Transaction Document and each Financing Document to which the Lessee immediately prior to such transaction was a party immediately preceding the date of such transaction, with the same effect as if the Surviving Lessee had been named herein and therein.

(iii) Merger, Sale, etc.: Bondholders. The Lessee shall not enter into any transaction constituting a consolidation, merger, conveyance, transfer, lease or dividend not permitted by Section 10(b)(3)(ii), irrespective of any consent or waiver of the Owner Participant, unless immediately after giving effect to such transaction, the Bonds (or, if the Bonds are not then rated, the preferred stock of the Lessee), after giving effect to such transaction, shall be rated at least "investment grade" by Standard & Poor's Corporation and Moody's Investors Service, Inc.

(iv) Prior Notice to Rating Agencies.

Prior to entering into any transaction as to which the conditions set forth in paragraphs (ii) and (iii) above shall be applicable, the Lessee shall give notice thereof to the rating agencies specified in such paragraphs, such notice to be sufficiently in advance of such transaction to enable the rating agencies to respond thereto prior to consummation thereof.

(v) Incurrence of Debt. Without the consent of the Owner Participant, the Lessee shall not issue or assume any secured or unsecured indebtedness maturing more than eighteen months after the date of issuance thereof, if, immediately after such issue or assumption, the total amount of all secured and unsecured indebtedness of the Lessee maturing more than one year after the date of such issue or assumption shall exceed 65% of the aggregate of (x) such total amount and (y) the total of the capital and surplus of the Lessee.

(vi) Change in Chief Executive Office.

The Lessee will notify the Owner Trustee, the Owner Participant, the Loan Participant and the Indenture Trustee promptly after any change in its chief executive office and place of business, principal place of business or place where the Lessee maintains its business records.

(vii) No Petition Agreement. Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, the Lessee 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 Loan Participant under the Bankruptcy Code or any other applicable

Federal or state law or the law of the District of Columbia.

(viii) ANPP Project Agreements. Except where the failure to do so would not have a material and adverse effect on the Undivided Interest, the Real Property Interest, Unit 1 or the rights and benefits of the Owner Trustee or the Owner Participant under any Transaction Document, the Lessee at all times, unless the Owner Participant shall otherwise consent, (1) will perform its obligations under and comply with the terms of each ANPP Project Agreement to be complied with by it, (2) will exercise its rights under the ANPP Participation Agreement to maintain each ANPP Project Agreement in full force and effect, (3) will keep unimpaired all of the Lessee's rights, powers and remedies under each ANPP Project Agreement and prevent any forfeiture or impairment thereof, (4) will enforce the ANPP Participation Agreement in accordance with its terms, (5) will not take, fail to take or join in any action with respect to any ANPP Project Agreement except as otherwise permitted by clause (7), (6) will not accept or approve any amendment or any other change to the ANPP Participation Agreement and (7) will not accept or approve any amendment to any ANPP Project Agreement the effect of which would be to (A) reduce the Generation Entitlement Share related to the Undivided Interest, (B) relieve the Lessee of any obligation under the ANPP Participation Agreement in respect of the Undivided Interest or the Real Property Interest on or after the Closing Date, (C) impose, directly or indirectly, at any time on the Owner Trustee or the Owner Participant any obligations, (D) discriminate against (x) the Owner Trustee or the Owner Participant in its capacity as lessor in a sale and leaseback transaction or (y) any present or future ANPP Participant because



such ANPP Participant derived or will derive its status as "Participant" under the ANPP Participation Agreement from a lessor in a sale and leaseback transaction, or (E) deprive the Owner Trustee or the Owner Participant, as the case may be, of the benefit of Sections 15.2.2, 15.10 and 32.1 of the ANPP Participation Agreement (or any comparable successor provisions). The Lessee shall (A) provide copies of any proposed amendment to or modification of the ANPP Participation Agreement to the Owner Participant not less than 45 days prior to the execution thereof by the Lessee (except where the Lessee is unaware thereof 45 days prior to such execution, in which case the Lessee shall provide notice thereof as promptly as possible after becoming so aware) and (B) upon such execution furnish to the Owner Participant a copy of any such amendment or modification as executed. The Lessee will not, except as permitted by paragraph (ii) above or by the Assignment and Assumption, sell, transfer, assign or otherwise dispose of, except in the ordinary course of operation of PVNGS, all or any of its rights or interests in and to PVNGS.

(ix) Notes and Bonds. The Lessee will not, and will not permit any of its Affiliates to, acquire any of the Notes or Bonds.

(x) Cooperation. The Lessee will cooperate with the Owner Participant and the Owner Trustee in obtaining the valid and effective issue, or, as the case may be, transfer or amendment of all Governmental Actions (including, but without limitation, the License) necessary or, in the opinion of the Owner Participant, desirable for the ownership, operation and possession of the Undivided Interest, the Real Property Interest or any portion of Unit 1 represented thereby by the Owner Trustee or any transferee, lessee

or assignee thereof for the period from and after the Lease Termination Date. The Lessee agrees to accept and cooperate in receiving any transfer of the Owner Participant's right, title and interest in the Trust Estate made pursuant to Section 7(b)(4).

(xi) Decommissioning. (A) The Lessee will comply with its obligations under Applicable Law concerning the decommissioning and retirement from service of Unit 1 (which term shall include, for all purposes of this paragraph (xi), (i) the cost of removal, decontamination and disposition of equipment and fixtures, the cost of safe storage for later removal, decontamination and disposal and the cost of entombment of equipment and fixtures, and (ii) the cost of (x) razing of Unit 1, (y) removal and disposition of debris from the PVNGS Site and (z) restoration of relevant portions of the PVNGS Site). If Applicable Law or Governmental Action shall not, on or before December 31, 1990, impose upon the Lessee the obligation to create and maintain an external reserve fund dedicated to paying all the costs of decommissioning and removing from service Unit 1, then the Lessee will create and maintain such a fund on terms reasonably satisfactory to the Owner Participant; if Applicable Law or Governmental Action shall impose upon the Lessee an obligation to create and maintain such a fund, any fund in compliance with Applicable Law or such Governmental Action shall be deemed satisfactory to the Owner Participant for purposes of the preceding sentence. (B) Except to the extent provided in clauses (C) and (D) below, as between the Lessee, the Owner Trustee, the Owner Participant and any transferee (including by way of lease) or assign of any of the Lessor's or the Owner Participant's right, title or interest in Unit 1, the Lessee agrees to pay, be solely responsible for, and to indemnify

such parties against, all costs and expenses relating or allocable to, or incurred in connection with, the decommissioning and retirement from service of Unit 1, notwithstanding (i) the occurrence of the Lease Termination Date, any Event of Default, Default, Event of Loss, Deemed Loss Event or any other event or occurrence, (ii) any provision of any Transaction Document, or other document, instrument or agreement, including the ANPP Participation Agreement, (iii) any provision of the License or any other license or permit, or (iv) any Applicable Law, charter or by-law provision, Governmental Action or other impediment, including, without limitation, the bankruptcy or insolvency of the Lessee, either now or hereafter in effect; it being understood that the obligations of the Lessee under this clause (B) are and shall be absolute and unconditional. (C) In the event that (i) the Facility Lease shall have expired upon expiration (or early termination pursuant to Section 14(e) of the Facility Lease) of the Lease Term (other than in connection with an Event of Loss, Deemed Loss Event or Event of Default) and (ii) thereafter the Lessor shall (1) re-lease the Undivided Interest to any Person or (2) retain the Undivided Interest and sell power and energy from its Generation Entitlement Share through PNM, as agent, then after the Lessor has received (x) in the case of clause (1) above, gross rents in an aggregate amount (when discounted back to such Lease Termination Date at a rate per annum equal to the Prime Rate) equal to 20% of Facility Cost, or (y) in the case of clause (2) above, net electric revenues in an aggregate amount (discounted as aforesaid) equal to 20% of Facility Cost, the Lessor shall thereafter reimburse to the Lessee any further rent received or proceeds received from the sale of power and energy to the extent that such rent or proceeds are

attributable to the decommissioning obligation of the Lessee under this Section 10(b)(3)(xi) with respect to the period from and after such Lease Termination Date (payable on an annual basis with respect to each year or portion thereof during the term of such lease referred to in clause (1) above or such agency period referred to in clause (2) above); provided, however, that when such amount has been paid the Lessor shall be relieved of all obligations to make further reimbursement to the Lessee for such purpose. (D) In the event that (i) the Facility Lease shall have expired upon the expiration (or early termination pursuant to Section 14(e) of the Facility Lease) of the Lease Term (other than in connection with an Event of Loss, Deemed Loss Event or Event of Default, (ii) the Lessor shall sell (other than in connection with the termination by the Lessee of the Facility Lease for obsolescence pursuant to Section 14 of the Facility Lease) the Undivided Interest to any Person (including the Lessee in connection with the exercise by the Lessee of the purchase option provided by Section 13(b), but not the purchase option provided by Section 13(c), of the Facility Lease), and (iii) the net sales proceeds (discounted back to such Lease Termination Date at a rate per annum equal to the Prime Rate) received by the Lessor in connection therewith shall exceed 20% of Facility Cost (reduced by the percentage of Facility Cost, if any, actually realized by the Lessor pursuant to clause (C) above), then the Lessor shall reimburse to the Lessee any net proceeds of such sale to the extent that such proceeds are attributable to the decommissioning obligation of the Lessee under this Section 10(b)(3)(xi) with respect to the period from and after the date of such sale through the remaining useful life of Unit 1 (whereupon the reimbursement obligations of the Lessor under this

Section 10(b)(3)(xi) shall terminate); provided, however, that any such reimbursement shall not reduce the amount of such net sales proceeds retained by the Lessor to an amount (discounted as aforesaid) equal to less than 20% of Facility Cost (reduced by the percentage of Facility Cost, if any, actually realized by the Lessor pursuant to clause (C) above). The reimbursement obligations of the Lessor under clauses (C) and (D) above are for the sole benefit of the Lessee, and no other Person shall be a third party beneficiary with respect thereto. In the event that the Lessee and the Lessor shall not agree as to the amount of gross rents, net electric revenues or net sales proceeds attributable to the decommissioning obligation of the Lessee under this Section 10(b)(3)(xi), such amount shall be determined by the Appraisal Procedure.

(xii) **Other Leases with Respect to PVNGS.** Without the prior written consent of the Owner Participant, neither the Lessee nor any Affiliate of the Lessee will directly or indirectly enter into any lease transaction as lessee with respect to any undivided interest in PVNGS providing for "events of loss" upon terms materially less favorable to the Lessee than those contained in Appendix A hereto.

#### **SECTION 11. Conditions Precedent.**

(a) **Owner Participant and Loan Participant Conditions.** The obligation of (x) the Loan Participant to make the Loan on the Closing Date, and (y) the Owner Participant to make the Investment and the Real Estate Investment on the Closing Date, shall be subject to the fulfillment on or prior to the Closing Date of the following conditions precedent (each instrument, document, certificate or opinion referred to below to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) Notice of Closing; Transaction Documents. Each shall have received executed copies, or sets of executed counterparts, of (x) the Notice of Closing, and (y) each Transaction Document (other than the Tax Indemnification Agreement), the Mortgage Release, each Financing Document being executed on the Closing Date and such other documents as are contemplated by this Participation Agreement.

(2) Tax Indemnification Agreement. The Owner Participant shall have received an executed copy of the Tax Indemnification Agreement.

(3) Authentication Request, etc. The Owner Trustee shall have delivered to the Indenture Trustee (x) a request, dated the Closing Date, authorizing the Indenture Trustee to authenticate and deliver the Initial Series Note to the Loan Participant upon its payment to the Indenture Trustee, for the account of the Owner Trustee, of the proceeds of the Loan, and (y) the Original of the Facility Lease.

(4) Due Authorization, Execution and Delivery. All of the documents described in clauses (1) and (2) of this Section 11(a) shall have been duly authorized, executed and delivered by the respective parties thereto and shall be in full force and effect on the Closing Date, and the Loan Participant and the Owner Participant shall have received evidence as to such authorization, execution and delivery.

(5) Initial Series Note and Bonds Transactions; Investment. In the case of the Loan Participant, (A) the Loan Participant shall have received the proceeds from the sale of the Initial Series Bonds as a result of the consummation of the transactions contemplated by the Term Loan Agreement, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, the Initial Series Note evidencing the Loan made on

the Closing Date, (C) the Collateral Trust Trustee shall have accepted the Term Loan Supplemental Indenture and shall have released the amount of the Loan from the lien of the Collateral Trust Indenture, and (D) the Owner Participant shall have made the Investment and the Real Estate Investment on the Closing Date.

(6) Loan. In the case of the Owner Participant, the Loan Participant shall have made the Loan.

(7) ANPP Administrative Committee. The ANPP Administrative Committee shall have made the finding required by Section 15.6.2 of the ANPP Participation Agreement.

(8) No Violation. The making by the Owner Participant of the Investment and the Real Estate Investment and by the Loan Participant of the Loan shall not violate any Applicable Law.

(9) No Default. No Default or Event of Default or, in the case of the Loan Participant, Indenture Default or Indenture Event of Default, shall have occurred and be continuing.

(10) Recording and Filing. The financing statements and fixture filings under the Uniform Commercial Code and certain Transaction Documents, in each case as enumerated and described in Schedule 3, shall have been duly filed or recorded in the respective places or offices set forth in such Schedule and all recording and filing fees with respect thereto shall have been paid.

(11) Representations and Warranties of the Loan Participant. In the case of the Owner Participant, the representations and warranties of the Loan Participant set forth in Section 6(a) 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 the Owner Participant shall have

received an Officers' Certificate of the Loan Participant, dated the Closing Date, to such effect.

(12) Opinion of the Loan Participant's Counsel. In the case of the Owner Participant, it shall have received a favorable opinion of the Loan Participant's Counsel, dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Owner Participant may reasonably request.

(13) Representations and Warranties of the Owner Participant. In the case of the Loan Participant, the representations and warranties of the Owner Participant set forth in Section 7(a) 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 the Loan Participant shall have received a certificate of an officer of the Owner Participant, dated the Closing Date, to such effect.

(14) Opinion of the Owner Participant's Special Counsel. In the case of the Loan Participant, it shall have received a favorable opinion of the Owner Participant's Special Counsel, dated the Closing Date and addressed to the Loan Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents, as the Loan Participant may reasonably request.

(15) Representations and Warranties of the Owner Trustee. The representations and warranties of FNB and the Owner Trustee set forth in Section 8(a) 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 the Loan Participant and the Owner Participant shall have received a certificate from an officer of FNB and a certificate



of the Owner Trustee, dated the Closing Date, to such effect.

(16) Opinion of the Owner Trustee's Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of the Owner Trustee's Counsel, dated the Closing Date and addressed to each such Person, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Loan Participant or the Owner Participant may reasonably request.

(17) Representations and Warranties of the Indenture Trustee. The representations and warranties of the Indenture Trustee set forth in Section 9 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 the Loan Participant and the Owner Participant shall have received a certificate of the Indenture Trustee, dated the Closing Date, to such effect.

(18) Opinion of the Owner Participant's Special NRC Counsel. The Owner Participant shall have received a favorable opinion of the Owner Participant's Special NRC Counsel, dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Owner Participant may reasonably request.

(19) Representations and Warranties of the Lessee. (A) The representations and warranties of the Lessee set forth in Section 10(a), in any other Transaction Document, in the Term Loan Agreement and in any certificate or other document to which the Lessee is a party executed or delivered in connection with the transactions contemplated hereby or thereby 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 (B) no Default, Event

of Default, Deemed Loss Event or Event of Loss shall have occurred and be continuing and the Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Closing Date, to such effect. The following statements shall be true and such Officers' Certificate shall state that there has been no material adverse change in the properties, business, prospects or financial condition of the Lessee since September 30, 1985, and no event has occurred since that date which would materially adversely affect the ability of the Lessee to perform its obligations under the Participation Agreement or any other Transaction Document to which it is or is to be a party.

(20) Opinion of the Lessee's Special Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of the Lessee's Special Counsel, dated the Closing Date and addressed to each such Person, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Loan Participant or the Owner Participant shall reasonably request.

(21) Opinion of Lessee's General Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of the Lessee's General Counsel, dated the Closing Date and addressed to each such Person, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Loan Participant or the Owner Participant shall reasonably request.

(22) Opinion of Lessee's Arizona Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of the Lessee's Arizona Counsel, dated the Closing Date and addressed to each such Person, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the

Loan Participant or the Owner Participant shall reasonably request.

(23) Opinion of Special FERC Counsel. The Owner Participant shall have received a favorable opinion of Special FERC Counsel, dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Owner Participant shall reasonably request.

(24) Opinion of Owner Participant's Special Arizona Counsel. The Owner Participant shall have received a favorable opinion of the Owner Participant's Special Arizona Counsel, dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Owner Participant shall reasonably request.

(25) Opinion of Owner Participant's Special New Mexico Counsel. The Owner Participant shall have received a favorable opinion of the Owner Participant's Special New Mexico Counsel, dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Owner Participant may reasonably request.

(26) Opinion of the Owner Participant's Special Counsel. The Owner Participant shall have received a favorable opinion of the Owner Participant's Special Counsel, dated the Closing Date and addressed to the Owner Participant, with respect to such Federal tax and other tax matters as the Owner Participant may reasonably request.

(27) Opinion of the Loan Participant's Counsel. The Loan Participant shall have received a favorable opinion of the Loan Participant's Counsel,

dated the Closing Date and addressed to it, with respect to such matters as the Loan Participant shall reasonably request.

(28) Taxes. All Taxes, if any, payable in connection with the execution, delivery, recording and filing of the Transaction Documents and all the documents and instruments enumerated and described in Schedule 3, or in connection with the issue and sale of the Initial Series Note and the Bonds and the making by the Owner Participant of the Investment and the Real Estate Investment; and all Taxes payable in connection with the consummation of the transactions contemplated hereby and by the other Transaction Documents, shall have been duly paid in full.

(29) Form U-7D. A certificate on Form U-7D with respect to the Facility Lease shall have been duly executed and delivered by the Owner Trustee and the Owner Participant and shall be in due form for filing.

(30) Appraisal. The Owner Participant shall have received a letter, dated the Closing Date and addressed to the Owner Participant, from the Appraiser containing an appraisal of the Undivided Interest, which appraisal shall reflect the Appraiser's reasonable conclusion that (w) the fair market value in the hands of the Owner Trustee of the Undivided Interest on the Closing Date, taking into account the effect and existence of the Real Property Interest, the Assignment and Assumption and the ANPP Participation Agreement, is equal to the Purchase Price as set forth in the Notice of Closing, (x) the estimated remaining economic useful life of Unit 1 (including the Undivided Interest) is at least 39 years, (y) at the expiration of the first two years of the Renewal Term the Undivided Interest will have an estimated residual value taking into account the effect and the existence of this Participation Agreement, the Real Property Interest, the Assignment and Assumption and the ANPP

Participation Agreement, in the hands of the Owner Trustee or a Person (unrelated to the Lessee) who could lease or purchase the Undivided Interest from the Owner Trustee for commercial use, equal to at least 20% of the Purchase Price, determined without including in such value any increase or decrease for inflation or deflation during the period from the Closing Date through the expiration of the first two years of the Renewal Term, and (z) taking into account the effect and the existence of the Real Property Interest, the Assignment and Assumption and the ANPP Participation Agreement, the use of the Undivided Interest at the Lease Termination Date by any User is feasible from an engineering and economic point of view and is commercially reasonable.

(31) Offering and Sale of Interest. The Loan Participant, the Owner Trustee and the Owner Participant shall have received a letter from Kidder Peabody with respect to the offering and sale of the interests in the transactions contemplated by this Participation Agreement and each other participation agreement relating to an undivided interest in Unit 1.

(32) Extension Letter. The Extension Letter shall have been duly executed by the respective parties thereto and delivered to the Collateral Trust Trustee.

(33) Governmental Action. The Lessee shall have obtained all Governmental Actions (including, without limitation, the New Mexico Order, which Order shall be final and non-appealable, and the NRC Order and the FERC Order, which orders shall be final) required or, in the opinion of the Owner Participant, advisable for the consummation of all the transactions contemplated by this Participation Agreement and the other Transaction Documents and the Financing Documents in accordance with their terms.

(34) Title Report; Title Insurance. The Owner Participant shall have received (i) an updated title report, dated the Closing Date, with respect to the nuclear plant site, which report does not disclose any exceptions materially adverse to the possession or operation of Unit 1 or the performance by the Lessee of its obligations under this Participation Agreement and the other Transaction Documents to which the Lessee is, or is to become, a party; and (ii) such title insurance policies with respect to the nuclear plant site and improvements thereon (including the Owner Trustee's interests therein) as it shall have reasonably requested, such policies to be in form and substance satisfactory to the Owner Participant.

(35) No Change or Proposed Change in Tax Laws. No change shall have occurred or been proposed in the Code or any other tax statute, the regulations thereunder or any interpretation thereof that would adversely affect the tax consequences anticipated by the Owner Participant with respect to the transactions contemplated by the Transaction Documents, unless the Lessee shall have agreed in writing to indemnify the Owner Participant in a manner reasonably satisfactory to it against the effect of such change or proposed change.

(36) Insurance. The Owner Participant shall have received a written report from its independent insurance consultant in form and substance satisfactory to the Owner Participant.

(37) Survey. The Owner Participant shall have received a survey of the nuclear plant site prepared subsequent to January 1, 1979.

(38) Special Certificate of the Lessee. The Owner Participant shall have received a certificate of the Lessee, dated the Closing Date, to the effect that, except as set forth on the Schedule thereto, (A) Unit 1 has been in all material respects completed in a good and workmanlike manner and in

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accordance with the plans and specifications relating thereto (as the same may have been modified from time to time to reflect Unit 1 as actually completed), Applicable Law (including, but without limitation, the regulations of the NRC), the License and the ANPP Participation Agreement, (B) all Governmental Action necessary for the commercial operation of Unit 1 (including the Undivided Interest) have been received, other than such Governmental Action that is routine in nature for PVNGS or that cannot be obtained under Applicable Law, or is typically not applied for, prior to the time it is required, and that the Lessee expects to be obtained in due course, (C) the plans and specifications relating to Unit 1 are complete in all material respects (modified or to be modified as aforesaid) and consistent with prudent engineering practice, (D) the testing and startup procedures and the operation and maintenance programs are consistent with such plans and specifications, Applicable Law and prudent engineering practice, (E) Unit 1 has been tested in accordance with all customary testing and startup procedures which would have been performed on or prior to the Closing Date, and such tests and procedures indicate that Unit 1 will have the capacity and functional ability to perform in commercial operation, on a continuing basis, the function for which it is designed in accordance with such plans and specifications and has a nominal capacity of 1,270 megawatts electric, (F) all material Governmental Actions relating to the construction, operation or maintenance of Unit 1 are listed in a schedule to such certificate, (G) there is no present event or condition which would materially adversely affect the capability of Unit 1 to operate in accordance with such plans and specifications and (H) based upon the Lessee's present reasonable expectations, and subject to Applicable Law, the rights and interests made available to the ANPP Participants (including the Lessee) pursuant to the ANPP Participation Agreement, as such rights and interests are made available to the Owner Trustee, any successor or assign of the Owner Trustee or any

"Transferee" of the Owner Trustee under Section 15.10 of the ANPP Participation Agreement, under and pursuant to this Agreement, the Deed, the Assignment of Beneficial Interest or the Assignment and Assumption, together with the rights to be made available under and pursuant to the Assignment and Assumption, are adequate to permit, during the period following the Lease Termination Date or the taking of possession of the Undivided Interest and the Real Property Interest in the exercise of remedies under Section 16 of the Facility Lease, in accordance with the ANPP Project Agreements (i) the construction, location, occupation, connection, maintenance, replacement, renewal, repair or removal of Unit 1, (ii) the use, operation and possession of Unit 1, (iii) the construction, use, operation, possession, maintenance, replacement, renewal and repair of all alterations, modifications, additions, accessions, improvements, appurtenances, replacements and substitutions thereof and thereto, (iv) adequate ingress to and egress from Unit 1 for any reasonable purpose in connection with the exercise of rights under the Assignment and Assumption and its ownership and possession of the Undivided Interest and (v) the obtaining of nuclear fuel, of water and of transmission services to the ANPP Switchyard sufficient to enable delivery of the Generation Entitlement Share related to the Undivided Interest in a commercially efficient manner and on commercially reasonable terms. Nothing in the foregoing clause (H) shall be deemed to be or be construed as a warranty by the Lessee as to the performance by the Operating Agent of its obligations under the ANPP Participation Agreement. Such certificate shall also be attested to by J.L. Wilkins, Senior Vice President, Power Supply, PNM Electric, who shall state that (i) he has made such investigation, inspection and review as he deems necessary to make the statements in the certificate and (ii) to the best of his knowledge, the statements of the Lessee in such certificate are true and correct.



(39) Real Estate Appraisal. The Owner Participant shall have received an appraisal of the Real Property Interest, which appraisal shall reflect the appraiser's reasonable conclusion that the fair market value in the hands of the Owner Trustee of the Real Property Interest on the Closing Date is equal to the Real Estate Investment as set forth in the Notice of Closing. Such appraisal shall have covered such other matters as the Owner Participant shall have requested.

(40) Other Matters. The Loan Participant and the Owner Participant shall have received such other documents, certificates and opinions as the Loan Participant or the Owner Participant, or their respective counsel, shall reasonably request.

(b) Lessee Conditions. The obligation of the Lessee to sell and lease back the Undivided Interest and the Real Property Interest on the Closing Date pursuant to Section 4 shall be subject to the fulfillment on or prior to the Closing Date of the following conditions precedent, in each case in form and substance satisfactory to the Lessee:

(1) Paragraph (a) Documents. The Lessee shall have received executed copies of the documents, certificates, opinions (other than the opinion referred to in Section 11(a) (26)), appraisals, letters and forms described in paragraph (a) of this Section 11. All such opinions shall be addressed to the Lessee, except the opinions or documents to which reference is made in clauses (18), (24), (25) and (26) of said paragraph (a).

(2) Payment of Purchase Price. The Owner Trustee shall have paid to the Lessee an amount, in immediately available funds, equal to the Purchase Price and the Real Estate Investment.

(3) Special Opinion of the Lessee's Special Counsel. The Lessee shall have received a favorable opinion of the Lessee's Special Counsel, dated the

Closing Date and addressed to the Lessee, with respect to such Federal tax and other matters as the Lessee may reasonably request.

(4) Accountant's Letter. The Lessee shall have received a letter satisfactory to it from Peat, Marwick, Mitchell & Co., to the effect that, under generally accepted accounting principles and SFAS No. 13, the Facility Lease is an "operating lease".

(5) Orders. The FERC Order, the NMPSC Order and the NRC Order shall be in form and substance satisfactory to the Lessee.

(6) Changes in Pricing Assumptions. If any change or changes in the Pricing Assumptions shall have occurred on or before the Closing Date, the effect of such change or changes will not require the payment of Basic Rent (as to be adjusted pursuant to Section 3(e)(iv) of the Facility Lease) on an annual basis to exceed 11.7% of Facility Cost.

(c) Conditions to Releveraging. The obligation of the Loan Participant to make, and the Owner Trustee to borrow the proceeds of, the Releveraging Loan on the Releveraging Date shall be subject to the fulfillment on or prior to the Releveraging Date of the following conditions precedent (each instrument, document, certificate or opinion to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) Authentication Request, etc. The Owner Trustee shall have delivered to the Indenture Trustee a request, dated the Releveraging Date, authorizing the Indenture Trustee to authenticate and deliver the Releveraging Note to the Loan Participant upon its payment to the Indenture Trustee, for the account of the Owner Trustee, of the proceeds of the Releveraging Loan.

(2) Releveraging Note and Bond Transaction.  
(A) The Loan Participant shall have received the proceeds from the sale of Releveraging Bonds in an

amount sufficient to make the Releveraging Loan, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, the Releveraging Note evidencing the Releveraging Loan made on the Releveraging Date and (C) the Collateral Trust Trustee shall have accepted a supplement to the Collateral Trust Indenture subjecting the Releveraging Note to the lien of the Collateral Trust Indenture and shall have released the amount of the Releveraging Loan from the lien of the Collateral Trust Indenture.

(3) No Violation. The return to the Owner Participant of a portion of the Investment and the making by the Loan Participant of the Releveraging Loan shall not violate any Applicable Law.

(4) No Default. No Default, Event of Default, Indenture Default or Indenture Event of Default, shall have occurred and be continuing.

(5) Representations and Warranties of the Owner Participant. The representations and warranties of the Owner Participant set forth in Section 7(a) shall be true and correct on and as of the Releveraging Date with the same effect as though made on and as of the Releveraging Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Releveraging Date), and the Loan Participant shall have received a certificate of the Owner Participant, dated the Releveraging Date, to such effect.

(6) Representations and Warranties of the Owner Trustee. The representations and warranties of FNB and the Owner Trustee set forth in Section 8(a) shall be true and correct on and as of the Releveraging Date with the same effect as though made on and as of the Releveraging Date (with all references to the Closing Date in such representations and warranties being changed to a

reference to the Releveraging Date), and the Loan Participant shall have received a certificate from an officer of FNB and a certificate of the Owner Trustee, dated the Releveraging Date, to such effect.

(7) Representations and Warranties of the Lessee. (A) The representations and warranties of the Lessee set forth in Section 10(a) shall be true and correct on and as of the Releveraging Date with the same effect as though made on and as of the Releveraging Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Releveraging Date) and (B) no Default, Event of Default, Deemed Loss Event or Event of Loss shall have occurred and be continuing and the Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Releveraging Date, to such effect.

(8) Opinions of Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of each of the Owner Participant's Special Counsel, the Owner Trustee's Counsel, the Lessee's Special Counsel and the Lessee's General Counsel, each dated the Releveraging Date and addressing such matters relating to the transaction in connection with the Releveraging Loan as the Loan Participant or the Owner Participant (or any other party hereto) may reasonably request.

(d) Conditions to Refunding. In addition to the limitations set forth in Section 2(d), the obligation of the Owner Participant and the Loan Participant to participate in a refunding of the Notes as provided in Section 2(d) shall be subject to the fulfillment on or before the Refunding Date of the following conditions precedent (each instrument, document, certificate or opinion to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) Authentication Request, etc. The Owner Trustee shall have delivered to the Indenture Trustee a request, dated the Refunding Date, authorizing the Indenture Trustee to authenticate and deliver the Fixed Rate Note to the Loan Participant against redelivery of the Initial Series Note (and the Releveraging Note, if theretofore issued) to the Indenture Trustee for cancellation.

(2) Fixed Rate Note and Bond Transaction.

(A) The Loan Participant shall have received the proceeds from the sale of Refunding Bonds in an amount sufficient to make the Refunding Loan, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, the Fixed Rate Note evidencing the Refunding Loan made on the Refunding Date and (C) the Collateral Trust Trustee shall have accepted Refunding Supplemental Indenture subjecting the Fixed Rate Note to the lien of the Collateral Trust Indenture and shall have released the Initial Series Note (and the Releveraging Note, if theretofore issued) from the lien of the Collateral Trust Indenture.

(3) No Default. No Event of Default or Indenture Event of Default, shall have occurred and be continuing.

(4) Representations and Warranties of the Owner Participant. The representations and warranties of the Owner Participant set forth in Section 7(a) shall be true and correct on and as of the Refunding Date with the same effect as though made on and as of the Refunding Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Refunding Date), and the Loan Participant shall have received a certificate of the Owner Participant, dated the Refunding Date, to such effect.

(5) Representations and Warranties of the Owner Trustee. The representations and warranties of

FNB and the Owner Trustee set forth in Section 8(a) shall be true and correct on and as of the Refunding Date with the same effect as though made on and as of the Refunding Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Refunding Date), and the Loan Participant and the Owner Participant shall have received a certificate from an officer of FNB and a certificate of the Owner Trustee, dated the Refunding Date, to such effect.

(6) Representations and Warranties of the Lessee. (A) The representations and warranties of the Lessee set forth in Section 10(a) shall be true and correct on and as of the Refunding Date with the same effect as though made on and as of the Refunding Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Refunding Date), (B) no Default, Event of Default, Deemed Loss Event or Event of Loss shall have occurred and be continuing and the Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Refunding Date, to such effect and (C) on the date it becomes effective and on the Refunding Date, the Registration Statement does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading, and the Final Prospectus does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such shall have been made.

(7) Opinions of Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of each of the Owner Participant's Special Counsel, the Owner Trustee's Counsel, the Lessee's Special Counsel and the Lessee's General Counsel, each dated the Refunding Date and addressing such matters relating to the transactions

in connection with the Refunding Note as the Loan Participant or the Owner Participant (or any other party hereto) may reasonably request.

**SECTION 12. Consent to Assignment of the Facility Lease; Consent to Indenture.**

**(a) Consent to Assignment of Facility Lease.** The Lessee hereby acknowledges, and consents in all respects to, the partial assignment of the Facility Lease by the Owner Trustee to the Indenture Trustee under and pursuant to the Indenture and agrees:

(i) to make each payment of Basic Rent and Supplemental Rent due or to become due thereunder to the extent constituting Assigned Payments (excluding, in any event, all Excepted Payments) directly to the Indenture Trustee at the Indenture Trustee's Office, so long as any of the Notes shall be Outstanding and unpaid; and

(ii) not to seek to recover any payment (other than a payment that both the Owner Trustee and the Lessee agree was made in mistake) made to the Indenture Trustee in accordance with the Indenture once such payment is made.

**(b) Consent to Indentures.** The Lessee hereby consents in all respects to the execution and delivery of the Indenture, and to all of the terms thereof, and the Lessee acknowledges receipt of an executed counterpart of the Indenture; it being understood that such consent shall not be construed to require the Lessee's consent to any future supplement to, or amendment, waiver or modification of the terms of, the Indenture or any Note, except to the extent expressly provided for.

**(c) Consent to Assignment by Loan Participant.** Each of the parties hereto acknowledges that the Loan Participant is assigning its right, title and interest in and to the Transaction Documents to the Collateral

Trust Trustee as security for the Bonds to the extent set forth in the Collateral Trust Indenture, and each of the parties hereto consents to such assignment.

SECTION 13. Lessee's Indemnities and Agreements.

(a) General Indemnity. The Lessee agrees, whether or not any of the transactions contemplated hereby shall be consummated and whether or not the Facility Lease, any other Transaction Document or any Financing Document shall have expired or have been terminated, to assume liability for, and the Lessee does hereby agree to indemnify, protect, defend, save and keep harmless each Indemnitee, on an After-Tax Basis, from and against, any and all Claims which may be imposed on, incurred by or asserted against any Indemnitee (whether because of act or omission by such Indemnitee or otherwise and whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person) in any way relating to or arising out of (i) Unit 1, the Undivided Interest, the Real Property Interest, PVNGS or the PVNGS Site, or any part of any thereof, any ANPP Project Agreement, the issuance or payment of the Bonds or the Notes, this Participation Agreement or any other Transaction Document or any Financing Document (including, without limitation, the performance or enforcement of any of the obligations and terms hereunder or thereunder), (ii) a disposition of all or any part of the Undivided Interest, the Real Property Interest, Unit 1 or any other interest of the Owner Trustee in connection with any termination of the Facility Lease, or (iii) the design, manufacture, financing, erection, purchase, acceptance, rejection, ownership, acquisition, delivery, nondelivery, lease, sublease, preparation, installation, repair, transfer of title, abandonment, possession, use, operation, maintenance, condition, sale, return, storage or disposition of the Undivided Interest, Unit 1, the Real Property Interest, any Capital Improvement, the PVNGS Site, any other facilities on the PVNGS Site or any other interest of the Owner Trustee in any thereof or any accident, nuclear incident or extraordinary



nuclear occurrence in connection therewith (including, without limitation, (A) claims or penalties arising from any violation of law or liability in tort (strict or otherwise) or from the active or passive negligence of any Indemnitee, (B) loss of or damage to any property or the environment or death or injury to any Person, (C) latent and other defects, whether or not discoverable, (D) any claim for patent, trademark, service-mark or copyright infringement and (E) any claim of any Indemnitee incurred in the administration of this Participation Agreement, any other Transaction Document or any Financing Document and not paid as Transaction Expenses or included in Facility Cost and, if not included in Transaction Expenses, the reasonable fees and disbursements of counsel and other professionals incurred in connection therewith); provided, however, that the Lessee shall not be required to indemnify any Indemnitee pursuant to this Section 13(a), (1) for any Claim in respect of Unit 1, the Undivided Interest or the Real Property Interest arising from acts or events not attributable to the Lessee which occur after redelivery of the Undivided Interest to the Owner Trustee in accordance with Section 5 of the Facility Lease, except to the extent expressly provided in any Transaction Document, the ANPP Participation Agreement or any other agreement or undertaking of the Lessee, (2) for any Claim against such Indemnitee resulting solely from acts which would constitute the willful misconduct or gross negligence of such Indemnitee (unless imputed to such Indemnitee by reason of Unit 1, the Undivided Interest, the Real Property Interest, PVNGS, the PVNGS Site or any other facilities at the PVNGS Site or any occurrence in connection with any thereof), (3) for any Transaction Expense to be paid by the Owner Trustee pursuant to Section 14(a) or (4) for any Claim resulting solely from a transfer by the Owner Trustee or the Owner Participant of all or part of its interest in the Facility Lease, Unit 1, the Real Property Interest or the Undivided Interest other than in connection with any early termination of the Facility Lease or any exercise of remedies under Section 16 thereof or the transfer contemplated by Section 7(b)(4) or the first transfer by the Owner Participant to an Affiliate of the Owner Participant.

To the extent that an Indemnatee in fact receives indemnification payments from the Lessee under the indemnification provisions of this Section 13(a), the Lessee shall be subrogated, to the extent of such indemnity paid, to such Indemnatee's rights with respect to the transaction or event requiring or giving rise to such indemnity, but only so long as such subrogation shall not materially adversely affect the rights of such Indemnatee or any other Indemnatee hereunder. Nothing herein contained shall be construed as constituting a guaranty by the Lessee of the principal of or premium, if any, or interest on the Notes or the Bonds or of the residual value or useful life of the Undivided Interest.

(b) General Tax Indemnity.

(1) Indemnity. All payments by the Lessee in connection with the transactions contemplated by the Transaction Documents shall be free of withholdings of any nature whatsoever (and at the time that the Lessee is required to make any payment upon which any withholding is required, the Lessee shall pay an additional amount such that the net amount actually received by the Person entitled to receive such payment will, after such withholding, equal the full amount of the payment then due) and shall be free of expense to each Indemnatee for collection or other charges. Whether or not any of the transactions contemplated hereby are consummated, except as provided in Section 13(b)(2), the Lessee shall pay, and shall indemnify, defend and hold each Indemnatee harmless, on an After-Tax Basis, from and against, any and all Taxes howsoever imposed (whether imposed on or with respect to the Indemnatee, the Lessee, Unit 1, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site or any part thereof or interest therein or otherwise) by any Federal, state or local government or subdivision thereof or taxing authority in the United States or by any foreign country or subdivision thereof or by any foreign or international taxing authority in connection with or

relating to (A) the design, construction, financing, purchase, acquisition, acceptance, rejection, delivery, nondelivery, transport, ownership, assembly, possession, repossession, operation, use, condition, maintenance, repair, improvement, sale, return, abandonment, preparation, installation, storage, replacement, redelivery, manufacture, insuring, leasing, subleasing, modification, transfer of title, rebuilding, rental, importation, exportation or other application or disposition of, or the imposition of any Lien other than Owner Participant's Liens and Owner Trustee's Liens (or incurrence of any liability to refund or pay over any amount as a result of any Lien other than Owner Participant's Liens and Owner Trustee's Liens) on, Unit 1, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site, or any part thereof or interest therein, (B) the payment of Rent or the receipts or earnings arising from or received with respect to, and the indebtedness with respect to, Unit 1, the Undivided Interest, the Real Property Interest or any Capital Improvement, or any part thereof, interest therein or application or disposition thereof, (C) any amount paid or payable pursuant to this Participation Agreement, any other Transaction Document or any Financing Document or the transactions contemplated hereby or thereby (D) Unit 1, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site, or any part thereof, or interest therein, or the applicability of the Facility Lease to the Undivided Interest or any Capital Improvement, or any part thereof or interest therein, (E) this Participation Agreement, any other Transaction Document or any Financing Document or (F) otherwise with respect to or in connection with the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document.

(2) Exclusions from General Tax Indemnity. Section 13(b)(1) (except for the first sentence thereof) shall not apply to:

(i) Taxes based on, or measured by, net income imposed by the United States federal government (including, without limitation, any minimum Taxes, capital gains Taxes, withholding Taxes, any Taxes on, or measured by, items of tax preference, surcharges, additions to tax, penalties, fines or other charges in respect thereof);

(ii) Taxes (other than sales, use or rental Taxes) imposed by any state or local government or other taxing authority in the United States that are based on, or measured by, the net income, items of tax preference, net worth or capital of an Indemnatee, except, with respect to the Owner Trustee, the Trust, the Trust Estate, the Owner Participant and any Affiliate of any thereof, any such Taxes imposed by a jurisdiction as a result of a relation or asserted relation of such jurisdiction to the transactions contemplated by the Transaction Documents or the Financing Documents or as a result of the activities of the Lessee, any ANPP Participant or any Affiliate of any thereof in such jurisdiction; provided, however, that the amount of any such excepted Taxes shall be calculated (i) on a pro forma basis assuming that such Indemnatee has no other taxable income in the taxing jurisdiction imposing the Tax (provided that such calculation shall take into account any allocation or apportionment method used by such jurisdiction except to the extent that such method takes into account the income or activities of business entities organized outside the United States) and is able to use any net operating loss carryovers to the fullest extent allowed by law and (ii) by taking into account any actual reduction in Taxes in such jurisdiction or in any other jurisdiction in which such Indemnatee is subject to tax (whether such reduction results from the operation of allocation or apportionment

formulas, from credits or otherwise) which reduction results from the transactions contemplated by the Transaction Documents or the Financing Documents; provided further, however, that, with respect to any Tax based on, or measured by, capital or net worth, the Lessee's indemnity obligation shall not exceed the incremental portion of such Tax attributable to the transactions contemplated by the Transaction Documents;

(iii) Taxes attributable to the Undivided Interest or the Real Property Interest that are imposed with respect to any period after (a) the Lease Termination Date and (b) the date possession of the Undivided Interest and the Real Property Interest has been delivered to the Lessor as provided in Section 5(a) of the Facility Lease, unless such Taxes relate to events occurring or matters arising prior to or simultaneously with such date;

(iv) Taxes on or with respect to an Indemnitee arising from any voluntary transfer by such Indemnitee of any interest in the Undivided Interest, the Real Property Interest, the Trust Estate, the Indenture Estate, the Notes or any other right or interest arising under the Transaction Documents or the Financing Documents, unless an Event of Default has occurred and is continuing, or Taxes arising from an involuntary transfer by such Indemnitee of any such interest arising from a bankruptcy or similar proceeding in which such Indemnitee is the debtor unless such bankruptcy or other proceeding was caused by the Lessee or any Affiliate thereof;

(v) Taxes based on or measured by any fees, commission or compensation received by the Owner Trustee or the Indenture Trustee for acting as trustee, or for other services rendered, in connection with any of the

transactions contemplated by the Transaction Documents or the Financing Documents;

(vi) Taxes on or with respect to an Indemnatee arising by reason of such Indemnatee's failure to file proper and timely reports or returns (unless the filing of such reports or returns is the obligation of the lessee under the Transaction Documents or the Financing Documents) and any penalties or additions to tax imposed by reason of such Indemnatee's failure to comply with the laws imposing such Tax, unless such failure results from any action of the Lessee or failure by the Lessee to comply with any provision of the Transaction Documents or the Financing Documents, including the failure to provide necessary information;

(vii) Taxes on or with respect to an Indemnatee arising as a result of a material failure of such Indemnatee to fulfill its obligations with respect to the contest of any claim in accordance with Section 13(b)(4) of this Participation Agreement;

(viii) Taxes imposed on or with respect to a transferee (or subsequent transferee) of an original Indemnatee (other than a transferee or subsequent transferee that is an Affiliate of its transferrer) to the extent that the amount of such Taxes exceeds the amount of taxes that would have been imposed on or with respect to such original Indemnatee but for the transfer to such transferee or, if imposed, would not have been subject to indemnification under this Section 13(b); provided, however, that the exception in this clause shall not apply to any transferee where such transfer shall have occurred during the continuance of an Event of Default;

(ix) any Taxes imposed on the Lessor or the Owner Participant resulting from, or which would not have occurred but for, Lessor's Liens or Owner Participant's Liens and any Taxes imposed on the Indenture Trustee which would not have occurred but for Indenture Trustee's Liens;

(x) any Tax that results solely from the activities of an Indemnitee in any taxing jurisdiction which activities are unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents;

(xi) any Tax on or with respect to an Indemnitee resulting from any amendment or modification entered into by such Indemnitee to any Transaction Document or Financing Document if the Lessee is not a party to such amendment or modification or has not consented to such amendment or modification, in each case unless an Event of Default shall have occurred and be continuing; and

(xii) any Tax on or with respect to an Indemnitee resulting from the gross negligence or willful misconduct of such Indemnitee (it being understood that no Indemnitee is responsible for determining whether a Tax is payable if such Tax is the responsibility of the Lessee under this Section 13(b));

provided, however, that the foregoing subclauses (i) through (xiv) shall not apply to any Tax imposed on the Collateral Trust Trustee, the Loan Participant, or the indenture estate under the Collateral Trust Indenture.

(3) Calculation of General Tax Indemnity Payments. If any Indemnitee realizes a net permanent tax benefit by reason of the payment of any indemnity under Section 13(b)(1), such Indemnitee

shall pay the Lessee, but not before the Lessee shall have made all payments theretofore due to such Indemnatee pursuant to this Section 13(b), an amount equal to the lesser of (x) the sum of such tax benefit plus any other net tax benefit realized by such Indemnatee as the result of any payment made by such Indemnatee pursuant to this sentence, and (y) the amount of such payment by the Lessee to such Indemnatee and any other payment by the Lessee to such Indemnatee theretofore made pursuant to this Section 13(b) less the aggregate amount of all prior payments by such Indemnatee to the Lessee pursuant to this clause (y) with respect to amounts paid pursuant to Section 13(b)(1), it being intended that no Indemnatee should realize a net tax benefit pursuant to this Section 13(b) unless the Lessee shall first have been made whole for any payments by it to such Indemnatee pursuant to this Section 13(b); provided, however, that in computing any permanent tax benefit, such Indemnatee shall be deemed first to have utilized all deductions and credits available to it otherwise than by reason of any payment by the Lessee pursuant to this Section 13(b); provided further, however, that notwithstanding the provisions of this clause (3), such Indemnatee shall not be obligated to make any payment to the Lessee pursuant to this clause (3) if at the time such payment shall be due an Event of Default shall have occurred and be continuing.

(4) General Tax Indemnity-Contests. If a written claim shall be made against any Indemnatee for any Tax for which the Lessee is obligated pursuant to this Section 13(c), such Indemnatee shall notify the Lessee promptly of such claim but the failure so to notify the Lessee shall not affect any obligation of the Lessee pursuant to this Section 13(b). If the Lessee shall reasonably request in writing within 30 days after receipt of such notice, such Indemnatee shall in good faith and at the Lessee's expense contest the imposition of such Taxes; provided, however, that such Indemnatee may in its sole discretion select the forum for such contest



and determine whether any such contest shall be by (A) resisting payment of such Taxes, (B) paying such Taxes under protest or (C) paying such Taxes and seeking a refund thereof; provided further, however, that (W) such Indemnatee shall not be obligated to contest any claim in which the amount in question is less than \$250,000, (X) at such Indemnatee's option, such contest shall be conducted by the Lessee in the name of such Indemnatee (subject to the preceding proviso) and (Y) in no event shall such Indemnatee be required or the Lessee permitted to contest the imposition of any Taxes for which the Lessee is obligated pursuant to this Section 13(b) unless (u) the Lessee shall have acknowledged its liability to such Indemnatee for an indemnity payment pursuant to this Section 13(b) as a result of such claim if and to the extent such Indemnatee or the Lessee, as the case may be, shall not prevail in the contest of such claim; (v) such Indemnatee shall have received from the Lessee (i) satisfactory indemnity for any liability, expense or loss arising out of or relating to such contest including, but not limited to, (A) all reasonable legal, accountants' and investigatory fees and disbursements, (B) the amount of any interest, additions to tax or penalty that may be payable as a result of contesting such claim and (C) if such contest is to be initiated by the payment of, and the claiming of a refund for such Tax, sufficient funds to make such payment on an After-Tax Basis and (ii) an opinion of independent tax counsel selected by the Lessee and approved by such Indemnatee (which approval shall not be unreasonably withheld) and furnished at the Lessee's sole expense to the effect that a Reasonable Basis exists for contesting such claim or, in the event of an appeal, that it is more likely than not that an appellate court or an administrative agency with appellate jurisdiction, as the case may be, will reverse or substantially modify the adverse determination; (w) the Lessee shall have agreed to pay such Indemnatee on demand all reasonable costs and expenses that such Indemnatee may incur in connection with contesting such claim (including,

without limitation, all costs, expenses, losses, reasonable legal and accounting fees, disbursements, penalties, interest and additions to tax); (x) such Indemnitee shall have reasonably determined that the action to be taken will not result in any danger of sale, forfeiture or loss of, or the creation of any Lien (except if the Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of such Indemnitee in a manner satisfactory to such Indemnitee) on, Unit 1, any part thereof, the Undivided Interest, the Real Property Interest, or any interest in any of the foregoing; and (y) if such contest shall be conducted in a manner requiring the payment of the claim, the Lessee shall have paid the amount required. The Lessee agrees to give such Indemnitee reasonable notice of any contest prior to the commencement thereof. If any Indemnitee shall obtain a refund of all or any part of any Taxes paid by the Lessee, such Indemnitee shall pay the Lessee, but not before the Lessee shall have made all payments theretofore due to such Indemnitee pursuant to this Section 13(b), an amount equal to the lesser of (xx) the amount of such refund, including interest received and attributable thereto, plus any permanent net tax benefit realized by such Indemnitee as a result of any payment by such Indemnitee made pursuant to this sentence, (after taking into account the tax consequences of the receipt of such refund and such interest) or (yy) such tax payment by the Lessee to such Indemnitee plus any other payment by the Lessee to such Indemnitee theretofore made pursuant to this Section 13(b), in either case, net of any expenses not already paid or incurred by the Lessee; provided, however, that in computing any permanent tax benefit, such Indemnitee shall be deemed first to have utilized all deductions and credits available to it otherwise than by reason of any payment by the Lessee pursuant to this Section 13(b); provided, further, however, that notwithstanding the provisions of this clause (4), such Indemnitee shall not be obligated to make any payment to the Lessee pursuant to this clause (4) if

at the time such payment shall be due a Default or an Event of Default shall have occurred and be continuing under the Facility Lease. An Indemnatee shall not be required to make any payment pursuant to this clause (4) before such time as the Lessee shall have made all payments and indemnities then due under the Transaction Documents to such Indemnatee. Notwithstanding anything contained in this clause (4) to the contrary, no Indemnatee shall be required to contest any claim if the subject matter thereof shall be of a continuing nature and shall have previously been decided pursuant to the contest provisions of this clause (4) unless there shall have been a change in the law (including, without limitation, amendments to statutes or regulations, administrative rulings and court decisions) after such claim shall have been so previously decided, and such Indemnatee shall have received an opinion of independent tax counsel selected by the Lessee and approved by such Indemnatee (which approval shall not be unreasonably withheld) and furnished at the Lessee's sole expense to the effect that such change provides substantial authority for the position which such Indemnatee and the Lessee, as the case may be, had asserted in such previous contest. Nothing contained in this Section 13(b) shall require any Indemnatee to contest or permit the Lessee to contest a claim which it would otherwise be required to contest pursuant to this Section 13(b) if such Indemnatee shall waive payment by the Lessee of any amount that might otherwise be payable by the Lessee under this Section 13(b) by way of indemnity in respect of such claim.

(5) **General Tax Indemnity-Reports.** If any report, return or statement is required to be filed with respect to any obligations of the Lessee under or arising out of this Section 13(b), the Lessee shall timely file the same, except for any such report, return or statement which such Indemnatee has notified the Lessee that it intends to file. The Lessee shall either file such report, return or statement so as to show the ownership of the

Undivided Interest or the Real Property Interest, as the case may be, in the Owner Trustee and send a copy of such report, return or statement to the Owner Trustee and such Indemnatee or, where not so permitted, notify the Owner Trustee and such Indemnatee of such requirement and prepare and deliver such report, return or statement to the Owner Trustee and such Indemnatee in a manner satisfactory to the Owner Trustee and such Indemnatee within a reasonable time prior to the time such report, return or statement is to be filed or, where such return, statement or report shall be required to reflect items in addition to any obligations of the Lessee under or arising out of this Section 13(b), provide the Owner Trustee and such Indemnatee with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of the Lessee under or arising out of this Section 13(b) (and the Lessee shall hold each Indemnatee harmless from and against any liabilities, obligations, losses, damages, penalties, claims, actions, suits and reasonable costs arising out of any insufficiency or inaccuracy in any such return, statement, report or information). The Lessee shall not have any right to examine the tax returns of any Indemnatee.

(6) General Tax Indemnity-Payment. All Taxes shall be paid when due and payable and, unless otherwise requested by the appropriate Indemnatee, the Lessee shall pay any Taxes for which it is liable pursuant to this Section 13(b) directly to the appropriate taxing authority and shall pay such appropriate Indemnatee promptly on demand in immediately available funds any amount due such Indemnatee pursuant to this Section 13(b) with respect to such Taxes. Any such demand shall specify in reasonable detail the payment and the facts upon which the right to payment is based. Each Indemnatee shall promptly forward to the Lessee any notice, bill or advice received by it concerning any Taxes. Within 30 days after the date of each payment by the Lessee of any Taxes, the Lessee shall furnish the

appropriate Indemnatee the original or a certified copy of a receipt for the Lessee's payment of such Taxes or such other evidence of payment of such Taxes as is acceptable to such Indemnatee. The Lessee shall also furnish promptly upon request such data as any Indemnatee may require to enable such Indemnatee to comply with the requirements of any taxing jurisdiction. Whenever any payment is to be made by the Lessee under this Section 13(b) and it shall be necessary, in calculating the After-Tax Basis amount of such payment, to compute the amount of any liability for federal, state or local tax imposed on or measured by the net income of any Indemnatee, such computation shall be based on the assumption that such taxes shall be payable at the highest marginal statutory rate in effect for the relevant period.

(7) **Definition of Indemnatee.** For purposes of this Section 13(b), the term Indemnatee shall mean and include the successors and assigns of each respective Indemnatee, and for purposes of federal income taxes, the affiliated group of corporations and each member thereof (within the meaning of Section 1504 of the Code) of which such Indemnatee is a member, if such group shall file a consolidated United States federal income tax return, and, for purposes of income or franchise taxes imposed by a particular state or local taxing jurisdiction, shall mean and include any consolidated or combined group of which such Indemnatee is or shall be a member that is treated as such by such state or local taxing jurisdiction.

(c) **Supporting Material.** Upon receipt of any payment provided for by this Section 13, the Indemnatee receiving the same shall provide to the Lessee such supporting material (other than tax returns) as the Lessee shall reasonably request. The Lessee shall reimburse to any Indemnatee any expenses incurred in providing requested supporting material to the Lessee.

#### SECTION 14. Transaction Expenses.

(a) Transaction Expenses. Subject to the provisions of paragraph (c) below, with funds provided by the Owner Participant, the Owner Trustee hereby agrees that it will pay when due an appropriate portion (taking into account the other undivided interests in Unit 1 being sold on the Closing Date) of the following costs and expenses (Transaction Expenses):

(i) the reasonable legal fees and disbursements of the Loan Participant's Counsel, Special FERC Counsel, the Owner Participant's Special Arizona Counsel, the Owner Participant's Special New Mexico Counsel, the Owner Participant's Special Counsel, the Owner Participant's Special NRC Counsel, the Owner Trustee's Counsel and the Indenture Trustee's Counsel for their services rendered in connection with the execution and delivery of this Participation Agreement and the other Transaction Documents and all fees, expenses and disbursements incurred by them in connection with such transactions; and reasonable legal fees, expenses and disbursements in connection with NRC and ANPP Participant approvals in connection with such transactions;

(ii) the initial (but not the ongoing) fees and expenses of the Owner Trustee and the Indenture Trustee;

(iii) all stenographic, printing, reproduction, and other reasonable out-of-pocket expenses (other than investment banking or brokerage fees) incurred in connection with the execution and delivery of this Participation Agreement and the other Transaction Documents and all other agreements, documents or instruments prepared in connection therewith (including all computer analysis and travel related costs);

(iv) the fees of the Appraiser for services rendered as contemplated by Section 11(a)(30), the fees of the appraiser for services rendered as contemplated by Section 11(a)(39) and the fees of the insurance consultant for services rendered as contemplated by Section 11(a)(36);

(v) all costs of issue of the Bonds including, without limitation, the costs of preparing the Financing Documents, filing fees relating to the Registration Statement and the fees, expenses and disbursements of Collateral Trust Trustee's Counsel, Bank Counsel, Loan Participant's special Arizona counsel and special New Mexico counsel, Underwriter's Counsel, the initial fees of the Collateral Trust Trustee and its out-of-pocket expenses through the Refunding Date, rating agency fees, the fees and commissions of the underwriters of the Bonds and the fees, expenses and disbursements of the Loan Participant;

(vi) commitment fees payable to the Banks under the Term Loan Agreement; and

(vii) the fees and out-of-pocket expenses of Kidder Peabody in connection with the placement of the beneficial interest in the Trust.

Subject to the provisions of paragraph (c) below, funds for the payment of Transaction Expenses will be provided by the Owner Participant to the Owner Trustee and the Owner Trustee will promptly disburse such funds.

(b) Post-Closing Expenses. The Lessee will pay, as Supplemental Rent, (i) the ongoing fees, expenses, disbursements and costs (including legal and other professional fees and expenses) of or incurred by the Owner Trustee, the Indenture Trustee and the Collateral Trust Trustee, including in connection with the issue, sale and purchase of Notes and Bonds after the Closing Date, and (ii) all fees, expenses,

disbursements and costs (including legal and other professional fees and expenses) incurred by the Loan Participant, the Owner Participant, the Owner Trustee, the Indenture Trustee and the Collateral Trust Trustee in connection with (a) any Default, Event of Default, Indenture Default or Indenture Event of Default, (b) the entering into or giving or withholding of any amendment, modification, supplement, waiver or consent with respect to any Transaction Document or Financing Document, (c) any Event of Loss or Deemed Loss Event, (d) any transfer of all or any part of the right, title and interest of the Indenture Trustee in, to and under the Transaction Documents, (e) any transfer of all or any part of the right, title and interest of the Owner Trustee in the Undivided Interest, the Real Property Interest or in, to and under the Transaction Documents, (f) any transfer contemplated by Section 7(b)(4) and (g) any releveraging or refunding referred to in Section 2(c) or 2(d) (except to the extent constituting Transaction Expenses).

(c) Lessee's Obligation. Notwithstanding Section 14(a) hereof, (i) in the event the transactions contemplated by this Participation Agreement shall not be consummated, the Lessee shall pay or cause to be paid; and shall indemnify and hold harmless the Loan Participant, the Indenture Trustee, the Owner Trustee and the Owner Participant in respect of all Transaction Expenses unless such failure to consummate shall result solely from the Owner Participant's default in making its Investment hereunder and (ii) the Lessee shall pay or cause to be paid that portion of Transaction Expenses which exceeds a percentage of the Purchase Price equal to the Transaction Expense Cap set forth in Schedule 2.

#### SECTION 15. Owner Participant's Transfers.

(a) Transfers. After the Closing Date, except as contemplated by Section 7(b)(4), the Owner Participant shall not assign, convey or otherwise transfer all or any part of (including without limitation an undivided interest in) its right, title or interest in and to this Participation Agreement, any of the other



Transaction Documents or the Trust Estate (except its right to receive Excepted Payments) to any Person (a Transferee) except on the following conditions:

(i) the Transferee shall enter into an agreement or agreements whereby such Transferee confirms that (1) it shall be bound by the terms of this Participation Agreement and each other Transaction Document, to the extent of the interest transferred, as if it had been originally named as the Owner Participant hereunder and thereunder and (2) if such Transferee is a public utility company, it shall have waived its right to claim Special Casualty Value upon the occurrence of a Deemed Loss Event (of the type specified in clause (1) of the definition thereof) under the Facility Lease;

(ii) the Transferee shall be either (A) a financial institution, a corporation or a partnership with a net worth or capital and surplus of at least \$25,000,000 (or, in the case of a partnership, at least one of whose general partners has such a net worth or capital and surplus), or a direct or indirect wholly owned subsidiary of such a financial institution or corporation, (B) a direct or indirect wholly owned subsidiary of (1) the Owner Participant or (2) any parent of the Owner Participant, (C) such other Person as shall have been approved by the Lessee or (D) any Person; provided, however, that if the Transferee is a subsidiary referred to in clause (A) above or a Person referred to in clause (D) above; the transferring Owner Participant (and any parent thereof secondarily liable pursuant to this Section 15(a)(ii)) shall continue to be liable for (or the parent of such Transferee, which shall otherwise be a permitted Transferee, shall enter into an agreement whereby such parent confirms that it shall be secondarily

liable for) the obligations of such Transferee under Section 7(b)(i) notwithstanding such transfer; and

(iii) such transfer shall not violate the Securities Act or any provision of, or create a relationship which would be in violation of, any Applicable Law or agreement to which the transferring Owner Participant or the Transferee is a party or by which its property is bound.

Upon any such transfer, the transferring Owner Participant shall, except as expressly provided in clause (ii) above, be released from its obligations under this Participation Agreement and the other Transaction Documents to the extent of the interest transferred. An agreement to transfer shall not in and of itself constitute a transfer for purposes of this Section 15.

(b) Procedure. If the Owner Participant transfers all or any part of its interest hereunder pursuant to this Section 15, it shall give written notice thereof to the Lessee, the Owner Trustee, the Indenture Trustee and the Loan Participant, specifying the name and address for notices to the Transferee, such other information and evidence as shall be necessary to establish compliance with this Section 15 and the extent of the interest transferred to such Transferee. If, as a result of any such transfer, the original Owner Participant is not to continue to receive all payments to be made by the Indenture Trustee to the "Owner Participant" under the Indenture, the original Owner Participant shall from time to time, by notice to the Indenture Trustee, with copies to the Lessee, the Owner Trustee and the Collateral Trust Trustee, designate the manner in which any such payments to the "Owner Participant" are to be allocated, and the Indenture Trustee shall be entitled to rely on such notice for all purposes. This Section 15 is for the benefit of the Lessee, the Owner Trustee and the Owner Participant and may not be enforced by any other party hereto.

**SECTION 16. Brokerage and Finders' Fees and Commissions.**

Except to the extent of amounts payable by the Owner Participant pursuant to Section 14, the Lessee will indemnify and hold harmless the Loan Participant, the Indenture Trustee, the Owner Trustee and the Owner Participant in respect of any commissions, fees, judgments or other expenses of any nature and kind which any of them may become liable to pay by reason of any claims by or on behalf of brokers, finders, agents, advisors or investment bankers in connection with the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document, or any litigation or similar proceeding arising from any such claims, other than those claims arising out of written undertakings of the party claiming indemnification under this Section 16 or any Affiliate or shareholder (or Affiliate of such shareholder) of such Person with any such broker, finder, agent, advisor or investment banker.

**SECTION 17. Survival of Representations and Warranties; Binding Effect.**

(a) Survival. All indemnities, representations and warranties contained in this Participation Agreement, in any other Transaction Document, in any Financing Document and in any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith, shall survive, and shall continue in effect following, the execution and delivery of this Participation Agreement, the making of the investments and the loans referred to herein, any disposition of any interest in the Undivided Interest, Unit 1 or any other property referred to in this Participation Agreement and the expiration or other termination of any of the Transaction Documents or Financing Documents and shall be and continue in effect notwithstanding (i) any investigation made by the Owner Participant or the Loan Participant or (ii) the fact that any of the Indenture Trustee, the Owner Trustee, the Loan Participant or the Owner Participant may waive.

compliance with any of the other terms, provisions or conditions of any of the Transaction Documents or Financing Documents. The obligations of the Lessee under Sections 10(b)(1)(vi), 10(b)(1)(viii), 10(b)(2), 10(b)(3)(vii), 10(b)(3)(x), 10(b)(3)(xi), 13, 14, 16 and 19(f) shall survive the expiration or other termination of this Participation Agreement or any other Transaction Document or Financing Document. The extension of any applicable statute of limitations by the Owner Trustee, the Indenture Trustee, the Lessee, the Owner Participant, the Loan Participant or any Indemnatee shall not affect such survival.

(b) Binding Effect. All agreements, representations and warranties in this Participation Agreement, the other Transaction Documents and the Financing Documents and in any agreement, document or certificate delivered concurrently with the execution of this Participation Agreement or from time to time thereafter, shall bind the party making the same and its successors and permitted assigns and shall inure to the benefit of each party for whom made and their respective successors and permitted assigns, and, to the extent provided in the next sentence, each Indemnatee and its successors and assigns. The obligations of the Lessee under Section 13 hereof and Section 20 of the Facility Lease are expressly made for the benefit of, and shall be enforceable by, any Indemnatee, separately or together, without declaring the Facility Lease to be in default and notwithstanding any assignment by the Lessor of the Facility Lease or any of its rights thereunder or any disposition of all or any part of any interest in the Undivided Interest, the Real Property Interest, Unit 1 or any other property referred to in this Participation Agreement, or in this Participation Agreement or any other Transaction Document or any Financing Document. All payments required to be made pursuant to Section 13 hereof shall be made directly to, or as otherwise requested by, the Indemnatee entitled thereto upon written demand by such Indemnatee. The Lessee shall not assign any of its rights or obligations hereunder without the prior written consent of the Owner Participant and the Owner Trustee. Except as otherwise

indicated, all references herein to any party to this Participation Agreement and the other Transaction Documents shall include the permitted successors and assigns of such party.

#### SECTION 18. Notices.

All communications, notices and consents provided for herein shall be in writing, including telex, telecopy or other wire transmission containing a request for assurance of receipt in a manner typical with respect to communications of that type, or mailed by registered or certified mail, and shall be addressed (i) if to the Owner Participant, at the address for notices set forth on Schedule 2; (ii) if to First PV Funding Corporation at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, Attention: President; (iii) if to The First National Bank of Boston, or the Owner Trustee, at 100 Federal Street, Boston, Massachusetts 02110, Attention: Corporate Trust Division (TWX No. 940581); (iv) if to Chemical Bank, at 55 Water Street, New York, New York 10041, Attention: Corporate Trustee Administration; and (v) if to Public Service Company of New Mexico, at Alvarado Square, Albuquerque, New Mexico 87158, Attention: Secretary; or at such other address as any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other parties hereto. All such communications, notices and consents given in the manner provided above shall be effective on the date of receipt of such communication or notice.

#### SECTION 19. Miscellaneous.

(a) Execution. This Participation Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Although this Participation Agreement is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively

the dates set forth under the signatures hereto, and this Participation Agreement shall be effective on the latest of such dates.

(b) Intention of the Owner Participant. The Owner Participant intends to exercise its rights and carry out its obligations hereunder and under the other Transaction Documents solely with a view to furthering its own best interests and does not have, and does not expect to have, any form of joint profit motive with any other Person. The Owner Participant shall not be required to share any Rent to which it is entitled under the Facility Lease with any other Person except to the extent provided in the Indenture. The Owner Participant is not under the control of nor shall it be deemed to be under the control of any other Person having any interest in Unit 1, and shall not be the agent of or have a right or power to bind any such Person (other than the Owner Trustee) without its express written consent. The Owner Participant accordingly does not intend to create any form of partnership or joint venture with any other Person by virtue of the transactions contemplated hereby or by any of the Transaction Documents. In the event that it is determined, contrary to the intent of the Owner Participant, that, for purposes of the Code or any other income tax law, a form of partnership or joint venture exists between the Owner Participant and any other Person, the Owner Participant hereby elects to the extent permitted by law (i) not to have the partnership provisions of the Code or such other income tax law apply to any of the transactions contemplated hereby or by any of the Transaction Documents and (ii) to be treated solely as owning the Undivided Interest.

(c) Governing Law. This Participation Agreement has been negotiated and delivered in the State of New York and shall be governed by, and be construed in accordance with, the laws of the State of New York.

(d) Amendments, Supplements, etc. Neither this Participation Agreement nor any of the terms hereof may be amended, supplemented, waived or modified orally, but

only by an instrument in writing signed by the party against which enforcement of such change is sought.

(e) Headings. The headings of the sections and paragraphs of this Participation Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

(f) Bankruptcy of Owner Participant. If (a) the Owner Participant or the Owner Trustee becomes a debtor subject to the reorganization provisions of the Bankruptcy Code, or any successor provision, (b) pursuant to such reorganization provisions the Owner Participant or the Owner Trustee is required, by reason of the Owner Participant being held to have recourse liability directly or indirectly to the Holder of any Note or the Indenture Trustee, to make payment on account of any amount payable as principal or interest on such Note and (c) such Holder or the Indenture Trustee actually receives any Excess Amount (as hereinafter defined) which reflects any payment by the Owner Participant on account of clause (b) of this Section, then such Holder or the Indenture Trustee, as the case may be, shall promptly refund to the Owner Participant such Excess Amount. For purposes of this Section, "Excess Amount" means the amount by which such payment exceeds the amount which would have been received on or prior to the date of such payment by such Holder or the Indenture Trustee if the Owner Participant or the Owner Trustee had not become subject to the recourse liability referred to in clause (b) of this Section. Nothing contained in this Section shall prevent such Holder or the Indenture Trustee from enforcing any personal recourse obligation (and retaining the proceeds thereof) of the Owner Participant expressly provided for under this Participation Agreement.

(g) Entire Agreement. This Participation Agreement (including the Schedules hereto), the other Transaction Documents and the Financing Documents supersede all prior agreements, written or oral, between or among any of the parties hereto relating to the

transactions contemplated hereby and thereby and each of the parties hereto represents and warrants to the others that this Participation Agreement and the other Transaction Documents and the Financing Documents constitute the entire agreement among the parties relating to the transactions contemplated hereby and thereby.

(h) Publicity. Each party hereto agrees that it will not issue or release for external publication any article or advertising or publicity matter relating to the transaction contemplated hereby or any similar transaction and mentioning or implying the identity of the Owner Participant without the prior written consent of the Owner Participant; provided, however, that the Owner Participant agrees that such written consent shall not be withheld if such disclosure is required by Applicable Law.



IN WITNESS WHEREOF, the parties hereto have each caused this Participation Agreement to be duly executed by their respective officers thereunto duly authorized as of the dates set forth below.

MFS LEASING CCRP.

By Christine R. Cook  
Title: Production Office Supervisor

Date: December 31, 1985

FIRST PV FUNDING CORPORATION

By \_\_\_\_\_  
President

Date: December 31, 1985

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

By W. Robinson  
Senior Vice President and  
Chief Financial Officer

Date: December 31, 1985



THE FIRST NATIONAL BANK OF  
BOSTON, in its individual  
capacity and as Owner  
Trustee

By: 

Vice President

Date: December 31, 1985

CHEMICAL BANK, in its indi-  
vidual capacity and as  
Indenture Trustee

By: 

Vice President

Date: December 31, 1985



PUBLIC SERVICE COMPANY OF NEW MEXICO

PALO VERDE NUCLEAR GENERATING  
STATION UNIT 1

NOTICE OF CLOSING

MFS LEASING CORP.

Pursuant to Section 5(a) of the Participation Agreement, dated as of December 16, 1985 (the Participation Agreement) among MFS Leasing Corp., as Owner Participant (the Owner Participant), First PV Funding Corporation, as Loan Participant, The First National Bank of Boston, as Owner Trustee, Chemical Bank, as Indenture Trustee, and Public Service Company of New Mexico (PNM), PNM hereby gives notice of a Closing to occur at 10:00 a.m. on December 31, 1985 (the Closing Date). The Closing will be held at the offices of Messrs. Mudge Rose Guthrie Alexander & Ferdon, 180 Maiden Lane, New York, New York 10038.

(i) Purchase Price is \$60,000,000.

(ii) Real Estate Investment is \$28,328.

(iii) Based upon information supplied to PNM, the current estimate of Transaction Expenses is an aggregate of \$3,575,000. Instructions with respect to such Transaction Expenses will be provided by PNM.

(iv) Payment of the Purchase Price and the Real Estate Investment shall be made as provided in (i) that certain Collateral Trust Escrow Agreement dated December 31, 1985, between Chemical Bank and Chemical Bank, as Collateral Trust Trustee, and (ii) that certain Owner Participant Escrow Agreement dated December 31, 1985, between the Owner Participant and Chemical Bank.

Capitalized terms used herein and not otherwise specifically defined herein shall have the meanings set forth in Appendix A to the Participation Agreement.

IN WITNESS WHEREOF, Public Service Company of New Mexico has executed this Notice of Closing this 30th day of December, 1985.

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

By 47 Robinson  
Senior Vice President and Chief  
Financial Officer

[illegible]

## Schedule 2

### OWNER PARTICIPANT INFORMATION; PRICING ASSUMPTIONS

#### Owner Participant Information

1. The Owner Participant is MFS Leasing Corp., a Delaware corporation. The Owner Participant's address for notices is: Suite 3030, One Mellon Bank Center, Pittsburgh, Pennsylvania 15258, Attention: President.

2. The Loan Percentage is 77%.

3. The Investment Percentage is 23%.

4. For purposes of Sections 10(a)(5) and (a)(16) of the Participation Agreement the Excluded State is Delaware..

5. "Net Economic Return" shall mean the after-tax economic yield and after-tax cash flow (after all Federal, state and local taxes) and the periodic return on investment and the timing of recognition of income originally expected by the Owner Participant with respect to the Undivided Interest, utilizing the same assumptions as used by the Owner Participant in making the original computation upon which its evaluation of investment in the Undivided Interest and the initial computation of Basic Rent, Casualty Value, Special Loss Value and Termination Value were based.

6. The "Purchase Price" shall be \$60,000,000.

7. The "Undivided Interest Percentage" shall mean 1.36%.

8. The "Real Estate Investment" shall mean \$28,328.

9. The "Transaction Expense Cap" shall mean 2.25%.

10. The other counsel to which reference is made in the definition of Owner Participant's Special Counsel is Reed, Smith, Shaw and McClay.

Pricing Assumptions

Basic Rent, Casualty Value, Special Casualty Value and Termination Value, as set forth in the Facility Lease as originally executed, have been computed on the basis of the following pricing assumptions:

- |   |  |
|---|--|
| 1. Investment Percentage                | 23%  |
| 2. Loan Percentage                      | 77%  |
| 3. Interest Rate on Initial Series Note | 9.5% per annum   |
| 4. ACRS Deductions                      | 10-year public utility property deductions on the basis of 92.8% of Facility Cost.                       |
| 5. Straight Line Deductions             | 10-year straight line deductions, using the half-year convention, on the basis of 7.2% of Facility Cost. |
| 6. Owner Participant's Tax Year-End     | December 31, 1985  |
| 7. Closing Date                         | December 31, 1985  |
| 8. Transaction Expenses                 | 1.1% of Facility Cost paid by the Owner Participant in addition to its Investment.                       |

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(amortized on a straight-line basis during the Basis Lease Term)



9. Real Estate Investment \$28,328.
10. Interim Rent . An amount equal to the daily equivalent of the first Basic Rent Payment, for the period from the Closing Date to (but excluding) January 15, 1986.
11. Basic Rent Payment Date January 15 and July 15 of each year.
12. First Basic Rent Payment Date July 15, 1986.
13. Last Basic Rent Payment Date January 15, 2015.
14. Interim Rent Payment Date January 15, 1986.
15. Marginal Tax Rate 46%
16. Estimated Tax Payments 90% current, quarterly.
17. First Estimated Tax Payment Date December 15, 1985.
18. Accounting Method Accrual
19. Amortization of Initial Series Note See schedule attached thereto.



### Schedule 3

#### Recordations and Filings

Part I. Recordations in Respect of the Sale of, and the Owner Trustee's Title to, the Undivided Interest and the Real Property Interest.

County Recorder, Maricopa County, Arizona:

- (i) Deed;
- (ii) Bill of Sale;
- (iii) Assignment of Beneficial Interest;
- (iv) Assignment and Assumption;
- (v) Facility Lease;
- (vi) Indenture; and
- (vii) Mortgage Release.

Part II. UCC-1 Financing Statements.

A. County Recorder, Maricopa County, Arizona:

(i) A financing statement on form UCC-1 naming PNM, as lessee, the Owner Trustee, as lessor, and the Indenture Trustee, as assignee of the Owner Trustee, in respect of the Facility Lease;

(ii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate; and

(iii) A financing statement on form UCC-1 naming the Loan Participant, as debtor, and the Collateral Trust Trustee, as secured party, in respect of the Pledged Property (as defined in the Collateral Trust Indenture).

B. Secretary of State, Arizona:

(i) A financing statement on form UCC-1 naming PNM, as lessee, the Owner Trustee, as lessor, and the Indenture Trustee, as

assignee of the Owner Trustee, in respect of the Facility Lease; and

(ii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate; and

(iii) A financing statement on form UCC-1 naming the Loan Participant, as debtor, and the Collateral Trust Trustee, as secured party, in respect of the Pledged Property (as defined in the Collateral Trust Indenture).

C. Office of County Clerk, Bernalillo County, New Mexico:

(i) A financing statement on form UCC-1 naming PNM, as lessee, and the Owner Trustee, as lessor, in respect of the Facility Lease;

(ii) A financing statement on form UCC-\_\_ naming the Indenture Trustee, as assignee of the Owner Trustee, in respect of the Facility Lease; and

(iii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate.

D. Secretary of State, New Mexico:

(i) A financing statement on form UCC-1 naming PNM, as lessee, the Owner Trustee, as lessor, in respect of the Facility Lease;

(ii) A financing statement on form UCC-\_\_ naming the Indenture Trustee, as

assignee of the Owner Trustee, in respect of the Facility Lease; and

(iii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate.

E. Massachusetts: state and local:

A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate.

Part III. Other Filings.

Filing of the Facility Lease, the Indenture, the Collateral Trust Indenture and the Mortgage Release with the Secretary of State of the State of New Mexico pursuant to the New Mexico Public Utility Act.

## Appendix A

### DEFINITION OF TERMS

The terms defined herein relate to the Participation Agreement (as defined below) and certain Transaction Documents executed, or to be executed, in connection with the Participation Agreement. Such terms include the plural as well as the singular. Any agreement defined or referred to below shall include each amendment, modification and supplement thereto and waiver thereof as may become effective from time to time, except where otherwise indicated. Any term defined below by reference to any agreement shall have such meaning whether or not such document is in effect. The terms "hereof", "herein", "hereunder" and comparable terms refer to the entire agreement with respect to which such terms are used and not to any particular article, section or other subdivision thereof.

If, and to the extent that, either the Participation Agreement or any other Transaction Document which incorporates this Appendix shall be amended from time to time pursuant to the respective terms thereof, this Appendix shall be, or be deemed to have been, amended concurrently with the execution and delivery of each such amendment in order to conform the definitions herein to the new or amended definitions set forth in or required by each such amendment.

Additional Equity Investment shall have the meaning specified in Section 8(f) of the Facility Lease.

Additional Notes shall have the meaning set forth in the recitations in the Indenture, which Additional Notes shall be issued, if at all, pursuant to Section 3.5 of the Indenture.

Affiliate, with respect to any Person, shall mean any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and

"under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

After-Tax Basis shall mean, with respect to any payment received or deemed to have been received by any Person, the amount of such payment supplemented by a further payment to that Person so that the sum of the two payments shall, after deduction of all taxes and other charges (taking into account any credits or deductions arising therefrom and the timing thereof and computed at the highest marginal statutory tax rate) resulting from the receipt (actual or constructive) of such two payments imposed under any Applicable Law or by any Governmental Authority, be equal to such payment received or deemed to have been received.

ANPP Administrative Committee shall mean the committee established pursuant to Section 6.1.1 of the ANPP Participation Agreement (or any comparable successor provision).

ANPP Operating Committee shall mean the committee established pursuant to Section 6.1.2 of the ANPP Participation Agreement (or any comparable successor provision).

ANPP Participants shall have the meaning assigned to the word "Participant" under the ANPP Participation Agreement.

ANPP Participation Agreement shall mean the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, among APS, Salt River, Southern California, PNM, El Paso and SCPPA, as heretofore amended, and as hereafter amended pursuant to the terms thereof.

ANPP Project Agreements shall mean the ANPP Participation Agreement and the other Project Agreements (as such term is defined in the ANPP Participation Agreement).

ANPP Switchyard shall mean the ANPP High Voltage Switchyard located at the PVNGS Site, the ownership, construction, operation and maintenance of which are governed by the ANPP High Voltage Switchyard Participation Agreement executed as of August 20, 1981 (APS Contract No. 2252-419,00), the parties to which are APS, PNM, Salt River, El Paso and Southern California.

Applicable Law shall mean all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, permits, certificates, orders, interpretations, licenses and permits of any Governmental Authority and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other judicial or quasi judicial tribunal (including those pertaining to health, safety, the environment or otherwise).

Appraisal Procedure shall mean a procedure whereby two independent appraisers, one chosen by the Lessee and one by the Lessor, shall mutually agree upon the value, period or amount then the subject of an appraisal. If either the Lessor or the Lessee, as the case may be, shall determine that a value, period or amount to be determined under the Facility Lease or any other Transaction Document cannot be established by mutual agreement, such party shall appoint its appraiser and deliver a written notice thereof to the other party. Such other party shall appoint its appraiser within 15 days after receipt from the other party of the foregoing written notice. If within 20 days after appointment of the two appraisers, as described above, the two appraisers are unable to agree upon the value, period or amount in question, a third independent appraiser shall be chosen within ten days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser within such period,



such appointment shall be made by the American Arbitration Association, or any organization successor thereto, from a panel of arbitrators having experience in the business of operating a nuclear electric generating plant and a familiarity with equipment used or operated in such business. The decision of the third appraiser so appointed and chosen shall be given within ten days after the selection of such third appraiser. If three appraisers shall be so appointed and the determination of one appraiser is more disparate from the middle determination by more than twice the amount by which the third determination is disparate from the middle determination, then the determination of such appraiser shall be excluded, the remaining two determinations shall be averaged and such average shall be binding and conclusive on the Lessor and the Lessee; otherwise the average of all three determinations shall be binding and conclusive on the Lessor and the Lessee. The fees and expenses of appraisers incurred in connection with any Appraisal Procedure relating to any transaction contemplated by any provision of any Transaction Document shall be divided equally between the Lessor and the Lessee (except pursuant to Section 16 of the Facility Lease, which shall be paid solely by the Lessee).

APS shall mean Arizona Public Service Company, an Arizona corporation.

Appraiser shall mean Ebasco Business Consulting Company.

Assigned Payments shall have the meaning specified in Section 2.1(1) of the Indenture.

Assignment and Assumption shall mean the Assignment, Assumption and Further Agreement, dated as of December 16, 1985, between PNM and the Owner Trustee.

Assignment of Beneficial Interest shall mean the Deed and Assignment of Beneficial Interest under USLIFE Title Trust No. 530, dated December 31, 1985, from PNM to the Owner Trustee.

Assumption Agreement shall mean the Assumption Agreement of PNM substantially in the form of Exhibit B to the Indenture.

Assumptions shall mean the Pricing Assumptions and the Tax Assumptions.

Atomic Energy Act shall mean the Atomic Energy Act of 1954, as amended, and regulations from time to time issued, published or promulgated pursuant thereto.

Authorized Officer shall mean, with respect to the Indenture Trustee, any officer of the Indenture Trustee who shall be duly authorized by appropriate corporate action to authenticate a Note and shall mean, with respect to the Owner Trustee, any officer of the Owner Trustee who shall be duly authorized by appropriate corporate action to execute any Transaction Document.

Bank Counsel shall mean Willkie, Farr & Gallagher, One Citicorp Center, 153 East 53rd Street, New York, New York 10022.

Bankruptcy Code shall mean the Bankruptcy Reform Act of 1978, as amended, and any law with respect to bankruptcy, insolvency or reorganization successor thereto.

Basic Lease Term shall mean the initial term of the Facility Lease, which shall begin on the Closing Date and end on January 15, 2015, unless earlier terminated as provided in the Facility Lease.

Basic Rent shall have the meaning set forth in Section 3(a) of the Facility Lease.

Basic Rent Payment Dates shall mean and include January 15, 1986, and January 15 and July 15 of each year thereafter, commencing January 15, 1986, and ending January 15, 2015, and, if the Lessee shall elect the Renewal Term, each January 15 and July 15 of each year during the Renewal Term, commencing July 15, 2015 and ending on the last day of the Renewal Term.

Bill of Sale shall mean the Deed and Bill of Sale, dated December 31, 1985, between PNM and the Owner Trustee.

Bonds shall mean all bonds, notes and other evidences of indebtedness from time to time issued and outstanding under the Collateral Trust Indenture, including, but without limitation, the Initial Series Bonds, the Releveraging Bonds, the Refunding Bonds and any other Additional Bonds.

Business Day shall mean any day other than a Saturday or Sunday or other day on which banks in Albuquerque, New Mexico, New York, New York or Boston, Massachusetts are authorized or obligated to be closed.

Capital Improvement shall mean (a) the addition, betterment or enlargement of any property constituting part of Unit 1 or the replacement of any such property with other property, irrespective of whether such replacement property constitutes an enlargement or betterment of the property which it replaces, the cost of which addition, betterment, enlargement or replacement may be capitalized, and not charged to maintenance or repairs, in accordance with the Uniform System of Accounts and, in the case of any addition, betterment or enlargement, is not included or reflected in the plans and specifications for Unit 1, as built, and (b) any alteration, modification, addition or improvement to Unit 1, other than original, substitute or replacement parts incorporated into Unit 1; provided, however, that any Capital Improvement with respect to any portion of

Unit 1 constituting a Common Facility shall mean only an undivided interest in and to one-third of such Capital Improvement.

Casualty Value, as of any Basic Rent Payment Date during the Basic Lease Term, shall mean the percentage of Facility Cost set forth opposite such Basic Rent Payment Date in Schedule 3 to the Facility Lease. Anything contained in the Participation Agreement or the Facility Lease to the contrary notwithstanding, Casualty Value shall be, when added to all other amounts which the Lessee is required to pay under Section 9(c) of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any Basic Rent Payment Date, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes. Casualty Value as of any Basic Rent Payment Date during the Renewal Term shall mean the unamortized portion as of such Basic Rent Payment Date of the Fair Market Sales Value of the Undivided Interest, determined by the straight-line amortization of such Fair Market Sales Value at the commencement of such Renewal Term over the period from such commencement date through the remaining term of the License determined pursuant to Section 13(a) of the Facility Lease.

Certificate of Acceptance shall mean a certificate in the form of Exhibit A to the Facility Lease, which certificate shall have been duly completed, executed and delivered by or on behalf of the Lessee and the Lessor on the Closing Date or any other date contemplated by the Facility Lease.

Change in Tax Law shall have the meaning set forth in Section 3(d) of the Facility Lease.

Chemical Bank shall mean Chemical Bank, a New York banking corporation.

Chief Financial Officer shall mean the person designated by the Board of Directors of PNM as the chief financial officer of PNM.

Claims shall mean liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving liability in tort, strict or otherwise), actions, suits, judgments, costs, expenses and disbursements, whether or not any of the foregoing shall be founded or unfounded (including, without limitation, legal fees and expenses and costs of investigation) of any kind and nature whatsoever without any limitation as to amount.

Closing shall mean the proceedings which occur on the Closing Date, as contemplated by the Participation Agreement.

Closing Date shall mean December 31, 1985.

Code shall mean the Internal Revenue Code of 1954, as amended, or any comparable successor law.

Collateral Trust Indenture shall mean the Collateral Trust Indenture, dated as of December 16, 1985, among PNM, Funding Corp and the Collateral Trust Trustee.

Collateral Trust Indenture Supplement shall mean a supplement to the Collateral Trust Indenture.

Collateral Trust Trustee shall mean Chemical Bank, not in its individual capacity, but solely as Collateral Trust Trustee under the Collateral Trust Indenture, and the successors or assigns of such Trustee.

Common Facilities shall mean all PVNGS Common Facilities as set forth in Item B of Exhibit B to the Bill of Sale other than common facilities excluded from Unit 1 as set forth in Item B to such Exhibit B.

Coverage Ratio shall mean the fraction (i) the denominator of which shall be the sum (calculated as of a date no earlier than 135 days prior to the date of calculation) of (x) the interest that will be payable during the twelve-month period following the date of the transaction with respect to which a calculation is required to be made on the debt (both long-term and short-term) of the Surviving Lessee, and (y) the interest portion of payments due during the twelve-month period following the date of such transaction on lease obligations of the Surviving Lessee with a term in excess of one year, and (ii) the numerator of which shall be the sum of (x) the pro forma net earnings (before taxes and excluding the allowance for funds used during construction) of the Surviving Lessee for a twelve-month period ending no earlier than 135 days prior to the date of such transaction, and (y) such denominator.

Cure Option shall have the meaning set forth in Section 16(e) of the Facility Lease.

Deed shall mean the Deed, dated December 31, 1985, from PNM to the Owner Trustee.

Deemed Loss Event shall mean any of the following events (unless waived by the Owner Participant): (1) if at any time after the Closing Date and before the Lease Termination Date, the Owner Trustee or the Owner Participant, by reason of the ownership of the Undivided Interest or the Real Property Interest or any part thereof by the Lessor or the lease of the Undivided Interest or the Real Property Interest to the Lessee or any of the other transactions contemplated by the Transaction Documents (the term Owner Participant, as used in this definition, not including any Transferee who at the time of transfer to such Transferee is a non-exempt entity of the type referred to in this

definition, whether by reason of such ownership, lease, transactions or otherwise) shall be deemed by any Governmental Authority having jurisdiction to be, or shall become subject to regulation (other than Non-Burdensome Regulation) as, an "electric utility" or a "public utility" or a "public utility holding company" under any Applicable Law or by reason of any Governmental Action, and the effect thereof on the Lessor or the Owner Participant would be, in the sole judgment of either such Person, acting on advice of counsel, adverse, and the Lessor and the Owner Participant have not waived application of this definition (which waiver shall be in writing and may be either indefinite or for a specific period); except that if the Lessee, at its sole cost and expense, is contesting diligently and in good faith any action by any Governmental Authority which would otherwise constitute a Deemed Loss Event under this clause (1), such Deemed Loss Event shall be deemed not to have occurred so long as (i) such contest does not involve any danger of the foreclosure, sale, forfeiture or loss of, or the creation of any Lien on, the Undivided Interest, the Real Property Interest or any part thereof or any interest therein, (ii) such contest does not adversely affect the Undivided Interest, the Real Property Interest or any part thereof or any other property, assets or rights of the Lessor or the Owner Participant or the lien of the Indenture thereon, (iii) the Lessee shall have furnished the Lessor, the Owner Participant, and the Indenture Trustee with an opinion of independent counsel satisfactory to each such Person to the effect that there exists a reasonable basis for contesting such determination, (iv) such determination shall be effectively stayed or withdrawn during such contest (and shall not be subject to retroactive application at the conclusion of such contest) in a manner satisfactory to the Lessor and the Owner Participant, and the Owner Participant shall have determined that the Lessor's continued ownership of the Undivided Interest and the Real Property Interest during the pendency of such contest or such contest will not adversely affect its business, and (v) the Lessee shall have indemnified the Lessor and the Owner Participant in a manner satisfactory to each such Person for any

liability or loss which either such Person may incur as a result of the Lessee's contest; (2) any change in the Price-Anderson Act, the Atomic Energy Act or the regulations of the NRC, or any other Applicable Law in each case as in effect on the Closing Date, as a result of which (i) the aggregate liability for a single "nuclear incident" of "persons indemnified" (as each such term is defined in the Price-Anderson Act) is increased, unless the change is such that neither the Owner Trustee nor the Owner Participant (as such) may be exposed, either during or subsequent to the Lease Term, to any increased real or potential liability in respect of a nuclear incident, (ii) the "aggregate liability" for a single "nuclear incident" of "persons indemnified" (as each term is defined in the Price-Anderson Act) exceeds the amount of financial protection established by the NRC as a condition to the License, unless the change is such that neither the Owner Trustee nor the Owner Participant (as such) may be exposed, either during or subsequent to the Lease Term, to any increased real or potential liability in respect of a nuclear incident, (iii) the amount of financial protection required, including but not limited to the limitation on the amount of deferred premiums for such financial protection, is increased, unless the change is such that neither the Owner Trustee nor the Owner Participant (as such) may be exposed, either during or subsequent to the Lease Term, to any increased real or potential liability in respect of a nuclear incident, or (iv) either the Owner Trustee or the Owner Participant (as such) may be exposed to any other increase in its real or potential liability in respect of a nuclear incident, either during or subsequent to the Lease Term; (3) any change in Applicable Law as a result of which the Owner Trustee shall become liable in its individual capacity, or the Owner Participant shall become liable in any capacity, in respect of any portion of the Termination Obligation (as defined in the ANPP Participation Agreement) or, during the Lease Term, any other liability or obligation imposed as of the date hereof on licensees of the NRC; (4) any change in Applicable Law or any Governmental Action the effect of which is to make the transactions contemplated by the Transaction Documents unauthorized,



illegal or otherwise contrary to Applicable Law; or (5) any expiration, revocation, suspension, amendment or interpretation by any Governmental Authority of the NRC Order, the License or the licensing of the Lessee by the NRC or any other Governmental Action or change in Applicable Law as a result of which either the Lessor or the Owner Participant shall be required to become a licensee of the NRC prior to the Lease Termination Date.

Default shall mean an event or condition which, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

Directive shall mean an instrument in writing executed in accordance with the terms and provisions of the Indenture by the Holders, or their duly authorized agents or attorneys-in-fact, representing a Majority in Interest of Holders of Notes, directing the Indenture Trustee to take or refrain from taking the action specified in such instrument.

Early Termination Date shall have the meaning specified in Section 14(d) of the Facility Lease.

Early Termination Notice shall have the meaning specified in Section 14(d) of the Facility Lease.

El Paso shall mean El Paso Electric Company, a Texas corporation.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended.

Estimated Transaction Expenses shall have the meaning set forth in Section 5(a) of the Participation Agreement.

Event of Default shall have the meaning set forth in Section 15 of the Facility Lease.

Event of Loss shall mean any of the following events: (a) a Final Shutdown, (b) a Requisition of Title, (c) a Requisition of Use for an indefinite period which can be reasonably expected to exceed, or a stated period which ends on the last day of or after, the Lease Term or (d) any degradation of the rated capacity of Unit 1 to below 630 megawatts electric for an indefinite period which can reasonably be expected to exceed the lesser of 5 years and the remaining Lease Term or for a stated period in excess of the lesser of five years or the remaining Lease Term (other than as a result of damage to or destruction of Unit 1).

Excepted Payments shall mean (i) all payments of Supplemental Rent, other than payments by the Lessee (x) of Casualty Value, Termination Value or Special Casualty Value or in connection with the exercise of the Cure Option (y) of indemnity payments to which either the Loan Participant or any Indemnatee other than the Owner Trustee or the Owner Participant (or the respective successors, assigns, agents, officers, directors or employees of the Owner Trustee or the Owner Participant) is entitled; (ii) any amounts payable under any Transaction Document to reimburse the Lessor or the Owner Participant (including the reasonable expenses of the Lessor or the Owner Participant incurred in connection with any such payment) for performing or complying with any of the obligations of the Lessee under and as permitted by any Transaction Document, (iii) any amount payable to the Owner Participant by any Transferee as the purchase price of the Owner Participant's interest in the Trust Estate, (iv) so long as no Event of Default shall have occurred and be continuing, all payments of Basic Rent in excess of amounts then due and owing in respect of the principal of and premium, if any, and interest on all Notes Outstanding; (v) any insurance proceeds with respect to an Event of Loss in excess of amounts then due and owing in respect of the principal of and premium, if any, and interest on all Notes Outstanding, (vi) any insurance proceeds (or payments with respect to risks self-insured) under liability policies and (vii) any payments in respect of interest

to the extent attributable to payments referred to in clauses (i) through (vi) above.

Excess Amount shall have the meaning set forth in Section 19(f) of the Participation Agreement.

Existing Mortgage shall mean the Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, between PNM and Irving Trust Company, as heretofore supplemented by all Supplemental Indentures thereto.

Extension Letter shall mean the Extension Letter, to be dated the Closing Date and addressed to the Collateral Trust Trustee by Funding Corp and PNM.

Expenses shall mean liabilities, obligations, losses, damages, taxes (other than taxes on income), claims, actions, suits, costs, expenses and disbursements (including legal fees and expenses) of any kind and nature whatsoever.

Facility Cost shall mean the Purchase Price plus the sum of (x) all Supplemental Financing Amounts, and (y) all Additional Equity Investment amounts.

Facility Lease shall mean the Facility Lease, dated as of December 16, 1985, between PNM, as Lessee, and the Owner Trustee, as Lessor.

Fair Market Rental Value or Fair Market Sales Value of any property or service shall mean the value of such property or service for lease or sale determined on the basis of an arm's-length transaction for cash between an informed and willing lessee or buyer or purchaser (under no compulsion to lease or purchase) and an informed and willing lessor or seller (under no compulsion to lease or sell), and shall take into account the Lessor's rights and obligations under the Assignment and Assumption and the Assignment of Beneficial Interest and rights under the Deed and the Bill of Sale, but shall be without regard to any rights of the Lessee (including any renewal options) under the Lease. Except pursuant to Section 16 of the Facility Lease, Fair Market Rental

Value and Fair Market Sales Value of the Undivided Interest and the Real Property Interest shall be determined on the assumption that (i) Unit 1 has been maintained in accordance with, and the Lessee has complied with, the requirements of the Facility Lease and the other Transaction Documents, and (ii) the Lessee or PNM, as possessor of the Undivided Interest and the Real Property Interest, is otherwise in compliance with the requirements of all Transaction Documents. Fair Market Rental Value shall be determined on the assumption that rent will be payable in equal semi-annual installments in arrears.

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

Federal Securities shall have the meaning set forth in Section 2.3(c) of the Indenture.

FERC shall mean the Federal Energy Regulatory Commission of the United States of America or any successor agency.

FERC Order shall mean the Order Disclaiming Jurisdiction issued by FERC on December 5, 1985 (Docket No. EL86-5-000).

Final Prospectus shall mean the Prospectus included in the Registration Statement on the date the same becomes effective, including documents incorporated into said Prospectus by reference.

Final Shutdown shall mean the earlier to occur of (i) the expiration, suspension (for an indefinite period which can reasonably be expected to exceed the lesser of five years and the remaining Lease Term or for a stated period in excess of the lesser of five years and the remaining Lease Term) or revocation of that portion of the License that permits the operation of Unit 1 or the possession by the Lessee of the Undivided Interest and the Real Property Interest, (ii) the cessation of operation of Unit 1 as a result of a nuclear incident relating to PVNGS for an indefinite

period which can reasonably be expected to exceed the lesser of five years and the remaining Lease Term or for a stated period in excess of the lesser of five years and the remaining Lease Term, (iii) damage to or destruction of Unit 1 and the failure of the Lessee, or of the Lessee and one or more other ANPP Participants, to agree within five years of such damage or destruction to restore and reconstruct Unit 1 and (iv) damage to or destruction of Unit 1, without restoration or reconstruction having been completed by the end of the Lease Term, such that Unit 1 will have a rated capacity as of the penultimate day of the Lease Term of at least 630 megawatts electric. For purposes of this definition, Final Shutdown pursuant to the foregoing clause (iii) will be deemed to have occurred upon the earlier of (x) the written declaration of the Lessee of its intent not so to agree and (y) the expiration of such five-year period without written agreement, and pursuant to the foregoing clause (iv) will be deemed to have occurred on the day preceding the Lease Termination Date.

Financing Documents shall mean the Collateral Trust Indenture, the Underwriting Agreement and the Term Loan Agreement.

Fixed Rate Note shall mean the non-recourse promissory note, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Refunding Date to refund the Initial Series Note and the Releveraging Note (if theretofore issued).

FNB shall mean the Owner Trustee in its individual capacity, and its successors and assigns.

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

Funding Corp shall mean First PV Funding Corporation, a Delaware corporation.

Generating Unit shall mean Unit 1 or any of the other Generating Units (as such term is defined in the ANPP Participation Agreement) constituting PVNGS.

Generation Entitlement Share shall have the meaning assigned thereto in the ANPP Participation Agreement and (i) when used in reference to Unit 1, shall mean the Generation Entitlement Share of PNM as the ANPP Participant with respect to its interest in Unit 1, (ii) when used in reference to the Undivided Interest, shall mean that portion of the Generation Entitlement Share attributable to the Undivided Interest and (iii) when used in Section 19 of the Facility Lease, shall refer to all Generating Units at PVNGS.

Governmental Action shall mean all authorizations, consents, approvals, waivers, exceptions, variances, orders, licenses, exemptions, publications, filings, notices to and declarations of or with any Governmental Authority (other than routine reporting requirements the failure to comply with which will not affect the validity or enforceability of any of the Transaction Documents or have a material adverse effect on the transactions contemplated by any Transaction Document or any Financing Document or any other action in respect of any Governmental Authority and shall include, without limitation, all siting, environmental and operating permits and licenses which are required for the use and operation of Unit 1, including the Undivided Interest and the Real Property Interest.

Governmental Authority shall mean any Federal, state, county, municipal, foreign, international, regional or other governmental authority, agency, board, body, instrumentality or court.

Holders shall mean the holders of the Notes.

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

Indemnatee shall mean the Owner Participant, the Owner Trustee, FNB, the Loan Participant, the stockholder of Funding Corp and its officers and directors, Chemical Bank, the Indenture Trustee, each Holder of a Note from time to time Outstanding, the Collateral Trust Trustee, the Trust, the Trust Estate, the Lease Indenture Estate, the indenture estate under the Collateral Trust Indenture, any Affiliate of any of the foregoing and the respective successors, assigns, agents, officers, directors or employees of the foregoing, excluding, however, any ANPP Participant other than the Owner Trustee or the Owner Participant.

Indenture shall mean the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 16, 1985, between the Owner Trustee and the Indenture Trustee.

Indenture Default shall mean an event which, after giving of notice or lapse of time, or both, would become an Indenture Event of Default.

Indenture Event of Default shall mean any of the events specified in Section 6.2 of the Indenture.

Indenture Trustee shall mean Chemical Bank, a New York banking corporation, not in its individual capacity, but solely as Indenture Trustee under the Indenture and each successor trustee and co-trustee thereunder.

Indenture Trustee's Liens shall mean Liens against the Lease Indenture Estate which result from acts of, or any failure to act by, or as a result of claims against, the Indenture Trustee, in its individual capacity, unrelated to the transactions contemplated by the Transaction Documents.

Indenture Trustee's Office shall mean the office of the Indenture Trustee located at 55 Water Street, New York, New York 10041, Attention: Corporate Trustee Administration, or such other office as may be designated by the Indenture Trustee to the Owner Trustee and each Holder of a Note Outstanding under the Indenture.

Indenture Trustee's Counsel shall mean Willkie, Farr & Gallagher, One Citicorp Center, 153 East 53rd Street, New York, New York 10022.

Initial Series Bonds shall mean the promissory notes of Funding Corp evidencing the loans made to the Company under the Term Loan Agreement, issued, authenticated and delivered under the Term Loan Agreement and the Collateral Trust Indenture, as supplemented by the Term Note Supplemental Indenture.

Initial Series Note shall mean the non-recourse promissory note, substantially in the form of Exhibit A to the Indenture, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Closing Date to finance a portion of the Purchase Price.

Investment shall have the meaning set forth in Section 3(a) of the Participation Agreement.

Investment Company Act shall mean the Investment Company Act of 1940, as amended.

Investment Percentage shall mean the percentage identified as such in Schedule 2 to the Participation Agreement.

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



Kidder, Peabody shall mean Kidder, Peabody & Co. Incorporated.

Lease Indenture Estate shall have the meaning set forth in Section 2.1 of the Indenture.

Lease Term shall mean the aggregate of the Basic Lease Term and the Renewal Term, if any.

Lease Termination Date shall mean the last day of the Lease Term (whether occurring by reason of a termination or expiration of the Lease Term).

Lessee shall mean Public Service Company of New Mexico, a New Mexico corporation, and its successors and assigns, as lessee under the Facility Lease and as party to the other Transactions Documents and Financing Documents to which it is a signatory.

Lessee Request shall mean a request of the Lessee delivered pursuant to Section 6.03 of the Collateral Trust Indenture.

Lessee's General Counsel shall mean Keleher & McLeod, P.A., P.O. Drawer AA, Albuquerque, New Mexico 87103.

Lessee's Special Arizona Counsel shall mean Snell & Wilmer, 3100 Valley Bank Center, Phoenix, Arizona 85073.

Lessee's Special Counsel shall mean Mudge Rose Guthrie Alexander & Ferdon, 180 Maiden Lane, New York, New York 10038.

Lessor shall mean the Owner Trustee, as lessor under the Facility Lease, and its successors and assigns.

Lessor's Interest shall have the meaning set forth in Section 8(c)(3) of the Participation Agreement.

**Lessor's Liens, or Owner Trustee's Liens** shall mean Liens against the Trust Estate or the Lease Indenture Estate (other than Permitted Liens) for which the Lessee is not responsible and which result from acts of, or any failure to act by, or as a result of claims against, FNB or the Lessor, unrelated to the ownership of the Undivided Interest or the Real Property Interest, the administration of the Trust Estate or the transactions contemplated by the Transaction Documents or the Financing Documents.

**License** shall mean NRC Facility Operating License No. NPF-41, as the same may be amended, modified, extended, renewed or superseded from time to time.

**License Expiration Date** shall mean the date of expiration of the License.

**Lien** shall mean any mortgage, pledge, security interest, encumbrance, lien, easement, servitude or charge of any kind, including, without limitation, any conditional sale or other title retention agreement, any lease in the nature thereof or the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

**Loan** shall have the meaning set forth in Section 2(a) of the Participation Agreement.

**Loan Participant** shall mean Funding Corp.

**Loan Participant's Counsel** shall mean Mudge Rose Guthrie Alexander & Ferdon, 180 Maiden Lane, New York, New York 10038.

Loan Percentage shall mean the percentage identified as such in Schedule 2 to the Participation Agreement.

Majority in Interest of Holders of Notes shall mean Holders of a majority in principal amount of all Notes Outstanding under the Indenture at the time of any such determination.

Material Project Agreements shall mean (i) Nuclear Fuel Contract between APS and Combustion Engineering, Inc. (CE), dated as of August 20, 1973, (ii) Nuclear Steam Supply Contract between APS and CE, dated as of August 20, 1973, (iii) Turbine Generator Contract between APS and General Electric Company, dated as of March 21, 1974, (iv) Uranium Enrichment Services Contract between the United States of America (USA) and APS, dated November 15, 1984, and the Associated Supplemental Agreement of Settlement between USA and APS, dated November 15, 1984, (v) Contract between APS and Westinghouse Electric Corporation for fuel fabrication services for reload batches of nuclear fuel, dated August 7, 1974, as amended, (vi) Agreement for the Sale and Purchase of Waste Water Effluent between the City of Tolleson, APS and Salt River, dated June 12, 1981, (vii) Agreement for Construction of Arizona Nuclear Power Project between Bechtel Power Corporation (Bechtel) and APS, dated January 15, 1973, (viii) Agreement for Engineering and Procurement Services between APS and Bechtel, dated January 15, 1973, and (ix) Option and Purchase of Effluent dated April 23, 1973, among the Cities of Phoenix, Glendale, Mesa, Tempe and Scottsdale, the Town of Youngtown, APS and Salt River.

Maximum Option Period shall mean the period, in no event ending after January 15, 2023, determined as provided in Section 13(a) of the Facility Lease as of the date of expiration of the Basic Lease Term, (i) at the end of which the residual value of the Undivided Interest (without regard to inflation or deflation from the Closing Date and without regard to the obligation of the Lessee to pay decommissioning costs pursuant to

Section 10(b)(3)(xi) of the Participation Agreement, but taking into consideration the existence and effect of the Assignment and Assumption, the ANPP Participation Agreement and the License, and taking into consideration any additional expenditure that would be required to acquire the Real Property Interest) shall be at least equal to 20% of Facility Cost, (ii) which, when added to the Basic Lease Term, does not exceed 80% of the economic useful life of the Undivided Interest from the Closing Date and (iii) at the end of which, taking into consideration the existence and effect of the Assignment and Assumption, the ANPP Participation Agreement and the License, and taking into consideration any additional expenditure that would be required to acquire the Real Property Interest, the use of the Undivided Interest by any User (in a transaction pursuant to which the Owner Participant could realize the amount referred to in clause (i) above) is feasible from an engineering and economic point of view and is commercially reasonable. Unless the period, as computed in accordance with the preceding sentence, shall end on a January 15 or July 15, the final date of the Maximum Option Period shall be the final January 15 or July 15 in the period, as so computed. In no event shall the Maximum Option Period end after the License Expiration Date..

Minimum Net Worth means a Net Worth equal to the greater of (x) \$700,000,000 and (y) (1) \$950,000,000 less (2) with respect to each Generating Unit as to which PNM shall have entered into one or more transactions constituting sale and leaseback transactions under the ANPP Participation Agreement (including, but without limitation, the transaction contemplated by the Participation Agreement), (A) \$50,000,000 (in the case of Unit 1) and \$100,000,000 (in the case of each other Generating Unit) times (B) the aggregate percentage of the Lessee's undivided interest in such PVNGS unit subject to such transactions.

Mortgage Release shall mean the Indenture of Partial Release, to be dated the Closing Date, under and with respect to the Existing Mortgage.

Net Economic Return shall have the meaning set forth in Schedule 2 to the Participation Agreement.

Net Worth means the excess of assets over liabilities determined by the Lessee's auditors on the basis of generally accepted accounting principles.

New Mexico Order shall mean the order issued by the NMPSC on November 27, 1985, as amended by Order Adopting Errata Notice issued on November 30, 1985, in Case No. 1995, approving, among other things, the terms of the Facility Lease and the execution and delivery of the Facility Lease by PNM.

New Mexico Public Utility Act shall mean the New Mexico Public Utility Act, as amended.

NMPSC shall mean the New Mexico Public Service Commission established pursuant to Section 62-5-1 of New Mexico Statutes Annotated, 1978.

Non-Burdensome Regulation shall mean  
(i) regulation to which the Owner Participant or the Owner Trustee is otherwise subject by reason of its lease financing or other activities unrelated to the transactions contemplated by the Transaction Documents,  
(ii) ministerial regulatory requirements which do not impose limitations or regulatory requirements on the business or activities of the Owner Participant and which are deemed, in the reasonable discretion of the Owner Participant, not to be burdensome,  
(iii) regulation resulting from any possession of the Undivided Interest on or after the Lease Termination Date or (iv) regulation of the Owner Trustee which would be terminated by the appointment of a successor Owner Trustee or a co-Owner Trustee pursuant to the terms of the Trust Agreement.

Nonseverable, when used with respect to any Capital Improvement, shall mean any Capital Improvement which is not a Severable Capital Improvement.

Noteholder shall mean any Holder from time to time of a Note Outstanding under the Indenture.

Notes shall mean the Initial Series Note and the Releveraging Note, the Fixed Rate Note and any other Additional Notes.

Notice of Closing shall have the meaning set forth in Section 5(a) of the Participation Agreement.

NRC shall mean the Nuclear Regulatory Commission of the United States of America or any successor agency.

NRC Order shall mean the Order of the NRC in the matter of Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Unit 1); Application In Respect Of A Sale And Leaseback Financing Transaction By Public Service Company Of New Mexico (Docket No. STN 50-528), December 12, 1985.

Officers' Certificate shall mean a certificate signed by the President or any Vice President and by the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Person with respect to which such term is used.

Operating Agent shall have the meaning assigned thereto in the ANPP Participation Agreement.

Original of the Facility Lease shall mean the fully executed counterpart of the Facility Lease, marked "This Counterpart is the Original Counterpart", pursuant to Section 22(e) of the Facility Lease and containing the receipt of the Indenture Trustee.

Outstanding when used with respect to Notes, shall mean, as of the date of determination, all such Notes theretofore issued, authenticated and delivered under the Indenture, except (a) Notes theretofore cancelled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation, (b) Notes or portions thereof for the payment of which the Indenture Trustee holds (and has notified the holders thereof that it holds) in trust for that purpose an amount sufficient to make full payment thereof when due, (c) Notes or portions thereof which have been pledged as collateral for any obligations of the obligor thereof to the extent that an amount sufficient to make full payment of such obligations when due has been deposited with the pledgee of such Notes for the purpose of holding such amount in trust for the payment of such obligations in accordance with the indenture or agreement under which such obligations are secured and (d) Notes in exchange for, or in lieu of, which other Notes have been issued, authenticated and delivered pursuant to the Indenture; provided, however, that any Note owned by the Lessee or the Owner Trustee or any Affiliate of either thereof shall be disregarded and deemed not to be Outstanding for the purpose of any Directive.

Overdue Interest Rate shall mean the weighted average rate per annum of interest payable with respect to overdue payments of principal on the Notes Outstanding, computed as set forth in such Notes.

Owner Participant shall mean the Person identified as such in Schedule 2 to the Participation Agreement, and the successors and assigns of such Person in accordance with the Trust Agreement and the Participation Agreement.

Owner Participant's Liens shall mean Liens against the Trust Estate or the Lease Indenture Estate (other than Permitted Liens) for which the Lessee is not responsible and which result from acts of, or any failure to act by, or as a result of claims against, the Owner Participant unrelated to the transactions

contemplated by the Transaction Documents or the Financing Documents.

Owner Participant's Special Arizona Counsel shall mean Meyer, Hendricks, Victor, Osborne & Maledon, 2700 North Third Street, Suite 4000, Phoenix, Arizona 85004.

Owner Participant's Special NRC Counsel shall mean Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

Owner Participant's Special New Mexico Counsel shall mean Rodey, Dickason, Sloan, Akin & Robb, P.A., 20 First Plaza, Suite 700, Albuquerque, New Mexico 87103.

Owner Participant's Special Counsel shall mean Cravath, Swaine & Moore, One Chase Manhattan Plaza, New York, New York 10005, and, for purposes of Section 14(a)(i) of the Participation Agreement, any other counsel specified in Schedule 2 to the Participation Agreement.

Owner Trustee shall mean The First National Bank of Boston, a national banking association, not in its individual capacity, but solely as Owner Trustee under the Trust Agreement, and each successor as trustee, separate trustee and co-trustee thereunder.

Owner Trustee's Counsel shall mean Shipman & Goodwin, 799 Main Street, Hartford, Connecticut 06103.

Participation Agreement shall mean the Participation Agreement, dated as of December 16, 1985, among the Owner Trustee, the Indenture Trustee, Funding Corp, the Owner Participant and PNM.

Penalty Rate shall mean 2% per annum in excess of the Prime Rate.



Permitted Liens shall mean (i) the respective rights and interests of the Lessee, the Owner Participant, the Lessor, the Loan Participant and the Indenture Trustee, as provided in the Transaction Documents; (ii) the rights of any sublessee or assignee under a sublease or an assignment permitted by the terms of the Facility Lease; (iii) the Lien of the Existing Mortgage on the leasehold estate under the Facility Lease; (iv) Liens for taxes either not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, so long as such proceedings shall not (x) involve any danger of the sale, forfeiture or loss of the Undivided Interest or the Real Property Interest, any part thereof or interest therein, of the Lessor or the Owner Participant therein, (y) interfere with the use, possession or disposition of the Undivided Interest or the Real Property Interest, or any part thereof or interest therein, or (z) impair payment of Rent; (v) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's, or other like Liens arising in the ordinary course of business for PVNGS, and not delinquent; (vi) Lessor's Liens, Owner Participant's Liens and Indenture Trustee's Liens; (vii) choate Liens that have been bonded for the full amount in dispute or as to which other satisfactory security arrangements shall have been made and which are being contested diligently by the appropriate party in good faith and by appropriate proceedings so long as such proceedings shall not violate clause (x), (y) or (z) of clause (iv) above; (viii) choate Liens of any of the types described in clause (v) above that have been bonded for the full amount in dispute or as to which other satisfactory security arrangements shall have been made and which arise out of judgments or awards and with respect to which (A) an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate reserves shall have been provided as required by Accounting Practice and (B) there shall have been secured a stay of execution pending such appeal or proceeding for review, so long as such proceedings shall not violate clause (x), (y) or (z) of clause (iv) above; (ix) the rights and interests of the Lessee under the

Assignment and Assumption; (x) the rights of the NRC under the License; (xi) the rights of the ANPP Participants (other than (i) the Lessee and (ii) any Person who shall become an ANPP Participant in respect of the Undivided Interest and the Real Property Interest) under the ANPP Participation Agreement or any other ANPP Project Agreement; and (xii) Liens on the undivided ownership interests in Unit 1 of the ANPP Participants and other Persons (other than the Lessee).

Person shall mean any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

PNM shall mean Public Service Company of New Mexico.

Price-Anderson Act shall mean the Price-Anderson Act, Pub. L. No. 85-256, 71 Stat. 576 (1957), as amended to the Closing Date.

Pricing Assumptions shall mean the pricing assumptions set forth in Schedule 2 to the Participation Agreement.

Prime Rate shall mean the rate of interest publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime or base lending rate. Any change in the Prime Rate shall be effective on the date such change in the Prime Rate is announced.

Project Insurance shall have the meaning assigned thereto in the ANPP Participation Agreement.

Project Manager shall have the meaning assigned thereto in the ANPP Participation Agreement.

Public Service Company of New Mexico shall mean Public Service Company of New Mexico, a New Mexico corporation, and its successors and assigns.

Purchase Documents shall mean the Bill of Sale, the Deed and the Assignment of Beneficial Interest and such other documents as the Owner Participant, the Owner Trustee, the Indenture Trustee, the Loan Participant or their respective counsel shall deem desirable to convey good and marketable title to the Undivided Interest and the Real Property Interest to the Trust.

Purchase Price shall have the meaning set forth in Section 4(a) of the Participation Agreement.

PVNGS shall mean the Arizona Nuclear Power Project, as that term is defined in the ANPP Participation Agreement.

PVNGS Site shall mean the interest in the Arizona land trust and the real property described in Exhibit A to the Bill of Sale.

Real Estate Investment shall mean the purchase price of the Real Property Interest.

Real Property Interest shall mean the right, title and interest of the Owner Trustee acquired pursuant to the Deed and the Assignment of Beneficial Interest.

Reasonable Basis shall mean that, upon a complete review of the relevant law and facts, the weight of legal analysis supporting the position is significant when compared with the weight of legal analysis contrary to the position.

Refunding Bonds shall mean Funding Corp's Lease Obligation Bonds, Series A, issued, authenticated and delivered under the Collateral Trust Indenture, as supplemental by the Refunding Supplemental Indenture, as described in the Underwriting Agreement.

Refunding Date shall mean the date of issuance of the Refunding Bonds.

Refunding Amount shall mean the original principal amount of the Refunding Bonds.

Refunding Loan shall have the meaning set forth in Section 2(d) of the Participation Agreement.

Refunding Supplemental Indenture shall mean the Refunding Bond Supplemental Indenture to be dated as of the effective date of the Registration Statement, among PNM, Funding Corp and the Collateral Trust Trustee, supplementing the Collateral Trust Indenture and providing, among other things, for the issuance of the Refunding Bonds.

Registration Statement shall mean the registration statement on Form S-3 (File No. 33-2031), including all exhibits and all documents incorporated in the Registration Statement by reference, filed with the SEC under the Securities Act in connection with the offer, issue and sale of the Refunding Bonds.

Regulations shall mean the income tax regulations issued, published or promulgated under the Code.

Releveraging Amount shall mean (i) the initial principal amount of the Releveraging Bonds, or (ii) the initial principal amount of the Refunding Bonds to the extent in excess of the principal amount of Bonds being refunded.

Releveraging Bonds shall mean a series of securities issued, authenticated and delivered under the Collateral Trust Indenture in accordance with Section 2.03 thereof, part of the proceeds of which is used to refund to the Owner Participant a portion of its Investment as provided in Section 3(b) of the Participation Agreement.

Releveraging Date shall mean the date of issuance of the Releveraging Bonds.

Releveraging Loan shall have the meaning specified in Section 2(c) of the Participation Agreement.

Releveraging Note shall mean the non-recourse promissory note, substantially in the form of the Initial Series Note or, if the Refunding Date shall have occurred the Fixed Rate Note, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Releveraging Date to refund to the Owner Trustee a portion of the Investment.

Renewal Term shall have the meaning set forth in Section 12 of the Facility Lease.

Rent shall mean Basic Rent and Supplemental Rent.

Rent Differential shall have the meaning set forth in Section 3(h) of the Facility Lease.

Requisition of Title shall mean any circumstance or event in consequence of which Unit 1 or the Undivided Interest shall be condemned or seized or title thereto shall be requisitioned or taken by any Governmental Authority under power of eminent domain or otherwise and all administrative or judicial appeals opposing such condemnation, seizure or taking shall have been exhausted or the period for such appeal shall have expired.

Requisition of Use shall mean any circumstance or event in consequence of which the use of Unit 1 or the Undivided Interest shall be requisitioned or taken by any Governmental Authority under power of eminent domain or otherwise, other than a Requisition of Title.

Responsible Officer shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Transaction Document, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer who in the normal performance of his operational responsibility would have knowledge of such matter and the requirements with respect thereto.

Retained Assets shall mean (i) the Lessee's interest in PVNGS other than the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest (ii) Severable Capital Improvements title to the undivided interest in which is retained by the Lessee in accordance with Section 8(e) of the Facility Lease, and (iii) any additional interest in and to PVNGS (other than the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest) to which the Lessee becomes entitled in consequence of Sections 16.2 or 23.5 of the ANPP Participation Agreement (except as otherwise provided in Section 5(a) or 19 of the Facility Lease).

Sale Proceeds shall mean, with respect to any sale of the Undivided Interest and the Real Property Interest by the Lessor to any Person other than the Lessee, the gross proceeds of such sale payable in cash, less all costs and expenses whatsoever incurred by the Lessor and the Owner Participant in connection therewith.

Salt River shall mean Salt River Project Agricultural Improvement and Power District, an Arizona agricultural improvement district.

SCPPA shall mean Southern California Public Power Authority, a California joint powers agency (doing business in Arizona as Southern California Public Power Authority Association).

SEC shall mean the Securities and Exchange Commission of the United States of America or any successor agency.

Section 6(c) Application shall mean Funding Corp's Application for an Order under Section 6(c) of the Investment Company Act of 1940 Exempting First PV Funding Corporation from All Provisions of such Act, as filed with the SEC on September 20, 1985, as amended by an Amendment No. 1 thereto dated November 8, 1985 and Amendment No. 2 thereto dated November 25, 1985.

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

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

Severable, when used with respect to any Capital Improvement, shall mean any Capital Improvement which can be removed from Unit 1 without materially damaging Unit 1 or materially diminishing or impairing the value, utility or condition which Unit 1 would have had if the applicable Capital Improvement had not been made.

Share shall mean a percentage equal to the Undivided Interest Percentage.

Southern California shall mean Southern California Edison Company, a California corporation.

Special Casualty Value, shall mean (i) the percentage of Facility Cost set forth opposite such date in Schedule 4 to the Facility Lease and (ii) during the Renewal Term, the amount determined by amortizing ratably the Fair Market Sales Value of the Undivided Interest as of the day following the last day of the Basic Term in monthly steps over the remaining term of the License determined pursuant to Section 13(a) of the Facility Lease. Anything contained in the Facility Lease to the contrary notwithstanding, Special Casualty Value shall be, when added to all other amounts which

the Lessee is required to pay under Section 9(d) of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any date of payment, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Special FERC Counsel shall mean Newman & Holtzinger, P.C., 1615 L Street, Washington, D.C. 20036.

Supplemental Financing shall mean a financing of the Supplemental Financing Amount of Capital Improvements made pursuant to Section 8(f) of the Facility Lease.

Supplemental Financing Amount shall mean that portion of the Undivided Interest Percentage of the cost of a Capital Improvement which equals (i) the amount of the increase, if any, in the Owner Participant's basis in the Undivided Interest for purposes of section 1012 of the Code as a result of such Capital Improvement less (ii) the amount of the related Additional Equity Investment of the Lessor, if any.

Supplemental Rent shall have the meaning set forth in Section 3(b) of the Facility Lease.

Surviving Lessee shall have the meaning specified in Section 10(b)(3)(ii) of the Participation Agreement.

Tax shall mean any and all fees (including, without limitation, documentation, recording, license and registration fees), taxes (including, without limitation, net income, franchise, value added, ad valorem, gross income, gross receipts, sales, use, property, personal and real, tangible and intangible, and stamp taxes), levies, imposts, duties, charges, assessments, or withholdings of any nature whatsoever, general or specific, ordinary or extraordinary, together with any



and all penalties, fines, additions to tax and interest thereon.

Tax Assumptions shall mean the assumptions set forth in Section 1(a) of the Tax Indemnification Agreement, with respect to the Federal income tax consequences of the transactions included or reflected in the Pricing Assumptions.

Tax Indemnification Agreement shall mean the Tax Indemnification Agreement, dated as of December 16, 1985, PNM and the Owner Participant.

Term Loan Agreement shall mean the Term Loan Agreement dated as of December 31, 1985 among Funding Corp, PNM and the banks named on the signature pages thereto.

Term Note Supplemental Indenture shall mean the Term Note Supplemental Indenture dated as of December 31, 1985 among PNM, Funding Corp and the Collateral Trust Trustee, supplementing the Collateral Trust Indenture and providing, among other things, for the issuance of the Initial Series Bonds.

Termination Date shall have the meaning set forth in Section 14(a) of the Facility Lease.

Termination Event shall mean any early termination of the Facility Lease in accordance with Section 14 thereof.

Termination Notice shall have the meaning set forth in Section 14(a) of the Facility Lease.

Termination Obligation shall have the meaning set forth in Section 15.10.2 of the ANPP Participation Agreement (or any comparable successor provision).

Termination Value, as of any Basic Rent Payment Date during the Basic Lease Term, shall mean the percentage of Facility Cost set forth opposite such Basic Rent Payment Date in Schedule 5 to the Facility Lease. Anything contained in the Facility Lease to the contrary notwithstanding, Termination Value shall be, when added to all other amounts which the Lessee is required to pay under Section 14 of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full as of any Basic Rent Payment Date the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Transaction Documents shall mean the Participation Agreement, the Facility Lease, the Trust Agreement, the Indenture, the Extension Letter, the Tax Indemnification Agreement, the Mortgage Release, the Assignment and Assumption, each Purchase Document and the Notes.

Transaction Expenses shall have the meaning set forth in Section 14(a) of the Participation Agreement.

Transfer shall mean the transfer, by bill of sale or otherwise, by the Lessor of all the Lessor's right, title and interest in and to the Undivided Interest and the Real Property Interest and under the Assignment and Assumption on an "as is, where is" basis, free and clear of all Lessor's Liens and Owner Participant's Liens but otherwise without recourse, representation or warranty (including an express disclaimer of representations and warranties in a manner comparable to that set forth in the second sentence of Section 6(b) of the Facility Lease), together with the due assumption by the transferee of, and the due release of the Lessor from, all the Lessor's obligations under the Assignment and Assumption and the Assignment of Beneficial Interest by an instrument or instrument satisfactory in form and substance to the Lessor and the Owner Participant.

Transferee shall have the meaning assigned thereto in Section 15 of the Participation Agreement.

Trust shall mean the trust created by the Trust Agreement.

Trust Agreement shall mean the Trust Agreement, dated as of December 16, 1985, between the Owner Participant and FNB.

Trust Estate shall have the meaning set forth in Section 2.02 of the Trust Agreement.

Trust Indenture Act shall mean the Trust Indenture Act of 1939, as amended.

Trustee's Expenses shall mean any and all liabilities, obligations, costs, compensation, fees, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (other than such amounts as are included in Transaction Expenses) which may be imposed on, incurred by or asserted against the Indenture Trustee or any of its agents, servants or personal representatives, in any way relating to or arising out of the Indenture, the Lease Indenture Estate, the Participation Agreement or the Facility Lease, or any document contemplated thereby, or the performance or enforcement of any of the terms thereof, or in any way relating to or arising out of the administration of such Lease Indenture Estate or the action or inaction of the Indenture Trustee under the Indenture; provided, however, that such amounts shall not include any Taxes or any amount expressly excluded from the Lessee's indemnity obligations pursuant to Section 13(a) or 13(b) of the Participation Agreement.

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

Underwriting Agreement shall mean the agreement among Funding Corp, PNM, Kidder Peabody and Drexel Burnham Lambert Incorporated (both acting either as underwriters or representatives of the underwriters named therein) relating to the purchase, sale and delivery of the Refunding Bonds.

Underwriters' Counsel shall mean Willkie, Farr & Gallagher, One Citicorp Center, 153 East 53rd Street, New York, New York 10022.

Undivided Interest shall mean an undivided interest in Unit 1, the percentage of which shall be equal to the Undivided Interest Percentage; the owner of the Undivided Interest shall be a tenant-in-common with the owners (including PNM, if it should be such an owner) of all other undivided interests in Unit 1. Where the context so requires, Undivided Interest includes an appropriate portion of Generation Entitlement Share.

Undivided Interest Indenture Supplement shall mean the supplement to the Indenture substantially in the form of Exhibit C thereto pursuant to which the Owner Trustee causes the Undivided Interest and the Real Property Interest to be subjected to the Lien of the Indenture.

Undivided Interest Percentage shall mean the respective percentages identified as such on Schedule 2 to the Participation Agreement; provided, however, that in respect to the portion of Unit 1 constituting Common Facilities, the Undivided Interest Percentage shall be a percentage equal to one-third of the percentage identified on Schedule 2 to the Participation Agreement with respect to Unit 1.

Uniform System of Accounts shall mean the Uniform System of Accounts prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act (Class A and Class B), 18 CFR 101, as in effect on the date of execution of the Participation

Agreement, as amended or modified from time to time after such date.

Unit 1 shall mean the 1,270 megawatt unit commonly known as Unit 1 at the Palo Verde Nuclear Generating Station and one-third of the Common Facilities, all as more fully described in Annex A to the Bill of Sale, together with all Capital Improvements thereto.

Unit 1 Retained Assets shall mean (i) all resident fuel assemblies, equipment and personal property constituting part of the Generating Unit (as defined in the ANPP Participation Agreement) designated as Palo Verde Nuclear Generating Station (other than common facilities) owned by the Lessee but excluded from Unit 1 as set forth in Item A of Exhibit B to the Bill of Sale and (ii) a one-third interest in all equipment and personal and real property constituting PVNGS common facilities owned by the Lessee but excluded from Unit 1 as set forth in Item B of Exhibit B to the Bill of Sale.

User shall mean a Person unrelated to PNM (within the meaning of Section 318 of the Code) possessing the Undivided Interest after the Lease Termination Date.

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**TRUST AGREEMENT**

dated as of December 16, 1985

between

**MFS LEASING CORP.**

as Owner Participant

and

**THE FIRST NATIONAL BANK OF BOSTON,**

as Owner Trustee

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**Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities**

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## TRUST AGREEMENT:

TRUST AGREEMENT, dated as of December 16, 1985, between the corporation executing this Agreement as "Owner Participant" on the signature page hereof (the Owner Participant) and THE FIRST NATIONAL BANK OF BOSTON, a national banking association (the Owner Trustee).

### W I T N E S S E T H:

WHEREAS, the Owner Participant desires to acquire the Undivided Interest and the Real Property Interest through the Trust created hereby; and

WHEREAS, The First National Bank of Boston is willing to act as Owner Trustee and to accept the Trust created hereby;

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

### ARTICLE I

#### DEFINITIONS

SECTION 1.01. Definitions. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Appendix A to the Participation Agreement. References in this Agreement to articles, sections, paragraphs and clauses are to articles, sections, paragraphs and clauses of this Agreement unless otherwise indicated.

## ARTICLE II

### AUTHORITY TO EXECUTE AND PERFORM VARIOUS DOCUMENTS; RATIFICATION AND CONFIRMATION; DECLARATION OF TRUST BY THE OWNER TRUSTEE

SECTION 2.01. Authority To Execute and Perform Various Documents. The Owner Participant hereby authorizes and directs the Owner Trustee (i) to execute and deliver each Transaction Document to which the Owner Trustee is a party and to execute and request the Indenture Trustee to issue, authenticate and deliver the Initial Series Note (each such Transaction Document, including the Initial Series Note, to be in the form approved by the Owner Participant), (ii) to execute and deliver all other agreements, instruments and certificates contemplated by the documents referred to in clause (i), (iii) to take whatever action shall be required to be taken by the Owner Trustee by the terms of, and exercise its rights and perform its duties under, each of the documents, agreements, instruments and certificates referred to in clauses (i) and (ii) above as set forth in such documents, agreements, instruments and certificates and (iv) subject to the terms of this Agreement, to take such other action in connection with the foregoing as the Owner Participant may from time to time direct.

SECTION 2.02. Ratification and Confirmation. By certificate dated December 18, 1985 (the Section 15.6.1 Certificate), the Owner Trustee confirmed the matters required to be confirmed on the part of a lessor in a sale and leaseback transaction under Section 15.6.1 of the ANPP Participation Agreement, a copy of which certificate is attached hereto as Schedule 1. The Owner Participant, by its execution and delivery of this Agreement, ratifies and confirms the execution and delivery by the Owner Trustee of the Section 15.6.1 Certificate.

SECTION 2.03. Declaration of Trust by the Owner Trustee. The Owner Trustee hereby declares that it will hold all estate, right, title and interest of

the Owner Trustee in and to the Undivided Interest, the Real Property Interest, the Transaction Documents and any other property contributed by the Owner Participant, including without limitation all amounts of Rent, insurance proceeds and requisition, indemnity or other payments of any kind, but specifically excluding any Excepted Payments (collectively, the Trust Estate), upon the trusts set forth herein and for the use and benefit of the Owner Participant.

### ARTICLE III

#### PAYMENTS

##### SECTION 3.01. Payments from Trust Estate Only.

All payments to be made by the Owner Trustee under this Agreement shall be made only from the income and proceeds from the Trust Estate and only to the extent that the Owner Trustee shall have received income or proceeds from the Trust Estate to make such payments in accordance with the terms hereof, except as specifically provided in Section 6.01. The Owner Participant agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for payment as herein provided and that, except as specifically provided herein, the Owner Trustee shall not be liable to the Owner Participant for any amounts payable under this Agreement and shall not be subject to any liability under this Agreement.

SECTION 3.02. Method of Payment. All amounts payable to the Owner Participant pursuant to this Agreement shall be paid by the Owner Trustee to the Owner Participant, or its nominee, by crediting the amount to be distributed to the Owner Participant to an account maintained by the Owner Participant with the Owner Trustee in immediately available funds or by transferring such amount in immediately available funds to a banking institution with bank wire transfer facilities for the account of the Owner Participant, as instructed from time to time by the Owner Participant.



## ARTICLE IV

### DISTRIBUTIONS

SECTION 4.01. Distributions. Subject to the terms and requirements of the Transaction Documents, all payments and amounts received by or on behalf of the Owner Trustee shall be distributed forthwith upon receipt in the following order of priority: first, so much of such payment or amount as shall be required to pay or reimburse the Owner Trustee for any fees or expenses not otherwise paid or reimbursed to the Owner Trustee as to which the Owner Trustee is entitled to be paid or reimbursed hereunder shall be retained by the Owner Trustee; and, second, the balance, if any, of such payment or amount remaining thereafter shall be distributed to the Owner Participant.

## ARTICLE V

### DUTIES OF THE OWNER TRUSTEE

SECTION 5.01. Notice of Certain Events. In the event the Owner Trustee shall have knowledge of any Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event, the Owner Trustee shall give prompt written notice thereof to the Owner Participant, the Lessee, the Loan Participant and the Indenture Trustee unless such Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event no longer exists before the giving of such notice. Subject to the provisions of Section 5.03, the Owner Trustee shall take or refrain from taking such action, not inconsistent with the provisions of the Transaction Documents, with respect thereto as the Owner Participant shall direct by written instruction to the Owner Trustee. If the Owner Trustee shall have given the Owner Participant written notice of any event and shall not have received written instructions as above provided within 30 days after mailing notice of such event to the Owner Participant, the Owner Trustee may, subject to the provisions of the Transaction Documents, take or refrain

from taking such action, but shall be under no duty to, and shall have no liability for its failure or refusal to, take or refrain from taking any action with respect thereto as the Owner Trustee shall deem advisable and in the best interests of the Owner Participant. For all purposes of this Agreement, in the absence of actual knowledge of an officer in the corporate trust division of the Owner Trustee, the Owner Trustee shall not be deemed to have knowledge of any Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event unless the Owner Trustee receives written notice thereof given by or on behalf of the Owner Participant, the Lessee, the Loan Participant, the Indenture Trustee or any Holder of a Note.

#### SECTION 5.02. Action upon Instructions.

Subject to the terms of Sections 5.01 and 5.03, upon the written instructions of the Owner Participant, the Owner Trustee will take or refrain from taking such action or actions, not inconsistent with the provisions of the Transaction Documents, as may be specified in such instructions.

SECTION 5.03. Indemnification. The Owner Trustee shall not be required to take or refrain from taking any action under this Agreement or any other Transaction Document (other than the actions specified in the first sentence of Section 5.01) unless the Owner Trustee shall have been indemnified by the Lessee or, if the Owner Trustee reasonably believes such indemnity to be inadequate, by the Owner Participant, in manner and form reasonably satisfactory to the Owner Trustee, against any liability, fee, cost or expense (including reasonable attorneys' fees) which may be incurred or charged in connection therewith, other than such as may result from the willful misconduct or gross negligence of the Owner Trustee; and, if the Owner Participant shall have directed the Owner Trustee to take or refrain from taking any action under any Transaction Document, the Owner Participant agrees to furnish such indemnity by a written undertaking of indemnification and, in addition, to pay the reasonable compensation of the Owner Trustee for the services performed or to be

performed by it pursuant to such direction. The Owner Trustee shall not be required to take any action under any Transaction Document if the Owner Trustee shall reasonably determine, or shall have been advised by counsel, that such action is likely to result in personal liability for which the Owner Trustee has not been and will not be adequately indemnified or is contrary to the terms hereof or of any document contemplated hereby to which the Owner Trustee is a party or is otherwise contrary to law.

**SECTION 5.04. No Duties Except as Specified in Trust Agreement or Instructions.** The Owner Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or any other part of the Trust Estate, or to otherwise take or refrain from taking any action under or in connection with any document contemplated hereby to which the Owner Trustee is a party, except as expressly provided by the terms of this Agreement or in written instructions from the Owner Participant received pursuant to Section 5.01 or 5.02; and no implied duties or obligations shall be read into this Agreement against the Owner Trustee. The Owner Trustee nevertheless agrees that it will, in its individual capacity and at its own cost and expense, promptly take all action as may be necessary to discharge any Lessor's Liens arising by, through or under it on any part of the Trust Estate.

**SECTION 5.05. No Action Except Under Specified Documents or Instructions.** The Owner Trustee agrees that it will not manage, control, use, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or any other part of the Trust Estate except (i) as required by the terms of the Transaction Documents, (ii) in accordance with the powers granted to, or the authority conferred upon, such Owner Trustee pursuant to this Agreement or (iii) in accordance with the express terms hereof or with written instructions from the Owner Participant pursuant to Section 5.01 or 5.02.

**SECTION 5.06. Absence of Duties.** Except in accordance with written instructions furnished pursuant to Section 5.01 and 5.02, and without limitation of the generality of Section 5.04, the Owner Trustee shall not have any duty to (i) file, record or deposit any Transaction Document or any other document, or to maintain any such filing, recording or deposit or to refile, rerecord or redeposit any such document, (ii) obtain insurance on the Undivided Interest or the Real Property Interest or effect or maintain any such insurance, other than to receive and forward to the Owner Participant any notices, policies, certificates or binders furnished to the Owner Trustee pursuant to the Lease, (iii) maintain Unit 1, the Undivided Interest or the Real Property Interest, (iv) pay or discharge any Tax or any Lien owing with respect to or assessed or levied against any part of the Trust Estate, except as provided in the last sentence of Section 5.04, other than to receive and forward notice of such Tax or Lien to the Owner Participant, (v) confirm, verify, investigate or inquire into the failure to receive any reports or financial statements of the Lessee, (vi) inspect Unit 1 at any time or ascertain or inquire as to the performance or observance of any of the covenants of the Lessee or any other Person under any Transaction Document with respect to the Undivided Interest, the Real Property Interest or Unit 1 or (vii) manage, control, use, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or Unit 1 or any part thereof or any other part of the Trust Estate, except as provided in Section 5.05.

## **ARTICLE VI**

### **THE OWNER TRUSTEE**

**SECTION 6.01. Acceptance of Trust and Duties.** The Owner Trustee accepts the trusts hereby created and agrees to perform the same, but only upon the terms of this Agreement. The Owner Trustee also agrees to disburse all moneys actually received by it constituting part of the Trust Estate upon the terms of this Agreement. The Owner Trustee shall not be answerable or

accountable under any circumstances, except for (i) its own wilful misconduct or gross negligence, (ii) the inaccuracy of any of its representations or warranties contained in Section 6.03 or under Section 8(a) of the Participation Agreement given expressly in its individual capacity, (iii) its failure to perform obligations expressly undertaken by it in the last sentence of Section 5.04 of this Agreement or in Section 8(b) of the Participation Agreement or (iv) Taxes based on or measured by any fees, commissions or compensation received by it for acting as trustee in connection with any of the transactions contemplated by the Transaction Documents.

**SECTION 6.02. Furnishing of Documents.** The Owner Trustee will furnish to the Owner Participant, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, opinions, certificates, financial statements and any other instruments furnished to the Owner Trustee hereunder or under the Transaction Documents, unless by the express terms of any Transaction Document a copy of the same is required to be furnished by some other Person directly to the Owner Participant, or the Owner Trustee shall have determined that the same has already been furnished to the Owner Participant.

**SECTION 6.03. No Representations or Warranties as to the Undivided Interest, the Real Property Interest, Unit 1 or Documents.** The Owner Trustee makes (i) NO REPRESENTATION OR WARRANTY AS TO THE TITLE, VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, UNIT 1 OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST OR UNIT 1 WHATSOEVER, except that the Owner Trustee hereby represents, warrants and covenants to the Owner Participant that it will comply with the last sentence of Section 5.04, and (ii) no representation or warranty as to the validity or enforceability of any Transaction Document or as to the correctness of any statement made by any Person other than the Owner Trustee, contained in any thereof, and except that the Owner Trustee represents,

warrants and covenants to the Owner Participant that this Agreement has been and each of such other documents which contemplates execution thereof by the Owner Trustee has been or will be executed and delivered by its officers who are, or will be, duly authorized to execute and deliver such documents on its behalf.

**SECTION 6.04. No Segregation of Moneys; No Interest.** Except as otherwise provided herein or in any of the Transaction Documents, moneys received by the Owner Trustee hereunder need not be segregated in any manner, except to the extent required by law, and may be deposited under such general conditions as may be prescribed by law, and the Owner Trustee shall not be liable for any interest thereon, except as may be agreed to by the Owner Trustee.

**SECTION 6.05. Reliance; Advice of Counsel.** The Owner Trustee shall not incur any liability to any Person in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it in good faith to be signed by the proper party or parties. The Owner Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Owner Trustee may for all purposes hereof rely on an Officers' Certificate of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the trusts hereunder, the Owner Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled Persons to be selected and employed by it, and the Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or

opinion within the scope of such Person's competence of any such counsel, accountants or other skilled Persons and not contrary to this Agreement.

SECTION 6.06. Not Acting in Individual Capacity. Except as provided in this Article VI, in accepting the trusts hereby created the Owner Trustee acts solely as trustee hereunder and not in its individual capacity; and all Persons having any claim against the Owner Trustee by reason of the transactions contemplated by the Transaction Documents shall look only to the Trust Estate (or a part thereof, as the case may be) for payment or satisfaction thereof, except as specifically provided in this Article VI and except to the extent the Owner Trustee shall otherwise agree in any Transaction Document to which it is a party.

## ARTICLE VII

### INDEMNIFICATION OF THE OWNER TRUSTEE BY THE OWNER PARTICIPANT

SECTION 7.01. The Owner Participant To Indemnify the Owner Trustee. The Owner Participant agrees to assume liability for, and to indemnify and hold harmless the Owner Trustee, in its individual capacity, against and from, any and all Expenses which may be imposed on, incurred by or asserted at any time against the Owner Trustee (and not indemnified by the Lessee within a reasonable time after demand therefor) in any way relating to or arising out of the Trust Estate, any of the properties included therein, the administration of the Trust Estate or any action or inaction of the Owner Trustee hereunder or under the Transaction Documents, except only that the Owner Participant shall not be required to indemnify the Owner Trustee for Expenses arising or resulting from any of the matters described in the last sentences of Sections 5.04 and 6.01. The indemnities contained in this Section 7.01 shall survive the termination of this Agreement.

SECTION 7.02. Compensation and Expenses. The Owner Trustee shall receive as compensation for its services hereunder such ordinary fees as are fair, reasonable and customary for the performance of such services and as may heretofore and from time to time hereafter be agreed upon between the Owner Participant and the Owner Trustee. The Owner Trustee shall be entitled to be reimbursed for its reasonable expenses hereunder and to be compensated reasonably for any extraordinary services rendered hereunder.

## ARTICLE VIII

### TERMINATION OF TRUST AGREEMENT

SECTION 8.01. Termination of Trust Agreement. This Agreement and the trusts created hereby shall terminate and the Trust Estate shall, subject to the Participation Agreement, the Indenture and Article IV of this Agreement, be distributed to the Owner Participant, and this Agreement shall be of no further force or effect, upon the earlier of (i) the sale or other final disposition by the Owner Trustee of all property constituting part of the Trust Estate and the final distribution by the Owner Trustee of all moneys or other property or proceeds constituting part of the Trust Estate in accordance with the terms of Article IV and (ii) 21 years less one day after the death of the last survivor of all of the descendants living on the date of this Agreement of the present members of the Boards of Directors of the Owner Trustee and the Owner Participant, but if any such rights, privileges or options shall be or become valid under Applicable Law for a period subsequent to the 21st anniversary of the death of such last survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then such rights, privileges or options shall not terminate as aforesaid but shall extend to and continue in effect, but only if such



nontermination and extension shall then be valid under Applicable Law, until such time as the same shall, under Applicable Law, cease to be valid.

SECTION 8.02. Termination at Option of the Owner Participant. Notwithstanding Section 8.01, this Agreement and the trusts created hereby shall terminate and the Trust Estate shall be distributed to the Owner Participant, and this Agreement shall be of no further force and effect, upon the election of the Owner Participant by notice to the Owner Trustee, if such notice shall be accompanied by the written agreement of the Owner Participant assuming all the obligations of the Owner Trustee under or contemplated by the Transaction Documents and all other obligations of the Owner Trustee incurred by it as trustee hereunder; provided, however, that no such election shall be effective until the lien of the Indenture on the Lease Indenture Estate has been released and until full payment of the principal of and premium, if any, and interest on the Notes has been made. Such written agreement shall be reasonably satisfactory in form and substance to the Owner Trustee and shall release the Owner Trustee from all further obligations of the Owner Trustee hereunder and under the agreements and other instruments mentioned in the preceding sentence.

## ARTICLE IX

### SUCCESSOR OWNER TRUSTEES, CO-OWNER TRUSTEES AND SEPARATE OWNER TRUSTEES

SECTION 9.01. Resignation of the Owner Trustee; Appointment of Successor. (a) The Owner Trustee may resign at any time without cause by giving at least 30 days' prior written notice to the Owner Participant, the Indenture Trustee, the Holders of the then Outstanding Notes and the Lessee, such resignation to be effective on the acceptance of appointment by a successor Owner Trustee under Section 9.01(b). In addition, the Owner Participant may at any time remove the Owner Trustee with or without cause by an instrument in

writing delivered to the Owner Trustee, such removal to be effective upon the acceptance of appointment by a successor owner trustee under Section 9.01(b). In case of the resignation or removal of the Owner Trustee, the Owner Participant may appoint a successor Owner Trustee by an instrument signed by the Owner Participant. If a successor Owner Trustee shall not have been appointed within 30 days after the giving of written notice of such resignation or the delivery of the written instrument with respect to such removal, the Owner Trustee or the Owner Participant may apply to any court of competent jurisdiction to appoint a successor Owner Trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as above provided. Any successor Owner Trustee so appointed by such court shall immediately and without further act be superseded by any successor Owner Trustee appointed as above provided within one year from the date of the appointment by such court.

(b) Any successor Owner Trustee, however appointed, shall execute and deliver to the predecessor Owner Trustee an instrument accepting such appointment, and thereupon such successor Owner Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Owner Trustee in the trusts hereunder with like effect as if originally named an Owner Trustee herein; but nevertheless, upon the written request of such successor Owner Trustee, such predecessor Owner Trustee shall execute and deliver an instrument transferring to such successor Owner Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, duties and trusts of such predecessor Owner Trustee, and such predecessor Owner Trustee shall duly assign, transfer, deliver and pay over to such successor Owner Trustee all moneys or other property then held by such predecessor Owner Trustee upon the trusts herein expressed.

(c) Any successor Owner Trustee, however appointed, shall be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least

\$50,000,000, if there be such an institution willing, able and legally qualified to perform the duties of Owner Trustee hereunder upon reasonable or customary terms.

(d)- Any corporation into which the Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Owner Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Owner Trustee may be transferred, shall, subject to the terms of Section 9.01(c), be the Owner Trustee under this Agreement without further act.

**SECTION 9.02. Co-Trustees and Separate Trustees.** Whenever the Owner Trustee or the Owner Participant shall deem it necessary or prudent in order either to conform to any law of any jurisdiction in which all or any part of the Trust Estate shall be situated or to make any claim or bring any suit with respect to the Trust Estate, the Notes or any Transaction Document, or the Owner Trustee or the Owner Participant shall be advised by counsel satisfactory to it that it is so necessary or prudent, the Owner Trustee and the Owner Participant shall execute and deliver an agreement supplemental hereto and all other instruments and agreements, and shall take all other action, necessary or proper to constitute one or more Persons (and the Owner Trustee may appoint one or more of its officers) either as co-trustee or co-trustees jointly with the Owner Trustee of all or any part of the Trust Estate, or as separate trustee or separate trustees of all or any part of the Trust Estate, and to vest in such Persons, in such capacity, such title to the Trust Estate or any part thereof and such rights or duties as may be necessary or desirable, all for such period and under such terms and conditions as are satisfactory to the Owner Trustee and the Owner Participant. In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Estate and all rights and duties of such co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Owner Trustee, without the

appointment of a successor to such co-trustee or separate trustee.

## ARTICLE X

### SUPPLEMENTS AND AMENDMENTS

**SECTION 10.01. Supplements and Amendments.**  
At the written request of the Owner Participant, this Agreement shall be amended by a written instrument signed by the Owner Trustee and the Owner Participant, but if in the opinion of the Owner Trustee any instrument required to be so executed adversely affects any right, duty or liability of, or immunity or indemnity in favor of, it under this Agreement or any of the documents contemplated hereby to which it is a party, or would cause or result in any conflict with or breach of any terms, conditions or provisions of, or default under, its charter documents or by-laws or any document contemplated hereby to which it is a party, the Owner Trustee may in its sole discretion decline to execute such instrument, unless it shall have been provided an indemnity satisfactory to the Owner Trustee by the Owner Participant.

**SECTION 10.02. Limitation on Amendments.**  
Notwithstanding Section 10.01, the Owner Trustee shall not, without the consent of the Indenture Trustee, execute any amendment which might result in the trusts created hereunder being terminated prior to the release of the lien of the Indenture on the Lease Indenture Estate or prior to the payment in full of the principal of and premium, if any, and interest on the Notes.

## ARTICLE XI

### MISCELLANEOUS

**SECTION 11.01. No Legal Title to Trust Estate in the Owner Participant.** The Owner Participant shall not have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of any

right, title or interest of the Owner Participant in and to the Trust Estate or hereunder shall operate to terminate this Agreement or the trusts hereunder or entitle any successor or transferee to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

**SECTION 11.02. Sale of Undivided Interest and/or Real Property Interest by the Owner Trustee is Binding.** Any sale or other conveyance of the Undivided Interest, the Real Property Interest or any part thereof or any assignment of rights under the Assignment and Assumption by the Owner Trustee made pursuant to the terms of this Agreement or any other Transaction Document shall bind the Owner Participant and shall be effective to transfer and convey all right, title and interest of the Owner Trustee and the Owner Participant in and to the Undivided Interest, the Real Property Interest or any part thereof, or such rights under the Assignment and Assumption, as the case may be. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Owner Trustee.

**SECTION 11.03. Limitations on Rights of Others.** Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the Owner Trustee and the Owner Participant any legal or equitable right, remedy or claim under or in respect of this Agreement, any covenants, conditions or provisions contained herein or the Trust Estate, all of which are and shall be construed to be for the sole and exclusive benefit of the Owner Trustee and the Owner Participant.

**SECTION 11.04. Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all notices hereunder shall be given as provided in the Participation Agreement.

**SECTION 11.05. 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.

**SECTION 11.06. Limitation on the Owner Participant's Liability.** The Owner Participant shall not have any liability for the performance of this Agreement except as expressly set forth herein.

**SECTION 11.07. Separate Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

**SECTION 11.08. Successors and Assigns.** All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Owner Trustee and its successors and assigns and the Owner Participant and its successors and assigns, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by the Owner Participant shall bind the successors and assigns of the Owner Participant.

**SECTION 11.09. Transfer of Interests.** Subject to the provisions of Section 15 of the Participation Agreement, the Owner Participant may assign, convey or otherwise transfer all or any part of its right, title and interest in and to this Agreement and the Trust Estate. In case of any such assignment, conveyance or transfer of less than all of the interest of the Owner Participant, (i) the transferor and transferee or transferees shall be severally obligated with respect to the indemnification obligations imposed under Section 7.01 in accordance with the interest held by each of them and (ii) appropriate amendments shall be made to this Agreement to provide for the situation in which there is more than one Owner Participant as may be agreed to by the transferor and transferee or transferees and consented to by the Owner Trustee. No

such assignment, conveyance or transfer shall violate any provision of Applicable Law or create a relationship which would be in violation thereof. The Owner Trustee shall not be on notice of or otherwise be bound by any such assignment, conveyance or transfer until it shall have received an executed counterpart of the instrument of such assignment, conveyance or transfer.

SECTION 11.10. Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 11.11. Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance, except to the extent that, pursuant to the laws of the State of New Mexico or Arizona, as the case may be, the laws of either such State are mandatorily applicable hereto.

SECTION 11.12. Administration of Trust. The principal place of administration of the Trust shall be in Boston, Massachusetts.

SECTION 11.13. Performance by the Owner Participant. Any obligation of the Owner Trustee hereunder or under any Transaction Document or other document contemplated herein may be performed by the Owner Participant and any such performance shall not be construed as a revocation of the trusts created hereby.

SECTION 11.14. Conflict with Transaction Documents. If this Agreement (or any instructions given by the Owner Participant pursuant hereto) shall require that any action be taken with respect to any matter and any other Transaction Document (or any instructions duly given in accordance with the terms thereof) shall require that a different action be taken with respect to such matter, and such actions shall be mutually exclusive, the provisions of such other Transaction Document, in respect thereof, shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers hereunto duly authorized, as of the day and year first above written.

Owner Participant:

MFS LEASING CORP.

By: Christine R. Cook  
~~Assistant~~ Vice President

Owner Trustee:

THE FIRST NATIONAL BANK OF  
BOSTON,

By: [Signature]  
Vice President



**SECTION 15.6.1**  
**LESSOR'S CERTIFICATE**  
**1985-3**

The undersigned, being a duly elected, qualified and acting Vice President of **THE FIRST NATIONAL BANK OF BOSTON**, a national banking association (FNB), hereby certifies as follows:

1. Reference is made to (i) the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, as amended by Amendments No. 1 through No. 10 thereto (as so amended, the **ANPP Participation Agreement**), and (ii) the sale and leaseback transaction proposed to be entered into by Public Service Company of New Mexico (PNM) on or before December 31, 1985 with respect to Palo Verde Nuclear Generating Station Unit 1 and PNM's interest therein and in certain common facilities relating thereto (the **Proposed PNM Sale and Leaseback Transaction**);

2. In connection with the Proposed PNM Sale and Leaseback Transaction, FNB will enter into a Trust Agreement to be dated as of December 16, 1985 (the **Trust Agreement**) MFS Leasing Corp. constituting FNB the trustee (in such capacity, **Owner Trustee**) of a grantor trust (the **Grantor Trust**); thereafter, the Grantor Trust will acquire from PNM an undivided ownership interest of up to approximately 1.37% in certain assets constituting part of Palo Verde Nuclear Generating Station Unit 1 and up to approximately .457% in certain related common facilities and lease back such interest to PNM pursuant to a Facility Lease to be dated as of December 16, 1985 having a primary term of approximately 29 years; and

3. Upon the execution and delivery of the Trust Agreement and upon consummation of the Proposed PNM Sale and Leaseback Transaction, FNB, solely in its capacity as Owner Trustee and not otherwise, confirms that, except as provided in Sections 15.2.2, 15.6.4 and 15.10 of the ANPP Participation Agreement, PNM shall be and remain the sole "Participant" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind the Grantor Trust) in all dealings with the other ANPP Participants in relation to the property, rights, titles and interests of PNM transferred to the Grantor Trust pursuant to the Proposed PNM Sale and Leaseback Transaction.

**WITNESS** the signature of the undersigned this 18th day of December, 1985 for and on behalf of FNB.

  
\_\_\_\_\_  
Vice President

CERTAIN RIGHTS OF THE LESSOR UNDER THIS FACILITY LEASE HAVE BEEN ASSIGNED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, CHEMICAL BANK, AS INDENTURE TRUSTEE UNDER A TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS DATED AS OF DECEMBER 16, 1985. THIS FACILITY LEASE HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. SEE SECTION 22(e) OF THIS FACILITY LEASE FOR INFORMATION CONCERNING THE RIGHTS OF HOLDERS OF VARIOUS COUNTERPARTS HEREOF.

THIS COUNTERPART IS NOT THE ORIGINAL COUNTERPART.

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**FACILITY LEASE**

dated as of December 16, 1985

between

THE FIRST NATIONAL BANK OF BOSTON,  
not in its individual capacity, but solely as Owner  
Trustee under a Trust Agreement, dated as of  
December 16, 1985, with MFS Leasing Corp.,

Lessor

and

PUBLIC SERVICE COMPANY OF NEW MEXICO,

Lessee

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Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities

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## FACILITY LEASE

FACILITY LEASE, dated as of December 16, 1985, between THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of December 16, 1985, with MFS Leasing Corp. (the Lessor), and PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the Lessee).

### W I T N E S S E T H :

WHEREAS, the Lessor owns the Undivided Interest and the Real Property Interest;

WHEREAS, the Lessee desires to lease the Undivided Interest and the Real Property Interest from the Lessor on the terms and conditions set forth herein; and

WHEREAS, the Lessor is willing to lease the Undivided Interest and the Real Property Interest to the Lessee on the terms and conditions set forth herein;

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

#### SECTION 1. Definitions.

For purposes hereof, capitalized terms used herein shall have the meanings assigned to such terms in Appendix A and Schedule 1 hereto. References in this Facility Lease to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Facility Lease unless otherwise indicated.

#### SECTION 2. Lease of Undivided Interest; Term; Personal Property.

(a) Lease of Undivided Interest. Upon the terms and subject to the conditions of this Facility Lease, the Lessor hereby agrees to lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, the Undivided Interest.

(b) Term. The term of this Facility Lease shall begin on the Closing Date and shall end on the last day of the Lease Term.

(c) Personal Property. It is the express intention of the Lessor and the Lessee that title to the Undivided Interest and every portion thereof is severed, and shall be and remain severed, from title to the real estate constituting the Real Property Interest and the PVNGS Site. The Lessor and the Lessee intend that the Undivided Interest shall constitute personal property to the maximum extent permitted by Applicable Law.

### SECTION 3. Rent; Adjustments to Rent.

(a) Basic Rent. The Lessee shall pay to the Lessor, as basic rent (herein referred to as Basic Rent) for the Undivided Interest, the following amounts:

(i) on January 15, 1986, an amount equal to the daily equivalent of Basic Rent (set forth in Schedule 1) payable pursuant to clause (ii) below, from and including December 31, 1985 to but excluding January 15, 1986 plus or minus the Rent Differential, if any, referred to in Section 3(h);

(ii) on July 15, 1986 and on each Basic Rent Payment Date thereafter to and including January 15, 2015, an amount equal to the percentage of Facility Cost set forth opposite such Basic Rent Payment Date on Schedule 2 plus or minus the Rent Differential, if any, referred to in Section 3(h); and

(iii) if the Lessee shall elect the Renewal Term, on July 15, 2015 and on each Basic Rent Payment Date thereafter during the Renewal Term, an amount equal to one-half of an amount determined by dividing the amount of all payments of Basic Rent payable with respect to the Basic Lease Term pursuant to clause (ii) of this Section 3(a) (taking into account any

adjustments pursuant to Sections 3(d) and 3(e) and any increases and decreases pursuant to Section 3(h)), by 58.

If an interest payment on the Initial Series Note (and the Releveraging Note, if then outstanding) shall be due on a date other than a Basic Rent Payment Date, the Lessee shall pay additional Basic Rent on such date equal to such interest payment and such payment of additional Basic Rent shall be credited against the Basic Rent due on the Basic Rent Payment Date next succeeding the date that such additional Basic Rent shall have been paid.

(b) Supplemental Rent. The Lessee shall pay the following amounts (herein referred to as Supplemental Rent):

(i) when due or, where no due date is specified, on demand, any amount (other than Basic Rent, Casualty Value, Termination Value and Special Casualty Value) which the Lessee assumes the obligation to pay or agrees to pay to the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee or any Indemnatee under this Facility Lease, any other Transaction Document or the Collateral Trust Indenture and any amount which the Lessor is obligated to pay under Section 6.9, 7.6 or 8.7 of the Indenture;

(ii) when due any amount payable hereunder as Casualty Value, Termination Value or Special Casualty Value, and any premium or prepayment penalty with respect to the Notes;

(iii) on demand and in any event on the Basic Rent Payment Date next succeeding the date such amounts shall be due and payable hereunder, to the extent permitted by Applicable Law, interest (computed on the same basis as interest on the Notes is computed) at a rate per annum equal to (A) the Overdue

Interest Rate, on that portion of the payment of Basic Rent or Supplemental Rent distributable pursuant to clause "first" of Section 5.1 or clause "second" of Section 5.3 of the Indenture (determined prior to the computation of interest on overdue payments referred to in such clauses), and (B) the Penalty Rate, on the balance of any such payment of Basic Rent or Supplemental Rent (including, in the case of both clause (i) and clause (ii) above, but without limitation, to the extent permitted by Applicable Law, interest payable pursuant to this clause (iii)) not paid when due (without regard to any period of grace) for any period for which the same shall be overdue.

The Lessor shall have all rights, powers and remedies provided for in this Facility Lease, at law, in equity or otherwise, in the case of non-payment of Basic Rent or Supplemental Rent.

(c) Form of Payment. Subject to Section 11(b), each payment of Rent under this Facility Lease shall be made in immediately available funds no later than 11:00 a.m., local time at the place of receipt, on the date each such payment shall be due and payable hereunder and shall be paid either (A) in the case of payments other than Excepted Payments, to the Lessor at its address determined in accordance with Section 17, or at such other address as the Lessor may direct by notice in writing to the Lessee, or (B) in the case of Excepted Payments, to such Person as shall be entitled to receive such payment at such address as such Person may direct by notice in writing to the Lessee. If the date on which any payment of Rent is due hereunder shall not be a Business Day, the payment otherwise due thereon shall be due and payable on the preceding Business Day, with the same force and effect as if paid on the nominal date provided in this Facility Lease.

(d) Adjustments to Rent. Basic Rent and the schedules of Casualty Values, Termination Values and

Special Casualty Values attached hereto shall be adjusted (upward or downward) to preserve Net Economic Return if there is any change in the Code or successor legislation enacted by the Ninety-ninth Congress or if there is adopted, promulgated, issued or published, prior to January 15, 1997, proposed, temporary or final regulations resulting therefrom (regardless of the effective date of such regulations) (herein referred to as a Change in Tax Law). Adjustments under this paragraph (d) shall be (1) made not more than once a year and (2) limited in the aggregate to the extent, if any, necessary such that the aggregate amount of Basic Rent theretofore and thereafter payable throughout the Basic Lease Term (computed for such purpose only without regard to any adjustments theretofore made pursuant to Section 3(e) or 3(h)) shall not be more than 11% upward and 10% downward from the aggregate amount of Basic Rent payable throughout the Basic Lease Term (computed as aforesaid) prior to any adjustment theretofore made pursuant to this Section 3(d); provided, however, that no downward adjustment shall be made hereunder unless and until the aggregate amount of all such downward adjustments shall exceed 1% and then only to the extent such aggregate exceeds 1% (resulting in a maximum downward adjustment of 10%). The foregoing 11% maximum, 10% minimum and 1% "deadband" limitations were determined on the basis of an assumed interest rate on the Notes set forth in Schedule 1 hereto and are subject to adjustment in connection with any refunding of the Initial Series Note to provide the same protection to the Owner Participant and the Lessee as provided in the original calculations thereof by the Owner Participant.

The provisions of this Section 3(d), to the contrary notwithstanding, if any Change in Tax Law is, or becomes, applicable to the transaction contemplated by this Facility Lease in consequence of the transfer of the Owner Participant's beneficial interest in the Trust (whether or not permitted by Section 15 of the Participation Agreement) or if such Change in Tax Law would not have been applicable to such transaction had no such transfer occurred, then no adjustment shall be, or be required to be, made pursuant to this



paragraph (d); provided, however, that this sentence shall not apply to the initial transfer of the Owner Participant's beneficial interest to one of its Affiliates.

(e) Further Adjustments. Basic Rent and the schedules of Casualty Values, Special Casualty Values and Termination Values attached hereto shall be adjusted (upward or downward) to preserve Net Economic Return if there is (i) issuance of the Releveraging Note or the Fixed Rate Note, (ii) any Supplemental Financing, (iii) the payment of Transaction Expenses in an amount which is other than 1.1% of the Purchase Price or (iv) any change in the pricing assumptions set forth in Schedule 2 to the Participation Agreement.

(f) Computation of Adjustments. Upon the occurrence of an event requiring an adjustment to Basic Rent payable pursuant to clause (ii) of Section 3(a), and the schedules of Casualty Values, Special Casualty Values and Termination Values attached hereto, pursuant to paragraph (d) or (e) of this Section 3, the Owner Participant shall make the necessary computations and furnish to the Lessee, the Loan Participant, the Lessor and the Indenture Trustee the revised amounts and percentages, which amounts and percentages shall be implemented upon delivery thereof and effective as of the date of occurrence of the event requiring such adjustment (taking into account any payment of Basic Rent already made) and shall remain effective until changed in consequence of any verification procedure set forth below. Such revised amounts and percentages shall be subject to verification (at the Lessee's request) by the Owner Participant's nationally recognized independent public accountants, in which case such accountants shall either (i) confirm to the Lessee in writing that such revised amounts were computed on a basis consistent with the original calculations, or (ii) compute and provide to the Lessee, the Lessor, the Owner Participant, the Loan Participant and the Indenture Trustee revised amounts and percentages which are on such a basis. The revised amounts and percentages, as so confirmed or computed if applicable, shall be conclusive and binding

upon the Lessee, the Lessor, the Owner Participant, the Loan Participant and the Indenture Trustee. The cost of any such verification shall be borne by the Lessee unless such accountants shall require an adjustment to the revised amounts and percentages originally provided by the Owner Participant which is greater than 10% of the adjustment so provided, in which case such cost shall be divided and paid by the Lessee and the Owner Participant in equal amounts. Each adjustment pursuant to paragraph (d) or (e) of this Section 3 may, but need not, be evidenced by the execution and delivery of a supplement to this Facility Lease in form and substance satisfactory to the Lessee and the Owner Participant, but shall be effective as provided herein without regard to the date on which such supplement to this Facility Lease is so executed and delivered. Any adjustment referred to in this Section 3 shall satisfy the provisions of Revenue Procedure 75-21, Revenue Procedure 75-28 and any other applicable statute, regulation, revenue procedure, revenue ruling or technical information release relating to the subject matter of Revenue Procedure 75-21 or Revenue Procedure 75-28, but, in the case of any upward adjustment, shall be no less than the adjustment otherwise required pursuant to this Section 3.

(g) Sufficiency of Basic Rent and Supplemental Rent. Notwithstanding any other provision of this Facility Lease, any other Transaction Document or any Financing Document, (i) the amount of Basic Rent payable on each Basic Rent Payment Date shall be at least equal to the aggregate amount of principal, premium, if any, and accrued interest payable on all Notes then Outstanding and (ii) each payment of Casualty Value, Special Casualty Value and Termination Value shall in no event be less (when added to all other amounts required to be paid by the Lessee under this Facility Lease in respect of any Event of Loss or Deemed Loss Event or termination of this Facility Lease) than an amount sufficient, as of the date of payment, to pay in full the principal of, and premium, if any, and interest on all Notes Outstanding on and as of such date of payment

(taking into account any assumption of the Notes by the Lessee).

(h) Rent Differential. So long as the Initial Series Note shall be outstanding, each installment of Basic Rent shall be increased or decreased, as the case may be, by the Rent Differential. For purposes hereof, Rent Differential shall mean, as of any Basic Rent Payment Date, the difference between (i) the aggregate amount of interest due and payable on each Basic Rent Payment Date on the Initial Series Note (and the Releveraging Note, if then outstanding), and (ii) the aggregate amount of interest that would have been due and payable on such Basic Rent Payment Date on such Note or Notes if such Note or Notes had at all times during the relevant period borne interest at a rate equal to 9.5% per annum (computed on the basis of a 360-day year of twelve 30-day months). If, as of any Basic Rent Payment Date, (A) the amount determined in accordance with clause (i) of the immediately preceding sentence shall be greater than the amount determined in accordance with clause (ii) of such sentence, the amount of Basic Rent due on such Basic Rent Payment Date shall be increased by the Rent Differential, and (B) the amount determined in accordance with such clause (ii) shall exceed the amount determined in accordance with such clause (i), the amount of Basic Rent due on such Basic Rent Payment Date shall be decreased by the Rent Differential.

#### SECTION 4. Net Lease.

This Facility Lease (as originally executed and as modified, supplemented and amended from time to time) is a net lease and the Lessee hereby acknowledges and agrees that the Lessee's obligation to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute, unconditional and irrevocable and shall not be affected by any circumstances of any character, including, without limitation, (i) any set-off, abatement, counterclaim, suspension, recoupment, reduction, defense or other right or claim which the Lessee may have against the Lessor, the Owner

Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant, the Operating Agent, any ANPP Participant, any vendor or manufacturer of any equipment or assets included in the Undivided Interest, Unit 1, any Capital Improvement, the Real Property Interest, the PVNGS Site, PVNGS, or any part of any thereof, or any other Person for any reason whatsoever, (ii) any defect in or failure of the title- merchant-ability, condition, design, compliance with specifications, operation or fitness for use of all or any part of the Undivided Interest, Unit 1, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, (iii) any damage to, or removal, abandonment, shutdown, salvage, scrapping, requisition, taking, loss, theft or destruction of all or any part of the Undivided Interest, Unit 1, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, or any interference, interruption or cessation in the use or possession thereof or of the Undivided Interest by the Lessee or by any other Person (including, but without limitation, the Operating Agent or any other ANPP Participant) for any reason whatsoever or of whatever duration, (iv) any restriction, prevention or curtailment of or interference with any use of all or any part of the Undivided Interest, Unit 1, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, (v) any insolvency, bankruptcy, reorganization or similar proceeding by or against the Lessee, the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant, the Operating Agent, any other ANPP Participant or any other Person, (vi) the invalidity, illegality or unenforceability of this Facility Lease, any other Transaction Document, any Financing Document, the ANPP Participation Agreement or any other instrument referred to herein or therein or any other infirmity herein or therein or any lack of right, power or authority of the Lessor, the Lessee, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant or any other Person to enter into this Facility Lease, any other Transaction Document or any Financing Document, or any doctrine of force majeure, impossibility, frustration, failure of consideration, or any similar

legal or equitable doctrine that the Lessee's obligation to pay Rent is excused because the Lessee has not received or will not receive the benefit for which the Lessee bargained, it being the intent of the Lessee to assume all risks from all causes whatsoever that the Lessee does not receive such benefit, (vii) the breach or failure of any warranty or representation made in this Facility Lease or any other Transaction Document or any Financing Document by the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant or any other Person, (viii) any amendment or other change of, or any assignment of rights under, this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, or any waiver, action or inaction under or in respect of this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, or any exercise or non-exercise of any right or remedy under this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, including, without limitation, the exercise of any foreclosure or other remedy under the Indenture, the Collateral Trust Indenture or this Facility Lease, or the sale of Unit 1, any Capital Improvement, the Undivided Interest, the Real Property Interest, the PVNGS Site or PVNGS, or any part thereof or any interest therein, or (ix) any other circumstance or happening whatsoever whether or not similar to any of the foregoing. The Lessee acknowledges that by conveying the leasehold estate created by this Facility Lease to the Lessee and by putting the Lessee in possession of the Undivided Interest and the Real Property Interest, the Lessor has performed all of the Lessor's obligations under and in respect of this Facility Lease, except the covenant that the Lessor and Persons acting for the Lessor will not interfere with the Lessee's quiet enjoyment of the Undivided Interest and the Real Property Interest. The Lessee hereby waives, to the extent permitted by Applicable Law, 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 or to effect or claim any diminution or reduction of Rent

payable by the Lessee hereunder, including without limitation the provisions of Arizona Revised Statutes Section 33-343, except in accordance with the express terms hereof. 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 Lessee nonetheless agrees to pay to the Lessor or other Person entitled thereto an amount equal to each installment of Basic Rent and all Supplemental Rent at the time such payment would have become due and payable in accordance with the terms hereof had this Facility Lease not been terminated in whole or in part. Each payment of Rent made by the Lessee hereunder shall be final and the Lessee shall not seek or have any right to recover all or any part of such payment from the Lessor or any other Person for any reason whatsoever. All covenants, agreements and undertakings of the Lessee herein shall be performed at its cost, expense and risk unless expressly otherwise stated. Nothing in this Section 4 shall be construed as a guaranty by the Lessee of any residual value in the Undivided Interest or as a guaranty of the Notes. Any provisions of Section 7(b)(2) or 8(c) of the Participation Agreement to the contrary notwithstanding, if the Lessee shall fail to make any payment of Rent to any Person when and as due (taking into account applicable grace periods), such Person shall have the right at all times, to the exclusion of the ANPP Participants, to demand, collect, sue for, enforce obligations relating to and otherwise obtain all amounts due in respect of such Rent.

#### SECTION 5. Return of the Undivided Interest.

(a) Return of the Undivided Interest. On the Lease Termination Date, the Lessee will surrender possession of the Undivided Interest and the Real Property Interest to the Lessor. At the time of such return the Lessee shall pay or have paid all amounts due and payable, or to become due and payable, by it as an ANPP Participant under each and every ANPP Project Agreement allocable or chargeable (whether or not payable during or after the Lease Term) to the Undivided Interest or

the Real Property Interest in respect of any period or periods ending on or prior to the Lease Termination Date (including, but without limitation, all amounts payable with respect to any and all discretionary Capital Improvements to Unit 1 or the PVNGS Site approved or authorized (without the concurrence of the Owner Participant) within the 3-year period preceding the end of the Lease Term, whether or not implementation thereof has been completed on or prior to the Lease Termination Date), and the Undivided Interest shall be free and clear of all Liens (other than Permitted Liens described in clauses (i), (v) (other than those arising by, through or under the Lessee alone), (vi), (vii) (other than as aforesaid), (viii) (other than as aforesaid), (ix) and (x) of the definition of such term) and in the condition and state of repair required by Section 8. The Lessor shall not abandon the Undivided Interest. In the event that on or prior to the Lease Termination Date there shall have occurred a default by any ANPP Participant (other than PNM) under the ANPP Participation Agreement and such default shall not have been cured by the defaulting ANPP Participant, then (i) the Lessee agrees to indemnify and hold the Lessor (and each successor, assign and transferee thereof) harmless against any and all obligations under the ANPP Participation Agreement with respect to contributions or payments required to be made thereby as a result of such default and (ii) the Lessor (and each successor, assign and transferee thereof) agrees to reimburse the Lessee for all amounts paid by the Lessee pursuant to the foregoing clause (i) to the extent, but only to the extent, that the Lessor (or such successor, assign or transferee) shall have actually received proceeds from the sale of the Generation Entitlement Share of the defaulting ANPP Participant as a result of the payment made by the Lessee pursuant to the foregoing clause (i), and, to the extent the Lessor (or such successor, assign or transferee) shall have received such proceeds, the amount to be reimbursed to the Lessee pursuant to this clause (ii) shall include interest at the Prime Rate from the date of any payment by the Lessee pursuant to the foregoing clause (i) through the date of

reimbursement of such amount pursuant to this clause (ii).

(b) **Disposition Services.** The Lessee agrees that if it does not exercise its option to renew or purchase as provided in Sections 12 and 13, respectively, then during the last thirty-six months of the Lease Term, the Lessee will fully cooperate with the Lessor in connection with the Lessor's efforts to lease or dispose of the Undivided Interest including using the Lessee's reasonable efforts to lease or dispose of the Undivided Interest. The Lessor agrees to reimburse the Lessee for reasonable out-of-pocket costs and expenses of the Lessee incurred at the request of the Lessor or the Owner Participant in connection with such cooperation and such efforts.

#### **SECTION 6. Warranty of the Lessor.**

(a) **Quiet Enjoyment.** The Lessor warrants that until the Lease Termination Date, if the Lessee is in compliance with each and every term and provision of this Facility Lease and each other Transaction Document to be complied with by the Lessee, the Lessee's use and possession of Unit 1, including the Undivided Interest, shall not be interrupted by the Lessor or any Person claiming by, through or under the Lessor, and their respective successors and assigns.

(b) **Disclaimer of Other Warranties.** The warranty set forth in Section 6(a) is in lieu of all other warranties of the Lessor or the Owner Participant, whether written, oral or implied, with respect to this Facility Lease, Unit 1, any Capital Improvement, the Undivided Interest, PVNGS, the Real Property Interest or the PVNGS Site. As among the Owner Participant, the Loan Participant, the Indenture Trustee, the Collateral Trust Trustee, the Lessor and the Lessee, execution by the Lessee of this Facility Lease shall be conclusive proof of the compliance of Unit 1 (including any Capital Improvement), the Undivided Interest and the Real Property Interest with all requirements of this Facility Lease, and the Lessee acknowledges and agrees that



(i) NEITHER THE LESSOR NOR THE OWNER PARTICIPANT IS A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND AND (ii) THE LESSOR LEASES AND THE LESSEE TAKES THE UNDIVIDED INTEREST AND THE REAL PROPERTY INTEREST, AND SHALL TAKE EACH CAPITAL IMPROVEMENT, AND ANY PART THEREOF, AS IS AND WHERE IS, and neither the Lessor nor the Owner Participant shall be deemed to have made, and THE LESSOR AND THE OWNER PARTICIPANT EACH HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF UNIT 1, ANY CAPITAL IMPROVEMENT, THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, THE PVNGS SITE OR PVNGS, OR ANY PART THEREOF, THE MERCHANTABILITY THEREOF OR THE FITNESS THEREOF FOR ANY PARTICULAR PURPOSE, TITLE TO UNIT 1, ANY CAPITAL IMPROVEMENT, THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, THE PVNGS SITE OR PVNGS, OR ANY PART THEREOF, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT OR THE ABSENCE OF ANY LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, NOR SHALL THE LESSOR OR THE OWNER PARTICIPANT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LIABILITY IN TORT, STRICT OR OTHERWISE), it being agreed that all such risks, as among the Owner Participant, the Loan Participant, the Collateral Trust Trustee, the Indenture Trustee, the Lessor and the Lessee, are to be borne by the Lessee. The provisions of this Section 6(b) have been negotiated, and, except to the extent otherwise expressly provided in Section 6(a), the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties by the Lessor, the Owner Participant, the Loan Participant, the Collateral Trust Trustee or the Indenture Trustee, express or implied, with respect to Unit 1 (including any Capital Improvement), the Undivided Interest, PVNGS, the Real Property Interest or the PVNGS Site that may arise pursuant to any law now or hereafter in effect, or otherwise.

(c) Enforcement of Certain Warranties. The Lessor authorizes the Lessee (directly or through

agents, including the Operating Agent), at the Lessee's expense, to assert for the Lessor's account, during the Lease Term, all of the Lessor's rights (if any) under any applicable warranty and any other claims (under this Facility Lease or any Purchase Document) that the Lessee or the Lessor may have against any vendor or manufacturer with respect to Unit 1 (including any Capital Improvement) or the Undivided Interest, and the Lessor agrees to cooperate, at the Lessee's expense, with the Lessee and the Operating Agent in asserting such rights. Any amount receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) by the Lessee as payment under any such warranty or other claim against any vendor or manufacturer (or, if such warranty or claim relates to the Undivided Interest and the Retained Assets, the portion of such received amount appropriately allocable to the Undivided Interest) shall be applied in accordance with Sections 9(g), (h) and (i).

#### **SECTION 7. Liens.**

The Lessee will not directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to the Undivided Interest, the Real Property Interest, the Lessor's title thereto or any interest of the Lessor or Lessee therein (and the Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien), except Permitted Liens.

#### **SECTION 8. Operation and Maintenance; Capital Improvements.**

(a) **Operation and Maintenance.** The Lessee agrees that it will exercise its rights, powers, elections and options as an ANPP Participant under the ANPP Project Agreements to cause the Operating Agent to (A) maintain Unit 1 in such condition that Unit 1 will have the capacity and functional ability to perform, on a continuing basis (ordinary wear and tear excepted), in normal commercial operation, the functions and substantially at the ratings for which it was designed,

(B) operate, service, maintain and repair Unit 1 and replace all necessary or useful parts and components thereof so that the condition and operating efficiency will be maintained and preserved, ordinary wear and tear excepted, in all material respects in accordance with (1) prudent utility practice for items of similar size and nature, (2) such operating standards as shall be required to take advantage of and enforce all available warranties and (3) the terms and conditions of all insurance policies maintained in effect at any time with respect thereto, (C) use, possess, operate and maintain Unit 1 in compliance with all material applicable Governmental Actions (including the License) affecting PVNGS or Unit 1 or the use, possession, operation and maintenance thereof and (D) otherwise act in accordance with the standards set forth in the ANPP Participation Agreement. The Lessee will comply with all its obligations under Applicable Law affecting Unit 1, the Undivided Interest, PVNGS, the Real Property Interest and the PVNGS Site, and the use, operation and maintenance thereof. The Lessee agrees to (i) exercise its rights under the ANPP Participation Agreement so that there will always be an Operating Agent under the ANPP Participation Agreement and (ii) maintain in full force and effect a license from the NRC adequate to possess the Undivided Interest and the Real Property Interest under the circumstances contemplated by the ANPP Participation Agreement. The Lessee will keep and maintain proper books and records (i) relating to all Operating Funds (as defined in the ANPP Participation Agreement) provided by it to the Operating Agent under the ANPP Participation Agreement and (ii) upon receipt of the requisite information from the Operating Agent, relating to the application of such Operating Funds to the operation and maintenance of Unit 1 and the acquisition, construction and installation of Capital Improvements, all in accordance with the Uniform System of Accounts. The Lessor shall not be obliged in any way to maintain, alter, repair, rebuild or replace Unit 1, any Capital Improvement, the Undivided Interest or the Real Property Interest, or any part thereof, or, except as provided in Section 8(f), to pay the cost of alteration, rebuilding, replacement, repair or

10 maintenance of Unit 1, any Capital Improvement, the Undivided Interest or the Real Property Interest, or any part thereof, and the Lessee expressly waives the right to perform any such action at the expense of the Lessor pursuant to any law at any time in effect.

(b) Inspection. The Lessor, the Owner Participant, the Indenture Trustee and the Collateral Trust Trustee shall have the right to inspect PVNGS (subject, in each event, to the ANPP Participation Agreement, Applicable Law, applicable confidentiality undertakings and procedures established by the Operating Agent) at their expense. The Lessor and the Owner Participant shall have the right to inspect, at their expense, the books and records of the Lessee relating to PVNGS, and make copies of and extracts therefrom (subject as aforesaid) and may, at their expense, discuss the Lessee's affairs, finances and accounts with its executive officers and its independent public accountants (and by this provision, the Lessee authorizes such accountants, in the presence of the Lessee, to discuss with the Lessor and the Owner Participant and their respective authorized representatives the affairs, finances and accounts of the Lessee), all at such times and as often as may be reasonably requested. None of the Lessor, the Owner Participant, the Indenture Trustee and the Collateral Trust Trustee shall have any duty whatsoever to make any inspection or inquiry referred to in this Section 8(b) and shall not incur any liability or obligation by reason of not making any such inspection or inquiry.

(c) Capital Improvements. If and to the extent required by the ANPP Participation Agreement, the Lessee shall, at its sole expense, promptly participate in the making of any Capital Improvement to Unit 1. The Undivided Interest Percentage of the net proceeds of any sale or other disposition of property removed from Unit 1 receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) by or credited to the account of the Lessee in accordance with the ANPP Participation Agreement and any insurance proceeds receivable (without regard to any

right of setoff or other similar right of any Person against the Lessee) for the account of the Lessor or the Lessee in respect of the loss or destruction of, or damage or casualty to, any such property shall be applied as provided in Section 9(g), (h) or (i), as the case may be. An undivided interest equal to the Undivided Interest Percentage in property at any time removed from Unit 1 shall remain the property of the Lessor, no matter where located, until such time as a Capital Improvement constituting a replacement of such property shall have been installed in Unit 1 or such removed property has been disposed of by the Operating Agent in accordance with the ANPP Participation Agreement. Simultaneously with such disposition by the Operating Agent, title to the Lessor's undivided interest in the removed property shall vest in the Person designated by the Operating Agent, free and clear of any and all claims or rights of the Lessor. Unless subparagraph (3) of Section 8(e) shall be applicable, upon the incorporation of a Capital Improvement in Unit 1, without further act, (i) title to an undivided interest equal to the Undivided Interest Percentage in such Capital Improvement shall vest in the Lessor and (ii) such undivided interest in such Capital Improvement shall become subject to this Facility Lease and be deemed to be part of the Undivided Interest for all purposes hereof to the same extent that the Lessor had an undivided interest in the property originally incorporated or installed in Unit 1. The Lessee warrants and agrees that the Lessor's interest in all Capital Improvements shall be free and clear of all Liens, except Permitted Liens other than the type specified in clauses (ii), (iii) and (xii) of the definition thereof.

(d) Reports. To the extent permissible, the Lessee shall prepare and file in timely fashion, or, where the Lessor shall be required to file, the Lessee shall prepare and deliver to the Lessor within a reasonable time prior to the date for filing, any reports with respect to Unit 1, the Undivided Interest or the Real Property Interest or the condition or operation thereof that shall be required to be filed with any governmental

or regulatory authority. On or before March 1 of each year and on the Lease Termination Date, the Lessee shall furnish the Lessor and the Owner Participant with a report stating the total cost of all Capital Improvements and describing separately and in reasonable detail each Capital Improvement (or related group of Capital Improvements) made during the period from the date hereof to December 31, 1986 in the case of the first such report or during the period from the end of the period covered by the last previous report to the December 31 prior to such report in the case of subsequent reports. On or before March 1 in each year (commencing March 1, 1986) and at such other times as the Lessor or the Owner Participant shall reasonably request in writing (which request shall provide a reasonable period for response), the Lessee will report in writing to the Lessor with respect to (i) the most recent annual capital expenditure budget submitted by the Operating Agent to the Lessee in accordance with the ANPP Participation Agreement and (ii) the then plans (if any) which the Lessee may have for the financing of the same under Section 8(f).

(e) Title to Capital Improvements. Title to an undivided interest, equal to the Undivided Interest Percentage, in each Capital Improvement to Unit 1 shall vest as follows:

(1) in the case of each Nonseverable Capital Improvement, whether or not the Lessor shall have financed or provided financing (in whole or in part) for such undivided interest in such Capital Improvement by an Additional Equity Investment or a Supplemental Financing, or both, effective on the date such Capital Improvement shall have been incorporated or installed in Unit 1, the Lessor shall, without further act, acquire title to such undivided interest in such Capital Improvement;

(2) in the case of each Severable Capital Improvement, if the Lessor shall have financed (by an Additional Equity Investment or a

Supplemental Financing, or both) the Undivided Interest Percentage of the cost of such Capital Improvement, the Lessor shall, without further act, acquire title to such undivided interest in such Capital Improvement; and

(3) in the case of each Severable Capital Improvement, if the Lessor shall not have financed (by either an Additional Equity Investment or a Supplemental Financing, or both) the Undivided Interest Percentage of the cost of such Capital Improvement, the Lessee shall retain title to such undivided interest.

Immediately upon title to such undivided interest in any Capital Improvement vesting in the Lessor pursuant to sub-paragraph (1) or sub-paragraph (2) of this Section 8(e), such undivided interest in such Capital Improvement shall, without further act, become subject to this Facility Lease and be deemed part of the Undivided Interest and Unit 1 for all purposes hereof.

(f) Funding of the Cost of Capital Improvements. Before placing in service any Capital Improvement to Unit 1 the cost of which exceeds \$100,000,000 in respect of the interests of all ANPP Participants, the Lessee shall give the Lessor and the Owner Participant reasonable advance notice thereof. The Owner Participant shall have the option, in its sole discretion, of financing through the Lessor the cost of any such Capital Improvement; or any other Capital Improvement presented to the Owner Participant for financing, including or not including the making of an investment by the Owner Participant (an Additional Equity Investment) and the issuance of one or more Additional Notes, all on terms acceptable to the Lessee and the Owner Participant. If the Owner Participant does not finance, or arrange the financing of, the cost of such Capital Improvement, the Lessee may cause the Lessor to issue, if and to the extent permitted by the Indenture, to one or more Persons (other than any Person

affiliated with the Lessee within the meaning of Section 318 of the Code) one or more Additional Notes and to use the proceeds thereof to pay the cost of such Capital Improvement, subject to satisfaction of the following conditions:

(i) there shall be no more than one Supplemental Financing in any calendar year;

(ii) the sum of the Supplemental Financing Amounts in any calendar year shall equal or exceed the Undivided Interest Percentage of \$5,000,000;

(iii) the Lessee may include in any request for a Supplemental Financing only Capital Improvements not previously financed in any Supplemental Financing and which have been installed or affixed no earlier than three calendar years before the beginning of the calendar year in which such Supplemental Financing occurs;

(iv) the total amount of all Supplemental Financings during the Basic Lease Term shall not exceed the Undivided Interest Percentage of \$100,000,000;

(v) unless waived by the Owner Participant, the Bonds issued and outstanding under the Collateral Trust Indenture shall be rated no less than "investment grade", as determined by Standard & Poor's Corporation and Moody's Investors Service, Inc.;

(vi) the Supplemental Financing Amount shall not exceed that portion of the cost of Capital Improvements which, when financed, will constitute an addition to the Owner Participant's basis under section 1012 of the Code;



(vii) in the opinion of independent tax counsel to the Owner Participant, such Supplemental Financing shall not result in adverse tax consequences to the Owner Participant or adversely affect the status of this Facility Lease as a "true lease" for Federal tax purposes, and the Owner Participant and the Lessor shall have agreed upon the amount and manner of payment of any indemnity (if any) payable by the Lessee as a consequence of such Supplemental Financing;

(viii) the Additional Notes shall have a final maturity date no later than January 15, 2015;

(ix) the Lessee shall have made such representations, warranties and covenants regarding the tax characteristics of each undivided interest in each Capital Improvement as the Owner Participant requests and the Tax Indemnification Agreement shall have been appropriately modified;

(x) appropriate adjustments to Basic Rent and the schedules of Casualty Values, Special Casualty Values and Termination Values shall have been agreed to by the Owner Participant;

(xi) the Lessee shall pay to the Lessor an amount equal to all out-of-pocket costs and expenses reasonably incurred by the Lessor or the Owner Participant not financed as a part of such Supplemental Financing or reflected in adjustments to Basic Rent;

(xii) no Default or Event of Default shall have occurred and be continuing; and

(xiii) the Lessee shall enter into such agreements and shall provide such tax indemnities, representations, warranties, covenants, opinions, certificates and other

documents as the Owner Participant shall reasonably request.

(g) Useful Life. If the Lessee shall not theretofore have exercised its option under Section 13 to purchase the Undivided Interest and the Real Property Interest, then (i) if the Lessee shall not theretofore have exercised its option to renew the Lease pursuant to Section 12, on January 15, 2014, the Lessee shall initiate the Appraisal Procedure to determine the remaining economic useful life of Unit 1 as of July 15, 2014 and (ii) on the Rent Payment Date occurring one year prior to the end of the Renewal Term, if any, the Lessee shall initiate the Appraisal Procedure to determine the remaining economic useful life of Unit 1 as of the date six months prior to the end of the Renewal Term. The Lessee and the Lessor agree to use their best efforts to ensure that such determination of remaining economic useful life is made no later than July 15, 2014 (in the case of the first such determination) and six months prior to the end of the Renewal Term (in the case of the second such determination).

#### SECTION 9. Event of Loss; Deemed Loss Event.

(a) Damage or Loss. In the event that Section 16.2 of the ANPP Participation Agreement (as in effect on the date hereof) shall become applicable, or an Event of Loss, a Requisition of Use or a Requisition of Title shall occur, or Unit 1 or any substantial part thereof shall suffer destruction, damage, loss, condemnation, confiscation, theft or seizure for any reason whatsoever, such fact shall promptly, and in any case within five Business Days of any such event, be reported by the Lessee to the Lessor and the Owner Participant.

(b) Repair. The Lessee shall promptly make any and all payments required of the Lessee under the provisions of the ANPP Participation Agreement relating to damage or destruction or the like to Unit 1 or any portion thereof; provided, however, that the Lessee shall in no event be obligated to make or join in any agreement under Section 16.2 of the ANPP Participation

Agreement (as in effect on the date hereof) concerning repairs to or reconstruction of Unit 1.

(c) Payment of Casualty Value. On the Basic Rent Payment Date next following the occurrence of an Event of Loss, the Lessee shall pay to the Lessor all Basic Rent due on such Basic Rent Payment Date, plus an amount equal to the excess of (i) Casualty Value determined as of such Basic Rent Payment Date over (ii) the unpaid principal amount of the Notes Outstanding on such date after giving effect to the payment, if any, of the principal installment due and payable on such date. Upon compliance in full by the Lessee with the foregoing provisions of this Section 9(c) and assumption by the Lessee of all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall (so long as no Default or Event of Default shall have occurred and be continuing), and at any time after the occurrence of an Event of Loss, the Lessor may:

(1) in the case of an Event of Loss arising from a Final Shutdown, if the Lessee shall have declined, but one or more of the other ANPP Participants shall have elected, to reconstruct or restore Unit 1, as permitted by the ANPP Participation Agreement, Transfer the Undivided Interest and the Real Property Interest to such electing ANPP Participants, as required by and in the proportions set forth in the ANPP Participation Agreement, in which case the Lessee shall be entitled to receive the portion of the "salvage value" purchase price allocable to the Undivided Interest; or

(2) if clause (1) shall not be applicable, Transfer the Undivided Interest and the Real Property Interest to the Lessee.

If the Lessee shall not have assumed all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes in accordance with Section 3.9(b) of the Indenture, but shall have paid all amounts required by

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this Section 9(c), the Lessor shall retain the Undivided Interest and the Real Property Interest subject to the terms of this Facility Lease and Section 7(b)(4) of the Participation Agreement; provided, however, that (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount on each Basic Rent Payment Date equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

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(d) Payment of Special Casualty Value. If a Deemed Loss Event occurs, the party hereto having knowledge thereof shall promptly notify the other thereof and, at the Lessor's option, on the day of the month (specified in Schedule 4) next following the month during which the Deemed Loss Event occurs, the Lessee shall pay to the Lessor on such day an amount equal to the excess of (i) Special Casualty Value determined as of the date such payment is due over (ii) the principal amount of the Notes Outstanding on such date after giving effect to the payment, if any, of the principal instalment due and payable on such day. Upon compliance in full by the Lessee with the foregoing provisions of this Section 9(d) and assumption by the Lessee of all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall (so long as no Default or Event of Default shall have occurred and be continuing), and at any time after the occurrence of a Deemed Loss Event, the Lessor may, Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall not have assumed all the liabilities and obligations of the Owner Trustee under the Indenture and the Notes in accordance with Section 3.9(b) of the Indenture but shall have paid all amounts required by this Section 9(d), the Lessor shall retain the Undivided Interest and the Real Property Interest subject to the terms of this Facility Lease and Section 7(b)(4) of the Participation Agreement; provided, however, that (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount on each Basic Rent Payment Date equal to the

aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes Outstanding and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

(e) Requisition of Use. In the case of a Requisition of Use not constituting an Event of Loss, this Facility Lease shall continue, and each and every obligation of the Lessee hereunder and under each Transaction Document shall remain in full force and effect. So long as no Default or Event of Default shall have occurred and be continuing, the Lessee shall be entitled to all sums received by reason of any such Requisition of Use for the period ending on the Lease Termination Date, and the Lessor shall be entitled to all sums received by reason of any such Requisition of Use for the period after the Lease Termination Date.

(f) Termination of Obligation. Until the Lessee shall have made the payments specified in Section 9(c) or 9(d), the Lessee shall make all payments of Rent when due; and the Lessee shall thereafter be required to make all payments of Supplemental Rent as and when due. In the event that the Lessee shall assume all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, upon payment by the Lessee of the payments specified in Section 9(c) or 9(d) and all Rent due and owing through and including the date of payment (including Basic Rent due on or accrued through such date, as the case may be), the Lease Term shall end and the Lessee's obligation to pay further Basic Rent shall cease.

(g) Application of Payments on an Event of Loss. Any payments receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) at any time by the Lessor or the Lessee (other than insurance placed by the Owner Trustee or the Owner Participant pursuant to Section 10(b)) from any governmental authority, insurer or other Person (except the Lessee) as a result of the occurrence of an Event of Loss shall be applied as follows:

(i) all such payments received at any time by the Lessee shall be promptly paid to the Lessor for application pursuant to the following provisions of this Section 9(g), except that the Lessee may retain any amounts that would at the time be payable to the Lessee as reimbursement under the provisions of clause (ii) below;

(ii) so much of such payments as shall not exceed the amount required to be paid by the Lessee pursuant to Section 9(c) (ignoring, for this purpose, clause (ii) of the first sentence thereof) shall be applied in reduction of the Lessee's obligation to pay such amount if not already paid by the Lessee or, if already paid by the Lessee, shall be applied to reimburse the Lessee for its payment of such amount; and

(iii) the balance, if any, of such payments remaining thereafter shall be divided between the Lessor and the Lessee as their interests may appear.

(h) Application of Payments Not Relating to an Event of Loss. Payments receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) at any time by the Lessor (other than insurance placed by the Owner Trustee or the Owner Participant pursuant to Section 10(b)) or the Lessee from any Governmental Authority, insurer or other Person with respect to any destruction, damage, loss, condemnation, confiscation, theft or seizure of or Requisition of Title to or Requisition of Use of Unit 1 or any part thereof not constituting an Event of Loss shall be applied first to reimburse the Lessee for all amounts expended in respect of the repair, replacement or reconstruction of Unit 1 or any part thereof as provided in Section 9(b), and second the balance, if any, of such payments shall be divided between the Lessor and the Lessee as their interests may appear.

(i) Other Dispositions. Notwithstanding the foregoing provisions of this Section 9, so long as a Default or Event of Default shall have occurred and be continuing, any amount that would otherwise be payable to or for the account of, or that would otherwise be retained by, the Lessee pursuant to Section 10 or this Section 9 shall be paid to the Lessor as security for the obligations of the Lessee under this Facility Lease and, at such time thereafter as no Default or Event of Default shall be continuing, such amount shall be paid promptly to the Lessee unless this Facility Lease shall have theretofore been declared to be in default, in which event such amount shall be disposed of in accordance with the provisions hereof, of the Indenture and of the Trust Agreement.

(j) Assumption of Notes; Creation of Lien on Undivided Interest. In connection with an Event of Loss, a Deemed Loss Event or the exercise of the Cure Option, (i) the Lessee agrees to use its best efforts to comply with the conditions respecting its assumption of all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes set forth in Section 3.9(b) of the Indenture, and (ii) the Lessor agrees that, if the Lessee fails to assume all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes in accordance with Section 3.9(b) of the Indenture, not later than two Business Days prior to the date on which the Lessee is to acquire the Owner Participant's interest in the Trust Estate pursuant to Section 7(b)(4) of the Participation Agreement, the Lessor will cause the Undivided Interest and the Real Property Interest to be subjected to the Lien of the Indenture by executing and delivering to the Indenture Trustee the Undivided Interest Indenture Supplement.

#### SECTION 10. Insurance.

(a) Required Insurance. The Lessee will use its best efforts to cause the Operating Agent to carry and maintain insurance required under the ANPP Participation Agreement and will make all payments required of the Lessee under the ANPP Participation

Agreement in respect of such insurance. The Lessee will at all times maintain, directly or through the Operating Agent, policies of casualty and liability insurance with respect to the Undivided Interest and the Real Property Interest in such amounts and with such coverage as shall be adequate in accordance with prudent utility practice. Any policies of insurance in respect of destruction, damage, loss, theft or other casualty to the Undivided Interest, the Real Property Interest, Unit 1 or any part thereof shall name the Lessor (and, to the extent practicable, the Owner Participant) as additional insured, as its interests may appear, and any policies with respect to nuclear liability insurance shall include all Indemnitees as additional insureds; provided, however, that if the Operating Agent, as trustee, shall become the loss payee under any policy of insurance constituting Project Insurance, then the Lessor and the Owner Participant shall be and be made beneficiaries of the trust arrangement under which the Operating Agent acts as trustee. The Lessee shall, on or before March 1 of each year, commencing March 1, 1986, furnish to the Lessor and the Owner Participant (A) a certificate signed by an independent insurance broker showing the insurance then maintained under the ANPP Participation Agreement and hereunder, stating that all premiums then due have been paid and stating that the insurance then carried and maintained under the ANPP Participation Agreement and hereunder is in accordance with the terms of the ANPP Participation Agreement and this Section 10, and (B) upon the request of the Lessor or the Owner Participant, copies (to the extent permitted by the issuers of such policies) of policies so maintained. All insurance proceeds paid in respect of damage, destruction, loss, theft or other casualty to the Undivided Interest or the Real Property Interest shall be applied as provided in Section 9(g) (h) or (i), as the case may be.

(b) Permitted Insurance. Nothing in this Section 10 shall prohibit the Lessee from placing, at its expense, insurance on or with respect to the cost of purchasing replacement power, naming the Lessee as insured and/or loss payee, unless such insurance would



conflict with or otherwise limit the availability of insurance to be provided or maintained in accordance with Section 10(a). Nothing in this Section 10 shall prohibit the Lessor or the Owner Participant from placing at its expense other insurance on or with respect to Unit 1, the Undivided Interest or the Real Property Interest or the operation of Unit 1, naming the Lessor or the Owner Participant as insured and/or loss payee, unless such insurance would conflict with or otherwise limit the insurance to be provided or maintained in accordance with Section 10(a).

#### SECTION 11. Rights to Assign or Sublease.

(a) Assignment or Sublease by the Lessee. Without the prior written consent of the Lessor, the Lessee shall not assign, sublease, transfer or encumber (except for Permitted Liens) its leasehold interest in the Undivided Interest or the Real Property Interest under this Facility Lease. The Lessee shall not, without the prior written consent of the Lessor and the Owner Participant, part with the possession of, or suffer or allow to pass out of its possession, the Undivided Interest, the Real Property Interest or any interest therein, except to the extent required pursuant to the ANPP Participation Agreement or expressly permitted by the provisions of this Facility Lease or any other Transaction Document.

(b) Assignment by Lessor as Security for Lessor's Obligations. To secure the indebtedness evidenced by the Notes, the Lessor will assign to the Indenture Trustee its right, title and interest to receive certain payments of Rent (not including, in any event, Excepted Payments), to the extent provided in the Indenture and may assign to the Indenture Trustee its right, title and interest in the Undivided Interest and the Real Property Interest as contemplated by Section 9(j). The Lessee hereby (a) consents to such assignment pursuant to the terms of the Indenture, (b) agrees to pay directly to the Indenture Trustee at the Indenture Trustee's Office (so long as the lien of the Indenture has not been satisfied and discharged and

the Lessor is obligated thereunder) all amounts of Rent (other than Excepted Payments) due or to become due to the Lessor that shall be required to be paid to the Indenture Trustee pursuant to the Indenture, (c) agrees that the right of the Indenture Trustee to any such payments shall be absolute and unconditional and shall not be affected by any circumstances whatsoever, including, without limitation, those circumstances set forth in Section 4 and (d) agrees that, to the extent provided in the Indenture and until the Indenture is discharged in accordance with its terms, the Indenture Trustee shall have all the rights of the Lessor hereunder with respect to Assigned Payments as if the Indenture Trustee had originally been named herein as the Lessor.

#### SECTION 12. Lease Renewal.

Subject to the notice requirements set forth in Section 13(a), at the end of the Basic Lease Term provided that no Default, Event of Default, Event of Loss or Deemed Loss Event shall have occurred and be continuing and the Notes shall have been paid in full, the Lessee shall have the right to renew the term of this Facility Lease for a period commencing January 15, 2015, and ending on the later of January 15, 2017 and the end of the Maximum Option Period (the Renewal Term), during which the Basic Rent payable shall be the rental provided in Section 3(a)(iii) and Section 21.

#### SECTION 13. Notices for Renewal or Purchase; Purchase Options.

(a) Notice; Determination of Values; Appraisal Procedure. Not later than three years nor earlier than five years prior to the expiration date of the Basic Lease Term, and not later than three years nor earlier than five years prior to the expiration date of the Renewal Term, as the case may be, the Lessee shall give to the Lessor written notice of its election either to (A) return the Undivided Interest and the Real Property Interest to the Lessor pursuant to Section 5, or (B) exercise the renewal option permitted by Section 12 (in the case of the notice delivered in respect of the

expiration date of the Basic Lease Term) or the purchase option permitted by Section 13(b). If the notice specified in clause (B) of the preceding sentence is given three years prior to the expiration of the Basic Lease Term, then not later than two years prior to the expiration date of the Basic Lease Term, the Lessee will give the Lessor written notice of its election either to exercise the renewal option permitted by Section 12 or the purchase option permitted by Section 13(b). Any such election shall be irrevocable as to the Lessee, but no such election shall be binding on the Lessor if, on the effective date thereof, a Default or an Event of Default shall have occurred and be continuing or an Event of Loss or a Deemed Loss Event shall have occurred. Promptly after giving notice, (i) in case the renewal option has been elected, the Maximum Option Period shall be determined by the Appraisal Procedure, or (ii) in case the purchase option permitted by Section 13(b) has been elected, the Lessee and the Owner Participant shall agree upon the Fair Market Sales Value of the Undivided Interest and the Real Property Interest, or, if within three months after the date of the Lessee's notice the Lessee and the Owner Participant shall be unable so to agree, such value shall be determined by the Appraisal Procedure.

(b) Purchase Option at Expiration of the Lease Term. Subject to the notice requirements set forth in Section 13(a), unless a Default or an Event of Default shall have occurred and be continuing or an Event of Loss or Deemed Loss Event shall have occurred, on the date of the expiration of the Basic Lease Term or the Renewal Term (if elected), the Lessee shall have the right to purchase the Undivided Interest and the Real Property Interest for a purchase price equal to the Fair Market Sales Value thereof.

(c) Special Purchase Option. Upon 30 days' prior written notice to the Lessor, unless a Default or an Event of Default shall have occurred or be continuing or an Event of Loss or Deemed Loss Event shall have occurred, if the Lessee shall determine that upon a refunding of the Initial Series Note (and the

Releveraging Note, if theretofore issued) such refunding would violate any limitation then imposed by the NMPSC, the Lessee shall have the right to purchase the Undivided Interest and the Real Property Interest for a purchase price equal to the greater of (i) the Fair Market Sales Value thereof and (ii) Casualty Value as of the Basic Rent Payment Date first preceding the date of such purchase (or as of the date of such purchase, if such date shall be a Basic Rent Payment Date) plus, if such date shall not be a Basic Rent Payment Date, a pro ration of Basic Rent to the date of purchase.

(d) **Purchase of the Undivided Interest; Payment, Etc.** If the Lessee shall have elected to purchase the Undivided Interest and the Real Property Interest pursuant to Section 13(b) or Section 13(c), payment by the Lessee of the purchase price for the Undivided Interest and the Real Property Interest shall be made in immediately available funds, whereupon the Lessor shall Transfer the Undivided Interest and the Real Property Interest to the Lessee.

#### SECTION 14. Termination for Obsolescence.

(a) **Termination Notice.** Notwithstanding any provision herein contained to the contrary, unless a Default or an Event of Default shall have occurred and be continuing or an Event of Loss or a Deemed Loss Event shall have occurred, the Lessee shall have the option (provided that the Lessee shall have delivered to the Lessor an Officers' Certificate to the effect that the Lessee's Board of Directors has adopted and there is in effect a resolution determining that Unit 1 is (A) uneconomic to the Lessee or (B) economically obsolete for any reason; and provided that the Lessee shall be disposing of all its other leased interests in Unit 1, on at least 360 days' prior written notice (a Termination Notice) to the Lessor, the Owner Participant and the Indenture Trustee (which notice shall be irrevocable)) to terminate this Facility Lease on any Basic Rent Payment Date after January 15, 1998, and prior to January 15, 2012 (the Termination Date). If the Lessee shall give the Lessor a Termination Notice, the Lessee shall, as agent for the Lessor, use its best efforts to obtain cash bids for the purchase of the

Undivided Interest and the Real Property Interest, together with the interest of the Lessor under the Assignment and Assumption. The Lessor shall also have the right to obtain such cash bids, either directly or through agents other than the Lessee. The Lessee shall certify to the Lessor within ten days after the Lessee's receipt of each bid (and, in any event, prior to the Termination Date) the amount and terms thereof and the name and address of the party (which shall not be the Lessee or any Affiliate of the Lessee) submitting such bid.

(b) Right of Lessor to Retain Undivided Interest upon Termination. The Lessor may elect to retain, rather than sell, the Undivided Interest and the Real Property Interest by giving notice to the Lessee and the Indenture Trustee prior to the Termination Date. It shall be a condition precedent to the Lessor's right to retain the Undivided Interest and the Real Property Interest that on or prior to the Termination Date the Lessor shall have paid (or made provision for payment) to the Indenture Trustee, the unpaid principal amount of all Notes Outstanding on such date and all premium, if any, and interest accrued and unpaid on the date of payment. If the Lessor elects to retain the Undivided Interest and the Real Property Interest pursuant to this Section 14(b), the Lessee shall pay to the Lessor on the Termination Date the Basic Rent and any other Rent due or accrued, as the case may be, to and including the Termination Date, together with an amount equal to the excess, if any, of the Termination Value as of the Termination Date over the highest bona fide offer received pursuant to Section 14(a).

(c) Events on the Termination Date. If the Lessor has not elected to retain the Undivided Interest and the Real Property Interest as provided in Section 14(b), on the Termination Date the Lessor shall (upon receipt of the sale price and all additional payments specified in the next sentence) Transfer the Undivided Interest and the Real Property Interest for cash to the bidder (which shall not be the Lessee or an Affiliate of the Lessee) that shall have submitted the

highest bid on or before the Termination Date. The total sale price realized at such sale shall be retained by the Lessor (subject, however, to the terms of the Indenture and the requirement that there shall have been paid, or provision for payment made, to the Indenture Trustee the unpaid principal amount of all Notes Outstanding on the Termination Date and all premium, if any, and interest accrued and unpaid on the date of payment) and, in addition, on the Termination Date the Lessee shall pay to the Lessor (A) the excess, if any, of the Termination Value as of the Termination Date over the net sale price of the Undivided Interest and the Real Property Interest and (B) any Basic Rent due or accrued, as the case may be, to and including the Termination Date and shall pay to the Person or Persons entitled thereto all Supplemental Rent (other than Termination Value). Upon compliance by the Lessee with the applicable provisions of this Section 14, the obligation of the Lessee to pay Basic Rent due hereunder for any period after the Termination Date shall cease and the Basic Lease Term shall end on the Termination Date; provided, however, that, in the event of termination of this Facility Lease pursuant to this Section 14, the obligations of the Lessee under the ANPP Participation Agreement (except as therein expressly provided) and the Assignment and Assumption shall continue in full force and effect and shall not be impaired by reason of any such termination. If, other than as a result of the Lessor's election to retain the Undivided Interest and the Real Property Interest as provided in Section 14(b), on or as of the Termination Date no such sale shall occur or the Lessee shall not have complied in full with this Section 14, this Facility Lease shall continue in full force and effect in accordance with its terms without prejudice to the Lessee's right to exercise its rights under this Section 14 thereafter, except that the Lessee shall not be entitled to deliver another Termination Notice during the 3-year period following such Termination Date. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise take any action in connection with any such sale other than, if the Lessor has not elected to retain the Undivided Interest and the

Real Property Interest, to Transfer the Undivided Interest and the Real Property Interest to the purchaser named in the highest bid certified by the Lessee to the Lessor or obtained by the Lessor, against receipt of the payments provided for herein.

(d) Early Termination Notice. In the event that the Lessee shall fail to exercise its renewal option or purchase option within the time limit provided by Section 13(a), the Lessor shall have the option, on any Basic Rent Payment Date thereafter, on at least 120 days prior written notice (an Early Termination Notice) to the Lessee and the Indenture Trustee, to terminate this Facility Lease on the Basic Rent Payment Date specified in such notice (the Early Termination Date). Any Early Termination Notice may be revoked by the Lessor at any time on or prior to the Early Termination Date.

(e) Events on the Early Termination Date. On the Early Termination Date the Lessor shall, at its option, (i) Transfer the Undivided Interest and the Real Property Interest to the bidder (other than the Lessee or any Affiliate of the Lessee) selected by the Lessor or (ii) retain the Undivided Interest and the Real Property Interest. It shall be a condition precedent to the Lessor's right to sell or retain the Undivided Interest and the Real Property Interest that on or prior to the Early Termination Date the Lessor shall have paid (or made provision for payment) to the Indenture Trustee on such date the unpaid principal amount of all Notes Outstanding on such date and all premium, if any, and interest accrued and unpaid on the date of payment. The total sale price realized at any such sale shall be retained by the Lessor and, in addition, on the Early Termination Date the Lessee shall pay to the Lessor any Basic Rent due or accrued, as the case may be, to and including the Early Termination Date, and shall pay to the Person or Persons entitled thereto all Supplemental Rent (other than Termination Value). Upon compliance by the Lessee with the applicable provisions of this Section 14, the obligation of the Lessee to pay Basic Rent due hereunder for any period after the Early Termination Date shall cease and the Lease Term shall

end on the Early Termination Date; provided, however, that in the event of the termination of this Facility Lease pursuant to this Section 14, the obligations of the Lessee under the ANPP Participation Agreement (except as therein expressly provided) and the Assignment and Assumption shall continue in full force and effect and shall not be impaired by reason of any such termination.

#### SECTION 15. Events of Default.

The term Event of Default, wherever used herein, shall mean any of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any Applicable Law or Governmental Action):

(i) the Lessee shall fail to make, or cause to be made, (x) payment of Casualty Value, Termination Value, Special Casualty Value or payment due pursuant to exercise of the Cure Option when due, (y) any payment of Basic Rent within 5 Business Days after the same shall become due or (z) any payment of Supplemental Rent (other than Casualty Value, Termination Value, Special Casualty Value or payment due pursuant to exercise of the Cure Option) within 20 days after the same shall become due or demanded, as the case may be; or

(ii) the Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it under Section 10(b)(3)(i), 10(b)(3)(ii), 10(b)(3)(iii) or 10(b)(3)(v) of the Participation Agreement or Section 7, 10 (other than failure of the Lessee to cause to be delivered the insurance broker's certificate described therein) or 11 of this Facility Lease; or



(iii) the remaining economic useful life of Unit 1, as determined under Section 8(g) (if required thereby to be so determined), shall be less than 5-1/2 years as of July 15, 2014, or less than 3-1/2 years as of the date six months prior to the end of the Renewal Term; or

(iv) the Lessee shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 10(b)(3)(viii) of the Participation Agreement and such failure shall continue for a period of 30 days after there shall have been given to the Lessee by the Lessor or the Owner Participant a notice specifying such failure and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(v) the Lessee shall fail to perform or observe any covenant, condition or agreement (other than those referred to in clauses (i) through (iv) above) to be performed or observed by it under this Facility Lease or any other Transaction Document, and such failure shall continue for a period of 30 days after there shall have been given to the Lessee by the Lessor or the Owner Participant a notice specifying such failure and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(vi) any representation or warranty made by the Lessee in this Facility Lease, any other Transaction Document (other than the Tax Indemnification Agreement) or any agreement, document or certificate delivered by the Lessee in connection herewith or therewith shall prove to have been incorrect in any material respect when any such representation or warranty was made or given and shall remain

material and materially incorrect at the time in question; or

(vii) the Lessee shall commence a voluntary case or other proceeding seeking 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 seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking of possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall take any corporate action to authorize any of the foregoing; or an involuntary case or other proceeding shall be commenced against the Lessee seeking liquidation, reorganization or other relief with respect to it or its 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, and such involuntary case or other proceeding shall remain undismitted or unstayed for a period of 60 consecutive days; or

(viii) final judgment for the payment of money in excess of \$1,000,000 shall be rendered against the Lessee and the Lessee shall not have discharged the same or provided for its discharge in accordance with its terms or bonded the same or procured a stay of execution thereof within 60 days from the entry thereof; or

(ix) (1) a default by the Lessee under the ANPP Participation Agreement in consequence of

which the Lessee's right to receive its Generation Entitlement Share in PVNGS is suspended by the other ANPP Participants, or (2) the giving by any ANPP Participant of a notice under Section 23.2 (or any comparable successor provision) of the ANPP Participation Agreement respecting a default thereunder by the Lessee and the lapse of 20 Business Days from the giving of such notice without the Lessee having cured such default; provided, however, that for purposes of this clause (2) if the Lessee shall have disputed the existence or nature of a default and such dispute shall have become the subject of an arbitration under Section 24 (or any comparable successor provision) of the ANPP Participation Agreement, such 20 Business Day period shall commence on the date of the final determination of the board of arbitrators under such Section 24; or

(x) (1) the Lessee shall fail to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any Debt (which term shall mean (A) indebtedness for borrowed money, (B) obligations as lessee under leases and (C) obligations under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clause (A) or (B) above, in each case if the principal amount (or equivalent) thereof is greater than \$20,000,000) of the Lessee, and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt, but only if the Lessee shall have received notice of such failure or a Responsible Officer of the Lessee shall have actual knowledge of such failure; or (2) any other default under any agreement

or instrument relating to any such Debt, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such Debt, but only if the Lessee shall have received notice of such default or a Responsible Officer of the Lessee shall have actual knowledge of such default.

#### SECTION 16. Remedies.

(a) Remedies. Upon the occurrence of any Event of Default and so long as the same shall be continuing, the Lessor may, at its option, declare this Facility Lease to be in default by written notice to such effect given to the Lessee, and may exercise one or more of the following remedies as the Lessor in its sole discretion shall elect:

(i) the Lessor may, by notice to the Lessee, rescind or terminate this Facility Lease;

(ii) the Lessor may (x) demand that the Lessee, and thereupon the Lessee shall, return possession of the Undivided Interest and the Real Property Interest promptly to the Lessor in the manner and condition required by, and otherwise in accordance with the provisions of, this Facility Lease as if the Undivided Interest and the Real Property Interest were being returned at the end of the Lease Term and the Lessor shall not be liable for the reimbursement of the Lessee for any costs and expenses incurred by the Lessee in connection therewith and (y) enter upon the PVNGS Site and take immediate possession of (to the exclusion of the Lessee) the Undivided Interest and the Real Property Interest, by summary proceedings or otherwise, all without

liability to the Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise;

(iii) the Lessor may sell the Undivided Interest and the Real Property Interest, or any part thereof, together with any interest of the Lessor under the Assignment and Assumption, at public or private sale, as the Lessor may determine, free and clear of any rights of the Lessee in the Undivided Interest and the Real Property Interest and without any duty to account to the Lessee with respect to such action or inaction or any proceeds with respect thereto (except to the extent required by clause (v) or (vi) below if the Lessor shall elect to exercise its rights thereunder), in which event the Lessee's obligation to pay Basic Rent hereunder for periods commencing after the date of such sale shall be terminated or proportionately reduced, as the case may be (except to the extent that Basic Rent is to be included in computations under clause (v) or (vi) below if the Lessor shall elect to exercise its rights thereunder);

(iv) the Lessor may hold, keep idle or lease to others all or any part of the Undivided Interest and the Real Property Interest, as the Lessor in its sole discretion may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect to such action or inaction, except that the Lessee's obligation to pay Basic Rent for periods commencing after the Lessee shall have been deprived of use of the Undivided Interest and the Real Property Interest pursuant to this clause (iv) shall be reduced by the net proceeds, if any, received by the Lessor from

leasing the Undivided Interest and the Real Property Interest to any Person other than the Lessee for the same periods or any portion thereof;

(v) except in the case of an Event of Default specified in clause (iii) of Section 15, the Lessor may, whether or not the Lessor shall have exercised or shall thereafter at any time exercise its rights under clause (i), (ii), (iii) or (iv) above, demand, by written notice to the Lessee specifying a payment date which shall be a Basic Rent Payment Date not earlier than 10 days after the date of such notice, that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the Basic Rent Payment Date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due after the Basic Rent Payment Date specified in such notice), any unpaid Rent due through the Basic Rent Payment Date specified in such notice plus whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the interest rate specified in Section 3(b)(iii) from the Basic Rent Payment Date specified in such notice to the date of actual payment) (and upon receipt of such payment the Lessor shall Transfer to the Lessee the Undivided Interest and the Real Property Interest):

(A) an amount equal to the excess, if any, of Casualty Value, computed as of the Basic Rent Payment Date specified in such notice, over the Fair Market Rental Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 1) until the end of the remaining useful life of Unit 1, after discounting

such Fair Market Rental Value semi-annually to present value as of the Basic Rent Payment Date specified in such notice at a rate of 12% per annum;

(B) an amount equal to the excess, if any, of such Casualty Value over the Fair Market Sales Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 1) as of the Basic Rent Payment Date specified in such notice; or

(C) an amount equal to the excess, if any, of (1) the present value as of the Basic Rent Payment Date specified in such notice of all installments of Basic Rent until the end of the Basic Lease Term or the Renewal Term, as the case may be, discounted semi-annually at a rate of 10% per annum, over (2) the present value as of such Basic Rent Payment Date of the Fair Market Rental Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 1) until the end of the Basic Lease Term or the Renewal Term, as the case may be, discounted semi-annually at a rate of 10% per annum;

(vi) if the Lessor shall have sold all the Undivided Interest and the Real Property Interest pursuant to clause (iii) above, the Lessor, in lieu of exercising its rights under clause (v) above with respect to the Undivided Interest and the Real Property Interest may, if it shall so elect, demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (in lieu of Basic Rent due for periods commencing after the next Basic Rent

Payment Date following the date of such sale), any unpaid Basic Rent due through such Basic Rent Payment Date, plus the amount of any deficiency between the Sale Proceeds and Casualty Value, computed as of such Basic Rent Payment Date, together with interest at the interest rate specified in Section 3(b)(iii) on the amount of such Rent and such deficiency from the date of such sale until the date of actual payment;

(vii) in the case of an Event of Default specified in clause (iii) of Section 15, the Lessor may demand, by written notice of the Lessee specifying a payment date which shall be the last Basic Rent Payment Date of the Lease Term, that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on such Basic Rent Payment Date, as liquidated damages for loss of a bargain and not as a penalty, any unpaid Rent due through such Basic Rent Payment Date plus an amount equal to the Fair Market Sales Value (without regard to the obligations of the Lessee under Section 10(b)(3)(xi) of the Participation Agreement) of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 1) determined as of such Basic Rent Payment Date (together with interest on such amount at the interest rate specified in Section 3(b)(iii) from such Basic Rent Payment Date specified in such notice to the date of actual payment) (and upon receipt of such payment the Lessor shall Transfer to the Lessee the Undivided Interest and the Real Property Interest); or

(viii) the Lessor may exercise any other right or remedy that may be available to it under any Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.



(b) No Release. No rescission or termination of this Facility Lease, in whole or in part, or repossession of the Undivided Interest or the Real Property Interest or exercise of any remedy under paragraph (a) of this Section 16 shall, except as specifically provided therein, relieve the Lessee of any of its liabilities and obligations hereunder. In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and other costs and expenses incurred by the Lessor or the Owner Participant by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto. At any sale of the Undivided Interest, the Real Property Interest or any part thereof pursuant to this Section 16, the Owner Participant, the Lessor or the Indenture Trustee may bid for and purchase such property.

— (c) Remedies Cumulative. No remedy under paragraph (a) of this Section 16 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy provided under such paragraph (a) or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any Default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default. The failure or delay of the Lessor in exercising any right granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein. To the extent permitted by Applicable Law, the Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Lessor to sell, lease or otherwise use the Undivided Interest or Unit 1 in mitigation of the Lessor's damages as set forth in paragraph (a) of this Section 16 or which may otherwise

limit or modify any of the Lessor's rights and remedies provided in this Section 16.

(d) Exercise of Other Rights or Remedies. In addition to all other rights and remedies provided in this Section 16, the Lessor may exercise any other right or remedy that may be available to it under Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

(e) Special Cure Right of Lessee. In the event a "Notice of Default" is given under Section 15 (iv), the Lessee may, on or prior to the occurrence of an Event of Default resulting therefrom, give written notice to the Lessor stating that the Lessee has elected to exercise the option (the Cure Option) provided in this Section 16(e), which election shall be irrevocable as to the Lessee. Promptly after the giving of such notice, the Lessee and the Owner Participant shall agree upon the Fair Market Sales Value of the Undivided Interest and the Real Property Interest or, if they shall be unable so to agree within one month after the date of the Lessee's notice, such value shall be determined by the Appraisal Procedure. On the Basic Rent Payment Date next following the date that such Fair Market Sales Value shall have been determined, the Lessee shall pay to the Lessor all Rent due on such Basic Rent Payment Date, plus an amount equal to the excess of (i) the greater of such Fair Market Sales Value and the Casualty Value determined as of such Basic Rent Payment Date over (ii) the unpaid principal amount of the Notes Outstanding on such date after giving effect to the payment, if any, of the principal installment due and payable on such date. Upon compliance in full by the Lessee with the foregoing provisions of this paragraph (e) and assumption by the Lessee of all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall not have assumed all the obligations and liabilities of the Owner Trustee under

the Indenture and the Notes in accordance with Section 3.9(b) of the Indenture, but shall have paid all amounts required by this paragraph (e), the Lessor shall retain the Undivided Interest and the Real Property Interest subject to the terms of this Facility Lease and Section 7(b)(4) of the Participation Agreement; provided, however, that the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount on each Basic Rent Payment Date equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding and this Facility Lease shall become a security agreement for all purposes of Applicable Law. The Lessee agrees to use its best efforts to comply with the conditions respecting its assumption set forth in Section 3.9(b) of the Indenture and, failing such assumption, agrees to accept a transfer of the Owner Participant's right, title and interest in the Trust Estate pursuant to Section 7(b)(4) of the Participation Agreement.

#### SECTION 17. Notices.

All communications and notices provided for in this Facility Lease shall be in writing and shall be given in person or by means of telex, telecopy, or other wire transmission, or mailed by registered or certified mail, addressed as provided in the Participation Agreement. All such communications and notices given in such manner shall be effective on the date of receipt of such communication or notice.

#### SECTION 18. Successors and Assigns.

This Facility Lease, including all agreements, covenants, indemnities, representations and warranties, shall be binding upon and inure to the benefit of the Lessor and its successors and permitted assigns, and the Lessee and its successors and, to the extent permitted hereby, assigns.

#### SECTION 19. Right to Perform for Lessee.

If the Lessee shall fail to make any payment of Rent to be made by it, or shall fail to perform or comply with any of its other agreements contained herein, or fail to make any payment to be made by it under any ANPP Project Agreement, or shall fail to perform or comply with any of its other agreements contained in any ANPP Project Agreement, either the Lessor or the Owner Participant may, but shall not be obligated to, tender such payment, or effect such performance or compliance, and the amount of such payment and the amount of all costs and expenses (including, without limitation, attorneys' and other professionals' fees and expenses) of the Lessor or the Owner Participant, as the case may be, 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 Penalty Rate, shall be deemed Supplemental Rent, payable by the Lessee upon demand. In the event that the Lessor or the Owner Participant shall cure any default by the Lessee under the ANPP Participation Agreement, then (so long as an Event of Default has occurred and is continuing) the Lessor, together with each other Person contributing to such cure, shall be entitled (to the full extent enforceable in accordance with Applicable Law) to receive the Generation Entitlement Share of the Lessee under the ANPP Participation Agreement (not limited to Unit 1), with each contributor to receive a percentage of such Generation Entitlement Share equal to the percentage of the cure contributed thereby.

#### SECTION 20. Additional Covenants.

The Lessee agrees to comply with and to pay, as Supplemental Rent, all amounts payable by it under the provisions of Section 13 of the Participation Agreement and under the provisions of the Tax Indemnification Agreement, which provisions are incorporated herein by this reference as fully as if set forth in full at this place. The Lessee agrees to comply with its covenants and agreements set forth in Sections 10(b), 14 and 16 of the Participation Agreement and

Articles III, IV, V and VI of the Assignment and Assumption which covenants and agreements are incorporated herein by this reference as fully as if set forth in full at this place.

**SECTION 21. Lease of Real Property Interest.**

Pursuant to the Deed and the Assignment of Beneficial Interest, the Lessee has sold to the Lessor the Real Property Interest. The Lessor hereby grants to the Lessee a leasehold interest in the Real Property Interest, such leasehold to be coterminous with the lease of the Undivided Interest hereunder and to be at a rent per annum equal to ~~6.21%~~ of the Real Estate Investment payable by the Lessee to the Lessor in arrears in equal semiannual installments on each Basic Rent Payment Date during the Lease Term.

12.42

**SECTION 22. Amendments and Miscellaneous.**

(a) **Amendments in Writing.** The terms of this Facility Lease may not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

(b) **Survival.** (1) All indemnities, representations and warranties contained in this Facility Lease and the other Transaction Documents and the Financing Documents and in any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall survive, and continue in effect following, the execution and delivery of this Facility Lease and the expiration or other termination of this Facility Lease.

(2) The obligations of the Lessee to pay Supplemental Rent and the obligations of the Lessee under Sections 5, 16, 19 and 20 hereof shall survive the expiration or termination of this Facility Lease. The extension of any applicable statute of limitations by the Owner Trustee, the Indenture Trustee, the Lessee, the Owner Participant, the Loan Participant or any

Indemnatee shall not affect such survival. The obligations of the Lessee under Section 20 are expressly made for the benefit of, and shall be enforceable by, any Indemnatee, separately or together, without declaring this Facility Lease to be in default and notwithstanding any assignment by the Lessor of this Facility Lease or any of its rights thereunder or any disposition of all or any part of any interest in the Undivided Interest, the Real Property Interest, Unit 1 or any other property referred to in this Facility Lease or in this Facility Lease or any other Transaction Document or Financing Document. All payments required to be made pursuant to Section 20 shall be made directly to, or as otherwise requested by, the Indemnatee entitled thereto upon written demand by such Indemnatee.

(c) Severability of Provisions. Any provision of this Facility Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(d) True Lease. This Facility Lease shall constitute an agreement of lease and nothing herein or therein shall be construed as conveying to the Lessee any right, title or interest in or to the Undivided Interest or the Real Property Interest, except as lessee only.

(e) Original Lease. The single executed original of this Facility Lease marked "THIS COUNTERPART IS THE ORIGINAL COUNTERPART" and containing the receipt of the Indenture Trustee thereon shall be the "Original" of this Facility Lease. To the extent 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 other than the "Original".

(f) **Governing Law.** This Facility Lease shall be governed by and construed in accordance with the law of the State of New York, except to the extent that pursuant to the law of the State of Arizona the law of the State of Arizona is mandatorily applicable thereto.

(g) **Headings.** The division of this Facility Lease into sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Facility Lease.

(h) **Concerning the Owner Trustee.** FNB is entering into this Facility Lease solely as Owner Trustee under the Trust Agreement and not in its individual capacity. Anything herein to the contrary notwithstanding, all and each of the representations, warranties, undertakings and agreements herein made on the part of the Owner Trustee are made and intended not as personal representations, warranties, undertakings and agreements by or for the purpose or with the intention of binding FNB personally but are made and intended for the purpose of binding only the Trust Estate, and this Facility Lease is executed and delivered by the Owner Trustee solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed hereunder by or shall at any time be enforceable against FNB or any successor in trust or the Owner Participant on account of any representation, warranty, undertaking or agreement hereunder of the Owner Trustee, either expressed or implied, all such personal liability, if any, being expressly waived by the Lessee, except that the Lessee or any Person claiming by, through or under it, making claim hereunder, may look to the Trust Estate for satisfaction of the same and the Owner Trustee or its successor in trust, as applicable, shall be

personally liable for its own gross negligence or willful misconduct. If a successor owner trustee is appointed in accordance with the terms of the Trust Agreement, such successor owner trustee shall, without any further act, succeed to all the rights, duties, immunities and obligations of the Owner Trustee hereunder and the predecessor owner trustee shall be released from all further duties and obligations hereunder.

(i) Disclosure. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is the Owner Participant described in Schedule 1 hereto. The address of the beneficiary is also therein described. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110, Attention of Corporate Trust Division.

(j) Counterpart Execution. This Facility Lease may be executed in any number of counterparts and by each of the parties hereto or thereto on separate counterparts, all such counterparts together constituting but one and the same instrument.



IN WITNESS WHEREOF, each of the parties hereto has caused this Facility Lease to be duly executed in New York, New York by an officer thereunto duly authorized.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of December 16, 1985, with MFS Leasing Corp.

By 

Vice President

PUBLIC SERVICE COMPANY OF NEW  
MEXICO,

By 

Senior Vice President and  
Chief Financial Officer

State of New York       )  
                                  ) ss:  
County of New York     )

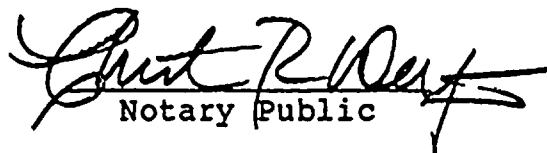
The foregoing instrument was acknowledged before me this 31st day of December, 1985, by A.J. ROBISON, the Senior Vice President and Chief Financial Officer of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, on behalf of the corporation.

  
Notary Public

State of New York       )  
                                  ) ss:  
County of New York     )

CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 4514814  
Qualified in New York  
Commission Expires 12/31/88

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by CLARK M. WHITCOMB, a Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association as trustee under that certain Trust Agreement dated as of December 16, 1985.

  
Notary Public

CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 4514814  
Qualified in New York  
Commission Expires 12/31/88

6091.MFS.2898.47A:2



SCHEDULE 1  
to  
LEASE

OWNER PARTICIPANT INFORMATION

1. The Owner Participant is MFS Leasing Corp., a Delaware corporation, whose address is Suite 3030, One Mellon Bank Center, Pittsburgh, Pennsylvania. 15258

2. The daily equivalent rate is .02383% of Facility Cost.

3. The assumed interest rate on the Notes utilized in determining the limitations set forth in Section 3(d) is 11.70%.

6091.MFS.2898.47A:2



SCHEDULE 2  
TO LEASE

BASIC RENT PERCENTAGES

On each Basic Rent Payment Date the percentage of Facility Cost is 4.28951%.



# SCHEDULE 3

to  
LEASE

## SCHEDULE OF CASUALTY VALUES

Basic Rent Payment Date	Percentage of Facility Cost	Basic Rent Payment Date	Percentage of Facility Cost
1/15/1986	103.6957918		
7/15/1986	103.5957813	7/15/2010	47.5548698
1/15/1987	105.4024872	7/15/2010	44.9575365
7/15/1987	106.9086982	1/15/2011	42.3037502
1/15/1988	108.2090007	7/15/2011	39.6125753
7/15/1988	109.3377982	1/15/2012	36.9097144
1/15/1989	110.2970722	7/15/2012	34.1506417
7/15/1989	111.1028620	1/15/2013	31.3840584
1/15/1990	111.7267835	7/15/2013	28.5638000
7/15/1990	112.1801653	1/15/2014	25.7413531
1/15/1991	112.4342070	7/15/2014	22.8685614
7/15/1991	112.5068595	1/15/2015	20.0000000
1/15/1992	112.3879209		
7/15/1992	112.0871743		
1/15/1993	111.5791527		
7/15/1993	110.8705008		
1/15/1994	109.9354567		
7/15/1994	108.7791226		
1/15/1995	107.4065319		
7/15/1995	105.9494094		
1/15/1996	104.4230736		
7/15/1996	102.8536827		
1/15/1997	101.3033397		
7/15/1997	99.7149363		
1/15/1998	98.1020627		
7/15/1998	96.4417574		
1/15/1999	94.7565806		
7/15/1999	93.0223336		
1/15/2000	91.2628025		
7/15/2000	89.4525875		
1/15/2001	87.6167782		
7/15/2001	85.7287215		
1/15/2002	83.8148872		
7/15/2002	81.8473143		
1/15/2003	79.8539342		
7/15/2003	77.8054227		
1/15/2004	75.7312595		
7/15/2004	73.6007005		
1/15/2005	71.4448675		
7/15/2005	69.2315380		
1/15/2006	66.9935766		
7/15/2006	64.6972236		
1/15/2007	62.3771938		
7/15/2007	59.9981313		
1/15/2008	57.5967169		
7/15/2008	55.1359387		
1/15/2009	52.6545689		
7/15/2009	50.1138799		





SCHEDULE 4

to  
LEASE

SCHEDULE OF SPECIAL CASUALTY VALUES

<u>Payment Date</u>	<u>Percentage of Facility Cost</u>
12/30/1985	101.6857860
1/30/1986	102.4200123
2/30/1986	103.5168515
3/30/1986	104.5480459
4/30/1986	105.5582211
5/30/1986	106.5726787
6/30/1986	107.5659382
7/30/1986	104.2711216
8/30/1986	105.2676247
9/30/1986	106.2427914
10/30/1986	107.2219197
11/30/1986	108.2050519
12/30/1986	109.1667048
1/30/1987	105.8398703
2/30/1987	106.8039572
3/30/1987	107.7605984
4/30/1987	108.6995882
5/30/1987	109.6422090
6/30/1987	110.5670285
7/30/1987	107.2028902
8/30/1987	108.1292158
9/30/1987	109.0376247
10/30/1987	109.9493963
11/30/1987	110.8645665
12/30/1987	111.7617008
1/30/1988	108.3695008
2/30/1988	109.2674032
3/30/1988	110.1590749
4/30/1988	111.0366057
5/30/1988	111.9172306
6/30/1988	112.7835964
7/30/1988	109.3602149
8/30/1988	110.2265381
9/30/1988	111.0785138
10/30/1988	111.9333748
11/30/1988	112.7911519
12/30/1988	113.6344902
1/30/1989	110.1877467
2/30/1989	111.0303907
3/30/1989	111.8681605
4/30/1989	112.6916543
5/30/1989	113.5177965
6/30/1989	114.3295384
7/30/1989	110.8507685
8/30/1989	111.6609729
9/30/1989	112.4566773
10/30/1989	113.2548036

11/30/1989	114.3553777
12/30/1989	114.3413489
1/30/1990	111.3364359
2/30/1990	112.1201437
3/30/1990	112.8986295
4/30/1990	113.6626897
5/30/1990	114.4289076
6/30/1990	115.1505687
7/30/1990	111.6408775
8/30/1990	112.3893578
9/30/1990	113.1231692
10/30/1990	113.8588925
11/30/1990	114.5965479
12/30/1990	115.3174189
1/30/1991	111.7505235
2/30/1991	112.4694061
3/30/1991	113.1826833
4/30/1991	113.8832705
5/30/1991	114.5854955
6/30/1991	115.2749124
7/30/1991	111.6720940
8/30/1991	112.3566059
9/30/1991	113.0282054
10/30/1991	113.7012178
11/30/1991	114.3756584
12/30/1991	115.0370789
1/30/1992	111.4058483
2/30/1992	112.0615551
3/30/1992	112.7121658
4/30/1992	113.3499996
5/30/1992	113.9889745
6/30/1992	114.6150480
7/30/1992	110.9479706
8/30/1992	111.5673538
9/30/1992	112.1737195
10/30/1992	112.7809834
11/30/1992	113.3891549
12/30/1992	113.9841891
1/30/1993	110.2856126
2/30/1993	110.8730623
3/30/1993	111.4550590
4/30/1993	112.0241848
5/30/1993	112.5939084
6/30/1993	113.1506299
7/30/1993	109.4131972
8/30/1993	109.9612727
9/30/1993	110.4962171
10/30/1993	111.0314963
11/30/1993	111.5621139
12/30/1993	112.0894672
1/30/1994	108.3171586
2/30/1994	108.8298780
3/30/1994	109.3367547
4/30/1994	109.8306592
5/30/1994	110.3245670
6/30/1994	110.8181570
7/30/1994	107.0166307
8/30/1994	107.4997077
9/30/1994	107.7827846
10/30/1994	108.4658615

11/30/1994	108.7489335
12/30/1994	109.4320154
1/30/1995	105.6197097
2/30/1995	106.0917742
3/30/1995	106.5638327
4/30/1995	107.0359031
5/30/1995	107.5079676
6/30/1995	107.9800321
7/30/1995	104.1564349
8/30/1995	104.6167638
9/30/1995	105.0774928
10/30/1995	105.5380217
11/30/1995	105.9985506
12/30/1995	106.4590795
1/30/1996	102.6236546
2/30/1996	103.0721000
3/30/1996	103.5205454
4/30/1996	103.9689909
5/30/1996	104.4174363
6/30/1996	104.8658817
7/30/1996	101.0180672
8/30/1996	101.4538552
9/30/1996	101.8896431
10/30/1996	102.3254311
11/30/1996	102.7612191
12/30/1996	103.2020316
1/30/1997	99.3443725
2/30/1997	99.7727770
3/30/1997	100.2011816
4/30/1997	100.6299594
5/30/1997	101.0587411
6/30/1997	101.4945776
7/30/1997	97.6292046
8/30/1997	98.0496061
9/30/1997	98.4705503
10/30/1997	98.8915003
11/30/1997	99.3124562
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10/30/1999	91.4817693

11/30/1999	91.3714727
12/30/1999	92.2689921
1/30/2000	98.3645375
2/30/2000	88.7460600
3/30/2000	89.1275825
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5/30/2003	76.8987781
6/30/2003	77.2359817
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4/30/2004	71.8049107
5/30/2004	72.1125513
6/30/2004	72.4302741
7/30/2004	68.4416046
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1/30/2009	43.4482183
2/30/2009	43.6379901
3/30/2009	43.8277618
4/30/2009	44.0192636
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11/30/2009	41.0148233
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2/30/2010	37.2466730
3/30/2010	37.4092504
4/30/2010	37.5739010
5/30/2010	37.7385738
6/30/2010	37.9169349
7/30/2010	33.7817799
8/30/2010	33.9289392
9/30/2010	34.0786647
10/30/2010	34.2284176
11/30/2010	34.3781983
12/30/2010	34.5416729
1/30/2011	30.3922892
2/30/2011	30.5262604
3/30/2011	30.6602316
4/30/2011	30.7966840
5/30/2011	30.9331629
6/30/2011	31.0840462
7/30/2011	26.9198583
8/30/2011	27.0376110
9/30/2011	27.1583859
10/30/2011	27.2791931
11/30/2011	27.4000330
12/30/2011	27.5352836
1/30/2012	23.3561276
2/30/2012	23.4600065
3/30/2012	23.5638854
4/30/2012	23.6707277
5/30/2012	23.7776018
6/30/2012	23.8996342
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12/30/2012	20.1685827
1/30/2013	15.9581069
2/30/2013	16.0303290
3/30/2013	16.1025511
4/30/2013	16.1783041
5/30/2013	16.2540949
6/30/2013	16.3458380
7/30/2013	12.1189786
8/30/2013	12.1732530
9/30/2013	12.2317125
10/30/2013	12.2902166
11/30/2013	12.3487660
12/30/2013	12.4232753
1/30/2014	8.1798504
2/30/2014	8.2187687
3/30/2014	8.2576869
4/30/2014	8.3008010
5/30/2014	8.3439600
6/30/2014	8.4039072
7/30/2014	4.1432461
8/30/2014	4.1632832
9/30/2014	4.1882365
10/30/2014	4.2132425
11/30/2014	4.2383016
12/30/2014	4.2801572
1/30/2015	2.641863

**SCHEDULE 5  
to  
LEASE**

**SCHEDULE OF TERMINATION VALUES**

<b>Basic Rent Payment Date</b>	<b>Percentage of Facility Cost</b>	<b>Basic Rent Payment Date</b>	<b>Percentage of Facility Cost</b>
7/15/1986	103.6957818	7/15/2010	47.5548499
1/15/1987	105.4024872	7/15/2010	44.9379388
7/15/1987	106.9086982	1/15/2011	42.3037502
1/15/1988	108.2090007	7/15/2011	39.6126763
7/15/1988	109.3377982	1/15/2012	36.9997144
1/15/1989	110.2970722	7/15/2012	34.3506417
7/15/1989	111.1028620	1/15/2013	31.3840584
1/15/1990	111.7267835	7/15/2013	29.5638000
7/15/1990	112.1801653	1/15/2014	25.7413531
1/15/1991	112.4342070	7/15/2014	22.8685614
7/15/1991	112.5068595	1/15/2015	20.0600000
1/15/1992	112.3879209		
7/15/1992	112.0871743		
1/15/1993	111.5791527		
7/15/1993	110.8705008		
1/15/1994	109.9354567		
7/15/1994	108.7791226		
1/15/1995	107.4065319		
7/15/1995	105.9494094		
1/15/1996	104.4230736		
7/15/1996	102.8536827		
1/15/1997	101.3033397		
7/15/1997	99.7149363		
1/15/1998	98.1020627		
7/15/1998	96.4417574		
1/15/1999	94.7565806		
7/15/1999	93.0223336		
1/15/2000	91.2628025		
7/15/2000	89.4525875		
1/15/2001	87.6167782		
7/15/2001	85.7287215		
1/15/2002	83.8148872		
7/15/2002	81.8473143		
1/15/2003	79.8539342		
7/15/2003	77.8054227		
1/15/2004	75.7312595		
7/15/2004	73.6007005		
1/15/2005	71.4448675		
7/15/2005	69.2315380		
1/15/2006	66.9935766		
7/15/2006	64.6972236		
1/15/2007	62.3771938		
7/15/2007	59.9981313		
1/15/2008	57.5967169		
7/15/2008	55.1359387		
1/15/2009	52.6545689		
7/15/2009	50.1138799		





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**TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND  
ASSIGNMENT OF RENTS**

Dated as of December 16, 1985

between

**THE FIRST NATIONAL BANK OF BOSTON, not  
in its individual capacity, but solely  
as Owner Trustee under a Trust  
Agreement dated as of December 16,  
1985, with MFS LEASING CORP.**

and

**CHEMICAL BANK,  
as Indenture Trustee**

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**Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities**

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TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS dated as of December 16, 1985, between THE FIRST NATIONAL BANK OF BOSTON, a national banking association (FNB), not in its individual capacity, but solely as trustee (the Owner Trustee) under a Trust Agreement dated as of December 16, 1985 between FNB, whose address is 100 Federal Street, Boston, Massachusetts 02110, with MFS Leasing Corp., and CHEMICAL BANK, a New York banking corporation (the Indenture Trustee), whose address is 55 Water Street, New York, New York 10041.

W I T N E S S E T H:

WHEREAS, the Owner Trustee has entered into a Participation Agreement, dated as of December 16, 1985 among the Owner Participant, First PV Funding Corporation, a Delaware corporation, Public Service Company of New Mexico, a New Mexico corporation, and the Indenture Trustee;

WHEREAS, the Owner Trustee, acting on behalf of the Owner Participant, pursuant to the Trust Agreement and the Participation Agreement, intends to purchase the Undivided Interest and the Real Property Interest from Public Service Company of New Mexico and lease the Undivided Interest and the Real Property Interest to Public Service Company of New Mexico pursuant to the Facility Lease;

WHEREAS, in order to finance a portion of the Purchase Price of the Undivided Interest, the Owner Trustee desires to issue its promissory note hereunder with such promissory note to be substantially in the form of Exhibit A hereto;

WHEREAS, in the circumstances contemplated by Sections 2(c) and 2(d) of the Participation Agreement, the Owner Trustee may desire to finance a greater portion of the Purchase Price of the Undivided Interest than the portion financed from the proceeds of the Initial Series Note (but in no event in an amount in excess of 80% of said Purchase Price) and in connection with such releveraging to issue its promissory note (in

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connection with Section 2(c) of the Participation Agreement) or to increase the principal amount of the Fixed Rate Note otherwise issuable in connection with a refunding of the Initial Series Note (and the Releveraging Note if theretofore issued);

WHEREAS, in order to finance the Supplemental Financing Amount of Capital Improvements and to refund notes of any series previously issued, the Owner Trustee may desire to issue additional promissory notes hereunder (together with the Releveraging Note and the Fixed Rate Note, the Additional Notes) secured on a pari passu basis with other Notes Outstanding from time to time;

WHEREAS, in order to secure the obligations referred to herein, the Owner Trustee desires to grant to the Indenture Trustee the security interest herein provided and the parties hereto desire that this Indenture be regarded as a "security agreement" and as a "financing statement" for such security agreement under the Uniform Commercial Code;

NOW, THEREFORE, in consideration of the premises, of the acceptance by the Indenture Trustee of the trusts hereby created and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### CONSTRUCTION, GOVERNING LAW, INTERPRETATION AND DEFINITIONS

#### SECTION 1.1. Governing Law.

This Indenture (i) is being executed and delivered in the State of New York, (ii) shall be deemed to be a contract made in such State and (iii) for all purposes shall be construed in accordance with and governed by the laws of the State of New York, except to

the extent to which the laws of the State of Arizona are mandatorily applicable hereto.

SECTION 1.2. Headings and Table of Contents.

The division of this Indenture into articles and sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Indenture.

SECTION 1.3. Definitions; Construction of References.

In this Indenture, unless the context otherwise requires:

(a) the term this Indenture means this instrument together with all exhibits, appendices and schedules hereto as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto pursuant to the provisions hereof;

(b) all references in this instrument to designated Articles, Sections and other subdivisions are to designated Articles, Sections and other subdivisions of this instrument unless otherwise indicated;

(c) all accounting terms not otherwise defined herein shall have the meanings assigned to them in accordance with generally accepted accounting principles; and

(d) capitalized terms used herein which are not otherwise defined herein shall have the meanings set forth in Appendix A hereto, and the rules of construction set forth in Appendix A hereto shall be applicable hereto.



#### SECTION 1.4. Disclosure of Beneficiaries.

Pursuant to Arizona Revised Statutes Section 33-401, (i) the beneficiary of the Trust Agreement is MFS Leasing Corp., a Delaware corporation, whose address is Suite 3030, One Mellon Bank Center, Pittsburgh, Pennsylvania and (ii) the beneficiary if this Indenture is the Holder of the Notes, First PV Funding Corporation whose address is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 and, by pledge and assignment, Chemical Bank, as trustee under the Collateral Trust Indenture, whose address is 55 Water Street, New York, New York 10041: Attention of Corporate Trustee Administration. Copies of the Trust Agreement and this Indenture are available for inspection at the Indenture Trustee's office.

### ARTICLE II

#### SECURITY

#### SECTION 2.1. Grant of Security Interest; Mortgage.

As security for the due and punctual payment of the principal of and premium, if any, and interest on the Notes according to their respective terms and effect and the performance and observance by the Owner Trustee of all the covenants and agreements made by it or on its behalf in the Notes, the Participation Agreement and this Indenture, the Owner Trustee does by its execution and delivery hereof hereby grant a security interest in and grant, bargain, convey, warrant, assign, transfer, mortgage, pledge and set over unto the Indenture Trustee, and to its successors and assigns in trust, the following (the Lease Indenture Estate):

(1) all right, title and interest of the Owner Trustee in, to and under the Facility Lease to the extent, and only to the extent, constituting Rent (including, but without

constituting Rent (including, but without limitation, Basic Rent, payments of Casualty Value, Termination Value and Special Casualty Value, and payments under and pursuant to Sections 13(c) and 16 of the Facility Lease) (the Assigned Payments), together with all rights, powers and remedies on the part of the Owner Trustee arising under the Facility Lease to demand, collect or receive the Assigned Payments;

(2) all moneys and securities deposited or required to be deposited with the Indenture Trustee pursuant to any term of this Indenture and held or required to be held by the Indenture Trustee hereunder;

(3) all profits, revenues and other income of all property from time to time subjected to the lien of this Indenture, and all right, title and interest of every nature whatsoever of the Owner Trustee in and to the same and every part thereof;

(4) all right, title and interest of the Owner Trustee in and to any right to restitution from the Lessee in respect of any determination of invalidity of the Facility Lease; and

(5) all proceeds of the foregoing;

but excluding, however, from the Lease Indenture Estate any and all Excepted Payments; and subject, however, to (i) the terms and provisions of this Indenture and (ii) the rights of the Lessee under the Facility Lease.

To the extent that any portion of the Lease Indenture Estate constitutes fixtures or real property, this Indenture constitutes a realty mortgage and an assignment of rents with respect to all such items of real property and in addition to all other rights or remedies set forth in this Indenture, or otherwise available under Applicable Law, the Indenture Trustee shall have all of the rights, remedies and benefits of a

mortgagee of real property under Applicable Law, including, without limitation, the rights and remedies pursuant to Arizona Revised Statutes § 33-702.B and Owner Trustee shall be deemed a mortgagor with respect to such items.

TO HAVE AND TO HOLD all the aforesaid properties, rights and interests unto the Indenture Trustee, its successors and assigns forever, but in trust, nevertheless, for the use and purposes and with the power and authority and subject to the terms and conditions mentioned and set forth in this Indenture.

UPON CONDITION that, unless and until an Indenture Event of Default shall have occurred and be continuing, the Owner Trustee shall be permitted, to the exclusion of the Indenture Trustee, to possess and use the Lease Indenture Estate and exercise all rights with respect thereto and, without limitation of the foregoing, the Owner Trustee may exercise all of its rights under the Facility Lease to the same extent as if its right, title and interest therein had not been assigned to the Indenture Trustee to the extent set forth above, except that the Indenture Trustee shall receive all payments of Assigned Payments and all moneys and securities required to be held by or deposited with the Indenture Trustee hereunder.

It is expressly agreed that, anything herein contained to the contrary notwithstanding, the Owner Trustee shall remain obligated to the Lessee under the Facility Lease to perform all of the Owner Trustee's obligations thereunder in accordance with and pursuant to the terms and provisions thereof, and the Indenture Trustee shall not be required or obligated in any manner, except as expressly provided herein, to perform or fulfill any obligations of the Owner Trustee under the Facility Lease or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to 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 Trustee hereby warrants and represents that it has not assigned or pledged any of its right, title or interest in and to the Lease Indenture Estate to anyone other than the Indenture Trustee.

#### SECTION 2.2. Payments Under the Facility Lease.

The Facility Lease provides that (i) all payments constituting Assigned Payments shall be made to the Indenture Trustee at the Indenture Trustee's Office, (ii) all other payments other than Excepted Payments shall be made to the Lessor at such address as the Lessor may direct by notice in writing to the Lessee, and (iii) all Excepted Payments shall be made to the Person entitled to receive such payments. The Owner Trustee agrees that, so long as any Notes shall be Outstanding hereunder, all payments described in clause (i) above shall be directed to be made to the Indenture Trustee or in accordance with the Indenture Trustee's instruction and that if it should receive any such payments or any proceeds for or with respect to the Lease Indenture Estate or otherwise constituting part of the Lease Indenture Estate, it will promptly forward such payments to the Indenture Trustee or in accordance with the Indenture Trustee's instructions. The Indenture Trustee agrees to apply payments from time to time received by it (from the Lessee, the Owner Trustee or otherwise) with respect to the Lease Indenture Estate in the manner provided in Section 3.11 and Article V hereof.

#### SECTION 2.3. Release of Lien on Lease Indenture Estate.

(a) Upon receiving evidence satisfactory to the Indenture Trustee that (i) it has received, or provision has been made in accordance with paragraph (c) hereof for, full payment of all principal of and premium, if any, and interest on the Notes and any other sums payable to the Indenture Trustee and the Holders of the Notes under this Indenture or the Facility Lease, and (ii) all Trustee's Expenses shall have been paid in full

or provision satisfactory to the Indenture Trustee shall have been made for such payment,

(A) the security interest and all other estate and rights granted by this Indenture shall cease and become null and void and all of the property, rights and interests included in the Lease Indenture Estate shall revert to and revest in the Owner Trustee without any other act or formality whatsoever, and

(B) the Indenture Trustee shall, at the request of the Owner Trustee, execute and deliver to the Owner Trustee such termination statements, releases or other instruments presented to the Indenture Trustee by or at the direction of the Owner Trustee as shall be requisite to evidence the satisfaction and discharge of this Indenture and the lien hereby created with respect to the Lease Indenture Estate, to release or reconvey to the Owner Trustee or as directed by the Owner Trustee all the Lease Indenture Estate, freed and discharged from the provisions herein contained with respect thereto, and to release the Owner Trustee from its covenants herein contained.

(b) Upon receipt by the Indenture Trustee of the Assumption Agreement and other documents and opinions described in Section 3.9(b) hereof, (i) the security interest and all other estate and rights granted by this Indenture by or on behalf of the Owner Trustee shall cease and become null and void and all of the property, rights and interests included in the Lease Indenture Estate shall revert to and revest in the Owner Trustee without any other act or formality whatsoever and (ii) the Indenture Trustee shall, at the request of the Owner Trustee, execute and deliver to the Owner Trustee such termination statements, releases or other instruments presented to the Indenture Trustee by or at the direction of the Owner Trustee as shall be requisite to evidence the satisfaction and discharge of this Indenture as to the Owner Trustee and the lien hereby created with respect to the Lease Indenture Estate, to release or reconvey to the Owner Trustee or as directed by the Owner Trustee all the Lease Indenture Estate,

freed and discharged from the provisions herein contained with respect thereto, and to release the Owner Trustee from its covenants herein contained.

(c) Any Note shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in this Section 2.3(c) if (i) there shall have been deposited with the Indenture Trustee either moneys in an amount which shall be sufficient, or direct obligations of or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America or certificates of an ownership interest in the principal of or interest on obligations of or guaranteed as to principal and interest by the United States of America (Federal Securities), in each case which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys in an amount which shall be sufficient, together with the moneys, if any, deposited with or held by the Indenture Trustee at the same time (such sufficiency to be established by the delivery to the Indenture Trustee of a certificate of an independent public accountant), to pay when due the principal of and premium, if any, and interest due and to become due on said Note on and prior to the redemption date or maturity date thereof, as the case may be, and (ii) in the event said Note does not mature or is not to be redeemed within the next 45 days, the Indenture Trustee shall have been given irrevocable instructions to give, as soon as practicable, a notice to the registered Holder of such Note that the deposit required by subclause (i) above has been made with the Indenture Trustee and that said Note is deemed to have been paid in accordance with this Section 2.3(c) and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of and premium, if any, and interest on said Note. Neither the Federal Securities nor moneys deposited with the Indenture Trustee pursuant to this Section 2.3(c) or principal or interest payments on any such Federal Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment

of the principal of and premium, if any, and interest on said Note; provided, however, that any cash received from such principal or interest payments on such Federal Securities deposited with the Indenture Trustee, shall be reinvested pursuant to Section 8.8 hereof in Federal Securities. At such time as any Note shall be deemed paid as aforesaid, it shall no longer be secured by or entitled to the benefits of the Lease Indenture Estate or this Indenture, except that such Note shall be entitled to the benefits of the portions of the Lease Indenture Estate described in Granting Clauses (2), (3) and (5), to the extent such portions relate to such moneys or Federal Securities deposited with the Indenture Trustee.

(d) So long as any Note as to which this Indenture has been discharged remains unpaid, this Indenture shall continue in effect with respect to such Note solely with respect to rights of registration of transfer, exchange or replacement of such Note, rights to receive payment of the principal thereof and premium, if any, and interest thereon in accordance with the terms of this Indenture from such deposited funds or the proceeds of or interest on such Federal Securities and the correlative rights and responsibilities of the Indenture Trustee; provided, however, that, following such discharge, no claim for payment of principal of or premium, if any, or interest on such Note shall be made against the Owner Trustee or the Lease Indenture Estate other than as provided in this Section; provided, further, that the Owner Trustee, following such discharge, shall be released from any further duties or obligations under this Indenture and, except as expressly provided therein, any other Transaction Document.

#### SECTION 2.4. Power of Attorney.

Subject to the other terms of this Indenture, the Owner Trustee hereby appoints the Indenture Trustee the Owner Trustee's attorney-in-fact, irrevocably, with full power of substitution, to collect, ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys due and to become due to

the Owner Trustee under or arising out of the Lease Indenture Estate, to endorse any checks or other instruments or orders in connection therewith, and to take any action (including the filing of financing statements or other documents) or institute any proceedings which the Indenture Trustee may deem to be necessary or appropriate to protect and preserve the interest of the Indenture Trustee in the Lease Indenture Estate.

### ARTICLE III

#### ISSUE, EXECUTION, AUTHENTICATION, FORM AND REGISTRATION OF NOTES

##### SECTION 3.1. Limitation on Notes..

No Notes may be issued under the provisions of, or become secured by, this Indenture except in accordance with the provisions of this Article III. No Note shall be issued in an original principal amount of less than \$25,000.

##### SECTION 3.2. Execution of Notes.

All Notes shall be manually executed on behalf of the Owner Trustee by one of its Responsible Officers. In case any Responsible Officer of the Owner Trustee who shall have executed any of the Notes shall cease to be such a Responsible Officer before such Notes so executed shall have been authenticated by the Indenture Trustee and delivered or disposed of by the Owner Trustee, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who executed such Notes had not ceased to be such a Responsible Officer of the Owner Trustee; and any Note may be executed on behalf of the Owner Trustee by such person as, at the actual time of execution of such Note, shall be a Responsible Officer of the Owner Trustee, although at the date of such Note any such person was not such a Responsible Officer.



**SECTION 3.3. Effect of Certificate of Authentication.**

Only such Notes as shall bear thereon a certificate of authentication substantially in the following form manually executed by the Indenture Trustee shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate of authentication of the Indenture Trustee upon any Note executed by the Owner Trustee shall be conclusive evidence that the Note so authenticated was duly issued, authenticated and delivered under this Indenture:

This Note is one of the series of Notes referred to therein and in the within-mentioned Indenture.

[NAME OF INDENTURE TRUSTEE]  
as Indenture Trustee,

By \_\_\_\_\_  
Authorized Officer

**SECTION 3.4. Creation of the Initial Series Note; Aggregate Principal Amount, Dating and Terms; Prerequisites to Authentication and Delivery of Initial Series Note; Application of Proceeds.**

(a) There is hereby created and established a separate series of Notes of the Owner Trustee designated: "Nonrecourse Promissory Note, Initial Series", which will be substantially in the form of Exhibit A hereto, and is herein referred to as the "Initial Series Note".

(b) Subject to the provisions of Section 3.10 hereof, the aggregate principal amount of the Initial Series Note issued by the Owner Trustee and authenticated and delivered by the Indenture Trustee hereunder shall not exceed the Maximum Principal Amount set forth in Schedule I hereto.

(c) The Initial Series Note, subject to paragraph (e) of this Section 3.4, shall be executed and issued by the Owner Trustee and authenticated and delivered by the Indenture Trustee on the date and to the Person specified by the Owner Trustee in its request and authorization for issuance, shall be dated the date specified by the Owner Trustee in its request and authorization for issuance, and shall be in the form of a registered Note payable to the Person designated in the Owner Trustee's request and authorization for issuance or its registered assigns.

(d) The Initial Series Note shall bear interest on the principal amount thereof from time to time Outstanding from the date thereof until paid at the rates of interest set forth in the form of the Initial Series Note. The principal amount of the Initial Series Note shall be payable as set forth in the Schedule of Principal Payments attached thereto. Installments of interest on and principal of the Initial Series Note shall be due and payable on the dates specified in the form of Initial Series Note.

(e) The Indenture Trustee shall authenticate the Initial Series Note and deliver the Initial Series Note to the Person designated by the Owner Trustee in the request and authorization for issuance in respect of the Initial Series Note in accordance with the provisions of this Section 3.4.

(f) Upon receipt of the proceeds of the Initial Series Note, the Indenture Trustee shall immediately transfer the same to, or pursuant to the direction of, the Owner Trustee, all as set forth in the request and authorization for issuance submitted by the Owner Trustee to the Indenture Trustee.

#### SECTION 3.5. Additional Notes.

(1) Subject to Section 3.6 hereof, Additional Notes of the Owner Trustee may be issued under and secured by this Indenture, at any time or from time to time, in addition to the Initial Series Note and subject to the conditions hereinafter provided in this Section,

for cash in the amount of the original principal amount of such Additional Notes, for the purpose of (i) refunding any previously issued series of Notes, in whole or in part, and/or (ii) providing funds for the payment of all or any portion of the Supplemental Financing Amount relating to Capital Improvements made or installed from time to time pursuant to the Facility Lease and/or (iii) providing funds to be paid to the Owner Trustee in the event of a partial return of the Investment to the Owner Trustee as contemplated by Sections 2(c) and 2(d) of the Participation Agreement; provided, however, that (x) in the case of Notes issued for the purposes set forth in clause (ii) or (iii) of this Section 3.5, no Note shall be issued by the Owner Trustee pursuant to this Section 3.5 unless such Notes may be pledged in accordance with Section 2.15(b) of the Collateral Trust Indenture and serve as the basis for Additional Bonds and (y) in the case of Notes issued for the purposes set forth in clause (i) or (iii) of this Section 3.5, no Note shall be issued by the Owner Trustee pursuant to this Section 3.5 unless Section 2(c) and/or 2(d) of the Participation Agreement shall have been complied with.

(2) Before any Additional Notes shall be issued under the provisions of this Section 3.5, the Owner Trustee shall have received from the Owner Participant, and delivered to the Indenture Trustee not less than 10 nor more than 30 days prior to the proposed date of issuance of such Additional Notes as set forth in the below mentioned request and authorization, a request and authorization to issue Additional Notes, which request and authorization shall include the amount of such Additional Notes, the date of issuance of such Additional Notes and details with respect thereto which are not inconsistent with this Section. Additional Notes shall have a designation so as to distinguish such Additional Notes from the Initial Series Note but otherwise shall be substantially similar in terms to the Initial Series Note, shall specify maturity dates, rank pari passu with all Notes then Outstanding, be dated their respective dates of authentication, bear interest at such rates (which may be fixed or floating) as shall be indicated in the aforementioned request and

authorization, and shall be stated to be payable by their terms not later than the last day of the Basic Term.

(3) Except as to any differences in the maturity dates and amortization schedules of the Additional Notes or the rate or rates of interest thereon and the date or dates such interest is payable or the provisions for redemption with respect thereto, if any, such Additional Notes shall be on a parity with, and shall be entitled to the same benefits and security of this Indenture as, other Notes issued pursuant to the terms hereof.

(4) The terms, conditions and designations of such Additional Notes (which shall be consistent with this Indenture) shall be set forth in an indenture supplemental to this Indenture executed by the Owner Trustee and the Indenture Trustee. Such Additional Notes shall be executed as provided in Section 3.2 and deposited with the Indenture Trustee for authentication, but before such Additional Notes shall be authenticated and delivered by the Indenture Trustee there shall be filed with the Indenture Trustee, in addition to the other documents and certificates required by this Section 3.5, the following, all of which shall be dated as of the date of the supplemental indenture:

(a) a copy of such supplemental indenture (which shall include the form of such series of Notes in respect thereof);

(b) a certificate of a Responsible Officer of the Owner Trustee (i) stating that to the best of his knowledge, no Default or Event of Default or Indenture Event of Default has occurred and is continuing, (ii) stating that the conditions in respect of the issuance of such additional series of Notes contained in this Section 3.5 have been satisfied, (iii) specifying the amount of the costs and expenses relating to the issuance and sale of such additional series of Notes, (iv) stating that payments pursuant to the Facility Lease of Basic Rent, Casualty Value, Special Casualty Value and Termination Value and of amounts in respect of

the exercise of the Cure Option and the Special Purchase Option are sufficient to pay all the Outstanding Notes, after taking into account the issuance of such Additional Notes and any related redemption, and (v), in the case of Notes issued for the purpose set forth in clause (ii) of Section 3.5(1), stating that all conditions to the related Supplemental Financing as set forth in Section 8(f) of the Facility Lease have been satisfied;

(c) such additional documents, certificates and opinions as shall be reasonably requested by, and acceptable to, the Owner Trustee and the Indenture Trustee.

(d) a request and authorization to the Indenture Trustee by or on behalf of the Owner Trustee to authenticate and deliver such Additional Notes to or upon the order of the Person or Persons noted in such request at the address set forth therein, and in such principal amounts as are stated therein, upon payment to the Indenture Trustee, but for the account of the Owner Trustee, of the sum or sums specified in such request and authorization; and

(e) an opinion of counsel to the effect that the conditions precedent required under this Indenture for the issuance of such Additional Notes have been complied with.

When the documents referred to in the foregoing clauses (a) through (e) above shall have been filed with the Indenture Trustee and when the Additional Notes described in the above-mentioned order and authorization shall have been executed and authenticated as required by this Indenture, the Indenture Trustee shall deliver such Additional Notes in the manner described in clause (d) above, but only upon payment to the Indenture Trustee of the sum or sums specified in such request and authorization.

**SECTION 3.6. Security for and Parity of Notes.**

All Notes issued and Outstanding hereunder shall rank on a parity with each other and shall as to each other be secured equally and ratably by this Indenture, without preference, priority or distinction of any thereof over any other by reason of difference in time of issuance or otherwise. The maximum principal amount of Notes Outstanding and secured by this Indenture shall be the Maximum Outstanding Amount set forth in Schedule I hereto.

**SECTION 3.7. Source of Payments Limited.**

All payments to be made by the Owner Trustee under this Indenture or on the Notes shall be made only from the Lease Indenture Estate and the Trust Estate. Each Holder of a Note, by its acceptance of such Note, and the Indenture Trustee agree that they will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to such Holder or the Indenture Trustee as herein provided and that neither the Owner Participant nor, except as expressly provided in this Indenture, the Owner Trustee nor the Indenture Trustee, shall be personally liable to such Holder of a Note or the Indenture Trustee, as the case may be, for any amounts payable hereunder or under such Note; provided, however, that in the event that the Lessee shall assume all the obligations and liabilities of the Owner Trustee hereunder and under the Notes pursuant to Section 3.9(b), then all payments to be made under this Indenture and the Notes shall be made only from payments made by the Lessee under the Notes in accordance with the Assumption Agreement referred to in Section 3.9(b) and each Holder of a Note and the Indenture Trustee agree that in such event they will look solely to the Lessee for such payment. Nothing herein contained shall be interpreted as affecting the duties and obligations of the Indenture Trustee set forth in Section 7.4 hereof.

In furtherance of the foregoing, to the fullest extent permitted by law, each Holder of a Note (and each assignee of such Person), by its acceptance thereof, and the Indenture Trustee agree, as a condition to the Notes being secured under this Indenture, that neither such Holder nor the Indenture Trustee will exercise any statutory right to negate the agreements set forth in this Section 3.7.

#### SECTION 3.8. Place and Medium of Payment.

The principal of and premium, if any, and interest on each Note shall be payable at the Indenture Trustee's Office in immediately available funds in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Notwithstanding the foregoing or any provision in any Note to the contrary, if so requested by the Holder of any Note, by written notice to the Indenture Trustee, all amounts (other than the final payment) payable with respect to such obligation shall be paid by crediting the amount to be distributed to such Holder to an account maintained by such Holder with the Indenture Trustee or by the Indenture Trustee's transferring such amount by wire, with such wire transfer to be initiated by such time as to permit, to the extent practicable, oral confirmation thereof (specifying the wire number) to be given no later than 12:00 noon New York City time on the date scheduled for payment, but only to the extent of funds available for such wire transfer; to such other bank in the United States having wire transfer facilities, including a Federal Reserve Bank, as shall have been specified in such notice, for credit to the account of such Holder maintained at such bank, any such credit or transfer pursuant to this Section 3.8 to be in immediately available funds, without any presentment or surrender of such Note. Final payment of any such Note shall be made only against surrender of such Note at the Indenture Trustee's Office.

**SECTION 3.9. Prepayment of Notes; Assumption by Lessee; Notice of Assumption or Prepayment.**

(a) Notes shall be subject to prepayment (other than through application of the installment payments on such Notes) from time to time only as provided in this Indenture and as otherwise specifically provided, with respect to Notes of a particular series, in such Notes.

(b) In the event of the occurrence of a Deemed Loss Event, Event of Loss or Cure Option, and upon receipt by the Indenture Trustee of the documents listed below, all the obligations and liabilities of the Owner Trustee hereunder and under the Notes shall be assumed by the Lessee and the Owner Trustee shall be released and discharged without further act or formality whatsoever from all obligations and liabilities hereunder and under the Notes:

(1) a duly executed Assumption Agreement substantially in the form of Exhibit B to this Indenture;

(2) an opinion of counsel to the Lessee, addressed to the Indenture Trustee and the Holders of the Outstanding Notes, to the effect that the conditions precedent required by this Indenture for such assumption have been complied with, that the Assumption Agreement has been duly authorized, executed and delivered on behalf of the Lessee, that no Governmental Action is necessary or required in connection therewith (or if any such Governmental Action is necessary or required, that the same has been duly obtained and is in full force and effect), and that the Assumption Agreement is a legal, valid and binding agreement and obligation of the 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);



(3) copies of all Governmental Actions referred to in such opinion;

(4) an indenture supplemental to this Indenture which shall, among other things, confirm the release of the Owner Trustee and the Lease Indenture Estate thereby effected and contain provisions appropriately amending references to the Facility Lease in this Indenture;

(5) a certificate of a Responsible Officer of the Lessee stating that, to the best of his knowledge, (i) the conditions precedent required by this Indenture for such assumption have been complied with, (ii) no Indenture Event of Default has occurred and is continuing, (iii) such assumption is permitted by the provisions of the Lessee's Articles of Incorporation and By-Laws and (iv) the Lessee is not insolvent within the meaning of any applicable preferential transfer, fraudulent conveyance or bankruptcy law; and

(6) a certificate of a Responsible Officer of the Owner Trustee stating that, to the best of his knowledge, no Indenture Event of Default has occurred and is continuing.

(c) Notice of any assumption or prepayment of Notes shall be given as promptly as practicable after the Indenture Trustee is notified thereof, and, in the case of prepayment, in no event less than (i) 30 days before the date fixed for prepayment (provided the Indenture Trustee receives such notification at least three Business Days before such 30th day), in the event of the exercise by the Lessee or the Owner Trustee, as the case may be, of its option to terminate the Facility Lease pursuant to Section 14 thereof or in the event of the exercise by the Lessee of the Cure Option or (ii) one day before the date fixed for prepayment, in the event of the exercise by the Lessee of the Special Purchase Option pursuant to Section 13(c) of the Facility Lease to the registered Holders of the Notes which have been assumed or are to be prepaid (and any

assignee of a registered Holder which has given the Indenture Trustee written notice of such assignment).

(d) If the assumption described in paragraph (b) above has not occurred, then, as required by Section 9(j) of the Facility Lease, not less than 2 Business Days prior to any transfer referred to in Section 7(b)(4) of the Participation Agreement, the Owner Trustee will cause the Undivided Interest and the Real Property Interest to be subjected to the lien of this Indenture by executing and delivering to the Indenture Trustee an Undivided Interest Indenture Supplement substantially in the form of Exhibit C to this Indenture.

#### SECTION 3.10. Mutilated, Destroyed, Lost or Stolen Notes.

If any Note shall become mutilated or shall be destroyed, lost or stolen, the Owner Trustee shall, upon the written request of the Holder of such Note, execute, and the Indenture Trustee shall authenticate and deliver in replacement thereof, a new Note, payable in the same original principal amount and dated the same date and of the same series as the Note so mutilated, destroyed, lost or stolen. The Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal theretofore made on the Note so mutilated, destroyed, lost or stolen and the date to which interest on such old Note has been paid. If the Note being replaced has been mutilated, such Note shall be delivered to the Indenture Trustee who shall then deliver a certificate of destruction of the type required by Section 4.3 hereof. If the Note being replaced has been destroyed, lost or stolen, the Holder of such Note shall furnish to the Lessee, the Owner Trustee and the Indenture Trustee a bond or surety agreement of such Holder as shall be satisfactory to them to save the Lessee, the Owner Trustee, the Indenture Trustee, the Trust Estate and the Lease Indenture Estate harmless from any loss, however remote, including claims for principal of, and premium, if any, and interest on the purportedly destroyed, lost or stolen Note, together with evidence satisfactory to the Lessee, the Owner Trustee and the Indenture Trustee of the destruction,

loss or theft of such Note and of the ownership thereof; provided, however, that if the Holder of such Note is the Collateral Trust Trustee, the unsecured written undertaking of the Collateral Trust Trustee, in its individual capacity, shall be sufficient indemnity for purposes of this Section.

**SECTION 3.11. Allocation of Principal and Interest.**

In the case of each Note, each payment of principal thereof and interest thereon shall be applied, first, to the payment of accrued but unpaid interest on such Note (as well as any interest on overdue principal or, to the extent permitted by law, interest) to the date of such payment, second, to the payment of the principal amount of, and premium, if any, on such Note then due (including any overdue installment of principal) thereunder and third, the balance, if any, remaining thereafter, to the balance of the payment of the principal amount of, and premium, if any, on such Note.

**ARTICLE IV**

**REGISTRATION, TRANSFER, EXCHANGE,  
CANCELLATION AND OWNERSHIP OF  
NOTES**

**SECTION 4.1. Register of Notes.**

The Indenture Trustee on behalf of the Owner Trustee shall maintain at the Indenture Trustee's Office a register for the purpose of registration, and registration of transfer and exchange, of the Notes by series and in which shall be entered the names and addresses of the owners of such Notes and the principal amounts of the Notes owned by them, respectively. For these purposes, the Indenture Trustee is hereby appointed transfer agent and registrar for the Notes.

**SECTION 4.2. Registration of Transfer or Exchange of Notes.**

A Holder of a Note intending to register the transfer of any Outstanding Note held by such Holder (including any transfer in the form of a pledge or assignment) or to exchange any Outstanding Note held by such Holder for a new Note or Notes of the same series may surrender such Outstanding Note at the Indenture Trustee's Office, together with the written request of such Holder, or of its attorney duly authorized in writing, in each case with signatures guaranteed, for the registration of such Note in the name of any pledgee or assignee (in the case of a transfer in the form of a pledge or assignment) or for the issuance of a new Note or Notes of the same series, specifying the authorized denomination or denominations of any new Note or Notes to be issued and the name and address of the Person or Persons in whose name or names the Note or Notes are to be registered (either as pledgee or assignee or as owner). Promptly upon receipt by the Indenture Trustee of the foregoing and satisfaction of the requirements of Sections 4.5 and 4.6 hereof, the Indenture Trustee shall register such Note or Notes in the name or names of the Person or Persons as shall be specified in the written request and, in the case in which a new Note or Notes are to be issued, the Owner Trustee shall execute and the Indenture Trustee shall authenticate and deliver such new Note or Notes of the same series, in the same aggregate principal amount and dated the same date as the Outstanding Note surrendered, in such authorized denomination or denominations as shall be specified in the written request. The Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal theretofore made on the old Note or Notes in exchange or transfer for which any new Note has been issued and the date to which interest on such old Note or Notes has been paid.

#### SECTION 4.3. Cancellation of Notes.

All Notes surrendered to the Indenture Trustee for payment in full, prepayment in full or registration of transfer or exchange shall be cancelled by it; and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Indenture Trustee shall destroy cancelled Notes held by it in a manner satisfactory to the Owner Trustee and deliver a certificate of destruction to the Owner Trustee. If the Owner Trustee shall acquire any of the Notes, such acquisition shall not operate as a redemption of or the satisfaction of the indebtedness represented by such Notes unless and until the same shall be delivered to the Indenture Trustee for cancellation.

#### SECTION 4.4. Limitation on Timing of Registration of Notes.

The Indenture Trustee shall not be required to register transfers or exchanges of Notes on any date fixed for the payment or prepayment of principal of or interest on the Notes or during the fifteen days preceding any such date.

#### SECTION 4.5. Restrictions on Transfer Resulting from Federal Securities Laws; Legend.

If not prohibited by the Securities Act, each Note shall be delivered to the initial Holder thereof without registration of such Note under the Securities Act and without qualification of this Indenture under the Trust Indenture Act. Prior to any transfer of any Note, in whole or in part, to any Person other than the Collateral Trust Trustee, the Holder thereof shall furnish to the Lessee, the Indenture Trustee and the Owner Trustee an opinion of counsel, which opinion and which counsel shall be reasonably satisfactory to the Indenture Trustee, the Owner Trustee and the Lessee, to the effect that such transfer will not violate the registration provisions of the Securities Act or require qualification of this Indenture under the Trust Indenture Act, and all 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 in violation of such Act.

**SECTION 4.6. Charges upon Transfer or Exchange of Notes.**

As a further condition to registration of transfer or exchange of any Note, the Indenture Trustee and the Owner Trustee may charge the Holder thereof for any stamp taxes or governmental charges required to be paid with respect to such registration of transfer or exchange.

**SECTION 4.7. Inspection of Register of Notes.**

The register of the Holders of the Notes referred to in Section 4.1 shall at all reasonable times be open for inspection by any Holder of a Note. Upon request by any Holder of a Note, or the Owner Trustee or the Lessee, the Indenture Trustee shall furnish such Person, at the expense of such Person, with a list of the names and addresses of all Holders of Notes entered on the register kept by the Indenture Trustee indicating the series, principal amount and number of each Note held by each such Holder.

**SECTION 4.8. Ownership of Notes.**

(a) Prior to due presentment for registration of transfer of any Note, the Owner Trustee and the Indenture Trustee may deem and treat the Holder of record of such Note as the absolute owner of such Note for the purpose of receiving payment of all amounts payable with respect to such Note and for all other purposes, and neither the Owner Trustee nor the Indenture Trustee shall be affected by any notice to the contrary.

(b) The Owner Trustee and the Indenture Trustee may, in their discretion, treat the Holder of record of any Note as the owner thereof without actual production of such Note for any purpose hereunder, except as provided in the last sentence of Section 3.8 hereof.

(c) Neither the Owner Trustee nor the Indenture Trustee shall be bound to take notice of or carry out the execution of any trust in respect of any Note, and may register the transfer of the same on the direction of the Holder of record thereof, whether named as trustee or otherwise, as though such Holder were the beneficial owner thereof.

(d) The receipt by the Holder of record of any Note of any payment of principal, premium or interest shall be a good discharge to the Owner Trustee and the Indenture Trustee for the same and neither the Owner Trustee nor the Indenture Trustee shall be bound to inquire into the title of any such Holder.

## ARTICLE V

### RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME AND PROCEEDS FROM THE LEASE INDENTURE ESTATE

#### SECTION 5.1. Basic Rent, Interest on Overdue Installments of Basic Rent and Prepayments of Interest.

Except as otherwise provided in Section 5.3 or 5.7 hereof, each payment of Basic Rent, as well as any payment of Supplemental Rent representing interest on overdue installments of Basic Rent, received by the Indenture Trustee at any time, shall be distributed by the Indenture Trustee in the following order of priority: first, so much of such payment as shall be required to pay in full the aggregate amount of the payment or payments of principal and/or interest (as well as any interest on overdue principal or, to the

extent permitted by law, interest) then due and unpaid on all Notes shall be distributed to the Holders of the Notes ratably, without priority of one over the other, in the proportion that the aggregate amount of such payment or payments then due and unpaid on all Notes held by each such Holder on such date bears to the aggregate amount of such payment or payments then due and unpaid on all Notes Outstanding on such date, without priority of interest over principal or principal over interest; and second, the balance, if any, of such payment remaining thereafter shall be distributed, concurrently with any distribution pursuant to clause first hereof, to the Owner Trustee or as the Owner Trustee may direct. If there shall not otherwise have been distributed on any date (or within any applicable period of grace), pursuant to this Section 5.1, the full amount then distributable pursuant to clause first of this Section 5.1, the Indenture Trustee shall distribute other payments of the character referred to in Sections 5.4 and 5.5 then held by it or thereafter received by it, except as otherwise provided in Section 5.3, to the Holders of all Notes to the extent necessary to enable it to make all the distributions then due pursuant to such clause first; provided that to the extent any distribution is made from amounts held pursuant to Section 5.4 hereof and the Lessee subsequently makes the payment of Basic Rent or Supplemental Rent in respect of which such distribution was made, such payment of Basic Rent or Supplemental Rent shall, unless a Default or Event of Default shall have occurred and be continuing, be applied to the purpose for which such amount held pursuant to Section 5.4 had been held, subject, in all cases, to the terms of Section 5.4. The portion of each such payment made to the Indenture Trustee which is to be distributed by the Indenture Trustee in payment of Notes shall be applied in accordance with Section 3.11. Any payment received by the Indenture Trustee pursuant to Section 6.8 shall be distributed to the Holders of the Notes, ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due and unpaid on all Notes held by each such Holder bears to the aggregate amount of the payments then due and unpaid on all Notes Outstanding. Amounts distributed by the Indenture Trustee pursuant to this



Section 5.1 shall be distributed as promptly as practicable after such amounts are actually received by the Indenture Trustee; provided, however, that in the event the Indenture Trustee shall be directed to make payments to the Holder of any Note by wire transfer in accordance with Section 3.8 hereof, any amounts received by the Indenture Trustee after 11:00 A.M., New York City time, may be distributed on the following Business Day.

**SECTION 5.2. Amounts Received as Result of Event of Loss, Deemed Loss Event, Exercise of Option to Terminate or Exercise of Cure or Special Purchase Option.**

If an Event of Loss or Deemed Loss Event shall occur or the Lessee shall exercise the Cure or Special Purchase Option, and if either the Assumption Agreement or the Undivided Interest Indenture Supplement shall have been executed and delivered, any amounts of Casualty Value, Special Casualty Value or Fair Market Sales Value received or held by the Indenture Trustee in respect of such Event of Loss or Deemed Loss Event or exercise of the Cure or the Special Purchase Option shall be distributed forthwith to the Owner Participant. If the Lessee or Owner Trustee, as the case may be, shall exercise its option to terminate the Facility Lease pursuant to Section 14 thereof, or the Lessee shall exercise the Special Purchase Option pursuant to Section 13(c) thereof, then there shall be prepaid, on the date payments or proceeds with respect thereto are received by the Indenture Trustee (or as soon thereafter as practicable) under Section 14 of the Facility Lease, the unpaid principal amount of all Notes, together with the premium, if any, and all accrued but unpaid interest thereon to the date of such prepayment. Notice of such prepayment shall be given as provided in Section 3.9(c) and may provide that it is subject to receipt of funds for such prepayment. Except as otherwise provided in Section 5.3 or 5.7, any payments received and amounts realized by the Indenture Trustee upon exercise of the Lessee's or the Owner Trustee's option to terminate the Facility Lease under Section 14 thereof shall in each case be distributed on

the date of prepayment as provided in clauses first, second and fifth of Section 5.3.

SECTION 5.3. Amounts Received After, or Held at Time of, Indenture Event of Default under Section 6.2.

Except as otherwise provided in Section 5.7, all payments received and amounts realized by the Indenture Trustee in respect of the Lease Indenture Estate (including any amounts realized by the Indenture Trustee from the exercise of any remedies pursuant to the Facility Lease or Article VI of this Indenture) after an Indenture Event of Default referred to in Section 6.2 shall have occurred and be continuing and the Notes have been accelerated pursuant to Section 7.1, as well as all payments thereafter received or amounts then held by the Indenture Trustee as part of the Lease Indenture Estate, shall be distributed by the Indenture Trustee in the following order of priority:

first, so much of such payments or amounts as shall be required to reimburse the Indenture Trustee for any Trustee's Expenses (to the extent not previously reimbursed) and to pay the reasonable remuneration of the Indenture Trustee, shall be applied by the Indenture Trustee to such reimbursement and payment;

second, so much of such payments or amounts remaining as shall be required to pay in full the aggregate unpaid principal amount of all Notes, together with premium, if any, plus accrued but unpaid interest (as well as interest on overdue principal and, to the extent permitted by law, on overdue interest) thereon to the date of distribution, shall be distributed to the Holders of such Notes and in case the aggregate amount so to be distributed shall be insufficient to pay all such Notes in full as aforesaid, then ratably, without priority of one over the other, in the proportion that the aggregate unpaid principal amount of all such Notes held by each such Holder, together with premium, if any, plus accrued but unpaid interest thereon to the

date of distribution bears to the aggregate unpaid principal amount of all Notes, together with premium, if any, plus accrued but unpaid interest thereon to the date of distribution;

third, so much of such payments or amounts remaining as shall be required to pay the present or former Holders of the Notes the amounts payable to them as Indemnitees (to the extent not previously reimbursed) shall be distributed to such Holders; and in case the aggregate amount so to be paid to all such Holders in accordance with this clause third shall be insufficient to pay all such amounts as aforesaid, then ratably, without priority of one over the other, in the proportion that the amount of such indemnity or other payments to which such Person is entitled bears to the aggregate amount of such indemnity or other payments to which all such Persons are entitled;

fourth, the balance, if any, of such payments or amounts remaining shall be applied to the payment of any other indebtedness at the time due and owing to the Indenture Trustee or the Holders of the Notes which this Indenture by its terms secures; and

fifth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to or upon the direction of the Owner Trustee.

**SECTION 5.4. Amounts Received for Which Provision Is Made in a Transaction Document.**

Except as otherwise provided in Section 5.1, 5.3 or 5.7 hereof, any payments received by the Indenture Trustee in respect of the Lease Indenture Estate for which provision as to the application thereof is made in a Transaction Document shall be applied to the purpose for which such payment was made in accordance with the terms of such Transaction Document, as determined, in the first instance, from instructions or other information accompanying such payment, or, otherwise, in accordance with instructions from the payor of such payments.

**SECTION 5.5. Amounts Received for Which No Provision Is Made.**

Except as otherwise provided in Section 5.1, 5.3 or 5.7, any payments received and any amounts realized by the Indenture Trustee in respect of the Lease Indenture Estate.

(a) for which no provision as to the application thereof is made in a Transaction Document or elsewhere in this Article V shall be held by the Indenture Trustee as part of the Lease Indenture Estate, and;

(b) to the extent received or realized at any time after payment in full of the principal of and premium, if any, and interest on all the Notes, as well as any other amounts remaining as part of the Lease Indenture Estate after payment in full of the principal of and premium, if any, and interest on all the Notes, shall be distributed by the Indenture Trustee in the order of priority set forth in Section 5.3, (omitting clause second thereof).

**SECTION 5.6. Payments to Owner Trustee.**

Unless otherwise directed by the Owner Trustee, all payments to be made to the Owner Trustee hereunder shall be made to the Owner Participant by wire transfer of immediately available funds as soon as practicable but in any event no later than the close of business on the date of receipt (assuming the Indenture Trustee has received such funds prior to 11:00 a.m. New York City time on the same day), to such account at such bank or trust company as the Owner Participant shall from time to time designate in writing to the Indenture Trustee.

## **SECTION 5.7. Excepted Payments.**

Anything in this Article V or elsewhere in this Indenture to the contrary notwithstanding, any Excepted Payment received at any time by the Indenture Trustee shall be distributed as promptly as practicable to the Person entitled to receive such Payment (such entitlement to be conclusively determined by reference to payment instructions from such Person).

## **ARTICLE VI**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF OWNER TRUSTEE; EVENTS OF DEFAULT; REMEDIES OF THE INDENTURE TRUSTEE**

#### **SECTION 6.1. Representations, Warranties and Covenants of Owner Trustee.**

The Owner Trustee hereby covenants and agrees that (i) it will duly and punctually pay the principal of, and premium, if any, and interest on, the Notes in accordance with the terms thereof and this Indenture, (ii) it will not pledge, create a security interest in or mortgage, so long as this Indenture shall remain in effect, any of its estate, right, title or interest in and to the Lease Indenture Estate or otherwise constituting part of the Trust Estate, to anyone other than the Indenture Trustee, (iii) so long as this Indenture shall remain in effect, it will not purchase or agree to purchase any property or asset other than the Undivided Interest and the Real Property Interest and other than as contemplated by the Transaction Documents, (iv) it will not, except with the prior written concurrence of the Indenture Trustee or as expressly provided in or permitted by this Indenture or with respect to the Trust Agreement or any property not constituting part of the Lease Indenture Estate, take any action which would result in an impairment of any Note or the obligation of the Lessee to pay any amount under the Facility Lease

which is part of the Lease Indenture Estate (not in any event including in respect of Excepted Payments) or any of the other rights or security created or effected thereby, or (v) issue, or incur any obligation in respect of, indebtedness for borrowed money except for its obligations in respect of Notes.

A signed copy of any amendment or supplement to the Trust Agreement shall be delivered by the Owner Trustee to the Indenture Trustee and the Lessee. This Indenture and the Lease Indenture Estate shall not be affected by any action taken under or in respect of the Trust Agreement except as otherwise provided in or permitted by this Indenture. The Trust Agreement may not in any event be terminated by the Owner Participant or the Owner Trustee or revoked by the Owner Participant so long as any of the Notes or any unpaid obligations under this Indenture remain Outstanding. The Owner Trustee may resign as Owner Trustee, appoint a successor Owner Trustee and take all necessary and proper action to constitute one or more Persons as co-trustee(s) jointly with the Owner Trustee or as separate trustee(s), all in accordance with the terms and conditions of Article IX of the Trust Agreement.

#### SECTION 6.2. . Indenture Events of Default.

The term Indenture Event of Default, wherever used herein, shall mean any of the following events (whatever the reason for such Indenture Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) any of the Events of Default specified in the following clauses of Section 15 of the Facility Lease: (1) clause (i)(y), except a failure of the Lessee to pay any amount which shall constitute an Excepted Payment; (2) clause (i)(x), except a failure of the Lessee to pay any amount which shall constitute an Excepted Payment or except where the Owner Trustee shall not have rescinded or terminated the Facility Lease

pursuant to Section 16(a)(i) of the Facility Lease; or (3) clause (vii); or

(b) the rescission or termination of, or the taking of action by the Owner Trustee or the Owner Participant the effect of which would be to rescind or terminate, the Facility Lease, whether pursuant to Section 16(a)(i) of the Facility Lease or otherwise; or

(c) any failure by the Lessee to perform and observe Section 10(b)(3)(iii) of the Participation Agreement; or

(d) the Owner Trustee shall fail to make any payment in respect of the principal of, or premium, if any, or interest on, the Notes within ten (10) Business Days after the same shall have become due (other than by virtue of any failure by the Lessee to make any payment of Rent therefor); or

(e) the Owner Trustee shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 6.1 of this Indenture, or the Owner Participant shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 7(b)(1) of the Participation Agreement and, in any such case, such failure shall continue for a period of 30 days after notice thereof shall have been given to the Owner Trustee and the Owner Participant and the Lessee by the Indenture Trustee, specifying such failure and requiring it to be remedied.

### SECTION 6.3. Enforcement of Remedies.

(a) In the event that an Indenture Event of Default shall have occurred and be continuing, then and in every such case the Indenture Trustee, subject to paragraph (b) of this Section 6.3 and Section 6.11, may, and when required pursuant to the provisions of Article VII hereof shall, exercise any or all of the rights and powers and pursue, subject to the rights of the Lessee under the Facility Lease, (x) in the event such Indenture Event of Default is referred to in paragraph (d) or (e) of Section 6.2, any or all of the remedies

then available pursuant to this Article VI and Article VII, or (y) in the event such Indenture Event of Default is referred to in paragraph (a), (b) or (c) of Section 6.2, any or all of such remedies concurrently with the exercise and pursuit by the Owner Trustee of any or all of the remedies then available to the Owner Trustee under the Facility Lease.

(b) Any provisions of the Facility Lease or this Indenture to the contrary notwithstanding, if the Lessee shall fail to pay any Excepted Payment to any Person entitled thereto as and when due, such Person shall have the right at all times, to the exclusion of the Indenture Trustee, to demand, collect, sue for, enforce performance of obligations relating to, or otherwise obtain all amounts due in respect of such Excepted Payment.

#### SECTION 6.4. Specific Remedies; Enforcement of Claims without Possession of Notes.

Subject to Sections 6.2, 6.3 and 6.11 hereof and the terms of the documents constituting a part of the Lease Indenture Estate, upon the occurrence and during the continuance of an Indenture Event of Default:

(a) The Indenture Trustee may, in order to enforce the rights of the Indenture Trustee and of the Holders of the Notes, direct payment to it of all moneys and enforce any agreement or undertaking constituting a part of the Lease Indenture Estate by any action, suit, remedy or proceeding authorized or permitted by this Indenture or by law or by equity, and whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by Applicable Law, and in addition may sell, assign, transfer and deliver, from time to time to the extent permitted by Applicable Law, all or any part of the Lease Indenture Estate or any interest therein, at any private sale or public auction with or without demand, advertisement or notice (except as herein required or as may be required by Applicable Law) of the



date, time and place of sale and any adjournment thereof, for cash or credit or other property, for immediate or future delivery and for such price or prices and on such terms as the Indenture Trustee, in its uncontrolled discretion, may determine, or as may be required by Applicable Law, so long as the Owner Participant and the Owner Trustee are afforded a commercially reasonable opportunity to bid for all or such part of the Lease Indenture Estate in connection therewith. It is agreed that 90 days' notice to the Owner Participant, the Owner Trustee and the Lessee of the date, time and place of any proposed sale by the Indenture Trustee of all or any part of the Lease Indenture Estate or interest therein is reasonable. The Indenture Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Indenture Trustee and of the Holders of the Notes asserted or upheld in any bankruptcy, receivership or other judicial proceedings.

(b) Without limiting the foregoing, the Indenture Trustee, its assigns and its legal representatives, subject to the rights of the Lessee under the Facility Lease, shall have as to such of the Lease Indenture Estate as is subject to the Uniform Commercial Code or similar law in each relevant jurisdiction all the remedies of a secured party under the Uniform Commercial Code or similar law in such jurisdiction and such further remedies as from time to time may hereafter be provided in such jurisdiction for a secured party.

(c) All rights of action and rights to assert claims under this Indenture or under any of the Notes may be enforced by the Indenture Trustee without the possession of the Notes at any trial or other proceedings instituted by the Indenture Trustee, and any such trial or other proceedings shall be brought in its own name as trustee of an express trust, and any recovery or judgment shall be for the ratable benefit of the Holders of the Notes as herein provided. In any proceedings brought by the Indenture Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Indenture

Trustee shall be a party) the Indenture Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any such Holders parties to such proceedings.

(d) The Indenture Trustee may exercise any other right or remedy that may be available to it under Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

#### SECTION 6.5. Rights and Remedies Cumulative.

Subject to Sections 6.2, 6.3 and 6.11 hereof, (a) each and every right, power and remedy herein specifically given to the Indenture Trustee under this Indenture shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Indenture Trustee and the exercise or the beginning of the exercise of any right, power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and (b) no delay or omission by the Indenture Trustee in the exercise of any right, power or remedy or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Owner Participant, the Owner Trustee or the Lessee or to be an acquiescence therein.

#### SECTION 6.6. Restoration of Rights and Remedies.

In case the Indenture Trustee shall have proceeded to enforce any right, power or remedy under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Indenture Trustee, then and in every such case

the Owner Trustee, the Owner Participant, the Indenture Trustee and the Lessee shall be restored to their former positions and rights hereunder with respect to the Lease Indenture Estate, and all rights, powers and remedies of the Indenture Trustee shall continue as if no such proceedings had been taken.

#### SECTION 6.7. Waiver of Past Defaults.

Any past Indenture Default or Indenture Event of Default and its consequences may be waived by the Indenture Trustee, except an Indenture Default or an Indenture Event of Default (i) in the payment of the principal of or interest on any Note, subject to the provisions of Section 7.1 hereof, or (ii) in respect of a covenant or provision hereof which, under Section 10.2 hereof, cannot be modified or amended without the consent of each Holder of a Note then Outstanding. Upon any such waiver, such Indenture Default or Indenture Event of Default shall cease to exist, and any other Indenture 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 Indenture Default or Indenture Event of Default or impair any right consequent thereon.

#### SECTION 6.8. Right of Owner Trustee to Pay Rent; Note Purchase; Substitute Lessee.

Anything in this Article VI or Article VII to the contrary notwithstanding:

(a) an Indenture Event of Default shall be deemed cured if such Indenture Event of Default results from non-payment of Basic Rent or Supplemental Rent under the Facility Lease, and the Owner Trustee or the Owner Participant shall have paid all principal of and interest on the Notes due (other than by acceleration) on the date such Basic Rent was payable (plus interest on such amount as required hereby) within 15 days after the receipt by the Owner Trustee of notice of such non-payment, such receipt to be evidenced by, among other things, any notice thereof given to the Owner Trustee in accordance with the notice provisions of the

Participation Agreement. The Owner Trustee or the Owner Participant, upon exercising cure rights under this paragraph (a), shall not obtain any Lien on any part of the Lease Indenture Estate on account of such payment for the costs and expenses incurred in connection therewith nor, except as expressly provided in the succeeding sentence, shall any claims of the Owner Trustee or the Owner Participant against the Lessee or any other Person for the repayment thereof impair the prior right and security interest of the Indenture Trustee in and to the Lease Indenture Estate. Upon any payment by the Owner Trustee or the Owner Participant pursuant to this Section 6.8, the Owner Trustee or the Owner Participant, as the case may be, shall (to the extent of such payment made by it) be subrogated to the rights of the Indenture Trustee and the Holders of the Notes to receive the payment of Rent with respect to which the Owner Trustee or the Owner Participant made such payment and interest on account of such Rent payment being overdue in the manner set forth in the next sentence. If the Indenture Trustee shall thereafter receive such payment of Rent or such interest, the Indenture Trustee shall, notwithstanding the requirements of Section 5.1, on the date such payment is received by the Indenture Trustee, remit such payment of Rent (to the extent of the payment made by the Owner Trustee or the Owner Participant pursuant to this Section 6.8) and such interest to the Owner Trustee or the Owner Participant, as the case may be, in reimbursement for the funds so advanced by it.

(b) Each Holder of a Note agrees, by acceptance thereof, that if the Notes have been accelerated pursuant to Section 7.1, and the Owner Trustee, within 30 days after receiving notice from the Indenture Trustee pursuant to Section 7.1 hereof, shall give written notice to the Indenture Trustee of the Owner Trustee's intention to purchase all of the Notes in accordance with this paragraph, accompanied by assurances of the Owner Trustee to purchase the Notes, then, upon receipt within 10 Business Days after such notice from the Owner Trustee of an amount equal to the aggregate unpaid principal amount of and any premium with respect to any unpaid Notes then held by such Holder, together with accrued but unpaid interest thereon to the

date of such receipt (as well as any interest on overdue principal and, to the extent permitted by law, interest), such Holder will forthwith sell, assign, transfer and convey to the Owner Trustee (without recourse or warranty of any kind other than of title to the Notes so conveyed) all of the right, title and interest of such Holder in and to the Lease Indenture Estate, this Indenture and all Notes held by such Holder; provided, that no such Holder shall be required so to convey unless (1) the Owner Trustee shall have simultaneously tendered payment for all other Notes issued by the Owner Trustee at the time Outstanding pursuant to this paragraph and (2) such conveyance is not in violation of any Applicable Law.

(c) Each Holder of a Note further agrees by its acceptance thereof that the Owner Trustee shall have the right, pursuant to Section 16 of the Facility Lease, to terminate the Facility Lease and, in connection therewith, to arrange for the substitution of another Person as lessee under a new lease substantially similar to the Facility Lease (hereinafter the Substituted Lessee) and, subject to: (i) any Indenture Event of Default under paragraphs (d) and (e) of Section 6.2 having been cured by the Owner Trustee, (ii) the Substituted Lessee's assuming all of the obligations under the Facility Lease and (iii) the Substituted Lessee's having an assigned credit rating by Standard & Poor's Corporation and Moody's Investors Service, Inc. (or, if either of such organizations shall not rate securities issued by such Substituted Lessee, by any other nationally recognized rating organization in the United States of America) with respect to at least one series of its debt obligations or preferred stock of the Substituted Lessee equal to or better than the ratings assigned, immediately prior to such substitution, by such organizations to comparable securities of the Lessee immediately prior to such substitution but in no event less than "investment grade" rating assigned by such organizations, then the Facility Lease between the Owner Trustee and such Substituted Lessee shall, for all purposes of this Indenture, be deemed to be the Facility Lease subject to the lien of this Indenture.

#### SECTION 6.9. Further Assurances.

Subject to Section 7.6 hereof, the Owner Trustee covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as shall be reasonably requested by the Indenture Trustee for the purpose of fully carrying out and effectuating this Indenture and the intent hereof.

#### SECTION 6.10. Right of Indenture Trustee To Perform Covenants, etc.

If the Owner Trustee shall fail to make any payment or perform any act required to be made or performed by it hereunder or under the Facility Lease or if the Owner Trustee shall fail to release any Lien affecting the Lease Indenture Estate which it is required to release by the terms of this Indenture, the Indenture Trustee, without notice to or demand upon the Owner Trustee and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Lease Indenture Estate. All sums so paid by the Indenture Trustee and all costs and expenses (including without limitation reasonable fees and expenses of legal counsel and other professionals) so incurred, together with interest thereon from the date of payment or occurrence, shall constitute additional indebtedness secured by this Indenture and shall be paid from the Lease Indenture Estate to the Indenture Trustee on demand. The Indenture Trustee shall not be liable for any damages resulting from any such payment or action unless such damages shall be a consequence of willful misconduct or gross negligence on the part of the Indenture Trustee.

#### SECTION 6.11. Certain Other Rights of the Owner Trustee.

Notwithstanding any provision to the contrary in this Indenture, the Owner Trustee shall at all times retain, to the exclusion of the Indenture Trustee, all rights of the Owner Trustee 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 take any other action under or in respect of the Facility Lease, as well as all rights, powers and remedies on the part of the Owner Trustee, whether arising under the Facility Lease or by statute or at law or in equity or otherwise, arising out of any Default or Event of Default subject, however, to Section 10.2. Without the prior written consent of the Indenture Trustee, the exercise of any of the aforesaid rights so retained by the Owner Trustee shall not be exercised in such a manner as to (i) reduce the amounts payable by the Lessee under the Facility Lease below the amounts necessary to provide the Owner Trustee with sufficient monies to make timely payments in full of amounts due with respect to the principal of and premium, if any, and interest on all Notes or (ii) rescind or terminate the Facility Lease pursuant to Section 16(a)(i) thereof. Nor shall the Owner Trustee exercise any other right or remedy under the Facility Lease the effect of which would be to effect such rescission or termination.

## ARTICLE VII

### CERTAIN DUTIES OF THE OWNER TRUSTEE AND THE INDENTURE TRUSTEE

#### SECTION 7.1: Duties in Respect of Events of Default, Deemed Loss Events and Events of Loss; Acceleration of Maturity.

In the event the Owner Trustee shall have actual knowledge of an Indenture Event of Default, an Event of Default, a Deemed Loss Event or an Event of Loss, the Owner Trustee shall give prompt written notice thereof to the Owner Participant, the Lessee and the Indenture Trustee. In the event the Indenture Trustee shall have actual knowledge of an Event of Default, an Indenture Event of Default, a Deemed Loss Event or an Event of Loss, the Indenture Trustee shall give prompt written notice thereof to the Owner Participant, the Owner Trustee, the Lessee and each Holder of a Note.

Subject to the terms of Sections 6.2, 6.3, 6.4, 6.8, 6.11 and 7.3 hereof, (a) the Indenture Trustee shall take such action (including the waiver of past Defaults in accordance with Section 6.7 hereof), or refrain from taking such action, with respect to any such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss as the Indenture Trustee shall be instructed by a Directive, (b) if the Indenture Trustee shall not have received instructions as above provided within 20 days after mailing by the Indenture Trustee of notice of such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss to the Persons referred to above, the Indenture Trustee may, subject to instructions thereafter received pursuant to the preceding sentence, take such action, or refrain from taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss as it shall determine advisable in the best interests of the Holders of the Notes of all series and (c) in the event that an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee in its discretion may, or upon receipt of a Directive shall, by written notice to the Owner Trustee, declare the unpaid principal amount of all Notes with accrued interest thereon to be immediately due and payable, upon which declaration such principal amount and such accrued interest shall immediately become due and payable without further act or notice of any kind. For all purposes of this Indenture, in the absence of actual knowledge, neither the Owner Trustee nor the Indenture Trustee shall be deemed to have knowledge of an Indenture Event of Default or Event of Default except that the Indenture Trustee shall be deemed to have knowledge of the failure of the Lessee to pay any installment of Basic Rent within 10 Business Days after the same shall become due. For purposes of this Section 7.1, neither the Owner Trustee nor the Indenture Trustee shall be deemed to have actual knowledge of any Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss unless it shall have received notice thereof pursuant to Section 11.6 hereof or such Indenture Event of Default or Event of Default shall actually be known by an



officer in the corporate trust department of the Owner Trustee or by an officer in the Corporate Trustee Administration Department of the Indenture Trustee, as the case may be.

#### SECTION 7.2. Duties in Respect of Matters Specified in Directive.

Subject to the terms of Sections 6.2, 6.3, 6.4, 6.8, 6.11, 7.1 and 7.3 hereof, upon receipt of a Directive, the Indenture Trustee shall take such of the following action as may be specified in such Directive: (i) give such notice or direction or exercise such right, remedy or power permitted hereunder or permitted with respect to the Facility Lease or in respect of any part or all of the Lease Indenture Estate as shall be specified in such Directive; and (ii) take such action to preserve or protect the Lease Indenture Estate as shall be specified in such Directive, it being agreed that without such a Directive, the Indenture Trustee shall not waive, consent to or approve any such matter as satisfactory to it.

#### SECTION 7.3. Indemnification.

The Indenture Trustee shall not be required to take or refrain from taking any action under Section 7.1 or 7.2 or Article VI hereof which shall require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability unless the Indenture Trustee shall have been indemnified by the Holders of the Notes against liability, cost or expense (including counsel fees) which may be incurred in connection therewith, or unless, in the reasonable judgment of the Indenture Trustee, the indemnities of the Lessee shall be adequate for such purpose; provided, however, that if the Holder of such Note is the Collateral Trust Trustee, the unsecured written undertaking of the Collateral Trust Trustee, in its individual capacity, shall be sufficient indemnity for purposes of this Section. The Indenture Trustee shall not be required to take any action under Section 7.1 or 7.2 or Article VI hereof nor shall any other provision of this Indenture be deemed to impose a duty on the Indenture Trustee to

take any action, if the Indenture Trustee shall reasonably determine, or shall have been advised by counsel, that such action is likely to result in personal liability or is contrary to the terms hereof or of the Facility Lease or is otherwise contrary to law.

**SECTION 7.4. Limitations on Duties; Discharge of Certain Liens Resulting from Claims Against Indenture Trustee..**

The Indenture Trustee shall have no duty or obligation to take or refrain from taking any action under, or in connection with, this Indenture or the Facility Lease, except as expressly provided by the terms of this Indenture. The Indenture Trustee nevertheless agrees that it will, in its individual capacity and at its own cost and expense, promptly take such action as may be necessary duly to discharge all Liens on any part of the Lease Indenture Estate which result from acts by or claims against it arising out of events or conditions not related to its rights in the Lease Indenture Estate or the administration of the Lease Indenture Estate or the transactions contemplated hereby.

**SECTION 7.5. Restrictions on Dealing with Lease Indenture Estate.**

Except as provided in the Transaction Documents, the Owner Trustee shall not use, operate, store, lease, control, manage, sell, dispose of or otherwise deal with any part of the Lease Indenture Estate.

**SECTION 7.6. Filing of Financing Statements and Continuation Statements.**

Pursuant to Section 10(b)(2) of the Participation Agreement, the Lessee has covenanted to maintain the priority of the lien of this Indenture on the Lease Indenture Estate. The Indenture Trustee shall, at the request and expense of the Lessee as provided in the Participation Agreement, execute and deliver to the Lessee and the Lessee will file, if not

already filed, such financing statements or other documents and such continuation statements or other documents with respect to financing statements or other documents previously filed relating to the lien created under this Indenture in the Lease Indenture Estate as may be necessary to protect, perfect and preserve the lien created under this Indenture. At any time and from time to time, upon the request of the Lessee or the Indenture Trustee, at the expense of the Lessee as provided in the Participation Agreement (and upon receipt of the form of document so to be executed), the Owner Trustee shall promptly and duly execute and deliver any and all such further instruments and documents as the Lessee or the Indenture Trustee may request in order for the Indenture Trustee to obtain the full benefits of the security interest and assignment created or intended to be created hereby and of the rights and powers herein granted. Upon the reasonable instructions (which instructions shall be accompanied by the form of document to be filed) at any time and from time to time of the Lessee or the Indenture Trustee, the Owner Trustee shall execute and file any financing statement (and any continuation statement with respect to any such financing statement), any certificate of title or any other document, in each case relating to the security interest and assignment created by this Indenture as may be specified in such instructions. In addition, the Indenture Trustee and the Owner Trustee will execute such continuation statements with respect to financing statements and other documents relating to the lien created under this Indenture in the Lease Indenture Estate as may be reasonably specified from time to time in written instructions of any Holder of a Note (which instructions may, by their terms, be operative only at a future date and which shall be accompanied by the form of such continuation statement or other document so to be filed).

## ARTICLE VIII

### CONCERNING THE OWNER TRUSTEE AND THE INDENTURE TRUSTEE

#### SECTION 8.1. Acceptance of Trusts; Standard of Care.

The Indenture Trustee accepts the trusts hereby created and applicable to it and agrees to perform the same but only upon the terms of this Indenture and the Participation Agreement and agrees to receive and disburse all moneys constituting part of the Lease Indenture Estate in accordance with the provisions hereof, provided that no implied duties or obligations shall be read into this Indenture or the Participation Agreement against the Indenture Trustee. The Indenture Trustee shall enter into and perform its obligations under the Participation Agreement, and, at the request of the Owner Trustee, any other agreement relating to any transfer of the Undivided Interest or the Real Property Interest or the assignment of rights under the Assignment and Assumption or, at the request of the Owner Trustee, the purchase by any Person of Notes or Additional Notes issued hereunder, all as contemplated hereby. The Indenture Trustee shall not be liable under any circumstances, except for its own willful misconduct or gross negligence. If any Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee shall exercise such of the rights and remedies vested in it by this Indenture, subject to the provisions hereof, and shall use the same degree of care in their exercise as a prudent man would exercise or use in the circumstances in the conduct of his own affairs; provided that if in the opinion of the Indenture Trustee, such action may tend to involve expense or liability, it shall not be obligated to take such action unless it is furnished with indemnity satisfactory to it.

## **SECTION 8.2. No Duties of Maintenance, Etc.**

Except pursuant to Section 7.2 hereof and except as provided in, and without limiting the generality of, Sections 7.1 and 7.4 hereof, the Indenture Trustee shall have no duty (i) to see to any recording or filing of any Transaction Document, or to see to the maintenance of any such recording or filing, or (ii) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, or assessed or levied against, any part of the Lease Indenture Estate (except such as are required to be paid or discharged by it pursuant to this Indenture or any of the other Transaction Documents) or to make or file any reports or returns related thereto.

## **SECTION 8.3. Representations and Warranties of Indenture Trustee and the Owner Trustee.**

NEITHER THE OWNER TRUSTEE NOR THE INDENTURE TRUSTEE MAKES ANY REPRESENTATION OR WARRANTY AS TO THE VALUE, CONDITION, MERCHANTABILITY OR FITNESS FOR USE OF UNIT 1, THE UNDIVIDED INTEREST OR ANY PART OF THE LEASE INDENTURE ESTATE OR AS TO ITS INTEREST THEREIN, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO UNIT 1, THE UNDIVIDED INTEREST OR ANY PART OF THE LEASE INDENTURE ESTATE WHATSOEVER. The Owner Trustee and the Indenture Trustee each represents and warrants, in its individual capacity, as to itself that this Indenture has been executed and delivered by one or more of its officers who are duly authorized to execute and deliver this Indenture on its behalf.

## **SECTION 8.4. Moneys Held in Trust; Non-Segregation of Moneys.**

All moneys and securities deposited with and held by the Indenture Trustee under this Indenture for the purpose of paying, or securing the payment of, the principal of or premium or interest on the Notes shall be held in trust. Except as provided in Sections 2.3(c), 8.8 and 11.1 hereof, moneys received by the Indenture Trustee under this Indenture need not be

segregated in any manner except to the extent required by law, and may be deposited under such general conditions as may be prescribed by law; provided, however, that any payments received or applied hereunder by the Indenture Trustee shall be accounted for by the Indenture Trustee so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof. Except as otherwise expressly provided herein, the Indenture Trustee shall not be liable for any interest on any money held pursuant to this Indenture.

**SECTION 8.5. Reliance on Writings, Use of Agents, Etc.**

The Indenture Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, telegram, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. In the case of the Lessee, the Indenture Trustee may accept a copy of a resolution of the Board of Directors or any duly constituted and authorized committee of the Board of Directors of the Lessee, certified by the Secretary or an Assistant Secretary of the Lessee as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by such Board or Committee and that the same is in full force and effect. As to the aggregate unpaid principal amount of the Notes Outstanding as of any date, the Owner Trustee may for all purposes hereof rely on a certificate signed by any Authorized Officer of the Indenture Trustee. As to any fact or matter the manner of ascertainment of which is not specifically described herein, the Indenture Trustee may for all purposes hereof rely on a certificate, signed by the Chairman of the Board, the President, any Vice President and the Treasurer or the Secretary or any Assistant Treasurer or Assistant Secretary of the Lessee, or a Holder of a Note or any Responsible Officer of the Owner Trustee, as the case may be, as to such fact or matter, and such certificate shall constitute full protection to the Indenture Trustee for any action taken or omitted to be taken by

it in good faith in reliance thereon. The Indenture Trustee shall furnish to the Owner Trustee upon request such information and copies of such documents as the Indenture Trustee may have and as are necessary for the Owner Trustee to perform its duties under Article III hereof. In the administration of the trusts hereunder, the Indenture Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys selected by it in good faith and with reasonable care, and, with respect to matters relating to the Notes, the Lease Indenture Estate and its rights and duties under this Indenture and the other Transaction Documents, may, at the expense of the Lessee, or, if the Lessee shall have failed to pay or provide for the payment thereof, at the expense of the Lease Indenture Estate, consult with counsel, accountants and other skilled persons to be selected and employed by it in good faith and with reasonable care, and the Indenture Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons so selected. Unless otherwise specified herein or in any other Transaction Document, any opinion of counsel referred to in this Indenture or in such other Transaction Document may be relied on by the Indenture Trustee to the extent it is rendered by an attorney or firm of attorneys satisfactory to the Indenture Trustee (which may be counsel to the Owner Participant, the Owner Trustee, the Lessee or any party to any Transaction Document).

**SECTION 8.6. Indenture Trustee to Act Solely as Trustee.**

The Indenture Trustee acts hereunder solely as trustee as herein provided and not in any individual capacity, except as otherwise expressly provided herein; and except as provided in Sections 9(a) and 9(b) of the Participation Agreement or Section 7.4 or 8.1 hereof, all Persons having any claim against the Indenture Trustee arising from matters relating to the Notes by reason of the transactions contemplated hereby shall, subject to the lien and priorities of payment as herein

provided and to Sections 3.6 and 5.7, look only to the Lease Indenture Estate for payment or satisfaction thereof.

**SECTION 8.7. Limitation on Rights Against Registered Holders, the Owner Trustee or Lease Indenture Estate.**

The Indenture Trustee shall be entitled to be paid or reimbursed for Trustee's Expenses as provided herein and in the other Transaction Documents. Nonetheless, the Indenture Trustee agrees that it shall have no right against the Holders of the Notes, the Owner Trustee (except to the extent included in Transaction Expenses payable by the Owner Participant) or, except as provided in Article V and Section 6.4 or this Article VIII, the Lease Indenture Estate for any fee as compensation for its services hereunder.

**SECTION 8.8. Investment of Certain Payments Held by the Indenture Trustee.**

Any amounts held by the Indenture Trustee hereunder other than pursuant to Section 2.3(c) or 11.1 hereof shall be invested by the Indenture Trustee from time to time as directed in writing by the Owner Trustee or by the Owner Participant as agent of the Owner Trustee and at the expense and risk of the Owner Participant in (i) obligations of, or guaranteed as to interest and principal by, the United States Government maturing not more than 90 days after such investment, (ii) open market commercial paper of any corporation incorporated under the laws of the United States of America or any State thereof rated "prime-1" or its equivalent by Moody's Investors Service, Inc. or "A-1" or its equivalent by Standard & Poor's Corporation or (iii) certificates of deposit maturing within 90 days after such investment issued by commercial banks organized under the laws of the United States of America or of any political subdivision thereof having a combined capital and surplus in excess of \$500,000,000; provided, however, that the aggregate amount at any one time so invested (a) in open market commercial paper of any corporation shall not exceed \$2,000,000 and (b) in



certificates of deposit issued by any one bank shall not exceed \$10,000,000. Any income or gain realized as a result of any such investment shall be applied to make up any losses resulting from any such investment to the extent such losses shall not have been paid by the Owner Trustee or the Owner Participant pursuant to this Section 8.8. Any further income or gain so realized shall be promptly distributed (in no event later than the next Business Day) to the Owner Trustee or the Owner Participant, except after the occurrence and during the continuance of an Indenture Event of Default. The Indenture Trustee shall have no liability for any loss resulting from any investment made in accordance with this Section. Any such investment may be sold (without regard to maturity date) by the Indenture Trustee whenever necessary to make any distribution required by Article V hereof.

**SECTION 8.9. No Responsibility for Recitals, etc.**

The Indenture Trustee makes no representation or warranty as to the correctness of any statement, recital or representation made by any Person other than the Indenture Trustee in this Indenture, any other Transaction Document or the Notes.

**SECTION 8.10. Indenture Trustee May Engage in Certain Transactions.**

The Indenture Trustee may engage in or be interested in any financial or other transaction with the Lessee, the Owner Participant, the Owner Trustee and any other party to a Transaction Document, provided that if the Indenture Trustee determines that any such relation is in conflict with its duties under this Indenture, it shall eliminate the conflict or resign as Indenture Trustee.

**SECTION 8.11. Construction of Ambiguous Provisions.**

The Indenture Trustee, subject to Section 8.1 hereof, may construe any ambiguous or inconsistent provisions of this Indenture, and any such construction by the Indenture Trustee shall be binding upon the Noteholders. In construing any such provision, the Indenture Trustee will be entitled to rely upon opinions of counsel and will not be responsible for any loss or damage resulting from reliance in good faith thereon, except for its own gross negligence or willful misconduct.

**ARTICLE IX**

**SUCCESSOR TRUSTEES**

**SECTION 9.1. Resignation and Removal of Indenture Trustee; Appointment of Successor.**

(a) The Indenture Trustee may resign at any time without cause by giving at least 30 days' prior written notice to the Owner Participant, the Owner Trustee, the Lessee and to each Holder of a Note, such resignation to be effective upon the acceptance of such trusteeship by a successor. In addition, the Indenture Trustee may be removed without cause by a Directive delivered to the Owner Participant, the Owner Trustee, the Lessee and the Indenture Trustee, and the Indenture Trustee shall promptly give notice thereof in writing to each Holder of a Note. In the case of the resignation or removal of the Indenture Trustee, a successor trustee may be appointed by such a Directive. If a successor trustee shall not have been appointed within 30 days after such notice of resignation or removal, the Indenture Trustee, the Owner Trustee or any Holder of a Note may apply to any court of competent jurisdiction to appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided. The successor so appointed by such court shall

immediately and without further act be superseded by any successor appointed as above provided within one year from the date of the appointment by such court.

(b) Any successor trustee, however appointed, shall execute and deliver to its predecessor and to the Owner Trustee an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the estates, properties, rights, powers and duties of its predecessor hereunder in the trusts under this Indenture applicable to it with like effect as if originally named the Indenture Trustee; but, nevertheless, upon the written request of such successor trustee or receipt of a Directive, its predecessor shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressly applicable to it, all the estates, properties, rights and powers of such predecessor under this Indenture, and such predecessor shall duly assign, transfer, deliver and pay over to such successor trustee all moneys or other property then held by such predecessor under this Indenture.

(c) Any successor trustee, however appointed, shall be a bank or trust company organized under the laws of the United States or any jurisdiction thereof having a combined capital and surplus of at least \$100,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Indenture Trustee hereunder upon reasonable or customary terms.

(d) Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Indenture Trustee may be transferred, shall, subject to the terms of paragraph (c) of this Section 9.1, be the Indenture Trustee under this Indenture without further act.

## ARTICLE X

### SUPPLEMENTS AND AMENDMENTS TO THIS INDENTURE AND OTHER DOCUMENTS

#### SECTION 10.1. Supplements, Amendments and Modifications to This Indenture Without Consent of Holders of Notes.

The Indenture Trustee may, with the written consent of the Owner Trustee, from time to time and at any time execute a supplement to this Indenture without the consent of the Holders of Notes Outstanding in order to (i) cure any defect, omission or ambiguity in this Indenture or for any other purpose if such action does not adversely affect the interests of such Holders, (ii) grant or confer upon the Indenture Trustee for the benefit of such Holders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred and which are not contrary to or inconsistent with this Indenture, (iii) add to the covenants or agreements to be observed by the Owner Trustee and which are not contrary to this Indenture or surrender any right or power of the Owner Trustee, (iv) confirm or amplify, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, this Indenture, of the properties covered hereby, or subject to the lien or pledge of this Indenture additional revenues, properties or other collateral, including pursuant to an Undivided Interest Indenture Supplement, (v) qualify this Indenture under the provisions of the Trust Indenture Act, (vi) evidence the appointment of any successor Indenture Trustee pursuant to the terms hereof, (vii) evidence the assumption and release affected by the Assumption Agreement, or (viii) execute supplemental indentures to evidence the issuance of and to provide the terms of, Additional Notes to be issued hereunder in accordance with the terms hereof.

SECTION 10.2. Supplements and Amendments to this Indenture and the Facility Lease With Consent of Holders of Notes.

Except as provided in Section 10.1 hereof, at any time and from time to time, (i) upon receipt of a Directive, the Indenture Trustee shall execute a supplement to this Indenture for the purpose of adding provisions to, or changing or eliminating provisions of, this Indenture, but only as specified in such Directive and, (ii) upon receipt of a written instruction from the Lessee and the Owner Trustee, the Indenture Trustee shall consent to any amendment of or supplement to the Facility Lease or execute and deliver such written waiver or modification of the terms of the Facility Lease to which the Owner Trustee may agree; provided, however, that, without the consent of the Holders of all the Notes then Outstanding no such supplement or amendment to this Indenture or the Facility Lease, or waiver or modification of the terms of either thereof, shall (x) modify any of the provisions of this Section or of Section 7.1 or 7.2 hereof or Section 4 of the Facility Lease or of the definition of Directive contained in Appendix A hereto or the definition of Indenture Event of Default herein, reduce the amount of the Basic Rent, Casualty Value, Termination Value or any payment under or pursuant to Section 16 of the Facility Lease as set forth in the Facility Lease below such amount as is required to pay the full principal of, and premium, if any, and interest on, the Notes when due, or extend the time of payment thereof, (y) except as permitted by clause (x) above, modify, amend or supplement the Facility Lease or consent to the termination or any assignment thereof, in any case reducing the Lessee's obligations in respect of the payment of the Basic Rent, Casualty Value, Termination Value or any payment under or pursuant to Section 16 of the Facility Lease below the amount referred to in clause (x) above, or (z) deprive the Holders of any Note of the lien of this Indenture on the Lease Indenture Estate (except as contemplated by Section 3.9(b)) or materially adversely affect the rights and remedies for the benefit of such Holders provided in Article VI of this Indenture; and, provided, further, that, without the consent of the

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Holders of all the Notes then Outstanding and affected thereby no such supplement or amendment to this Indenture or the Facility Lease, or waiver or modification of the terms of either thereof, shall reduce the amount or extend the time of payment of any amount payable under any Note, reduce or modify the provisions for the computation of the rate of interest owing or payable thereon, adversely alter or modify the provisions of Article V with respect to the order of priorities in which distributions thereunder with respect to the Notes shall be made, or reduce, modify or amend any indemnities in favor of the Holders of the Notes. Anything to the contrary contained herein notwithstanding, without the necessity of the consent of the Holders of Notes or the Indenture Trustee, (a) any indemnities in favor of the Owner Trustee or the Owner Participant may be modified, amended or changed and (b) the Owner Trustee may enter into any agreement with respect to the Lease Indenture Estate which by its terms does not become effective prior to the satisfaction and discharge of this Indenture, provided, however, that any agreement entered into by the Owner Trustee pursuant to this clause (b) shall not materially adversely affect the Indenture Trustee or the Holder of any Note.

**SECTION 10.3. Certain Limitations on Supplements and Amendments.**

If in the opinion of the Owner Trustee or the Indenture Trustee, each of which shall be entitled to rely on counsel for purposes of this Section 10.3, any document required to be executed by either of them pursuant to the terms of Section 10.1 or 10.2 does not comply with the provisions of this Indenture or adversely affects any right, immunity or indemnity in favor of, or increases any duty of, the Owner Trustee or the Indenture Trustee under this Indenture, the Facility Lease or the Participation Agreement, the Owner Trustee or the Indenture Trustee, as the case may be, may in its discretion decline to execute such document.

**SECTION 10.4. Directive Need Not Specify Particular Form of Supplement or Amendment.**

It shall not be necessary for any Directive furnished pursuant to Section 10.2 hereof to specify the particular form of the proposed documents to be executed pursuant to such Section, but it shall be sufficient if such request shall indicate the substance thereof.

**SECTION 10.5. Trustee to Furnish Copies of Supplement or Amendment.**

Promptly after the execution by the Owner Trustee or the Indenture Trustee of any document entered into pursuant to Section 10.2, the Indenture Trustee shall mail, by first-class mail, postage prepaid, a conformed copy thereof to each Holder of an Outstanding Note at the address of such Person set forth in the register kept pursuant to Section 4.1 but the failure of the Indenture Trustee to mail such conformed copies shall not impair or affect the validity of such document.

**ARTICLE XI**

**MISCELLANEOUS**

**SECTION 11.1. Moneys for Payments in Respect of Notes to be Held in Trust.**

In case the Holder of any Note shall fail to present the same for payment on any date on which the principal thereof or interest thereon becomes payable, the Indenture Trustee may set aside in trust the moneys then due thereon uninvested and shall pay such moneys to the Holder of such Note or such Person upon due presentation or surrender thereof in accordance with the provisions of this Indenture, subject always, however, to the provisions of Sections 3.8 and 11.2.

**SECTION 11.2. Disposition of Moneys Held for Payments of Notes.**

Any moneys set aside under Section 11.1 and not paid to Holders of Notes as provided in Section 11.2 shall be held by the Indenture Trustee in trust until the latest of (i) the date three years after the date of such setting aside, (ii) the date all other Holders of the Notes shall have received full payment of all principal of and interest and other sums payable to them on such Notes or the Indenture Trustee shall hold (and shall have notified such Persons that it holds) in trust for that purpose an amount sufficient to make full payment thereof when due and (iii) the date the Owner Trustee shall have fully performed and observed all its covenants and obligations contained in this Indenture with respect to the Notes; and thereafter shall be paid to the Owner Trustee by the Indenture Trustee on demand; and thereupon the Indenture Trustee shall be released from all further liability with respect to such moneys; and thereafter the Holders of the Notes in respect of which such moneys were so paid to the Owner Trustee shall have no rights in respect thereof except to obtain payment of such moneys from the Owner Trustee. Upon the setting aside of such moneys, interest thereon shall cease to accrue on the Notes.

**SECTION 11.3. Transfers Not to Affect Indenture or Trusts.**

No Holder of a Note shall have legal title to any part of the Lease Indenture Estate. No transfer, by operation of law or otherwise, of any Note or other right, title and interest of any Holder of a Note in and to the Lease Indenture Estate or hereunder shall operate to terminate this Indenture or the trusts hereunder with respect to such Note or entitle any successor or transferee of such Holder to an accounting or to the transfer to it of legal title to any part of the Lease Indenture Estate.



**SECTION 11.4. Binding Effect of Sale of Lease Indenture Estate.**

Any sale or other conveyance of the Lease Indenture Estate or any part thereof by the Indenture Trustee made pursuant to the terms of this Indenture or the Facility Lease shall bind the Holders of the Notes and shall be effective to transfer or convey all right, title and interest of the Indenture Trustee, the Owner Trustee and such Holders in and to the same. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Indenture Trustee.

**SECTION 11.5. Limitation as to Enforcement of Rights, Remedies and Claims.**

Nothing in this Indenture, whether express or implied, shall be construed to give to any Person, other than the Owner Trustee, the Owner Participant, the Lessee (to the extent Lessee's consent or other action by the Lessee is expressly provided for), the Indenture Trustee and the Holders of the Notes, any legal or equitable right, remedy or claim under or in respect of this Indenture or any Note.

**SECTION 11.6. Notices.**

Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices given hereunder to the Lessee, the Owner Trustee, the Owner Participant or the Indenture Trustee shall be given in the manner provided in Section 18 of the Participation Agreement. Notices by the Indenture Trustee to any Holder of a Note shall be in writing and shall be given in person or by means of telex, telecopy or other wire transmission (with request for assurance of receipt in a manner typical with respect to communications of that type), or mailed by registered or certified mail, addressed to such Holder at the address set forth in the register kept pursuant to Section 4.1. Whenever any notice in writing is required to be given

by the Indenture Trustee to any Holder of a Note such notice shall be effective (x) if sent by telex, telecopy or other wire transmission, on the date of transmission thereof, or (y) if sent by mail, three Business Days after being mailed.

#### SECTION 11.7. Separability of Provisions

In case any one or more of the provisions of this Indenture or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and any other application hereof shall not in any way be affected or impaired.

#### SECTION 11.8. Benefit of Parties, Successors and Assigns.

All representations, warranties, covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Owner Trustee, the Indenture Trustee and their respective successors and assigns and each Holder of a Note, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by any Holder of a Note shall bind the successors and assigns of such Holder and any Holder of a Note issued in transfer or exchange of such Note.

#### SECTION 11.9. Survival of Representations and Warranties.

All representations and warranties made with respect to the Notes shall survive the execution and delivery of this Indenture and the issue, sale and delivery of any Notes and shall continue in effect so long as any Note issued hereunder is Outstanding and unpaid.

**SECTION 11.10. Bankruptcy of the Owner Trustee.**

If (a) the Owner Trustee becomes a debtor subject to the reorganization provisions of the Bankruptcy Code, or any successor provision, (b) pursuant to such reorganization provisions the Owner Trustee is required, by reason of the Owner Trustee being held to have recourse liability directly or indirectly to the Holder of any Note or the Indenture Trustee, to make payment on account of any amount payable as principal or interest on such Note and (c) such Holder or the Indenture Trustee actually receives any Excess Amount (as hereinafter defined) which reflects any payment by the Owner Trustee on account of clause (b) of this Section, then such Holder or the Indenture Trustee, as the case may be, shall promptly refund to the Owner Trustee such Excess Amount. For purposes of this Section, "Excess Amount" means the amount by which such payment exceeds the amount which would have been received on or prior to the date of such payment by such Holder or the Indenture Trustee if the Owner Trustee had not become subject to the recourse liability referred to in clause (b) of this Section. Nothing contained in this Section shall prevent such Holder or the Indenture Trustee from enforcing any recourse obligation (and retaining the proceeds thereof) of the Owner Trustee expressly provided for under this Indenture or in the Notes.

**SECTION 11.11. Bankruptcy of the Owner Participant.**

The Indenture Trustee and the Holders of the Notes shall be bound by the provisions of Section 19(f) of the Participation Agreement.

**SECTION 11.12. Counterpart Execution.**

This Indenture and any amendment or supplement to this Indenture may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all

such counterparts shall together constitute but one and the same instrument.

SECTION 11.13. Dating of Indenture.

Although this Indenture is dated for convenience and for the purpose of reference as of the date mentioned, the actual date or dates of execution by the Owner Trustee and the Indenture Trustee are as indicated by their respective acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have each caused this Indenture to be duly executed by their respective officers thereunto duly authorized, all as of the date first set forth above.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual  
capacity, but solely as Owner  
Trustee under the Trust  
Agreement dated as of  
December 16, 1985, with the  
Owner Participant identified on  
Schedule 1 hereto

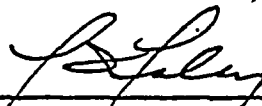
By



Vice President

CHEMICAL BANK,

By



Vice President

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

On the 31st day of December, 1985, before me personally came CLARK M. WHITCOMB, to me known, who, being by me duly sworn, did acknowledge, depose and say that he resides at Boston, Massachusetts; that he is Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, described in and which executed the foregoing instrument; ~~that he knows the seal of said association; that the seal affixed to said instrument is such seal; that it was so affixed by~~ authority of the by-laws of said association; and that he signed his name thereto on behalf of said association by like order.

  
\_\_\_\_\_  
Notary Public

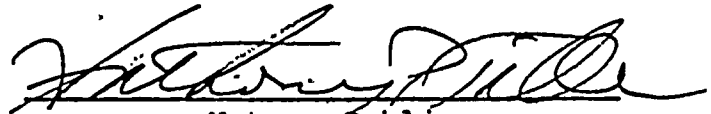
[NOTARIAL SEAL]

Term Expires:

DAVID KAUFMAN  
Notary Public, State of New York  
No. 31-4701418  
Qualified in New York County  
Commission Expires March 30, 1987

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

On the 31st day of December, 1985, before me personally came T.J. FOLEY, to me known, who, being by me duly sworn, did acknowledged, depose and say that he resides at Bethpage, New York; that he is Vice President of CHEMICAL BANK, a New York banking corporation, described in and which executed the foregoing instrument; ~~that he knows the seal of said corporation, that the seal affixed to said instrument is such seal; that it was so affixed by~~ authority of the by-laws of said corporation; and that he signed his name thereto on behalf of said corporation by like order.

  
Notary Public

[NOTARIAL SEAL]

Term Expires:

ANTHONY P. TILLER  
NOTARY PUBLIC, State of New York  
Residing in New York County  
New York Co. CLK's No. 31-4794245  
Commission Expires March 30, 1987

## SCHEDULE I

### Owner Participant

1. The Owner Participant is MFS Leasing Corp., a Delaware corporation.

2. . For purposes of Section 3.4(b) of the Indenture, the Maximum Principal Amount is \$46,200,000.

3. For purposes of Section 3.6 of the Indenture, the Maximum Outstanding Amount is \$100,000,000.

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**EXHIBIT A**

**FORM OF INITIAL SERIES NOTE**

The Initial Series Note shall be substantially in the following form, with such omissions, insertions and variations as the Owner Trustee may determine with the approval of the Indenture Trustee and are not inconsistent with the provisions of the Indenture or as may be provided for in the Indenture:

**THIS NOTE HAS NOT BEEN REGISTERED UNDER THE  
SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED,  
SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT**

**NONRECOURSE PROMISSORY NOTE, INITIAL SERIES**

Issued at: New York, New York

Issue Date: December 31, 1985

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as owner trustee (Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with MFS Leasing Corp. (the Owner Participant), hereby promises to pay to FIRST PV FUNDING CORPORATION, or registered assigns, the principal sum of (\$ ) on \_\_\_\_\_ 15, 20\_\_, and to pay interest on the remaining unpaid principal amount hereof from the date hereof, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 15 and July 15 in each year, commencing January 15, 1986, at the rate equal to the Variable Rate (as defined below) per annum, until the principal hereof is paid in full or made available for payment.

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Said principal shall be payable in installments consisting of \_\_\_\_ installments of principal commencing on July 15, 198\_, and on each January 15 and July 31 thereafter, to and including \_\_\_\_\_ 15, 20\_\_, each such principal installment to be equal to the percentage of the original principal amount hereof set forth in Schedule X hereto for the date such installment is due.

The "Variable Rate" shall mean the Applicable Percentage (as defined below) of the rate publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime or base lending rate (any change in the Variable Rate being effective on the date such change in the Variable Rate is so announced). The "Applicable Percentage" shall equal (i) 100% for the period from December 31, 1985 through June 30, 1986, (ii) 125% for the period from July 1, 1986 through September 30, 1986, (iii) 150% for the period from October 1, 1986 through December 31, 1986, and (iv) 200% thereafter. All payments of interest shall be computed on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 16, 1985, as at any time amended or supplemented in accordance with the provisions thereof (the Indenture), between The First National Bank of Boston, not in its individual capacity, but solely as Owner

Trustee (the Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with the Owner Participant and CHEMICAL BANK, as Trustee (the Indenture Trustee), shall be made only from the Lease Indenture Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee Office, or as otherwise provided in the Indenture.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received --- by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is the Initial Series Note referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest

rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of the Initial Series Note.

This Initial Series Note is subject to mandatory prepayment in full as provided in Section 5.2 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment. In addition this Initial Series Note is subject to special prepayment, in whole only, on the date on which the Fixed Rate Note is issued in accordance with Section 3.5 of the Indenture, by giving written notice to the Indenture Trustee and the Holder of this Initial Series Note at least on Business Day prior to such date, such prepayment being with the following premiums (expressed as a percentage of principal amount of this Initial Series Note), together with accrued interest to the date of prepayment:

<u>Period</u>	<u>Premium</u>
January 1-10, 1986	.096%
January 11-17, 1986	.072%
January 18-24, 1986	.048%
January 25-31, 1986	.024%

and thereafter without premium.

In case an Indenture Event of Default shall occur and be continuing the unpaid balance of the principal of this Initial Series Note and any other Notes together with all accrued but unpaid interest thereon may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the Owner hereof for the purpose of receiving payments of principal of, and premium if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual  
capacity, but solely as Owner  
Trustee under a Trust Agreement  
dated as of December 16, 1985  
with MFS Leasing Corp.

By \_\_\_\_\_  
Vice President

# ASSIGNMENT

Date: December 31, 1985

For value received, the undersigned hereby sells, assigns and transfers to **CHEMICAL BANK**, as Trustee pursuant to the Collateral Trust Indenture dated as of December 16, 1985, as amended and supplemented, among the undersigned, Public Service Company of New Mexico and said Trustee, without recourse, the within Initial Series Note and all rights thereunder.

**FIRST PV FUNDING CORPORATION**

By \_\_\_\_\_  
President

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## EXHIBIT B

### ASSUMPTION AGREEMENT

TO: The Holders (as defined below) from time to time of the Notes (as defined below) of The First National Bank of Boston, not in its individual capacity, but solely as owner trustee under a Trust Agreement dated as of December 16, 1985 with [name of owner participant] (in such capacity, the "Issuer") under the Trust Indenture, Mortgage, Security Agreement, and Assignment of Rents (the "Indenture") dated as of December 16, 1985 among the Issuer and Chemical Bank, as trustee (the "Trustee").

The undersigned, PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the "Obligor"), for the purpose of satisfying in part its obligation to make certain payments under that certain Facility Lease dated as of December 16, 1985 between the Issuer and the Obligor (the "Facility Lease"), does hereby covenant and agree with the Holders (as defined in the Indenture) from time to time of the Notes (as defined in the Indenture) as follows:

SECTION 1. The Obligor does hereby agree to, and does hereby, assume unconditionally the payment of the principal of the Notes and of the interest and premium (if any) thereon, at the rates provided in the Notes, when and as the same shall become due and payable, whether at maturity or upon mandatory prepayment or upon declaration or otherwise, according to the terms of the Notes and of the Indenture.

SECTION 2. The assumption herein contained shall be binding upon the Obligor, its successors and assigns and shall remain in full force and effect irrespective of the power or authority of the Issuer to issue the Notes or to execute, acknowledge and deliver the Indenture or the validity of the Notes, or the Indenture, or of any defense whatsoever that the Issuer may or might have to the payment of the Notes (principal, interest or premium), or to the performance or observance of any of the provisions or conditions of the Indenture or any Note, or of the existence or continuance of the Issuer as a legal entity; nor shall said assumption be affected by the merger, consolidation, or other dissolution of the Issuer or the sale or other transfer of the property the Issuer or by of the Issuer as an entirety, or substantially so, to any other person; nor shall the assumption be discharged or impaired by any act, failure or omission whatsoever on the part of any Holder of any Notes or the Trustee, including, among other such acts, failures and omissions, the following:

(a) any failure to present any Note for payment or to demand payment thereof, or to give to the Obligor notice of dishonor and non-payment of any Note when and as the same may become due and payable, or notice of any failure on the part of the Issuer to do any act or thing or to perform or keep any covenant or agreement by it to be done, kept or performed under the terms of Notes or the Indenture;

(b) any extension of the obligation of any Note, either indefinitely or for any period of time, or any other modification in the obligations under any Note or the Indenture or of the Issuer thereon or in connection therewith;

(c) any act or failure to act with regard to any Note or the Indenture or anything which might vary the risk of the Obligor; and

(d) any action taken under the Indenture and the Notes in the exercise of any right or power thereby conferred or any failure or omission on the

part of the Trustee or the Holder of any Note to enforce any right or security given under the Indenture or any Note, or any waiver of any right or any failure or omission on the part of the Trustee or any Holder of any Note to enforce any right of any Holder of any Note against the Issuer;

provided, always, that the specific enumeration of the above mentioned acts, failures, waivers or omissions shall not be deemed to exclude any other acts, failures, waivers or omissions though not specifically mentioned herein, it being the purpose and intent of this Assumption Agreement that the obligation of the Obligor shall be absolute and unconditional to the extent herein specified and shall not be discharged, impaired or varied except by the payment of the principal of and interest on any Note and any premium thereon in case of prepayment, and then only to the extent of such payments.

SECTION 3. (a) Subject to the requirements of Sections 10(b)(3)(iii) and (b)(3)(iv) of the Participation Agreement and to the provisions of paragraph (b) of this Section, nothing contained in this Assumption Agreement shall prevent any consolidation or merger of the Obligor with or into any other corporation or corporations (whether or not affiliated with the Obligor), or successive consolidations or mergers in which the Obligor or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance or lease of all or substantially all the property of the Obligor, to any other corporation authorized to acquire and operate the same; provided, however, and the Obligor hereby covenants and agrees, that upon any such consolidation, merger, sale, conveyance or lease, all obligations of the Obligor under this Assumption Agreement on or in respect of any Note, and the due and punctual performance and observance of all of the covenants and conditions of this Assumption Agreement to be performed by the Obligor, shall be expressly and duly assumed, by an agreement reasonably satisfactory in form and substance to the Trustee, executed and delivered by the corporation (if other than the Obligor) formed by such consolidation, or into which the Obligor shall have

been merged, or by the corporation which shall have acquired such property.

(b) The Indenture Trustee (as defined in the Indenture), subject to applicable provisions of the Indenture, may rely upon an opinion of counsel to the Obligor as conclusive evidence that any such merger, consolidation, sale or conveyance complies with the provisions of this Section.

SECTION 4. The Obligor does hereby consent to all of the terms and conditions of each Note Series and of the Indenture, and hereby waives any and all rights of notice of any fact or facts or circumstance or circumstances whatsoever and consents to any extension or extensions of time of any payment or payments, or of any other act or thing which any Holder or Holders of any Note or the Issuer may agree to consent to, either expressly, by acquiescence or otherwise, and hereby agrees not to claim or enforce any rights of subrogation or any other right or privilege which might otherwise arise on account of any payment made by it or act or thing done by it on account of or in accordance with its assumption herein contained, unless and until all of the Notes have been fully paid and discharged.

SECTION 5. The assumption herein expressed may be transferred or assigned at any time or from time to time and shall be considered to be transferred and assigned upon the transfer of any Note, whether with or without the consent of or notice to the Obligor or the Issuer. The Obligor hereby agrees to execute and deliver such instruments and to do such acts and things requested by the Trustee as shall be reasonably necessary to carry out and effectuate the purposes and intents of this Assumption Agreement. This Assumption Agreement may not be amended or modified in any respect without the prior written consent (evidenced as provided in the Indenture) of the Holders of not less than a majority in principal amount of the Notes Outstanding (as defined in the Indenture); provided, however, that without the written consent of the Holders of all of the Notes Outstanding, no such amendment or modification shall be effective which will change any of the

provisions of Sections 1, 2, 4 or 5 of this Assumption Agreement. The Obligor agrees to file with the Indenture Trustee a duplicate original of each such consent.

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

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

ATTEST:

\_\_\_\_\_  
Title:



EXHIBIT C

UNDIVIDED INTEREST SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE NO. \_\_\_\_\_ dated as of \_\_\_\_\_, \_\_\_\_\_, to the TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (hereinafter, together with supplements thereto, the Indenture) dated as of December 16, 1985, between THE FIRST NATIONAL BANK OF BOSTON (FNB), not in its individual capacity, but solely as trustee (the Owner Trustee) under a Trust Agreement, dated as of December 16, 1985, between FNB, whose address is 100 Federal Street, Boston, Massachusetts 02110, and MFS LEASING CORP., and CHEMICAL BANK, a New York banking corporation (the Indenture Trustee), whose address is 55 Water Street, New York, New York 10041.

W I T N E S S E T H:

WHEREAS, in accordance with Section 9(j) of the Facility Lease, the Owner Trustee is obligated, in certain cases, to cause the Undivided Interest and the Real Property Interest to be subjected to the Lien of the Indenture; and

WHEREAS, in order to further secure the obligations referred to in the Indenture, the Owner Trustee desires to grant to the Indenture Trustee the security interest and realty mortgage herein provided and the parties hereto desire that the Indenture be regarded (i) to the extent that the Undivided Interest constitutes personal property, as a "security agreement" and as a "financing statement" under the Uniform Commercial Code and (ii) to the extent that the Undivided Interest and the Real Property Interest constitute fixtures or real property, as a realty mortgage;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration,



receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1.1. The Indenture. This Supplemental Indenture No. \_\_\_\_\_ shall be construed as supplemental to and amendatory of the Indenture and shall form a part thereof, and the Indenture is hereby incorporated by reference herein and is hereby ratified, approved and confirmed.

SECTION 1.2. Definitions. Capitalized terms used herein, but which are not otherwise defined herein shall have the meanings set forth in Appendix A to the Indenture.

SECTION 1.3. Recording Information. The Indenture was recorded on December 31, 1985, in Maricopa County, Arizona [describe] [specify other recorded documents] [specify other places of recordation].

SECTION 1.4. Governing Law. This Supplemental Indenture No. \_\_\_\_ and the Indenture shall, for all purposes, be construed in accordance with and governed by the laws of the State of New York except to the extent that the laws of the State of Arizona shall be mandatorily applicable thereto.

SECTION 1.5. Security Interest and Realty Mortgage. As further security for the due and punctual payment of the principal of and premium, if any, and interest on the Notes according to their respective terms and effect and the performance and observance by the Owner Trustee of all the covenants and agreements made by it or on its behalf in the Notes, the Participation Agreement and this Indenture, the Owner Trustee does, by its execution and delivery hereof, hereby grant a security interest in, bargain, convey, warrant, assign, transfer, mortgage, pledge and set over unto the Indenture Trustee, and to its successors and assigns in trust, the following (which shall be a part of the Lease Indenture Estate for all purposes of the Indenture and the other Transaction Documents):

(1) the Undivided Interest and the Real Property Interest, including, but without limitation, the Owner Trustee's Share of all Capital Improvements (including any which constitute fixtures under Applicable Law) now existing or which hereafter may become part of the Undivided Interest;

(2) all right, title and interest of the Owner Trustee in, to and under (a) the Bill of Sale, (b) the ANPP Participation Agreement, (c) the Deed and (d) the Assignment of Beneficial Interest, including, but without limitation, all amounts of Rent, insurance proceeds and condemnation, requisition and other awards and payments of any kind for or with respect to any part of the Lease Indenture Estate as contemplated in such documents;

(3) all other property of every kind and description, real, personal and mixed, and interests therein now held or hereafter acquired by the Owner Trustee pursuant to any term of any Transaction Document, whether or not subjected to the Lien of this Indenture by an indenture supplemental hereto; and

(4) all proceeds of the foregoing;

but excluding, however, from the Lease Indenture Estate any and all Excepted Payments; and subject, however, to (i) the terms and provisions of this Indenture and (ii) the rights of the Lessee under the Facility Lease.

TO HAVE AND TO HOLD all the aforesaid properties, rights and interests unto the Indenture Trustee, its successors and assigns forever, but in trust, nevertheless, for the use and purposes and with the power and authority and subject to the terms and conditions mentioned and set forth in this Indenture.

UPON CONDITION that, unless and until an Indenture Event of Default shall have occurred and be

continuing, the Owner Trustee shall be permitted, to the exclusion of the Indenture Trustee, to possess and use the Lease Indenture Estate and exercise all rights with respect thereto and, without limitation of the foregoing, the Owner Trustee may exercise all of its rights under the documents specified in clause (2) above to the same extent as if its right, title and interest therein had not been assigned to the Indenture Trustee to the extent set forth above, except that the Indenture Trustee shall receive all payments of Assigned Payments and all moneys and securities required to be held by or deposited with the Indenture Trustee hereunder.

The Owner Trustee hereby warrants and represents that it has not assigned or pledged any of its right, title or interest in and to the Lease Indenture Estate to anyone other than the Indenture Trustee.

**SECTION 1.6. Real Estate Remedies.** In addition to the remedies specified in the Indenture (including but without limitation Section 6.4 thereof), or otherwise available pursuant to Applicable Law, to the extent that any portion of the Lease Indenture Estate constitutes fixtures or real property, the Indenture and this Supplemental Indenture No. \_\_\_ shall be, and shall be deemed to be, a realty mortgage and assignment of rents with respect to all items of real property and fixtures and the Indenture Trustee shall have all the rights, remedies and benefits of a mortgagee of real property under Applicable Law (including, but without limitation, rights and remedies pursuant to Arizona Revised Statutes Section 33-702.B, or any comparable successor provision) and the Owner Trustee shall be and be deemed to be, a mortgagor with respect to such fixtures and real property.

**SECTION 1.7. Certain Releases.** In case a release from the security and other interests created by Section 1.5 hereof by the Indenture Trustee of a portion of the Undivided Interest shall be necessary in order to enable the Owner Trustee or the Lessee to perform its covenants and agreements set forth in the Transaction Documents or in the ANPP Participation Agreement or the Owner Trustee or the Lessee to carry out any action

required by Section 8 of the Facility Lease, the Indenture Trustee shall execute and deliver to, or as directed by, the Owner Trustee or the Lessee an appropriate instrument or instruments provided to the Indenture Trustee by the Owner Trustee or the Lessee. (in due form for filing or recording), so releasing a portion of the Undivided Interest, provided, however, that the Indenture Trustee shall have first received an Officer's Certificate in form and substance reasonably satisfactory to the Indenture Trustee, executed by the Lessee, accompanied by an opinion of counsel reasonably satisfactory to the Indenture Trustee, each of which shall be to the effect that all necessary actions have been or are being taken simultaneously with such release in connection with the proposed action to comply with the terms of this Indenture and Section 8 of the Facility Lease.

**SECTION 1.8. Severance.** The parties hereto understand and agree that Unit 1 (including the Undivided Interest), each Capital Improvement and each part thereof is or shall be severed, and shall be and remain severed, from the real estate constituting the PVNGS Site and even if physically attached thereto, shall retain the character of personal property, shall be treated as personal property with respect to the rights of all persons whomsoever, shall not be or become fixtures or otherwise part of the real estate constituting the PVNGS Site, and, by virtue of its nature as personal property, shall not be affected in any way by any instrument dealing with the real estate constituting the PVNGS Site.

**SECTION 1.9. ANPP Participation Agreement.** The provision by the Owner Trustee to the Indenture Trustee of the realty mortgage and the security interest contemplated by this Supplemental Indenture No. \_\_\_ is in compliance with the provisions of the ANPP Participation Agreement, including, but without limitation, Section 15.6.3.2 thereof.

**SECTION 1.10. Appointment of Co-Trustees or Separate Trustees.**

(a) At any time or times, when necessary or prudent or for the purpose of meeting the legal requirements of any jurisdiction in which any part of the Lease Indenture Estate may, at any time, be located, the Indenture Trustee, except as set forth in subsection (b) (6) of this Section 1.10, may, and upon receipt of a Directive shall, appoint one or more Persons to act as co-trustee of all or any such part of the Lease Indenture Estate or to act as separate trustee of any property constituting part thereof, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons any property, title, right or power deemed necessary or desirable, subject to the remaining provisions of this Section 1.10. Except as set forth in subsection (b) (6) of this Section 1.10 the Owner Trustee shall join in any such appointment upon the request of the Indenture Trustee, but such joining will not be necessary for the effectiveness of such appointment.

(b) Every separate trustee or co-trustee shall be appointed subject to the following terms:

(1) The rights, powers, duties and obligations conferred or imposed upon any such separate trustee or co-trustee shall not be greater than those conferred or imposed upon the Indenture Trustee, and such rights and powers shall be exercisable only jointly with the Indenture Trustee, except to the extent that, under any law of any jurisdiction in which any particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event, except as set forth in subsection (b) (6) of this Section 1.10, such rights and powers shall be exercised by such separate trustee or co-trustee subject to the provisions of subsection (b) (4) of this Section 1.10.

(2) The Indenture Trustee may at any time, by an instrument in writing executed by it, accept the resignation of, and may (and

upon the receipt of a Directive, shall) remove any separate trustee or co-trustee appointed under this Section 1.10.

(3) No trustee under the Indenture and this Supplemental Indenture No. \_\_\_\_ shall be liable by reason of any act or omission of any other trustee or co-trustee under this Indenture.

(4) Except as set forth in subsection (b) (6) of this Section 1.10, no power given to such separate trustee or co-trustee shall be separately exercised hereunder by such separate trustee or co-trustee except with the consent in writing of the Indenture Trustee.

(5) The Indenture Trustee shall maintain custody of all money and securities.

(6) Notwithstanding anything contained to the contrary in this Section 1.10, to the extent the laws of any jurisdiction preclude the Indenture Trustee from taking any action hereunder either alone, jointly or through a separate trustee under the direction and control of the Indenture Trustee, the Owner Trustee, at the instruction of the Indenture Trustee, shall appoint a separate trustee for such jurisdiction, which separate trustee shall have full power and authority to take all action hereunder as to matters relating to such jurisdiction without the consent of the Indenture Trustee, but subject to the same limitations in any exercise of his power and authority as those to which the Indenture Trustee is subject.

(c) Upon the acceptance in writing of such appointment by any such separate trustee or co-trustee, it shall be vested with the estates or property to which its appointment relates as specified in the instrument of appointment, subject to all the terms of the Indenture and this Supplemental Indenture No. \_\_\_\_.

(d) Any separate trustee or co-trustee may, at any time, constitute the Indenture Trustee, its agent or attorney-in-fact, with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of the Indenture and this Supplemental Indenture No. \_\_\_\_ on its behalf and in its name. If a separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

**SECTION 1.11. Separability of Provisions.** In case any one or more of the provisions of this Supplemental Indenture No. \_\_ or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and the Indenture and any other application hereof and thereof shall not in any way be affected or impaired.

**SECTION 1.12. Counterpart Execution.** This Supplemental Indenture No. \_\_ may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have each caused this Indenture to be duly executed by their respective officers thereunto duly authorized, all as of the date first set forth above.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual  
capacity, but solely as Owner  
Trustee under the Trust  
Agreement dated as of  
December 16, 1985, with MFS  
Leasing Corp.

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

CHEMICAL BANK

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



THIS NOTE HAS NOT BEEN REGISTERED UNDER THE  
SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED,  
SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES

Issued at: New York, New York

Issue Date: December 31, 1985

No. R-1

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as owner trustee (Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with MFS Leasing Corp. (the Owner Participant), hereby promises to pay to FIRST PV FUNDING CORPORATION, or registered assigns, the principal sum of Forty-Six Million and Two Hundred Thousand Dollars (\$46,200,000) on January 15, 2015, and to pay interest on the remaining unpaid principal amount hereof from the date hereof, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 15 and July 15 in each year, commencing January 15, 1986, at the rate equal to the Variable Rate (as defined below) per annum, until the principal hereof is paid in full or made available for payment.

Said principal shall be payable in installments consisting of 38 installments of principal commencing on July 15, 1986, and on each January 15 and July 15 thereafter, to and including January 15, 2015, each such principal installment to be equal to the percentage of the original principal amount hereof set forth in Schedule X hereto for the date such installment is due.

The "Variable Rate" shall mean the Applicable Percentage (as defined below) of the rate publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime or base lending rate (any change in the Variable Rate being effective on the date such change in the Variable Rate

6091.MFS.2898.51B:2

is so announced). The "Applicable Percentage" shall equal (i) 100% for the period from December 31, 1985 through June 30, 1986, (ii) 125% for the period from July 1, 1986 through September 30, 1986, (iii) 150% for the period from October 1, 1986 through December 31, 1986, and (iv) 200% thereafter. All payments of interest shall be computed on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 16, 1985, as at any time amended or supplemented in accordance with the provisions thereof (the Indenture), between The First National Bank of Boston, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with the Owner Participant and CHEMICAL BANK, as Trustee (the Indenture Trustee), shall be made only from the Lease Indenture Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and

that neither the Owner Participant, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee Office, or as otherwise provided in the Indenture.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is the Initial Series Note referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as

well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of the Initial Series Note.

This Initial Series Note is subject to mandatory prepayment in full as provided in Section 5.2 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment. In addition this Initial Series Note is subject to special prepayment, in whole only, on the date on which the Fixed Rate Note is issued in accordance with Section 3.5 of the Indenture, by giving written notice to the Indenture Trustee and the Holder of this Initial Series Note at least on Business Day prior to such date, such prepayment being with the following premiums (expressed as a percentage of principal amount of this Initial Series Note), together with accrued interest to the date of prepayment:

<u>Period</u>	<u>Premium</u>
January 1-10, 1986	.096%
January 11-17, 1986	.072%
January 18-24, 1986	.048%
January 25-31, 1986	.024%

and thereafter without premium.

In case an Indenture Event of Default shall occur and be continuing the unpaid balance of the principal of this Initial Series Note and any other Notes together with all accrued but unpaid interest thereon may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the Owner hereof for the purpose of receiving payments of principal of, and premium if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement dated as of December 16, 1985 with MFS Leasing Corp.

By \_\_\_\_\_  
Vice President

SPECIMEN

ASSIGNMENT

Date: December 31, 1985

For value received, the undersigned hereby sells, assigns and transfers to CHEMICAL BANK, as Trustee pursuant to the Collateral Trust Indenture dated as of December 16, 1985, as amended and supplemented, among the undersigned, Public Service Company of New Mexico and said Trustee, without recourse, the within Initial Series Note and all rights thereunder.

FIRST PV FUNDING CORPORATION

By \_\_\_\_\_  
President

SPECIMEN

SCHEDULE X  
Initial Series Note

Date	Mellon
7/15/1986	379,205.60
1/15/1987	397,217.87
7/15/1987	416,085.71
1/15/1988	435,849.79
7/15/1988	456,552.65
1/15/1989	478,238.90
7/15/1989	500,955.25
1/15/1990	524,750.62
7/15/1990	549,676.28
1/15/1991	575,785.90
7/15/1991	603,135.73
1/15/1992	631,784.68
7/15/1992	661,794.45
1/15/1993	693,229.69
7/15/1993	726,158.10
1/15/1994	760,650.61
7/15/1994	796,781.51
1/15/1995	834,628.63
7/15/1995	874,273.49
1/15/1996	915,801.48
7/15/1996	959,382.06
1/15/1997	559,584.63
7/15/1997	526,547.54
1/15/1998	518,788.54
7/15/1998	637,853.57
1/15/1999	545,528.73
7/15/1999	670,785.58
1/15/2000	573,662.97
7/15/2000	705,429.24
1/15/2001	603,265.22
7/15/2001	741,874.85
1/15/2002	634,413.47
7/15/2002	780,217.61
1/15/2003	667,189.99
7/15/2003	820,557.89
1/15/2004	701,681.58
7/15/2004	863,001.51
1/15/2005	737,979.83
7/15/2005	907,660.09
1/15/2006	776,181.38
7/15/2006	954,651.34
1/15/2007	816,388.25
7/15/2007	1,004,099.42
1/15/2008	858,708.12
7/15/2008	1,056,135.33
1/15/2009	903,254.70
7/15/2009	1,110,897.30
1/15/2010	950,148.05
7/15/2010	1,168,531.20
1/15/2011	999,514.98
7/15/2011	1,229,191.02
1/15/2012	1,051,489.48
7/15/2012	1,293,039.28
1/15/2013	1,106,213.10
7/15/2013	1,360,247.61
1/15/2014	1,163,835.43
7/15/2014	1,430,997.26
1/15/2015	1,518,594.91
	46,200,000.00





This Note is one of the series of Notes referred to therein and in the within-mentioned Indenture.

CHEMICAL BANK  
as Indenture Trustee

By \_\_\_\_\_  
Authorized Officer

SPECIMEN

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ASSIGNMENT, ASSUMPTION

AND

FURTHER AGREEMENT

dated as of December 16, 1985

between

PUBLIC SERVICE COMPANY OF NEW MEXICO,

and

THE FIRST NATIONAL BANK OF BOSTON,  
not in its individual capacity, but  
solely as Owner Trustee under a Trust  
Agreement, dated as of December 16,  
1985, with MFS Leasing Corp.

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Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities

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MFS LEASING CORP.



ASSIGNMENT, ASSUMPTION AND FURTHER AGREEMENT, dated as of December 16, 1985, between PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (PNM), and THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee), under a Trust Agreement, dated as of December 16, 1985, with the Owner Participant identified on Schedule 1 hereto.

W I T N E S S E T H :

WHEREAS, PNM and the other ANPP Participants are parties to the ANPP Participation Agreement (such terms and all other terms used in these recitals without definition having the respective definitions to which reference is made in Article I below); and

WHEREAS, PNM has sold, and the Owner Trustee has purchased, the Undivided Interest and the Real Property Interest for and in consideration of the payment to PNM by the Owner Trustee of the Purchase Price, the purchase price of the Real Property Interest and the assignments and assumptions herein set forth;

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

ARTICLE I

DEFINITIONS

For purposes hereof, capitalized terms used herein shall have the meanings assigned to such terms in Appendix A hereto. References in this Agreement to articles, sections, paragraphs and clauses are to articles, sections, paragraphs and clauses in this Agreement unless otherwise indicated.

## ARTICLE II

### NONPARTITIONMENT

SECTION 2.01. Nonpartitionment. The Owner Trustee hereby waives any rights it may have to partition Unit 1, whether by partitionment in kind or by sale and division of proceeds, and further agrees that it will not resort to any action in law or in equity to partition Unit 1, and it waives the benefits of all laws that may now or hereafter authorize such partition for a term (i) which shall be coterminous with the ANPP Participation Agreement or (ii) which shall be for such lesser period as may be required under Applicable Law.

## ARTICLE III

### ASSIGNMENTS; EXERCISE OF RIGHTS

SECTION 3.01. Assignment of Warranties. PNM hereby ASSIGNS to the Owner Trustee an undivided interest, equal to the Undivided Interest Percentage, in, to and under any and all warranties of and other claims against dealers, manufacturers, vendors, contractors and subcontractors relating to Unit 1.

SECTION 3.02. Assignment of the ANPP Participation Agreement. (a) PNM hereby ASSIGNS to the Owner Trustee an undivided interest, equal to the Undivided Interest Percentage in, to and under all of PNM's rights under the ANPP Participation Agreement, to the extent that such rights relate to the Undivided Interest (including, but without limitation, a percentage entitlement equal to the Undivided Interest Percentage to the Net Energy Generation and Available Generating Capability (as each such term is defined in the ANPP Participation Agreement) of Unit 1).

(b) The Owner Trustee hereby ASSIGNS to PNM the rights assigned under paragraph (a) until the Lease Termination Date.

**SECTION 3.03. Exercise of Rights as Participant under the ANPP Participation Agreement.**

(a) Except as provided in Sections 15.2.2, 15.6.4 and Section 15.10 of the ANPP Participation Agreement (or any comparable successor provision) PNM shall be and remain the sole "Participant" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind) in all dealings with the other ANPP Participants in relation to the Undivided Interest, the Real Property Interest and the rights assigned to the Owner Trustee pursuant to this Agreement; provided, however, that the foregoing shall not limit in any way any liability or obligation that PNM may incur to the Owner Trustee or the Owner Participant under any Transaction Document as a result of the exercise by PNM of rights as a "Participant" under the ANPP Participation Agreement.

(b) Unless the ANPP Participation Agreement shall otherwise permit, any right conferred on the Owner Trustee by Section 15.2.2 of the ANPP Participation Agreement shall be exercised as required by Section 15.6.3.3 of said Agreement.

(c) The provisions of this Section 3.03 shall remain in full force and effect until such time as the ANPP Administrative Committee or the ANPP Participants shall otherwise consent.

**ARTICLE IV**

**ASSUMPTION; RELEASE**

**SECTION 4.01. Assumption by Owner Trustee.** Except as contemplated by Section 5(a) of the Facility Lease, the Owner Trustee agrees that, effective on and as of the Lease Termination Date (unless a Transferee (Transferee) shall have qualified under Section 15.10 of the ANPP Participation Agreement or any comparable successor provision), unless a Default or Event of Default shall have occurred and be continuing or an Event of Loss or Deemed Loss Event shall have occurred, the Owner

Trustee shall assume and agree to pay, perform and discharge the Owner Trustee's Share of all liabilities and obligations of PNM under, or with respect to, the ANPP Project Agreements, attributable to Unit 1, other than any and all costs relating to, allocable to, or incurred in connection with, the decommissioning and retirement of Unit 1 from commercial service, including, but without limitation, (x) the cost of removal, decontamination and disposition of equipment and fixtures, the cost of safe storage for later removal, decontamination and disposal and the cost of entombment of equipment and fixtures, and (y) the cost of (i) the razing of PVNGS Unit 1, (ii) the removal and disposition of debris from the PVNGS Site, and (iii) the restoration of relevant portions of the PVNGS Site.

SECTION 4.02. Release. Upon the assumption and agreement by a Transferee pursuant to Section 4.01 (whether at the Lease Termination Date or thereafter), the Owner Trustee shall therewith and thereupon be released and discharged from its obligations under Section 4.01 arising on or after such assumption and agreement.

## ARTICLE V

### NO RELEASE OF PNM; REIMBURSEMENT

SECTION 5.01. No Release of PNM. Notwithstanding the provisions of Article IV or any other provision hereof or of any other Transaction Document, and except to the extent provided in Section 15.10 of the ANPP Participation Agreement (or any comparable successor provision), PNM shall not be released from any liability or obligation under the ANPP Project Agreements, or otherwise, with respect to PVNGS, and PNM shall remain liable for the payment and performance of all such liabilities and obligations, including, but without limitation, any and all liabilities and obligations not assumed by the Owner Trustee or a Transferee pursuant to Section 4.01.



**SECTION 5.02. Reimbursement.** Unless a Default or an Event of Default shall have occurred and be continuing or an Event of Loss or Deemed Loss Event shall have occurred, from and after the Lease Termination Date, upon the payment or performance by PNM of any liability or obligation in respect of which the Owner Trustee shall also have become obligated in consequence of Article IV or the ANPP Participation Agreement, and for so long as the Owner Trustee shall be so liable, PNM shall be entitled to prompt reimbursement by the Owner Trustee for all amounts expended in connection with such payment or performance.

## **ARTICLE VI**

### **FURTHER AGREEMENTS OF PNM**

**SECTION 6.01. Agreement to Sell or Lease Unit 1 Retained Assets.** Upon a transfer to a Transferee, PNM agrees in respect of the Undivided Interest and the Real Property Interest, (i) if the Transferee is a purchaser of the Undivided Interest and the Real Property Interest, to sell to the Transferee, at a price equal to the then Fair Market Sales Value thereof, an undivided interest, equal to the Undivided Interest Percentage, in and to the Unit 1 Retained Assets, or (ii) if the Transferee is a lessee of the Undivided Interest and the Real Property Interest, to lease or otherwise make available to the Transferee, at a rent equal to the then Fair Market Rental Value thereof, an undivided interest, equal to the Undivided Interest Percentage, in and to the Unit 1 Retained Assets. Any such sale or lease by PNM shall be accomplished by an appropriate bill of sale or lease. "

**SECTION 6.02. Agreement to Assign or Make Available ANPP Project Agreements.** Upon a transfer to a Transferee, PNM agrees in respect of the Undivided Interest and the Real Property Interest, (i) if the Transferee is a purchaser of the Undivided Interest and the Real Property Interest, to assign to the Transferee an undivided interest, equal to the Undivided Interest

Percentage, in the ANPP Project Agreements (other than the ANPP Participation Agreement) to the extent relating to Unit 1 and the Unit 1 Retained Assets, and (ii) if the Transferee is a lessee of the Undivided Interest and the Real Property Interest, to assign for the term of such lease to the Transferee an undivided interest, equal to the Undivided Interest Percentage, in the ANPP Project Agreements (other than the ANPP Participation Agreement) to the extent relating to Unit 1 and the Unit 1 Retained Assets. Any assignment pursuant to this Section 6.02 shall be accomplished by an appropriate instrument of assignment.

**SECTION 6.03. Agreements to Seek Amendments to the ANPP Participation Agreement and the License.** PNM agrees to use its best efforts to obtain any required amendments to the ANPP Participation Agreement and the License to permit PNM to act as Agent of the Owner Trustee in the manner contemplated by Section 7.01 hereof, if (i) PNM shall not have elected to purchase the Undivided Interest and the Real Property Interest as provided in Section 13(b) of the Facility Lease and (ii) there shall not be a Transferee in respect of the Undivided Interest and the Real Property Interest.

## **ARTICLE VII**

### **INTERIM AGENCY ARRANGEMENTS**

**SECTION 7.01. Designation of Agent.** From and after surrender of possession to the Owner Trustee (or its assigns) of the Undivided Interest and the Real Property Interest pursuant to Section 5(a) of the Facility Lease and until a transfer to a Transferee in respect of the Undivided Interest and the Real Property Interest (such period being referred to as the Agency Period), PNM shall be, and the Owner Trustee hereby designates PNM as, the initial agent (the Agent) of the Owner Trustee in the exercise of all rights assigned to the Owner Trustee hereunder.

**SECTION 7.02. Operation of Unit 1.** During the Agency Period, the Agent shall administer the operation of the Undivided Interest and the Real Property Interest in accordance with this Agreement and all instructions of the Owner Trustee in accordance with Applicable Law. If, however, the Owner Trustee and the User shall, prior to, or at any time during, the Agency Period, enter into any joint ownership and operating agreement with other Persons having a legal right to, or right to use, any other undivided interest in Unit 1, the Agent agrees to join in, and be bound by, the terms of such agreement if the Agent's performance thereunder shall not violate, or result in a violation of, any Applicable Law or the License. The Owner Trustee agrees to give the Agent reasonable prior written notice of the commencement of the negotiation of any such agreement.

**SECTION 7.03. ANPP Participation Agreement.** PNM agrees that, at all times during the Agency Period, it will perform all obligations and discharge all liability for which it is responsible as a "Participant" under the ANPP Participation Agreement in respect of the Undivided Interest and the Real Property Interest. In the performance of the foregoing agreement, PNM shall not exercise its rights as an ANPP Participant to cause Capital Improvements to be made to Unit 1 unless the Owner Trustee shall have agreed to provide funds for the payment of the Owner Trustee's Share of the cost of such Capital Improvements to PNM prior to the date on which such amounts shall be due with respect thereto under the ANPP Participation Agreement.

**SECTION 7.04. Support.** Except with respect to the Unit 1 Retained Assets for which provision is made in Section 7.06, PNM covenants and agrees that, at all times during the Agency Period, it will provide, or make available, to the Owner Trustee all PNM's rights in and to other assets owned by PNM and the ANPP Project Agreements to the extent relating to the Undivided Interest and the Real Property Interest.

**SECTION 7.05. Compensation.** As compensation for its obligations under Sections 7.02, 7.03 and 7.04,

PNM shall be entitled to receive, and the Owner Trustee hereby agrees to pay, an amount equal to the Owner Trustee's Share of the aggregate of (i) amounts paid by PNM as provided in Section 7.03 to the extent reasonably allocable to Unit 1 and (ii) reasonable compensation for the Unit 1 Retained Assets and (iii) out-of-pocket expenses incurred by PNM or the Agent, as the case may be, in connection with the performance of its agreements in this Article VII. Compensation under this Section 7.05 shall be paid promptly in cash upon receipt of an invoice from PNM.

**SECTION 7.06. Transmission; Transmission Agreement.** (a) PNM covenants and agrees that, at all times during the Agency Period, the Owner Trustee shall have the right to wheel, under normal transmission operating conditions, the Owner Trustee's Share of up to 1270 MW of power and energy, under normal transmission operating conditions, over transmission equipment in which PNM now owns or may hereafter acquire an ownership interest, between Unit 1 and the ANPP Switchyard.

(b) Based upon the respective rights, duties and obligations of the Owner Trustee and PNM set forth in Section 7.06(a), if PNM shall fail or decline to give the notice of renewal of the Facility Lease or purchase of the Undivided Interest, in each case as provided in Section 13(a) of the Facility Lease, PNM and the Owner Trustee shall forthwith commence the negotiation in good faith of a definitive transmission agreement, not inconsistent with the terms and provisions of Section 7.06(a), but containing sufficient detail for the proper wheeling of power and energy, under normal transmission operating conditions, over the equipment of PNM referred to in such Section 7.06(a) under then existing circumstances, for the exercise or stipulation, as the case may be, of the respective rights, duties and obligations of the Owner Trustee and PNM set forth in Section 7.06(a). PNM and the Owner Trustee shall complete such negotiations and execute such definitive transmission agreement prior to the Lease Termination Possession Date and such definitive transmission agreement shall provide for compensation to PNM for the

transmission services so provided at the Fair Market Sales Value thereof.

## ARTICLE VIII

### MISCELLANEOUS

**SECTION 8.01. Successors and Assigns.** This Agreement shall be binding upon the successors and assigns of each of PNM and the Owner Trustee.

**SECTION 8.02. Governing Law.** The interpretation of this Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the law of the State of New York.

**SECTION 8.03. Counterpart Execution.** This Agreement may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, all such counterparts together constituting but one and the same instrument.

**SECTION 8.04. Amendments.** The terms of this Agreement shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever, except by written instrument signed by PNM and the Owner Trustee.

**SECTION 8.05. Survival.** All agreements and covenants contained in this Agreement or any agreement, document or certificate delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement.

**SECTION 8.06. Severability of Provisions.** Any provision of this Agreement which may be determined by competent authority to be 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 no such prohibition or

unenforceability in any jurisdiction shall invalidate or render unenforceable such provisions in any other jurisdiction. -To the extent permitted by Applicable Law, PNM hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

**SECTION 8.07. Headings.** The division of this Agreement into sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**SECTION 8.08. Disclosure of Beneficiary.**

Pursuant to Arizona Revised Statutes 833-401, the beneficiary of the Trust Agreement is MFS Leasing Corp., a Delaware corporation, whose address is Suite 3030, One Mellon Bank Center, Pittsburgh, Pennsylvania 15258, Attention: President. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts, 02110, Attention of Corporate Trust Division.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed in New York, New York by their respective officers thereunto duly authorized.

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

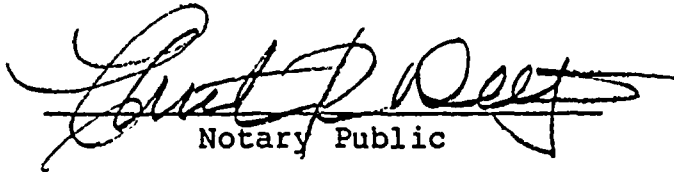
By A. J. Robinson  
Senior Vice President and  
Chief Financial Officer

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of December 16, 1985, with MFS Leasing Corp.

By: [Signature]  
Vice President

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

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by A.J. Robison, the Senior Vice President and Chief Financial Officer of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, on behalf of the corporation.

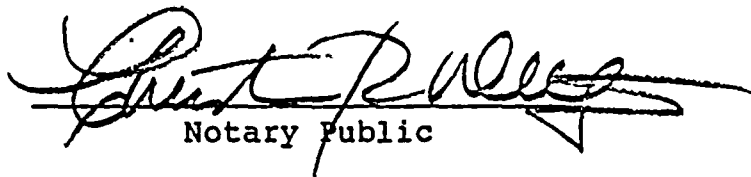
  
Notary Public

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

CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 401,014  
Qualified in New York County  
Commission Expires March 30, 1986

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The foregoing instrument was acknowledged before me this 31st day of December, 1985, by Clark M. Whitcomb, a Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association under that certain Trust Agreement dated as of December 16, 1985.

  
Notary Public

CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 401,014  
Qualified in New York County  
Commission Expires March 30, 1986

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When recorded, return to:

Greg R. Nielson  
Snell & Wilmer  
3100 Valley Bank Center  
Phoenix, Arizona 85073

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DEED AND BILL OF SALE

dated December 31, 1985

between

PUBLIC SERVICE COMPANY OF NEW MEXICO,  
a New Mexico corporation,  
as Seller

and

THE FIRST NATIONAL BANK OF BOSTON, a national banking  
association, not in its individual capacity, but solely  
as Owner Trustee under a Trust Agreement, dated as of  
December 16, 1985, with MFS Leasing Corp.,  
as Buyer

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DEED AND BILL OF SALE, dated as of December 16, 1985 between PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the Seller), and THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not in its individual capacity, but solely as Owner Trustee (in such capacity, the Owner Trustee) under the Trust Agreement, dated December 31, 1985, with the Owner Participant identified in paragraph 6 hereof (the Owner Participant, and the Owner Trustee in its capacity as owner trustee under the foregoing Trust Agreement being hereinafter referred to as the Buyer).

W I T N E S S E T H :

WHEREAS, the Seller desires to sell, and the Buyer desires to purchase, the Undivided Interest, for and in consideration of the amounts paid by the Buyer to the Seller pursuant to the Participation Agreement (as hereinafter defined);

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

1. For the purpose hereof, capitalized terms used herein, unless otherwise defined herein, shall have the meanings assigned to such terms in Appendix A attached hereto.

The property described on Exhibit B hereto is collectively referred to herein as Unit 1 and the undivided interests therein being conveyed pursuant hereto are referred to collectively herein as the Undivided Interest. Unit 1 is located on the PVNGS Site described in Exhibit A hereto.

2. The Seller does hereby GRANT, BARGAIN, CONVEY, SELL, ASSIGN, TRANSFER AND SET OVER unto the Buyer (i) a 1.36% undivided interest in and to the property described in Exhibit B, Section A hereto (the Generating Unit) and (ii) a .453333% undivided interest in and to all of the property described on Exhibit B, Section B hereto (the Common Facilities) TO HAVE AND TO HOLD the same unto the Buyer, its successors and assigns, FOREVER. It is the intent of this Deed and Bill of Sale, that, from and after the date of this Deed and Bill of Sale, Buyer will own an undivided 1.36% interest in the Generating Unit, as a tenant in common with the owners of the remaining undivided interests in the Generating Unit, and an undivided .453333% interest in the Common Facilities, as a tenant in common with the owners of the remaining undivided interests in the Common Facilities.

3. The Seller does hereby WARRANT AND COVENANT that it is the true and lawful owner of the Undivided Interest and has good right to sell the Undivided Interest, that title to the Undivided Interest is on the date of execution hereof free and clear of all claims, liens, security interests and encumbrances of any nature,

other than Permitted Liens (other than those described in clause (ii) of the definition of such term and that portion of clause (iv) of such definition relating to liens for taxes being contested), that good, marketable and indefeasible title to the Undivided Interest is hereby conveyed to the Buyer, and that the Seller will forever warrant and defend such title against the claims of all Persons. The foregoing warranties of the Seller are to the restraint of any other covenant of the Seller otherwise arising by implication by virtue of Arizona Revised Statutes, Section 33-435.

4. The Seller and the Buyer hereby acknowledge and confirm that, as between the Seller and the Buyer, the Undivided Interest is and will remain personal property, and is not, and will not become, an accession to the PVNGS Site or to the Real Property Interest, title thereto being separate and distinct from title to such real property. The Buyer hereby waives any rights it may have to partition Unit 1, whether by partitionment in kind or by sale and division of proceeds, and further agrees that it will not resort to any action in law or in equity to partition Unit 1 and it waives the benefits of all laws that may now or hereafter authorize such partition for a term (i) which shall be coterminous with the ANPP Participation Agreement or (ii) which shall be for such lesser period as may be required by Applicable Law.

5. Pursuant to the Assignment and Assumption, the Seller has agreed to pay certain costs and expenses relating to Unit 1, including, but without limitation, with respect to decommissioning and retirement of Unit 1, and to perform and comply with certain obligations relating to transfers of interests in Unit 1. All such agreements and obligations of the Seller are hereby incorporated by reference in this Deed and Bill of Sale as if set forth in full herein.

6. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is MFS Leasing Corp., a Delaware corporation (the Owner Participant), whose address is Suite 3030, One Mellon Bank Center, Pittsburgh, Pennsylvania. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts, 02110, Attention of Corporate Trust Division.

IN WITNESS WHEREOF, the parties hereto have caused this Deed and Bill of Sale to be executed on this 31st day of December, 1985.

PUBLIC SERVICE COMPANY OF NEW MEXICO, a  
New Mexico corporation

By *af Robinson*  
Senior Vice President and  
Chief Financial Officer

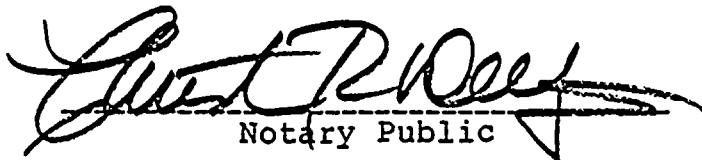
THE FIRST NATIONAL BANK OF BOSTON, a  
national banking association, not in  
its individual capacity, but solely as  
Owner Trustee under the Trust Agreement

By *[Signature]*  
Vice President



State of New York       )  
                                  ) ss:  
County of New York     )

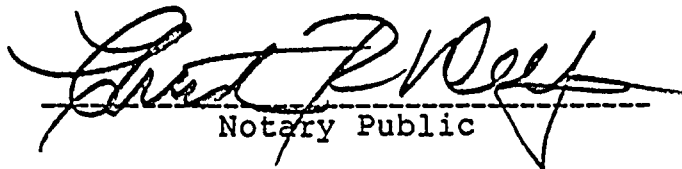
The foregoing instrument was acknowledged before me this 31st day of December, 1985, by A.J. ROBISON, the Senior Vice President and Chief Financial Officer of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, on behalf of the corporation.

  
Notary Public

CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 401-111  
Qualified         
Commission Expires       

State of New York       )  
                                  ) ss:  
County of New York     )

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by CLARK M. WHITCOMB, a Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association as trustee under that certain Trust Agreement dated as of December 16, 1985.

  
Notary Public

CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 401-111  
Qualified         
Commission Expires March 20, 1986





EXHIBIT A  
to  
DEED AND  
BILL OF SALE

PVNGS SITE DESCRIPTION

I. PVNGS PLANT SITE

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian; Maricopa County, Arizona; EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the East half of the Southeast quarter thereof; and EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82, Maricopa County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and  
EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County Records.

PARCEL NO. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

## II. HASSAYAMPA PUMPING STATION AND EFFLUENT PIPELINE

1C All real property, leases, licenses, easements, rights-of-way and other property held by USLife Title Company of Arizona Trust No. 530 established by that certain Trust Agreement dated October 15, 1975, as amended, but excluding therefrom all improvements.

## III. MISCELLANEOUS REAL PROPERTY INTERESTS

Those ANPP Project Agreements (as defined in the ANPP Participation Agreement), in addition to the Trust Agreement for USLife Title Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix Metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement).

EXHIBIT B  
to  
DEED AND  
BILL OF SALE

UNIT 1 DESCRIPTION

A. Unit 1 of the Palo Verde Nuclear Generating Station (PVNGS), located in Maricopa County, Arizona, approximately 55 miles west of the City of Phoenix, Arizona, and approximately 16 miles west of the City of Buckeye, Arizona, consisting of:

- I. Unit 1 Combustion Engineering "System 80" pressurized water reactor nuclear steam supply system (the NSSS). The NSSS is comprised of a reactor vessel containing 241 fuel assemblies with approximately 100 tons of enriched uranium (fuel assemblies, however, are not part of Unit 1 and are not included in the Undivided Interest being sold), two steam generators, four reactor coolant pumps and various additional systems and subsystems. The licensed thermal rating of the NSSS is 3800 MW.
- II. Unit 1 GE TC6F-43, 1800 RPM tandem-compound, six flow, reheat turbine-generator including turbine, generator, moisture separator-reheater, exciter, controls, and auxiliary subsystems. The turbine-generator is conductor cooled and rated at 1,554 MVA at 24,000 V, 3 phase, 60 Hz, 1.5 in Hg ABS back pressure, and approximately 1,363 MW maximum gross electric output.
- III. Unit 1 146 ft. inside diameter, steel-lined, prestressed concrete cylindrical containment building with a hemispherical dome designed for 60 psig. The containment building houses the reactor system.
- IV. Unit 1 auxiliary systems and equipment including engineered safeguards systems, reactor auxiliary systems and turbine-generator auxiliary systems associated with items I, II, and III above, extending to and including the Unit 1 start-up transformer.
- V. Unit 1 cooling tower system consisting of three (3) mechanical draft cooling towers, including a closed cycle circulating water system, make-up water systems and essential spray ponds.

- VI. Unit 1 radioactive waste treatment system, including liquid, gaseous, and solid waste subsystems, controls, instrumentation, storage, handling and shipment facilities.
- VII. Unit 1 emergency diesel-generator system, including a diesel-generator building which contains two diesel generators, fuel oil systems, storage tanks, control and instrumentation systems and other equipment.
- VIII. Unit 1 internal communication systems, including associated interconnections and computer data links.

**BUT EXCLUDING:**

- I. Nuclear fuel for Unit 1, including spare fuel assemblies.
- II. Spare Parts (Unit 1).
- III. Transmission facilities (including any and all facilities and equipment providing interconnection between the Unit 1 turbine generator and the ANPP High Voltage Switchyard, including step-up transformers and standby equipment and systems).
- IV. Oil and diesel fuel inventories (Unit 1).

**TO:** B. . All PVNGS common facilities, INCLUDING BUT NOT LIMITED

- I. Surveillance systems, including associated radioactive monitoring systems and equipment.
- II. Water treatment facilities and transport systems for supply of waste water effluent.
- III. Warehouses and related storage facilities and equipment.

**BUT EXCLUDING:**

- I. Nuclear fuel, including spare fuel assemblies.
- II. All transmission and ANPP High Voltage Switchyard facilities.

- III. Administration Building.
- IV. Administration Annex Building.
- V. Technical Support Center.
- VI. Visitor Center.
- VII. External communication systems and equipment, including associated interconnections and computer data links.
- VIII. Parking lot improvements, road improvements, fencing and dikes.
- IX. Spare parts (Common Facilities).
- X. Simulator.
- XI. Oil and diesel fuel inventories.
- XII. Real property, beneficial interest in USLife Title Company of Arizona Trust No. 530, and Project Agreement interests described in Exhibit A.

When recorded, return to: Greg R. Nielson  
Snell & Wilmer  
3100 Valley Bank Center  
Phoenix, Arizona

DEED

For the consideration of Ten Dollars (\$10.00) and other valuable considerations, PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (Grantor), hereby grants, conveys, sells, transfers and assigns to THE FIRST NATIONAL BANK OF BOSTON, a national banking association, as Owner Trustee (the Owner Trustee) under that certain Trust Agreement (the Trust Agreement), with the beneficiary identified below, dated as of December 16, 1985 (the Owner Trustee being hereinafter referred to as Grantee), (A) an undivided .4% interest in the land that is more particularly described on Exhibit A attached hereto and by this reference incorporated herein, and (B) an undivided .453333% interest in those ANPP Project Agreements (as defined in the Arizona Nuclear Power Project Participation Agreement dated August 23, 1973, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company and Southern California Public Power Authority, as amended (the "ANPP Participation Agreement")) in addition to the Trust Agreement for USLife Title Company of Arizona Trust 530, consisting of leases, licenses, easements and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to the Palo Verde Nuclear Generating Station (as defined in the ANPP Participation Agreement) from the 91st Avenue sewage treatment plant serving the Phoenix, Arizona metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement) (such ANPP Project Agreements being hereinafter referred to as the "Assigned Project Agreements", and the land described in Exhibit A together with the land subject to the Assigned Project Agreements being hereinafter collectively referred to as the "Land") together with all rights and privileges of Grantor appurtenant thereto, including but not limited to the perpetual right to locate, maintain and use the Improvements (as hereinafter defined) on the Land and the perpetual right of ingress and egress over,

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upon and across the Land to the Improvements, BUT excepting and excluding from the transfer being made pursuant to this Deed any and all facilities, structures, improvements, equipment and property of whatever kind and nature now or hereafter constructed, placed or affixed on the Land (collectively, the Improvements), Grantor and Grantee hereby acknowledging and agreeing that the interest in the Improvements to be acquired by Grantee shall be acquired pursuant to a separate Deed and Bill of Sale dated as of December 16, 1985, between Grantor and Grantee and not pursuant to this Deed.

1. The interest being transferred pursuant to this Deed is subject to the ANPP Participation Agreement; to the Project Agreements as defined in said ANPP Participation Agreement; and to the matters set forth on Exhibit B attached hereto and incorporated herein by this reference.

2. Grantor hereby warrants that it is the true and lawful owner of the undivided interest conveyed hereby in the property described on Exhibit A attached hereto and has good right to sell the undivided interest in such property; that Grantor has good and marketable title to the undivided interest in the property described on Exhibit A and that title to such property is on the date of execution hereof free and clear of all claims, liens, encumbrances, security interests, covenants, assessments, rights, reservations, easements, restrictions and conditions save and except only those matters set forth on Exhibit B attached hereto; that good, marketable and indefeasible title to the undivided interest in the property described on Exhibit A is hereby conveyed to Owner Trustee; and that, subject only to the matters set forth on Exhibit B attached hereto, Grantor hereby warrants, and will forever defend, the title against all persons whomsoever.

3. Grantor intends by this Deed that, from and after the recordation of this Deed, Grantee will own an undivided .4% interest in the property described in Exhibit A, as a tenant in common with the owners of the remaining undivided interests in such property, and an undivided .453333% interest in the Assigned Project Agreements as a tenant in common with the owners of the remaining undivided interests in the Assigned Project Agreements.



4. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is MFS Leasing Corp., a Delaware corporation, whose address is Suite 3030, One Mellon Bank Center, Pittsburgh, Pennsylvania 15258, Attention: President. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts, 02110, Attention of Corporate Trust Division.

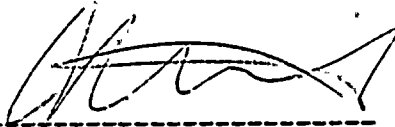
IN WITNESS WHEREOF, Grantor has caused this Deed to be executed on this 31st day of December, 1985.

PUBLIC SERVICE COMPANY OF NEW  
MEXICO, a New Mexico corpo-  
ration,

By *A. J. Bohlen*  
Senior Vice President and  
Chief Financial Officer

Accepted and Agreed  
to:

THE FIRST NATIONAL BANK  
OF BOSTON, a national  
banking association,  
not in its individual  
capacity, but solely  
as Trustee of the  
Trust Agreement

By   
Vice President

State of New York     )  
                                  ) ss.  
County of New York    )

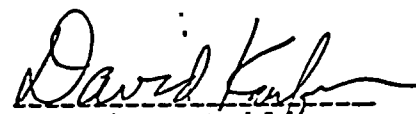
The foregoing instrument was acknowledged before me this 31st day of December, 1985, by A. J. Robison, the Senior Vice President and Chief Financial Officer of Public Service Company of New Mexico, a New Mexico corporation, on behalf of the corporation.

  
Notary Public

State of New York     )  
                                  ) ss.  
County of New York    )

DAVID KAUFMAN  
Notary Public, State of New York  
No. 62-770413  
Qualified in New York City, 1987  
Commission Expires March 31, 1990

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by Clark M. Whitcomb, Vice President of The First National Bank of Boston, a national banking association, on behalf of the banking association as Owner Trustee under that certain Trust Agreement dated as of December 16, 1985.

  
Notary Public

DAVID KAUFMAN  
Notary Public, State of New York  
No. 62-770413  
Qualified in New York City, 1987  
Commission Expires March 31, 1990

EXHIBIT A  
to  
DEED

PVNGS SITE DESCRIPTION

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the

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Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the East half of the Southeast quarter thereof; and EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82, Maricopa County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and

EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County Records.

PARCEL NO. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.



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EXHIBIT B  
TO  
DEED

1. The right to enter upon, occupy and use, any part or all of that portion of the West half of the West half of Section 27, lying within 20 feet of the center line of the transmission line right of way of the Central Arizona Light and Power Company for the purposes provided in the Act of June 10, 1920 (41 STAT., 1063), and subject to the conditions and limitations of Section 24 of said Act, as Amended by the Act of August 26, 1935 (49 STAT., 846), as reserved unto the United States of America in instrument recorded September 30, 1949 in Docket 442, page 577. (Part of Parcel No. 5 - South half of said Section 27)
2. Roadway over the South .65 feet of said Sections 9 and 10, as shown on Book 13 of Road Maps, page 48. (Parcels 10 and 11)
3. Easement and rights incident thereto for electric lines approximately 28 feet South of the North line of said Section 34, as set forth in instrument recorded February 20, 1952 in Docket 878, page 548. (Parcel No. 8)
4. All the Oil and Gas in said lands, as reserved unto the United States of America, and the right to prospect for, mine and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of June 17, 1914 (38 Stat. 509), as set forth in Patent recorded June 4, 1957 in Docket 2194, page 409. (Part of Parcel No. 11)
5. Easement and rights incident thereto for transmission line over said Section 34, said easement being 10 feet in width, the centerline described as follows: Beginning at a point approximately 28 feet South and 2445.5 feet East of the Northwest corner of said Section 34; thence Southerly along, parallel to and approximately 2620 feet to a point; thence Easterly, along, parallel to, and approximately 2648 feet South of the North line of said Section 34, a distance of approximately 1556 feet to a point, as set forth in instrument recorded January 15, 1962 in Docket 3992, page 49. (Parcel No. 8)
6. One-Sixteenth of all gas, oil, metals and mineral rights as reserved unto the State of Arizona, in Patent recorded January 11, 1974 in Docket 10473, page 447. (Parcel 1)
7. Easement and rights incident thereto for highway purposes over the West 55 feet of the East half of said Section 4, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Parcel 3)
8. Easement and rights incident thereto for highway purposes over the West 55 feet of the Southeast quarter of said Section 28, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Parcel 6)

9. Easement and rights incident thereto for highway purposes over the West 55 feet of the East half of said Section 33, as set forth in instrument recorded October 10, 1975 in Docket 1137 page 142. (Parcel 7)

10. Easement and rights incident thereto for highway purposes over the West 55 feet of the Southeast quarter of said Section 9, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Part of Parcel 10)

11. Easement and rights incident thereto for electric lines over the North 10 feet of the following described property: The Southeast quarter of Section 23, Township 1 North, Range 6 West; Except the West 55 feet thereof for roadway, as set forth in instrument recorded June 25, 1976 in Docket 11736, page 1090. (Parcel 6)

12. Easement for highway purposes over said premises, as granted to Maricopa County, a Political Subdivision, by instrument recorded December 15, 1977 in Docket 12602, page 575, described as follows:

The South 40 feet of the East one-half of the Southeast quarter of Section 9; the South 40 feet of the Southwest quarter of Section 10; the South 40 feet of the West one-half of the Southeast quarter of Section 10, the South 40 feet of the Southwest quarter of the Southeast quarter of Section 9; All being in Township 1 South, Range 6 West of the Gile and Salt River Base and Meridian, Maricopa County, Arizona.

13. A roadway of a width consistent with the right of way over the Southerly portion of Sections 9 and 10 of the within described property, and other property designated County Road on Book 25 of Road Maps, page 47, recorded December 26, 1978. (Also known as Hard Road from the Hassayampa Salome Highway to the South entrance of the Palo Verde Nuclear Generating Station)

14. Arizona Nuclear Power Project Agreement dated August 23, 1973, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company and Southern California Public Power Authority, as amended.

15. 1985 taxes not yet due and payable.

16. Easement and rights incident thereto for transmission line right of way over a portion of said premises, as set forth in instrument recorded November 15, 1985 in Document No. 85-544605. (Parcels 1, 2, 8, 9 and 11)

17. Easement and rights incident thereto for highway over a portion of said premises, as set forth in instrument recorded February 3, 1959, in Docket 2740, page 309, and as shown in Book 12 of Road Maps, page 82 (Parcel 12).

18. Easement and rights incident thereto for roadway 20 feet in width, over the East 20 feet of the within described property, by instrument recorded October 19, 1976, in Docket 11907, page 115 (Parcel 12).



When recorded, return to: Greg R. Nielson  
Snell & Wilmer  
3100 Valley Bank Center  
Phoenix, Arizona 85073

**DEED AND ASSIGNMENT OF BENEFICIAL INTEREST**

**USLIFE TITLE TRUST NO. 530**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (Assignor), as the present owner of an undivided 10.2% of the entire beneficial interest under US Life Title Company of Arizona Trust No. 530 (Trust 530) established by that certain Trust Agreement dated October 15, 1975 (the Trust 530 Agreement), for and in consideration of the sum of Ten and no/100 Dollars (\$10.00) and other valuable consideration, does by these presents sell, assign, convey, transfer and set over to **THE FIRST NATIONAL BANK OF BOSTON**, a national banking association, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee) under that certain Trust Agreement (the Trust Agreement) with the beneficiary identified below, dated as of December 16, 1985 (the Owner Trustee being referred to herein as the Assignee) an undivided .453333% beneficial interest in Trust 530.

1. It is the intent of this Deed and Assignment of Beneficial Interest that, from and after the date of this Deed and Assignment of Beneficial Interest, Assignee will own an undivided .453333% of the entire beneficial interest in Trust 530, as a tenant in common with other beneficiaries.

2. Assignor hereby warrants that it is the true and lawful owner of the beneficial interest being transferred hereby and has good right to sell such interest; that Assignor has good and marketable title to such beneficial interest and that title to such beneficial interest is on the date of execution hereof free and clear of all claims, liens, security interests, covenants, rights, restrictions, conditions and

6091.MFS.2898.05:1

encumbrances of any nature, save and except only those matters set forth in paragraph 3 hereinbelow; that good, marketable and indefeasible title to such beneficial interest is hereby conveyed to Owner Trustee; and that, subject only to the matters set forth in paragraph 3 hereinbelow, Assignor warrants and will forever defend such title against the claims of all persons whomsoever.

3. This Deed and Assignment of Beneficial Interest is given and accepted with the understanding and agreement that Assignor and Assignee hereby ratify, confirm and approve all proper actions heretofore taken by USLife Title Company of Arizona, as Trustee of Trust 530 (the Trustee) and all proper disbursements heretofore made by the Trustee, and is given and accepted with the understanding and agreement that the interest in Trust 530 which is being transferred hereby is being transferred and assigned, and the property held under Trust 530 is, subject to all the terms and conditions of (i) the Arizona Nuclear Power Project Participation Agreement dated August 23, 1973, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company and Southern California Public Power Authority, as amended, (ii) the Project Agreements as defined in said Arizona Nuclear Power Project Participation Agreement and (iii) the Trust 530 Agreement, including all supplements and amendments thereto; and is subject to all obligations and liabilities under the Trust 530 Agreement heretofore accrued or hereafter arising under the terms thereof. Assignee hereby accepts, assumes and agrees to be bound by all of the terms, conditions, stipulations and obligations of Trust 530 Agreement. Trustee is authorized to substitute Assignee in place of Assignor under the Trust 530, to the extent of the interest hereby assigned to Assignee.

4. Assignee hereby advises the Trustee that, until further notice, Assignee's address for all Trust 530 purposes is:

100 Federal Street  
Boston, Massachusetts 02110  
Attention of Corporate Trust  
Division

5. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is MFS Leasing Corp., a Delaware corporation, whose address is Suite 3030, One Mellon Bank Center, Pittsburgh, Pennsylvania. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110; Attention of Corporate Trust Division.

IN WITNESS WHEREOF, Assignor has caused this Deed and Assignment of Beneficial Interest to be executed on this 31st day of December, 1985.

PUBLIC SERVICE COMPANY OF NEW  
MEXICO, a New Mexico corporation

By *A. J. Robison*  
Senior Vice President and  
Chief Financial Officer

State of New York                    )  
  ) ss.  
County of New York                )

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by A.J. Robison, the Senior Vice President and Chief Financial Officer of Public Service Company of New Mexico, a New Mexico corporation, on behalf of the corporation.

*David Kaufman*  
Notary Public  
DAVID KAUFMAN  
Notary Public, State of New York  
No. 31-4791418  
Qualified in New York County  
Commission Expires March 20, 1987

ACCEPTANCE BY ASSIGNEE

The foregoing Deed and Assignment of Beneficial Interest is hereby accepted and all terms and conditions are hereby approved, and Assignee hereby acknowledges receipt of a copy of the Trust 530 Agreement and all amendments and supplements thereto, and hereby agrees to be bound by and to comply with all the terms and obligations of the Trust 530 Agreement.

DATED as of the 31st day of December, 1985.

THE FIRST NATIONAL BANK OF  
BOSTON, a national banking  
association, not in its  
individual capacity but  
solely as Trustee under the  
Trust Agreement

By 

Vice President

State of New York                    )  
  ) ss.  
County of New York                 )

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by Clark M. Whitcomb, a Vice President of First National Bank of Boston, a national banking association, on behalf of the banking association as Trustee under that certain Trust Agreement dated as of December 16, 1985.

  
Notary Public

DAVID KAUFMAN  
Notary Public, State of New York  
No. 31-4701818  
Qualified in New York County  
Commission Expires March 22, 1987

ENDORSEMENT OF TRUSTEE

The foregoing Deed Assignment of Beneficial Interest is hereby accepted, and filed in Trust Department of USLIFE TITLE COMPANY of Arizona this \_\_\_\_ day of \_\_\_\_\_, 198\_\_.

USLIFE TITLE COMPANY OF  
ARIZONA, Trustee

By \_\_\_\_\_  
Authorized Signature

NOTE: Trustee's endorsement hereon shall be effective only after all assignment fees and other fees currently due Trustee with respect to the interest being assigned have been paid in full.

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of December, 1985, \_\_\_\_\_, a trust officer of USLIFE TITLE COMPANY of Arizona, an Arizona corporation, on behalf of the corporation, as Trustee under the Trust 530 Agreement.

\_\_\_\_\_  
Notary Public



December 31, 1985

**CHEMICAL BANK**

not in its individual  
capacity, but solely as Collateral  
Trust Trustee  
55 Water Street,  
New York, New York 10041  
Attention: Corporate Trustee Administration

**PUBLIC SERVICE COMPANY OF NEW MEXICO  
PALO VERDE NUCLEAR GENERATING STATION UNIT 1 LEASE**

Dear Sirs:

Reference is made to the Participation Agreement, dated as of December 16, 1985 (the Participation Agreement), among the parties whose signatures appear at the foot hereof. All capitalized terms used herein without definition shall have the meanings set forth in Appendix A to the Participation Agreement.

1. Representations, Warranties and Agreements. The Loan Participant, the Owner Participant, FNB, the Owner Trustee, the Indenture Trustee and Public Service Company of New Mexico (PNM) hereby confirm for your benefit that their respective representations and warranties (in the capacity given therein) and, in the case of PNM, agreements contained in Sections 6, 7, 8, 9, 10, 13 and 14 of the Participation Agreement and, in the case of the Owner Participant, the agreements contained in Section 14(a) of the Participation Agreement, are true and correct and hereby respectively repeat such representations, warranties and agreements, in the case of PNM and the Owner Participant, to the same extent as if such representations, warranties and agreements were set forth herein in full, whether or not the same are amended after the date hereof.

6091.MFS.2898.77:1

2. **Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements contained herein shall survive the execution and delivery of this letter.

3. **Successors and Assigns.** All terms and provisions of this letter shall inure to your benefit and the benefit of your successors and assigns and each holder from time to time of each Bond.

4. **Consequences of Breach.** A breach of the representations, warranties and agreements contained herein will not entitle you or any holder of a Bond to exercise remedies or take other action under the Participation Agreement or any other Transaction Document, but you may pursue all other rights you have at law or in equity in consequence of such a breach.

5. **Governing Law.** This letter shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.



MFS LEASING CORP.

By:

Christine R. Cook  
~~Assistant Vice President~~

FIRST PV FUNDING CORPORATION

By:

John Barber  
President

CHEMICAL BANK,  
as Indenture Trustee

By:

[Signature]  
Vice President

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

By:

at Robison  
Senior Vice President and  
Chief Financial Officer

THE FIRST NATIONAL BANK OF  
BOSTON

in its individual capacity  
and as Owner Trustee

By:

[Signature]  
Vice President



INDENTURE OF PARTIAL RELEASE

THIS INDENTURE OF PARTIAL RELEASE, dated as of this 31 day of December, 1985, by IRVING TRUST COMPANY, a corporation organized and existing under the laws of the State of New York, as Trustee (hereinafter sometimes called "the Trustee"), to PUBLIC SERVICE COMPANY OF NEW MEXICO, a corporation organized and existing under the laws of the State of New Mexico (hereinafter sometimes called "the Company");

## W I T N E S S E T H

WHEREAS, a certain Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, executed and delivered by the Company to the Trustee to secure bonds of the Company issued and to be issued thereunder, was filed for record as a real property mortgage and as a financing statement in the Office of the County Recorder, County of Maricopa, State of Arizona, and has been supplemented by thirty-two supplemental indentures, the last such supplement being dated as of December 1, 1984, such supplemental indentures having been filed for record as real property mortgages and as financing statements in the Office of the County Recorder, County of Maricopa, State of Arizona (said Indenture of Mortgage and Deed of Trust and said supplemental indentures being hereinafter collectively referred to as the "Indenture"); and

WHEREAS, specific recording information pertaining to the aforementioned recordings is shown on Appendix I attached hereto and made a part hereof; and

WHEREAS, the Company has represented to the Trustee that it has agreed to transfer, sell and convey the property hereinafter described; and

WHEREAS, the Company has complied with all requirements of the Indenture which are prerequisite to the execution and delivery of this Indenture of Partial Release; and

WHEREAS, the Trustee has been requested to release the property hereinafter described from the lien of the Indenture, and the Indenture authorizes the execution of this Indenture of Partial Release;

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00) and other good and valuable consideration to it in hand paid by the Company, the receipt whereof is hereby acknowledged, Irving Trust Company, as Trustee as aforesaid, does hereby release and discharge from the lien of the Indenture and forever quitclaim and set over unto the said Public Service Company of New Mexico, a New Mexico corporation, its successors and assigns forever, all that certain property more particularly described in the Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the right, title and interest in said property hereby released, quitclaimed and set over unto Public Service Company of New Mexico, its successors and assigns forever, free and discharged from any lien, claim or interest whatsoever of said Irving Trust Company, as Trustee as aforesaid, by virtue of said Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, as supplemented as aforesaid; PROVIDED, HOWEVER, that the lien of said Indenture of Mortgage and Deed of Trust, as supplemented as aforesaid, as to all other property

covered thereby and not heretofore released, whether owned by Public Service Company of New Mexico at the time said Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, was executed or since acquired, is hereby reserved and unaffected by this instrument.

This instrument is made without warranty by, and without recourse to, the Trustee in any event whatsoever.

IN WITNESS WHEREOF, said Irving Trust Company, as Trustee as aforesaid, has caused its corporate name to be hereunto affixed by one of its ~~Assistant~~ Vice Presidents and the same to be attested by one of its Assistant Vice Presidents or Assistant Secretaries, and the due execution of this Indenture of Partial Release to be acknowledged, all as of the day and year first above written.

IRVING TRUST COMPANY  
as Trustee

By   
~~Assistant~~ Vice President

ATTEST:

  
Title: ~~Assistant~~ Secretary

STATE OF NEW YORK

COUNTY OF NEW YORK

) ss.

On this 30 day of December, 1985, before me appeared W. T. C. [unclear] to me personally known, who being by me duly sworn, did say that he is an ~~Assistant~~ Vice President of Irving Trust Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said W. T. C. [unclear] acknowledged said instrument to be the free act and deed of said corporation.

Marion Eichenwald  
NOTARY PUBLIC

My commission expires:  
\_\_\_\_\_

MARION EICHENWALD  
Notary Public, State of New York  
No. 81-462,100  
Qualified in New York County  
Commission Expires March 30, 1987



EXHIBIT "A"

The following described property located in Maricopa County, Arizona:

Certain real property interests consisting of (i) an undivided two and 166,667/1,000,000 percent (2.166667%) fee interest in the Palo Verde Nuclear Generating Station ("PVNGS") Plant Site land described in Part I of Schedule 1 attached hereto and incorporated herein by reference; and (ii) an undivided two and 455,556/1,000,000 percent (2.455556%) beneficial interest in USLife Title Trust No. 530, more particularly described in Part II of said Schedule 1; and (iii) an undivided two and 455,556/1,000,000 percent (2.455556%) interest in certain PVNGS "Project Agreements" more particularly described in Part III of said Schedule 1.





DESCRIPTION OF REAL PROPERTY

I. PVNGS PLANT SITE

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northwest quarter of Section 27.

PARCEL NO 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the East half of the Southeast quarter thereof;  
and

EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, Page 82, Maricopa County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said

highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof;  
and

EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, Page 52, Maricopa County Records.

PARCEL 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

## II. HASSAYAMPA PUMPING STATION AND EFFLUENT PIPELINE

All real property, leases, licenses, easements, rights-of-way and other property held by USLife Title Company of Arizona Trust No. 530 established by that certain Trust Agreement dated

October 15, 1975, as amended, but excluding therefrom all improvements.

### III. MISCELLANEOUS REAL PROPERTY INTERESTS

Those Arizona Nuclear Power Project ("ANPP") Project Agreements (as defined in the ANPP Participation Agreement dated as of August 23, 1973, as amended), in addition to the Trust Agreement for US Life Title Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix Metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement).

8285C



INDENTURE OF PARTIAL RELEASE

THIS INDENTURE OF PARTIAL RELEASE, dated as of this 31 day of December, 1985, by IRVING TRUST COMPANY, a corporation organized and existing under the laws of the State of New York, as Trustee (hereinafter sometimes called "the Trustee"), to PUBLIC SERVICE COMPANY OF NEW MEXICO, a corporation organized and existing under the laws of the State of New Mexico (hereinafter sometimes called "the Company");

## W I T N E S S E T H

WHEREAS, a certain Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, executed and delivered by the Company to the Trustee to secure bonds of the Company issued and to be issued thereunder, was filed for record as a real property mortgage and as a financing statement in the Office of the County Recorder, County of Maricopa, State of Arizona, and has been supplemented by thirty-two supplemental indentures, the last such supplement being dated as of December 1, 1984, such supplemental indentures having been filed for record as real property mortgages and as financing statements in the Office of the County Recorder, County of Maricopa, State of Arizona (said Indenture of Mortgage and Deed of Trust and said supplemental indentures being hereinafter collectively referred to as the "Indenture"); and

WHEREAS, specific recording information pertaining to the aforementioned recordings is shown on Appendix I attached hereto and made a part hereof; and

WHEREAS, the Company has represented to the Trustee that it has agreed to transfer, sell and convey the property hereinafter described; and

WHEREAS, the Company has complied with all requirements of the Indenture which are prerequisite to the execution and delivery of this Indenture of Partial Release; and

WHEREAS, the Trustee has been requested to release the property hereinafter described from the lien of the Indenture, and the Indenture authorizes the execution of this Indenture of Partial Release;

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00) and other good and valuable consideration to it in hand paid by the Company, the receipt whereof is hereby acknowledged, Irving Trust Company, as Trustee as aforesaid, does hereby release and discharge from the lien of the Indenture and forever quitclaim and set over unto the said Public Service Company of New Mexico, a New Mexico corporation, its successors and assigns forever, all that certain property more particularly described in the Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the right, title and interest in said property hereby released, quitclaimed and set over unto Public Service Company of New Mexico, its successors and assigns forever, free and discharged from any lien, claim or interest whatsoever of said Irving Trust Company, as Trustee as aforesaid, by virtue of said Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, as supplemented as aforesaid; PROVIDED, HOWEVER, that the lien of said Indenture of Mortgage and Deed of Trust, as supplemented as aforesaid, as to all other property

covered thereby and not heretofore released, whether owned by Public Service Company of New Mexico at the time said Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, was executed or since acquired, is hereby reserved and unaffected by this instrument.

This instrument is made without warranty by, and without recourse to, the Trustee in any event whatsoever.

IN WITNESS WHEREOF, said Irving Trust Company, as Trustee as aforesaid, has caused its corporate name to be hereunto affixed by one of its ~~Assistant~~ Vice Presidents and the same to be attested by one of its Assistant Vice Presidents or Assistant Secretaries, and the due execution of this Indenture of Partial Release to be acknowledged, all as of the day and year first above written.

IRVING TRUST COMPANY  
as Trustee

By   
~~Assistant~~ Vice President

ATTEST:

  
Title: 



STATE OF NEW YORK

COUNTY OF NEW YORK

) ss.

On this 30<sup>th</sup> day of December, 1985, before me appeared  
W. T. COOPER to me personally known, who being by me  
duly sworn, did say that he is an ~~Assistant~~ Vice President of Irving  
Trust Company, and that the seal affixed to said instrument is the  
corporate seal of said corporation, and that said instrument was signed  
and sealed in behalf of said corporation by authority of its Board of  
Directors, and said W. T. COOPER acknowledged said instru-  
ment to be the free act and deed of said corporation.

Marion Eichenwald  
NOTARY PUBLIC

My commission expires:  
\_\_\_\_\_

MARION EICHENWALD  
Notary Public, State of New York  
No. 81-842589  
Qualified in New York County  
Commission Expires March 30, 1987



EXHIBIT "A"

The following described property located in Maricopa County, Arizona:

- (1) An undivided seven and 366,667/1,000,000 percent (7.366667%) interest in "Unit 1" as described in Part A of Schedule 1 attached hereto and incorporated herein by reference;
- (2) an undivided two and 455,556/1,000,000 percent (2.455556%) interest in the Palo Verde Nuclear Generating Station ("PVNGS") Common Facilities described in Part B of said Schedule 1; and (3) the Generation Entitlement Share (as defined in the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, as amended (the "ANPP Participation Agreement")) and the related interest in the ANPP Participation Agreement associated with the above-described property.

A. Unit 1 of the Palo Verde Nuclear Generating Station ("PVNGS"), located in Maricopa County, Arizona, approximately 55 miles west of the City of Phoenix, Arizona, and approximately 16 miles west of the City of Buckeye, Arizona, CONSISTING OF:

- I. Unit 1 Combustion Engineering "System 80" pressurized water reactor nuclear steam supply system (the NSSS). The NSSS is comprised of a reactor vessel containing 241 fuel assemblies with approximately 100 tons of enriched uranium (fuel assemblies, however, are not a part of Unit 1 and will not be included in the Facilities being sold), two steam generators, four reactor coolant pumps and various additional systems and subsystems. The licensed thermal rating of the NSSS is 3800 MW.
- II. Unit 1 GE TC6F-43, 1800 RPM tandem-compound, six flow, reheat turbine-generator including turbine, generator, moisture separator-reheater, exciter, controls, and auxiliary subsystems. The turbine-generator is conductor cooled and rated at 1,554 MVA at 24,000 V, 3 phase, 60 Hz, 1.5 in Hg ABS back pressure, and approximately 1,363 MW maximum gross electric output.
- III. Unit 1 146 ft. inside diameter, steel-lined, prestressed concrete cylindrical containment building with a hemispherical dome designed for 60 psig. The containment building houses the reactor system.
- IV. Unit 1 auxiliary systems and equipment including engineered safeguards systems, reactor auxiliary systems and turbine-generator auxiliary systems associated with items I, II, and III above, extending to and including the Unit 1 start-up transformer.
- V. Unit 1 cooling tower system consisting of three (3) mechanical draft cooling towers, including a closed cycle circulating water system, make-up water systems and essential spray ponds.

#### SCHEDULE 1

- VI. Unit 1 radioactive waste treatment system, including liquid, gaseous, and solid waste subsystems, controls, instrumentation, storage, handling and shipment facilities.
- VII. Unit 1 emergency diesel-generator system, including a diesel-generator building which contains two diesel generators, fuel oil systems, storage tanks, control and instrumentation systems and other equipment.
- VIII. Unit 1 internal communication systems, including associated interconnections and computer data links.

BUT EXCLUDING:

- I. Nuclear fuel for Unit 1, including spare fuel assemblies.
- II. Spare parts (Unit 1).
- III. Transmission facilities (including any and all facilities and equipment providing interconnection between the Unit 1 turbine generator and the ANPP High Voltage Switchyard, including step-up transformers and standby equipment and systems).
- IV. Oil and diesel fuel inventories (Unit 1).

B. All PVNGS Common Facilities, INCLUDING BUT NOT

LIMITED TO:

- I. Surveillance systems, including associated radioactive monitoring systems and equipment.
- II. Water treatment facilities and transport systems for supply of waste water effluent.
- III. Warehouses and related storage facilities and equipment.

BUT EXCLUDING:

- I. Nuclear fuel, including spare fuel assemblies.
- II. All transmission and ANPP High Voltage Switchyard facilities.

- III. Administration building.
  - IV. Administration annex building.
  - V. Technical support center.
  - VI. Visitor center.
  - VII. External communication systems and equipment, including associated interconnections and computer data links.
  - VIII. Parking lot improvements, road improvements, fencing and dikes.
  - IX. Spare parts (Common Facilities).
  - X. Simulator.
  - XI. Oil and diesel fuel inventories.
  - XII. Real property, beneficial interest in USLife Title Company of Arizona Trust No. 530, and Project Agreement interests described in Schedule 2 attached hereto.
-

## DESCRIPTION OF REAL PROPERTY

### I. PVNGS PLANT SITE

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northwest quarter of Section 27.

PARCEL NO 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

### SCHEDULE 2

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;  
EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the East half of the Southeast quarter thereof;

and

EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, Page 82, Maricopa County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof;

and

EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, Page 52, Maricopa County Records.

PARCEL 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.



## II. HASSAYAMPA PUMPING STATION AND EFFLUENT PIPELINE

All real property, leases, licenses, easements, rights-of-way and other property held by USLife Title Company of Arizona Trust No. 530 established by that certain Trust Agreement dated October 15, 1975, as amended, but excluding therefrom all improvements.

## III. MISCELLANEOUS REAL PROPERTY INTERESTS

Those ANPP Project Agreements (as defined in the ANPP Participation Agreement), in addition to the Trust Agreement for US Life Title Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix Metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement).

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**TAX INDEMNIFICATION AGREEMENT**

dated as of December 16, 1985

between

**MFS LEASING CORP.,  
as Owner Participant**

and

**PUBLIC SERVICE COMPANY OF NEW MEXICO,  
as Lessee**

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**Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities**

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## TAX INDEMNIFICATION AGREEMENT

THIS TAX INDEMNIFICATION AGREEMENT, dated as of December 16, 1985, between MFS LEASING CORP., (the Owner Participant) and PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the Lessee). Capitalized terms not otherwise defined herein shall have the meaning set forth in Appendix A to the Participation Agreement, dated as of December 16, 1985, among MFS LEASING CORP., Public Service Company of New Mexico; First PV Funding Corporation, the First National Bank of Boston, and Chemical Bank (the Participation Agreement).

### W I T N E S S E T H:

WHEREAS, the Owner Participant and the Lessee have executed the Participation Agreement pursuant to which the Owner Participant has agreed to cause the Owner Trustee to purchase from the Lessee, and the Lessee has agreed to sell to the Owner Trustee, the Undivided Interest and the Real Property Interest;

WHEREAS, the Owner Trustee and the Lessee have executed the Facility Lease pursuant to which the Owner Trustee has agreed to lease to the Lessee, and the Lessee has agreed to lease from the Owner Trustee, the Undivided Interest and the Real Property Interest;

WHEREAS, the Lessee understands that the Owner Participant has entered into the Transaction Documents based on the assumption that, for purposes of federal income tax laws, including any rules, regulations and procedures thereunder, the Owner Participant, as sole beneficiary of the Trust created under the Trust Agreement pursuant to which the Owner Trustee has purchased, and is the owner of, the Undivided Interest and the Real Property Interest, will be entitled to those items of income, loss, deduction and credit with respect to the Undivided Interest and the Real Property Interest as are provided to an owner of property; and

WHEREAS, the Owner Participant and the Lessee desire to clarify their respective rights and obligations with respect to such items of income, loss, deduction and credit for federal income tax purposes;

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

**SECTION 1. Tax Assumptions and Tax Representations.**

(a) **Tax Assumptions.** The Facility Lease has been entered into, and the Owner Participant's Net Economic Return has been computed, on the basis of the following assumed federal income tax benefits:

(1) The Facility Lease will be treated as a true lease under which the Owner Trustee will be the purchaser, owner and lessor of the Undivided Interest and the Real Property Interest and the Lessee will be treated as the lessee of the Undivided Interest and the Real Property Interest.

(2) The Owner Participant will be entitled to take into account in computing its federal income tax liability each item of income, gain, deduction, loss and credit of the trust created by the Trust Agreement.

(3) The Lessee will retain the investment credit. The transaction will constitute a "sale-and-leaseback transaction" for purposes of § 1.47-3(g) of the Regulations.

(4) The Owner Participant will be allowed deductions under the Accelerated Cost Recovery System with respect to the Undivided Interest pursuant to sections 168(a), 168(b)(1) and 168(f)(12) of the Code; the Owner Participant's taxable year in which the Closing Date occurs will be a full taxable year; the Owner Participant's aggregate adjusted



basis for purposes of computing such deductions will be equal to 100% of the Purchase Price; with respect to 92.8% of the Purchase Price, the Owner Participant will be entitled to take such deductions (resulting in a write-off of such percentage of the Purchase Price to a zero salvage value) in the following amounts at the following times:

<u>Year</u>	<u>Percentage (to be applied against 92.8% of the Purchase Price)</u>
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1985	8%
1986	14%
1987	12%
1988	10%
1989	10%
1990	10%
1991	9%
1992	9%
1993	9%
1994	9%

and with respect to the remaining 7.2% of the Purchase Price, the Owner Participant will be entitled to take such deductions (resulting in a write-off of such percentage of the Purchase Price to a zero salvage value) in the following amounts at the following times:

<u>Year</u>	<u>Percentage (to be applied against 7.2% of the Purchase Price)</u>
-------------	--

1985	5%
1986	10%
1987	10%
1988	10%
1989	10%
1990	10%
1991	10%
1992	10%
1993	10%
1994	10%
1995	5%

(the deductions described in this paragraph (4) being hereinafter referred to as the ACRS Deductions).

(5) The indebtedness evidenced by the Notes will constitute a loan made to the Owner Trustee; all amounts paid with respect thereto other than payments of principal will be deductible, when paid or accrued, pursuant to section 163 of the Code and the Regulations in accordance with the method of accounting on the basis of which the Owner Participant regularly computes its income (the Interest Deductions).

(6) The Owner Participant will be allowed current deductions for amortization of an amount equal to the Transaction Expenses computed on a straight-line basis over the Basic Lease Term (the Amortization Deductions).

(7) The Owner Participant will have at all relevant times sufficient federal taxable income against which to apply the ACRS Deductions, the Interest Deductions and the Amortization Deductions.

(8) The Notes will bear interest pursuant to their terms at the rates applicable from time to time; the principal amount of the Notes will constitute no more than 80 percent of the Purchase Price; and the Notes will be amortized by certain payments of principal pursuant to the terms thereof.

(9) Basic Rent will be paid on the Basic Rent Payment Dates. Basic Rent will be payable in arrears in semi-annual installments during the Basic Lease Term and the Renewal Term as set forth in the Facility Lease.

(10) Neither the Owner Trustee nor the Owner Participant will at any time be required to include any amount in gross income for federal income tax

purposes with respect to the transactions contemplated by the Transaction Documents or the Financing Documents other than (a) payments of Basic Rent in the amounts and no earlier than at the times such payments are required to be made in accordance with the Facility Lease, which payments of Basic Rent shall be accrued ratably over the six-month period preceding the date on which such payment of Basic Rent is required to be made in accordance with the Facility Lease, (b) payments pursuant to the exercise of Lessee's options to purchase the Undivided Interest as described in the Facility Lease at the time such payments are made, and (c) any payments required to be made on an After-Tax Basis pursuant to the Transaction Documents at the time such payments are made.

(11) The Owner Participant's marginal federal rate of income tax is 46 percent, without giving effect to any credits against tax.

(12) The Owner Participant's cash investment in the Undivided Interest at the Closing Date will be an amount equal to the Investment Percentage of the Purchase Price.

(13) The Closing Date will be December 31, 1985.

(14) The Owner Trustee and the Owner Participant will be entitled to treat each item of income, gain, deduction, loss and credit with respect to the transactions contemplated by the Transaction Documents and the Financing Documents as derived from or allocable to sources within the United States.

(b) Tax Representations. The Lessee represents and warrants to and covenants with the Owner Participant that:

(1) On the Closing Date and throughout the Lease Term, the Undivided Interest will constitute "recovery property" and "10-year property" within

the meaning of sections 168(c)(1) and 168(c)(2)(C) of the Code as in effect on the date hereof.

(2) Unit 1 will be "placed in service" for the purposes of section 168 of the Code no later than the Closing Date, and each item of property constituting the Undivided Interest will be so placed-in-service no later than the Closing Date.

(3) Not more than 7.2% of the property constituting the Undivided Interest and not more than 7.2% of the Purchase Price shall be subject to the provisions of section 168(f)(12) of the Code, dealing with limitations on property financed with tax-exempt bonds.

(4) The Lessee has provided to the Appraiser all factual information in its possession which is relevant to such Appraiser's conclusions and such information is accurate and complete on the Closing Date. The Lessee has no reason to believe that the Appraiser's conclusions are inaccurate.

(5) Assuming that the Owner Participant is the owner of the Undivided Interest for federal income tax purposes, the Owner Participant will be entitled to the ACRS Deductions, the Interest Deductions and the Amortization Deductions.

(6) Neither the Owner Trustee nor the Owner Participant will at any time be required to include any amount in gross income for federal income tax purposes with respect to the transactions contemplated by the Transaction Documents or the Financing Documents other than the amounts described in Sections 1(a)(10)(a), (b) and (c) hereof at the respective times referred to therein.

(7) The Owner Trustee and the Owner Participant will be entitled to treat each item of income, gain, deduction, loss and credit with respect to the transactions contemplated by the Transaction Documents or the Financing Documents as

derived from or allocable to sources within the United States.

(8) The provisions of section 168(f)(10) of the Code as in effect on the Closing Date and as such section of the Code may be amended by any provision substantially similar to any provision set forth in section 1509(b) of H.R. 3838 will not apply to the transactions contemplated by the Transaction Documents in a manner that could cause a Loss and the Lessee will not take any action pursuant to section 168(b)(3) or 168(f)(2)(C) that is inconsistent with the Owner Participant's entitlement to the ACRS Deductions.

(9) Neither Unit 1 nor any item of property constituting the Undivided Interest was placed in service for federal income tax purposes prior to May 1, 1985.

(10) At all times prior to the closing on the Closing Date the Undivided Interest was owned by the Lessee.

(11) The provisions of Section 168(e) of the Code will not apply to the transactions contemplated by the Transaction Documents.

(12) Throughout the Lease Term the Undivided Interest shall not constitute "tax-exempt use property" within the meaning of section 168(j) of the Code as in effect on the Closing Date and as such section of the Code may be amended by any provision substantially similar to any provision set forth in section 1502(a) of H.R. 3838, and the provisions of section 168(j) of the Code as in effect on the Closing Date and as so amended will not apply to the transactions contemplated by the Transaction Documents.

(13) No part of the Undivided Interest will be used predominantly outside the United States within the meaning of Section 168(f)(2) of the Code.

(14) On the Closing Date, no improvements, modifications or additions to the Undivided Interest are required to render the Undivided Interest complete for its intended use by the Lessee.

(15) No part of the cost of the Undivided Interest or Real Property Interest paid for or incurred by the Lessee or any Affiliate thereof shall not have been reimbursed by the Owner Trustee.

(16) On the Closing Date, for federal income tax purposes, the fair market value of the Undivided Interest was \$60,000,000 and the fair market value of the Real Property Interest was \$28,328.

(17) (i) It is reasonable to expect (x) that the Undivided Interest will be useful to and useable by a Person other than the Lessee or any Person related to the Lessee at the end of the Basic Lease Term and the Renewal Term and capable of continued leasing or transfer to such a Person at that time, and (y) that it will be commercially feasible for the Owner Trustee or the Owner Participant to enter into such a lease or transfer at such time in a transaction pursuant to which the Owner Participant would realize, with respect to the Undivided Interest, the residual value set forth in the report of the Appraiser apart from any amounts that such a Person would be required to expend pursuant to the Assignment and Assumption or otherwise in connection with the acquisition or use of the Undivided Interest and apart from any amounts that such a Person would be required to expend in connection with the acquisition or use of the Real Property Interest and (ii) the Undivided Interest does not constitute, and will not constitute during the Lease Term, "limited use property" within the meaning of Revenue Procedure 76-30; provided, however, that this representation is not a representation that any residual value shall in fact exist at the end of the Basic Lease Term and Renewal Term.

## SECTION 2. Indemnification.

(a) **Consistent Tax Returns.** The Lessee agrees that neither it nor any Affiliate will at any time take any action, directly or indirectly, or file any returns or other documents inconsistent with the assumptions and representations set forth in Section 1 hereof, and that the Lessee and any such Affiliate will file such returns, maintain such records, take such actions and execute such documents, as reasonably requested by the Owner Participant from time to time, as may be appropriate to facilitate the realization of such assumptions by the Owner Participant. The Lessee covenants and agrees to maintain, or cause to be maintained, such other records as shall be reasonably requested by the Owner Participant, in each case in order to verify the factual basis for the matters referred to in this Tax Indemnification Agreement. The Lessee shall make the records referred to in the preceding sentences available, or cause such records to be made available, for inspection by the Owner Participant or its authorized agents, during normal business hours at the Lessee's office at Alvarado Square, Albuquerque, New Mexico 87158, Attention: A. J. Robison, Senior Vice President and Chief Financial Officer, upon request by, and five days' prior notice from, the Owner Participant. The Lessee shall, at its expense, upon request by the Owner Participant, provide to the Owner Participant a copy of such records which shall be certified to be a true copy by an affidavit attached thereto and executed by an officer of the Lessee. Notwithstanding the preceding sentence, the Owner Participant or its authorized agents shall have the right to make copies and extracts of any such records at the Owner Participant's sole expense. The Lessee may, in accordance with its record retention practice and consistent with the requirements of the NRC, after written notice to the Owner Participant at least 30 days prior thereto, destroy such records as are specified in such notice other than those identified by the Owner Participant by written notice to the Lessee prior to such destruction.

(b) Indemnification - Loss of Tax Benefits.  
The Lessee shall indemnify the Owner Participant on an After-Tax Basis for

(1) any loss, disallowance, delay in obtaining, or recapture of the federal income tax benefits described in Section 1(a) hereof resulting in whole or in part from any one or more of the following events or things:

(i) any representation or warranty of the Lessee in Section 1(b) hereof or elsewhere in this Tax Indemnification Agreement, the other Transaction Documents or the Financing Documents, shall prove inaccurate at any time or the Lessee shall breach any of its covenants in Section 1(b) hereof or any of its agreements, covenants, duties, undertakings or other obligations under this Tax Indemnification Agreement or the other Transaction Documents or the Financing Documents, or

(ii) any act or failure to act by the Lessee or by any Affiliate, transferee, sublessee, or assignee of the Lessee or by any user of the Undivided Interest, or by any person to whom the Lessee or any Affiliate thereof shall sell power or energy generated at PVNGS, or by any person having custody or possession of Unit 1 or the Undivided Interest or by any ANPP Participant or by any Affiliate of any of the foregoing or by any subsequent transferee, sublessee or assignee or by any trustee, receiver, liquidator or debtor in possession of any of the foregoing, other than, in the case of the Lessee, the execution and delivery of one or more of the Transaction Documents or the Financing Documents and acts specifically required or expressly permitted to be performed by the Lessee under the Facility Lease or any Transaction Document or any Financing Document; provided, however, that (A) any act of the Lessee performed to



satisfy a general covenant to comply with Applicable Laws or prudent utility practice or to cause the Undivided Interest to be operated and maintained or to carry out obligations under the ANPP Participation Agreement and related agreements, (B) any act that is permitted by implication or because it is not required or prohibited by such documents, (C) any act that implements a general requirement or right on the part of the Lessee in a manner that is not specifically required or expressly permitted under such documents and (D) the making of any Capital Improvement shall each be an act or failure to act for which the Lessee is responsible under this paragraph (ii), or

(iii) the sale or other disposition of Unit 1, the Undivided Interest or any item of property comprising the Undivided Interest upon the exercise by the Owner Participant of its remedies under the Facility Lease upon the occurrence of an Event of Default thereunder, or

(iv) the bankruptcy, or other proceedings for the protection of debtors, of or involving the Lessee or any transferee, sublessee or assignee of the Lessee or any subsequent transferee, sublessee or assignee or any Affiliate of any of the foregoing, or any foreclosure on any property of any of the foregoing, or

(v) any damage to or destruction, loss of generating capacity, theft, nongovernmental taking or requisition or repair of or any addition, improvement, modification, alteration, replacement or substitution of or to Unit 1 or the Undivided Interest or the Real Property Interest, or any part of any thereof, or

(vi) any governmental taking or requisition of title, use or otherwise of Unit 1, the Undivided Interest or the Real Property Interest or any part of any thereof if such taking or requisition does not immediately constitute an Event of Loss under the Facility Lease, or

(vii) any payment by any manufacturer or any other vendor or supplier or contractor or subcontractor with respect to any part of Unit 1 or the Undivided Interest, but in the event of any such payment made to the Owner Participant, any indemnity hereunder shall take into account any economic benefit realized by the Owner Participant from the receipt of such payment without double counting for any economic loss for which such payment provided compensation, or

(viii) any issuance, defeasance, refinancing, refunding, redemption, purchase, repurchase, cancellation, retirement, reoptimization, substitution, releveraging, modification or remarketing of the Notes, or the Bonds, or any other debt securities issued or assumed pursuant to the Transaction Documents or the Financing Documents or any terms or provisions of any thereof or otherwise in connection with the financing, refinancing or any Supplemental Financing of Unit 1, any Capital Improvement or the Undivided Interest or the Real Property Interest or any part thereof or interest therein, including, without limitation, the purchase or deemed purchase by the Lessee or the Loan Participant of any such Notes, Bonds or securities, or

(ix) the presence of the Loan Participant, or any successor or assign thereof, in the transactions contemplated by the Transaction Documents and the Financing Documents, or

(x) the existence or operation of the ANPP Participation Agreement, the ANPP Project Agreements or any amendment to any of the foregoing (including without limitation the rights and remedies of the ANPP Participants) or any obligations of the Lessee or restriction of rights of the Owner Trustee or the Owner Participant or provisions of any of the Transaction Documents or the Financing Documents (including without limitation the provisions of the Assignment and Assumption) resulting from any of the foregoing, or

(xi) the existence, provisions or operation of the License, or

(xii) the existence, provisions or operation of USLife Title Insurance Company of Arizona Trust No. 530, or

(xiii) the existence or implementation of the provisions set forth in Section 10(b)(3)(xi) of the Participant Agreement, and

(2) any inclusion in the Owner Participant's gross income, for federal income tax purposes, of any amount in respect of any replacement or substitution of, any alteration to or modification in, or any addition or improvement to, any item of property comprising the Undivided Interest or any part or any expenditure made, or property furnished by the Lessee in respect of such item of property or pursuant to the Transaction Documents or Financing Documents (whether or not permitted or required under the Transaction Document or Financing Documents)

(any such loss, disallowance, delay in obtaining or recapture in respect of either subsection (1) above or this subsection (2) being referred to as a Loss).

(c) Indemnity Payment - After-Tax Basis.

(1) In the event of a Loss, the Owner Participant, unless pursuant to Section 5 hereof the Owner Participant is not entitled to payment with respect to such Loss, shall notify the Lessee of such Loss and the Lessee shall pay to the Owner Participant on an After-Tax Basis an amount (the Indemnity Payment) which shall be equal to the sum of the aggregate additional federal income taxes payable by the Owner Participant as a result of such Loss and any interest, penalties or additions to tax payable as a result of such Loss (except to the extent such penalties result from the Owner Participant's failure to file returns which are timely and proper insofar as they relate to matters unrelated to the transactions contemplated by the Transaction Documents).

(2) If the Owner Participant, as the result of a Loss occurring with respect to any year under circumstances that require the Lessee to indemnify the Owner Participant with respect to such Loss pursuant to Section 2(b) hereof, shall be entitled to claim (taking into account the assumptions set forth in Section 3 hereof) with respect to any subsequent year federal income tax savings that would not have been realized but for such Loss, the Owner Participant shall pay to the Lessee an amount equal to the sum of such federal income tax savings plus the amount of any federal, state or local income tax savings the Owner Participant is entitled to claim (taking into account the assumptions set forth in Section 3 hereof) as the result of any payment made pursuant to this sentence; provided, however, that such sum shall not be payable (i) before such time as the Lessee shall have made all payments or indemnities then due pursuant to the Transaction Documents and (ii) while any Default or Event of Default shall have occurred and be continuing; provided further, however, that such sum shall not exceed the excess of the amounts previously paid by the Lessee to the Owner Participant pursuant to Section 2(c)(1) hereof with respect to the Loss that gave rise to such tax savings over the amounts previously paid by the Owner Participant to the

Lessee pursuant to this Section 2(c)(2) with respect to such Loss.

### SECTION 3. Determination of Payments.

Whenever it may be necessary for purposes of this Tax Indemnification Agreement to determine (a) the amount resulting from any Loss suffered by the Owner Participant or (b) the amount of any federal income tax savings referred to in Section 2 hereof, such determination shall be made on the assumptions that (a) the federal income taxes of the Owner Participant are payable at the highest marginal statutory tax rates in effect for corporate taxpayers such as the Owner Participant for the respective years to which any Loss or Losses relate (the Effective Rate), (b) in computing its federal income tax liability, the Owner Participant can concurrently fully utilize the tax benefits that are the subject of such Loss against taxes payable at the Effective Rate and (c) the Owner Participant can fully utilize any tax benefits resulting from a Loss against federal income taxes payable at the Effective Rate. For purposes of determining the amount of taxes payable by the Owner Participant upon receipt of any payment required to be made by the Lessee to the Owner Participant under this Tax Indemnification Agreement and the amount of any tax savings realized by the Owner Participant as a result of any payment made by the Owner Participant pursuant to Section 2 hereof, it shall be assumed that federal, state, local and foreign taxes are payable by the Owner Participant at the highest marginal statutory rates then in effect. The determination of the amount payable to or by the Owner Participant under this Tax Indemnification Agreement shall be made in the first instance by the Owner Participant, who shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount; and if requested by the Lessee, such determination shall be verified in writing by a firm of nationally recognized independent public accountants selected by the Owner Participant and acceptable to the Lessee. The costs of such verification shall be borne by the Lessee unless an error of 10 percent or more shall be discovered in which case such costs shall be

shared equally. Any statements furnished to the Lessee pursuant to Section 3 hereof shall (a) be signed by a Responsible Officer of the Owner Participant, (b) state in reasonable detail the basis upon which such amount or adjustment has been determined and (c) certify that such amount or adjustment has been determined pursuant to and in compliance with this Tax Indemnification Agreement. The Lessee agrees that it will not have the right to inspect the tax returns, books, records or any other documents of the Owner Participant or any Affiliate thereof in order to verify the basis or the accuracy of the calculations so made or of the amounts set forth in any such statement and that the determinations made by the independent accountants in accordance with this Section 3 shall be conclusive and binding.

#### SECTION 4. Effective Date.

An Indemnity Payment shall be payable not later than 20 days after demand by the Owner Participant, except as provided in Section 6.

#### SECTION 5. Excluded Events.

The Owner Participant shall be responsible for, and shall not be entitled to any payment in respect of, any Loss occurring solely as a direct result of one or more of the following events:

(a) a failure of the Owner Participant to claim in a proper or timely manner the ACRS Deductions, the Interest Deductions or the Amortization Deductions for the appropriate years (any disclosure or failure to make a disclosure pursuant to section 6661 of the Code shall not cause a claim to be considered improper), unless (i) the claiming of any such deductions would be inconsistent with any prior audit adjustment by the IRS with respect to which the Lessee is required to indemnify the Owner Participant under this Tax Indemnification Agreement (except to the extent such prior audit adjustment is being contested in accordance with the provisions of Section 6 hereof), (ii) the Owner Participant shall have furnished the Lessee with an opinion of independent tax counsel (mutually acceptable

to the Owner Participant and the Lessee, but not excluding the regular outside counsel of the Owner Participant or the Lessee) to the effect that as a result of a Tax Law Change, Event of Loss, Termination Event, or an act, omission or misrepresentation of the Lessee such claim would not be proper pursuant to the standards of ABA Formal Opinion 85-352 or (iii) such failure to claim any such deductions for the appropriate year is caused by a failure of the Lessee to take any action or provide the Owner Participant with any information or document that the Lessee is required to take or provide pursuant to the Transaction Documents or the Financing Documents;

(b) the failure of the Owner Participant to have sufficient federal taxable income to benefit from the ACRS Deductions, the Interest Deductions, or the Amortization Deductions;

(c) any voluntary sale by the Owner Participant or any involuntary sale or other disposition resulting from the bankruptcy of, the foreclosure against; or any similar proceeding against, the Owner Participant or the Owner Trustee (unless such bankruptcy, foreclosure or similar proceeding shall have been caused by the Lessee or any Affiliate thereof), of the Undivided Interest, the Trust Estate, or any beneficial interest therein, unless an Event of Default shall have occurred and be continuing;

(d) any Event of Loss whereby the Lessee is required under the Facility Lease to pay, and shall have paid in full, Casualty Value for all of the Undivided Interest, or any termination of the Facility Lease, whereby the Lessee is required under the Facility Lease to pay, and shall have paid in full, Termination Value for all of the Undivided Interest, except to the extent the payment made with respect to such Event of Loss or termination did not properly reflect the time of the occurrence of such Event of Loss or termination;

(e) any amendment, modification, deletion, addition or change in or to the provisions of the Code which shall occur after the Closing Date other than any

provision set forth in Title XV of H.R. 3838 or any provision substantially similar to any such provision and other than a Tax Law Change; provided, however, that such Loss is not a result in whole or in part of any act or failure to act, after the date of enactment of such amendment, modification, deletion, addition or change, by any Person referred to in Section 2(b)(1)(ii) hereof that is inconsistent with the provisions of such amendment, modification, deletion, addition or change in the Code or the representations, warranties or covenants made by the Lessee in Section 1(b) hereof;

(f) the Owner Participant or Lessor being treated as engaged in a partnership with any other person, except if such partnership arises as a result of an event or circumstance set forth in Section 2(b) hereof;

(g) the failure of the Owner Trust to be taxed as a conduit entity unless such failure arises as a result of an event or circumstance set forth in Section 2(b)(1)(viii), (ix), (x), or (xii);

(h) the inability of the Owner Participant to claim the ACRS Deductions, Interest Deductions or Amortization Deductions due to the the Owner Participant or any affiliate thereof, being or becoming an entity subject to the provisions set forth in Section 465 of the Code, a charitable organization, any agency or instrumentality of the United States, a State or political subdivision thereof or an international organization within the meaning of Section 168(j)(4)(C) of the Code;

(i) failure of the transaction to qualify as a "true lease" for federal income tax purposes, resulting in the Owner Participant not being treated as the owner of the the Undivided Interest for federal income tax purposes, except as a result of an event or circumstance set forth in Section 2(b) hereof; and

(j) failure of the Owner Participant to fulfill its material obligations to contest a proposed adjustment or adverse determination as provided in Section 6 hereof.



## SECTION 6. Contests.

(a) If the IRS proposes in writing an adjustment in the federal income tax liability of the Owner Participant, which adjustment if sustained would result in a Loss, the Owner Participant shall notify the Lessee promptly of such adjustment and of all action taken or proposed to be taken by the IRS and the Owner Participant shall for at least 30 days after giving such notice forbear, if such forbearance is permitted by law, payment of any tax (including interest, penalties and additions to tax thereon) asserted to be payable as a result of such proposed adjustment.

(b) If the Lessee requests within 30 days after the Owner Participant's notice pursuant to paragraph (a) of this Section 6 that the proposed adjustment be contested, the Owner Participant shall contest the proposed adjustment in good faith at the trial court level upon receipt of an opinion of independent tax counsel of nationally recognized standing selected by the Lessee and reasonably satisfactory to the Owner Participant to the effect that there exists a basis in law and fact under the standard imposed by ABA Formal Opinion 85-352 for such contest and at each appellate level upon receipt of an opinion of independent tax counsel of nationally recognized standing selected by the Lessee and reasonably satisfactory to the Owner Participant to the effect that there exists a substantial possibility that an appellate court will reverse or substantially modify the lower court decision, provided that (i) the Owner Participant shall be entitled to pursue or forego any administrative proceedings, shall be required to contest any proposed adjustment beyond the level of administrative proceedings only if timely requested by the Lessee and shall not be required to pursue any appeal to the United States Supreme Court, (ii) the Owner Participant shall determine the court of competent jurisdiction in which to contest the proposed adjustment either before or after payment of the tax asserted to be payable as a result thereof, and (iii) the Owner Participant shall keep the Lessee informed as to the progress of any litigation and, if requested by the Lessee, shall consult with the

Lessee's counsel (provided that the conduct of all administrative proceedings and litigation shall nevertheless remain within the sole discretion of the Owner Participant and its tax counsel exercised in good faith and provided, further, that the Owner Participant shall not unreasonably discriminate against any such proposed adjustment as compared to other proposed adjustments made by the IRS involving the potential tax liability of the Owner Participant). The Owner Participant shall not be required to take any action pursuant to this paragraph (b) of this Section 6 unless: (i) the amount of the Indemnity Payment arising from all proposed adjustments with respect to a taxable year, plus all indemnities that would arise by reason of the fact that the subject matter of any such adjustments is of a continuing nature, shall be in excess of \$250,000; (ii) the Lessee shall have agreed to indemnify the Owner Participant in a manner satisfactory to the Owner Participant for any expense which the Owner Participant may incur as a result of contesting such proposed adjustment; (iii) the Lessee shall have agreed to pay the Owner Participant on demand all reasonable costs and expenses that the Owner Participant may incur in connection with contesting such proposed adjustment (including, without limitation, reasonable legal and accounting fees, disbursements, penalties, interest and additions to tax); (iv) no Event of Default shall have occurred and be continuing; and (v) the Owner Participant shall have determined that the action to be taken will not result in any danger of sale, forfeiture or loss of, or the creation of any Lien (except for Liens permitted under the Transaction Documents and except if the Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of the Owner Participant in a manner satisfactory to the Owner Participant) on the Undivided Interest, the Real Property Interest, Unit 1 or any part thereof or interest therein. The Owner Participant shall also not be required to contest any proposed adjustment if the subject matter thereof shall be of a continuing nature and shall have previously been decided pursuant to the contest provisions of this Section 6, unless there shall have been a change in the law (including, without limitation, amendments to statutes or regulations,

administrative rulings and court decisions) after such previous contest shall have been so decided, and the Owner Participant shall have received an opinion of independent tax counsel selected as provided in this Section 6(b) and furnished at the Lessee's sole expense to the effect that the prior authorities are no longer determinative of the issue.

(c) If the Owner Participant shall elect to contest a proposed adjustment by paying the tax claimed (including such other amounts payable as interest, penalties, or additions to tax) and seeking a refund, and if the proposed adjustment would be a Loss with respect to which the Lessee could be required to indemnify the Owner Participant under this Tax Indemnification Agreement, then the Lessee shall advance to the Owner Participant on an interest-free basis and with no additional net after-tax cost to the Owner Participant the aggregate amount of such taxes, interest, penalties and additions to tax which the Owner Participant shall have elected to pay. If the Owner Participant subsequently receives a refund, in whole or in part, of such taxes, interest, penalties or additions to tax, or if the Loss is not one for which the Lessee is required to make an Indemnity Payment, the Owner Participant shall promptly pay to the Lessee the amount of such refunded or credited taxes, money advanced, interest, penalties or additions to tax plus the amount of any interest received by the Owner Participant from the taxing authority, or interest the payment of which is actually avoided with respect to such refunded taxes, interest, penalties, additions to tax or money advanced; provided, however, that the Owner Participant may offset the amount of such refunded taxes, interest, penalties or additions to tax against any amount due and owing by the Lessee to the Owner Participant pursuant to this Tax Indemnification Agreement.

(d) Notwithstanding anything to the contrary contained in this Section 6, the Owner Participant may at any time decline to take any further action with respect to a proposed adjustment; provided, however, that if the Lessee has properly requested such action pursuant to paragraph (b) of this Section 6 and shall

have duly complied with all of the terms of this Section 6, the Owner Participant shall notify the Lessee that the Owner Participant waives its right to any Indemnity Payment by the Lessee that would otherwise be payable by the Lessee pursuant to this Tax Indemnification Agreement in respect of such adjustment, including any indemnities arising solely from such adjustment in subsequent years or which would arise by reason of the fact that the subject matter of such adjustment is of a continuing nature. In such event, the Owner Participant shall, within 30 days of such notice, reimburse the Lessee for all amounts previously advanced by the Lessee to the Owner Participant pursuant to paragraph (c) of this Section 6 including any interest realized by the Owner Participant or the payment of which is actually avoided by reason of payment of the tax claimed with funds advanced by the Lessee.

(e) If the Lessee shall have appropriately requested the Owner Participant to contest any proposed adjustment as above provided and shall have duly complied with all of the terms of this Section 6, the fact of the Lessee's liability for indemnification to the extent required pursuant to this Tax Indemnification Agreement shall become fixed upon a Final Determination of the liability of the Owner Participant for the tax and any interest, penalties and additions to tax asserted to be payable as a result of such proposed adjustment. A "Final Determination" with respect to a Loss shall mean (i) a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., when all allowable appeals have been exhausted by either party to the action to the extent required by this Section 6) or, in any case where judicial review shall at the time be unavailable by reason of the proposed adjustment involving a decrease in a net operating loss carryforward, a decision, judgment, decree or other order of an administrative official or agency of competent jurisdiction, which has become final (i.e., all administrative appeals have been exhausted by either party to the extent required by this Section 6), (ii) a closing agreement entered into under Section 7121 of the Code or any other settlement agreement entered

into in connection with an administrative or judicial proceeding, or (iii) the expiration of the time for instituting a claim for refund, or if such a claim was filed, the expiration of the time for instituting suit with respect thereto. Notwithstanding anything in this Section 6 to the contrary hereinabove, the Owner Participant shall not be required to make any payments to the Lessee under this Section 6 while there shall be an amount due and owing by the Lessee to the Owner Participant under any of the Transaction Documents, or if and for so long as an Event of Default shall have occurred and be continuing. The amount payable to the Owner Participant pursuant to this Section 6 shall be paid pursuant to Section 3 hereof after receipt by the Lessee of a written demand therefor from the Owner Participant accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable.

#### SECTION 7. Adjustments.

The assumed federal income tax benefits set forth in Section 1(a) hereof shall be adjusted to reflect any Adjustments to Rent provided for in Section 3(d) of the Facility Lease.

#### SECTION 8. Affiliated Group.

For purposes of this Tax Indemnification Agreement, the term "Owner Participant" shall include any member of an affiliated group of corporations of which the Owner Participant is, or may become, a member if consolidated or combined returns are or shall be filed for such affiliated group for federal, state or local income tax purposes.

#### SECTION 9. Duration.

The obligations and liabilities of the Owner Participant and the Lessee arising under this Tax Indemnification Agreement shall continue in full force and effect, notwithstanding the expiration or early termination of the Facility Lease, until all such obligations have been met and such liabilities have been

paid in full, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

#### SECTION 10. Payments.

All payments to be made to the Owner Participant or the Lessee pursuant to this Tax Indemnification Agreement shall be made in immediately available funds to such bank and/or account in the continental United States for the account of the Owner Participant or the Lessee as from time to time the Owner Participant shall have directed the Lessee or the Lessee shall have directed the Owner Participant, as the case may be, in writing. If the date on which any payment to be made pursuant to this Tax Indemnification Agreement shall not be a Business Day, such payment shall be made on the next succeeding Business Day.

#### SECTION 11. Interest.

Interest at the Penalty Rate shall be payable on any amount not paid when due hereunder until such amount shall be paid.

#### SECTION 12. Notices.

All notices and other communications provided for herein shall be given to the Owner Participant or the Lessee, as the case may be, in the manner and to the appropriate address, and shall become effective, as provided in Section 17 of the Facility Lease.

#### SECTION 13. No Setoff.

Except in accordance with the express terms hereof, (a) no payment required to be made by the Lessee pursuant to this Tax Indemnification Agreement shall be subject to any right of setoff, counterclaim, defense, abatement, suspension, deferment or reduction, and (b) the Lessee shall have no right to terminate this Tax Indemnification Agreement, or to be released, relieved or discharged from any obligation or liability under

this Tax Indemnification Agreement for any reason whatsoever except as expressly provided herein.

#### SECTION 14. Governing Law.

This Tax Indemnification Agreement shall be governed by and construed in accordance with the laws of the State of New York.

#### SECTION 15. Counterparts.

This Tax Indemnification Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument.

#### SECTION 16. Headings.

The headings of the sections of this Tax Indemnification Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

#### SECTION 17. Amendments, Supplements, etc.

Neither this Tax Indemnification Agreement nor any of the terms hereof may be amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

#### SECTION 18. No Duplication of Payment.

Nothing contained in the terms of this Tax Indemnification Agreement or any other Transaction Document shall be construed to require the Lessee to make any payment with respect to any Loss more than once or to make any payments hereunder to the extent previously reflected in a rental adjustment pursuant to Section 3(d) of the Facility Lease.

IN WITNESS WHEREOF, the Owner Participant and the Lessee have caused this Tax Indemnification Agreement to be duly executed by their respective officers thereunto duly authorized as of the date set forth below.

PUBLIC SERVICE  
COMPANY OF NEW  
MEXICO

By *A. J. Roberson*  
Vice President

Dated:  
December 31, 1985

MFS LEASING CORP.

By *Christine R. Cook*  
*Assistant Vice President*  
Dated:  
December 31, 1985



THE FIRST NATIONAL BANK OF BOSTON,  
not in its individual capacity, but  
solely as Owner Trustee under the  
Trust Agreement dated as of  
December 16, 1985, between The  
First National Bank of Boston and  
MFS Leasing Corp. (the "Owner  
Participant")

December 31, 1985

Chemical Bank, as Indenture Trustee  
55 Water Street  
New York, N.Y. 10041

Dear Sirs:

This letter is being delivered to you in connection with the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 16, 1985 (the "Indenture"), between The First National Bank of Boston, not in its individual capacity, but solely as Owner Trustee under the Trust Agreement referred to above, and Chemical Bank, as Indenture Trustee.

Capitalized terms used herein shall have the meanings set forth in Appendix A to the Indenture.

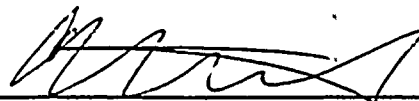
We hereby agree that, notwithstanding the provisions of Section 6.11 of the Indenture, so long as the Initial Series Bonds are outstanding, the Indenture Trustee, in addition to the Owner Trustee, shall have and retain the right to exercise remedies under the Facility Lease in connection with any Indenture Event of Default referred to in paragraph (a)(1) of Section 6.2 of the Indenture. For purposes of Section 6.3(a) of the Indenture, any such remedy exercised and pursued by the Indenture Trustee shall be deemed to have been exercised and pursued by the Owner Trustee.

The agreement set forth in this letter shall expire on December 31, 1986.

Very truly yours,

THE FIRST NATIONAL BANK OF BOSTON,  
not in its individual capacity,  
but solely as Owner Trustee under  
the Trust Agreement referred to  
above.

by



CLARK M. WHITCOMB, VICE PRESIDENT



MELLOW

OWNER PARTICIPANT ESCROW LETTER

December 31, 1985

Chemical Bank  
55 Water Street  
New York, New York 10041  
Attention: Corporate Trustee Administration

Dear Sirs:

We have remitted to you immediately available funds in the amount of \$13,800,000. As our agent, you are hereby instructed to purchase for our account a Repurchase Agreement in the amount of \$13,800,000 (the Repurchase Agreement), fully collateralized by direct obligations of the United States of America, pursuant to which Merrill Lynch Government Securities Inc. is obligated to repurchase such obligations on January 2, 1986 (the Maturity Date) for an amount equal to \$13,805,520.

Unless our rights under the Repurchase Agreement have been assigned pursuant to the next succeeding paragraph, upon fulfillment by Merrill Lynch Government Securities Inc. of its obligations under the Repurchase Agreement on the Maturity Date; you are hereby instructed to remit the proceeds thereof to The First National Bank of Boston, as Owner Trustee under Trust Agreement No. 3, in its account at Chemical Bank.

Our rights hereunder and in the Repurchase Agreement may be assigned and reassigned, in whole but not in part, upon execution of

one or more of the assignments attached hereto and delivery to you of written notice of each such assignment.

Very truly yours,

MFS Leasing Corp., as Owner  
Participant

By Christine R. Cook  
Assistant Vice President

Acknowledged and Agreed:

Chemical Bank

By [Signature]  
Vice President

---

ASSIGNMENTS

MFS Leasing Corp., as Owner Participant, hereby assigns to The First National Bank of Boston, as Owner Trustee under Trust Agreement No. 3, dated as of December 16, 1985, an interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$13,805,520 in respect of the proceeds thereof.

MFS Leasing Corp., as Owner  
Participant

By Christine R. Cook  
Assistant Vice President

Acknowledged and Accepted:

The First National Bank of  
Boston, as Owner Trustee

By [Signature]  
Authorized Officer

The First National Bank of Boston, as Owner Trustee under Trust Agreement No. 3, hereby assigns to Chemical Bank, ~~as Indenture Trustee under Trust Indenture, Mortgage Security Agreement and Assignments of Bonds No. 2, dated as of December 16, 1985,~~ an interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$13,805,520 in respect of the proceeds thereof.

The First National Bank of  
Boston, as Owner Trustee

By 

Authorized Officer

Acknowledged and Accepted:

Chemical Bank, ~~as Indenture~~  
~~Trustee~~

By 

Vice President

Chemical Bank, ~~Trustee under the Indenture of Mortgage and Security Agreement and Assignment of Proceeds~~, hereby assigns to Public Service Company of New Mexico, an interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$13,805,520 in respect of the proceeds thereof.

Chemical Bank, as ~~Indenture~~  
~~Trustee~~

By *[Signature]*  
Vice President

Acknowledged and Accepted:

Public Service Company of New Mexico

By *A. J. Robison*  
Senior Vice President and  
Chief Financial Officer

Public Service Company of New Mexico hereby assigns to Irving Trust Company, as Trustee under the Indenture of Mortgage and Deed of Trust, dated as of June 1, 1947, between PNM and such Trustee, all interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$13,805,520, ~~as proceeds thereof, the balance thereof being expressly retained by Public Service Company of New Mexico.~~

Public Service Company of New Mexico

By *A. J. Robison*  
Senior Vice President and  
Chief Financial Officer

Acknowledged and Accepted:

Irving Trust Company,  
as Trustee

By \_\_\_\_\_  
Vice President

The First National Bank of Boston, as Owner Trustee under the Trust Agreement dated as of December 16, 1985, with the above-named Owner Participant hereby acknowledges and agrees to the foregoing and further acknowledges that the foregoing is in full satisfaction of any right it may have to receive immediately available funds, whether by wire transfer or otherwise.

The First National Bank of  
Boston, not in its individual  
capacity but solely as Owner  
Trustee as aforesaid

By 

Vice President





**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**Sale and Leaseback of an Undivided Interests in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities**

**Burnham Leasing Corporation  
December 31, 1985**

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**PARTICIPATION AGREEMENT**

dated as of December 16, 1985

among

**BURNHAM LEASING CORPORATION**  
as Owner Participant

**FIRST PV FUNDING CORPORATION,**  
as Loan Participant

**THE FIRST NATIONAL BANK OF BOSTON,**  
in its individual capacity and as Owner Trustee  
under a Trust Agreement,  
dated as of December 16, 1985,  
with the Owner Participant, as Owner Trustee

**CHEMICAL BANK**  
in its individual capacity and as Indenture Trustee  
under a Trust Indenture, Mortgage, Security Agreement  
and Assignment of Rents, dated as of December 16,  
1985,  
with the Owner Trustee, as Indenture Trustee

and

**PUBLIC SERVICE COMPANY OF NEW MEXICO,**  
as Lessee

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**Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities**

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## PARTICIPATION AGREEMENT

PARTICIPATION AGREEMENT, dated as of December 16, 1985, among the Owner Participant identified in Schedule 2 (the Owner Participant), FIRST PV FUNDING CORPORATION, a Delaware corporation (the Loan Participant), THE FIRST NATIONAL BANK OF BOSTON, a national banking association, in its individual capacity (FNB) and as Owner Trustee (the Owner Trustee) under a Trust Agreement, dated as of December 16, 1985, with the Owner Participant, CHEMICAL BANK, a New York banking corporation, in its individual capacity (Chemical Bank) and as Indenture Trustee (the Indenture Trustee) under a Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 16, 1985, with the Owner Trustee, and PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the Lessee).

### W I T N E S S E T H .:

WHEREAS, the Owner Participant desires to cause the Trust to acquire the Undivided Interest and the Real Property Interest and to lease the Undivided Interest and the Real Property Interest to the Lessee under the Facility Lease;

WHEREAS, the Lessee desires to sell the Undivided Interest and the Real Property Interest to the Trust and lease the Undivided Interest and the Real Property Interest back from the Trust under the Facility Lease;

WHEREAS, the Owner Trustee and the Lessee will enter into the Purchase Documents with respect to the sale and purchase of the Undivided Interest and the Real Property Interest;

WHEREAS, pursuant to the terms and provisions of the Indenture, the Owner Trustee will authorize the creation, issuance and sale and delivery of the Initial Series Note and the granting of the security therefor, and the Indenture Trustee will authenticate the Initial Series Note; and

WHEREAS, the Loan Participant is willing to purchase the Initial Series Note on the terms and conditions set forth herein;

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

#### SECTION 1. Definitions.

For the purposes hereof, capitalized terms used herein shall have the meanings assigned to such terms in Appendix A and Schedule 2. References in this Participation Agreement to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Participation Agreement unless otherwise indicated.

#### SECTION 2. Participation by the Loan Participant; Releveraging; Refunding.

(a) **Loan Participant's Commitment.** Subject to the satisfaction of the conditions in Sections 5(a) and 11(a), on the Closing Date the Loan Participant agrees to lend to the Owner Trustee, on a non-recourse basis, an amount (the Loan) equal to the Loan Percentage of the Purchase Price.

#### (b) Payment; Terms of the Initial Series Note.

(1) **Payment.** Proceeds of the Loan shall be paid directly to the Indenture Trustee, for the account of the Owner Trustee, in immediately available funds, at the Indenture Trustee's Office.

(2) **Terms of the Initial Series Note.** The Loan shall be evidenced by the Initial Series Note. The Initial Series Note shall be issued by the Owner Trustee under and pursuant to the Indenture and shall be in the principal amount of the Loan and shall bear interest at the rates per annum and shall be payable as set forth in the Indenture.

(c) **Releveraging of the Debt.** Upon the occurrence of an adjustment of Basic Rent and the schedules of Casualty Values, Special Casualty Values and Termination Values, under Section 3(d) of the Facility

Lease, subject to the conditions set forth in Section 11(c), on the Releveraging Date the Loan Participant agrees to lend to the Owner Trustee, on a non-recourse basis, an amount (the Releveraging Loan) equal to the Releveraging Amount. There shall be up to two Releveraging Loans under this Section 2(c), the date or dates of which shall be mutually acceptable to the Lessee, the Owner Participant and the Loan Participant. Proceeds of the Releveraging Loan shall be paid directly to the Indenture Trustee, for the account of the Owner Trustee as a partial refund of the Investment, in immediately available funds, at the Indenture Trustee's Office. The Releveraging Loan shall be represented by the Releveraging Note, which Note shall be issued by the Owner Trustee under and pursuant to the Indenture and shall be in the principal amount of the Releveraging Loan and shall bear interest at the rates per annum and shall be payable as set forth in the Indenture.

(d) Refunding of the Initial Series Note and the Releveraging Note. Subject to the satisfaction of the conditions set forth in Section 11(d), on the Refunding Date the Loan Participant agrees to lend to the Owner Trustee, on a non-recourse basis, an amount (the Refunding Loan) equal to the sum of (i) the amount necessary to refund the Initial Series Note and the Releveraging Note (if theretofore issued) and (ii) an amount equal to the Releveraging Amount. Proceeds of the Refunding Loan shall be paid directly to the Indenture Trustee (i) to the extent necessary to refund the Initial Series Note and the Releveraging Note (if theretofore issued), for such purpose, and (ii) to the extent of such Releveraging Amount, for the account of the Owner Trustee as a partial refund of the Investment, in each case in immediately available funds, at the Indenture Trustee's Office. The Refunding Loan shall be represented by the Fixed Rate Note, which Note shall be issued by the Owner Trustee under and pursuant to the Indenture and shall be in the principal amount of the Refunding Loan and shall bear interest at the rates per annum and shall be payable as set forth in the Indenture. On the Refunding Date the Fixed Rate Note shall be exchanged by the Owner Trustee for the Initial

Series Note and the Releveraging Note (if theretofore issued). Not less than 5 Business Days prior to the Refunding Date, the Loan Participant shall deliver to the Owner Participant and the Lessee a certificate setting forth the information necessary to complete the form of Fixed Rate Note (including the schedules thereto) set forth in the Indenture. Upon such delivery, and upon approval by the Lessee and the Owner Participant of the terms thereof, the Owner Participant and the Lessee shall cause the form of Fixed Rate Note to be completed. The parties hereto shall make a good faith effort to cooperate to effect such amendments of the Transaction Documents as may be necessary or appropriate to effect such refunding. The refunding contemplated by this Section 2(d) shall be effected at the request of the Lessee given in writing at least 10 Business Days prior to the Refunding Date; provided, however, that (i) no such request shall be made or refunding occur while an Event of Default shall have occurred and be continuing; (ii) Net Economic Return shall not be adversely affected thereby (or appropriate adjustments shall have been made or shall be made on the Refunding Date pursuant to Section 3(e) of the Facility Lease to preserve Net Economic Return); (iii) any modifications of the Transaction Documents shall satisfy the provisions of Revenue Procedure 75-21, Revenue Procedure 75-28 and any other applicable statute, regulation, revenue procedure, revenue ruling or technical information release relating to the subject matter of such revenue procedures; and (iv) such modifications (after giving effect to any adjustments pursuant to clause (ii) above) shall not, in the opinion of the Owner Participant's Special Counsel, adversely affect the tax benefits contemplated by the Owner Participant in entering into the transactions contemplated by this Participation Agreement and the other Transaction Documents.

### SECTION 3. Participation by the Owner Participant; Partial Refund.

(a) Owner Participant's Commitment. Subject to the satisfaction of the conditions in Sections 5(a) and 11(a), on the Closing Date the Owner Participant

agrees to make an investment with respect to the Undivided Interest in an amount (the Investment) equal to the Investment Percentage of the Purchase Price. The Owner Participant's Investment is subject to adjustment as provided in paragraph (b) below. Proceeds of the Investment shall be paid directly to the Indenture Trustee, for the account of the Owner Trustee, in immediately available funds, at the Indenture Trustee's Office.

(b) Partial Refund. In the event that the Indenture Trustee shall have received the proceeds of the Releveraging Loan or that portion of the Refunding Loan equal to the Releveraging Amount used in calculating the amount of such Releveraging Loan, (as evidenced by an officer's certificate of the Loan Participant) the Indenture Trustee shall as soon as practicable return the same to the Owner Participant as a partial refund of the Investment, which Investment shall thereupon be reduced accordingly.

#### SECTION 4. Purchase, Sale, Financing and Lease of the Undivided Interest; Purchase, Sale and Lease of the Real Property Interest.

(a) The Undivided Interest. Subject to (x) the satisfaction of the conditions in Sections 5(a) and 11(a), (y) receipt from the Owner Participant of the Investment and (z) receipt from the Loan Participant of the proceeds of the Loan, on the Closing Date the Owner Trustee shall (i) cause the Trust to purchase the Undivided Interest from the Lessee for the purchase price (the Purchase Price) specified on Schedule 2 and (ii) disburse an amount equal to the Estimated Transaction Expenses in accordance with the payment instructions set forth in the Notice of Closing. Subject to the satisfaction of the conditions in Section 11(b), on the Closing Date the Lessee shall sell the Undivided Interest to the Trust for the Purchase Price. Concurrently with such purchase and sale, the Trust shall lease the Undivided Interest to the Lessee; and the Lessee shall lease the Undivided Interest from the Owner Trustee, pursuant to the Facility Lease.

(b) The Real Property Interest. Subject to (x) the satisfaction of the conditions in Sections 5(a) and 11(a) and (y) receipt from the Owner Participant of the Real Estate Investment on the Closing Date, the Owner Participant shall cause the Trust to purchase the Real Property Interest from the Lessee for a purchase price equal to the Real Estate Investment specified on Schedule 2. Subject to the satisfaction of the conditions in Section 11(b), on the Closing Date the Lessee shall sell the Real Property Interest to the Trust for such purchase price. Concurrently with such purchase and sale, the Trust shall lease the Real Property Interest to the Lessee, and the Lessee shall lease the Real Property Interest from the Trust, pursuant to the Facility Lease.

#### SECTION 5. Notice of Closing; Closing.

(a) Notice of Closing. Not later than 1 Business Day prior to the Closing Date, the Lessee shall deliver to the Owner Participant, the Owner Trustee, the Loan Participant, the Collateral Trust Trustee and the Indenture Trustee a notice, substantially in the form of Schedule 1 (the Notice of Closing), which shall (i) state that the Closing Date shall occur on the date specified therein, (ii) set forth the Purchase Price and a list of the then known Transaction Expenses payable by the Owner Trustee pursuant to Section 14(a) (the Estimated Transaction Expenses), (iii) provide payment instructions in respect of the disposition of the Purchase Price, (iv) set forth Real Estate Investment and (v) provide payment instructions in respect of the Real Estate Investment.

(b) Closing. Upon satisfaction of the conditions in Section 5(a) and Section 11(a) and upon receipt from the Owner Participant of the Investment, the Real Estate Investment and the amount of Estimated Transaction Expenses and from the Loan Participant of the Loan, on the Closing Date the Owner Trustee shall (i) cause the Indenture Trustee to pay to the Lessee an amount equal to the Purchase Price and disburse the Estimated Transaction Expenses, in immediately available

10 funds, pursuant to payment instructions of the Lessee set forth in the Notice of Closing and (ii) pay to the Lessee an amount equal to the Real Estate Investment, in immediately available funds, pursuant to payment instructions of the Lessee set forth in the Notice of Closing. Upon satisfaction of the conditions in Section 11(b), on the Closing Date, the Lessee shall deliver to the Owner Trustee the Bill of Sale, the Deed and the Assignment of Beneficial Interest.

**SECTION 6. Representations, Warranties and Agreements of the Loan Participant; Direction to the Indenture Trustee.**

(a) The Loan Participant represents and warrants that:

10 (1) **Due Organization.** The Loan Participant is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has the corporate power and authority to carry on its business as presently conducted, own its properties, and enter into and perform its obligations under this Participation Agreement and each other Transaction Document and each Financing Document to which it is, or is to become, a party.

(2) **Due Authorization; Enforceability.** The execution, delivery and performance by the Loan Participant of this Participation Agreement, each other Transaction Document and each Financing Document to which it is, or is to become, a party, have been duly authorized by all necessary corporate action on the part of the Loan Participant and do not require the consent or approval of the stockholder of the Loan Participant. This Participation Agreement, each other Transaction Document and each Financing Document to which the Loan Participant is, or is to become, a party, have been, or on or before the Closing Date will have been, duly executed and delivered by the Loan Participant and constitute, or upon execution and delivery thereof will constitute, legal, valid and binding agreements of the Loan

Participant enforceable against it in accordance with their respective terms.

(3) No Violation. Neither the execution, delivery or performance by the Loan Participant of this Participation Agreement, any other Transaction Document or any Financing Document to which it is, or is to become, a party, nor the consummation by the Loan Participant of the transactions contemplated hereby or thereby, nor compliance by the Loan Participant with the provisions hereof or thereof conflicts or will conflict with, or results or will result in the breach of any provision of, the Certificate of Incorporation or By-Laws of the Loan Participant or any Applicable Law or any indenture, mortgage or agreement to which the Loan Participant is a party or by which it or its property is bound or requires any Governmental Action, except such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished.

(4) No Other Business. Except as contemplated by this Participation Agreement, the other Transaction Documents and the Financing Documents and except as otherwise contemplated by the Section 6(c) Application, the Loan Participant has not engaged, and will not engage, in any business or activity of any type or kind whatever.

(5) ERISA. The Loan Participant is not acquiring any Note with the "plan assets" of any "employee benefit plan" within the meaning of section 3(3) of ERISA or any "plan" within the meaning of section 4975(e)(1) of the Code.

(6) Investment Representation. The Loan Participant is acquiring the Note to be acquired by it for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of Section 5 of the Securities Act. The Loan Participant understands that the Note to be acquired by it has not been



registered under the Securities Act and will bear the legend set forth in the form of such Note.

(b) Agreements of the Loan Participant. The Loan Participant agrees that:

(1) Transfers of the Notes. Any transfer or assignment of any Note or of all or any part of the Loan Participant's interest hereunder or under any other Transaction Document or any Financing Document shall be effected in a transaction constituting an exempted transaction under the Securities Act and on the express condition that the transferee, assignee or participant shall agree to be bound by the terms and provisions hereof and thereof. Neither the Loan Participant nor any subsequent Holder of a Note may sell, exchange or transfer any Note to any other Person (other than the Collateral Trust Trustee) unless such transferee delivers to the other parties hereto a representation and warranty (and an opinion of counsel satisfactory to each of the other parties hereto) to the effect that neither the transfer of such Note to, nor the ownership of such Note by, such transferee will cause such transferee, or any other party hereto, to be engaged in a "prohibited transaction", as defined in section 406 of ERISA or section 4975 of the Code, which is not at such time subject to an exemption contained in ERISA or in the rules, regulations, releases or bulletins adopted thereunder.

(2) Quiet Enjoyment. The Loan Participant acknowledges Section 6(a) of the Facility Lease.

(3) No Other Business. During such time as any Note is outstanding and held by the Loan Participant or the Collateral Trust Trustee, the Loan Participant will not (i) engage in any business or activity other than (1) in connection with the Transaction Documents or the Financing Documents or (2) as otherwise contemplated by the Section 6(c) Application or (ii) amend or engage in any activity or take any action not permitted by Article THIRD,

FOURTH or SIXTH of its Certificate of Incorporation, as in effect on the date of execution and delivery hereof, without, in each case, the consent of the other parties hereto.

(c) Direction to the Indenture Trustee. The Loan Participant, as purchaser of each Note, (i) hereby authorizes and directs the Indenture Trustee to execute, deliver and perform this Participation Agreement, (ii) hereby authorizes and directs the Indenture Trustee to register such Note in the name of the Collateral Trust Trustee and, upon authentication and delivery thereof pursuant to this Participation Agreement and the Indenture, to deliver such Note to the Loan Participant pursuant to the Collateral Trust Indenture, (iii) acknowledges and agrees that, in connection with this Participation Agreement, the Indenture Trustee shall have the benefits and protections of Article VIII of the Indenture and (iv) agrees that, in the event of a conflict between the provisions of this Participation Agreement and the Indenture, the Indenture Trustee shall, as between the Indenture Trustee and the Loan Participant, be fully protected in relying on the express terms of the Indenture.

#### SECTION 7. Representations, Warranties and Agreements of the Owner Participant.

(a) Representations and Warranties. The Owner Participant represents and warrants that:

(1) Due Organization. The Owner Participant is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has the corporate power and authority to enter into and perform its obligations under this Participation Agreement and each other Transaction Document to which it is, or is to become, a party.

(2) Due Authorization. This Participation Agreement and each other Transaction Document to which the Owner Participant is, or is to become on

or before the Closing Date, a party have been duly authorized by all necessary corporate action on the part of the Owner Participant and do not require the consent or approval of its stockholders or any trustee or holder of any of its indebtedness or other obligations, except such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished.

(3) Execution. This Participation Agreement and each other Transaction Document to which the Owner Participant is, or is to become on or before the Closing Date, a party have been, or on or before the Closing Date will have been, duly executed and delivered by the Owner Participant and constitute, or upon execution and delivery thereof will constitute, its legal, valid and binding agreements, enforceable against it in accordance with their respective terms.

(4) No Violation. Neither the execution, delivery or performance by the Owner Participant of this Participation Agreement or any other Transaction Document to which it is, or is to become on or prior to the Closing Date, a party, nor the consummation by the Owner Participant of the transactions contemplated hereby or thereby, nor compliance by the Owner Participant with the provisions hereof or thereof, conflicts with, or results in the breach of any provision of, or is inconsistent with, its documents of incorporation or By-Laws or contravenes any Applicable Law applicable to it, or any indenture, mortgage or agreement for borrowed money to which the Owner Participant is a party or any other agreement or instrument to which the Owner Participant is a party or by which it or its property is bound or requires any Governmental Action with respect to the Owner Participant under Federal or New York law or the law of the jurisdiction of its incorporation on or before the Closing Date, except such as are contemplated by the Transaction Documents or the Financing Documents or such as have been, or on or before the Closing Date will have

been, duly obtained, given or accomplished; provided, however, that the Owner Participant makes no representation or warranty as to any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Holding Company Act, the New Mexico Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 1.

(5) No Owner Participant's Liens. Neither the execution and delivery by the Owner Participant of this Participation Agreement or any other Transaction Document to which the Owner Participant is, or is to become on or before the Closing Date, a party, nor the performance by the Owner Participant of its obligations hereunder or thereunder, will subject the Trust Estate or the Lease Indenture Estate, or any portion of either thereof, to any Owner Participant's Lien.

(6) Acquisition for Investment. The Owner Participant is acquiring the beneficial interest in the Trust Estate for its own account, for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of Section 5 of the Securities Act, but subject, nevertheless, to any requirement of law that the disposition of the Owner Participant's property shall at all times be within its control.

(7) No Prior Security Interest. There exists no security interest in or other Lien on the Lease Indenture Estate in the state of the chief place of business of the Owner Participant, the State of New Mexico or the State of Arizona arising as a result of claims against the Owner Participant unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents which is prior to the Indenture Trustee's security interest in the Lease Indenture Estate.

(8) Securities Act. Except as contemplated by the Financing Documents, neither the Owner Participant nor anyone authorized to act on its behalf has directly or indirectly offered or sold any security issued or to be issued to finance Unit 1 or any security the offering of which for the purposes of the Securities Act would be deemed to be part of the offerings contemplated by the Transaction Documents and the Financing Documents or solicited any offer to acquire any such security from any Person in violation of Section 5 of the Securities Act.

(9) ERISA. The Owner Participant is not acquiring its interests in the Trust with the "plan assets" of any "employee benefit plan" within the meaning of section 3(3) of ERISA or any "plan" within the meaning of section 4975(e)(1) of the Code.

(b) Agreements of the Owner Participant. The Owner Participant agrees that:

(1) No Owner Participant's Liens. The Owner Participant will not create or permit to exist, and, at its own cost and expense, will promptly take such action as may be necessary duly to discharge, all Owner Participant's Liens.

(2) Quiet Enjoyment. The Owner Participant acknowledges the provisions of Section 6(a) of the Facility Lease and Section 8(c) of this Participation Agreement.

(3) No-Petition Agreement. Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, 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 Loan Participant under the

Bankruptcy Code, or any other applicable Federal or state law or the law of the District of Columbia.

(4) Transfer of Interest in the Trust Estate. Unless the Lessee shall have assumed the Notes as contemplated by Section 3.9(b) of the Indenture, upon receipt by the Lessor of the payments specified in Section 9(c), 9(d) or 16(e) of the Facility Lease and, if applicable, compliance in full by the Lessee with Section 9(f) of the Facility Lease, the Owner Participant shall, and at any time following the occurrence of an Event of Loss or Deemed Loss Event, the Owner Participant may, assign, convey and otherwise transfer to the Lessee all of the Owner Participant's right, title and interest in, to and under the Trust Estate (except the right to receive Excepted Payments), such transfer (i) to be free and clear of Owner Participant's Liens but otherwise without recourse, representation or warranty and (ii) to be accompanied by the assumption by the Lessee of, and due release of the Owner Participant from, all obligations under the Trust Agreement (such transfer, assumption and release to be accomplished by an instrument or instruments in form and substance satisfactory to the Lessee, the Owner Trustee and the Owner Participant).

#### SECTION 8. Representations, Warranties and Agreements of the Owner Trustee and FNB.

(a) Representations and Warranties. FNB as Owner Trustee and (except as otherwise provided in the last sentence of this Section 8(a)) in its individual capacity, represents and warrants that:

(1) Due Organization. FNB is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has all requisite corporate power and authority to enter into and perform its obligations under (x) the Trust Agreement and, to the extent it is a party hereto in its individual capacity, this Participation Agreement and (y) acting as Owner

Trustee, this Participation Agreement and each other Transaction Document to which FNB is, or is to become on or before the Closing Date, a party as Owner Trustee.

(2) Due Authorization; Enforceability; etc. This Participation Agreement and each other Transaction Document to which FNB is, or is to become on or before the Closing Date, a party have been duly authorized by all necessary corporate action of FNB (in its individual capacity or as Owner Trustee, as the case may be) and, upon execution and delivery hereof and thereof, this Participation Agreement and each such other Transaction Document will be duly executed and delivered and will be legal, valid and binding agreements of FNB (in its respective capacities), enforceable against it (in its respective capacities) in accordance with their respective terms; it being understood that FNB is not making any representation or warranty as to the priorities of the Liens created or to be created under any Transaction Document, title to the Trust Estate or recordings or filings necessary in connection therewith.

(3) Notes. Upon execution of the Note to be issued by the Owner Trustee hereunder and under the Indenture, authentication thereof by the Indenture Trustee pursuant to the Indenture and delivery thereof against payment therefor in accordance with this Participation Agreement and such Note will be a legal, valid and binding obligation of the Owner Trustee, enforceable against the Owner Trustee in accordance with its terms.

(4) No Violation. Neither the execution and delivery by (x) FNB of the Trust Agreement and, to the extent FNB is a party hereto in its individual capacity, this Participation Agreement and (y) the Owner Trustee of this Participation Agreement and each other Transaction Document (other than the Trust Agreement) to which the Owner Trustee is, or

is to become on or before the Closing Date, a party, nor the performance by FNB, in its individual capacity or as Owner Trustee, as the case may be, of its obligations under each, conflicts with, or results in the breach of any provision of, its Articles of Association or By-Laws and does not contravene any Applicable Law of the United States of America or The Commonwealth of Massachusetts governing the banking or trust powers of FNB, and does not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which FNB is a party or by which it is bound or require any Governmental Action with respect to the Owner Trustee under any Federal or Massachusetts law, except such as are contemplated by the Transaction Documents or the Financing Documents or such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished; provided, however, that no representation or warranty is made with respect to the right, power or authority of FNB or the Owner Trustee to act under the ANPP Participation Agreement or the License in respect of the Undivided Interest or Unit 1, and the Owner Trustee makes no representation or warranty as to any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Holding Company Act, the New Mexico Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 1.

(5) Defaults. To the best knowledge of the Owner Trustee, no Indenture Default or Indenture Event of Default has occurred and is continuing. The Owner Trustee is not in violation of any of the terms of this Participation Agreement or any other Transaction Document to which it is, or is to become on or before the Closing Date, a party.

(6) Litigation. There is no action, suit, investigation or proceeding pending or, to the



knowledge of FNB, threatened against FNB (in any capacity) before any court, arbitrator or administrative or governmental body and which relates to its banking or trust powers which, individually or in the aggregate, if decided adversely to the interests of FNB in such capacity, would have an adverse effect upon the ability of FNB (in any capacity) to perform its obligations under this Participation Agreement or any other Transaction Document to which it is, or is to become on or before the Closing Date, a party (in any capacity).

(7) Location of the Chief Place of Business and Chief Executive Office, etc. The chief place of business and chief executive office of the Owner Trustee and the office where its records concerning the accounts or contract rights relating to the transactions contemplated hereby are kept is located in Boston, Massachusetts.

(8) No Prior Security Interest. There exists no security interest in the Lease Indenture Estate in the States of New Mexico, New York or Arizona or in The Commonwealth of Massachusetts arising as a result of any claim against FNB unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents which is prior to the Indenture Trustee's security interest in the Lease Indenture Estate.

(9) No Owner Trustee's Liens. Neither the execution by FNB (in any capacity) of this Participation Agreement or any other Transaction Document to which it (in any capacity) is, or is to become on or before the Closing Date, a party, nor the performance in such capacity by it of its obligations hereunder or thereunder, will subject the Trust Estate or the Lease Indenture Estate, or any portion thereof, to any Owner Trustee's Lien.

The representations and warranties in Section 8(a)(2) and Section 8(a)(3), as to Transaction Documents and the Note issued thereby being legal, valid and binding

obligations enforceable in accordance with their respective terms, are given only by FNB in its capacity as Owner Trustee and not in its individual capacity, except that FNB does represent in its individual capacity that it is authorized under the laws of The Commonwealth of Massachusetts to execute and deliver the Transaction Documents to which it is a party.

(b) **Agreements of FNB.** FNB agrees, in its individual capacity, that:

(1) **Discharge of Liens.** FNB will not create or permit to exist, and will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, all Owner Trustee's Liens.

(2) **Certain Amendments.** Unless a Default or an Event of Default has occurred and is continuing or an Event of Loss or Deemed Loss Event has occurred, FNB will not amend any of the payment terms of any of the Notes, or take any action to refund any of the Notes after the date of issue thereof pursuant to the terms of this Participation Agreement and the Indenture without the prior written consent of the Lessee. Except for amendments or supplements made pursuant to Article X of the Trust Agreement or contemplated by Section 7(b)(4), FNB will not amend or supplement, or consent to any amendment of or supplement to, the Trust Agreement without the prior written consent of the Lessee unless a Default or an Event of Default has occurred and is continuing or the Lease Termination Date has occurred, if such amendment would materially and adversely affect the rights of the Lessee under the Facility Lease and this Participation Agreement.

(3) **Change in Location of Chief Place of Business and Chief Executive Office, etc.** FNB shall notify the Lessee, the Loan Participant and the Indenture Trustee promptly after any change in its chief executive office, principal and chief place of business or place where its records concerning the

accounts or contract rights relating to the transactions contemplated hereby are kept.

(4) No Petition Agreement. Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, FNB (in any capacity) 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 Loan Participant under the Bankruptcy Code or any other applicable Federal or state law or the law of the District of Columbia.

(5) Quiet Enjoyment. FNB acknowledges Section 6(a) of the Facility Lease.

(c) Agreements of the Owner Trustee. The Owner Trustee agrees that:

(1) Subject and Subordinate. The rights and remedies of the Owner Trustee and the Owner Participant in the Undivided Interest, and the related Generation Entitlement Share are subject and subordinate to the rights and remedies of the ANPP Participants (other than (i) the Lessee or (ii) any Person who shall become an ANPP Participant in respect of the Lessor's Interest (as defined in Section 8(c)(3)) under the ANPP Project Agreements.

*the Real  
Property  
Interest*

(2) Lessee to be Participant. Except as provided in Sections 15.2.2, 15.6.4 and 15.10 (or any comparable successor provisions) of the ANPP Participation Agreement, the Lessee shall be and remain the sole "Participant" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind the Lessor and the Indenture Trustee) in all dealings with the other ANPP Participants in relation to the property, rights, titles and interests of the Lessee transferred to the Lessor pursuant to the Transaction Documents; provided, however, that the foregoing shall not limit in any way any liability or

obligation that the Lessee may incur to the Owner Trustee or the Owner Participant under any Transaction Document as a result thereof.

(3) Cash Bids. Upon the expiration of the Facility Lease and upon the Lessee failing to purchase or otherwise reacquire all the right, title and interest in PVNGS and contractual rights related thereto necessary for the operation of the interest (the Lessor's Interest) acquired by the Lessor pursuant to the Transaction Documents, the Lessor shall entertain cash bids from each ANPP Participant for the Lessor's Interest.

(4) Survival. The provisions of this paragraph (4) and Sections 8(c)(1), (2) and (3) shall remain in full force and effect until such time as the ANPP Administrative Committee or the ANPP Participants shall otherwise consent.

(5) License Matters. The Owner Trustee acknowledges that before taking possession of the Undivided Interest or any part thereof or of any other interest in PVNGS, there may be required (i) the issuance of an appropriate license from the NRC, whether by amendment to the License or otherwise, or (ii) a partial transfer of the License authorizing the Lessor to possess its interest in PVNGS, to the extent of the Undivided Interest, upon application for partial transfer of such License to such extent filed pursuant to Applicable Law.

#### SECTION 9. Representations, Warranties and Agreements of Chemical Bank.

(a) Representations and Warranties. Chemical Bank represents and warrants that:

(1) Due Organization. Chemical Bank is a banking corporation duly organized and validly existing in good standing under the laws of the State of New York and has the corporate power and authority and legal right to enter into and perform its

obligations under the Indenture, this Participation Agreement and each other Transaction Document to which it is, or is to become on or before the Closing Date, a party.

(2) Due Authorization. This Participation Agreement and each other Transaction Document to which Chemical Bank is, or is to become on or before the Closing Date, a party have been or will be duly authorized by all necessary corporate action of Chemical Bank and each has been or will have been duly executed and delivered by Chemical Bank.

(3) Authentication of Initial Series Note. The officer of Chemical Bank who shall authenticate the Note to be issued pursuant to the Indenture shall be, at the time of such authentication, an Authorized Officer.

(4) No Violation. Neither the execution and delivery by Chemical Bank of this Participation Agreement or the Indenture, nor the authentication by it of the Initial Series Note, nor the consummation by it of the transactions contemplated hereby or thereby, nor the compliance by it with the provisions hereof or thereof will contravene any Applicable Law governing its banking or trust powers, or contravene or result in a breach of, or constitute a default under, its Articles of Incorporation or By-laws, or require any Governmental Action under any Federal or New York law, except such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished; provided, however, that no representation or warranty is made as to (i) any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Holding Company Act, the New Mexico Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 1 or (ii) the Lease Indenture Estate

to the extent it may constitute real property under Applicable Law.

(b) ~~Agreements~~. The Indenture Trustee agrees that:

(1) Agreement to Discharge Liens. The Indenture Trustee will not create or permit to exist, and will promptly take such action as may be necessary duly to discharge, all Indenture Trustee's Liens.

(2) No Petition Agreement. Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, the Indenture Trustee 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 Loan Participant under the Bankruptcy Code or any other applicable Federal or state law or the law of the District of Columbia.

(3) Quiet Enjoyment. The Indenture Trustee agrees to be bound by Section 6(a) of the Facility Lease.

#### SECTION 10. Representations, Warranties and Agreements of the Lessee.

(a) Representations and Warranties. The Lessee represents and warrants that:

(1) Due Organization. The Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of New Mexico and has the corporate power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Participation Agreement, each other Transaction Document and Financing Document to which it is, or is to become, a party. The Lessee is duly qualified and in good

standing to do business as a foreign corporation in the State of Arizona and has not failed to qualify to do business or to be in good standing in any other jurisdiction where failure so to qualify or be in good standing would materially and adversely affect the financial condition of the Lessee or its ability to perform any obligations under this Participation Agreement, any other Transaction Document or any Financing Document to which it is, or is to become, a party. The Lessee does not legally or beneficially or constructively own (within the meaning of section 318 of the Code) any capital stock of the Loan Participant.

(2) Due Authorization. The execution, delivery and performance by the Lessee of this Participation Agreement, each other Transaction Document and each Financing Document to which it is, or is to become on or before the Closing Date, a party, have been duly authorized by all necessary corporate action on the part of the Lessee and do not, and will not, require the consent or approval of the stockholders of the Lessee or any trustee or holder of any indebtedness or other obligation of the Lessee, other than (i) the Mortgage Release, (ii) the finding of the ANPP Administrative Committee described in Section 15.6.2 of the ANPP Participation Agreement and (iii) such other consents and approvals as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant.

(3) Execution. This Participation Agreement, each other Transaction Document and each Financing Document to which the Lessee is, or is to become on or before the Closing Date, a party, will have been duly executed and delivered by the Lessee, and this Participation Agreement constitutes, and upon execution and delivery thereof, each such Transaction Document and each such Financing Document will constitute, the legal, valid and binding agreement

of the Lessee, enforceable against the Lessee in accordance with its terms.

(4) No Violation, etc. Neither the execution, delivery or performance by the Lessee of this Participation Agreement, any other Transaction Document or any Financing Document to which it is, or is to become on or before the Closing Date, a party, nor the consummation by the Lessee of the transactions contemplated hereby or thereby, nor compliance by the Lessee with the provisions hereof or thereof, conflicts or will conflict with, or results or will result in a breach or contravention of any of the provisions of, the Articles of Incorporation or By-Laws of the Lessee or any Affiliate of the Lessee, or any Applicable Law, or any indenture, mortgage, lease or any other agreement or instrument to which the Lessee or any Affiliate of the Lessee is a party or by which the property of the Lessee or any Affiliate of the Lessee is bound, or results or will result in the creation or imposition of any Lien (other than Permitted Liens) upon any property of the Lessee or any Affiliate of the Lessee. There is no provision of the Articles of Incorporation or By-Laws of the Lessee or any Affiliate of the Lessee, or any Applicable Law, or any such indenture, mortgage, lease or other agreement or instrument which materially adversely affects or in the future is likely (so far as the Lessee can now foresee) to materially adversely affect the business, operations, affairs, condition, properties or assets of the Lessee, or its ability to perform its obligations under this Participation Agreement, any other Transaction Document or any Financing Document to which it is, or is to become, a party.

(5) Governmental Actions. No Governmental Action is or will be required in connection with the execution, delivery or performance by the Lessee of; or the consummation by the Lessee of the transactions contemplated by, this Participation Agreement, any other Transaction Document or any



Financing Document, except such Governmental Actions (i) as have been, or on or before the Closing Date (the Refunding Date, in the case of the Registration Statement) will have been, duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant and the Loan Participant, (ii) as may be required under existing Applicable Law to be obtained, given or accomplished from time to time after the Closing Date in connection with the maintenance, use, possession or operation of Unit 1 or otherwise with respect to Unit 1 and the Lessee's or the Operating Agent's involvement therewith and which are, for PVNGS, routine in nature and which the Lessee has no reason to believe will not be timely obtained and (iii) as may be required under Applicable Law not now in effect. No Governmental Action (except Governmental Action as may be required by any Governmental Authority of or in the Excluded State or States identified on Schedule 2 hereto) is or will be required (a) in connection with the participation by the Owner Trustee, the Indenture Trustee, the Owner Participant or the Loan Participant in the consummation of the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document or (b) to be obtained by any of such Persons during the term of the Facility Lease with respect to Unit 1 except such Governmental Actions (i) as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant and the Loan Participant, (ii) as may be required by Applicable Law not now in effect, (iii) as may be required in consequence of any transfer of ownership of the Undivided Interest or the Real Property Interest by the Owner Trustee, (iv) as would be required by existing Applicable Law upon termination or expiration of the Facility Lease in connection with taking possession of an interest in Unit 1, (v) as may be required by existing Applicable Law if, after termination or expiration of the Facility Lease, the Lessee should provide transmission services for the Owner Trustee or cease

to be agent for the Owner Trustee as provided under the Assignment and Assumption, or (vi) as may be required in consequence of any exercise of remedies or other rights by any such Person in connection with taking possession of an interest in Unit 1.

(6) Securities Act. Neither the Lessee nor anyone acting on its behalf has directly or indirectly offered or sold any Bond, any interest in any Note, any note issued with respect to any other undivided interest in Unit 1, the Undivided Interest or any other undivided interest in Unit 1, the Facility Lease or any other lease of an undivided interest in Unit 1, or any similar security or lease, or any interest in any security or lease the offering of which, for purposes of the Securities Act, would be deemed to be part of the same offering as the offering of the aforementioned securities or leases, or solicited any offer to acquire any of the aforementioned securities or leases in violation of Section 5 of the Securities Act, and except as contemplated by this Participation Agreement, neither the Lessee nor any one authorized to act on its behalf will take any action which would subject the issuance or sale of any Note or any interest in the Facility Lease or any other debt instrument (other than the Refunding Bonds) issued or to be issued to finance the Undivided Interest to the registration requirements of such Section 5.

(7) Title to the Undivided Interest and Real Property Interest; Security Interest. On the Closing Date, (A) good and marketable title to the Undivided Interest and the Related Generation Entitlement Share will be duly, validly and effectively conveyed and transferred to the Owner Trustee, free and clear of all Liens, except Permitted Liens (other than those described in clause (ii) of the definition of such term and that portion of clause (iv) of such definition relating to Liens for taxes being contested), (B) good and marketable title to the Real Property Interest will be duly, validly and effectively conveyed and transferred to the Owner

Trustee, as provided in the Deed and the Assignment of Beneficial Interest, (C) the Lessee will have good and marketable title to its ownership interest in the Retained Assets, free and clear of all Liens except Permitted Liens, the Lien of the Existing Mortgage and matters disclosed in the title report referred to in Section 11(a)(34), (D) the Lessee will have good and valid title to its ownership interest in the PVNGS Site, (E) Unit 1 will be wholly located on the PVNGS Site without any material encroachments by any portion thereof on any other property, (F) all filings and recordings necessary or advisable to perfect the Owner Trustee's right, title and interest in and to the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest, and to perfect for the benefit of the Indenture Trustee and the holders of the Notes the first priority security interest, mortgage and assignment of rents provided for in the Indenture, will have been duly made and (G) no other action, including any action under any fraudulent conveyance statute, will be required to protect the title and interests of the Owner Trustee in and to the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest against the claims of all Persons whomsoever or to perfect such first priority security interest, mortgage and assignment of rents in favor of the Indenture Trustee..

(8) Non-Interference. None of the Permitted Liens will, on and after the Closing Date, materially interfere with the use or possession of the Undivided Interest, the related Generation Entitlement Share or the Real Property Interest or the use of or the exercise by the Owner Trustee of its rights under the Bill of Sale, the Deed, the Assignment of Beneficial Interest and the Assignment and Assumption with respect to, the interests in PVNGS granted or to be granted under the Bill of Sale, the Deed, the Assignment of Beneficial Interest and the Assignment and Assumption.

(9) Personal Property. Unit 1, based on the agreements of the Lessee and the other ANPP Participants in the ANPP Participation Agreement and of the Lessee and the Owner Trustee herein and in the other Transaction Documents, is to the full extent permitted by Applicable Law personal property under the laws of the State of Arizona.

(10) Location of Chief Executive Office. The chief executive office and place of business of the Lessee and the office where it keeps its records concerning its accounts or contract rights is located at Alvarado Square, Albuquerque, Bernalillo County, New Mexico 87158.

(11) Financial Statements. The consolidated balance sheets of the Lessee and subsidiaries (A) as of December 31, 1984 and 1983, respectively, and the related consolidated statements of earnings, retained earnings and changes in financial position for each of the years in the three-year period ended December 31, 1984, together with the notes accompanying such financial statements, all certified by Peat, Marwick, Mitchell & Co., and (B) as of September 30, 1985 and 1984, respectively, and the related consolidated statements of earnings, retained earnings and changes in financial position for the nine-months period ended September 30, 1985 and September 30, 1984, respectively, all certified by the Controller or an Assistant Controller of the Lessee, as furnished to the Owner Participant, fairly present the financial position of the Lessee and its subsidiaries taken as a whole at each such date and the results of their operations for each of the periods then ended, in conformity with generally accepted accounting principles applied on a consistent basis and in conformity with applicable Accounting Practice.

(12) Disclosure. None of the financial statements to which reference is made in paragraph 11 above nor the reports to which reference is made in this paragraph 12 nor any certificate, written

statement or other document furnished to the Owner Participant by the Lessee in connection with the transactions contemplated hereby (under the circumstances at the time and for the purposes for which any statement made therein was made) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. There is no fact known to the Lessee that materially and adversely affects or, so far as the Lessee can now reasonably foresee, is likely to materially and adversely affect, the business or financial condition of the Lessee or any material portion of its properties or its ability to perform its obligations under this Participation Agreement, any other Transaction Document or any Financing Document to which the Lessee is, or is to become, a party. The Lessee has heretofore delivered to the Owner Participant the Lessee's Annual Report on Form 10-K for the year ended December 31, 1984, the Lessee's Quarterly Reports on Form 10-Q for the quarters ended March 31, 1985, June 30, 1985 and September 30, 1985, respectively, and the Current Reports on Form 8-K filed on January 14, 1985, February 12, 1985 (as amended by Form 8 filed April 12, 1985), July 3, 1985, October 8, 1985, December 9, 1985 and December 24, 1985.

(13) Litigation. Except as disclosed in the reports to which reference is made in paragraph 12, there is no action, suit, investigation or proceeding pending or, to the knowledge of the Lessee, threatened against the Lessee before any court, arbitrator or administrative or governmental body which questions the validity or enforceability of this Participation Agreement, any other Transaction Document or any Financing Document to which the Lessee is, or is to become, a party, or which, individually or in the aggregate, if decided adversely to the interests of the Lessee, would have a material adverse effect on the business or financial condition of the Lessee or materially and adversely affect the ability of the Lessee to perform its

obligations under this Participation Agreement or any other Transaction Document or any Financing Document to which it is or is to become a party.

(14) Tax Returns. The Lessee has filed all Federal, state, local and foreign, if any, tax returns which were required to be filed, and has paid all Taxes shown to be due and payable on such returns and has paid all other Taxes in respect of the Lessee's interest in Unit 1 and in the PVNGS Site which are payable by the Lessee to the extent the same have become due and payable and before they have become delinquent, except (i) for any Taxes the amount, applicability or validity of which may be in dispute and which are currently being contested in good faith by appropriate proceedings and with respect to which the Lessee has set aside on its books reserves (segregated to the extent required by generally accepted accounting principles) deemed by it to be adequate and (ii) for any Taxes relating to PVNGS in respect of which the Operating Agent has not given notice to the Lessee that the same are due and payable. The Federal income tax returns of the Lessee have been audited by the IRS for taxable years through 1980.

(15) ERISA. In reliance upon, and subject to the accuracy of the representations made by the Loan Participant in Section 6(a)(5) and the Owner Participant in Section 7(a)(9), the execution and delivery of this Participation Agreement, the other Transaction Documents and the Financing Documents by the Lessee will not involve any prohibited transaction within the meaning of ERISA or section 4975 of the Code.

(16) Regulation. So long as the Facility Lease is in effect, assuming the proper filing of Form U-7D with the SEC on or within 30 days after the Closing Date, under Applicable Law now in effect, neither the Loan Participant, the Owner Participant, FNB nor the Owner Trustee will be or become, solely by reason of either its entering into this

Participation Agreement or any other Transaction Document to which any of them is, or is to become, a party, or the transactions contemplated hereby or thereby, subject to regulation (i) as an "electric utility", a "public utility" or a "public utility holding company" by any Federal, state (other than the Excluded State or States identified on Schedule 2 hereto as to which no representation or warranty is given) or local public utility commission or other regulatory body, authority or group (including, without limitation, the SEC, the FERC or the NMPSC) or (ii) in any manner by the NRC. The Lessee is not, and covenants that (except in connection with a transaction permitted by Section 10(b)(3)(ii) hereof) it will not become, a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of a "holding company" within the meaning of the Holding Company Act. The Lessee is not subject to regulation by the Arizona Corporation Commission as a public utility or a public service corporation.

(17) Authorizations, etc. The Lessee has not failed to obtain any Governmental Action or other authorization, license, approval, permit, consent, right or interest, where a failure to obtain such would materially and adversely affect the ability of the Lessee to carry on its business as presently conducted or as described in the Registration Statement.

(18) No Default, etc. The Lessee is not in default, and no condition exists that, with the giving of notice or lapse of time or both, would constitute a default by the Lessee, under any material mortgage, deed of trust, indenture, lease, contract or other instrument or agreement to which the Lessee is a party or by which it or any of its properties or assets may be bound.

(19) Certain Documents. True and correct copies of the ANPP Participation Agreement, the Material Project Agreements and the Existing

Mortgage have been delivered to the Owner Participant's Special Counsel for and on behalf of the Owner Participant prior to the date of execution hereof. No ANPP Project Agreement will, on and after the Closing Date, materially and adversely interfere with (i) (except for the ANPP Participation Agreement in the case of the Generation Entitlement Share only) the title of the Owner Trustee to the Undivided Interest, the related Generation Entitlement Share or the Real Property Interest or (ii) except for the ANPP Participation Agreement, the use of, or the exercise by the Owner Trustee of its rights under the Facility Lease, the Deed, the Assignment of Beneficial Interest and the Assignment and Assumption with respect to, the Undivided Interest, the related Generation Entitlement Share, and the interests in the PVNGS Site (including the Real Property Interest) granted or to be granted under the Deed, the Assignment of Beneficial Interest and the Assignment and Assumption. No payment default or other default of a material nature by the Lessee has occurred and is continuing under the Existing Mortgage or any ANPP Project Agreement. The ANPP Participation Agreement and each other ANPP Project Agreement are in full force and effect and no breach of any thereof, to the Lessee's knowledge, by any other party thereto has occurred and is continuing, except where the failure to be in force and effect or such breach would not have a material and adverse effect on the Undivided Interest, the related Generation Entitlement Share, the Real Property Interest, Unit 1 or the rights and benefits of the Owner Trustee or the Owner Participant under any Transaction Document. Upon execution and delivery of the Mortgage Release and the recordation thereof or of UCC-3 releases in respect thereof, (i) the mortgagee and secured party thereunder will have released the lien of the Existing Mortgage on the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest and (ii) the rights of the Owner Trustee in the Undivided Interest and the Real Property Interest



and the related Generation Entitlement Share will not be, and will not become, subject or subordinate to the rights of any Person, except the Indenture Trustee under the Indenture and the ANPP Participants to the extent expressly set forth in the ANPP Participation Agreement (as in effect on the Closing Date) and except as may otherwise expressly be permitted by the Facility Lease. The lien of the Existing Mortgage does not extend to rights of PNM under Transaction Documents (other than the Lessee's leasehold interest under the Facility Lease) or to the Generation Entitlement Share related to the Undivided Interest.

(20) Unit 1. The description of Unit 1 set forth in Exhibit B to the Bill of Sale is correct and sufficiently complete to identify such property.

(21) Investment Company Act. The Lessee is not an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act.

(b) Agreements of Lessee.

(1) Delivery of Documents. The Lessee agrees that it will deliver to the Owner Participant and the Loan Participant:

(i) Financial Statements: (A) as soon as practicable, and in any event within 120 days, after the end of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee and subsidiaries as of the end of such fiscal year and related consolidated statements of earnings, retained earnings and changes in financial position for such year, all in reasonable detail and certified in an opinion by a nationally recognized firm of independent public accountants, and the annual and interim reports of the Lessee to its stockholders as soon as the same have been

mailed to such stockholders, (B) as soon as practicable, and in any event within 60 days, after the end of each fiscal quarter (other than the last fiscal quarter) of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee and subsidiaries as of the end of said period and a related consolidated statement of earnings, retained earnings and changes in financial position for said period, all in reasonable detail, and certified by the Controller or an Assistant Controller or the Chief Financial Officer of the Lessee and (C) as soon as practicable after the same have been filed, a copy of all documents filed by the Lessee with the SEC pursuant to the reporting requirements of the Securities Exchange Act;

(ii) Other Reports: promptly upon their becoming available, any registration statement, offering statement, investment memorandum or prospectus prepared by the Lessee in connection with the public offering of securities (other than public offerings of securities under employee stock option, consumer stock or dividend reinvestment plans);

(iii) Notice of Default: promptly upon the Lessee becoming aware of the existence thereof, written notice specifying any condition which constitutes a Default or an Event of Default or a default by any ANPP Participant under the ANPP Participation Agreement and the nature and status thereof;

(iv) Annual Certificate: within 120 days after the end of each fiscal year of the Lessee, a certificate of the Lessee, signed by the Controller or an Assistant Controller or the Chief Financial Officer of the Lessee, to the effect that such officer has reviewed, or caused to be reviewed by individuals under his supervision, this Participation Agreement and

each other Transaction Document and each Financing Document to which the Lessee is a party and has made, or caused to be made under his supervision, a review of the transactions contemplated hereby and thereby and the condition of the Lessee during such preceding fiscal year, and such review has not disclosed the existence during such fiscal period, nor does such officer have knowledge of the existence as at the date of such certificate, of any condition or event that constitutes a Default or Event of Default or, if any such condition or event exists, specifying the nature and period of existence thereof and any action the Lessee has taken, is taking, or proposes to take with respect thereto;

(v) Opinion of Counsel: within 120 days after the end of each fiscal year of the Lessee, an opinion or opinions, satisfactory to the Owner Participant, the Owner Trustee, the Collateral Trust Trustee and the Indenture Trustee, of the Lessee's General Counsel, the Lessee's Special Arizona Counsel and/or other counsel acceptable to the Owner Participant (A) either to the effect that (1) all filings and recordations required for compliance with Section 10(b)(2) (or refilings and rerecordations) have been duly made, and all other action has been taken, as is necessary, or (2) no such additional filings, recordings, refilings, rerecordings or other actions are necessary, to comply with the requirements of Section 10(b)(2) and (B) specifying the particulars of all action required for compliance with Section 10(b)(2) during the period from the date of such opinion through the last day of the next succeeding calendar year, including in the case of each UCC continuation statement required to be filed during such period, the office in which each such continuation statement is to be filed and the filing date and filing number of the original

financing statement or fixture filing to be continued, and the dates within which such continuation statement may be filed under applicable law;

(vi) ANPP Information: upon receipt by the Lessee, copies of all material notices, data, information and other written communications received by the Lessee under or pursuant to any ANPP Project Agreement or with respect to Unit 1, PVNGS or the PVNGS Site, subject in each case to applicable confidentiality undertakings with respect thereto, unless prohibited by Applicable Law; and

(vii) Requested Information: with reasonable promptness, such other data and information as to the business and properties of the Lessee or as to Unit 1, PVNGS or the PVNGS Site as from time to time may be reasonably requested by the Owner Participant, subject in each case to applicable confidentiality undertakings with respect thereto, unless prohibited by Applicable Law.

(2) Further Assurances. The Lessee will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as the Owner Participant may from time to time reasonably request in order to carry out more effectively the intent and purposes of this Participation Agreement, the other Transaction Documents and the Financing Documents, and the transactions contemplated hereby and thereby. The Lessee will cause the financing statements (and continuation statements with respect thereto) and the documents enumerated and described in Schedule 3, and all other documents necessary or advisable in that connection, to be recorded or filed at such places and times, and in such manner, and will take all such other actions or cause such actions to be taken, as may be necessary or reasonably requested by the Owner Participant, the Collateral Trust

Trustee, the Owner Trustee or the Indenture Trustee, in order to establish, preserve, protect and perfect the title of the Owner Trustee to the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest, and the Owner Trustee's rights and interests under this Participation Agreement and the other Transaction Documents and, so long as any Note is Outstanding, the first and prior security interest of the Indenture Trustee in the Lease Indenture Estate and the Indenture Trustee's rights under this Participation Agreement and the other Transaction Documents, all referred to and included under the granting clause of the Indenture.

(3) Covenants. The Lessee covenants and agrees as follows:

(i) Maintenance of Corporate Existence, etc. The Lessee shall at all times maintain its existence as a corporation under the laws of the State of New Mexico, except as permitted by paragraph (ii) below. The Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its rights (charter and statutory) and franchises; provided, however, that the Lessee may discontinue any right or franchise if its board of directors shall determine that such discontinuance is necessary or desirable in the conduct of its business and does not materially and adversely affect or diminish any right of the Owner Participant or the Loan Participant:

(ii) Merger, Sale, etc.: Owner Participant. Without the consent of the Owner Participant, the Lessee shall not (1) consolidate with any Person; (2) merge with or into any Person; or (3) except in connection with normal dividend policy of the Lessee, convey, transfer, lease, or dividend to any Person more than 5% of its assets, including

cash, in any single transaction or series of related transactions; unless, immediately after giving effect to such transaction:

(A) the Person who is the Lessee immediately following such consolidation, merger, conveyance, transfer or lease (the Surviving Lessee) shall be a corporation which (i) is organized under the laws of the United States of America, a state thereof or the District of Columbia, (ii) is a "public utility" under applicable state and Federal laws, (iii) is an ANPP Participant under the ANPP Participation Agreement with respect to Unit 1 (including the Undivided Interest), (iv) shall have assumed each covenant and condition of the Lessee under the ANPP Participation Agreement and each other ANPP Project Agreement and (v) holds a valid and subsisting license from the NRC to possess Unit 1 (including the Undivided Interest);

(B) the Surviving Lessee, if other than the Lessee immediately prior to such transaction, shall execute and deliver to the Owner Participant an agreement, in form and substance reasonably satisfactory to the Owner Participant, containing the assumption by the Surviving Lessee of each covenant and condition of this Participation Agreement, each other Transaction Document and each Financing Document to which the Lessee immediately prior to such transaction was a party immediately preceding such transaction;

(C) no Default (other than a failure to deliver documents and other information specified in Section 10(b)(1)(vi) hereof), Event of Default,

Event of Loss or Deemed Loss Event shall have occurred and be continuing;

(D) the Bonds (or, if the Bonds are not then rated, the preferred stock of the Lessee) after giving effect to such transaction, (1) shall be rated at least "investment grade" by Standard & Poor's Corporation and Moody's Investors Service, Inc. and (2) shall have an investment rating by Standard & Poor's Corporation and Moody's Investors Service, Inc. not less than one "smallest notch" below the rating assigned to the Bonds (or, if the Bonds are not then rated, the preferred stock of the Lessee) immediately prior to such transaction (or, if neither of such rating organizations shall rate the Bonds (or, if applicable, the preferred stock of the Lessee) at the time, by any nationally recognized rating organization in the United States of America);

(E) the Surviving Lessee shall have a Minimum Net Worth;

(F) the Surviving Lessee shall have delivered to the Owner Participant and the Indenture Trustee an Officers' Certificate and an opinion, reasonably satisfactory to the Owner Participant, of counsel to the Surviving Lessee, each stating that (1) such transaction complies with this subparagraph (ii) and (2) all conditions precedent to the consummation of such transaction have been satisfied and any Governmental Action required in connection with such transaction has been obtained, given or accomplished;

(G) the Surviving Lessee shall have delivered to the Owner Participant an

opinion, reasonably satisfactory to the Owner Participant, of independent counsel to the Surviving Lessee stating that such transaction does not and will not cause a Tax Loss;

(H) such transaction is otherwise permitted by and in accordance with the ANPP Participation Agreement; and

(I) the Coverage Ratio of the Surviving Lessee shall be at least 1.6 to 1.

Upon the consummation of such transaction the Surviving Lessee, if other than the Lessee immediately prior to such transaction, shall succeed to, and be substituted for, and may exercise every right and power of, the Lessee immediately prior to such transaction under this Participation Agreement, each other Transaction Document and each Financing Document to which the Lessee immediately prior to such transaction was a party immediately preceding the date of such transaction, with the same effect as if the Surviving Lessee had been named herein and therein.

(iii) Merger, Sale, etc.: Bondholders. The Lessee shall not enter into any transaction constituting a consolidation, merger, conveyance, transfer, lease or dividend not permitted by Section 10(b)(3)(ii), irrespective of any consent or waiver of the Owner Participant, unless immediately after giving effect to such transaction, the Bonds (or, if the Bonds are not then rated, the preferred stock of the Lessee), after giving effect to such transaction, shall be rated at least "investment grade" by Standard & Poor's Corporation and Moody's Investors Service, Inc.



(iv) **Prior Notice to Rating Agencies.**

Prior to entering into any transaction as to which the conditions set forth in paragraphs (ii) and (iii) above shall be applicable, the Lessee shall give notice thereof to the rating agencies specified in such paragraphs, such notice to be sufficiently in advance of such transaction to enable the rating agencies to respond thereto prior to consummation thereof.

(v) **Incurrence of Debt.** Without the consent of the Owner Participant, the Lessee shall not issue or assume any secured or unsecured indebtedness maturing more than eighteen months after the date of issuance thereof, if, immediately after such issue or assumption, the total amount of all secured and unsecured indebtedness of the Lessee maturing more than one year after the date of such issue or assumption shall exceed 65% of the aggregate of (x) such total amount and (y) the total of the capital and surplus of the Lessee.

(vi) **Change in Chief Executive Office.**

The Lessee will notify the Owner Trustee, the Owner Participant, the Loan Participant and the Indenture Trustee promptly after any change in its chief executive office and place of business, principal place of business or place where the Lessee maintains its business records.

(vii) **No Petition Agreement.** Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, the Lessee 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 Loan Participant under the Bankruptcy Code or any other applicable

Federal or state law or the law of the District of Columbia.

(viii) ANPP Project Agreements. Except where the failure to do so would not have a material and adverse effect on the Undivided Interest, the Real Property Interest, Unit 1 or the rights and benefits of the Owner Trustee or the Owner Participant under any Transaction Document, the Lessee at all times, unless the Owner Participant shall otherwise consent, (1) will perform its obligations under and comply with the terms of each ANPP Project Agreement to be complied with by it, (2) will exercise its rights under the ANPP Participation Agreement to maintain each ANPP Project Agreement in full force and effect, (3) will keep unimpaired all of the Lessee's rights, powers and remedies under each ANPP Project Agreement and prevent any forfeiture or impairment thereof, (4) will enforce the ANPP Participation Agreement in accordance with its terms, (5) will not take, fail to take or join in any action with respect to any ANPP Project Agreement except as otherwise permitted by clause (7), (6) will not accept or approve any amendment or any other change to the ANPP Participation Agreement and (7) will not accept or approve any amendment to any ANPP Project Agreement the effect of which would be to (A) reduce the Generation Entitlement Share related to the Undivided Interest, (B) relieve the Lessee of any obligation under the ANPP Participation Agreement in respect of the Undivided Interest or the Real Property Interest on or after the Closing Date, (C) impose, directly or indirectly, at any time on the Owner Trustee or the Owner Participant any obligations, (D) discriminate against (x) the Owner Trustee or the Owner Participant in its capacity as lessor in a sale and leaseback transaction or (y) any present or future ANPP Participant because

such ANPP Participant derived or will derive its status as "Participant" under the ANPP Participation Agreement from a lessor in a sale and leaseback transaction, or (E) deprive the Owner Trustee or the Owner Participant, as the case may be, of the benefit of Sections 15.2.2, 15.10 and 32.1 of the ANPP Participation Agreement (or any comparable successor provisions). The Lessee shall (A) provide copies of any proposed amendment to or modification of the ANPP Participation Agreement to the Owner Participant not less than 45 days prior to the execution thereof by the Lessee (except where the Lessee is unaware thereof 45 days prior to such execution, in which case the Lessee shall provide notice thereof as promptly as possible after becoming so aware) and (B) upon such execution furnish to the Owner Participant a copy of any such amendment or modification as executed. The Lessee will not, except as permitted by paragraph (ii) above or by the Assignment and Assumption, sell, transfer, assign or otherwise dispose of, except in the ordinary course of operation of PVNGS, all or any of its rights or interests in and to PVNGS.

(ix) Notes and Bonds. The Lessee will not, and will not permit any of its Affiliates to, acquire any of the Notes or Bonds.

(x) Cooperation. The Lessee will cooperate with the Owner Participant and the Owner Trustee in obtaining the valid and effective issue, or, as the case may be, transfer or amendment of all Governmental Actions (including, but without limitation, the License) necessary or, in the opinion of the Owner Participant, desirable for the ownership, operation and possession of the Undivided Interest, the Real Property Interest or any portion of Unit 1 represented thereby by the Owner Trustee or any transferee, lessee

or assignee thereof for the period from and after the Lease Termination Date. The Lessee agrees to accept and cooperate in receiving any transfer of the Owner Participant's right, title and interest in the Trust Estate made pursuant to Section 7(b)(4).

(xi) Decommissioning. (A) The Lessee will comply with its obligations under Applicable Law concerning the decommissioning and retirement from service of Unit 1 (which term shall include, for all purposes of this paragraph (xi), (i) the cost of removal, decontamination and disposition of equipment and fixtures, the cost of safe storage for later removal, decontamination and disposal and the cost of entombment of equipment and fixtures, and (ii) the cost of (x) razing of Unit 1, (y) removal and disposition of debris from the PVNGS Site and (z) restoration of relevant portions of the PVNGS Site). If Applicable Law or Governmental Action shall not, on or before December 31, 1990, impose upon the Lessee the obligation to create and maintain an external reserve fund dedicated to paying all the costs of decommissioning and removing from service Unit 1, then the Lessee will create and maintain such a fund on terms reasonably satisfactory to the Owner Participant; if Applicable Law or Governmental Action shall impose upon the Lessee an obligation to create and maintain such a fund, any fund in compliance with Applicable Law or such Governmental Action shall be deemed satisfactory to the Owner Participant for purposes of the preceding sentence. (B) Except to the extent provided in clauses (C) and (D) below, as between the Lessee, the Owner Trustee, the Owner Participant and any transferee (including by way of lease) or assign of any of the Lessor's or the Owner Participant's right, title or interest in Unit 1, the Lessee agrees to pay, be solely responsible for, and to indemnify

such parties against, all costs and expenses relating or allocable to, or incurred in connection with, the decommissioning and retirement from service of Unit 1, notwithstanding (i) the occurrence of the Lease Termination Date, any Event of Default, Default, Event of Loss, Deemed Loss Event or any other event or occurrence, (ii) any provision of any Transaction Document, or other document, instrument or agreement, including the ANPP Participation Agreement, (iii) any provision of the License or any other license or permit, or (iv) any Applicable Law, charter or by-law provision, Governmental Action or other impediment, including, without limitation, the bankruptcy or insolvency of the Lessee, either now or hereafter in effect; it being understood that the obligations of the Lessee under this clause (B) are and shall be absolute and unconditional. (C) In the event that (i) the Facility Lease shall have expired upon expiration (or early termination pursuant to Section 14(e) of the Facility Lease) of the Lease Term (other than in connection with an Event of Loss, Deemed Loss Event or Event of Default) and (ii) thereafter the Lessor shall (1) re-lease the Undivided Interest to any Person or (2) retain the Undivided Interest and sell power and energy from its Generation Entitlement Share through PNM, as agent, then after the Lessor has received (x) in the case of clause (1) above, gross rents in an aggregate amount (when discounted back to such Lease Termination Date at a rate per annum equal to the Prime Rate) equal to 20% of Facility Cost, or (y) in the case of clause (2) above, net electric revenues in an aggregate amount (discounted as aforesaid) equal to 20% of Facility Cost, the Lessor shall thereafter reimburse to the Lessee any further rent received or proceeds received from the sale of power and energy to the extent that such rent or proceeds are

attributable to the decommissioning obligation of the Lessee under this Section 10(b)(3)(xi) with respect to the period from and after such Lease Termination Date (payable on an annual basis with respect to each year or portion thereof during the term of such lease referred to in clause (1) above or such agency period referred to in clause (2) above); provided, however, that when such amount has been paid the Lessor shall be relieved of all obligations to make further reimbursement to the Lessee for such purpose. (D) In the event that (i) the Facility Lease shall have expired upon the expiration (or early termination pursuant to Section 14(e) of the Facility Lease) of the Lease Term (other than in connection with an Event of Loss, Deemed Loss Event or Event of Default, (ii) the Lessor shall sell (other than in connection with the termination by the Lessee of the Facility Lease for obsolescence pursuant to Section 14 of the Facility Lease) the Undivided Interest to any Person (including the Lessee in connection with the exercise by the Lessee of the purchase option provided by Section 13(b); but not the purchase option provided by Section 13(c), of the Facility Lease), and (iii) the net sales proceeds (discounted back to such Lease Termination Date at a rate per annum equal to the Prime Rate) received by the Lessor in connection therewith shall exceed 20% of Facility Cost (reduced by the percentage of Facility Cost, if any, actually realized by the Lessor pursuant to clause (C) above), then the Lessor shall reimburse to the Lessee any net proceeds of such sale to the extent that such proceeds are attributable to the decommissioning obligation of the Lessee under this Section 10(b)(3)(xi) with respect to the period from and after the date of such sale through the remaining useful life of Unit 1 (whereupon the reimbursement obligations of the Lessor under this

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Section 10(b)(3)(xi) shall terminate); provided, however, that any such reimbursement shall not reduce the amount of such net sales proceeds retained by the Lessor to an amount (discounted as aforesaid) equal to less than 20% of Facility Cost (reduced by the percentage of Facility Cost, if any, actually realized by the Lessor pursuant to clause (C) above). The reimbursement obligations of the Lessor under clauses (C) and (D) above are for the sole benefit of the Lessee, and no other Person shall be a third party beneficiary with respect thereto. In the event that the Lessee and the Lessor shall not agree as to the amount of gross rents, net electric revenues or net sales proceeds attributable to the decommissioning obligation of the Lessee under this Section 10(b)(3)(xi), such amount shall be determined by the Appraisal Procedure.

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(xii) **Other Leases with Respect to PVNGS.** Without the prior written consent of the Owner Participant, neither the Lessee nor any Affiliate of the Lessee will directly or indirectly enter into any lease transaction as lessee with respect to any undivided interest in PVNGS providing for "events of loss" upon terms materially less favorable to the Lessee than those contained in Appendix A hereto.

#### **SECTION 11. Conditions Precedent.**

(a) **Owner Participant and Loan Participant Conditions.** The obligation of (x) the Loan Participant to make the Loan on the Closing Date, and (y) the Owner Participant to make the Investment and the Real Estate Investment on the Closing Date, shall be subject to the fulfillment on or prior to the Closing Date of the following conditions precedent (each instrument, document, certificate or opinion referred to below to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) Notice of Closing; Transaction Documents. Each shall have received executed copies, or sets of executed counterparts, of (x) the Notice of Closing, and (y) each Transaction Document (other than the Tax Indemnification Agreement), the Mortgage Release, each Financing Document being executed on the Closing Date and such other documents as are contemplated by this Participation Agreement.

(2) Tax Indemnification Agreement. The Owner Participant shall have received an executed copy of the Tax Indemnification Agreement.

(3) Authentication Request, etc. The Owner Trustee shall have delivered to the Indenture Trustee (x) a request, dated the Closing Date, authorizing the Indenture Trustee to authenticate and deliver the Initial Series Note to the Loan Participant upon its payment to the Indenture Trustee, for the account of the Owner Trustee, of the proceeds of the Loan, and (y) the Original of the Facility Lease.

(4) Due Authorization, Execution and Delivery. All of the documents described in clauses (1) and (2) of this Section 11(a) shall have been duly authorized, executed and delivered by the respective parties thereto and shall be in full force and effect on the Closing Date, and the Loan Participant and the Owner Participant shall have received evidence as to such authorization, execution and delivery.

(5) Initial Series Note and Bonds Transactions; Investment. In the case of the Loan Participant, (A) the Loan Participant shall have received the proceeds from the sale of the Initial Series Bonds as a result of the consummation of the transactions contemplated by the Term Loan Agreement, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, the Initial Series Note evidencing the Loan made on



the Closing Date, (C) the Collateral Trust Trustee shall have accepted the Term Loan Supplemental Indenture and shall have released the amount of the Loan from the lien of the Collateral Trust Indenture, and (D) the Owner Participant shall have made the Investment and the Real Estate Investment on the Closing Date.

(6) Loan. In the case of the Owner Participant, the Loan Participant shall have made the Loan.

(7) ANPP Administrative Committee. The ANPP Administrative Committee shall have made the finding required by Section 15.6.2 of the ANPP Participation Agreement.

(8) No Violation. The making by the Owner Participant of the Investment and the Real Estate Investment and by the Loan Participant of the Loan shall not violate any Applicable Law.

(9) No Default. No Default or Event of Default or, in the case of the Loan Participant, Indenture Default or Indenture Event of Default, shall have occurred and be continuing.

(10) Recording and Filing. The financing statements and fixture filings under the Uniform Commercial Code and certain Transaction Documents, in each case as enumerated and described in Schedule 3, shall have been duly filed or recorded in the respective places or offices set forth in such Schedule and all recording and filing fees with respect thereto shall have been paid.

(11) Representations and Warranties of the Loan Participant. In the case of the Owner Participant, the representations and warranties of the Loan Participant set forth in Section 6(a) 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 the Owner Participant shall have

received an Officers' Certificate of the Loan Participant, dated the Closing Date, to such effect.

(12) Opinion of the Loan Participant's Counsel. In the case of the Owner Participant, it shall have received a favorable opinion of the Loan Participant's Counsel, dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Owner Participant may reasonably request.

(13) Representations and Warranties of the Owner Participant. In the case of the Loan Participant, the representations and warranties of the Owner Participant set forth in Section 7(a) 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 the Loan Participant shall have received a certificate of an officer of the Owner Participant, dated the Closing Date, to such effect.

(14) Opinion of the Owner Participant's Special Counsel. In the case of the Loan Participant, it shall have received a favorable opinion of the Owner Participant's Special Counsel, dated the Closing Date and addressed to the Loan Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents, as the Loan Participant may reasonably request.

(15) Representations and Warranties of the Owner Trustee. The representations and warranties of FNB and the Owner Trustee set forth in Section 8(a) 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 the Loan Participant and the Owner Participant shall have received a certificate from an officer of FNB and a certificate

of the Owner Trustee, dated the Closing Date, to such effect.

(16) Opinion of the Owner Trustee's Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of the Owner Trustee's Counsel, dated the Closing Date and addressed to each such Person, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Loan Participant or the Owner Participant may reasonably request.

(17) Representations and Warranties of the Indenture Trustee. The representations and warranties of the Indenture Trustee set forth in Section 9 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 the Loan Participant and the Owner Participant shall have received a certificate of the Indenture Trustee, dated the Closing Date, to such effect.

(18) Opinion of the Owner Participant's Special NRC Counsel. The Owner Participant shall have received a favorable opinion of the Owner Participant's Special NRC Counsel, dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Owner Participant may reasonably request.

(19) Representations and Warranties of the Lessee. (A) The representations and warranties of the Lessee set forth in Section 10(a), in any other Transaction Document, in the Term Loan Agreement and in any certificate or other document to which the Lessee is a party executed or delivered in connection with the transactions contemplated hereby or thereby 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 (B) no Default, Event

of Default, Deemed Loss Event or Event of Loss shall have occurred and be continuing and the Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Closing Date, to such effect. The following statements shall be true and such Officers' Certificate shall state that there has been no material adverse change in the properties, business, prospects or financial condition of the Lessee since September 30, 1985; and no event has occurred since that date which would materially adversely affect the ability of the Lessee to perform its obligations under the Participation Agreement or any other Transaction Document to which it is or is to be a party.

(20). Opinion of the Lessee's Special Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of the Lessee's Special Counsel, dated the Closing Date and addressed to each such Person, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Loan Participant or the Owner Participant shall reasonably request.

(21). Opinion of Lessee's General Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of the Lessee's General Counsel, dated the Closing Date and addressed to each such Person, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Loan Participant or the Owner Participant shall reasonably request.

(22) Opinion of Lessee's Arizona Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of the Lessee's Arizona Counsel, dated the Closing Date and addressed to each such Person, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the

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Loan Participant or the Owner Participant shall reasonably request.

(23) Opinion of Special FERC Counsel. The Owner Participant shall have received a favorable opinion of Special FERC Counsel, dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Owner Participant shall reasonably request.

(24) Opinion of Owner Participant's Special Arizona Counsel. The Owner Participant shall have received a favorable opinion of the Owner Participant's Special Arizona Counsel, dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Owner Participant shall reasonably request.

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(25) Opinion of Owner Participant's Special New Mexico Counsel. The Owner Participant shall have received a favorable opinion of the Owner Participant's Special New Mexico Counsel, dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents as the Owner Participant may reasonably request.

(26) Opinion of the Owner Participant's Special Counsel. The Owner Participant shall have received a favorable opinion of the Owner Participant's Special Counsel, dated the Closing Date and addressed to the Owner Participant, with respect to such Federal tax and other tax matters as the Owner Participant may reasonably request.

(27) Opinion of the Loan Participant's Counsel. The Loan Participant shall have received a favorable opinion of the Loan Participant's Counsel,

dated the Closing Date and addressed to it, with respect to such matters as the Loan Participant shall reasonably request.

(28) Taxes. All Taxes, if any, payable in connection with the execution, delivery, recording and filing of the Transaction Documents and all the documents and instruments enumerated and described in Schedule 3, or in connection with the issue and sale of the Initial Series Note and the Bonds and the making by the Owner Participant of the Investment and the Real Estate Investment, and all Taxes payable in connection with the consummation of the transactions contemplated hereby and by the other Transaction Documents, shall have been duly paid in full.

(29) Form U-7D. A certificate on Form U-7D with respect to the Facility Lease shall have been duly executed and delivered by the Owner Trustee and the Owner Participant and shall be in due form for filing.

(30) Appraisal. The Owner Participant shall have received a letter, dated the Closing Date and addressed to the Owner Participant, from the Appraiser containing an appraisal of the Undivided Interest, which appraisal shall reflect the Appraiser's reasonable conclusion that (w) the fair market value in the hands of the Owner Trustee of the Undivided Interest on the Closing Date, taking into account the effect and existence of the Real Property Interest, the Assignment and Assumption and the ANPP Participation Agreement, is equal to the Purchase Price as set forth in the Notice of Closing, (x) the estimated remaining economic useful life of Unit 1 (including the Undivided Interest) is at least 39 years, (y) at the expiration of the first two years of the Renewal Term the Undivided Interest will have an estimated residual value taking into account the effect and the existence of this Participation Agreement, the Real Property Interest, the Assignment and Assumption and the ANPP

Participation Agreement, in the hands of the Owner Trustee or a Person (unrelated to the Lessee) who could lease or purchase the Undivided Interest from the Owner Trustee for commercial use, equal to at least 20% of the Purchase Price, determined without including in such value any increase or decrease for inflation or deflation during the period from the Closing Date through the expiration of the first two years of the Renewal Term, and (z) taking into account the effect and the existence of the Real Property Interest, the Assignment and Assumption and the ANPP Participation Agreement, the use of the Undivided Interest at the Lease Termination Date by any User is feasible from an engineering and economic point of view and is commercially reasonable.

(31) Offering and Sale of Interest. The Loan Participant, the Owner Trustee and the Owner Participant shall have received a letter from Kidder Peabody with respect to the offering and sale of the interests in the transactions contemplated by this Participation Agreement and each other participation agreement relating to an undivided interest in Unit 1.

(32) Extension Letter. The Extension Letter shall have been duly executed by the respective parties thereto and delivered to the Collateral Trust Trustee.

(33) Governmental Action. The Lessee shall have obtained all Governmental Actions (including, without limitation, the New Mexico Order, which Order shall be final and non-appealable, and the NRC Order and the FERC Order, which orders shall be final) required or, in the opinion of the Owner Participant, advisable for the consummation of all the transactions contemplated by this Participation Agreement and the other Transaction Documents and the Financing Documents in accordance with their terms.

(34) Title Report; Title Insurance. The Owner Participant shall have received (i) an updated title report, dated the Closing Date, with respect to the nuclear plant site, which report does not disclose any exceptions materially adverse to the possession or operation of Unit 1 or the performance by the Lessee of its obligations under this Participation Agreement and the other Transaction Documents to which the Lessee is, or is to become, a party; and (ii) such title insurance policies with respect to the nuclear plant site and improvements thereon (including the Owner Trustee's interests therein) as it shall have reasonably requested, such policies to be in form and substance satisfactory to the Owner Participant.

(35) No Change or Proposed Change in Tax Laws. No change shall have occurred or been proposed in the Code or any other tax statute, the regulations thereunder or any interpretation thereof that would adversely affect the tax consequences anticipated by the Owner Participant with respect to the transactions contemplated by the Transaction Documents, unless the Lessee shall have agreed in writing to indemnify the Owner Participant in a manner reasonably satisfactory to it against the effect of such change or proposed change.

(36) Insurance. The Owner Participant shall have received a written report from its independent insurance consultant in form and substance satisfactory to the Owner Participant.

(37) Survey. The Owner Participant shall have received a survey of the nuclear plant site prepared subsequent to January 1, 1979.

(38) Special Certificate of the Lessee. The Owner Participant shall have received a certificate of the Lessee, dated the Closing Date, to the effect that, except as set forth on the Schedule thereto, (A) Unit 1 has been in all material respects completed in a good and workmanlike manner and in



accordance with the plans and specifications relating thereto (as the same may have been modified from time to time to reflect Unit 1 as actually completed), Applicable Law (including, but without limitation, the regulations of the NRC), the License and the ANPP Participation Agreement, (B) all Governmental Action necessary for the commercial operation of Unit 1 (including the Undivided Interest) have been received, other than such Governmental Action that is routine in nature for PVNGS or that cannot be obtained under Applicable Law, or is typically not applied for, prior to the time it is required, and that the Lessee expects to be obtained in due course, (C) the plans and specifications relating to Unit 1 are complete in all material respects (modified or to be modified as aforesaid) and consistent with prudent engineering practice, (D) the testing and startup procedures and the operation and maintenance programs are consistent with such plans and specifications, Applicable Law and prudent engineering practice, (E) Unit 1 has been tested in accordance with all customary testing and startup procedures which would have been performed on or prior to the Closing Date, and such tests and procedures indicate that Unit 1 will have the capacity and functional ability to perform in commercial operation, on a continuing basis, the function for which it is designed in accordance with such plans and specifications and has a nominal capacity of 1,270 megawatts electric, (F) all material Governmental Actions relating to the construction, operation or maintenance of Unit 1 are listed in a schedule to such certificate, (G) there is no present event or condition which would materially adversely affect the capability of Unit 1 to operate in accordance with such plans and specifications and (H) based upon the Lessee's present reasonable expectations, and subject to Applicable Law, the rights and interests made available to the ANPP Participants (including the Lessee) pursuant to the ANPP Participation Agreement, as such rights and interests are made available to the Owner Trustee, any successor or assign of the Owner Trustee or any

"Transferee" of the Owner Trustee under Section 15.10 of the ANPP Participation Agreement, under and pursuant to this Agreement, the Deed, the Assignment of Beneficial Interest or the Assignment and Assumption, together with the rights to be made available under and pursuant to the Assignment and Assumption, are adequate to permit, during the period following the Lease Termination Date or the taking of possession of the Undivided Interest and the Real Property Interest in the exercise of remedies under Section 16 of the Facility Lease, in accordance with the ANPP Project Agreements (i) the construction, location, occupation, connection, maintenance, replacement, renewal, repair or removal of Unit 1, (ii) the use, operation and possession of Unit 1, (iii) the construction, use, operation, possession, maintenance, replacement, renewal and repair of all alterations, modifications, additions, accessions, improvements, appurtenances, replacements and substitutions thereof and thereto, (iv) adequate ingress to and egress from Unit 1 for any reasonable purpose in connection with the exercise of rights under the Assignment and Assumption and its ownership and possession of the Undivided Interest and (v) the obtaining of nuclear fuel, of water and of transmission services to the ANPP Switchyard sufficient to enable delivery of the Generation Entitlement Share related to the Undivided Interest in a commercially efficient manner and on commercially reasonable terms. Nothing in the foregoing clause (H) shall be deemed to be or be construed as a warranty by the Lessee as to the performance by the Operating Agent of its obligations under the ANPP Participation Agreement. Such certificate shall also be attested to by J.L. Wilkins, Senior Vice President, Power Supply, PNM Electric, who shall state that (i) he has made such investigation, inspection and review as he deems necessary to make the statements in the certificate and (ii) to the best of his knowledge, the statements of the Lessee in such certificate are true and correct.

(39) Real Estate Appraisal. The Owner Participant shall have received an appraisal of the Real Property Interest, which appraisal shall reflect the appraiser's reasonable conclusion that the fair market value in the hands of the Owner Trustee of the Real Property Interest on the Closing Date is equal to the Real Estate Investment as set forth in the Notice of Closing. Such appraisal shall have covered such other matters as the Owner Participant shall have requested.

(40) Other Matters. The Loan Participant and the Owner Participant shall have received such other documents, certificates and opinions as the Loan Participant or the Owner Participant, or their respective counsel, shall reasonably request.

(b) Lessee Conditions. The obligation of the Lessee to sell and lease back the Undivided Interest and the Real Property Interest on the Closing Date pursuant to Section 4 shall be subject to the fulfillment on or prior to the Closing Date of the following conditions precedent, in each case in form and substance satisfactory to the Lessee:

(1) Paragraph (a) Documents. The Lessee shall have received executed copies of the documents, certificates, opinions (other than the opinion referred to in Section 11(a) (26)), appraisals, letters and forms described in paragraph (a) of this Section 11. All such opinions shall be addressed to the Lessee, except the opinions or documents to which reference is made in clauses (18), (24), (25) and (26) of said paragraph (a).

(2) Payment of Purchase Price. The Owner Trustee shall have paid to the Lessee an amount, in immediately available funds, equal to the Purchase Price and the Real Estate Investment.

(3) Special Opinion of the Lessee's Special Counsel. The Lessee shall have received a favorable opinion of the Lessee's Special Counsel, dated the

Closing Date and addressed to the Lessee, with respect to such Federal tax and other matters as the Lessee may reasonably request.

(4) Accountant's Letter. The Lessee shall have received a letter satisfactory to it from Peat, Marwick, Mitchell & Co., to the effect that, under generally accepted accounting principles and SFAS No. 13, the Facility Lease is an "operating lease".

(5) Orders. The FERC Order, the NMPSC Order and the NRC Order shall be in form and substance satisfactory to the Lessee.

(6) Changes in Pricing Assumptions. If any change or changes in the Pricing Assumptions shall have occurred on or before the Closing Date, the effect of such change or changes will not require the payment of Basic Rent (as to be adjusted pursuant to Section 3(e)(iv) of the Facility Lease) on an annual basis to exceed 11.7% of Facility Cost.

(c) Conditions to Releveraging. The obligation of the Loan Participant to make, and the Owner Trustee to borrow the proceeds of, the Releveraging Loan on the Releveraging Date shall be subject to the fulfillment on or prior to the Releveraging Date of the following conditions precedent (each instrument, document, certificate or opinion to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) Authentication Request, etc. The Owner Trustee shall have delivered to the Indenture Trustee a request, dated the Releveraging Date, authorizing the Indenture Trustee to authenticate and deliver the Releveraging Note to the Loan Participant upon its payment to the Indenture Trustee, for the account of the Owner Trustee, of the proceeds of the Releveraging Loan.

(2) Releveraging Note and Bond Transaction.  
(A) The Loan Participant shall have received the proceeds from the sale of Releveraging Bonds in an

amount sufficient to make the Releveraging Loan, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, the Releveraging Note evidencing the Releveraging Loan made on the Releveraging Date and (C) the Collateral Trust Trustee shall have accepted a supplement to the Collateral Trust Indenture subjecting the Releveraging Note to the lien of the Collateral Trust Indenture and shall have released the amount of the Releveraging Loan from the lien of the Collateral Trust Indenture.

(3) No Violation. The return to the Owner Participant of a portion of the Investment and the making by the Loan Participant of the Releveraging Loan shall not violate any Applicable Law.

(4) No Default. No Default, Event of Default, Indenture Default or Indenture Event of Default, shall have occurred and be continuing.

(5) Representations and Warranties of the Owner Participant. The representations and warranties of the Owner Participant set forth in Section 7(a) shall be true and correct on and as of the Releveraging Date with the same effect as though made on and as of the Releveraging Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Releveraging Date), and the Loan Participant shall have received a certificate of the Owner Participant, dated the Releveraging Date, to such effect.

(6) Representations and Warranties of the Owner Trustee. The representations and warranties of FNB and the Owner Trustee set forth in Section 8(a) shall be true and correct on and as of the Releveraging Date with the same effect as though made on and as of the Releveraging Date (with all references to the Closing Date in such representations and warranties being changed to a

reference to the Releveraging Date), and the Loan Participant shall have received a certificate from an officer of FNB and a certificate of the Owner Trustee, dated the Releveraging Date, to such effect.

(7) Representations and Warranties of the Lessee. (A) The representations and warranties of the Lessee set forth in Section 10(a) shall be true and correct on and as of the Releveraging Date with the same effect as though made on and as of the Releveraging Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Releveraging Date) and (B) no Default, Event of Default, Deemed Loss Event or Event of Loss shall have occurred and be continuing and the Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Releveraging Date, to such effect.

(8) Opinions of Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of each of the Owner Participant's Special Counsel, the Owner Trustee's Counsel, the Lessee's Special Counsel and the Lessee's General Counsel, each dated the Releveraging Date and addressing such matters relating to the transaction in connection with the Releveraging Loan as the Loan Participant or the Owner Participant (or any other party hereto) may reasonably request.

(d) Conditions to Refunding. In addition to the limitations set forth in Section 2(d), the obligation of the Owner Participant and the Loan Participant to participate in a refunding of the Notes as provided in Section 2(d) shall be subject to the fulfillment on or before the Refunding Date of the following conditions precedent (each instrument, document, certificate or opinion to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) Authentication Request, etc. The Owner Trustee shall have delivered to the Indenture Trustee a request, dated the Refunding Date, authorizing the Indenture Trustee to authenticate and deliver the Fixed Rate Note to the Loan Participant against redelivery of the Initial Series Note (and the Releveraging Note, if theretofore issued) to the Indenture Trustee for cancellation.

(2) Fixed Rate Note and Bond Transaction.

(A) The Loan Participant shall have received the proceeds from the sale of Refunding Bonds in an amount sufficient to make the Refunding Loan, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, the Fixed Rate Note evidencing the Refunding Loan made on the Refunding Date and (C) the Collateral Trust Trustee shall have accepted Refunding Supplemental Indenture subjecting the Fixed Rate Note to the lien of the Collateral Trust Indenture and shall have released the Initial Series Note (and the Releveraging Note, if theretofore issued) from the lien of the Collateral Trust Indenture.

(3) No Default. No Event of Default or Indenture Event of Default, shall have occurred and be-continuing.

(4) Representations and Warranties of the Owner Participant. The representations and warranties of the Owner Participant set forth in Section 7(a) shall be true and correct on and as of the Refunding Date with the same effect as though made on and as of the Refunding Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Refunding Date), and the Loan Participant shall have received a certificate of the Owner Participant, dated the Refunding Date, to such effect.

(5) Representations and Warranties of the Owner Trustee. The representations and warranties of

FNB and the Owner, Trustee set forth in Section 8(a) shall be true and correct on and as of the Refunding Date with the same effect as though made on and as of the Refunding Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Refunding Date), and the Loan Participant and the Owner Participant shall have received a certificate from an officer of FNB and a certificate of the Owner Trustee, dated the Refunding Date, to such effect.

(6) Representations and Warranties of the Lessee. (A) The representations and warranties of the Lessee set forth in Section 10(a) shall be true and correct on and as of the Refunding Date with the same effect as though made on and as of the Refunding Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Refunding Date), (B) no Default, Event of Default, Deemed Loss Event or Event of Loss shall have occurred and be continuing and the Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Refunding Date, to such effect and (C) on the date it becomes effective and on the Refunding Date, the Registration Statement does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading, and the Final Prospectus does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such shall have been made.

(7) Opinions of Counsel. The Loan Participant and the Owner Participant shall have received a favorable opinion of each of the Owner Participant's Special Counsel, the Owner Trustee's Counsel, the Lessee's Special Counsel and the Lessee's General Counsel, each dated the Refunding Date and addressing such matters relating to the transactions



in connection with the Refunding Note as the Loan Participant or the Owner Participant (or any other party hereto) may reasonably request.

**SECTION 12. Consent to Assignment of the Facility Lease; Consent to Indenture.**

**(a) Consent to Assignment of Facility Lease.**

The Lessee hereby acknowledges, and consents in all respects to, the partial assignment of the Facility Lease by the Owner Trustee to the Indenture Trustee under and pursuant to the Indenture and agrees:

(i) to make each payment of Basic Rent and Supplemental Rent due or to become due thereunder to the extent constituting Assigned Payments (excluding, in any event, all Excepted Payments) directly to the Indenture Trustee at the Indenture Trustee's Office, so long as any of the Notes shall be Outstanding and unpaid; and

(ii) not to seek to recover any payment (other than a payment that both the Owner Trustee and the Lessee agree was made in mistake) made to the Indenture Trustee in accordance with the Indenture once such payment is made.

**(b) Consent to Indentures.** The Lessee hereby consents in all respects to the execution and delivery of the Indenture, and to all of the terms thereof, and the Lessee acknowledges receipt of an executed counterpart of the Indenture; it being understood that such consent shall not be construed to require the Lessee's consent to any future supplement to, or amendment, waiver or modification of the terms of, the Indenture or any Note, except to the extent expressly provided for.

**(c) Consent to Assignment by Loan Participant.** Each of the parties hereto acknowledges that the Loan Participant is assigning its right, title and interest in and to the Transaction Documents to the Collateral

Trust Trustee as security for the Bonds to the extent set forth in the Collateral Trust Indenture, and each of the parties hereto consents to such assignment.

**SECTION 13. Lessee's Indemnities and Agreements.**

(a) **General Indemnity.** The Lessee agrees, whether or not any of the transactions contemplated hereby shall be consummated and whether or not the Facility Lease, any other Transaction Document or any Financing Document shall have expired or have been terminated, to assume liability for, and the Lessee does hereby agree to indemnify, protect, defend, save and keep harmless each Indemnitee, on an After-Tax Basis, from and against, any and all Claims which may be imposed on, incurred by or asserted against any Indemnitee (whether because of act or omission by such Indemnitee or otherwise and whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person) in any way relating to or arising out of (i) Unit 1, the Undivided Interest, the Real Property Interest, PVNGS or the PVNGS Site, or any part of any thereof, any ANPP Project Agreement, the issuance or payment of the Bonds or the Notes, this Participation Agreement or any other Transaction Document or any Financing Document (including, without limitation, the performance or enforcement of any of the obligations and terms hereunder or thereunder), (ii) a disposition of all or any part of the Undivided Interest, the Real Property Interest, Unit 1 or any other interest of the Owner Trustee in connection with any termination of the Facility Lease, or (iii) the design, manufacture, financing, erection, purchase, acceptance, rejection, ownership, acquisition, delivery, nondelivery, lease, sublease, preparation, installation, repair, transfer of title, abandonment, possession, use, operation, maintenance, condition, sale, return, storage or disposition of the Undivided Interest, Unit 1, the Real Property Interest, any Capital Improvement, the PVNGS Site, any other facilities on the PVNGS Site or any other interest of the Owner Trustee in any thereof or any accident, nuclear incident or extraordinary

nuclear occurrence in connection therewith (including, without limitation, (A) claims or penalties arising from any violation of law or liability in tort (strict or otherwise) or from the active or passive negligence of any Indemnitee, (B) loss of or damage to any property or the environment or death or injury to any Person, (C) latent and other defects, whether or not discoverable, (D) any claim for patent, trademark, service-mark or copyright infringement and (E) any claim of any Indemnitee incurred in the administration of this Participation Agreement, any other Transaction Document or any Financing Document and not paid as Transaction Expenses or included in Facility Cost and, if not included in Transaction Expenses, the reasonable fees and disbursements of counsel and other professionals incurred in connection therewith); provided, however, that the Lessee shall not be required to indemnify any Indemnitee pursuant to this Section 13(a), (1) for any Claim in respect of Unit 1, the Undivided Interest or the Real Property Interest arising from acts or events not attributable to the Lessee which occur after redelivery of the Undivided Interest to the Owner Trustee in accordance with Section 5 of the Facility Lease, except to the extent expressly provided in any Transaction Document, the ANPP Participation Agreement or any other agreement or undertaking of the Lessee, (2) for any Claim against such Indemnitee resulting solely from acts which would constitute the willful misconduct or gross negligence of such Indemnitee (unless imputed to such Indemnitee by reason of Unit 1, the Undivided Interest, the Real Property Interest, PVNGS, the PVNGS Site or any other facilities at the PVNGS Site or any occurrence in connection with any thereof), (3) for any Transaction Expense to be paid by the Owner Trustee pursuant to Section 14(a) or (4) for any Claim resulting solely from a transfer by the Owner Trustee or the Owner Participant of all or part of its interest in the Facility Lease, Unit 1, the Real Property Interest or the Undivided Interest other than in connection with any early termination of the Facility Lease or any exercise of remedies under Section 16 thereof or the transfer contemplated by Section 7(b)(4) or the first transfer by the Owner Participant to an Affiliate of the Owner Participant.

To the extent that an Indemnitee in fact receives indemnification payments from the Lessee under the indemnification provisions of this Section 13(a), the Lessee shall be subrogated, to the extent of such indemnity paid, to such Indemnitee's rights with respect to the transaction or event requiring or giving rise to such indemnity, but only so long as such subrogation shall not materially adversely affect the rights of such Indemnitee or any other Indemnitee hereunder. Nothing herein contained shall be construed as constituting a guaranty by the Lessee of the principal of or premium, if any, or interest on the Notes or the Bonds or of the residual value or useful life of the Undivided Interest.

**(b) General Tax Indemnity.**

(1) Indemnity. All payments by the Lessee in connection with the transactions contemplated by the Transaction Documents shall be free of withholdings of any nature whatsoever (and at the time that the Lessee is required to make any payment upon which any withholding is required, the Lessee shall pay an additional amount such that the net amount actually received by the Person entitled to receive such payment will, after such withholding, equal the full amount of the payment then due) and shall be free of expense to each Indemnitee for collection or other charges. Whether or not any of the transactions contemplated hereby are consummated, except as provided in Section 13(b)(2), the Lessee shall pay, and shall indemnify, defend and hold each Indemnitee harmless, on an After-Tax Basis, from and against, any and all Taxes howsoever imposed (whether imposed on or with respect to the Indemnitee, the Lessee, Unit 1, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site or any part thereof or interest therein or otherwise) by any Federal, state or local government or subdivision thereof or taxing authority in the United States or by any foreign country or subdivision thereof or by any foreign or international taxing authority in connection with or

relating to (A) the design, construction, financing, purchase, acquisition, acceptance, rejection, delivery, nondelivery, transport, ownership, assembly, possession, repossession, operation, use, condition, maintenance, repair, improvement, sale, return, abandonment, preparation, installation, storage, replacement, redelivery, manufacture, insuring, leasing, subleasing, modification, transfer of title, rebuilding, rental, importation, exportation or other application or disposition of, or the imposition of any Lien other than Owner Participant's Liens and Owner Trustee's Liens (or incurrence of any liability to refund or pay over any amount as a result of any Lien other than Owner Participant's Liens and Owner Trustee's Liens) on, Unit 1, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site, or any part thereof or interest therein, (B) the payment of Rent or the receipts or earnings arising from or received with respect to, and the indebtedness with respect to, Unit 1, the Undivided Interest, the Real Property Interest or any Capital Improvement, or any part thereof, interest therein or application or disposition thereof, (C) any amount paid or payable pursuant to this Participation Agreement, any other Transaction Document or any Financing Document or the transactions contemplated hereby or thereby (D) Unit 1, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site, or any part thereof, or interest therein, or the applicability of the Facility Lease to the Undivided Interest or any Capital Improvement, or any part thereof or interest therein, (E) this Participation Agreement, any other Transaction Document or any Financing Document or (F) otherwise with respect to or in connection with the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document.

(2) Exclusions from General Tax Indemnity. Section 13(b)(1) (except for the first sentence thereof) shall not apply to:

(i) Taxes based on, or measured by, net income imposed by the United States federal government (including, without limitation, any minimum Taxes, capital gains Taxes, withholding Taxes, any Taxes on, or measured by, items of tax preference, surcharges, additions to tax, penalties, fines or other charges in respect thereof);

(ii) Taxes (other than sales, use or rental Taxes) imposed by any state or local government or other taxing authority in the United States that are based on, or measured by, the net income, items of tax preference, net worth or capital of an Indemnatee, except, with respect to the Owner Trustee, the Trust, the Trust Estate, the Owner Participant and any Affiliate of any thereof, any such Taxes imposed by a jurisdiction as a result of a relation or asserted relation of such jurisdiction to the transactions contemplated by the Transaction Documents or the Financing Documents or as a result of the activities of the Lessee, any ANPP Participant or any Affiliate of any thereof in such jurisdiction; provided, however, that the amount of any such excepted Taxes shall be calculated (i) on a pro forma basis assuming that such Indemnatee has no other taxable income in the taxing jurisdiction imposing the Tax (provided that such calculation shall take into account any allocation or apportionment method used by such jurisdiction except to the extent that such method takes into account the income or activities of business entities organized outside the United States) and is able to use any net operating loss carryovers to the fullest extent allowed by law and (ii) by taking into account any actual reduction in Taxes in such jurisdiction or in any other jurisdiction in which such Indemnatee is subject to tax (whether such reduction results from the operation of allocation or apportionment

formulas, from credits or otherwise) which reduction results from the transactions contemplated by the Transaction Documents or the Financing Documents; provided further, however, that, with respect to any Tax based on, or measured by, capital or net worth, the Lessee's indemnity obligation shall not exceed the incremental portion of such Tax attributable to the transactions contemplated by the Transaction Documents;

(iii) Taxes attributable to the Undivided Interest or the Real Property Interest that are imposed with respect to any period after (a) the Lease Termination Date and (b) the date possession of the Undivided Interest and the Real Property Interest has been delivered to the Lessor as provided in Section 5(a) of the Facility Lease, unless such Taxes relate to events occurring or matters arising prior to or simultaneously with such date;

(iv) Taxes on or with respect to an Indemnitee arising from any voluntary transfer by such Indemnitee of any interest in the Undivided Interest, the Real Property Interest, the Trust Estate, the Indenture Estate, the Notes or any other right or interest arising under the Transaction Documents or the Financing Documents, unless an Event of Default has occurred and is continuing, or Taxes arising from an involuntary transfer by such Indemnitee of any such interest arising from a bankruptcy or similar proceeding in which such Indemnitee is the debtor unless such bankruptcy or other proceeding was caused by the Lessee or any Affiliate thereof;

(v) Taxes based on or measured by any fees, commission or compensation received by the Owner Trustee or the Indenture Trustee for acting as trustee, or for other services rendered, in connection with any of the

transactions contemplated by the Transaction Documents or the Financing Documents;

(vi) Taxes on or with respect to an Indemnatee arising by reason of such Indemnatee's failure to file proper and timely reports or returns (unless the filing of such reports or returns is the obligation of the lessee under the Transaction Documents or the Financing Documents) and any penalties or additions to tax imposed by reason of such Indemnatee's failure to comply with the laws imposing such Tax, unless such failure results from any action of the Lessee or failure by the Lessee to comply with any provision of the Transaction Documents or the Financing Documents, including the failure to provide necessary information;

(vii) Taxes on or with respect to an Indemnatee arising as a result of a material failure of such Indemnatee to fulfill its obligations with respect to the contest of any claim in accordance with Section 13(b)(4) of this Participation Agreement;

(viii) Taxes imposed on or with respect to a transferee (or subsequent transferee) of an original Indemnatee (other than a transferee or subsequent transferee that is an Affiliate of its transferor) to the extent that the amount of such Taxes exceeds the amount of taxes that would have been imposed on or with respect to such original Indemnatee but for the transfer to such transferee or, if imposed, would not have been subject to indemnification under this Section 13(b); provided, however, that the exception in this clause shall not apply to any transferee where such transfer shall have occurred during the continuance of an Event of Default;



(ix) any Taxes imposed on the Lessor or the Owner Participant resulting from, or which would not have occurred but for, Lessor's Liens or Owner Participant's Liens and any Taxes imposed on the Indenture Trustee which would not have occurred but for Indenture Trustee's Liens;

(x) any Tax that results solely from the activities of an Indemnatee in any taxing jurisdiction which activities are unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents;

(xi) any Tax on or with respect to an Indemnatee resulting from any amendment or modification entered into by such Indemnatee to any Transaction Document or Financing Document if the Lessee is not a party to such amendment or modification or has not consented to such amendment or modification, in each case unless an Event of Default shall have occurred and be continuing; and

(xii) any Tax on or with respect to an Indemnatee resulting from the gross negligence or willful misconduct of such Indemnatee (it being understood that no Indemnatee is responsible for determining whether a Tax is payable if such Tax is the responsibility of the Lessee under this Section 13(b));

provided, however, that the foregoing subclauses (i) through (xiv) shall not apply to any Tax imposed on the Collateral Trust Trustee, the Loan Participant, or the indenture estate under the Collateral Trust Indenture.

(3) Calculation of General Tax Indemnity Payments. If any Indemnatee realizes a net permanent tax benefit by reason of the payment of any indemnity under Section 13(b)(1), such Indemnatee

shall pay the Lessee, but not before the Lessee shall have made all payments theretofore due to such Indemnatee pursuant to this Section 13(b), an amount equal to the lesser of (x) the sum of such tax benefit plus any other net tax benefit realized by such Indemnatee as the result of any payment made by such Indemnatee pursuant to this sentence, and (y) the amount of such payment by the Lessee to such Indemnatee and any other payment by the Lessee to such Indemnatee theretofore made pursuant to this Section 13(b) less the aggregate amount of all prior payments by such Indemnatee to the Lessee pursuant to this clause (y) with respect to amounts paid pursuant to Section 13(b)(1), it being intended that no Indemnatee should realize a net tax benefit pursuant to this Section 13(b) unless the Lessee shall first have been made whole for any payments by it to such Indemnatee pursuant to this Section 13(b); provided, however, that in computing any permanent tax benefit, such Indemnatee shall be deemed first to have utilized all deductions and credits available to it otherwise than by reason of any payment by the Lessee pursuant to this Section 13(b); provided further, however, that notwithstanding the provisions of this clause (3), such Indemnatee shall not be obligated to make any payment to the Lessee pursuant to this clause (3) if at the time such payment shall be due an Event of Default shall have occurred and be continuing.

(4) General Tax Indemnity-Contests. If a written claim shall be made against any Indemnatee for any Tax for which the Lessee is obligated pursuant to this Section 13(c), such Indemnatee shall notify the Lessee promptly of such claim but the failure so to notify the Lessee shall not affect any obligation of the Lessee pursuant to this Section 13(b). If the Lessee shall reasonably request in writing within 30 days after receipt of such notice, such Indemnatee shall in good faith and at the Lessee's expense contest the imposition of such Taxes; provided, however, that such Indemnatee may in its sole discretion select the forum for such contest

and determine whether any such contest shall be by (A) resisting payment of such Taxes, (B) paying such Taxes under protest or (C) paying such Taxes and seeking a refund thereof; provided further, however, that (W) such Indemnatee shall not be obligated to contest any claim in which the amount in question is less than \$250,000, (X) at such Indemnatee's option, such contest shall be conducted by the Lessee in the name of such Indemnatee (subject to the preceding proviso) and (Y) in no event shall such Indemnatee be required or the Lessee permitted to contest the imposition of any Taxes for which the Lessee is obligated pursuant to this Section 13(b) unless (u) the Lessee shall have acknowledged its liability to such Indemnatee for an indemnity payment pursuant to this Section 13(b) as a result of such claim if and to the extent such Indemnatee or the Lessee, as the case may be, shall not prevail in the contest of such claim; (v) such Indemnatee shall have received from the Lessee (i) satisfactory indemnity for any liability, expense or loss arising out of or relating to such contest including, but not limited to, (A) all reasonable legal, accountants' and investigatory fees and disbursements, (B) the amount of any interest, additions to tax or penalty that may be payable as a result of contesting such claim and (C) if such contest is to be initiated by the payment of, and the claiming of a refund for such Tax, sufficient funds to make such payment on an After-Tax Basis and (ii) an opinion of independent tax counsel selected by the Lessee and approved by such Indemnatee (which approval shall not be unreasonably withheld) and furnished at the Lessee's sole expense to the effect that a Reasonable Basis exists for contesting such claim or, in the event of an appeal, that it is more likely than not that an appellate court or an administrative agency with appellate jurisdiction, as the case may be, will reverse or substantially modify the adverse determination; (w) the Lessee shall have agreed to pay such Indemnatee on demand all reasonable costs and expenses that such Indemnatee may incur in connection with contesting such claim (including,

without limitation, all costs, expenses, losses, reasonable legal and accounting fees, disbursements, penalties, interest and additions to tax); (x) such Indemnatee shall have reasonably determined that the action to be taken will not result in any danger of sale, forfeiture or loss of, or the creation of any Lien (except if the Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of such Indemnatee in a manner satisfactory to such Indemnatee) on, Unit 1, any part thereof, the Undivided Interest, the Real Property Interest, or any interest in any of the foregoing; and (y) if such contest shall be conducted in a manner requiring the payment of the claim, the Lessee shall have paid the amount required. The Lessee agrees to give such Indemnatee reasonable notice of any contest prior to the commencement thereof. If any Indemnatee shall obtain a refund of all or any part of any Taxes paid by the Lessee, such Indemnatee shall pay the Lessee, but not before the Lessee shall have made all payments theretofore due to such Indemnatee pursuant to this Section 13(b), an amount equal to the lesser of (xx) the amount of such refund, including interest received and attributable thereto, plus any permanent net tax benefit realized by such Indemnatee as a result of any payment by such Indemnatee made pursuant to this sentence, (after taking into account the tax consequences of the receipt of such refund and such interest) or (yy) such tax payment by the Lessee to such Indemnatee plus any other payment by the Lessee to such Indemnatee theretofore made pursuant to this Section 13(b), in either case, net of any expenses not already paid or incurred by the Lessee; provided, however, that in computing any permanent tax benefit, such Indemnatee shall be deemed first to have utilized all deductions and credits available to it otherwise than by reason of any payment by the Lessee pursuant to this Section 13(b); provided, further, however, that notwithstanding the provisions of this clause (4), such Indemnatee shall not be obligated to make any payment to the Lessee pursuant to this clause (4) if

at the time such payment shall be due a Default or an Event of Default shall have occurred and be continuing under the Facility Lease. An Indemnatee shall not be required to make any payment pursuant to this clause (4) before such time as the Lessee shall have made all payments and indemnities then due under the Transaction Documents to such Indemnatee. Notwithstanding anything contained in this clause (4) to the contrary, no Indemnatee shall be required to contest any claim if the subject matter thereof shall be of a continuing nature and shall have previously been decided pursuant to the contest provisions of this clause (4) unless there shall have been a change in the law (including, without limitation, amendments to statutes or regulations, administrative rulings and court decisions) after such claim shall have been so previously decided, and such Indemnatee shall have received an opinion of independent tax counsel selected by the Lessee and approved by such Indemnatee (which approval shall not be unreasonably withheld) and furnished at the Lessee's sole expense to the effect that such change provides substantial authority for the position which such Indemnatee and the Lessee, as the case may be, had asserted in such previous contest. Nothing contained in this Section 13(b) shall require any Indemnatee to contest or permit the Lessee to contest a claim which it would otherwise be required to contest pursuant to this Section 13(b) if such Indemnatee shall waive payment by the Lessee of any amount that might otherwise be payable by the Lessee under this Section 13(b) by way of indemnity in respect of such claim.

(5) General Tax Indemnity-Reports. If any report, return or statement is required to be filed with respect to any obligations of the Lessee under or arising out of this Section 13(b), the Lessee shall timely file the same, except for any such report, return or statement which such Indemnatee has notified the Lessee that it intends to file. The Lessee shall either file such report, return or statement so as to show the ownership of the

Undivided Interest or the Real Property Interest, as the case may be, in the Owner Trustee and send a copy of such report, return or statement to the Owner Trustee and such Indemnatee or, where not so permitted, notify the Owner Trustee and such Indemnatee of such requirement and prepare and deliver such report, return or statement to the Owner Trustee and such Indemnatee in a manner satisfactory to the Owner Trustee and such Indemnatee within a reasonable time prior to the time such report, return or statement is to be filed or, where such return, statement or report shall be required to reflect items in addition to any obligations of the Lessee under or arising out of this Section 13(b), provide the Owner Trustee and such Indemnatee with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of the Lessee under or arising out of this Section 13(b) (and the Lessee shall hold each Indemnatee harmless from and against any liabilities, obligations, losses, damages, penalties, claims, actions, suits and reasonable costs arising out of any insufficiency or inaccuracy in any such return, statement, report or information). The Lessee shall not have any right to examine the tax returns of any Indemnatee.

(6) General Tax Indemnity-Payment. All Taxes shall be paid when due and payable and, unless otherwise requested by the appropriate Indemnatee, the Lessee shall pay any Taxes for which it is liable pursuant to this Section 13(b) directly to the appropriate taxing authority and shall pay such appropriate Indemnatee promptly on demand in immediately available funds any amount due such Indemnatee pursuant to this Section 13(b) with respect to such Taxes. Any such demand shall specify in reasonable detail the payment and the facts upon which the right to payment is based. Each Indemnatee shall promptly forward to the Lessee any notice, bill or advice received by it concerning any Taxes. Within 30 days after the date of each payment by the Lessee of any Taxes, the Lessee shall furnish the

appropriate Indemnatee the original or a certified copy of a receipt for the Lessee's payment of such Taxes or such other evidence of payment of such Taxes as is acceptable to such Indemnatee. The Lessee shall also furnish promptly upon request such data as any Indemnatee may require to enable such Indemnatee to comply with the requirements of any taxing jurisdiction. Whenever any payment is to be made by the Lessee under this Section 13(b) and it shall be necessary, in calculating the After-Tax Basis amount of such payment, to compute the amount of any liability for federal, state or local tax imposed on or measured by the net income of any Indemnatee, such computation shall be based on the assumption that such taxes shall be payable at the highest marginal statutory rate in effect for the relevant period.

(7) **Definition of Indemnatee.** For purposes of this Section 13(b), the term Indemnatee shall mean and include the successors and assigns of each respective Indemnatee, and for purposes of federal income taxes, the affiliated group of corporations and each member thereof (within the meaning of Section 1504 of the Code) of which such Indemnatee is a member, if such group shall file a consolidated United States federal income tax return, and, for purposes of income or franchise taxes imposed by a particular state or local taxing jurisdiction, shall mean and include any consolidated or combined group of which such Indemnatee is or shall be a member that is treated as such by such state or local taxing jurisdiction.

(c) **Supporting Material.** Upon receipt of any payment provided for by this Section 13, the Indemnatee receiving the same shall provide to the Lessee such supporting material (other than tax returns) as the Lessee shall reasonably request. The Lessee shall reimburse to any Indemnatee any expenses incurred in providing requested supporting material to the Lessee.

#### SECTION 14. Transaction Expenses.

(a) Transaction Expenses. Subject to the provisions of paragraph (c) below, with funds provided by the Owner Participant, the Owner Trustee hereby agrees that it will pay when due an appropriate portion (taking into account the other undivided interests in Unit 1 being sold on the Closing Date) of the following costs and expenses (Transaction Expenses):

(i) the reasonable legal fees and disbursements of the Loan Participant's Counsel, Special FERC Counsel, the Owner Participant's Special Arizona Counsel, the Owner Participant's Special New Mexico Counsel, the Owner Participant's Special Counsel, the Owner Participant's Special NRC Counsel, the Owner Trustee's Counsel and the Indenture Trustee's Counsel for their services rendered in connection with the execution and delivery of this Participation Agreement and the other Transaction Documents and all fees, expenses and disbursements incurred by them in connection with such transactions; and reasonable legal fees, expenses and disbursements in connection with NRC and ANPP Participant approvals in connection with such transactions;

(ii) the initial (but not the ongoing) fees and expenses of the Owner Trustee and the Indenture Trustee;

(iii) all stenographic, printing, reproduction, and other reasonable out-of-pocket expenses (other than investment banking or brokerage fees) incurred in connection with the execution and delivery of this Participation Agreement and the other Transaction Documents and all other agreements, documents or instruments prepared in connection therewith (including all computer analysis and travel related costs);



(iv) the fees of the Appraiser for services rendered as contemplated by Section 11(a)(30), the fees of the appraiser for services rendered as contemplated by Section 11(a)(39) and the fees of the insurance consultant for services rendered as contemplated by Section 11(a)(36);

(v) all costs of issue of the Bonds including, without limitation, the costs of preparing the Financing Documents, filing fees relating to the Registration Statement and the fees, expenses and disbursements of Collateral Trust Trustee's Counsel, Bank Counsel, Loan Participant's special Arizona counsel and special New Mexico counsel, Underwriter's Counsel, the initial fees of the Collateral Trust Trustee and its out-of-pocket expenses through the Refunding Date, rating agency fees, the fees and commissions of the underwriters of the Bonds and the fees, expenses and disbursements of the Loan Participant;

(vi) commitment fees payable to the Banks under the Term Loan Agreement; and

(vii) the fees and out-of-pocket expenses of Kidder Peabody in connection with the placement of the beneficial interest in the Trust.

Subject to the provisions of paragraph (c) below, funds for the payment of Transaction Expenses will be provided by the Owner Participant to the Owner Trustee and the Owner Trustee will promptly disburse such funds.

(b) **Post-Closing Expenses.** The Lessee will pay, as Supplemental Rent, (i) the ongoing fees, expenses, disbursements and costs (including legal and other professional fees and expenses) of or incurred by the Owner Trustee, the Indenture Trustee and the Collateral Trust Trustee, including in connection with the issue, sale and purchase of Notes and Bonds after the Closing Date, and (ii) all fees, expenses,

disbursements and costs (including legal and other professional fees and expenses) incurred by the Loan Participant, the Owner Participant, the Owner Trustee, the Indenture Trustee and the Collateral Trust Trustee in connection with (a) any Default, Event of Default, Indenture Default or Indenture Event of Default, (b) the entering into or giving or withholding of any amendment, modification, supplement, waiver or consent with respect to any Transaction Document or Financing Document, (c) any Event of Loss or Deemed Loss Event, (d) any transfer of all or any part of the right, title and interest of the Indenture Trustee in, to and under the Transaction Documents, (e) any transfer of all or any part of the right, title and interest of the Owner Trustee in the Undivided Interest, the Real Property Interest or in, to and under the Transaction Documents, (f) any transfer contemplated by Section 7(b)(4) and (g) any releveraging or refunding referred to in Section 2(c) or 2(d) (except to the extent constituting Transaction Expenses).

(c) Lessee's Obligation. Notwithstanding Section 14(a) hereof, (i) in the event the transactions contemplated by this Participation Agreement shall not be consummated, the Lessee shall pay or cause to be paid, and shall indemnify and hold harmless the Loan Participant, the Indenture Trustee, the Owner Trustee and the Owner Participant in respect of all Transaction Expenses unless such failure to consummate shall result solely from the Owner Participant's default in making its Investment hereunder and (ii) the Lessee shall pay or cause to be paid that portion of Transaction Expenses which exceeds a percentage of the Purchase Price equal to the Transaction Expense Cap set forth in Schedule 2.

#### SECTION 15. Owner Participant's Transfers.

(a) Transfers. After the Closing Date, except as contemplated by Section 7(b)(4), the Owner Participant shall not assign, convey or otherwise transfer all or any part of (including without limitation an undivided interest in) its right, title or interest in and to this Participation Agreement, any of the other

Transaction Documents or the Trust Estate (except its right to receive Excepted Payments) to any Person (a Transferee) except on the following conditions:

(i) the Transferee shall enter into an agreement or agreements whereby such Transferee confirms that (1) it shall be bound by the terms of this Participation Agreement and each other Transaction Document, to the extent of the interest transferred, as if it had been originally named as the Owner Participant hereunder and thereunder and (2) if such Transferee is a public utility company, it shall have waived its right to claim Special Casualty Value upon the occurrence of a Deemed Loss Event (of the type specified in clause (1) of the definition thereof) under the Facility Lease;

(ii) the Transferee shall be either (A) a financial institution, a corporation or a partnership with a net worth or capital and surplus of at least \$25,000,000 (or, in the case of a partnership, at least one of whose general partners has such a net worth or capital and surplus), or a direct or indirect wholly owned subsidiary of such a financial institution or corporation, (B) a direct or indirect wholly owned subsidiary of (1) the Owner Participant or (2) any parent of the Owner Participant, (C) such other Person as shall have been approved by the Lessee or (D) any Person; provided, however, that if the Transferee is a subsidiary referred to in clause (A) above or a Person referred to in clause (D) above, the transferring Owner Participant (and any parent thereof secondarily liable pursuant to this Section 15(a)(ii)) shall continue to be liable for (or the parent of such Transferee, which shall otherwise be a permitted Transferee, shall enter into an agreement whereby such parent confirms that it shall be secondarily

liable for) the obligations of such Transferee under Section 7(b)(i) notwithstanding such transfer; and

(iii) such transfer shall not violate the Securities Act or any provision of, or create a relationship which would be in violation of, any Applicable Law or agreement to which the transferring Owner Participant or the Transferee is a party or by which its property is bound.

Upon any such transfer, the transferring Owner Participant shall, except as expressly provided in clause (ii) above, be released from its obligations under this Participation Agreement and the other Transaction Documents to the extent of the interest transferred. An agreement to transfer shall not in and of itself constitute a transfer for purposes of this Section 15.

(b) Procedure. If the Owner Participant transfers all or any part of its interest hereunder pursuant to this Section 15, it shall give written notice thereof to the Lessee, the Owner Trustee, the Indenture Trustee and the Loan Participant, specifying the name and address for notices to the Transferee, such other information and evidence as shall be necessary to establish compliance with this Section 15 and the extent of the interest transferred to such Transferee. If, as a result of any such transfer, the original Owner Participant is not to continue to receive all payments to be made by the Indenture Trustee to the "Owner Participant" under the Indenture, the original Owner Participant shall from time to time, by notice to the Indenture Trustee, with copies to the Lessee, the Owner Trustee and the Collateral Trust Trustee, designate the manner in which any such payments to the "Owner Participant" are to be allocated, and the Indenture Trustee shall be entitled to rely on such notice for all purposes. This Section 15 is for the benefit of the Lessee, the Owner Trustee and the Owner Participant and may not be enforced by any other party hereto.

**SECTION 16. Brokerage and Finders' Fees and Commissions.**

Except to the extent of amounts payable by the Owner Participant pursuant to Section 14, the Lessee will indemnify and hold harmless the Loan Participant, the Indenture Trustee, the Owner Trustee and the Owner Participant in respect of any commissions, fees, judgments or other expenses of any nature and kind which any of them may become liable to pay by reason of any claims by or on behalf of brokers, finders, agents, advisors or investment bankers in connection with the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document, or any litigation or similar proceeding arising from any such claims, other than those claims arising out of written undertakings of the party claiming indemnification under this Section 16 or any Affiliate or shareholder (or Affiliate of such shareholder) of such Person with any such broker, finder, agent, advisor or investment banker.

**SECTION 17. Survival of Representations and Warranties; Binding Effect.**

(a) Survival. All indemnities, representations and warranties contained in this Participation Agreement, in any other Transaction Document, in any Financing Document and in any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith, shall survive, and shall continue in effect following, the execution and delivery of this Participation Agreement, the making of the investments and the loans referred to herein, any disposition of any interest in the Undivided Interest, Unit 1 or any other property referred to in this Participation Agreement and the expiration or other termination of any of the Transaction Documents or Financing Documents and shall be and continue in effect notwithstanding (i) any investigation made by the Owner Participant or the Loan Participant or (ii) the fact that any of the Indenture Trustee, the Owner Trustee, the Loan Participant or the Owner Participant may waive

compliance with any of the other terms, provisions or conditions of any of the Transaction Documents or Financing Documents. The obligations of the Lessee under Sections 10(b)(1)(vi), 10(b)(1)(viii), 10(b)(2), 10(b)(3)(vii), 10(b)(3)(x), 10(b)(3)(xi), 13, 14, 16 and 19(f) shall survive the expiration or other termination of this Participation Agreement or any other Transaction Document or Financing Document. The extension of any applicable statute of limitations by the Owner Trustee, the Indenture Trustee, the Lessee, the Owner Participant, the Loan Participant or any Indemnitee shall not affect such survival.

(b) Binding Effect. All agreements, representations and warranties in this Participation Agreement, the other Transaction Documents and the Financing Documents and in any agreement, document or certificate delivered concurrently with the execution of this Participation Agreement or from time to time thereafter, shall bind the party making the same and its successors and permitted assigns and shall inure to the benefit of each party for whom made and their respective successors and permitted assigns, and, to the extent provided in the next sentence, each Indemnitee and its successors and assigns. The obligations of the Lessee under Section 13 hereof and Section 20 of the Facility Lease are expressly made for the benefit of, and shall be enforceable by, any Indemnitee, separately or together, without declaring the Facility Lease to be in default and notwithstanding any assignment by the Lessor of the Facility Lease or any of its rights thereunder or any disposition of all or any part of any interest in the Undivided Interest, the Real Property Interest, Unit 1 or any other property referred to in this Participation Agreement, or in this Participation Agreement or any other Transaction Document or any Financing Document. All payments required to be made pursuant to Section 13 hereof shall be made directly to, or as otherwise requested by, the Indemnitee entitled thereto upon written demand by such Indemnitee. The Lessee shall not assign any of its rights or obligations hereunder without the prior written consent of the Owner Participant and the Owner Trustee. Except as otherwise

indicated, all references herein to any party to this Participation Agreement and the other Transaction Documents shall include the permitted successors and assigns of such party.

#### SECTION 18. Notices.

All communications, notices and consents provided for herein shall be in writing, including telex, telecopy or other wire transmission containing a request for assurance of receipt in a manner typical with respect to communications of that type, or mailed by registered or certified mail, and shall be addressed (i) if to the Owner Participant, at the address for notices set forth on Schedule 2; (ii) if to First PV Funding Corporation at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, Attention: President; (iii) if to The First National Bank of Boston, or the Owner Trustee, at 100 Federal Street, Boston, Massachusetts 02110, Attention: Corporate Trust Division (TWX No. 940581); (iv) if to Chemical Bank, at 55 Water Street, New York, New York 10041, Attention: Corporate Trustee Administration; and (v) if to Public Service Company of New Mexico, at Alvarado Square, Albuquerque, New Mexico 87158, Attention: Secretary; or at such other address as any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other parties hereto. All such communications, notices and consents given in the manner provided above shall be effective on the date of receipt of such communication or notice.

#### SECTION 19. Miscellaneous.

(a) Execution. This Participation Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Although this Participation Agreement is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively

the dates set forth under the signatures hereto, and this Participation Agreement shall be effective on the latest of such dates.

(b) **Intention of the Owner Participant.** The Owner Participant intends to exercise its rights and carry out its obligations hereunder and under the other Transaction Documents solely with a view to furthering its own best interests and does not have, and does not expect to have, any form of joint profit motive with any other Person. The Owner Participant shall not be required to share any Rent to which it is entitled under the Facility Lease with any other Person except to the extent provided in the Indenture. The Owner Participant is not under the control of nor shall it be deemed to be under the control of any other Person having any interest in Unit 1, and shall not be the agent of or have a right or power to bind any such Person (other than the Owner Trustee) without its express written consent. The Owner Participant accordingly does not intend to create any form of partnership or joint venture with any other Person by virtue of the transactions contemplated hereby or by any of the Transaction Documents. In the event that it is determined, contrary to the intent of the Owner Participant, that, for purposes of the Code or any other income tax law, a form of partnership or joint venture exists between the Owner Participant and any other Person, the Owner Participant hereby elects to the extent permitted by law (i) not to have the partnership provisions of the Code or such other income tax law apply to any of the transactions contemplated hereby or by any of the Transaction Documents and (ii) to be treated solely as owning the Undivided Interest.

(c) **Governing Law.** This Participation Agreement has been negotiated and delivered in the State of New York and shall be governed by, and be construed in accordance with, the laws of the State of New York.

(d) **Amendments, Supplements, etc.** Neither this Participation Agreement nor any of the terms hereof may be amended, supplemented, waived or modified orally, but



only by an instrument in writing signed by the party against which enforcement of such change is sought.

(e) Headings. The headings of the sections and paragraphs of this Participation Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

(f) Bankruptcy of Owner Participant. If (a) the Owner Participant or the Owner Trustee becomes a debtor subject to the reorganization provisions of the Bankruptcy Code, or any successor provision, (b) pursuant to such reorganization provisions the Owner Participant or the Owner Trustee is required, by reason of the Owner Participant being held to have recourse liability directly or indirectly to the Holder of any Note or the Indenture Trustee, to make payment on account of any amount payable as principal or interest on such Note and (c) such Holder or the Indenture Trustee actually receives any Excess Amount (as herein-after defined) which reflects any payment by the Owner Participant on account of clause (b) of this Section, then such Holder or the Indenture Trustee, as the case may be, shall promptly refund to the Owner Participant such Excess Amount. For purposes of this Section, "Excess Amount" means the amount by which such payment exceeds the amount which would have been received on or prior to the date of such payment by such Holder or the Indenture Trustee if the Owner Participant or the Owner Trustee had not become subject to the recourse liability referred to in clause (b) of this Section. Nothing contained in this Section shall prevent such Holder or the Indenture Trustee from enforcing any personal recourse obligation (and retaining the proceeds thereof) of the Owner Participant expressly provided for under this Participation Agreement.

(g) Entire Agreement. This Participation Agreement (including the Schedules hereto), the other Transaction Documents and the Financing Documents supersede all prior agreements, written or oral, between or among any of the parties hereto relating to the

transactions contemplated hereby and thereby and each of the parties hereto represents and warrants to the others that this Participation Agreement and the other Transaction Documents and the Financing Documents constitute the entire agreement among the parties relating to the transactions contemplated hereby and thereby.

(h) **Publicity.** Each party hereto agrees that it will not issue or release for external publication any article or advertising or publicity matter relating to the transaction contemplated hereby or any similar transaction and mentioning or implying the identity of the Owner Participant without the prior written consent of the Owner Participant; provided, however, that the Owner Participant agrees that such written consent shall not be withheld if such disclosure is required by Applicable Law.

IN WITNESS WHEREOF, the parties hereto have each caused this Participation Agreement to be duly executed by their respective officers thereunto duly authorized as of the dates set forth below.

BURNHAM LEASING CORPORATION

By *Arden Barnett*  
Title: *Assistant Treasurer*

Date: December 31, 1985

FIRST PV FUNDING CORPORATION

By *[Signature]*  
President

Date: December 31, 1985

PUBLIC SERVICE COMPANY OF NEW MEXICO

By *aj Roberson*  
Senior Vice President and  
Chief Financial Officer

Date: December 31, 1985



THE FIRST NATIONAL BANK OF  
BOSTON, in its individual  
capacity and as Owner  
Trustee

By: 

Vice President

Date: December 31, 1985

CHEMICAL BANK, in its indi-  
vidual capacity and as  
Indenture Trustee

By: 

Vice President

Date: December 31, 1985

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Schedule 1

PUBLIC SERVICE COMPANY OF NEW MEXICO

PALO VERDE NUCLEAR GENERATING  
STATION UNIT 1

NOTICE OF CLOSING

BURNHAM LEASING CORPORATION

Pursuant to Section 5(a) of the Participation Agreement, dated as of December 16, 1985 (the Participation Agreement) among Burnham Leasing Corporation, as Owner Participant (the Owner Participant), First PV Funding Corporation, as Loan Participant, The First National Bank of Boston, as Owner Trustee, Chemical Bank, as Indenture Trustee, and Public Service Company of New Mexico (PNM), PNM hereby gives notice of a Closing to occur at 10:00 a.m. on December 31, 1985 (the Closing Date). The Closing will be held at the offices of Messrs. Mudge Rose Guthrie Alexander & Ferdon, 180 Maiden Lane, New York, New York 10038.

(i) Purchase Price is \$100,000,000.

(ii) Real Estate Investment is \$47,214.

(iii) Based upon information supplied to PNM, the current estimate of Transaction Expenses is an aggregate of \$3,575,000. Instructions with respect to such Transaction Expenses will be provided by PNM.

(iv) Payment of the Purchase Price and the Real Estate Investment shall be made as provided in (i) that certain Collateral Trust Escrow Agreement dated December 31, 1985, between Chemical Bank and Chemical Bank, as Collateral Trust Trustee, and (ii) that certain Owner Participant Escrow Agreement dated December 31, 1985, between the Owner Participant and Chemical Bank.

Capitalized terms used herein and not otherwise specifically defined herein shall have the meanings set forth in Appendix A to the Participation Agreement.

IN WITNESS WHEREOF, Public Service Company of New Mexico has executed this Notice of Closing this 30th day of December, 1985.

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

By 47 Robert  
Senior Vice President and Chief  
Financial Officer



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## Schedule 2

### OWNER PARTICIPANT INFORMATION; PRICING ASSUMPTIONS

#### Owner Participant Information

1. The Owner Participant is Burnham Leasing Corporation, a New York corporation. The Owner Participant's address for notices is: 60 Broad Street, New York, New York 10004, Attention: Chief Financial Officer.

2. The Loan Percentage is 77%.

3. The Investment Percentage is 23%.

4. For purposes of Sections 10(a)(5) and (a)(16) of the Participation Agreement the Excluded State is New York..

5. "Net Economic Return" shall mean the after-tax economic yield and periodic after-tax cash flows (after all Federal, state and local taxes) and the periodic return on investment and the timing of recognition of income originally expected by the Owner Participant with respect to the Undivided Interest, utilizing the same assumptions as used by the Owner Participant in making the original computation upon which its evaluation of investment in the Undivided Interest and the initial computation of Basic Rent, Casualty Value, Special Loss Value and Termination Value were based.

6. The "Purchase Price" shall be \$100,000,000.

7. The "Undivided Interest Percentage" shall mean 2.266667%.

8. The "Real Estate Investment" shall mean \$47,214.

9. The "Transaction Expense Cap" shall mean 2.25%.

### Pricing Assumptions

Basic Rent, Casualty Value, Special Casualty Value and Termination Value, as set forth in the Facility Lease as originally executed, have been computed on the basis of the following pricing assumptions:

- |   |  |
|---|--|
| 1. Investment Percentage                | 23%  |
| 2. Loan Percentage                      | 77%  |
| 3. Interest Rate on Initial Series Note | 9.5% per annum   |
| 4. ACRS Deductions                      | 10-year public utility property deductions on the basis of 92.8% of Facility Cost.                       |
| 5. Straight Line Deductions             | 10-year straight line deductions, using the half-year convention, on the basis of 7.2% of Facility Cost. |
| 6. Owner Participant's Tax Year-End     | December 31, 1985  |
| 7. Closing Date                         | December 31, 1985  |
| 8. Transaction Expenses                 | 1.1% of Facility Cost paid by the Owner Participant in addition to its Investment.                       |
| 9. Real Estate Investment               | \$47,214.  |

(Amortized on a straight-line basis during the Basic Lease Term)

10. Interim Rent

An amount equal to the daily equivalent of the first Basic Rent Payment, for the period from the Closing Date to (but excluding) January 15, 1986.

11. Basic Rent Payment Date

January 15 and July 15 of each year.

12. First Basic Rent Payment Date

July 15, 1986.

13. Last Basic Rent Payment Date

January 15, 2015.

14. Interim Rent Payment Date

January 15, 1986.

15. Marginal Tax Rate

46%

16. Estimated Tax Payments

90% current, quarterly.

17. First Estimated Tax Payment Date

December 15, 1985.

18. Accounting Method

Accrual

19. Amortization of Initial Series Note

See schedule attached thereto.



### Schedule 3

#### Recordations and Filings

Part I. Recordations in Respect of the Sale of, and the Owner Trustee's Title to, the Undivided Interest and the Real Property Interest.

County Recorder, Maricopa County, Arizona:

- (i) Deed;
- (ii) Bill of Sale;
- (iii) Assignment of Beneficial Interest;
- (iv) Assignment and Assumption;
- (v) Facility Lease;
- (vi) Indenture; and
- (vii) Mortgage Release.

Part II. UCC-1 Financing Statements.

A. County Recorder, Maricopa County, Arizona:

(i) A financing statement on form UCC-1 naming PNM, as lessee, the Owner Trustee, as lessor, and the Indenture Trustee, as assignee of the Owner Trustee, in respect of the Facility Lease;

(ii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate; and

(iii) A financing statement on form UCC-1 naming the Loan Participant, as debtor, and the Collateral Trust Trustee, as secured party, in respect of the Pledged Property (as defined in the Collateral Trust Indenture).

B. Secretary of State, Arizona:

(i) A financing statement on form UCC-1 naming PNM, as lessee, the Owner Trustee, as lessor, and the Indenture Trustee, as

assignee of the Owner Trustee, in respect of the Facility Lease; and

(ii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate; and

(iii) A financing statement on form UCC-1 naming the Loan Participant, as debtor, and the Collateral Trust Trustee, as secured party, in respect of the Pledged Property (as defined in the Collateral Trust Indenture).

**C. Office of County Clerk, Bernalillo County, New Mexico:**

(i) A financing statement on form UCC-1 naming PNM, as lessee, and the Owner Trustee, as lessor, in respect of the Facility Lease;

(ii) A financing statement on form UCC-\_\_ naming the Indenture Trustee, as assignee of the Owner Trustee, in respect of the Facility Lease; and

(iii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate.

**D. Secretary of State, New Mexico:**

(i) A financing statement on form UCC-1 naming PNM, as lessee, the Owner Trustee, as lessor, in respect of the Facility Lease;

(ii) A financing statement on form UCC-\_\_ naming the Indenture Trustee, as

assignee of the Owner Trustee, in respect of the Facility Lease; and

(iii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate.

**E. Massachusetts: state and local:**

A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate.

**Part III. Other Filings.**

Filing of the Facility Lease, the Indenture, the Collateral Trust Indenture and the Mortgage Release with the Secretary of State of the State of New Mexico pursuant to the New Mexico Public Utility Act.





## Appendix A

### DEFINITION OF TERMS

The terms defined herein relate to the Participation Agreement (as defined below) and certain Transaction Documents executed, or to be executed, in connection with the Participation Agreement. Such terms include the plural as well as the singular. Any agreement defined or referred to below shall include each amendment, modification and supplement thereto and waiver thereof as may become effective from time to time, except where otherwise indicated. Any term defined below by reference to any agreement shall have such meaning whether or not such document is in effect. The terms "hereof", "herein", "hereunder" and comparable terms refer to the entire agreement with respect to which such terms are used and not to any particular article, section or other subdivision thereof.

If, and to the extent that, either the Participation Agreement or any other Transaction Document which incorporates this Appendix shall be amended from time to time pursuant to the respective terms thereof, this Appendix shall be, or be deemed to have been, amended concurrently with the execution and delivery of each such amendment in order to conform the definitions herein to the new or amended definitions set forth in or required by each such amendment.

Additional Equity Investment shall have the meaning specified in Section 8(f) of the Facility Lease.

Additional Notes shall have the meaning set forth in the recitations in the Indenture, which Additional Notes shall be issued, if at all, pursuant to Section 3.5 of the Indenture.

Affiliate, with respect to any Person, shall mean any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and

"under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

After-Tax Basis shall mean, with respect to any payment received or deemed to have been received by any Person, the amount of such payment supplemented by a further payment to that Person so that the sum of the two payments shall, after deduction of all taxes and other charges (taking into account any credits or deductions arising therefrom and the timing thereof and computed at the highest marginal statutory tax rate) resulting from the receipt (actual or constructive) of such two payments imposed under any Applicable Law or by any Governmental Authority, be equal to such payment received or deemed to have been received.

ANPP Administrative Committee shall mean the committee established pursuant to Section 6.1.1 of the ANPP Participation Agreement (or any comparable successor provision).

ANPP Operating Committee shall mean the committee established pursuant to Section 6.1.2 of the ANPP Participation Agreement (or any comparable successor provision).

ANPP Participants shall have the meaning assigned to the word "Participant" under the ANPP Participation Agreement.

ANPP Participation Agreement shall mean the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, among APS, Salt River, Southern California, PNM, El Paso and SCPPA, as heretofore amended, and as hereafter amended pursuant to the terms thereof.

ANPP Project Agreements shall mean the ANPP Participation Agreement and the other Project Agreements (as such term is defined in the ANPP Participation Agreement).

ANPP Switchyard shall mean the ANPP High Voltage Switchyard located at the PVNGS Site, the ownership, construction, operation and maintenance of which are governed by the ANPP High Voltage Switchyard Participation Agreement executed as of August 20, 1981 (APS Contract No. 2252-419,00), the parties to which are APS, PNM, Salt River, El Paso and Southern California.

Applicable Law shall mean all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, permits, certificates, orders, interpretations, licenses and permits of any Governmental Authority and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other judicial or quasi judicial tribunal (including those pertaining to health, safety, the environment or otherwise).

Appraisal Procedure shall mean a procedure whereby two independent appraisers, one chosen by the Lessee and one by the Lessor, shall mutually agree upon the value, period or amount then the subject of an appraisal. If either the Lessor or the Lessee, as the case may be, shall determine that a value, period or amount to be determined under the Facility Lease or any other Transaction Document cannot be established by mutual agreement, such party shall appoint its appraiser and deliver a written notice thereof to the other party. Such other party shall appoint its appraiser within 15 days after receipt from the other party of the foregoing written notice. If within 20 days after appointment of the two appraisers, as described above, the two appraisers are unable to agree upon the value, period or amount in question, a third independent appraiser shall be chosen within ten days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser within such period,

such appointment shall be made by the American Arbitration Association, or any organization successor thereto, from a panel of arbitrators having experience in the business of operating a nuclear electric generating plant and a familiarity with equipment used or operated in such business. The decision of the third appraiser so appointed and chosen shall be given within ten days after the selection of such third appraiser. If three appraisers shall be so appointed and the determination of one appraiser is more disparate from the middle determination by more than twice the amount by which the third determination is disparate from the middle determination, then the determination of such appraiser shall be excluded, the remaining two determinations shall be averaged and such average shall be binding and conclusive on the Lessor and the Lessee; otherwise the average of all three determinations shall be binding and conclusive on the Lessor and the Lessee. The fees and expenses of appraisers incurred in connection with any Appraisal Procedure relating to any transaction contemplated by any provision of any Transaction Document shall be divided equally between the Lessor and the Lessee (except pursuant to Section 16 of the Facility Lease, which shall be paid solely by the Lessee).

APS shall mean Arizona Public Service Company, an Arizona corporation.

Appraiser shall mean Ebasco Business Consulting Company.

Assigned Payments shall have the meaning specified in Section 2.1(1) of the Indenture.

Assignment and Assumption shall mean the Assignment, Assumption and Further Agreement, dated as of December 16, 1985, between PNM and the Owner Trustee.

Assignment of Beneficial Interest shall mean the Deed and Assignment of Beneficial Interest under USLIFE Title Trust No. 530, dated December 31, 1985, from PNM to the Owner Trustee.

Assumption Agreement shall mean the Assumption Agreement of PNM substantially in the form of Exhibit B to the Indenture.

Assumptions shall mean the Pricing Assumptions and the Tax Assumptions.

Atomic Energy Act shall mean the Atomic Energy Act of 1954, as amended, and regulations from time to time issued, published or promulgated pursuant thereto.

Authorized Officer shall mean, with respect to the Indenture Trustee, any officer of the Indenture Trustee who shall be duly authorized by appropriate corporate action to authenticate a Note and shall mean, with respect to the Owner Trustee, any officer of the Owner Trustee who shall be duly authorized by appropriate corporate action to execute any Transaction Document.

Bank Counsel shall mean Willkie, Farr & Gallagher, One Citicorp Center, 153 East 53rd Street, New York, New York 10022.

Bankruptcy Code shall mean the Bankruptcy Reform Act of 1978, as amended, and any law with respect to bankruptcy, insolvency or reorganization successor thereto.

Basic Lease Term shall mean the initial term of the Facility Lease, which shall begin on the Closing Date and end on January 15, 2015, unless earlier terminated as provided in the Facility Lease.

Basic Rent shall have the meaning set forth in Section 3(a) of the Facility Lease.

Basic Rent Payment Dates shall mean and include January 15, 1986, and January 15 and July 15 of each year thereafter, commencing January 15, 1986, and ending January 15, 2015, and, if the Lessee shall elect the Renewal Term, each January 15 and July 15 of each year during the Renewal Term, commencing July 15, 2015 and ending on the last day of the Renewal Term.

Bill of Sale shall mean the Deed and Bill of Sale, dated December 31, 1985, between PNM and the Owner Trustee.

Bonds shall mean all bonds, notes and other evidences of indebtedness from time to time issued and outstanding under the Collateral Trust Indenture, including, but without limitation, the Initial Series Bonds, the Releveraging Bonds, the Refunding Bonds and any other Additional Bonds.

Business Day shall mean any day other than a Saturday or Sunday or other day on which banks in Albuquerque, New Mexico, New York, New York or Boston, Massachusetts are authorized or obligated to be closed.

Capital Improvement shall mean (a) the addition, betterment or enlargement of any property constituting part of Unit 1 or the replacement of any such property with other property, irrespective of whether such replacement property constitutes an enlargement or betterment of the property which it replaces, the cost of which addition, betterment, enlargement or replacement may be capitalized, and not charged to maintenance or repairs, in accordance with the Uniform System of Accounts and, in the case of any addition, betterment or enlargement, is not included or reflected in the plans and specifications for Unit 1, as built, and (b) any alteration, modification, addition or improvement to Unit 1, other than original, substitute or replacement parts incorporated into Unit 1; provided, however, that any Capital Improvement with respect to any portion of

Unit 1 constituting a Common Facility shall mean only an undivided interest in and to one-third of such Capital Improvement.

Casualty Value, as of any Basic Rent Payment Date during the Basic Lease Term, shall mean the percentage of Facility Cost set forth opposite such Basic Rent Payment Date in Schedule 3 to the Facility Lease. Anything contained in the Participation Agreement or the Facility Lease to the contrary notwithstanding, Casualty Value shall be, when added to all other amounts which the Lessee is required to pay under Section 9(c) of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any Basic Rent Payment Date, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes. Casualty Value as of any Basic Rent Payment Date during the Renewal Term shall mean the unamortized portion as of such Basic Rent Payment Date of the Fair Market Sales Value of the Undivided Interest, determined by the straight-line amortization of such Fair Market Sales Value at the commencement of such Renewal Term over the period from such commencement date through the remaining term of the License determined pursuant to Section 13(a) of the Facility Lease.

Certificate of Acceptance shall mean a certificate in the form of Exhibit A to the Facility Lease, which certificate shall have been duly completed, executed and delivered by or on behalf of the Lessee and the Lessor on the Closing Date or any other date contemplated by the Facility Lease.

Change in Tax Law shall have the meaning set forth in Section 3(d) of the Facility Lease.

Chemical Bank shall mean Chemical Bank, a New York banking corporation.

Chief Financial Officer shall mean the person designated by the Board of Directors of PNM as the chief financial officer of PNM.

Claims shall mean liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving liability in tort, strict or otherwise), actions, suits, judgments, costs, expenses and disbursements, whether or not any of the foregoing shall be founded or unfounded (including, without limitation, legal fees and expenses and costs of investigation) of any kind and nature whatsoever without any limitation as to amount.

Closing shall mean the proceedings which occur on the Closing Date, as contemplated by the Participation Agreement.

Closing Date shall mean December 31, 1985.

Code shall mean the Internal Revenue Code of 1954, as amended, or any comparable successor law.

Collateral Trust Indenture shall mean the Collateral Trust Indenture, dated as of December 16, 1985, among PNM, Funding Corp and the Collateral Trust Trustee.

Collateral Trust Indenture Supplement shall mean a supplement to the Collateral Trust Indenture.

Collateral Trust Trustee shall mean Chemical Bank, not in its individual capacity, but solely as Collateral Trust Trustee under the Collateral Trust Indenture, and the successors or assigns of such Trustee.



Common Facilities shall mean all PVNGS Common Facilities as set forth in Item B of Exhibit B to the Bill of Sale other than common facilities excluded from Unit 1 as set forth in Item B to such Exhibit B.

Coverage Ratio shall mean the fraction (i) the denominator of which shall be the sum (calculated as of a date no earlier than 135 days prior to the date of calculation) of (x) the interest that will be payable during the twelve-month period following the date of the transaction with respect to which a calculation is required to be made on the debt (both long-term and short-term) of the Surviving Lessee, and (y) the interest portion of payments due during the twelve-month period following the date of such transaction on lease obligations of the Surviving Lessee with a term in excess of one year, and (ii) the numerator of which shall be the sum of (x) the pro forma net earnings (before taxes and excluding the allowance for funds used during construction) of the Surviving Lessee for a twelve-month period ending no earlier than 135 days prior to the date of such transaction, and (y) such denominator.

Cure Option shall have the meaning set forth in Section 16(e) of the Facility Lease.

Deed shall mean the Deed, dated December 31, 1985, from PNM to the Owner Trustee.

Deemed Loss Event shall mean any of the following events (unless waived by the Owner Participant): (1) if at any time after the Closing Date and before the Lease Termination Date, the Owner Trustee or the Owner Participant, by reason of the ownership of the Undivided Interest or the Real Property Interest or any part thereof by the Lessor or the lease of the Undivided Interest or the Real Property Interest to the Lessee or any of the other transactions contemplated by the Transaction Documents (the term Owner Participant, as used in this definition, not including any Transferee who at the time of transfer to such Transferee is a non-exempt entity of the type referred to in this

definition, whether by reason of such ownership, lease, transactions or otherwise) shall be deemed by any Governmental Authority having jurisdiction to be, or shall become subject to regulation (other than Non-Burdensome Regulation) as, an "electric utility" or a "public utility" or a "public utility holding company" under any Applicable Law or by reason of any Governmental Action, and the effect thereof on the Lessor or the Owner Participant would be, in the sole judgment of either such Person, acting on advice of counsel, adverse, and the Lessor and the Owner Participant have not waived application of this definition (which waiver shall be in writing and may be either indefinite or for a specific period); except that if the Lessee, at its sole cost and expense, is contesting diligently and in good faith any action by any Governmental Authority which would otherwise constitute a Deemed Loss Event under this clause (1), such Deemed Loss Event shall be deemed not to have occurred so long as (i) such contest does not involve any danger of the foreclosure, sale, forfeiture or loss of, or the creation of any Lien on, the Undivided Interest, the Real Property Interest or any part thereof or any interest therein, (ii) such contest does not adversely affect the Undivided Interest, the Real Property Interest or any part thereof or any other property, assets or rights of the Lessor or the Owner Participant or the lien of the Indenture thereon, (iii) the Lessee shall have furnished the Lessor, the Owner Participant, and the Indenture Trustee with an opinion of independent counsel satisfactory to each such Person to the effect that there exists a reasonable basis for contesting such determination, (iv) such determination shall be effectively stayed or withdrawn during such contest (and shall not be subject to retroactive application at the conclusion of such contest) in a manner satisfactory to the Lessor and the Owner Participant, and the Owner Participant shall have determined that the Lessor's continued ownership of the Undivided Interest and the Real Property Interest during the pendency of such contest or such contest will not adversely affect its business, and (v) the Lessee shall have indemnified the Lessor and the Owner Participant in a manner satisfactory to each such Person for any

liability or loss which either such Person may incur as a result of the Lessee's contest; (2) any change in the Price-Anderson Act, the Atomic Energy Act or the regulations of the NRC, or any other Applicable Law in each case as in effect on the Closing Date, as a result of which (i) the aggregate liability for a single "nuclear incident" of "persons indemnified" (as each such term is defined in the Price-Anderson Act) is increased, unless the change is such that neither the Owner Trustee nor the Owner Participant (as such) may be exposed, either during or subsequent to the Lease Term, to any increased real or potential liability in respect of a nuclear incident, (ii) the "aggregate liability" for a single "nuclear incident" of "persons indemnified" (as each term is defined in the Price-Anderson Act) exceeds the amount of financial protection established by the NRC as a condition to the License, unless the change is such that neither the Owner Trustee nor the Owner Participant (as such) may be exposed, either during or subsequent to the Lease Term, to any increased real or potential liability in respect of a nuclear incident, (iii) the amount of financial protection required, including but not limited to the limitation on the amount of deferred premiums for such financial protection, is increased, unless the change is such that neither the Owner Trustee nor the Owner Participant (as such) may be exposed, either during or subsequent to the Lease Term, to any increased real or potential liability in respect of a nuclear incident, or (iv) either the Owner Trustee or the Owner Participant (as such) may be exposed to any other increase in its real or potential liability in respect of a nuclear incident, either during or subsequent to the Lease Term; (3) any change in Applicable Law as a result of which the Owner Trustee shall become liable in its individual capacity, or the Owner Participant shall become liable in any capacity, in respect of any portion of the Termination Obligation (as defined in the ANPP Participation Agreement) or, during the Lease Term, any other liability or obligation imposed as of the date hereof on licensees of the NRC; (4) any change in Applicable Law or any Governmental Action the effect of which is to make the transactions contemplated by the Transaction Documents unauthorized,

illegal or otherwise contrary to Applicable Law; or (5) any expiration, revocation, suspension, amendment or interpretation by any Governmental Authority of the NRC Order, the License or the licensing of the Lessee by the NRC or any other Governmental Action or change in Applicable Law as a result of which either the Lessor or the Owner Participant shall be required to become a licensee of the NRC prior to the Lease Termination Date.

Default shall mean an event or condition which, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

Directive shall mean an instrument in writing executed in accordance with the terms and provisions of the Indenture by the Holders, or their duly authorized agents or attorneys-in-fact, representing a Majority in Interest of Holders of Notes, directing the Indenture Trustee to take or refrain from taking the action specified in such instrument.

Early Termination Date shall have the meaning specified in Section 14(d) of the Facility Lease.

Early Termination Notice shall have the meaning specified in Section 14(d) of the Facility Lease.

El Paso shall mean El Paso Electric Company, a Texas corporation.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended.

Estimated Transaction Expenses shall have the meaning set forth in Section 5(a) of the Participation Agreement.

Event of Default shall have the meaning set forth in Section 15 of the Facility Lease.

Event of Loss shall mean any of the following events: (a) a Final Shutdown, (b) a Requisition of Title, (c) a Requisition of Use for an indefinite period which can be reasonably expected to exceed, or a stated period which ends on the last day of or after, the Lease Term or (d) any degradation of the rated capacity of Unit 1 to below 630 megawatts electric for an indefinite period which can reasonably be expected to exceed the lesser of 5 years and the remaining Lease Term or for a stated period in excess of the lesser of five years or the remaining Lease Term (other than as a result of damage to or destruction of Unit 1).

Excepted Payments shall mean (i) all payments of Supplemental Rent, other than payments by the Lessee (x) of Casualty Value, Termination Value or Special Casualty Value or in connection with the exercise of the Cure Option (y) of indemnity payments to which either the Loan Participant or any Indemnatee other than the Owner Trustee or the Owner Participant (or the respective successors, assigns, agents, officers, directors or employees of the Owner Trustee or the Owner Participant) is entitled; (ii) any amounts payable under any Transaction Document to reimburse the Lessor or the Owner Participant (including the reasonable expenses of the Lessor or the Owner Participant incurred in connection with any such payment) for performing or complying with any of the obligations of the Lessee under and as permitted by any Transaction Document, (iii) any amount payable to the Owner Participant by any Transferee as the purchase price of the Owner Participant's interest in the Trust Estate, (iv) so long as no Event of Default shall have occurred and be continuing, all payments of Basic Rent in excess of amounts then due and owing in respect of the principal of and premium, if any, and interest on all Notes Outstanding; (v) any insurance proceeds with respect to an Event of Loss in excess of amounts then due and owing in respect of the principal of and premium, if any, and interest on all Notes Outstanding, (vi) any insurance proceeds (or payments with respect to risks self-insured) under liability policies and (vii) any payments in respect of interest

to the extent attributable to payments referred to in clauses (i) through (vi) above.

Excess Amount shall have the meaning set forth in Section 19(f) of the Participation Agreement.

Existing Mortgage shall mean the Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, between PNM and Irving Trust Company, as heretofore supplemented by all Supplemental Indentures thereto.

Extension Letter shall mean the Extension Letter, to be dated the Closing Date and addressed to the Collateral Trust Trustee by Funding Corp and PNM.

Expenses shall mean liabilities, obligations, losses, damages, taxes (other than taxes on income), claims, actions, suits, costs, expenses and disbursements (including legal fees and expenses) of any kind and nature whatsoever.

Facility Cost shall mean the Purchase Price plus the sum of (x) all Supplemental Financing Amounts, and (y) all Additional Equity Investment amounts.

Facility Lease shall mean the Facility Lease, dated as of December 16, 1985, between PNM, as Lessee, and the Owner Trustee, as Lessor.

Fair Market Rental Value or Fair Market Sales Value of any property or service shall mean the value of such property or service for lease or sale determined on the basis of an arm's-length transaction for cash between an informed and willing lessee or buyer or purchaser (under no compulsion to lease or purchase) and an informed and willing lessor or seller (under no compulsion to lease or sell), and shall take into account the Lessor's rights and obligations under the Assignment and Assumption and the Assignment of Beneficial Interest and rights under the Deed and the Bill of Sale, but shall be without regard to any rights of the Lessee (including any renewal options) under the Lease. Except pursuant to Section 16 of the Facility Lease, Fair Market Rental

Value and Fair Market Sales Value of the Undivided Interest and the Real Property Interest shall be determined on the assumption that (i) Unit 1 has been maintained in accordance with, and the Lessee has complied with, the requirements of the Facility Lease and the other Transaction Documents, and (ii) the Lessee or PNM, as possessor of the Undivided Interest and the Real Property Interest, is otherwise in compliance with the requirements of all Transaction Documents. Fair Market Rental Value shall be determined on the assumption that rent will be payable in equal semi-annual installments in arrears.

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

Federal Securities shall have the meaning set forth in Section 2.3(c) of the Indenture.

FERC shall mean the Federal Energy Regulatory Commission of the United States of America or any successor agency.

FERC Order shall mean the Order Disclaiming Jurisdiction issued by FERC on December 5, 1985 (Docket No. EL86-5-000).

Final Prospectus shall mean the Prospectus included in the Registration Statement on the date the same becomes effective, including documents incorporated into said Prospectus by reference.

Final Shutdown shall mean the earlier to occur of (i) the expiration, suspension (for an indefinite period which can reasonably be expected to exceed the lesser of five years and the remaining Lease Term or for a stated period in excess of the lesser of five years and the remaining Lease Term) or revocation of that portion of the License that permits the operation of Unit 1 or the possession by the Lessee of the Undivided Interest and the Real Property Interest, (ii) the cessation of operation of Unit 1 as a result of a nuclear incident relating to PVNGS for an indefinite

period which can reasonably be expected to exceed the lesser of five years and the remaining Lease Term or for a stated period in excess of the lesser of five years and the remaining Lease Term, (iii) damage to or destruction of Unit 1 and the failure of the Lessee, or of the Lessee and one or more other ANPP Participants, to agree within five years of such damage or destruction to restore and reconstruct Unit 1 and (iv) damage to or destruction of Unit 1, without restoration or reconstruction having been completed by the end of the Lease Term, such that Unit 1 will have a rated capacity as of the penultimate day of the Lease Term of at least 630 megawatts electric. For purposes of this definition, Final Shutdown pursuant to the foregoing clause (iii) will be deemed to have occurred upon the earlier of (x) the written declaration of the Lessee of its intent not so to agree and (y) the expiration of such five-year period without written agreement, and pursuant to the foregoing clause (iv) will be deemed to have occurred on the day preceding the Lease Termination Date.

Financing Documents shall mean the Collateral Trust Indenture, the Underwriting Agreement and the Term Loan Agreement.

Fixed Rate Note shall mean the non-recourse promissory note, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Refunding Date to refund the Initial Series Note and the Releveraging Note (if theretofore issued).

FNB shall mean the Owner Trustee in its individual capacity, and its successors and assigns.

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



Funding Corp shall mean First PV Funding Corporation, a Delaware corporation.

Generating Unit shall mean Unit 1 or any of the other Generating Units (as such term is defined in the ANPP Participation Agreement) constituting PVNGS.

Generation Entitlement Share shall have the meaning assigned thereto in the ANPP Participation Agreement and (i) when used in reference to Unit 1, shall mean the Generation Entitlement Share of PNM as the ANPP Participant with respect to its interest in Unit 1, (ii) when used in reference to the Undivided Interest, shall mean that portion of the Generation Entitlement Share attributable to the Undivided Interest and (iii) when used in Section 19 of the Facility Lease, shall refer to all Generating Units at PVNGS.

Governmental Action shall mean all authorizations, consents, approvals, waivers, exceptions, variances, orders, licenses, exemptions, publications, filings, notices to and declarations of or with any Governmental Authority (other than routine reporting requirements the failure to comply with which will not affect the validity or enforceability of any of the Transaction Documents or have a material adverse effect on the transactions contemplated by any Transaction Document or any Financing Document or any other action in respect of any Governmental Authority and shall include, without limitation, all siting, environmental and operating permits and licenses which are required for the use and operation of Unit 1, including the Undivided Interest and the Real Property Interest.

Governmental Authority shall mean any Federal, state, county, municipal, foreign, international, regional or other governmental authority, agency, board, body, instrumentality or court.

Holders shall mean the holders of the Notes.

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

Indemnatee shall mean the Owner Participant, the Owner Trustee, FNB, the Loan Participant, the stockholder of Funding Corp and its officers and directors, Chemical Bank, the Indenture Trustee, each Holder of a Note from time to time Outstanding, the Collateral Trust Trustee, the Trust, the Trust Estate, the Lease Indenture Estate, the indenture estate under the Collateral Trust Indenture, any Affiliate of any of the foregoing and the respective successors, assigns, agents, officers, directors or employees of the foregoing, excluding, however, any ANPP Participant other than the Owner Trustee or the Owner Participant.

Indenture shall mean the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 16, 1985, between the Owner Trustee and the Indenture Trustee.

Indenture Default shall mean an event which, after giving of notice or lapse of time, or both, would become an Indenture Event of Default.

Indenture Event of Default shall mean any of the events specified in Section 6.2 of the Indenture.

Indenture Trustee shall mean Chemical Bank, a New York banking corporation, not in its individual capacity, but solely as Indenture Trustee under the Indenture and each successor trustee and co-trustee thereunder.

Indenture Trustee's Liens shall mean Liens against the Lease Indenture Estate which result from acts of, or any failure to act by, or as a result of claims against, the Indenture Trustee, in its individual capacity, unrelated to the transactions contemplated by the Transaction Documents.

Indenture Trustee's Office shall mean the office of the Indenture Trustee located at 55 Water Street, New York, New York 10041, Attention: Corporate Trustee Administration, or such other office as may be designated by the Indenture Trustee to the Owner Trustee and each Holder of a Note Outstanding under the Indenture.

Indenture Trustee's Counsel shall mean Willkie, Farr & Gallagher, One Citicorp Center, 153 East 53rd Street, New York, New York 10022.

Initial Series Bonds shall mean the promissory notes of Funding Corp evidencing the loans made to the Company under the Term Loan Agreement, issued, authenticated and delivered under the Term Loan Agreement and the Collateral Trust Indenture, as supplemented by the Term Note Supplemental Indenture.

Initial Series Note shall mean the non-recourse promissory note, substantially in the form of Exhibit A to the Indenture, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Closing Date to finance a portion of the Purchase Price.

Investment shall have the meaning set forth in Section 3(a) of the Participation Agreement.

Investment Company Act shall mean the Investment Company Act of 1940, as amended.

Investment Percentage shall mean the percentage identified as such in Schedule 2 to the Participation Agreement.

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

Kidder, Peabody shall mean Kidder, Peabody & Co. Incorporated.

Lease Indenture Estate shall have the meaning set forth in Section 2.1 of the Indenture.

Lease Term shall mean the aggregate of the Basic Lease Term and the Renewal Term, if any.

Lease Termination Date shall mean the last day of the Lease Term (whether occurring by reason of a termination or expiration of the Lease Term).

Lessee shall mean Public Service Company of New Mexico, a New Mexico corporation, and its successors and assigns, as lessee under the Facility Lease and as party to the other Transactions Documents and Financing Documents to which it is a signatory.

Lessee Request shall mean a request of the Lessee delivered pursuant to Section 6.03 of the Collateral Trust Indenture.

Lessee's General Counsel shall mean Keleher & McLeod, P.A., P.O. Drawer AA, Albuquerque, New Mexico 87103.

Lessee's Special Arizona Counsel shall mean Snell & Wilmer, 3100 Valley Bank Center, Phoenix, Arizona 85073.

Lessee's Special Counsel shall mean Mudge Rose Guthrie Alexander & Ferdon, 180 Maiden Lane, New York, New York 10038.

Lessor shall mean the Owner Trustee, as lessor under the Facility Lease, and its successors and assigns.

Lessor's Interest shall have the meaning set forth in Section 8(c)(3) of the Participation Agreement.

**Lessor's Liens or Owner Trustee's Liens** shall mean Liens against the Trust Estate or the Lease Indenture Estate (other than Permitted Liens) for which the Lessee is not responsible and which result from acts of, or any failure to act by, or as a result of claims against, FNB or the Lessor, unrelated to the ownership of the Undivided Interest or the Real Property Interest, the administration of the Trust Estate or the transactions contemplated by the Transaction Documents or the Financing Documents.

License shall mean NRC Facility Operating License No. NPF-41, as the same may be amended, modified, extended, renewed or superseded from time to time.

License Expiration Date shall mean the date of expiration of the License.

Lien shall mean any mortgage, pledge, security interest, encumbrance, lien, easement, servitude or charge of any kind, including, without limitation, any conditional sale or other title retention agreement, any lease in the nature thereof or the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

Loan shall have the meaning set forth in Section 2(a) of the Participation Agreement.

Loan Participant shall mean Funding Corp.

Loan Participant's Counsel shall mean Mudge Rose Guthrie Alexander & Ferdon, 180 Maiden Lane, New York, New York 10038.

Loan Percentage shall mean the percentage identified as such in Schedule 2 to the Participation Agreement.

Majority in Interest of Holders of Notes shall mean Holders of a majority in principal amount of all Notes Outstanding under the Indenture at the time of any such determination.

Material Project Agreements shall mean (i) Nuclear Fuel Contract between APS and Combustion Engineering, Inc. (CE), dated as of August 20, 1973, (ii) Nuclear Steam Supply Contract between APS and CE, dated as of August 20, 1973, (iii) Turbine Generator Contract between APS and General Electric Company, dated as of March 21, 1974, (iv) Uranium Enrichment Services Contract between the United States of America (USA) and APS, dated November 15, 1984, and the Associated Supplemental Agreement of Settlement between USA and APS, dated November 15, 1984, (v) Contract between APS and Westinghouse Electric Corporation for fuel fabrication services for reload batches of nuclear fuel, dated August 7, 1974, as amended, (vi) Agreement for the Sale and Purchase of Waste Water Effluent between the City of Tolleson, APS and Salt River, dated June 12, 1981, (vii) Agreement for Construction of Arizona Nuclear Power Project between Bechtel Power Corporation (Bechtel) and APS, dated January 15, 1973, (viii) Agreement for Engineering and Procurement Services between APS and Bechtel, dated January 15, 1973, and (ix) Option and Purchase of Effluent dated April 23, 1973, among the Cities of Phoenix, Glendale, Mesa, Tempe and Scottsdale, the Town of Youngtown, APS and Salt River.

Maximum Option Period shall mean the period, in no event ending after January 15, 2023, determined as provided in Section 13(a) of the Facility Lease as of the date of expiration of the Basic Lease Term, (i) at the end of which the residual value of the Undivided Interest (without regard to inflation or deflation from the Closing Date and without regard to the obligation of the Lessee to pay decommissioning costs pursuant to

Section 10(b)(3)(xi) of the Participation Agreement, but taking into consideration the existence and effect of the Assignment and Assumption, the ANPP Participation Agreement and the License, and taking into consideration any additional expenditure that would be required to acquire the Real Property Interest) shall be at least equal to 20% of Facility Cost, (ii) which, when added to the Basic Lease Term, does not exceed 80% of the economic useful life of the Undivided Interest from the Closing Date and (iii) at the end of which, taking into consideration the existence and effect of the Assignment and Assumption, the ANPP Participation Agreement and the License, and taking into consideration any additional expenditure that would be required to acquire the Real Property Interest, the use of the Undivided Interest by any User (in a transaction pursuant to which the Owner Participant could realize the amount referred to in clause (i) above) is feasible from an engineering and economic point of view and is commercially reasonable. Unless the period, as computed in accordance with the preceding sentence, shall end on a January 15 or July 15, the final date of the Maximum Option Period shall be the final January 15 or July 15 in the period, as so computed. In no event shall the Maximum Option Period end after the License Expiration Date.

Minimum Net Worth means a Net Worth equal to the greater of (x) \$700,000,000 and (y) (1) \$950,000,000 less (2) with respect to each Generating Unit as to which PNM shall have entered into one or more transactions constituting sale and leaseback transactions under the ANPP Participation Agreement (including, but without limitation, the transaction contemplated by the Participation Agreement), (A) \$50,000,000 (in the case of Unit 1) and \$100,000,000 (in the case of each other Generating Unit) times (B) the aggregate percentage of the Lessee's undivided interest in such PVNGS unit subject to such transactions.

Mortgage Release shall mean the Indenture of Partial Release, to be dated the Closing Date, under and with respect to the Existing Mortgage.

Net Economic Return shall have the meaning set forth in Schedule 2 to the Participation Agreement.

Net Worth means the excess of assets over liabilities determined by the Lessee's auditors on the basis of generally accepted accounting principles.

New Mexico Order shall mean the order issued by the NMPSC on November 27, 1985, as amended by Order Adopting Errata Notice issued on November 30, 1985, in Case No. 1995, approving, among other things, the terms of the Facility Lease and the execution and delivery of the Facility Lease by PNM.

New Mexico Public Utility Act shall mean the New Mexico Public Utility Act, as amended.

NMPSC shall mean the New Mexico Public Service Commission established pursuant to Section 62-5-1 of New Mexico Statutes Annotated, 1978.

Non-Burdensome Regulation shall mean (i) regulation to which the Owner Participant or the Owner Trustee is otherwise subject by reason of its lease financing or other activities unrelated to the transactions contemplated by the Transaction Documents, (ii) ministerial regulatory requirements which do not impose limitations or regulatory requirements on the business or activities of the Owner Participant and which are deemed, in the reasonable discretion of the Owner Participant, not to be burdensome, (iii) regulation resulting from any possession of the Undivided Interest on or after the Lease Termination Date or (iv) regulation of the Owner Trustee which would be terminated by the appointment of a successor Owner Trustee or a co-Owner Trustee pursuant to the terms of the Trust Agreement.



Nonseverable, when used with respect to any Capital Improvement, shall mean any Capital Improvement which is not a Severable Capital Improvement.

Noteholder shall mean any Holder from time to time of a Note Outstanding under the Indenture.

Notes shall mean the Initial Series Note and the Releveraging Note, the Fixed Rate Note and any other Additional Notes.

Notice of Closing shall have the meaning set forth in Section 5(a) of the Participation Agreement.

NRC shall mean the Nuclear Regulatory Commission of the United States of America or any successor agency.

NRC Order shall mean the Order of the NRC in the matter of Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Unit 1); Application In Respect Of A Sale And Leaseback Financing Transaction By Public Service Company Of New Mexico (Docket No. STN 50-528), December 12, 1985.

Officers' Certificate shall mean a certificate signed by the President or any Vice President and by the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Person with respect to which such term is used.

Operating Agent shall have the meaning assigned thereto in the ANPP Participation Agreement.

Original of the Facility Lease shall mean the fully executed counterpart of the Facility Lease, marked "This Counterpart is the Original Counterpart", pursuant to Section 22(e) of the Facility Lease and containing the receipt of the Indenture Trustee.

Outstanding when used with respect to Notes, shall mean, as of the date of determination, all such Notes theretofore issued, authenticated and delivered under the Indenture, except (a) Notes theretofore cancelled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation, (b) Notes or portions thereof for the payment of which the Indenture Trustee holds (and has notified the holders thereof that it holds) in trust for that purpose an amount sufficient to make full payment thereof when due, (c) Notes or portions thereof which have been pledged as collateral for any obligations of the obligor thereof to the extent that an amount sufficient to make full payment of such obligations when due has been deposited with the pledgee of such Notes for the purpose of holding such amount in trust for the payment of such obligations in accordance with the indenture or agreement under which such obligations are secured and (d) Notes in exchange for, or in lieu of, which other Notes have been issued, authenticated and delivered pursuant to the Indenture; provided, however, that any Note owned by the Lessee or the Owner Trustee or any Affiliate of either thereof shall be disregarded and deemed not to be Outstanding for the purpose of any Directive.

Overdue Interest Rate shall mean the weighted average rate per annum of interest payable with respect to overdue payments of principal on the Notes Outstanding, computed as set forth in such Notes.

Owner Participant shall mean the Person identified as such in Schedule 2 to the Participation Agreement, and the successors and assigns of such Person in accordance with the Trust Agreement and the Participation Agreement.

Owner Participant's Liens shall mean Liens against the Trust Estate or the Lease Indenture Estate (other than Permitted Liens) for which the Lessee is not responsible and which result from acts of, or any failure to act by, or as a result of claims against, the Owner Participant unrelated to the transactions

contemplated by the Transaction Documents or the Financing Documents.

Owner Participant's Special Arizona Counsel shall mean Meyer, Hendricks, Victor, Osborne & Maledon, 2700 North Third Street, Suite 4000, Phoenix, Arizona 85004.

Owner Participant's Special NRC Counsel shall mean Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

Owner Participant's Special New Mexico Counsel shall mean Rodey, Dickason, Sloan, Akin & Robb, P.A., 20 First Plaza, Suite 700, Albuquerque, New Mexico 87103.

Owner Participant's Special Counsel shall mean Cravath, Swaine & Moore, One Chase Manhattan Plaza, New York, New York 10005, and, for purposes of Section 14(a)(i) of the Participation Agreement, any other counsel specified in Schedule 2 to the Participation Agreement.

Owner Trustee shall mean The First National Bank of Boston, a national banking association, not in its individual capacity, but solely as Owner Trustee under the Trust Agreement, and each successor as trustee, separate trustee and co-trustee thereunder.

Owner Trustee's Counsel shall mean Shipman & Goodwin, 799 Main Street, Hartford, Connecticut 06103.

Participation Agreement shall mean the Participation Agreement, dated as of December 16, 1985, among the Owner Trustee, the Indenture Trustee, Funding Corp, the Owner Participant and PNM.

Penalty Rate shall mean 2% per annum in excess of the Prime Rate.

Permitted Liens shall mean (i) the respective rights and interests of the Lessee, the Owner Participant, the Lessor, the Loan Participant and the Indenture Trustee, as provided in the Transaction Documents; (ii) the rights of any sublessee or assignee under a sublease or an assignment permitted by the terms of the Facility Lease; (iii) the Lien of the Existing Mortgage on the leasehold estate under the Facility Lease; (iv) Liens for taxes either not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, so long as such proceedings shall not (x) involve any danger of the sale, forfeiture or loss of the Undivided Interest or the Real Property Interest, any part thereof or interest therein, of the Lessor or the Owner Participant therein, (y) interfere with the use, possession or disposition of the Undivided Interest or the Real Property Interest, or any part thereof or interest therein, or (z) impair payment of Rent; (v) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's, or other like Liens arising in the ordinary course of business for PVNGS, and not delinquent; (vi) Lessor's Liens, Owner Participant's Liens and Indenture Trustee's Liens; (vii) choate Liens that have been bonded for the full amount in dispute or as to which other satisfactory security arrangements shall have been made and which are being contested diligently by the appropriate party in good faith and by appropriate proceedings so long as such proceedings shall not violate clause (x), (y) or (z) of clause (iv) above; (viii) choate Liens of any of the types described in clause (v) above that have been bonded for the full amount in dispute or as to which other satisfactory security arrangements shall have been made and which arise out of judgments or awards and with respect to which (A) an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate reserves shall have been provided as required by Accounting Practice and (B) there shall have been secured a stay of execution pending such appeal or proceeding for review, so long as such proceedings shall not violate clause (x), (y) or (z) of clause (iv) above; (ix) the rights and interests of the Lessee under the

Assignment and Assumption; (x) the rights of the NRC under the License; (xi) the rights of the ANPP Participants (other than (i) the Lessee and (ii) any Person who shall become an ANPP Participant in respect of the Undivided Interest and the Real Property Interest) under the ANPP Participation Agreement or any other ANPP Project Agreement; and (xii) Liens on the undivided ownership interests in Unit 1 of the ANPP Participants and other Persons (other than the Lessee).

Person shall mean any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

PNM shall mean Public Service Company of New Mexico.

Price-Anderson Act shall mean the Price-Anderson Act, Pub. L. No. 85-256, 71 Stat. 576 (1957), as amended to the Closing Date.

Pricing Assumptions shall mean the pricing assumptions set forth in Schedule 2 to the Participation Agreement.

Prime Rate shall mean the rate of interest publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime or base lending rate. Any change in the Prime Rate shall be effective on the date such change in the Prime Rate is announced.

Project Insurance shall have the meaning assigned thereto in the ANPP Participation Agreement.

Project Manager shall have the meaning assigned thereto in the ANPP Participation Agreement.

Public Service Company of New Mexico shall mean Public Service Company of New Mexico, a New Mexico corporation, and its successors and assigns.

Purchase Documents shall mean the Bill of Sale, the Deed and the Assignment of Beneficial Interest and such other documents as the Owner Participant, the Owner Trustee, the Indenture Trustee, the Loan Participant or their respective counsel shall deem desirable to convey good and marketable title to the Undivided Interest and the Real Property Interest to the Trust.

Purchase Price shall have the meaning set forth in Section 4(a) of the Participation Agreement.

PVNGS shall mean the Arizona Nuclear Power Project, as that term is defined in the ANPP Participation Agreement.

PVNGS Site shall mean the interest in the Arizona land trust and the real property described in Exhibit A to the Bill of Sale.

Real Estate Investment shall mean the purchase price of the Real Property Interest.

Real Property Interest shall mean the right, title and interest of the Owner Trustee acquired pursuant to the Deed and the Assignment of Beneficial Interest.

Reasonable Basis shall mean that, upon a complete review of the relevant law and facts, the weight of legal analysis supporting the position is significant when compared with the weight of legal analysis contrary to the position.

Refunding Bonds shall mean Funding Corp's Lease Obligation Bonds, Series A, issued, authenticated and delivered under the Collateral Trust Indenture, as supplemental by the Refunding Supplemental Indenture, as described in the Underwriting Agreement.

Refunding Date shall mean the date of issuance of the Refunding Bonds.

Refunding Amount shall mean the original principal amount of the Refunding Bonds.

Refunding Loan shall have the meaning set forth in Section 2(d) of the Participation Agreement.

Refunding Supplemental Indenture shall mean the Refunding Bond Supplemental Indenture to be dated as of the effective date of the Registration Statement, among PNM, Funding Corp and the Collateral Trust Trustee, supplementing the Collateral Trust Indenture and providing, among other things, for the issuance of the Refunding Bonds.

Registration Statement shall mean the registration statement on Form S-3 (File No. 33-2031), including all exhibits and all documents incorporated in the Registration Statement by reference, filed with the SEC under the Securities Act in connection with the offer, issue and sale of the Refunding Bonds.

Regulations shall mean the income tax regulations issued, published or promulgated under the Code.

Releveraging Amount shall mean (i) the initial principal amount of the Releveraging Bonds, or (ii) the initial principal amount of the Refunding Bonds to the extent in excess of the principal amount of Bonds being refunded.

Releveraging Bonds shall mean a series of securities issued, authenticated and delivered under the Collateral Trust Indenture in accordance with Section 2.03 thereof, part of the proceeds of which is used to refund to the Owner Participant a portion of its Investment as provided in Section 3(b) of the Participation Agreement.

Releveraging Date shall mean the date of issuance of the Releveraging Bonds.

Releveraging Loan shall have the meaning specified in Section 2(c) of the Participation Agreement.

Releveraging Note shall mean the non-recourse promissory note, substantially in the form of the Initial Series Note or, if the Refunding Date shall have occurred the Fixed Rate Note, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Releveraging Date to refund to the Owner Trustee a portion of the Investment.

Renewal Term shall have the meaning set forth in Section 12 of the Facility Lease.

Rent shall mean Basic Rent and Supplemental Rent.

Rent Differential shall have the meaning set forth in Section 3(h) of the Facility Lease.

Requisition of Title shall mean any circumstance or event in consequence of which Unit 1 or the Undivided Interest shall be condemned or seized or title thereto shall be requisitioned or taken by any Governmental Authority under power of eminent domain or otherwise and all administrative or judicial appeals opposing such condemnation, seizure or taking shall have been exhausted or the period for such appeal shall have expired.

Requisition of Use shall mean any circumstance or event in consequence of which the use of Unit 1 or the Undivided Interest shall be requisitioned or taken by any Governmental Authority under power of eminent domain or otherwise, other than a Requisition of Title.



Responsible Officer shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Transaction Document, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer who in the normal performance of his operational responsibility would have knowledge of such matter and the requirements with respect thereto.

Retained Assets shall mean (i) the Lessee's interest in PVNGS other than the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest (ii) Severable Capital Improvements title to the undivided interest in which is retained by the Lessee in accordance with Section 8(e) of the Facility Lease, and (iii) any additional interest in and to PVNGS (other than the Undivided Interest, the related Generation Entitlement Share and the Real Property Interest) to which the Lessee becomes entitled in consequence of Sections 16.2 or 23.5 of the ANPP Participation Agreement (except as otherwise provided in Section 5(a) or 19 of the Facility Lease).

Sale Proceeds shall mean, with respect to any sale of the Undivided Interest and the Real Property Interest by the Lessor to any Person other than the Lessee, the gross proceeds of such sale payable in cash, less all costs and expenses whatsoever incurred by the Lessor and the Owner Participant in connection therewith.

Salt River shall mean Salt River Project Agricultural Improvement and Power District, an Arizona agricultural improvement district.

SCPPA shall mean Southern California Public Power Authority, a California joint powers agency (doing business in Arizona as Southern California Public Power Authority Association).

SEC shall mean the Securities and Exchange Commission of the United States of America or any successor agency.

Section 6(c) Application shall mean Funding Corp's Application for an Order under Section 6(c) of the Investment Company Act of 1940 Exempting First PV Funding Corporation from All Provisions of such Act, as filed with the SEC on September 20, 1985, as amended by an Amendment No. 1 thereto dated November 8, 1985 and Amendment No. 2 thereto dated November 25, 1985.

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

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

Severable, when used with respect to any Capital Improvement, shall mean any Capital Improvement which can be removed from Unit 1 without materially damaging Unit 1 or materially diminishing or impairing the value, utility or condition which Unit 1 would have had if the applicable Capital Improvement had not been made.

Share shall mean a percentage equal to the Undivided Interest Percentage.

Southern California shall mean Southern California Edison Company, a California corporation.

Special Casualty Value, shall mean (i) the percentage of Facility Cost set forth opposite such date in Schedule 4 to the Facility Lease and (ii) during the Renewal Term, the amount determined by amortizing ratably the Fair Market Sales Value of the Undivided Interest as of the day following the last day of the Basic Term in monthly steps over the remaining term of the License determined pursuant to Section 13(a) of the Facility Lease. Anything contained in the Facility Lease to the contrary notwithstanding, Special Casualty Value shall be, when added to all other amounts which

the Lessee is required to pay under Section 9(d) of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any date of payment, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Special FERC Counsel shall mean Newman & Holtzinger, P.C., 1615 L Street, Washington, D.C. 20036.

Supplemental Financing shall mean a financing of the Supplemental Financing Amount of Capital Improvements made pursuant to Section 8(f) of the Facility Lease.

Supplemental Financing Amount shall mean that portion of the Undivided Interest Percentage of the cost of a Capital Improvement which equals (i) the amount of the increase, if any, in the Owner Participant's basis in the Undivided Interest for purposes of section 1012 of the Code as a result of such Capital Improvement less (ii) the amount of the related Additional Equity Investment of the Lessor, if any.

Supplemental Rent shall have the meaning set forth in Section 3(b) of the Facility Lease.

Surviving Lessee shall have the meaning specified in Section 10(b)(3)(ii) of the Participation Agreement.

Tax shall mean any and all fees (including, without limitation, documentation, recording, license and registration fees), taxes (including, without limitation, net income, franchise, value added, ad valorem, gross income, gross receipts, sales, use, property, personal and real, tangible and intangible, and stamp taxes), levies, imposts, duties, charges, assessments, or withholdings of any nature whatsoever, general or specific, ordinary or extraordinary, together with any

and all penalties, fines, additions to tax and interest thereon.

**Tax Assumptions** shall mean the assumptions set forth in Section 1(a) of the Tax Indemnification Agreement, with respect to the Federal income tax consequences of the transactions included or reflected in the Pricing Assumptions.

**Tax Indemnification Agreement** shall mean the Tax Indemnification Agreement, dated as of December 16, 1985, PNM and the Owner Participant.

**Term Loan Agreement** shall mean the Term Loan Agreement dated as of December 31, 1985 among Funding Corp, PNM and the banks named on the signature pages thereto.

**Term Note Supplemental Indenture** shall mean the Term Note Supplemental Indenture dated as of December 31, 1985 among PNM, Funding Corp and the Collateral Trust Trustee, supplementing the Collateral Trust Indenture and providing, among other things, for the issuance of the Initial Series Bonds.

**Termination Date** shall have the meaning set forth in Section 14(a) of the Facility Lease.

**Termination Event** shall mean any early termination of the Facility Lease in accordance with Section 14 thereof.

**Termination Notice** shall have the meaning set forth in Section 14(a) of the Facility Lease.

**Termination Obligation** shall have the meaning set forth in Section 15.10.2 of the ANPP Participation Agreement (or any comparable successor provision).

Termination Value, as of any Basic Rent Payment Date during the Basic Lease Term, shall mean the percentage of Facility Cost set forth opposite such Basic Rent Payment Date in Schedule 5 to the Facility Lease. Anything contained in the Facility Lease to the contrary notwithstanding, Termination Value shall be, when added to all other amounts which the Lessee is required to pay under Section 14 of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full as of any Basic Rent Payment Date the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Transaction Documents shall mean the Participation Agreement, the Facility Lease, the Trust Agreement, the Indenture, the Extension Letter, the Tax Indemnification Agreement, the Mortgage Release, the Assignment and Assumption, each Purchase Document and the Notes.

Transaction Expenses shall have the meaning set forth in Section 14(a) of the Participation Agreement.

Transfer shall mean the transfer, by bill of sale or otherwise, by the Lessor of all the Lessor's right, title and interest in and to the Undivided Interest and the Real Property Interest and under the Assignment and Assumption on an "as is, where is" basis, free and clear of all Lessor's Liens and Owner Participant's Liens but otherwise without recourse, representation or warranty (including an express disclaimer of representations and warranties in a manner comparable to that set forth in the second sentence of Section 6(b) of the Facility Lease), together with the due assumption by the transferee of, and the due release of the Lessor from, all the Lessor's obligations under the Assignment and Assumption and the Assignment of Beneficial Interest by an instrument or instrument satisfactory in form and substance to the Lessor and the Owner Participant.

Transferee shall have the meaning assigned thereto in Section 15 of the Participation Agreement.

Trust shall mean the trust created by the Trust Agreement.

Trust Agreement shall mean the Trust Agreement, dated as of December 16, 1985, between the Owner Participant and FNB.

Trust Estate shall have the meaning set forth in Section 2.02 of the Trust Agreement.

Trust Indenture Act shall mean the Trust Indenture Act of 1939, as amended.

Trustee's Expenses shall mean any and all liabilities, obligations, costs, compensation, fees, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (other than such amounts as are included in Transaction Expenses) which may be imposed on, incurred by or asserted against the Indenture Trustee or any of its agents, servants or personal representatives, in any way relating to or arising out of the Indenture, the Lease Indenture Estate, the Participation Agreement or the Facility Lease, or any document contemplated thereby, or the performance or enforcement of any of the terms thereof, or in any way relating to or arising out of the administration of such Lease Indenture Estate or the action or inaction of the Indenture Trustee under the Indenture; provided, however, that such amounts shall not include any Taxes or any amount expressly excluded from the Lessee's indemnity obligations pursuant to Section 13(a) or 13(b) of the Participation Agreement.

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

Underwriting Agreement shall mean the agreement among Funding Corp, PNM, Kidder Peabody and Drexel Burnham Lambert Incorporated (both acting either as underwriters or representatives of the underwriters named therein) relating to the purchase, sale and delivery of the Refunding Bonds.

Underwriters' Counsel shall mean Willkie, Farr & Gallagher, One Citicorp Center, 153 East 53rd Street, New York, New York 10022.

Undivided Interest shall mean an undivided interest in Unit 1, the percentage of which shall be equal to the Undivided Interest Percentage; the owner of the Undivided Interest shall be a tenant-in-common with the owners (including PNM, if it should be such an owner) of all other undivided interests in Unit 1. Where the context so requires, Undivided Interest includes an appropriate portion of Generation Entitlement Share.

Undivided Interest Indenture Supplement shall mean the supplement to the Indenture substantially in the form of Exhibit C thereto pursuant to which the Owner Trustee causes the Undivided Interest and the Real Property Interest to be subjected to the Lien of the Indenture.

Undivided Interest Percentage shall mean the respective percentages identified as such on Schedule 2 to the Participation Agreement; provided, however, that in respect to the portion of Unit 1 constituting Common Facilities, the Undivided Interest Percentage shall be a percentage equal to one-third of the percentage identified on Schedule 2 to the Participation Agreement with respect to Unit 1.

Uniform System of Accounts shall mean the Uniform System of Accounts prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act (Class A and Class B), 18 CFR 101, as in effect on the date of execution of the Participation

Agreement, as amended or modified from time to time after such date.

Unit 1 shall mean the 1,270 megawatt unit commonly known as Unit 1 at the Palo Verde Nuclear Generating Station and one-third of the Common Facilities, all as more fully described in Annex A to the Bill of Sale, together with all Capital Improvements thereto.

Unit 1 Retained Assets shall mean (i) all resident fuel assemblies, equipment and personal property constituting part of the Generating Unit (as defined in the ANPP Participation Agreement) designated as Palo Verde Nuclear Generating Station (other than common facilities) owned by the Lessee but excluded from Unit 1 as set forth in Item A of Exhibit B to the Bill of Sale and (ii) a one-third interest in all equipment and personal and real property constituting PVNGS common facilities owned by the Lessee but excluded from Unit 1 as set forth in Item B of Exhibit B to the Bill of Sale.

User shall mean a Person unrelated to PNM (within the meaning of Section 318 of the Code) possessing the Undivided Interest after the Lease Termination Date.



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**TRUST AGREEMENT**

dated as of December 16, 1985

between

**BURNHAM LEASING CORPORATION**

as Owner Participant

and

**THE FIRST NATIONAL BANK OF BOSTON,**

as Owner Trustee

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**Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities**

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## TRUST AGREEMENT

TRUST AGREEMENT, dated as of December 16, 1985, between the corporation executing this Agreement as "Owner Participant" on the signature page hereof (the Owner Participant) and THE FIRST NATIONAL BANK OF BOSTON, a national banking association (the Owner Trustee).

### W I T N E S S E T H:

WHEREAS, the Owner Participant desires to acquire the Undivided Interest and the Real Property Interest through the Trust created hereby; and

WHEREAS, The First National Bank of Boston is willing to act as Owner Trustee and to accept the Trust created hereby;

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

### ARTICLE I

#### DEFINITIONS

SECTION 1.01. Definitions. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Appendix A to the Participation Agreement. References in this Agreement to articles, sections, paragraphs and clauses are to articles, sections, paragraphs and clauses of this Agreement unless otherwise indicated.

## ARTICLE II

### AUTHORITY TO EXECUTE AND PERFORM VARIOUS DOCUMENTS; RATIFICATION AND CONFIRMATION; DECLARATION OF TRUST BY THE OWNER TRUSTEE

SECTION 2.01. Authority To Execute and Perform Various Documents. The Owner Participant hereby authorizes and directs the Owner Trustee (i) to execute and deliver each Transaction Document to which the Owner Trustee is a party and to execute and request the Indenture Trustee to issue, authenticate and deliver the Initial Series Note (each such Transaction Document, including the Initial Series Note, to be in the form approved by the Owner Participant), (ii) to execute and deliver all other agreements, instruments and certificates contemplated by the documents referred to in clause (i), (iii) to take whatever action shall be required to be taken by the Owner Trustee by the terms of, and exercise its rights and perform its duties under, each of the documents, agreements, instruments and certificates referred to in clauses (i) and (ii) above as set forth in such documents, agreements, instruments and certificates and (iv) subject to the terms of this Agreement, to take such other action in connection with the foregoing as the Owner Participant may from time to time direct.

SECTION 2.02. Ratification and Confirmation. By certificate dated December 18, 1985 (the Section 15.6.1 Certificate), the Owner Trustee confirmed the matters required to be confirmed on the part of a lessor in a sale and leaseback transaction under Section 15.6.1 of the ANPP Participation Agreement, a copy of which certificate is attached hereto as Schedule 1. The Owner Participant, by its execution and delivery of this Agreement, ratifies and confirms the execution and delivery by the Owner Trustee of the Section 15.6.1 Certificate.

SECTION 2.03. Declaration of Trust by the Owner Trustee. The Owner Trustee hereby declares that it will hold all estate, right, title and interest of

the Owner Trustee in and to the Undivided Interest, the Real Property Interest, the Transaction Documents and any other property contributed by the Owner Participant, including without limitation all amounts of Rent, insurance proceeds and requisition, indemnity or other payments of any kind, but specifically excluding any Excepted Payments (collectively, the Trust Estate), upon the trusts set forth herein and for the use and benefit of the Owner Participant.

### ARTICLE III

#### PAYMENTS

##### SECTION 3.01. Payments from Trust Estate Only.

All payments to be made by the Owner Trustee under this Agreement shall be made only from the income and proceeds from the Trust Estate and only to the extent that the Owner Trustee shall have received income or proceeds from the Trust Estate to make such payments in accordance with the terms hereof, except as specifically provided in Section 6.01. The Owner Participant agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for payment as herein provided and that, except as specifically provided herein, the Owner Trustee shall not be liable to the Owner Participant for any amounts payable under this Agreement and shall not be subject to any liability under this Agreement.

SECTION 3.02. Method of Payment. All amounts payable to the Owner Participant pursuant to this Agreement shall be paid by the Owner Trustee to the Owner Participant, or its nominee, by crediting the amount to be distributed to the Owner Participant to an account maintained by the Owner Participant with the Owner Trustee in immediately available funds or by transferring such amount in immediately available funds to a banking institution with bank wire transfer facilities for the account of the Owner Participant, as instructed from time to time by the Owner Participant.

## ARTICLE IV

### DISTRIBUTIONS

SECTION 4.01. Distributions. Subject to the terms and requirements of the Transaction Documents, all payments and amounts received by or on behalf of the Owner Trustee shall be distributed forthwith upon receipt in the following order of priority: first, so much of such payment or amount as shall be required to pay or reimburse the Owner Trustee for any fees or expenses not otherwise paid or reimbursed to the Owner Trustee as to which the Owner Trustee is entitled to be paid or reimbursed hereunder shall be retained by the Owner Trustee; and, second, the balance, if any, of such payment or amount remaining thereafter shall be distributed to the Owner Participant..

## ARTICLE V

### DUTIES OF THE OWNER TRUSTEE

SECTION 5.01. Notice of Certain Events. In the event the Owner Trustee shall have knowledge of any Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event, the Owner Trustee shall give prompt written notice thereof to the Owner Participant, the Lessee, the Loan Participant and the Indenture Trustee unless such Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event no longer exists before the giving of such notice. Subject to the provisions of Section 5.03, the Owner Trustee shall take or refrain from taking such action, not inconsistent with the provisions of the Transaction Documents, with respect thereto as the Owner Participant shall direct by written instruction to the Owner Trustee. If the Owner Trustee shall have given the Owner Participant written notice of any event and shall not have received written instructions as above provided within 30 days after mailing notice of such event to the Owner Participant, the Owner Trustee may, subject to the provisions of the Transaction Documents, take or refrain

from taking such action, but shall be under no duty to, and shall have no liability for its failure or refusal to, take or refrain from taking any action with respect thereto as the Owner Trustee shall deem advisable and in the best interests of the Owner Participant. For all purposes of this Agreement, in the absence of actual knowledge of an officer in the corporate trust division of the Owner Trustee, the Owner Trustee shall not be deemed to have knowledge of any Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event unless the Owner Trustee receives written notice thereof given by or on behalf of the Owner Participant, the Lessee, the Loan Participant, the Indenture Trustee or any Holder of a Note.

**SECTION 5.02. Action upon Instructions.**

Subject to the terms of Sections 5.01 and 5.03, upon the written instructions of the Owner Participant, the Owner Trustee will take or refrain from taking such action or actions, not inconsistent with the provisions of the Transaction Documents, as may be specified in such instructions.

**SECTION 5.03. Indemnification.** The Owner Trustee shall not be required to take or refrain from taking any action under this Agreement or any other Transaction Document (other than the actions specified in the first sentence of Section 5.01) unless the Owner Trustee shall have been indemnified by the Lessee or, if the Owner Trustee reasonably believes such indemnity to be inadequate, by the Owner Participant, in manner and form reasonably satisfactory to the Owner Trustee, against any liability, fee, cost or expense (including reasonable attorneys' fees) which may be incurred or charged in connection therewith, other than such as may result from the willful misconduct or gross negligence of the Owner Trustee; and, if the Owner Participant shall have directed the Owner Trustee to take or refrain from taking any action under any Transaction Document, the Owner Participant agrees to furnish such indemnity by a written undertaking of indemnification and, in addition, to pay the reasonable compensation of the Owner Trustee for the services performed or to be

performed by it pursuant to such direction. The Owner Trustee shall not be required to take any action under any Transaction Document if the Owner Trustee shall reasonably determine, or shall have been advised by counsel, that such action is likely to result in personal liability for which the Owner Trustee has not been and will not be adequately indemnified or is contrary to the terms hereof or of any document contemplated hereby to which the Owner Trustee is a party or is otherwise contrary to law.

**SECTION 5.04. No Duties Except as Specified in Trust Agreement or Instructions.** The Owner Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or any other part of the Trust Estate, or to otherwise take or refrain from taking any action under or in connection with any document contemplated hereby to which the Owner Trustee is a party, except as expressly provided by the terms of this Agreement or in written instructions from the Owner Participant received pursuant to Section 5.01 or 5.02; and no implied duties or obligations shall be read into this Agreement against the Owner Trustee. The Owner Trustee nevertheless agrees that it will, in its individual capacity and at its own cost and expense, promptly take all action as may be necessary to discharge any Lessor's Liens arising by, through or under it on any part of the Trust Estate.

**SECTION 5.05. No Action Except Under Specified Documents or Instructions.** The Owner Trustee agrees that it will not manage, control, use, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or any other part of the Trust Estate except (i) as required by the terms of the Transaction Documents, (ii) in accordance with the powers granted to, or the authority conferred upon, such Owner Trustee pursuant to this Agreement or (iii) in accordance with the express terms hereof or with written instructions from the Owner Participant pursuant to Section 5.01 or 5.02.

**SECTION 5.06. Absence of Duties.** Except in accordance with written instructions furnished pursuant to Section 5.01 and 5.02, and without limitation of the generality of Section 5.04, the Owner Trustee shall not have any duty to (i) file, record or deposit any Transaction Document or any other document, or to maintain any such filing, recording or deposit or to refile, rerecord or redeposit any such document, (ii) obtain insurance on the Undivided Interest or the Real Property Interest or effect or maintain any such insurance, other than to receive and forward to the Owner Participant any notices, policies, certificates or binders furnished to the Owner Trustee pursuant to the Lease, (iii) maintain Unit 1, the Undivided Interest or the Real Property Interest, (iv) pay or discharge any Tax or any Lien owing with respect to or assessed or levied against any part of the Trust Estate, except as provided in the last sentence of Section 5.04, other than to receive and forward notice of such Tax or Lien to the Owner Participant, (v) confirm, verify, investigate or inquire into the failure to receive any reports or financial statements of the Lessee, (vi) inspect Unit 1 at any time or ascertain or inquire as to the performance or observance of any of the covenants of the Lessee or any other Person under any Transaction Document with respect to the Undivided Interest, the Real Property Interest or Unit 1 or (vii) manage, control, use, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or Unit 1 or any part thereof or any other part of the Trust Estate, except as provided in Section 5.05.

## **ARTICLE VI**

### **THE OWNER TRUSTEE**

#### **SECTION 6.01. Acceptance of Trust and Duties.**

The Owner Trustee accepts the trusts hereby created and agrees to perform the same, but only upon the terms of this Agreement. The Owner Trustee also agrees to disburse all moneys actually received by it constituting part of the Trust Estate upon the terms of this Agreement. The Owner Trustee shall not be answerable or

accountable under any circumstances, except for (i) its own wilful misconduct or gross negligence, (ii) the inaccuracy of any of its representations or warranties contained in Section 6.03 or under Section 8(a) of the Participation Agreement given expressly in its individual capacity, (iii) its failure to perform obligations expressly undertaken by it in the last sentence of Section 5.04 of this Agreement or in Section 8(b) of the Participation Agreement or (iv) Taxes based on or measured by any fees, commissions or compensation received by it for acting as trustee in connection with any of the transactions contemplated by the Transaction Documents.

**SECTION 6.02. Furnishing of Documents.** The Owner Trustee will furnish to the Owner Participant, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, opinions, certificates, financial statements and any other instruments furnished to the Owner Trustee hereunder or under the Transaction Documents, unless by the express terms of any Transaction Document a copy of the same is required to be furnished by some other Person directly to the Owner Participant, or the Owner Trustee shall have determined that the same has already been furnished to the Owner Participant.

**SECTION 6.03. No Representations or Warranties as to the Undivided Interest, the Real Property Interest, Unit 1 or Documents.** The Owner Trustee makes (i) NO REPRESENTATION OR WARRANTY AS TO THE TITLE, VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, UNIT 1 OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST OR UNIT 1 WHATSOEVER, except that the Owner Trustee hereby represents, warrants and covenants to the Owner Participant that it will comply with the last sentence of Section 5.04, and (ii) no representation or warranty as to the validity or enforceability of any Transaction Document or as to the correctness of any statement made by any Person other than the Owner Trustee, contained in any thereof, and except that the Owner Trustee represents,



warrants and covenants to the Owner Participant that this Agreement has been and each of such other documents which contemplates execution thereof by the Owner Trustee has been or will be executed and delivered by its officers who are, or will be, duly authorized to execute and deliver such documents on its behalf.

**SECTION 6.04. No Segregation of Moneys; No Interest.** Except as otherwise provided herein or in any of the Transaction Documents, moneys received by the Owner Trustee hereunder need not be segregated in any manner, except to the extent required by law, and may be deposited under such general conditions as may be prescribed by law, and the Owner Trustee shall not be liable for any interest thereon, except as may be agreed to by the Owner Trustee.

**SECTION 6.05. Reliance; Advice of Counsel.** The Owner Trustee shall not incur any liability to any Person in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it in good faith to be signed by the proper party or parties. The Owner Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Owner Trustee may for all purposes hereof rely on an Officers' Certificate of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the trusts hereunder, the Owner Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled Persons to be selected and employed by it, and the Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or

opinion within the scope of such Person's competence of any such counsel, accountants or other skilled Persons and not contrary to this Agreement.

**SECTION 6.06. Not Acting in Individual Capacity.** Except as provided in this Article VI, in accepting the trusts hereby created the Owner Trustee acts solely as trustee hereunder and not in its individual capacity; and all Persons having any claim against the Owner Trustee by reason of the transactions contemplated by the Transaction Documents shall look only to the Trust Estate (or a part thereof, as the case may be) for payment or satisfaction thereof, except as specifically provided in this Article VI and except to the extent the Owner Trustee shall otherwise agree in any Transaction Document to which it is a party.

## **ARTICLE VII**

### **INDEMNIFICATION OF THE OWNER TRUSTEE BY THE OWNER PARTICIPANT**

**SECTION 7.01. The Owner Participant To Indemnify the Owner Trustee.** The Owner Participant agrees to assume liability for, and to indemnify and hold harmless the Owner Trustee, in its individual capacity, against and from, any and all Expenses which may be imposed on, incurred by or asserted at any time against the Owner Trustee (and not indemnified by the Lessee within a reasonable time after demand therefor) in any way relating to or arising out of the Trust Estate, any of the properties included therein, the administration of the Trust Estate or any action or inaction of the Owner Trustee hereunder or under the Transaction Documents, except only that the Owner Participant shall not be required to indemnify the Owner Trustee for Expenses arising or resulting from any of the matters described in the last sentences of Sections 5.04 and 6.01. The indemnities contained in this Section 7.01 shall survive the termination of this Agreement.

**SECTION 7.02. Compensation and Expenses.** The Owner Trustee shall receive as compensation for its services hereunder such ordinary fees as are fair, reasonable and customary for the performance of such services and as may heretofore and from time to time hereafter be agreed upon between the Owner Participant and the Owner Trustee. The Owner Trustee shall be entitled to be reimbursed for its reasonable expenses hereunder and to be compensated reasonably for any extraordinary services rendered hereunder.

## **ARTICLE VIII**

### **TERMINATION OF TRUST AGREEMENT**

**SECTION 8.01. Termination of Trust Agreement.** This Agreement and the trusts created hereby shall terminate and the Trust Estate shall, subject to the Participation Agreement, the Indenture and Article IV of this Agreement, be distributed to the Owner Participant, and this Agreement shall be of no further force or effect, upon the earlier of (i) the sale or other final disposition by the Owner Trustee of all property constituting part of the Trust Estate and the final distribution by the Owner Trustee of all moneys or other property or proceeds constituting part of the Trust Estate in accordance with the terms of Article IV and (ii) 21 years less one day after the death of the last survivor of all of the descendants living on the date of this Agreement of the present members of the Boards of Directors of the Owner Trustee and the Owner Participant, but if any such rights, privileges or options shall be or become valid under Applicable Law for a period subsequent to the 21st anniversary of the death of such last survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then such rights, privileges or options shall not terminate as aforesaid but shall extend to and continue in effect, but only if such

nontermination and extension shall then be valid under Applicable Law, until such time as the same shall, under Applicable Law, cease to be valid.

**SECTION 8.02. Termination at Option of the Owner Participant.** Notwithstanding Section 8.01, this Agreement and the trusts created hereby shall terminate and the Trust Estate shall be distributed to the Owner Participant, and this Agreement shall be of no further force and effect, upon the election of the Owner Participant by notice to the Owner Trustee, if such notice shall be accompanied by the written agreement of the Owner Participant assuming all the obligations of the Owner Trustee under or contemplated by the Transaction Documents and all other obligations of the Owner Trustee incurred by it as trustee hereunder; provided, however, that no such election shall be effective until the lien of the Indenture on the Lease Indenture Estate has been released and until full payment of the principal of and premium, if any, and interest on the Notes has been made. Such written agreement shall be reasonably satisfactory in form and substance to the Owner Trustee and shall release the Owner Trustee from all further obligations of the Owner Trustee hereunder and under the agreements and other instruments mentioned in the preceding sentence.

## **ARTICLE IX**

### **SUCCESSOR OWNER TRUSTEES, CO-OWNER TRUSTEES AND SEPARATE OWNER TRUSTEES**

**SECTION 9.01. Resignation of the Owner Trustee; Appointment of Successor.** (a) The Owner Trustee may resign at any time without cause by giving at least 30 days' prior written notice to the Owner Participant, the Indenture Trustee, the Holders of the then Outstanding Notes and the Lessee, such resignation to be effective on the acceptance of appointment by a successor Owner Trustee under Section 9.01(b). In addition, the Owner Participant may at any time remove the Owner Trustee with or without cause by an instrument in

writing delivered to the Owner Trustee, such removal to be effective upon the acceptance of appointment by a successor owner trustee under Section 9.01(b). In case of the resignation or removal of the Owner Trustee, the Owner Participant may appoint a successor Owner Trustee by an instrument signed by the Owner Participant. If a successor Owner Trustee shall not have been appointed within 30 days after the giving of written notice of such resignation or the delivery of the written instrument with respect to such removal, the Owner Trustee or the Owner Participant may apply to any court of competent jurisdiction to appoint a successor Owner Trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as above provided. Any successor Owner Trustee so appointed by such court shall immediately and without further act be superseded by any successor Owner Trustee appointed as above provided within one year from the date of the appointment by such court.

(b) Any successor Owner Trustee, however appointed, shall execute and deliver to the predecessor Owner Trustee an instrument accepting such appointment, and thereupon such successor Owner Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Owner Trustee in the trusts hereunder with like effect as if originally named an Owner Trustee herein; but nevertheless, upon the written request of such successor Owner Trustee, such predecessor Owner Trustee shall execute and deliver an instrument transferring to such successor Owner Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, duties and trusts of such predecessor Owner Trustee, and such predecessor Owner Trustee shall duly assign, transfer, deliver and pay over to such successor Owner Trustee all moneys or other property then held by such predecessor Owner Trustee upon the trusts herein expressed.

(c) Any successor Owner Trustee, however appointed, shall be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least

\$50,000,000, if there be such an institution willing, able and legally qualified to perform the duties of Owner Trustee hereunder upon reasonable or customary terms.

(d) Any corporation into which the Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Owner Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Owner Trustee may be transferred, shall, subject to the terms of Section 9.01(c), be the Owner Trustee under this Agreement without further act.

SECTION 9.02. Co-Trustees and Separate Trustees. Whenever the Owner Trustee or the Owner Participant shall deem it necessary or prudent in order either to conform to any law of any jurisdiction in which all or any part of the Trust Estate shall be situated or to make any claim or bring any suit with respect to the Trust Estate, the Notes or any Transaction Document, or the Owner Trustee or the Owner Participant shall be advised by counsel satisfactory to it that it is so necessary or prudent, the Owner Trustee and the Owner Participant shall execute and deliver an agreement supplemental hereto and all other instruments and agreements, and shall take all other action, necessary or proper to constitute one or more Persons (and the Owner Trustee may appoint one or more of its officers) either as co-trustee or co-trustees jointly with the Owner Trustee of all or any part of the Trust Estate, or as separate trustee or separate trustees of all or any part of the Trust Estate, and to vest in such Persons, in such capacity, such title to the Trust Estate or any part thereof and such rights or duties as may be necessary or desirable, all for such period and under such terms and conditions as are satisfactory to the Owner Trustee and the Owner Participant. In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Estate and all rights and duties of such co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Owner Trustee, without the

appointment of a successor to such co-trustee or separate trustee.

## ARTICLE X

### SUPPLEMENTS AND AMENDMENTS

#### SECTION 10.01. Supplements and Amendments.

At the written request of the Owner Participant, this Agreement shall be amended by a written instrument signed by the Owner Trustee and the Owner Participant, but if in the opinion of the Owner Trustee any instrument required to be so executed adversely affects any right, duty or liability of, or immunity or indemnity in favor of, it under this Agreement or any of the documents contemplated hereby to which it is a party, or would cause or result in any conflict with or breach of any terms, conditions or provisions of, or default under, its charter documents or by-laws or any document contemplated hereby to which it is a party, the Owner Trustee may in its sole discretion decline to execute such instrument, unless it shall have been provided an indemnity satisfactory to the Owner Trustee by the Owner Participant.

#### SECTION 10.02. Limitation on Amendments.

Notwithstanding Section 10.01, the Owner Trustee shall not, without the consent of the Indenture Trustee, execute any amendment which might result in the trusts created hereunder being terminated prior to the release of the lien of the Indenture on the Lease Indenture Estate or prior to the payment in full of the principal of and premium, if any, and interest on the Notes.

## ARTICLE XI

### MISCELLANEOUS

SECTION 11.01. No Legal Title to Trust Estate in the Owner Participant. The Owner Participant shall not have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of any

right, title or interest of the Owner Participant in and to the Trust Estate or hereunder shall operate to terminate this Agreement or the trusts hereunder or entitle any successor or transferee to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

**SECTION 11.02. Sale of Undivided Interest and/or Real Property Interest by the Owner Trustee is Binding.** Any sale or other conveyance of the Undivided Interest, the Real Property Interest or any part thereof or any assignment of rights under the Assignment and Assumption by the Owner Trustee made pursuant to the terms of this Agreement or any other Transaction Document shall bind the Owner Participant and shall be effective to transfer and convey all right, title and interest of the Owner Trustee and the Owner Participant in and to the Undivided Interest, the Real Property Interest or any part thereof, or such rights under the Assignment and Assumption, as the case may be. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Owner Trustee.

**SECTION 11.03. Limitations on Rights of Others.** Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the Owner Trustee and the Owner Participant any legal or equitable right, remedy or claim under or in respect of this Agreement, any covenants, conditions or provisions contained herein or the Trust Estate, all of which are and shall be construed to be for the sole and exclusive benefit of the Owner Trustee and the Owner Participant.

**SECTION 11.04. Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all notices hereunder shall be given as provided in the Participation Agreement.

**SECTION 11.05. 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.

**SECTION 11.06. Limitation on the Owner Participant's Liability.** The Owner Participant shall not have any liability for the performance of this Agreement except as expressly set forth herein.

**SECTION 11.07. Separate Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

**SECTION 11.08. Successors and Assigns.** All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Owner Trustee and its successors and assigns and the Owner Participant and its successors and assigns, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by the Owner Participant shall bind the successors and assigns of the Owner Participant.

**SECTION 11.09. Transfer of Interests.** Subject to the provisions of Section 15 of the Participation Agreement, the Owner Participant may assign, convey or otherwise transfer all or any part of its right, title and interest in and to this Agreement and the Trust Estate. In case of any such assignment, conveyance or transfer of less than all of the interest of the Owner Participant, (i) the transferor and transferee or transferees shall be severally obligated with respect to the indemnification obligations imposed under Section 7.01 in accordance with the interest held by each of them and (ii) appropriate amendments shall be made to this Agreement to provide for the situation in which there is more than one Owner Participant as may be agreed to by the transferor and transferee or transferees and consented to by the Owner Trustee. No

such assignment, conveyance or transfer shall violate any provision of Applicable Law or create a relationship which would be in violation thereof. The Owner Trustee shall not be on notice of or otherwise be bound by any such assignment, conveyance or transfer until it shall have received an executed counterpart of the instrument of such assignment, conveyance or transfer.

SECTION 11.10. Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 11.11. Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance, except to the extent that, pursuant to the laws of the State of New Mexico or Arizona, as the case may be, the laws of either such State are mandatorily applicable hereto.

SECTION 11.12. Administration of Trust. The principal place of administration of the Trust shall be in Boston, Massachusetts.

SECTION 11.13. Performance by the Owner Participant. Any obligation of the Owner Trustee hereunder or under any Transaction Document or other document contemplated herein may be performed by the Owner Participant and any such performance shall not be construed as a revocation of the trusts created hereby.

SECTION 11.14. Conflict with Transaction Documents. If this Agreement (or any instructions given by the Owner Participant pursuant hereto) shall require that any action be taken with respect to any matter and any other Transaction Document (or any instructions duly given in accordance with the terms thereof) shall require that a different action be taken with respect to such matter, and such actions shall be mutually exclusive, the provisions of such other Transaction Document, in respect thereof, shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers hereunto duly authorized, as of the day and year first above written.

Owner Participant:

BURNHAM LEASING CORPORATION

By: Sheldon Barnett  
Vice President  
*(S. Barnett)*

Owner Trustee:

THE FIRST NATIONAL BANK OF  
BOSTON,

By: [Signature]  
Vice President



**SECTION 15.6.1  
LESSOR'S CERTIFICATE  
1985-2**

The undersigned, being a duly elected, qualified and acting Vice President of **THE FIRST NATIONAL BANK OF BOSTON**, a national banking association (FNB), hereby certifies as follows:

1. Reference is made to (i) the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, as amended by Amendments No. 1 through No. 10 thereto (as so amended, the ANPP Participation Agreement), and (ii) the sale and leaseback transaction proposed to be entered into by Public Service Company of New Mexico (PNM) on or before December 31, 1985 with respect to Palo Verde Nuclear Generating Station Unit 1 and PNM's interest therein and in certain common facilities relating thereto (the Proposed PNM Sale and Leaseback Transaction);

2. In connection with the Proposed PNM Sale and Leaseback Transaction, FNB will enter into a Trust Agreement to be dated as of December 16, 1985 (the Trust Agreement) with Burnham Leasing Corporation constituting FNB the trustee (in such capacity, Owner Trustee) of a grantor trust (the Grantor Trust); thereafter, the Grantor Trust will acquire from PNM an undivided ownership interest of up to approximately 2.86% in certain assets constituting part of Palo Verde Nuclear Generating Station Unit 1 and up to approximately .953% in certain related common facilities and lease back such interest to PNM pursuant to a Facility Lease to be dated as of December 16, 1985 having a primary term of approximately 29 years; and

3. Upon the execution and delivery of the Trust Agreement and upon consummation of the Proposed PNM Sale and Leaseback Transaction, FNB, solely in its capacity as Owner Trustee and not otherwise, confirms that, except as provided in Sections 15.2.2, 15.6.4 and 15.10 of the ANPP Participation Agreement, PNM shall be and remain the sole "Participant" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind the Grantor Trust) in all dealings with the other ANPP Participants in relation to the property, rights, titles and interests of PNM transferred to the Grantor Trust pursuant to the Proposed PNM Sale and Leaseback Transaction.

WITNESS the signature of the undersigned this 18th day of December, 1985 for and on behalf of FNB.

  
\_\_\_\_\_  
Vice President



CERTAIN RIGHTS OF THE LESSOR UNDER THIS FACILITY LEASE HAVE BEEN ASSIGNED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, CHEMICAL BANK, AS INDENTURE TRUSTEE UNDER A TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS DATED AS OF DECEMBER 16, 1985. THIS FACILITY LEASE HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. SEE SECTION 22(e) OF THIS FACILITY LEASE FOR INFORMATION CONCERNING THE RIGHTS OF HOLDERS OF VARIOUS COUNTERPARTS HEREOF.

THIS COUNTERPART IS NOT THE ORIGINAL COUNTERPART.

---

**FACILITY LEASE**

dated as of December 16, 1985

between

THE FIRST NATIONAL BANK OF BOSTON,  
not in its individual capacity, but solely as Owner  
Trustee under a Trust Agreement, dated as of  
December 16, 1985, with Burnham Leasing Corporation,

**Lessor**

and

PUBLIC SERVICE COMPANY OF NEW MEXICO,

**Lessee**

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Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities

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## FACILITY LEASE

FACILITY LEASE, dated as of December 16, 1985, between THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated a's of December 16, 1985, with Burnham Leasing Corporation (the Lessor), and PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the Lessee).

### W I T N E S S E T H :

WHEREAS, the Lessor owns the Undivided Interest and the Real Property Interest;

WHEREAS, the Lessee desires to lease the Undivided Interest and the Real Property Interest from the Lessor on the terms and conditions set forth herein; and

WHEREAS, the Lessor is willing to lease the Undivided Interest and the Real Property Interest to the Lessee on the terms and conditions set forth herein;

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

### SECTION 1. Definitions.

For purposes hereof, capitalized terms used herein shall have the meanings assigned to such terms in Appendix A and Schedule 1 hereto. References in this Facility Lease to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Facility Lease unless otherwise indicated.

### SECTION 2. Lease of Undivided Interest; Term; Personal Property.

(a) Lease of Undivided Interest. Upon the terms and subject to the conditions of this Facility Lease, the Lessor hereby agrees to lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, the Undivided Interest.

(b) Term. The term of this Facility Lease shall begin on the Closing Date and shall end on the last day of the Lease Term.

(c) Personal Property. It is the express intention of the Lessor and the Lessee that title to the Undivided Interest and every portion thereof is severed, and shall be and remain severed, from title to the real estate constituting the Real Property Interest and the PVNGS Site. The Lessor and the Lessee intend that the Undivided Interest shall constitute personal property to the maximum extent permitted by Applicable Law.

### SECTION 3. Rent; Adjustments to Rent.

(a) Basic Rent. The Lessee shall pay to the Lessor, as basic rent (herein referred to as Basic Rent) for the Undivided Interest, the following amounts:

(i) on January 15, 1986, an amount equal to the daily equivalent of Basic Rent (set forth in Schedule 1) payable pursuant to clause (ii) below, from and including December 31, 1985 to but excluding January 15, 1986 plus or minus the Rent Differential, if any, referred to in Section 3(h);

(ii) on July 15, 1986 and on each Basic Rent Payment Date thereafter to and including January 15, 2015, an amount equal to the percentage of Facility Cost set forth opposite such Basic Rent Payment Date on Schedule 2 plus or minus the Rent Differential, if any, referred to in Section 3(h); and

(iii) if the Lessee shall elect the Renewal Term, on July 15, 2015 and on each Basic Rent Payment Date thereafter during the Renewal Term, an amount equal to one-half of an amount determined by dividing the amount of all payments of Basic Rent payable with respect to the Basic Lease Term pursuant to clause (ii) of this Section 3(a) (taking into account any

adjustments pursuant to Sections 3(d) and 3(e) and any increases and decreases pursuant to Section 3(h)), by 58.

If an interest payment on the Initial Series Note (and the Releveraging Note, if then outstanding) shall be due on a date other than a Basic Rent Payment Date, the Lessee shall pay additional Basic Rent on such date equal to such interest payment and such payment of additional Basic Rent shall be credited against the Basic Rent due on the Basic Rent Payment Date next succeeding the date that such additional Basic Rent shall have been paid.

(b) **Supplemental Rent.** The Lessee shall pay the following amounts (herein referred to as Supplemental Rent):

(i) when due or, where no due date is specified, on demand, any amount (other than Basic Rent, Casualty Value, Termination Value and Special Casualty Value) which the Lessee assumes the obligation to pay or agrees to pay to the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee or any Indemnatee under this Facility Lease, any other Transaction Document or the Collateral Trust Indenture and any amount which the Lessor is obligated to pay under Section 6.9, 7.6 or 8.7 of the Indenture;

(ii) when due any amount payable hereunder as Casualty Value, Termination Value or Special Casualty Value, and any premium or prepayment penalty with respect to the Notes;

(iii) on demand and in any event on the Basic Rent Payment Date next succeeding the date such amounts shall be due and payable hereunder, to the extent permitted by Applicable Law, interest (computed on the same basis as interest on the Notes is computed) at a rate per annum equal to (A) the Overdue

Interest Rate, on that portion of the payment of Basic Rent or Supplemental Rent distributable pursuant to clause "first" of Section 5.1 or clause "second" of Section 5.3 of the Indenture (determined prior to the computation of interest on overdue payments referred to in such clauses), and (B) the Penalty Rate, on the balance of any such payment of Basic Rent or Supplemental Rent (including, in the case of both clause (i) and clause (ii) above, but without limitation, to the extent permitted by Applicable Law, interest payable pursuant to this clause (iii)) not paid when due (without regard to any period of grace) for any period for which the same shall be overdue.

The Lessor shall have all rights, powers and remedies provided for in this Facility Lease, at law, in equity or otherwise, in the case of non-payment of Basic Rent or Supplemental Rent.

(c) Form of Payment. Subject to Section 11(b), each payment of Rent under this Facility Lease shall be made in immediately available funds no later than 11:00 a.m., local time at the place of receipt, on the date each such payment shall be due and payable hereunder and shall be paid either (A) in the case of payments other than Excepted Payments, to the Lessor at its address determined in accordance with Section 17, or at such other address as the Lessor may direct by notice in writing to the Lessee, or (B) in the case of Excepted Payments, to such Person as shall be entitled to receive such payment at such address as such Person may direct by notice in writing to the Lessee. If the date on which any payment of Rent is due hereunder shall not be a Business Day, the payment otherwise due thereon shall be due and payable on the preceding Business Day, with the same force and effect as if paid on the nominal date provided in this Facility Lease.

(d) Adjustments to Rent. Basic Rent and the schedules of Casualty Values, Termination Values and

Special Casualty Values attached hereto shall be adjusted (upward or downward) to preserve Net Economic Return if there is any change in the Code or successor legislation enacted by the Ninety-ninth Congress or if there is adopted, promulgated, issued or published, prior to January 15, 1997, proposed, temporary or final regulations resulting therefrom (regardless of the effective date of such regulations) (herein referred to as a Change in Tax Law). Adjustments under this paragraph (d) shall be (1) made not more than once a year and (2) limited in the aggregate to the extent, if any, necessary such that the aggregate amount of Basic Rent theretofore and thereafter payable throughout the Basic Lease Term (computed for such purpose only without regard to any adjustments theretofore made pursuant to Section 3(e) or 3(h)) shall not be more than 11% upward and 10% downward from the aggregate amount of Basic Rent payable throughout the Basic Lease Term (computed as aforesaid) prior to any adjustment theretofore made pursuant to this Section 3(d); provided, however, that no downward adjustment shall be made hereunder unless and until the aggregate amount of all such downward adjustments shall exceed 1% and then only to the extent such aggregate exceeds 1% (resulting in a maximum downward adjustment of 10%). The foregoing 11% maximum, 10% minimum, and 1% "deadband" limitations were determined on the basis of an assumed interest rate on the Notes set forth in Schedule 1 hereto and are subject to adjustment in connection with any refunding of the Initial Series Note to provide the same protection to the Owner Participant and the Lessee as provided in the original calculations thereof by the Owner Participant.

The provisions of this Section 3(d) to the contrary notwithstanding, if any Change in Tax Law is, or becomes, applicable to the transaction contemplated by this Facility Lease in consequence of the transfer of the Owner Participant's beneficial interest in the Trust (whether or not permitted by Section 15 of the Participation Agreement) or if such Change in Tax Law would not have been applicable to such transaction had no such transfer occurred, then no adjustment shall be, or be required to be, made pursuant to this

paragraph (d); provided, however, that this sentence shall not apply to the initial transfer of the Owner Participant's beneficial interest to one of its Affiliates.

(e) Further Adjustments. Basic Rent and the schedules of Casualty Values, Special Casualty Values and Termination Values attached hereto shall be adjusted (upward or downward) to preserve Net Economic Return if there is (i) issuance of the Releveraging Note or the Fixed Rate Note, (ii) any Supplemental Financing, (iii) the payment of Transaction Expenses in an amount which is other than 1.1% of the Purchase Price or (iv) any change in the pricing assumptions set forth in Schedule 2 to the Participation Agreement.

(f) Computation of Adjustments. Upon the occurrence of an event requiring an adjustment to Basic Rent payable pursuant to clause (ii) of Section 3(a), and the schedules of Casualty Values, Special Casualty Values and Termination Values attached hereto, pursuant to paragraph (d) or (e) of this Section 3, the Owner Participant shall make the necessary computations and furnish to the Lessee, the Loan Participant, the Lessor and the Indenture Trustee the revised amounts and percentages, which amounts and percentages shall be implemented upon delivery thereof and effective as of the date of occurrence of the event requiring such adjustment (taking into account any payment of Basic Rent already made) and shall remain effective until changed in consequence of any verification procedure set forth below. Such revised amounts and percentages shall be subject to verification (at the Lessee's request) by the Owner Participant's nationally recognized independent public accountants, in which case such accountants shall either (i) confirm to the Lessee in writing that such revised amounts were computed on a basis consistent with the original calculations, or (ii) compute and provide to the Lessee, the Lessor, the Owner Participant, the Loan Participant and the Indenture Trustee revised amounts and percentages which are on such a basis. The revised amounts and percentages, as so confirmed or computed if applicable, shall be conclusive and binding

upon the Lessee, the Lessor, the Owner Participant, the Loan Participant and the Indenture Trustee. The cost of any such verification shall be borne by the Lessee unless such accountants shall require an adjustment to the revised amounts and percentages originally provided by the Owner Participant which is greater than 10% of the adjustment so provided, in which case such cost shall be divided and paid by the Lessee and the Owner Participant in equal amounts. Each adjustment pursuant to paragraph (d) or (e) of this Section 3 may, but need not, be evidenced by the execution and delivery of a supplement to this Facility Lease in form and substance satisfactory to the Lessee and the Owner Participant, but shall be effective as provided herein without regard to the date on which such supplement to this Facility Lease is so executed and delivered. Any adjustment referred to in this Section 3 shall satisfy the provisions of Revenue Procedure 75-21, Revenue Procedure 75-28 and any other applicable statute, regulation, revenue procedure, revenue ruling or technical information release relating to the subject matter of Revenue Procedure 75-21 or Revenue Procedure 75-28, but, in the case of any upward adjustment, shall be no less than the adjustment otherwise required pursuant to this Section 3.

(g) Sufficiency of Basic Rent and Supplemental Rent. Notwithstanding any other provision of this Facility Lease, any other Transaction Document or any Financing Document, (i) the amount of Basic Rent payable on each Basic Rent Payment Date shall be at least equal to the aggregate amount of principal, premium, if any, and accrued interest payable on all Notes then Outstanding and (ii) each payment of Casualty Value, Special Casualty Value and Termination Value shall in no event be less (when added to all other amounts required to be paid by the Lessee under this Facility Lease in respect of any Event of Loss or Deemed Loss Event or termination of this Facility Lease) than an amount sufficient, as of the date of payment, to pay in full the principal of, and premium, if any, and interest on all Notes Outstanding on and as of such date of payment

(taking into account any assumption of the Notes by the Lessee).

(h) **Rent Differential.** So long as the Initial Series Note shall be outstanding, each installment of Basic Rent shall be increased or decreased, as the case may be, by the Rent Differential. For purposes hereof, Rent Differential shall mean, as of any Basic Rent Payment Date, the difference between (i) the aggregate amount of interest due and payable on each Basic Rent Payment Date on the Initial Series Note (and the Releveraging Note, if then outstanding), and (ii) the aggregate amount of interest that would have been due and payable on such Basic Rent Payment Date on such Note or Notes if such Note or Notes had at all times during the relevant period borne interest at a rate equal to 9.5% per annum (computed on the basis of a 360-day year of twelve 30-day months). If, as of any Basic Rent Payment Date, (A) the amount determined in accordance with clause (i) of the immediately preceding sentence shall be greater than the amount determined in accordance with clause (ii) of such sentence, the amount of Basic Rent due on such Basic Rent Payment Date shall be increased by the Rent Differential, and (B) the amount determined in accordance with such clause (ii) shall exceed the amount determined in accordance with such clause (i), the amount of Basic Rent due on such Basic Rent Payment Date shall be decreased by the Rent Differential.

#### SECTION 4. Net Lease.

This Facility Lease (as originally executed and as modified, supplemented and amended from time to time) is a net lease and the Lessee hereby acknowledges and agrees that the Lessee's obligation to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute, unconditional and irrevocable and shall not be affected by any circumstances of any character, including, without limitation, (i) any set-off, abatement, counterclaim, suspension, recoupment, reduction, defense or other right or claim which the Lessee may have against the Lessor, the Owner



Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant, the Operating Agent, any ANPP Participant, any vendor or manufacturer of any equipment or assets included in the Undivided Interest, Unit 1, any Capital Improvement, the Real Property Interest, the PVNGS Site, PVNGS, or any part of any thereof, or any other Person for any reason whatsoever, (ii) any defect in or failure of the title- merchant-ability, condition, design, compliance with specifications, operation or fitness for use of all or any part of the Undivided Interest, Unit 1, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, (iii) any damage to, or removal, abandonment, shutdown, salvage, scrapping, requisition, taking, loss, theft or destruction of all or any part of the Undivided Interest, Unit 1, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, or any interference, interruption or cessation in the use or possession thereof or of the Undivided Interest by the Lessee or by any other Person (including, but without limitation, the Operating Agent or any other ANPP Participant) for any reason whatsoever or of whatever duration, (iv) any restriction, prevention or curtailment of or interference with any use of all or any part of the Undivided Interest, Unit 1, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, (v) any insolvency, bankruptcy, reorganization or similar proceeding by or against the Lessee, the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant, the Operating Agent, any other ANPP Participant or any other Person, (vi) the invalidity, illegality or unenforceability of this Facility Lease, any other Transaction Document, any Financing Document, the ANPP Participation Agreement or any other instrument referred to herein or therein or any other infirmity herein or therein or any lack of right, power or authority of the Lessor, the Lessee, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant or any other Person to enter into this Facility Lease, any other Transaction Document or any Financing Document, or any doctrine of force majeure, impossibility, frustration, failure of consideration, or any similar

legal or equitable doctrine that the Lessee's obligation to pay Rent is excused because the Lessee has not received or will not receive the benefit for which the Lessee bargained, it being the intent of the Lessee to assume all risks from all causes whatsoever that the Lessee does not receive such benefit, (vii) the breach or failure of any warranty or representation made in this Facility Lease or any other Transaction Document or any Financing Document by the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant or any other Person, (viii) any amendment or other change of, or any assignment of rights under, this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, or any waiver, action or inaction under or in respect of this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, or any exercise or non-exercise of any right or remedy under this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, including, without limitation, the exercise of any foreclosure or other remedy under the Indenture, the Collateral Trust Indenture or this Facility Lease, or the sale of Unit 1, any Capital Improvement, the Undivided Interest, the Real Property Interest, the PVNGS Site or PVNGS, or any part thereof or any interest therein, or (ix) any other circumstance or happening whatsoever whether or not similar to any of the foregoing. The Lessee acknowledges that by conveying the leasehold estate created by this Facility Lease to the Lessee and by putting the Lessee in possession of the Undivided Interest and the Real Property Interest, the Lessor has performed all of the Lessor's obligations under and in respect of this Facility Lease, except the covenant that the Lessor and Persons acting for the Lessor will not interfere with the Lessee's quiet enjoyment of the Undivided Interest and the Real Property Interest. The Lessee hereby waives, to the extent permitted by Applicable Law, 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 or to effect or claim any diminution or reduction of Rent

payable by the Lessee hereunder, including without limitation the provisions of Arizona Revised Statutes Section 33-343, except in accordance with the express terms hereof. 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 Lessee nonetheless agrees to pay to the Lessor or other Person entitled thereto an amount equal to each installment of Basic Rent and all Supplemental Rent at the time such payment would have become due and payable in accordance with the terms hereof had this Facility Lease not been terminated in whole or in part. Each payment of Rent made by the Lessee hereunder shall be final and the Lessee shall not seek or have any right to recover all or any part of such payment from the Lessor or any other Person for any reason whatsoever. All covenants, agreements and undertakings of the Lessee herein shall be performed at its cost, expense and risk unless expressly otherwise stated. Nothing in this Section 4 shall be construed as a guaranty by the Lessee of any residual value in the Undivided Interest or as a guaranty of the Notes. Any provisions of Section 7(b)(2) or 8(c) of the Participation Agreement to the contrary notwithstanding, if the Lessee shall fail to make any payment of Rent to any Person when and as due (taking into account applicable grace periods), such Person shall have the right at all times, to the exclusion of the ANPP Participants, to demand, collect, sue for, enforce obligations relating to and otherwise obtain all amounts due in respect of such Rent.

#### SECTION 5. Return of the Undivided Interest.

(a) Return of the Undivided Interest. On the Lease Termination Date, the Lessee will surrender possession of the Undivided Interest and the Real Property Interest to the Lessor. At the time of such return the Lessee shall pay or have paid all amounts due and payable, or to become due and payable, by it as an ANPP Participant under each and every ANPP Project Agreement allocable or chargeable (whether or not payable during or after the Lease Term) to the Undivided Interest or

the Real Property Interest in respect of any period or periods ending on or prior to the Lease Termination Date (including, but without limitation, all amounts payable with respect to any and all discretionary Capital Improvements to Unit 1 or the PVNGS Site approved or authorized (without the concurrence of the Owner Participant) within the 3-year period preceding the end of the Lease Term, whether or not implementation thereof has been completed on or prior to the Lease Termination Date), and the Undivided Interest shall be free and clear of all Liens (other than Permitted Liens described in clauses (i), (v) (other than those arising by, through or under the Lessee alone), (vi), (vii) (other than as aforesaid), (viii) (other than as aforesaid), (ix) and (x) of the definition of such term) and in the condition and state of repair required by Section 8. The Lessor shall not abandon the Undivided Interest. In the event that on or prior to the Lease Termination Date there shall have occurred a default by any ANPP Participant (other than PNM) under the ANPP Participation Agreement and such default shall not have been cured by the defaulting ANPP Participant, then (i) the Lessee agrees to indemnify and hold the Lessor (and each successor, assign and transferee thereof) harmless against any and all obligations under the ANPP Participation Agreement with respect to contributions or payments required to be made thereby as a result of such default and (ii) the Lessor (and each successor, assign and transferee thereof) agrees to reimburse the Lessee for all amounts paid by the Lessee pursuant to the foregoing clause (i) to the extent, but only to the extent, that the Lessor (or such successor, assign or transferee) shall have actually received proceeds from the sale of the Generation Entitlement Share of the defaulting ANPP Participant as a result of the payment made by the Lessee pursuant to the foregoing clause (i), and, to the extent the Lessor (or such successor, assign or transferee) shall have received such proceeds, the amount to be reimbursed to the Lessee pursuant to this clause (ii) shall include interest at the Prime Rate from the date of any payment by the Lessee pursuant to the foregoing clause (i) through the date of

reimbursement of such amount pursuant to this clause (ii).

(b) **Disposition Services.** The Lessee agrees that if it does not exercise its option to renew or purchase as provided in Sections 12 and 13, respectively, then during the last thirty-six months of the Lease Term, the Lessee will fully cooperate with the Lessor in connection with the Lessor's efforts to lease or dispose of the Undivided Interest including using the Lessee's reasonable efforts to lease or dispose of the Undivided Interest. The Lessor agrees to reimburse the Lessee for reasonable out-of-pocket costs and expenses of the Lessee incurred at the request of the Lessor or the Owner Participant in connection with such cooperation and such efforts.

#### **SECTION 6. Warranty of the Lessor.**

(a) **Quiet Enjoyment.** The Lessor warrants that until the Lease Termination Date, if the Lessee is in compliance with each and every term and provision of this Facility Lease and each other Transaction Document to be complied with by the Lessee, the Lessee's use and possession of Unit 1, including the Undivided Interest, shall not be interrupted by the Lessor or any Person claiming by, through or under the Lessor, and their respective successors and assigns.

(b) **Disclaimer of Other Warranties.** The warranty set forth in Section 6(a) is in lieu of all other warranties of the Lessor or the Owner Participant, whether written, oral or implied, with respect to this Facility Lease, Unit 1, any Capital Improvement, the Undivided Interest, PVNGS, the Real Property Interest or the PVNGS Site. As among the Owner Participant, the Loan Participant, the Indenture Trustee, the Collateral Trust Trustee, the Lessor and the Lessee, execution by the Lessee of this Facility Lease shall be conclusive proof of the compliance of Unit 1 (including any Capital Improvement), the Undivided Interest and the Real Property Interest with all requirements of this Facility Lease, and the Lessee acknowledges and agrees that

(i) NEITHER THE LESSOR NOR THE OWNER PARTICIPANT IS A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND AND (ii) THE LESSOR LEASES AND THE LESSEE TAKES THE UNDIVIDED INTEREST AND THE REAL PROPERTY INTEREST, AND SHALL TAKE EACH CAPITAL IMPROVEMENT, AND ANY PART THEREOF, AS IS AND WHERE IS, and neither the Lessor nor the Owner Participant shall be deemed to have made, and THE LESSOR AND THE OWNER PARTICIPANT EACH HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF UNIT 1, ANY CAPITAL IMPROVEMENT, THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, THE PVNGS SITE OR PVNGS, OR ANY PART THEREOF, THE MERCHANTABILITY THEREOF OR THE FITNESS THEREOF FOR ANY PARTICULAR PURPOSE, TITLE TO UNIT 1, ANY CAPITAL IMPROVEMENT, THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, THE PVNGS SITE OR PVNGS, OR ANY PART THEREOF, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT OR THE ABSENCE OF ANY LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, NOR SHALL THE LESSOR OR THE OWNER PARTICIPANT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LIABILITY IN TORT, STRICT OR OTHERWISE), it being agreed that all such risks, as among the Owner Participant, the Loan Participant, the Collateral Trust Trustee, the Indenture Trustee, the Lessor and the Lessee, are to be borne by the Lessee. The provisions of this Section 6(b) have been negotiated, and, except to the extent otherwise expressly provided in Section 6(a), the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties by the Lessor, the Owner Participant, the Loan Participant, the Collateral Trust Trustee or the Indenture Trustee, express or implied, with respect to Unit 1 (including any Capital Improvement), the Undivided Interest, PVNGS, the Real Property Interest or the PVNGS Site that may arise pursuant to any law now or hereafter in effect, or otherwise.

(c) Enforcement of Certain Warranties. The Lessor authorizes the Lessee (directly or through

agents, including the Operating Agent), at the Lessee's expense, to assert for the Lessor's account, during the Lease Term, all of the Lessor's rights (if any) under any applicable warranty and any other claims (under this Facility Lease or any Purchase Document) that the Lessee or the Lessor may have against any vendor or manufacturer with respect to Unit 1 (including any Capital Improvement) or the Undivided Interest, and the Lessor agrees to cooperate, at the Lessee's expense, with the Lessee and the Operating Agent in asserting such rights. Any amount receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) by the Lessee as payment under any such warranty or other claim against any vendor or manufacturer (or, if such warranty or claim relates to the Undivided Interest and the Retained Assets, the portion of such received amount appropriately allocable to the Undivided Interest) shall be applied in accordance with Sections 9(g), (h) and (i).

#### SECTION 7. Liens.

The Lessee will not directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to the Undivided Interest, the Real Property Interest, the Lessor's title thereto or any interest of the Lessor or Lessee therein (and the Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien), except Permitted Liens.

#### SECTION 8. Operation and Maintenance; Capital Improvements.

..(a) Operation and Maintenance. The Lessee agrees that it will exercise its rights, powers, elections and options as an ANPP Participant under the ANPP Project Agreements to cause the Operating Agent to (A) maintain Unit 1 in such condition that Unit 1 will have the capacity and functional ability to perform, on a continuing basis (ordinary wear and tear excepted), in normal commercial operation, the functions and substantially at the ratings for which it was designed,

(B) operate, service, maintain and repair Unit 1 and replace all necessary or useful parts and components thereof so that the condition and operating efficiency will be maintained and preserved, ordinary wear and tear excepted, in all material respects in accordance with (1) prudent utility practice for items of similar size and nature, (2) such operating standards as shall be required to take advantage of and enforce all available warranties and (3) the terms and conditions of all insurance policies maintained in effect at any time with respect thereto, (C) use, possess, operate and maintain Unit 1 in compliance with all material applicable Governmental Actions (including the License) affecting PVNGS or Unit 1 or the use, possession, operation and maintenance thereof and (D) otherwise act in accordance with the standards set forth in the ANPP Participation Agreement. The Lessee will comply with all its obligations under Applicable Law affecting Unit 1, the Undivided Interest, PVNGS, the Real Property Interest and the PVNGS Site, and the use, operation and maintenance thereof. The Lessee agrees to (i) exercise its rights under the ANPP Participation Agreement so that there will always be an Operating Agent under the ANPP Participation Agreement and (ii) maintain in full force and effect a license from the NRC adequate to possess the Undivided Interest and the Real Property Interest under the circumstances contemplated by the ANPP Participation Agreement. The Lessee will keep and maintain proper books and records (i) relating to all Operating Funds (as defined in the ANPP Participation Agreement) provided by it to the Operating Agent under the ANPP Participation Agreement and (ii) upon receipt of the requisite information from the Operating Agent, relating to the application of such Operating Funds to the operation and maintenance of Unit 1 and the acquisition, construction and installation of Capital Improvements, all in accordance with the Uniform System of Accounts. The Lessor shall not be obliged in any way to maintain, alter, repair, rebuild or replace Unit 1, any Capital Improvement, the Undivided Interest or the Real Property Interest, or any part thereof, or, except as provided in Section 8(f), to pay the cost of alteration, rebuilding, replacement, repair or



maintenance of Unit 1, any Capital Improvement, the Undivided Interest or the Real Property Interest, or any part thereof, and the Lessee expressly waives the right to perform any such action at the expense of the Lessor pursuant to any law at any time in effect.

(b) Inspection. The Lessor, the Owner Participant, the Indenture Trustee and the Collateral Trust Trustee shall have the right to inspect PVNGS (subject, in each event, to the ANPP Participation Agreement, Applicable Law, applicable confidentiality undertakings and procedures established by the Operating Agent) at their expense. The Lessor and the Owner Participant shall have the right to inspect, at their expense, the books and records of the Lessee relating to PVNGS, and make copies of and extracts therefrom (subject as aforesaid) and may, at their expense, discuss the Lessee's affairs, finances and accounts with its executive officers and its independent public accountants (and by this provision, the Lessee authorizes such accountants, in the presence of the Lessee, to discuss with the Lessor and the Owner Participant and their respective authorized representatives the affairs, finances and accounts of the Lessee), all at such times and as often as may be reasonably requested. None of the Lessor, the Owner Participant, the Indenture Trustee and the Collateral Trust Trustee shall have any duty whatsoever to make any inspection or inquiry referred to in this Section 8(b) and shall not incur any liability or obligation by reason of not making any such inspection or inquiry.

(c) Capital Improvements. If and to the extent required by the ANPP Participation Agreement, the Lessee shall, at its sole expense, promptly participate in the making of any Capital Improvement to Unit 1. The Undivided Interest Percentage of the net proceeds of any sale or other disposition of property removed from Unit 1 receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) by or credited to the account of the Lessee in accordance with the ANPP Participation Agreement and any insurance proceeds receivable (without regard to any

right of setoff or other similar right of any Person against the Lessee) for the account of the Lessor or the Lessee in respect of the loss or destruction of, or damage or casualty to, any such property shall be applied as provided in Section 9(g), (h) or (i), as the case may be. An undivided interest equal to the Undivided Interest Percentage in property at any time removed from Unit 1 shall remain the property of the Lessor, no matter where located, until such time as a Capital Improvement constituting a replacement of such property shall have been installed in Unit 1 or such removed property has been disposed of by the Operating Agent in accordance with the ANPP Participation Agreement. Simultaneously with such disposition by the Operating Agent, title to the Lessor's undivided interest in the removed property shall vest in the Person designated by the Operating Agent, free and clear of any and all claims or rights of the Lessor. Unless subparagraph (3) of Section 8(e) shall be applicable, upon the incorporation of a Capital Improvement in Unit 1, without further act, (i) title to an undivided interest equal to the Undivided Interest Percentage in such Capital Improvement shall vest in the Lessor and (ii) such undivided interest in such Capital Improvement shall become subject to this Facility Lease and be deemed to be part of the Undivided Interest for all purposes hereof to the same extent that the Lessor had an undivided interest in the property originally incorporated or installed in Unit 1. The Lessee warrants and agrees that the Lessor's interest in all Capital Improvements shall be free and clear of all Liens, except Permitted Liens other than the type specified in clauses (ii), (iii) and (xii) of the definition thereof.

(d) Reports. To the extent permissible, the Lessee shall prepare and file in timely fashion, or, where the Lessor shall be required to file, the Lessee shall prepare and deliver to the Lessor within a reasonable time prior to the date for filing, any reports with respect to Unit 1, the Undivided Interest or the Real Property Interest or the condition or operation thereof that shall be required to be filed with any governmental

or regulatory authority. On or before March 1 of each year and on the Lease Termination Date, the Lessee shall furnish the Lessor and the Owner Participant with a report stating the total cost of all Capital Improvements and describing separately and in reasonable detail each Capital Improvement (or related group of Capital Improvements) made during the period from the date hereof to December 31, 1986 in the case of the first such report or during the period from the end of the period covered by the last previous report to the December 31 prior to such report in the case of subsequent reports. On or before March 1 in each year (commencing March 1, 1986) and at such other times as the Lessor or the Owner Participant shall reasonably request in writing (which request shall provide a reasonable period for response), the Lessee will report in writing to the Lessor with respect to (i) the most recent annual capital expenditure budget submitted by the Operating Agent to the Lessee in accordance with the ANPP Participation Agreement and (ii) the then plans (if any) which the Lessee may have for the financing of the same under Section 8(f).

(e) **Title to Capital Improvements.** Title to an undivided interest, equal to the Undivided Interest Percentage, in each Capital Improvement to Unit 1 shall vest as follows:

(1) in the case of each Nonseverable Capital Improvement, whether or not the Lessor shall have financed or provided financing (in whole or in part) for such undivided interest in such Capital Improvement by an Additional Equity Investment or a Supplemental Financing, or both, effective on the date such Capital Improvement shall have been incorporated or installed in Unit 1, the Lessor shall, without further act, acquire title to such undivided interest in such Capital Improvement;

(2) in the case of each Severable Capital Improvement, if the Lessor shall have financed (by an Additional Equity Investment or a

Supplemental Financing, or both) the Undivided Interest Percentage of the cost of such Capital Improvement, the Lessor shall, without further act, acquire title to such undivided interest in such Capital Improvement; and

(3) in the case of each Severable Capital Improvement, if the Lessor shall not have financed (by either an Additional Equity Investment or a Supplemental Financing, or both) the Undivided Interest Percentage of the cost of such Capital Improvement, the Lessee shall retain title to such undivided interest.

Immediately upon title to such undivided interest in any Capital Improvement vesting in the Lessor pursuant to sub-paragraph (1) or sub-paragraph (2) of this Section 8(e), such undivided interest in such Capital Improvement shall, without further act, become subject to this Facility Lease and be deemed part of the Undivided Interest and Unit 1 for all purposes hereof.

(f) Funding of the Cost of Capital Improvements. Before placing in service any Capital Improvement to Unit 1 the cost of which exceeds \$100,000,000 in respect of the interests of all ANPP Participants, the Lessee shall give the Lessor and the Owner Participant reasonable advance notice thereof. The Owner Participant shall have the option, in its sole discretion, of financing through the Lessor the cost of any such Capital Improvement, or any other Capital Improvement presented to the Owner Participant for financing, including or not including the making of an investment by the Owner Participant (an Additional Equity Investment) and the issuance of one or more Additional Notes, all on terms acceptable to the Lessee and the Owner Participant. If the Owner Participant does not finance, or arrange the financing of, the cost of such Capital Improvement, the Lessee may cause the Lessor to issue, if and to the extent permitted by the Indenture, to one or more Persons (other than any Person

affiliated with the Lessee within the meaning of Section 318 of the Code) one or more Additional Notes and to use the proceeds thereof to pay the cost of such Capital Improvement, subject to satisfaction of the following conditions:

(i) there shall be no more than one Supplemental Financing in any calendar year;

(ii) the sum of the Supplemental Financing Amounts in any calendar year shall equal or exceed the Undivided Interest Percentage of \$5,000,000;

(iii) the Lessee may include in any request for a Supplemental Financing only Capital Improvements not previously financed in any Supplemental Financing and which have been installed or affixed no earlier than three calendar years before the beginning of the calendar year in which such Supplemental Financing occurs;

(iv) the total amount of all Supplemental Financings during the Basic Lease Term shall not exceed the Undivided Interest Percentage of \$100,000,000;

(v) unless waived by the Owner Participant, the Bonds issued and outstanding under the Collateral Trust Indenture shall be rated no less than "investment grade", as determined by Standard & Poor's Corporation and Moody's Investors Service, Inc.;

(vi) the Supplemental Financing Amount shall not exceed that portion of the cost of Capital Improvements which, when financed, will constitute an addition to the Owner Participant's basis under section 1012 of the Code;

(vii) in the opinion of independent tax counsel to the Owner Participant, such Supplemental Financing shall not result in adverse tax consequences to the Owner Participant or adversely affect the status of this Facility Lease as a "true lease" for Federal tax purposes, and the Owner Participant and the Lessor shall have agreed upon the amount and manner of payment of any indemnity (if any) payable by the Lessee as a consequence of such Supplemental Financing;

(viii) the Additional Notes shall have a final maturity date no later than January 15, 2015;

(ix) the Lessee shall have made such representations, warranties and covenants regarding the tax characteristics of each undivided interest in each Capital Improvement as the Owner Participant requests and the Tax Indemnification Agreement shall have been appropriately modified;

(x) appropriate adjustments to Basic Rent and the schedules of Casualty Values, Special Casualty Values and Termination Values shall have been agreed to by the Owner Participant;

(xi) the Lessee shall pay to the Lessor an amount equal to all out-of-pocket costs and expenses reasonably incurred by the Lessor or the Owner Participant not financed as a part of such Supplemental Financing or reflected in adjustments to Basic Rent;

(xii) no Default or Event of Default shall have occurred and be continuing; and

(xiii) the Lessee shall enter into such agreements and shall provide such tax indemnities, representations, warranties, covenants, opinions, certificates and other

documents as the Owner Participant shall reasonably request.

(g) Useful Life. If the Lessee shall not theretofore have exercised its option under Section 13 to purchase the Undivided Interest and the Real Property Interest, then (i) if the Lessee shall not theretofore have exercised its option to renew the Lease pursuant to Section 12, on January 15, 2014, the Lessee shall initiate the Appraisal Procedure to determine the remaining economic useful life of Unit 1 as of July 15, 2014 and (ii) on the Rent Payment Date occurring one year prior to the end of the Renewal Term, if any, the Lessee shall initiate the Appraisal Procedure to determine the remaining economic useful life of Unit 1 as of the date six months prior to the end of the Renewal Term. The Lessee and the Lessor agree to use their best efforts to ensure that such determination of remaining economic useful life is made no later than July 15, 2014 (in the case of the first such determination) and six months prior to the end of the Renewal Term (in the case of the second such determination).

#### SECTION 9. Event of Loss; ~~Deemed~~ Loss Event.

(a) Damage or Loss. In the event that Section 16.2 of the ANPP Participation Agreement (as in effect on the date hereof) shall become applicable, or an Event of Loss, a Requisition of Use or a Requisition of Title shall occur, or Unit 1 or any substantial part thereof shall suffer destruction, damage, loss, condemnation, confiscation, theft or seizure for any reason whatsoever, such fact shall promptly, and in any case within five Business Days of any such event, be reported by the Lessee to the Lessor and the Owner Participant.

(b) Repair. The Lessee shall promptly make any and all payments required of the Lessee under the provisions of the ANPP Participation Agreement relating to damage or destruction or the like to Unit 1 or any portion thereof; provided, however, that the Lessee shall in no event be obligated to make or join in any agreement under Section 16.2 of the ANPP Participation

Agreement. (as in effect on the date hereof) concerning repairs to or reconstruction of Unit 1.

(c) Payment of Casualty Value. On the Basic Rent Payment Date next following the occurrence of an Event of Loss, the Lessee shall pay to the Lessor all Basic Rent due on such Basic Rent Payment Date, plus an amount equal to the excess of (i) Casualty Value determined as of such Basic Rent Payment Date over (ii) the unpaid principal amount of the Notes Outstanding on such date after giving effect to the payment, if any, of the principal installment due and payable on such date. Upon compliance in full by the Lessee with the foregoing provisions of this Section 9(c) and assumption by the Lessee of all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall (so long as no Default or Event of Default shall have occurred and be continuing), and at any time after the occurrence of an Event of Loss, the Lessor may:

(1) in the case of an Event of Loss arising from a Final Shutdown, if the Lessee shall have declined, but one or more of the other ANPP Participants shall have elected, to reconstruct or restore Unit 1, as permitted by the ANPP Participation Agreement, Transfer the Undivided Interest and the Real Property Interest to such electing ANPP Participants, as required by and in the proportions set forth in the ANPP Participation Agreement, in which case the Lessee shall be entitled to receive the portion of the "salvage value" purchase price allocable to the Undivided Interest; or

(2) if clause (1) shall not be applicable, Transfer the Undivided Interest and the Real Property Interest to the Lessee.

If the Lessee shall not have assumed all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes in accordance with Section 3.9(b) of the Indenture, but shall have paid all amounts required by



this Section 9(c), the Lessor shall retain the Undivided Interest and the Real Property Interest subject to the terms of this Facility Lease and Section 7(b)(4) of the Participation Agreement; provided, however, that (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount on each Basic Rent Payment Date equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

(d) Payment of Special Casualty Value. If a Deemed Loss Event occurs, the party hereto having knowledge thereof shall promptly notify the other thereof and, at the Lessor's option, on the day of the month (specified in Schedule 4) next following the month during which the Deemed Loss Event occurs, the Lessee shall pay to the Lessor on such day an amount equal to the excess of (i) Special Casualty Value determined as of the date such payment is due over (ii) the principal amount of the Notes Outstanding on such date after giving effect to the payment, if any, of the principal instalment due and payable on such day. Upon compliance in full by the Lessee with the foregoing provisions of this Section 9(d) and assumption by the Lessee of all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall (so long as no Default or Event of Default shall have occurred and be continuing), and at any time after the occurrence of a Deemed Loss Event, the Lessor may, Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall not have assumed all the liabilities and obligations of the Owner Trustee under the Indenture and the Notes in accordance with Section 3.9(b) of the Indenture but shall have paid all amounts required by this Section 9(d), the Lessor shall retain the Undivided Interest and the Real Property Interest subject to the terms of this Facility Lease and Section 7(b)(4) of the Participation Agreement; provided, however, that (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount on each Basic Rent Payment Date equal to the

aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes Outstanding and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

(e) Requisition of Use. In the case of a Requisition of Use not constituting an Event of Loss, this Facility Lease shall continue, and each and every obligation of the Lessee hereunder and under each Transaction Document shall remain in full force and effect. So long as no Default or Event of Default shall have occurred and be continuing, the Lessee shall be entitled to all sums received by reason of any such Requisition of Use for the period ending on the Lease Termination Date, and the Lessor shall be entitled to all sums received by reason of any such Requisition of Use for the period after the Lease Termination Date.

(f) Termination of Obligation. Until the Lessee shall have made the payments specified in Section 9(c) or 9(d), the Lessee shall make all payments of Rent when due; and the Lessee shall thereafter be required to make all payments of Supplemental Rent as and when due. In the event that the Lessee shall assume all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, upon payment by the Lessee of the payments specified in Section 9(c) or 9(d) and all Rent due and owing through and including the date of payment (including Basic Rent due on or accrued through such date, as the case may be), the Lease Term shall end and the Lessee's obligation to pay further Basic Rent shall cease.

(g) Application of Payments on an Event of Loss. Any payments receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) at any time by the Lessor or the Lessee (other than insurance placed by the Owner Trustee or the Owner Participant pursuant to Section 10(b)) from any governmental authority, insurer or other Person (except the Lessee) as a result of the occurrence of an Event of Loss shall be applied as follows:

(i) all such payments received at any time by the Lessee shall be promptly paid to the Lessor for application pursuant to the following provisions of this Section 9(g), except that the Lessee may retain any amounts that would at the time be payable to the Lessee as reimbursement under the provisions of clause (ii) below;

(ii) so much of such payments as shall not exceed the amount required to be paid by the Lessee pursuant to Section 9(c) (ignoring, for this purpose, clause (ii) of the first sentence thereof) shall be applied in reduction of the Lessee's obligation to pay such amount if not already paid by the Lessee or, if already paid by the Lessee, shall be applied to reimburse the Lessee for its payment of such amount; and

(iii) the balance, if any, of such payments remaining thereafter shall be divided between the Lessor and the Lessee as their interests may appear.

(h) Application of Payments Not Relating to an Event of Loss. Payments receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) at any time by the Lessor (other than insurance placed by the Owner Trustee or the Owner Participant pursuant to Section 10(b)) or the Lessee from any Governmental Authority, insurer or other Person with respect to any destruction, damage, loss, condemnation, confiscation, theft or seizure of or Requisition of Title to or Requisition of Use of Unit 1 or any part thereof not constituting an Event of Loss shall be applied first to reimburse the Lessee for all amounts expended in respect of the repair, replacement or reconstruction of Unit 1 or any part thereof as provided in Section 9(b), and second the balance, if any, of such payments shall be divided between the Lessor and the Lessee as their interests may appear.

(i) Other Dispositions. Notwithstanding the foregoing provisions of this Section 9, so long as a Default or Event of Default shall have occurred and be continuing, any amount that would otherwise be payable to or for the account of, or that would otherwise be retained by, the Lessee pursuant to Section 10 or this Section 9 shall be paid to the Lessor as security for the obligations of the Lessee under this Facility Lease and, at such time thereafter as no Default or Event of Default shall be continuing, such amount shall be paid promptly to the Lessee unless this Facility Lease shall have theretofore been declared to be in default, in which event such amount shall be disposed of in accordance with the provisions hereof, of the Indenture and of the Trust Agreement.

(j) Assumption of Notes; Creation of Lien on Undivided Interest. In connection with an Event of Loss, a Deemed Loss Event or the exercise of the Cure Option, (i) the Lessee agrees to use its best efforts to comply with the conditions respecting its assumption of all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes set forth in Section 3.9(b) of the Indenture, and (ii) the Lessor agrees that, if the Lessee fails to assume all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes in accordance with Section 3.9(b) of the Indenture, not later than two Business Days prior to the date on which the Lessee is to acquire the Owner Participant's interest in the Trust Estate pursuant to Section 7(b)(4) of the Participation Agreement, the Lessor will cause the Undivided Interest and the Real Property Interest to be subjected to the Lien of the Indenture by executing and delivering to the Indenture Trustee the Undivided Interest Indenture Supplement.

#### SECTION 10. Insurance.

(a) Required Insurance. The Lessee will use its best efforts to cause the Operating Agent to carry and maintain insurance required under the ANPP Participation Agreement and will make all payments required of the Lessee under the ANPP Participation

Agreement in respect of such insurance. The Lessee will at all times maintain, directly or through the Operating Agent, policies of casualty and liability insurance with respect to the Undivided Interest and the Real Property Interest in such amounts and with such coverage as shall be adequate in accordance with prudent utility practice. Any policies of insurance in respect of destruction, damage, loss, theft or other casualty to the Undivided Interest, the Real Property Interest, Unit 1 or any part thereof shall name the Lessor (and, to the extent practicable, the Owner Participant) as additional insured, as its interests may appear, and any policies with respect to nuclear liability insurance shall include all Indemnitees as additional insureds; provided, however, that if the Operating Agent, as trustee, shall become the loss payee under any policy of insurance constituting Project Insurance, then the Lessor and the Owner Participant shall be and be made beneficiaries of the trust arrangement under which the Operating Agent acts as trustee. The Lessee shall, on or before March 1 of each year, commencing March 1, 1986, furnish to the Lessor and the Owner Participant (A) a certificate signed by an independent insurance broker showing the insurance then maintained under the ANPP Participation Agreement and hereunder, stating that all premiums then due have been paid and stating that the insurance then carried and maintained under the ANPP Participation Agreement and hereunder is in accordance with the terms of the ANPP Participation Agreement and this Section 10, and (B) upon the request of the Lessor or the Owner Participant, copies (to the extent permitted by the issuers of such policies) of policies so maintained. All insurance proceeds paid in respect of damage, destruction, loss, theft or other casualty to the Undivided Interest or the Real Property Interest shall be applied as provided in Section 9(g) (h) or (i), as the case may be.

(b) Permitted Insurance. Nothing in this Section 10 shall prohibit the Lessee from placing, at its expense, insurance on or with respect to the cost of purchasing replacement power, naming the Lessee as insured and/or loss payee, unless such insurance would

conflict with or otherwise limit the availability of insurance to be provided or maintained in accordance with Section 10(a). Nothing in this Section 10 shall prohibit the Lessor or the Owner Participant from placing at its expense other insurance on or with respect to Unit 1, the Undivided Interest or the Real Property Interest or the operation of Unit 1, naming the Lessor or the Owner Participant as insured and/or loss payee, unless such insurance would conflict with or otherwise limit the insurance to be provided or maintained in accordance with Section 10(a).

#### SECTION 11. Rights to Assign or Sublease.

(a) Assignment or Sublease by the Lessee. Without the prior written consent of the Lessor, the Lessee shall not assign, sublease, transfer or encumber (except for Permitted Liens) its leasehold interest in the Undivided Interest or the Real Property Interest under this Facility Lease. The Lessee shall not, without the prior written consent of the Lessor and the Owner Participant, part with the possession of, or suffer or allow to pass out of its possession, the Undivided Interest, the Real Property Interest or any interest therein, except to the extent required pursuant to the ANPP Participation Agreement or expressly permitted by the provisions of this Facility Lease or any other Transaction Document.

(b) Assignment by Lessor as Security for Lessor's Obligations. To secure the indebtedness evidenced by the Notes, the Lessor will assign to the Indenture Trustee its right, title and interest to receive certain payments of Rent (not including, in any event, Excepted Payments), to the extent provided in the Indenture and may assign to the Indenture Trustee its right, title and interest in the Undivided Interest and the Real Property Interest as contemplated by Section 9(j). The Lessee hereby (a) consents to such assignment pursuant to the terms of the Indenture, (b) agrees to pay directly to the Indenture Trustee at the Indenture Trustee's Office (so long as the lien of the Indenture has not been satisfied and discharged and

the Lessor is obligated thereunder) all amounts of Rent (other than Excepted Payments) due or to become due to the Lessor that shall be required to be paid to the Indenture Trustee pursuant to the Indenture, (c) agrees that the right of the Indenture Trustee to any such payments shall be absolute and unconditional and shall not be affected by any circumstances whatsoever, including, without limitation, those circumstances set forth in Section 4 and (d) agrees that, to the extent provided in the Indenture and until the Indenture is discharged in accordance with its terms, the Indenture Trustee shall have all the rights of the Lessor hereunder with respect to Assigned Payments as if the Indenture Trustee had originally been named herein as the Lessor.

#### SECTION 12. Lease Renewal.

Subject to the notice requirements set forth in Section 13(a), at the end of the Basic Lease Term provided that no Default, Event of Default, Event of Loss or Deemed Loss Event shall have occurred and be continuing and the Notes shall have been paid in full, the Lessee shall have the right to renew the term of this Facility Lease for a period commencing January 15, 2015, and ending on the later of January 15, 2017 and the end of the Maximum Option Period (the Renewal Term), during which the Basic Rent payable shall be the rental provided in Section 3(a)(iii) and Section 21.

#### SECTION 13. Notices for Renewal or Purchase; Purchase Options.

(a) Notice; Determination of Values; Appraisal Procedure. Not later than three years nor earlier than five years prior to the expiration date of the Basic Lease Term, and not later than three years nor earlier than five years prior to the expiration date of the Renewal Term, as the case may be, the Lessee shall give to the Lessor written notice of its election either to (A) return the Undivided Interest and the Real Property Interest to the Lessor pursuant to Section 5, or (B) exercise the renewal option permitted by Section 12 (in the case of the notice delivered in respect of the

expiration date of the Basic Lease Term) or the purchase option permitted by Section 13(b). If the notice specified in clause (B) of the preceding sentence is given three years prior to the expiration of the Basic Lease Term, then not later than two years prior to the expiration date of the Basic Lease Term, the Lessee will give the Lessor written notice of its election either to exercise the renewal option permitted by Section 12 or the purchase option permitted by Section 13(b). Any such election shall be irrevocable as to the Lessee, but no such election shall be binding on the Lessor if, on the effective date thereof, a Default or an Event of Default shall have occurred and be continuing or an Event of Loss or a Deemed Loss Event shall have occurred. Promptly after giving notice, (i) in case the renewal option has been elected, the Maximum Option Period shall be determined by the Appraisal Procedure, or (ii) in case the purchase option permitted by Section 13(b) has been elected, the Lessee and the Owner Participant shall agree upon the Fair Market Sales Value of the Undivided Interest and the Real Property Interest, or, if within three months after the date of the Lessee's notice the Lessee and the Owner Participant shall be unable so to agree, such value shall be determined by the Appraisal Procedure.

(b) Purchase Option at Expiration of the Lease Term. Subject to the notice requirements set forth in Section 13(a), unless a Default or an Event of Default shall have occurred and be continuing or an Event of Loss or Deemed Loss Event shall have occurred, on the date of the expiration of the Basic Lease Term or the Renewal Term (if elected), the Lessee shall have the right to purchase the Undivided Interest and the Real Property Interest for a purchase price equal to the Fair Market Sales Value thereof.

(c) Special Purchase Option. Upon 30 days' prior written notice to the Lessor, unless a Default or an Event of Default shall have occurred or be continuing or an Event of Loss or Deemed Loss Event shall have occurred, if the Lessee shall determine that upon a refunding of the Initial Series Note (and the



Releveraging Note, if theretofore issued) such refunding would violate any limitation then imposed by the NMPSC, the Lessee shall have the right to purchase the Undivided Interest and the Real Property Interest for a purchase price equal to the greater of (i) the Fair Market Sales Value thereof and (ii) Casualty Value as of the Basic Rent Payment Date first preceding the date of such purchase (or as of the date of such purchase, if such date shall be a Basic Rent Payment Date) plus, if such date shall not be a Basic Rent Payment Date, a pro-ration of Basic Rent to the date of purchase.

(d) Purchase of the Undivided Interest; Payment, Etc. If the Lessee shall have elected to purchase the Undivided Interest and the Real Property Interest pursuant to Section 13(b) or Section 13(c), payment by the Lessee of the purchase price for the Undivided Interest and the Real Property Interest shall be made in immediately available funds, whereupon the Lessor shall Transfer the Undivided Interest and the Real Property Interest to the Lessee.

#### SECTION 14. Termination for Obsolescence.

(a) Termination Notice. Notwithstanding any provision herein contained to the contrary, unless a Default or an Event of Default shall have occurred and be continuing or an Event of Loss or a Deemed Loss Event shall have occurred, the Lessee shall have the option (provided that the Lessee shall have delivered to the Lessor an Officers' Certificate to the effect that the Lessee's Board of Directors has adopted and there is in effect a resolution determining that Unit 1 is (A) uneconomic to the Lessee or (B) economically obsolete for any reason; and provided that the Lessee shall be disposing of all its other leased interests in Unit 1, on at least 360 days' prior written notice (a Termination Notice) to the Lessor, the Owner Participant and the Indenture Trustee (which notice shall be irrevocable)) to terminate this Facility Lease on any Basic Rent Payment Date after January 15, 1998, and prior to January 15, 2012 (the Termination Date). If the Lessee shall give the Lessor a Termination Notice, the Lessee shall, as agent for the Lessor, use its best efforts to obtain cash bids for the purchase of the

Undivided Interest and the Real Property Interest, together with the interest of the Lessor under the Assignment and Assumption. The Lessor shall also have the right to obtain such cash bids, either directly or through agents other than the Lessee. The Lessee shall certify to the Lessor within ten days after the Lessee's receipt of each bid (and, in any event, prior to the Termination Date) the amount and terms thereof and the name and address of the party (which shall not be the Lessee or any Affiliate of the Lessee) submitting such bid.

(b) Right of Lessor to Retain Undivided Interest upon Termination. The Lessor may elect to retain, rather than sell, the Undivided Interest and the Real Property Interest by giving notice to the Lessee and the Indenture Trustee prior to the Termination Date. It shall be a condition precedent to the Lessor's right to retain the Undivided Interest and the Real Property Interest that on or prior to the Termination Date the Lessor shall have paid (or made provision for payment) to the Indenture Trustee, the unpaid principal amount of all Notes Outstanding on such date and all premium, if any, and interest accrued and unpaid on the date of payment. If the Lessor elects to retain the Undivided Interest and the Real Property Interest pursuant to this Section 14(b), the Lessee shall pay to the Lessor on the Termination Date the Basic Rent and any other Rent due or accrued, as the case may be, to and including the Termination Date, together with an amount equal to the excess, if any, of the Termination Value as of the Termination Date over the highest bona fide offer received pursuant to Section 14(a).

(c) Events on the Termination Date. If the Lessor has not elected to retain the Undivided Interest and the Real Property Interest as provided in Section 14(b), on the Termination Date the Lessor shall (upon receipt of the sale price and all additional payments specified in the next sentence) Transfer the Undivided Interest and the Real Property Interest for cash to the bidder (which shall not be the Lessee or an Affiliate of the Lessee) that shall have submitted the

highest bid on or before the Termination Date. The total sale price realized at such sale shall be retained by the Lessor (subject, however, to the terms of the Indenture and the requirement that there shall have been paid, or provision for payment made, to the Indenture Trustee the unpaid principal amount of all Notes Outstanding on the Termination Date and all premium, if any, and interest accrued and unpaid on the date of payment) and, in addition, on the Termination Date the Lessee shall pay to the Lessor (A) the excess, if any, of the Termination Value as of the Termination Date over the net sale price of the Undivided Interest and the Real Property Interest and (B) any Basic Rent due or accrued, as the case may be, to and including the Termination Date and shall pay to the Person or Persons entitled thereto all Supplemental Rent (other than Termination Value). Upon compliance by the Lessee with the applicable provisions of this Section 14, the obligation of the Lessee to pay Basic Rent due hereunder for any period after the Termination Date shall cease and the Basic Lease Term shall end on the Termination Date; provided, however, that, in the event of termination of this Facility Lease pursuant to this Section 14, the obligations of the Lessee under the ANPP Participation Agreement (except as therein expressly provided) and the Assignment and Assumption shall continue in full force and effect and shall not be impaired by reason of any such termination. If, other than as a result of the Lessor's election to retain the Undivided Interest and the Real Property Interest as provided in Section 14(b), on or as of the Termination Date no such sale shall occur or the Lessee shall not have complied in full with this Section 14, this Facility Lease shall continue in full force and effect in accordance with its terms without prejudice to the Lessee's right to exercise its rights under this Section 14 thereafter, except that the Lessee shall not be entitled to deliver another Termination Notice during the 3-year period following such Termination Date. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise take any action in connection with any such sale other than, if the Lessor has not elected to retain the Undivided Interest and the

Real Property Interest, to Transfer the Undivided Interest and the Real Property Interest to the purchaser named in the highest bid certified by the Lessee to the Lessor or obtained by the Lessor, against receipt of the payments provided for herein.

(d) Early Termination Notice. In the event that the Lessee shall fail to exercise its renewal option or purchase option within the time limit provided by Section 13(a), the Lessor shall have the option, on any Basic Rent Payment Date thereafter, on at least 120 days prior written notice (an Early Termination Notice) to the Lessee and the Indenture Trustee, to terminate this Facility Lease on the Basic Rent Payment Date specified in such notice (the Early Termination Date). Any Early Termination Notice may be revoked by the Lessor at any time on or prior to the Early Termination Date.

(e) Events on the Early Termination Date. On the Early Termination Date the Lessor shall, at its option, (i) Transfer the Undivided Interest and the Real Property Interest to the bidder (other than the Lessee or any Affiliate of the Lessee) selected by the Lessor or (ii) retain the Undivided Interest and the Real Property Interest. It shall be a condition precedent to the Lessor's right to sell or retain the Undivided Interest and the Real Property Interest that on or prior to the Early Termination Date the Lessor shall have paid (or made provision for payment) to the Indenture Trustee on such date the unpaid principal amount of all Notes Outstanding on such date and all premium, if any, and interest accrued and unpaid on the date of payment. The total sale price realized at any such sale shall be retained by the Lessor and, in addition, on the Early Termination Date the Lessee shall pay to the Lessor any Basic Rent due or accrued, as the case may be, to and including the Early Termination Date, and shall pay to the Person or Persons entitled thereto all Supplemental Rent (other than Termination Value). Upon compliance by the Lessee with the applicable provisions of this Section 14, the obligation of the Lessee to pay Basic Rent due hereunder for any period after the Early Termination Date shall cease and the Lease Term shall

end on the Early Termination Date; provided, however, that in the event of the termination of this Facility Lease pursuant to this Section 14, the obligations of the Lessee under the ANPP Participation Agreement (except as therein expressly provided) and the Assignment and Assumption shall continue in full force and effect and shall not be impaired by reason of any such termination.

#### SECTION 15. Events of Default.

The term Event of Default, wherever used herein, shall mean any of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any Applicable Law or Governmental Action):

(i) the Lessee shall fail to make, or cause to be made, (x) payment of Casualty Value, Termination Value, Special Casualty Value or payment due pursuant to exercise of the Cure Option when due, (y) any payment of Basic Rent within 5 Business Days after the same shall become due or (z) any payment of Supplemental Rent (other than Casualty Value, Termination Value, Special Casualty Value or payment due pursuant to exercise of the Cure Option) within 20 days after the same shall become due or demanded, as the case may be; or

(ii) the Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it under Section 10(b)(3)(i), 10(b)(3)(ii), 10(b)(3)(iii) or 10(b)(3)(v) of the Participation Agreement or Section 7, 10 (other than failure of the Lessee to cause to be delivered the insurance broker's certificate described therein) or 11 of this Facility Lease; or

(iii) the remaining economic useful life of Unit 1, as determined under Section 8(g) (if required thereby to be so determined), shall be less than 5-1/2 years as of July 15, 2014, or less than 3-1/2 years as of the date six months prior to the end of the Renewal Term; or

(iv) the Lessee shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 10(b)(3)(viii) of the Participation Agreement and such failure shall continue for a period of 30 days after there shall have been given to the Lessee by the Lessor or the Owner Participant a notice specifying such failure and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(v) the Lessee shall fail to perform or observe any covenant, condition or agreement (other than those referred to in clauses (i) through (iv) above) to be performed or observed by it under this Facility Lease or any other Transaction Document, and such failure shall continue for a period of 30 days after there shall have been given to the Lessee by the Lessor or the Owner Participant a notice specifying such failure and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(vi) any representation or warranty made by the Lessee in this Facility Lease, any other Transaction Document (other than the Tax Indemnification Agreement) or any agreement, document or certificate delivered by the Lessee in connection herewith or therewith shall prove to have been incorrect in any material respect when any such representation or warranty was made or given and shall remain

material and materially incorrect at the time in question; or

(vii) the Lessee shall commence a voluntary case or other proceeding seeking 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 seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking of possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall take any corporate action to authorize any of the foregoing; or an involuntary case or other proceeding shall be commenced against the Lessee seeking liquidation, reorganization or other relief with respect to it or its 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, and such involuntary case or other proceeding shall remain undismitted or unstayed for a period of 60 consecutive days; or

(viii) final judgment for the payment of money in excess of \$1,000,000 shall be rendered against the Lessee and the Lessee shall not have discharged the same or provided for its discharge in accordance with its terms or bonded the same or procured a stay of execution thereof within 60 days from the entry thereof; or

(ix) (1) a default by the Lessee under the ANPP Participation Agreement in consequence of

which the Lessee's right to receive its Generation Entitlement Share in PVNGS is suspended by the other ANPP Participants, or (2) the giving by any ANPP Participant of a notice under Section 23.2 (or any comparable successor provision) of the ANPP Participation Agreement respecting a default thereunder by the Lessee and the lapse of 20 Business Days from the giving of such notice without the Lessee having cured such default; provided, however, that for purposes of this clause (2) if the Lessee shall have disputed the existence or nature of a default and such dispute shall have become the subject of an arbitration under Section 24 (or any comparable successor provision) of the ANPP Participation Agreement, such 20 Business Day period shall commence on the date of the final determination of the board of arbitrators under such Section 24; or

(x) (1) the Lessee shall fail to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any Debt (which term shall mean (A) indebtedness for borrowed money, (B) obligations as lessee under leases and (C) obligations under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clause (A) or (B) above, in each case if the principal amount (or equivalent) thereof is greater than \$20,000,000) of the Lessee, and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt, but only if the Lessee shall have received notice of such failure or a Responsible Officer of the Lessee shall have actual knowledge of such failure; or (2) any other default under any agreement



or instrument relating to any such Debt, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such Debt, but only if the Lessee shall have received notice of such default or a Responsible Officer of the Lessee shall have actual knowledge of such default.

#### SECTION 16. Remedies.

(a) Remedies. Upon the occurrence of any Event of Default and so long as the same shall be continuing, the Lessor may, at its option, declare this Facility Lease to be in default by written notice to such effect given to the Lessee, and may exercise one or more of the following remedies as the Lessor in its sole discretion shall elect:

(i) the Lessor may, by notice to the Lessee, rescind or terminate this Facility Lease;

(ii) the Lessor may (x) demand that the Lessee, and thereupon the Lessee shall, return possession of the Undivided Interest and the Real Property Interest promptly to the Lessor in the manner and condition required by, and otherwise in accordance with the provisions of, this Facility Lease as if the Undivided Interest and the Real Property Interest were being returned at the end of the Lease Term and the Lessor shall not be liable for the reimbursement of the Lessee for any costs and expenses incurred by the Lessee in connection therewith and (y) enter upon the PVNGS Site and take immediate possession of (to the exclusion of the Lessee) the Undivided Interest and the Real Property Interest, by summary proceedings or otherwise, all without

liability to the Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise;

(iii) the Lessor may sell the Undivided Interest and the Real Property Interest, or any part thereof, together with any interest of the Lessor under the Assignment and Assumption, at public or private sale, as the Lessor may determine, free and clear of any rights of the Lessee in the Undivided Interest and the Real Property Interest and without any duty to account to the Lessee with respect to such action or inaction or any proceeds with respect thereto (except to the extent required by clause (v) or (vi) below if the Lessor shall elect to exercise its rights thereunder), in which event the Lessee's obligation to pay Basic Rent hereunder for periods commencing after the date of such sale shall be terminated or proportionately reduced, as the case may be (except to the extent that Basic Rent is to be included in computations under clause (v) or (vi) below if the Lessor shall elect to exercise its rights thereunder);

(iv) the Lessor may hold, keep idle or lease to others all or any part of the Undivided Interest and the Real Property Interest, as the Lessor in its sole discretion may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect to such action or inaction, except that the Lessee's obligation to pay Basic Rent for periods commencing after the Lessee shall have been deprived of use of the Undivided Interest and the Real Property Interest pursuant to this clause (iv) shall be reduced by the net proceeds, if any, received by the Lessor from

leasing the Undivided Interest and the Real Property Interest to any Person other than the Lessee for the same periods or any portion thereof;

(v) except in the case of an Event of Default specified in clause (iii) of Section 15, the Lessor may, whether or not the Lessor shall have exercised or shall thereafter at any time exercise its rights under clause (i), (ii), (iii) or (iv) above, demand, by written notice to the Lessee specifying a payment date which shall be a Basic Rent Payment Date not earlier than 10 days after the date of such notice, that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the Basic Rent Payment Date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due after the Basic Rent Payment Date specified in such notice), any unpaid Rent due through the Basic Rent Payment Date specified in such notice plus whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the interest rate specified in Section 3(b)(iii) from the Basic Rent Payment Date specified in such notice to the date of actual payment) (and upon receipt of such payment the Lessor shall Transfer to the Lessee the Undivided Interest and the Real Property Interest):

(A) an amount equal to the excess, if any, of Casualty Value, computed as of the Basic Rent Payment Date specified in such notice, over the Fair Market Rental Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 1) until the end of the remaining useful life of Unit 1, after discounting

such Fair Market Rental Value semi-annually to present value as of the Basic Rent Payment Date specified in such notice at a rate of 12% per annum;

(B) an amount equal to the excess, if any, of such Casualty Value over the Fair Market Sales Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 1) as of the Basic Rent Payment Date specified in such notice; or

(C) an amount equal to the excess, if any, of (1) the present value as of the Basic Rent Payment Date specified in such notice of all installments of Basic Rent until the end of the Basic Lease Term or the Renewal Term, as the case may be, discounted semi-annually at a rate of 10% per annum, over (2) the present value as of such Basic Rent Payment Date of the Fair Market Rental Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 1) until the end of the Basic Lease Term or the Renewal Term, as the case may be, discounted semi-annually at a rate of 10% per annum;

(vi) if the Lessor shall have sold all the Undivided Interest and the Real Property Interest pursuant to clause (iii) above, the Lessor, in lieu of exercising its rights under clause (v) above with respect to the Undivided Interest and the Real Property Interest may, if it shall so elect, demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (in lieu of Basic Rent due for periods commencing after the next Basic Rent

Payment Date following the date of such sale), any unpaid Basic Rent due through such Basic Rent Payment Date, plus the amount of any deficiency between the Sale Proceeds and Casualty Value, computed as of such Basic Rent Payment Date, together with interest at the interest rate specified in Section 3(b)(iii) on the amount of such Rent and such deficiency from the date of such sale until the date of actual payment;

(vii) in the case of an Event of Default specified in clause (iii) of Section 15, the Lessor may demand, by written notice of the Lessee specifying a payment date which shall be the last Basic Rent Payment Date of the Lease Term, that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on such Basic Rent Payment Date, as liquidated damages for loss of a bargain and not as a penalty, any unpaid Rent due through such Basic Rent Payment Date plus an amount equal to the Fair Market Sales Value (without regard to the obligations of the Lessee under Section 10(b)(3)(xi) of the Participation Agreement) of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 1) determined as of such Basic Rent Payment Date (together with interest on such amount at the interest rate specified in Section 3(b)(iii) from such Basic Rent Payment Date specified in such notice to the date of actual payment) (and upon receipt of such payment the Lessor shall Transfer to the Lessee the Undivided Interest and the Real Property Interest); or

(viii) the Lessor may exercise any other right or remedy that may be available to it under any Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

(b) No Release. No rescission or termination of this Facility Lease, in whole or in part, or repossession of the Undivided Interest or the Real Property Interest or exercise of any remedy under paragraph (a) of this Section 16 shall, except as specifically provided therein, relieve the Lessee of any of its liabilities and obligations hereunder. In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and other costs and expenses incurred by the Lessor or the Owner Participant by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto. At any sale of the Undivided Interest, the Real Property Interest or any part thereof pursuant to this Section 16, the Owner Participant, the Lessor or the Indenture Trustee may bid for and purchase such property.

(c) Remedies Cumulative. No remedy under paragraph (a) of this Section 16 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy provided under such paragraph (a) or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any Default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default. The failure or delay of the Lessor in exercising any right granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein. To the extent permitted by Applicable Law, the Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Lessor to sell, lease or otherwise use the Undivided Interest or Unit 1 in mitigation of the Lessor's damages as set forth in paragraph (a) of this Section 16 or which may otherwise

limit or modify any of the Lessor's rights and remedies provided in this Section 16.

(d) Exercise of Other Rights or Remedies. In addition to all other rights and remedies provided in this Section 16, the Lessor may exercise any other right or remedy that may be available to it under Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

(e) Special Cure Right of Lessee. In the event a "Notice of Default" is given under Section 15 (iv), the Lessee may, on or prior to the occurrence of an Event of Default resulting therefrom, give written notice to the Lessor stating that the Lessee has elected to exercise the option (the Cure Option) provided in this Section 16(e), which election shall be irrevocable as to the Lessee. Promptly after the giving of such notice, the Lessee and the Owner Participant shall agree upon the Fair Market Sales Value of the Undivided Interest and the Real Property Interest or, if they shall be unable so to agree within one month after the date of the Lessee's notice, such value shall be determined by the Appraisal Procedure. On the Basic Rent Payment Date next following the date that such Fair Market Sales Value shall have been determined, the Lessee shall pay to the Lessor all Rent due on such Basic Rent Payment Date, plus an amount equal to the excess of (i) the greater of such Fair Market Sales Value and the Casualty Value determined as of such Basic Rent Payment Date over (ii) the unpaid principal amount of the Notes Outstanding on such date after giving effect to the payment, if any, of the principal installment due and payable on such date. Upon compliance in full by the Lessee with the foregoing provisions of this paragraph (e) and assumption by the Lessee of all the obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall not have assumed all the obligations and liabilities of the Owner Trustee under

the Indenture and the Notes in accordance with Section 3.9(b) of the Indenture, but shall have paid all amounts required by this paragraph (e), the Lessor shall retain the Undivided Interest and the Real Property Interest subject to the terms of this Facility Lease and Section 7(b)(4) of the Participation Agreement; provided, however, that the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount on each Basic Rent Payment Date equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding and this Facility Lease shall become a security agreement for all purposes of Applicable Law. The Lessee agrees to use its best efforts to comply with the conditions respecting its assumption set forth in Section 3.9(b) of the Indenture and, failing such assumption, agrees to accept a transfer of the Owner Participant's right, title and interest in the Trust Estate pursuant to Section 7(b)(4) of the Participation Agreement.

#### SECTION 17. Notices.

All communications and notices provided for in this Facility Lease shall be in writing and shall be given in person or by means of telex, telecopy, or other wire transmission, or mailed by registered or certified mail, addressed as provided in the Participation Agreement. All such communications and notices given in such manner shall be effective on the date of receipt of such communication or notice.

#### SECTION 18. Successors and Assigns.

This Facility Lease, including all agreements, covenants, indemnities, representations and warranties, shall be binding upon and inure to the benefit of the Lessor and its successors and permitted assigns, and the Lessee and its successors and, to the extent permitted hereby, assigns.



## SECTION 19. Right to Perform for Lessee.

If the Lessee shall fail to make any payment of Rent to be made by it, or shall fail to perform or comply with any of its other agreements contained herein, or fail to make any payment to be made by it under any ANPP Project Agreement, or shall fail to perform or comply with any of its other agreements contained in any ANPP Project Agreement, either the Lessor or the Owner Participant may, but shall not be obligated to, tender such payment, or effect such performance or compliance, and the amount of such payment and the amount of all costs and expenses (including, without limitation, attorneys' and other professionals' fees and expenses) of the Lessor or the Owner Participant, as the case may be, 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 Penalty Rate, shall be deemed Supplemental Rent, payable by the Lessee upon demand. In the event that the Lessor or the Owner Participant shall cure any default by the Lessee under the ANPP Participation Agreement, then (so long as an Event of Default has occurred and is continuing) the Lessor, together with each other Person contributing to such cure, shall be entitled (to the full extent enforceable in accordance with Applicable Law) to receive the Generation Entitlement Share of the Lessee under the ANPP Participation Agreement (not limited to Unit 1), with each contributor to receive a percentage of such Generation Entitlement Share equal to the percentage of the cure contributed thereby.

## SECTION 20. Additional Covenants.

The Lessee agrees to comply with and to pay, as Supplemental Rent, all amounts payable by it under the provisions of Section 13 of the Participation Agreement and under the provisions of the Tax Indemnification Agreement, which provisions are incorporated herein by this reference as fully as if set forth in full at this place. The Lessee agrees to comply with its covenants and agreements set forth in Sections 10(b), 14 and 16 of the Participation Agreement and

Articles III, IV, V and VI of the Assignment and Assumption which covenants and agreements are incorporated herein by this reference as fully as if set forth in full at this place.

**SECTION 21. Lease of Real Property Interest.**

Pursuant to the Deed and the Assignment of Beneficial Interest, the Lessee has sold to the Lessor the Real Property Interest. The Lessor hereby grants to the Lessee a leasehold interest in the Real Property Interest, such leasehold to be coterminous with the lease of the Undivided Interest hereunder and to be at a rent per annum equal to ~~6.25%~~ of the Real Estate Investment payable by the Lessee to the Lessor in arrears in equal semiannual installments on each Basic Rent Payment Date during the Lease Term.

12.42

**SECTION 22. Amendments and Miscellaneous.**

(a) **Amendments in Writing.** The terms of this Facility Lease may not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

(b) **Survival.** (1) All indemnities, representations and warranties contained in this Facility Lease and the other Transaction Documents and the Financing Documents and in any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall survive, and continue in effect following, the execution and delivery of this Facility Lease and the expiration or other termination of this Facility Lease.

(2) The obligations of the Lessee to pay Supplemental Rent and the obligations of the Lessee under Sections 5, 16, 19 and 20 hereof shall survive the expiration or termination of this Facility Lease. The extension of any applicable statute of limitations by the Owner Trustee, the Indenture Trustee, the Lessee, the Owner Participant, the Loan Participant or any

Indemnatee shall not affect such survival. The obligations of the Lessee under Section 20 are expressly made for the benefit of, and shall be enforceable by, any Indemnatee, separately or together, without declaring this Facility Lease to be in default and notwithstanding any assignment by the Lessor of this Facility Lease or any of its rights thereunder or any disposition of all or any part of any interest in the Undivided Interest, the Real Property Interest, Unit 1 or any other property referred to in this Facility Lease or in this Facility Lease or any other Transaction Document or Financing Document. All payments required to be made pursuant to Section 20 shall be made directly to, or as otherwise requested by, the Indemnatee entitled thereto upon written demand by such Indemnatee.

(c) Severability of Provisions. Any provision of this Facility Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(d) True Lease. This Facility Lease shall constitute an agreement of lease and nothing herein or therein shall be construed as conveying to the Lessee any right, title or interest in or to the Undivided Interest or the Real Property Interest, except as lessee only.

(e) Original Lease. The single executed original of this Facility Lease marked "THIS COUNTERPART IS THE ORIGINAL COUNTERPART" and containing the receipt of the Indenture Trustee thereon shall be the "Original" of this Facility Lease. To the extent 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 other than the "Original".

(f) Governing Law. This Facility Lease shall be governed by and construed in accordance with the law of the State of New York, except to the extent that pursuant to the law of the State of Arizona the law of the State of Arizona is mandatorily applicable thereto.

(g) Headings. The division of this Facility Lease into sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Facility Lease.

(h) Concerning the Owner Trustee. FNB is entering into this Facility Lease solely as Owner Trustee under the Trust Agreement and not in its individual capacity. Anything herein to the contrary notwithstanding, all and each of the representations, warranties, undertakings and agreements herein made on the part of the Owner Trustee are made and intended not as personal representations, warranties, undertakings and agreements by or for the purpose or with the intention of binding FNB personally but are made and intended for the purpose of binding only the Trust Estate, and this Facility Lease is executed and delivered by the Owner Trustee solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed hereunder by or shall at any time be enforceable against FNB or any successor in trust or the Owner Participant on account of any representation, warranty, undertaking or agreement hereunder of the Owner Trustee, either expressed or implied, all such personal liability, if any, being expressly waived by the Lessee, except that the Lessee or any Person claiming by, through or under it, making claim hereunder, may look to the Trust Estate for satisfaction of the same and the Owner Trustee or its successor in trust, as applicable, shall be

personally liable for its own gross negligence or willful misconduct. If a successor owner trustee is appointed in accordance with the terms of the Trust Agreement, such successor owner trustee shall, without any further act, succeed to all the rights, duties, immunities and obligations of the Owner Trustee hereunder and the predecessor owner trustee shall be released from all further duties and obligations hereunder.

(i) Disclosure. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is the Owner Participant described in Schedule 1 hereto. The address of the beneficiary is also therein described. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110, Attention of Corporate Trust Division.


(j) Counterpart Execution. This Facility Lease may be executed in any number of counterparts and by each of the parties hereto or thereto on separate counterparts, all such counterparts together constituting but one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused this Facility Lease to be duly executed in New York, New York by an officer thereunto duly authorized.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of December 16, 1985, with Burnham Leasing Corporation


By   
Vice President

PUBLIC SERVICE COMPANY OF NEW  
MEXICO,

By   
Senior Vice President and  
Chief Financial Officer


State of New York       )  
                              ) ss:  
County of New York     )

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by A.J. ROBISON, the Senior Vice President and Chief Financial Officer of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, on behalf of the corporation.

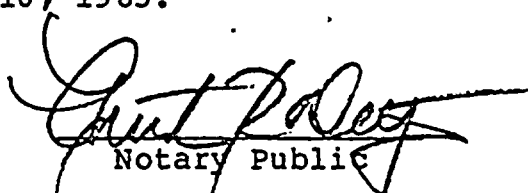
  
Notary Public


CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 4214614

State of New York       )  
                              ) ss:  
County of New York     )

Qualified in New York County  
Commission Expires March 30, 1986 

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by CLARK M. WHITCOMB, a Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association as trustee under that certain Trust Agreement dated as of December 16, 1985.

  
Notary Public

CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 4214614  
Qualified in New York County  
Commission Expires March 30, 1986 

6091.BURNHAM.2898.47A:2





SCHEDULE 1  
to  
LEASE

OWNER PARTICIPANT INFORMATION

1. The Owner Participant is Burnham Leasing Corporation, a New York corporation, whose address is 60 Broad Street, New York, New York 10004, Attention: Chief Financial Officer.

2. The daily equivalent rate is .0242685% of Facility Cost.

3. The assumed interest rate on the Notes utilized in determining the limitations set forth in Section 3(d) is 11.84%.

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SCHEDULE 2  
TO LEASE

BASIC RENT PERCENTAGES

On each Basic Rent Payment Date the percentage of Facility  
Cost is 4.3683233%.



## SCHEDULE OF CASUALTY VALUES

Basic Rent Payment Date	Percentage of Facility Cost	Basic Rent Payment Date	Percentage of Facility Cost
1/15/1986	104.9449929	1/15/2010	45.6329355
7/15/1986	104.9449929	7/15/2010	42.8476191
1/15/1987	106.7906349	1/15/2011	40.2055051
7/15/1987	108.3567602	7/15/2011	37.6968572
1/15/1988	109.6453406	1/15/2012	35.3513537
7/15/1988	110.7459963	7/15/2012	33.1926201
1/15/1989	111.6684070	1/15/2013	31.0385731
7/15/1989	112.4079070	7/15/2013	28.6298750
1/15/1990	112.9478299	1/15/2014	26.0153606
7/15/1990	113.2823292	7/15/2014	23.1718185
1/15/1991	113.3934703	1/15/2015	20.0000000
7/15/1991	113.2872211		
1/15/1992	112.9615662		
7/15/1992	112.4099531		
1/15/1993	111.6146188		
7/15/1993	111.8178282		
1/15/1994	113.2588791		
7/15/1994	115.1747439		
1/15/1995	116.4172103		
7/15/1995	114.9036415		
1/15/1996	112.4507038		
7/15/1996	109.6691084		
1/15/1997	106.9772870		
7/15/1997	103.8909368		
1/15/1998	100.9371133		
7/15/1998	97.5501383		
1/15/1999	95.3829528		
7/15/1999	94.0642048		
1/15/2000	91.7972204		
7/15/2000	90.4161433		
1/15/2001	88.0435117		
7/15/2001	86.6035347		
1/15/2002	84.1210666		
7/15/2002	82.6204585		
1/15/2003	80.0238785		
7/15/2003	78.4609530		
1/15/2004	75.7459084		
7/15/2004	74.1190412		
1/15/2005	71.2811124		
7/15/2005	68.5579027		
1/15/2006	66.2116454		
7/15/2006	63.8258487		
1/15/2007	61.3746389		
7/15/2007	58.8892024		
1/15/2008	56.3361083		
7/15/2008	53.7482788		
1/15/2009	51.0906065		
7/15/2009	48.3977741		



# SCHEDULE OF SPECIAL CASUALTY VALUES

SCHEDULE 4  
to  
LEASE

<u>Payment Date</u>	<u>Percentage of Facility Cost</u>	<u>Payment Date</u>	<u>Percentage of Facility Cost</u>
30 JAN 1986	102.54722	30 DEC 1989	116.00047
30 FEB 1986	103.64809	30 JAN 1990	112.41166
30 MAR 1986	104.75644	30 FEB 1990	113.20695
30 APR 1986	105.85531	30 MAR 1990	114.00891
30 MAY 1986	106.90920	30 APR 1990	114.79379
30 JUN 1986	107.99805	30 MAY 1990	115.55060
30 JUL 1986	104.66690	30 JUN 1990	116.32934
30 AUG 1986	105.70480	30 JUL 1990	112.70049
30 SEP 1986	106.76439	30 AUG 1990	113.45689
30 OCT 1986	107.77067	30 SEP 1990	114.21556
30 NOV 1986	108.81131	30 OCT 1990	114.93740
30 DEC 1986	109.85732	30 NOV 1990	115.66063
30 JAN 1987	106.48278	30 DEC 1990	116.42596
30 FEB 1987	107.47676	30 JAN 1991	112.76362
30 MAR 1987	108.49187	30 FEB 1991	113.48583
30 APR 1987	109.48584	30 MAR 1991	114.20996
30 MAY 1987	110.44763	30 APR 1991	114.91859
30 JUN 1987	111.43881	30 MAY 1991	115.60346
30 JUL 1987	108.01763	30 JUN 1991	116.30691
30 AUG 1987	108.95994	30 JUL 1991	112.60692
30 SEP 1987	109.92276	30 AUG 1991	113.28652
30 OCT 1987	110.83991	30 SEP 1991	113.97163
30 NOV 1987	111.78590	30 OCT 1991	114.62245
30 DEC 1987	112.73605	30 NOV 1991	115.29131
30 JAN 1988	109.27090	30 DEC 1991	115.96152
30 FEB 1988	110.19466	30 JAN 1992	112.22826
30 MAR 1988	111.12455	30 FEB 1992	112.87585
30 APR 1988	112.03624	30 MAR 1992	113.52462
30 MAY 1988	112.92193	30 APR 1992	114.15949
30 JUN 1988	113.83156	30 MAY 1992	114.76960
30 JUL 1988	110.33408	30 JUN 1992	115.39710
30 AUG 1988	111.22450	30 JUL 1992	111.62095
30 SEP 1988	112.11852	30 AUG 1992	112.22479
30 OCT 1988	112.97559	30 SEP 1992	112.82939
30 NOV 1988	113.85615	30 OCT 1992	113.40186
30 DEC 1988	114.74020	30 NOV 1992	113.99113
30 JAN 1989	111.21711	30 DEC 1992	114.58097
30 FEB 1989	112.08135	30 JAN 1993	110.76709
30 MAR 1989	112.94895	30 FEB 1993	111.33238
30 APR 1989	113.80184	30 MAR 1993	111.89806
30 MAY 1989	114.62675	30 APR 1993	112.44941
30 JUN 1989	115.47466	30 MAY 1993	112.97597
30 JUL 1989	111.91523	30 JUN 1993	113.51859
30 AUG 1989	112.74245	30 JUL 1993	109.68773
30 SEP 1989	113.57265	30 AUG 1993	110.22027
30 OCT 1989	114.36596	30 SEP 1993	110.75290
30 NOV 1989	115.18177	30 OCT 1993	111.28561
		30 NOV 1993	111.81840
		30 DEC 1993	112.35127

30 JAN 1994	108.51231
30 FEB 1994	109.03561
30 MAR 1994	109.55900
30 APR 1994	110.08248
30 MAY 1994	110.60604
30 JUN 1994	111.12969
30 JUL 1994	107.28128
30 AUG 1994	107.79490
30 SEP 1994	108.30862
30 OCT 1994	108.82242
30 NOV 1994	109.33632
30 DEC 1994	109.85031
30 JAN 1995	105.99200
30 FEB 1995	106.49549
30 MAR 1995	106.99907
30 APR 1995	107.50275
30 MAY 1995	108.00652
30 JUN 1995	108.51040
30 JUL 1995	104.64171
30 AUG 1995	105.13459
30 SEP 1995	105.62756
30 OCT 1995	106.12063
30 NOV 1995	106.61380
30 DEC 1995	107.10708
30 JAN 1996	103.22754
30 FEB 1996	103.70929
30 MAR 1996	104.19115
30 APR 1996	104.67311
30 MAY 1996	105.15518
30 JUN 1996	105.63736
30 JUL 1996	101.74645
30 AUG 1996	102.21656
30 SEP 1996	102.68678
30 OCT 1996	103.15711
30 NOV 1996	103.62755
30 DEC 1996	104.09811
30 JAN 1997	100.19529
30 FEB 1997	100.65320
30 MAR 1997	101.11123
30 APR 1997	101.56938
30 MAY 1997	102.02764
30 JUN 1997	102.48602
30 JUL 1997	98.57073
30 AUG 1997	99.01587
30 SEP 1997	99.46114
30 OCT 1997	99.90652
30 NOV 1997	100.35203
30 DEC 1997	100.79767
30 JAN 1998	96.86932

30 FEB 1998	97.30108
30 MAR 1998	97.73297
30 APR 1998	98.16499
30 MAY 1998	98.59713
30 JUN 1998	99.02943
30 JUL 1998	95.08740
30 AUG 1998	95.50515
30 SEP 1998	95.92304
30 OCT 1998	96.34107
30 NOV 1998	96.75923
30 DEC 1998	97.17753
30 JAN 1999	93.24199
30 FEB 1999	93.64041
30 MAR 1999	94.04822
30 APR 1999	94.45618
30 MAY 1999	94.88336
30 JUN 1999	95.30138
30 JUL 1999	91.36876
30 AUG 1999	91.75200
30 SEP 1999	92.15473
30 OCT 1999	92.55760
30 NOV 1999	92.96063
30 DEC 1999	93.36381
30 JAN 2000	89.41386
30 FEB 2000	89.79616
30 MAR 2000	90.18837
30 APR 2000	90.58073
30 MAY 2000	90.99331
30 JUN 2000	91.39628
30 JUL 2000	87.44946
30 AUG 2000	87.81585
30 SEP 2000	88.20275
30 OCT 2000	88.58982
30 NOV 2000	88.97705
30 DEC 2000	89.36446
30 JAN 2001	85.39946
30 FEB 2001	85.76492
30 MAR 2001	86.14081
30 APR 2001	86.51687
30 MAY 2001	86.91421
30 JUN 2001	87.30144
30 JUL 2001	83.33981
30 AUG 2001	83.68859
30 SEP 2001	84.05895
30 OCT 2001	84.42950
30 NOV 2001	84.80023
30 DEC 2001	85.17115
30 JAN 2002	81.19045
30 FEB 2002	81.53831



SCHEDULE 4 to  
LEASE

30 MAY 2010	40.44946
30 JUN 2010	40.66889
30 JUL 2010	36.54160
30 AUG 2010	36.75182
30 SEP 2010	36.96306
30 OCT 2010	37.21023
30 NOV 2010	37.44141
30 DEC 2010	37.67386
30 JAN 2011	33.56106
30 FEB 2011	33.78481
30 MAR 2011	34.01011
30 APR 2011	34.25218
30 MAY 2011	34.52503
30 JUN 2011	34.78171
30 JUL 2011	30.69470
30 AUG 2011	30.94344
30 SEP 2011	31.19440
30 OCT 2011	31.48591
30 NOV 2011	31.76102
30 DEC 2011	32.03866
30 JAN 2012	27.97434
30 FEB 2012	28.24479
30 MAR 2012	28.51811
30 APR 2012	28.81105
30 MAY 2012	29.13901
30 JUN 2012	29.45044
30 JUL 2012	25.42895
30 AUG 2012	25.66442
30 SEP 2012	25.94466
30 OCT 2012	26.26950
30 NOV 2012	26.57742
30 DEC 2012	26.88890
30 JAN 2013	22.87848
30 FEB 2013	23.01696
30 MAR 2013	23.25765
30 APR 2013	23.51922
30 MAY 2013	23.81622
30 JUN 2013	24.09586
30 JUL 2013	20.05318
30 AUG 2013	20.15899
30 SEP 2013	20.36659
30 OCT 2013	20.61801
30 NOV 2013	20.85150
30 DEC 2013	21.08759
30 JAN 2014	17.00080
30 FEB 2014	17.06193
30 MAR 2014	17.22429
30 APR 2014	17.40681
30 MAY 2014	17.62360

30 JUN 2014	17.82200
30 JUL 2014	13.69703
30 AUG 2014	13.71950
30 SEP 2014	13.84269
30 OCT 2014	14.00862
30 NOV 2014	14.15552
30 DEC 2014	14.30390
15 JAN 2015	14.45385
30 FEB 2015	10.36392

30 MAR 2002	81.89715
30 APR 2002	82.25618
30 MAY 2002	82.63761
30 JUN 2002	83.00841
30 JUL 2002	79.03131
30 AUG 2002	79.36168
30 SEP 2002	79.71478
30 OCT 2002	80.06807
30 NOV 2002	80.42157
30 DEC 2002	80.77528
30 JAN 2003	76.77818
30 FEB 2003	77.10766
30 MAR 2003	77.44869
30 APR 2003	77.78994
30 MAY 2003	78.15476
30 JUN 2003	78.50841
30 JUL 2003	74.51517
30 AUG 2003	74.82632
30 SEP 2003	75.16138
30 OCT 2003	75.49667
30 NOV 2003	75.83218
30 DEC 2003	76.16792
30 JAN 2004	72.15371
30 FEB 2004	72.46399
30 MAR 2004	72.78644
30 APR 2004	73.10912
30 MAY 2004	73.45662
30 JUN 2004	73.79237
30 JUL 2004	69.78229
30 AUG 2004	70.07337
30 SEP 2004	70.38961
30 OCT 2004	70.70610
30 NOV 2004	71.02284
30 DEC 2004	71.33983
30 JAN 2005	67.30778
30 FEB 2005	67.59802
30 MAR 2005	67.90107
30 APR 2005	68.20439
30 MAY 2005	68.53381
30 JUN 2005	68.85090
30 JUL 2005	64.82101
30 AUG 2005	65.08662
30 SEP 2005	65.37871
30 OCT 2005	65.69764
30 NOV 2005	66.00389
30 DEC 2005	66.31059
30 JAN 2006	62.27094
30 FEB 2006	62.52446
30 MAR 2006	62.80539

30 APR 2006	63.09628
30 MAY 2006	63.41306
30 JUN 2006	63.71494
30 JUL 2006	59.67209
30 AUG 2006	59.90939
30 SEP 2006	60.18114
30 OCT 2006	60.48094
30 NOV 2006	60.76741
30 DEC 2006	61.05437
30 JAN 2007	56.99607
30 FEB 2007	57.22714
30 MAR 2007	57.46705
30 APR 2007	57.73958
30 MAY 2007	58.05516
30 JUN 2007	58.33713
30 JUL 2007	54.27558
30 AUG 2007	54.46990
30 SEP 2007	54.74009
30 OCT 2007	55.01992
30 NOV 2007	55.28580
30 DEC 2007	55.55220
30 JAN 2008	51.47450
30 FEB 2008	51.68218
30 MAR 2008	51.92020
30 APR 2008	52.17150
30 MAY 2008	52.44706
30 JUN 2008	52.70833
30 JUL 2008	48.62731
30 AUG 2008	48.81749
30 SEP 2008	49.04536
30 OCT 2008	49.30450
30 NOV 2008	49.54894
30 DEC 2008	49.79396
30 JAN 2009	45.69606
30 FEB 2009	45.87938
30 MAR 2009	46.09461
30 APR 2009	46.32383
30 MAY 2009	46.57857
30 JUN 2009	46.81831
30 JUL 2009	42.71705
30 AUG 2009	42.68209
30 SEP 2009	43.08677
30 OCT 2009	43.32435
30 NOV 2009	43.54650
30 DEC 2009	43.76927
30 JAN 2010	39.64990
30 FEB 2010	39.81258
30 MAR 2010	40.00605
30 APR 2010	40.21428

**SCHEDULE 5  
to  
LEASE**

**SCHEDULE OF TERMINATION VALUES**

<b>Basic Rent Payment Date</b>	<b>Percentage of Facility Cost</b>	<b>Basic Rent Payment Date</b>	<b>Percentage of Facility Cost</b>
7/15/1986	104.3596781		
1/15/1987	100.1754379	1/15/2010	39.5550496
7/15/1987	107.7101553	7/15/2010	36.4594370
1/15/1988	108.9657244	1/15/2011	33.4921851
7/15/1988	110.0316834	7/15/2011	30.6397490
1/15/1989	110.9176260	1/15/2012	27.9539567
7/15/1989	111.6187962	7/15/2012	25.3966003
1/15/1990	112.1184324	1/15/2013	22.8444777
7/15/1990	112.4105882	7/15/2013	20.0174438
1/15/1991	112.4772241	1/15/2014	16.9632363
7/15/1991	112.3241974	7/15/2014	13.6575533
1/15/1992	111.9493769	1/15/2015	10.0000000
7/15/1992	111.3460882		
1/15/1993	110.4964402		
7/15/1993	110.6425629		
1/15/1994	112.0236126		
7/15/1994	113.8764128		
1/15/1995	115.0525952		
7/15/1995	113.4693583		
1/15/1996	110.9431956		
7/15/1996	108.0846369		
1/15/1997	105.3119231		
7/15/1997	102.1405505		
1/15/1998	99.0973640		
7/15/1998	95.6164637		
1/15/1999	93.3505577		
7/15/1999	91.9280492		
1/15/2000	89.5520069		
7/15/2000	88.0563043		
1/15/2001	85.5631951		
7/15/2001	83.9965897		
1/15/2002	81.3810284		
7/15/2002	79.7405323		
1/15/2003	76.9969225		
7/15/2003	75.2794608		
1/15/2004	72.4019905		
7/15/2004	70.6044053		
1/15/2005	67.5870427		
7/15/2005	64.6752385		
1/15/2006	62.1307583		
7/15/2006	59.5366188		
1/15/2007	56.8664297		
7/15/2007	54.1508341		
1/15/2008	51.3558306		
7/15/2008	48.5137414		
1/15/2009	45.5888287		
7/15/2009	42.6151122		



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**TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND  
ASSIGNMENT OF RENTS**

Dated as of December 16, 1985

between

**THE FIRST NATIONAL BANK OF BOSTON, not  
in its individual capacity, but solely  
as Owner Trustee under a Trust  
Agreement dated as of December 16,  
1985, with BURNHAM LEASING  
CORPORATION**

and

**CHEMICAL BANK,  
as Indenture Trustee**

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**Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities**

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TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS dated as of December 16, 1985, between THE FIRST NATIONAL BANK OF BOSTON, a national banking association (FNB), not in its individual capacity, but solely as trustee (the Owner Trustee) under a Trust Agreement dated as of December 16, 1985 between FNB, whose address is 100 Federal Street, Boston, Massachusetts 02110, with Burnham Leasing Corporation, and CHEMICAL BANK, a New York banking corporation (the Indenture Trustee), whose address is 55 Water Street, New York, New York 10041.

W I T N E S S E T H:

WHEREAS, the Owner Trustee has entered into a Participation Agreement, dated as of December 16, 1985 among the Owner Participant, First PV Funding Corporation, a Delaware corporation, Public Service Company of New Mexico, a New Mexico corporation, and the Indenture Trustee;

WHEREAS, the Owner Trustee, acting on behalf of the Owner Participant, pursuant to the Trust Agreement and the Participation Agreement, intends to purchase the Undivided Interest and the Real Property Interest from Public Service Company of New Mexico and lease the Undivided Interest and the Real Property Interest to Public Service Company of New Mexico pursuant to the Facility Lease;

WHEREAS, in order to finance a portion of the Purchase Price of the Undivided Interest, the Owner Trustee desires to issue its promissory note hereunder with such promissory note to be substantially in the form of Exhibit A hereto;

WHEREAS, in the circumstances contemplated by Sections 2(c) and 2(d) of the Participation Agreement, the Owner Trustee may desire to finance a greater portion of the Purchase Price of the Undivided Interest than the portion financed from the proceeds of the Initial Series Note (but in no event in an amount in excess of 80% of said Purchase Price) and in connection with such releveraging to issue its promissory note (in

connection with Section 2(c) of the Participation Agreement) or to increase the principal amount of the Fixed Rate Note otherwise issuable in connection with a refunding of the Initial Series Note (and the Releveraging Note if theretofore issued);

WHEREAS, in order to finance the Supplemental Financing Amount of Capital Improvements and to refund notes of any series previously issued, the Owner Trustee may desire to issue additional promissory notes hereunder (together with the Releveraging Note and the Fixed Rate Note, the Additional Notes) secured on a pari passu basis with other Notes Outstanding from time to time;

WHEREAS, in order to secure the obligations referred to herein, the Owner Trustee desires to grant to the Indenture Trustee the security interest herein provided and the parties hereto desire that this Indenture be regarded as a "security agreement" and as a "financing statement" for such security agreement under the Uniform Commercial Code;

NOW, THEREFORE, in consideration of the premises, of the acceptance by the Indenture Trustee of the trusts hereby created and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### CONSTRUCTION, GOVERNING LAW, INTERPRETATION AND DEFINITIONS

#### SECTION 1.1. Governing Law.

This Indenture (i) is being executed and delivered in the State of New York, (ii) shall be deemed to be a contract made in such State and (iii) for all purposes shall be construed in accordance with and governed by the laws of the State of New York, except to

the extent to which the laws of the State of Arizona are mandatorily applicable hereto.

SECTION 1.2. Headings and Table of Contents.

The division of this Indenture into articles and sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Indenture.

SECTION 1.3. Definitions; Construction of References.

In this Indenture, unless the context otherwise requires:

(a) the term this Indenture means this instrument together with all exhibits, appendices and schedules hereto as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto pursuant to the provisions hereof;

(b) all references in this instrument to designated Articles, Sections and other subdivisions are to designated Articles, Sections and other subdivisions of this instrument unless otherwise indicated;

(c) all accounting terms not otherwise defined herein shall have the meanings assigned to them in accordance with generally accepted accounting principles; and

(d) capitalized terms used herein which are not otherwise defined herein shall have the meanings set forth in Appendix A hereto, and the rules of construction set forth in Appendix A hereto shall be applicable hereto.

#### SECTION 1.4. Disclosure of Beneficiaries.

Pursuant to Arizona Revised Statutes Section 33-401, (i) the beneficiary of the Trust Agreement is Burnham Leasing Corporation, a New York corporation, whose address is 60 Broad Street, New York, New York 10004, Attention: Chief Financial Officer and (ii) the beneficiary if this Indenture is the Holder of the Notes, First PV Funding Corporation whose address is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 and, by pledge and assignment, Chemical Bank, as trustee under the Collateral Trust Indenture, whose address is 55 Water Street, New York, New York 10041: Attention of Corporate Trustee Administration. Copies of the Trust Agreement and this Indenture are available for inspection at the Indenture Trustee's office.

### ARTICLE II

#### SECURITY

#### SECTION 2.1. Grant of Security Interest; Mortgage.

As security for the due and punctual payment of the principal of and premium, if any, and interest on the Notes according to their respective terms and effect and the performance and observance by the Owner Trustee of all the covenants and agreements made by it or on its behalf in the Notes, the Participation Agreement and this Indenture, the Owner Trustee does by its execution and delivery hereof hereby grant a security interest in and grant, bargain, convey, warrant, assign, transfer, mortgage, pledge and set over unto the Indenture Trustee, and to its successors and assigns in trust, the following (the Lease Indenture Estate):

(1) all right, title and interest of the Owner Trustee in, to and under the Facility Lease to the extent, and only to the extent,

constituting Rent (including, but without limitation, Basic Rent, payments of Casualty Value, Termination Value and Special Casualty Value, and payments under and pursuant to Sections 13(c) and 16 of the Facility Lease) (the Assigned Payments), together with all rights, powers and remedies on the part of the Owner Trustee arising under the Facility Lease to demand, collect or receive the Assigned Payments;

(2) all moneys and securities deposited or required to be deposited with the Indenture Trustee pursuant to any term of this Indenture and held or required to be held by the Indenture Trustee hereunder;

(3) all profits, revenues and other income of all property from time to time subjected to the lien of this Indenture, and all right, title and interest of every nature whatsoever of the Owner Trustee in and to the same and every part thereof;

(4) all right, title and interest of the Owner Trustee in and to any right to restitution from the Lessee in respect of any determination of invalidity of the Facility Lease; and

(5) all proceeds of the foregoing;

but excluding, however, from the Lease Indenture Estate any and all Excepted Payments; and subject, however, to (i) the terms and provisions of this Indenture and (ii) the rights of the Lessee under the Facility Lease.

To the extent that any portion of the Lease Indenture Estate constitutes fixtures or real property, this Indenture constitutes a realty mortgage and an assignment of rents with respect to all such items of real property and in addition to all other rights or remedies set forth in this Indenture, or otherwise available under Applicable Law, the Indenture Trustee shall have all of the rights, remedies and benefits of a

mortgagee of real property under Applicable Law, including, without limitation, the rights and remedies pursuant to Arizona Revised Statutes § 33-702.B and Owner Trustee shall be deemed a mortgagor with respect to such items.

TO HAVE AND TO HOLD all the aforesaid properties, rights and interests unto the Indenture Trustee, its successors and assigns forever, but in trust, nevertheless, for the use and purposes and with the power and authority and subject to the terms and conditions mentioned and set forth in this Indenture.

UPON CONDITION that, unless and until an Indenture Event of Default shall have occurred and be continuing, the Owner Trustee shall be permitted, to the exclusion of the Indenture Trustee, to possess and use the Lease Indenture Estate and exercise all rights with respect thereto and, without limitation of the foregoing, the Owner Trustee may exercise all of its rights under the Facility Lease to the same extent as if its right, title and interest therein had not been assigned to the Indenture Trustee to the extent set forth above, except that the Indenture Trustee shall receive all payments of Assigned Payments and all moneys and securities required to be held by or deposited with the Indenture Trustee hereunder.

It is expressly agreed that, anything herein contained to the contrary notwithstanding, the Owner Trustee shall remain obligated to the Lessee under the Facility Lease to perform all of the Owner Trustee's obligations thereunder in accordance with and pursuant to the terms and provisions thereof, and the Indenture Trustee shall not be required or obligated in any manner, except as expressly provided herein, to perform or fulfill any obligations of the Owner Trustee under the Facility Lease or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to 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 Trustee hereby warrants and represents that it has not assigned or pledged any of its right, title or interest in and to the Lease Indenture Estate to anyone other than the Indenture Trustee.

**SECTION 2.2. Payments Under the Facility Lease.**

The Facility Lease provides that (i) all payments constituting Assigned Payments shall be made to the Indenture Trustee at the Indenture Trustee's Office, (ii) all other payments other than Excepted Payments shall be made to the Lessor at such address as the Lessor may direct by notice in writing to the Lessee, and (iii) all Excepted Payments shall be made to the Person entitled to receive such payments. The Owner Trustee agrees that, so long as any Notes shall be Outstanding hereunder, all payments described in clause (i) above shall be directed to be made to the Indenture Trustee or in accordance with the Indenture Trustee's instruction and that if it should receive any such payments or any proceeds for or with respect to the Lease Indenture Estate or otherwise constituting part of the Lease Indenture Estate, it will promptly forward such payments to the Indenture Trustee or in accordance with the Indenture Trustee's instructions. The Indenture Trustee agrees to apply payments from time to time received by it (from the Lessee, the Owner Trustee or otherwise) with respect to the Lease Indenture Estate in the manner provided in Section 3.11 and Article V hereof.

**SECTION 2.3. Release of Lien on Lease Indenture Estate.**

(a) Upon receiving evidence satisfactory to the Indenture Trustee that (i) it has received, or provision has been made in accordance with paragraph (c) hereof for, full payment of all principal of and premium, if any, and interest on the Notes and any other sums payable to the Indenture Trustee and the Holders of the Notes under this Indenture or the Facility Lease, and (ii) all Trustee's Expenses shall have been paid in full

or provision satisfactory to the Indenture Trustee shall have been made for such payment,

(A) the security interest and all other estate and rights granted by this Indenture shall cease and become null and void and all of the property, rights and interests included in the Lease Indenture Estate shall revert to and revest in the Owner Trustee without any other act or formality whatsoever, and

(B) the Indenture Trustee shall, at the request of the Owner Trustee, execute and deliver to the Owner Trustee such termination statements, releases or other instruments presented to the Indenture Trustee by or at the direction of the Owner Trustee as shall be requisite to evidence the satisfaction and discharge of this Indenture and the lien hereby created with respect to the Lease Indenture Estate, to release or reconvey to the Owner Trustee or as directed by the Owner Trustee all the Lease Indenture Estate, freed and discharged from the provisions herein contained with respect thereto, and to release the Owner Trustee from its covenants herein contained.

(b) Upon receipt by the Indenture Trustee of the Assumption Agreement and other documents and opinions described in Section 3.9(b) hereof, (i) the security interest and all other estate and rights granted by this Indenture by or on behalf of the Owner Trustee shall cease and become null and void and all of the property, rights and interests included in the Lease Indenture Estate shall revert to and revest in the Owner Trustee without any other act or formality whatsoever and (ii) the Indenture Trustee shall, at the request of the Owner Trustee, execute and deliver to the Owner Trustee such termination statements, releases or other instruments presented to the Indenture Trustee by or at the direction of the Owner Trustee as shall be requisite to evidence the satisfaction and discharge of this Indenture as to the Owner Trustee and the lien hereby created with respect to the Lease Indenture Estate, to release or reconvey to the Owner Trustee or as directed by the Owner Trustee all the Lease Indenture Estate,



freed and discharged from the provisions herein contained with respect thereto, and to release the Owner Trustee from its covenants herein contained.

(c) Any Note shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in this Section 2.3(c) if (i) there shall have been deposited with the Indenture Trustee either moneys in an amount which shall be sufficient, or direct obligations of or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America or certificates of an ownership interest in the principal of or interest on obligations of or guaranteed as to principal and interest by the United States of America (Federal Securities), in each case which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys in an amount which shall be sufficient, together with the moneys, if any, deposited with or held by the Indenture Trustee at the same time (such sufficiency to be established by the delivery to the Indenture Trustee of a certificate of an independent public accountant), to pay when due the principal of and premium, if any, and interest due and to become due on said Note on and prior to the redemption date or maturity date thereof, as the case may be, and (ii) in the event said Note does not mature or is not to be redeemed within the next 45 days, the Indenture Trustee shall have been given irrevocable instructions to give, as soon as practicable, a notice to the registered Holder of such Note that the deposit required by subclause (i) above has been made with the Indenture Trustee and that said Note is deemed to have been paid in accordance with this Section 2.3(c) and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of and premium, if any, and interest on said Note. Neither the Federal Securities nor moneys deposited with the Indenture Trustee pursuant to this Section 2.3(c) or principal or interest payments on any such Federal Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment

of the principal of and premium, if any, and interest on said Note; provided, however, that any cash received from such principal or interest payments on such Federal Securities deposited with the Indenture Trustee, shall be reinvested pursuant to Section 8.8 hereof in Federal Securities. At such time as any Note shall be deemed paid as aforesaid, it shall no longer be secured by or entitled to the benefits of the Lease Indenture Estate or this Indenture, except that such Note shall be entitled to the benefits of the portions of the Lease Indenture Estate described in Granting Clauses (2), (3) and (5), to the extent such portions relate to such moneys or Federal Securities deposited with the Indenture Trustee.

(d) So long as any Note as to which this Indenture has been discharged remains unpaid, this Indenture shall continue in effect with respect to such Note solely with respect to rights of registration of transfer, exchange or replacement of such Note, rights to receive payment of the principal thereof and premium, if any, and interest thereon in accordance with the terms of this Indenture from such deposited funds or the proceeds of or interest on such Federal Securities and the correlative rights and responsibilities of the Indenture Trustee; provided, however, that, following such discharge, no claim for payment of principal of or premium, if any, or interest on such Note shall be made against the Owner Trustee or the Lease Indenture Estate other than as provided in this Section; provided, further, that the Owner Trustee, following such discharge, shall be released from any further duties or obligations under this Indenture and, except as expressly provided therein, any other Transaction Document.

#### **SECTION 2.4. Power of Attorney.**

Subject to the other terms of this Indenture, the Owner Trustee hereby appoints the Indenture Trustee the Owner Trustee's attorney-in-fact, irrevocably, with full power of substitution, to collect, ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys due and to become due to

the Owner Trustee under or arising out of the Lease Indenture Estate, to endorse any checks or other instruments or orders in connection therewith, and to take any action (including the filing of financing statements or other documents) or institute any proceedings which the Indenture Trustee may deem to be necessary or appropriate to protect and preserve the interest of the Indenture Trustee in the Lease Indenture Estate.

### ARTICLE III

#### ISSUE, EXECUTION, AUTHENTICATION, FORM AND REGISTRATION OF NOTES

##### SECTION 3.1. Limitation on Notes.

No Notes may be issued under the provisions of, or become secured by, this Indenture except in accordance with the provisions of this Article III. No Note shall be issued in an original principal amount of less than \$25,000.

##### SECTION 3.2. Execution of Notes.

All Notes shall be manually executed on behalf of the Owner Trustee by one of its Responsible Officers. In case any Responsible Officer of the Owner Trustee who shall have executed any of the Notes shall cease to be such a Responsible Officer before such Notes so executed shall have been authenticated by the Indenture Trustee and delivered or disposed of by the Owner Trustee, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who executed such Notes had not ceased to be such a Responsible Officer of the Owner Trustee; and any Note may be executed on behalf of the Owner Trustee by such person as, at the actual time of execution of such Note, shall be a Responsible Officer of the Owner Trustee, although at the date of such Note any such person was not such a Responsible Officer.

**SECTION 3.3. Effect of Certificate of Authentication.**

Only such Notes as shall bear thereon a certificate of authentication substantially in the following form manually executed by the Indenture Trustee shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate of authentication of the Indenture Trustee upon any Note executed by the Owner Trustee shall be conclusive evidence that the Note so authenticated was duly issued, authenticated and delivered under this Indenture:

This Note is one of the series of Notes referred to therein and in the within-mentioned Indenture.

[NAME OF INDENTURE TRUSTEE]  
as Indenture Trustee,

By \_\_\_\_\_  
Authorized Officer

**SECTION 3.4. Creation of the Initial Series Note; Aggregate Principal Amount, Dating and Terms; Prerequisites to Authentication and Delivery of Initial Series Note; Application of Proceeds.**

(a) There is hereby created and established a separate series of Notes of the Owner Trustee designated: "Nonrecourse Promissory Note, Initial Series", which will be substantially in the form of Exhibit A hereto, and is herein referred to as the "Initial Series Note".

(b) Subject to the provisions of Section 3.10 hereof, the aggregate principal amount of the Initial Series Note issued by the Owner Trustee and authenticated and delivered by the Indenture Trustee hereunder shall not exceed the Maximum Principal Amount set forth in Schedule I hereto.

(c) The Initial Series Note, subject to paragraph (e) of this Section 3.4, shall be executed and issued by the Owner Trustee and authenticated and delivered by the Indenture Trustee on the date and to the Person specified by the Owner Trustee in its request and authorization for issuance, shall be dated the date specified by the Owner Trustee in its request and authorization for issuance, and shall be in the form of a registered Note payable to the Person designated in the Owner Trustee's request and authorization for issuance or its registered assigns.

(d) The Initial Series Note shall bear interest on the principal amount thereof from time to time Outstanding from the date thereof until paid at the rates of interest set forth in the form of the Initial Series Note. The principal amount of the Initial Series Note shall be payable as set forth in the Schedule of Principal Payments attached thereto. Installments of interest on and principal of the Initial Series Note shall be due and payable on the dates specified in the form of Initial Series Note.

(e) The Indenture Trustee shall authenticate the Initial Series Note and deliver the Initial Series Note to the Person designated by the Owner Trustee in the request and authorization for issuance in respect of the Initial Series Note in accordance with the provisions of this Section 3.4.

(f) Upon receipt of the proceeds of the Initial Series Note, the Indenture Trustee shall immediately transfer the same to, or pursuant to the direction of, the Owner Trustee, all as set forth in the request and authorization for issuance submitted by the Owner Trustee to the Indenture Trustee.

#### SECTION 3.5. Additional Notes.

(1) Subject to Section 3.6 hereof, Additional Notes of the Owner Trustee may be issued under and secured by this Indenture, at any time or from time to time, in addition to the Initial Series Note and subject to the conditions hereinafter provided in this Section,

for cash in the amount of the original principal amount of such Additional Notes, for the purpose of (i) refunding any previously issued series of Notes, in whole or in part, and/or (ii) providing funds for the payment of all or any portion of the Supplemental Financing Amount relating to Capital Improvements made or installed from time to time pursuant to the Facility Lease and/or (iii) providing funds to be paid to the Owner Trustee in the event of a partial return of the Investment to the Owner Trustee as contemplated by Sections 2(c) and 2(d) of the Participation Agreement; provided, however, that (x) in the case of Notes issued for the purposes set forth in clause (ii) or (iii) of this Section 3.5, no Note shall be issued by the Owner Trustee pursuant to this Section 3.5 unless such Notes may be pledged in accordance with Section 2.15(b) of the Collateral Trust Indenture and serve as the basis for Additional Bonds and (y) in the case of Notes issued for the purposes set forth in clause (i) or (iii) of this Section 3.5, no Note shall be issued by the Owner Trustee pursuant to this Section 3.5 unless Section 2(c) and/or 2(d) of the Participation Agreement shall have been complied with.

(2) Before any Additional Notes shall be issued under the provisions of this Section 3.5, the Owner Trustee shall have received from the Owner Participant, and delivered to the Indenture Trustee not less than 10 nor more than 30 days prior to the proposed date of issuance of such Additional Notes as set forth in the below mentioned request and authorization, a request and authorization to issue Additional Notes, which request and authorization shall include the amount of such Additional Notes, the date of issuance of such Additional Notes and details with respect thereto which are not inconsistent with this Section. Additional Notes shall have a designation so as to distinguish such Additional Notes from the Initial Series Note but otherwise shall be substantially similar in terms to the Initial Series Note, shall specify maturity dates, rank pari passu with all Notes then Outstanding, be dated their respective dates of authentication, bear interest at such rates (which may be fixed or floating) as shall be indicated in the aforementioned request and

authorization, and shall be stated to be payable by their terms not later than the last day of the Basic Term.

(3) Except as to any differences in the maturity dates and amortization schedules of the Additional Notes or the rate or rates of interest thereon and the date or dates such interest is payable or the provisions for redemption with respect thereto, if any, such Additional Notes shall be on a parity with, and shall be entitled to the same benefits and security of this Indenture as, other Notes issued pursuant to the terms hereof.

(4) The terms, conditions and designations of such Additional Notes (which shall be consistent with this Indenture) shall be set forth in an indenture supplemental to this Indenture executed by the Owner Trustee and the Indenture Trustee. Such Additional Notes shall be executed as provided in Section 3.2 and deposited with the Indenture Trustee for authentication, but before such Additional Notes shall be authenticated and delivered by the Indenture Trustee there shall be filed with the Indenture Trustee, in addition to the other documents and certificates required by this Section 3.5, the following, all of which shall be dated as of the date of the supplemental indenture:

(a) a copy of such supplemental indenture (which shall include the form of such series of Notes in respect thereof);

(b) a certificate of a Responsible Officer of the Owner Trustee (i) stating that to the best of his knowledge, no Default or Event of Default or Indenture Event of Default has occurred and is continuing, (ii) stating that the conditions in respect of the issuance of such additional series of Notes contained in this Section 3.5 have been satisfied, (iii) specifying the amount of the costs and expenses relating to the issuance and sale of such additional series of Notes, (iv) stating that payments pursuant to the Facility Lease of Basic Rent, Casualty Value, Special Casualty Value and Termination Value and of amounts in respect of

the exercise of the Cure Option and the Special Purchase Option are sufficient to pay all the Outstanding Notes, after taking into account the issuance of such Additional Notes and any related redemption, and (v), in the case of Notes issued for the purpose set forth in clause (ii) of Section 3.5(1), stating that all conditions to the related Supplemental Financing as set forth in Section 8(f) of the Facility Lease have been satisfied;

(c) such additional documents, certificates and opinions as shall be reasonably requested by, and acceptable to, the Owner Trustee and the Indenture Trustee.

(d) a request and authorization to the Indenture Trustee by or on behalf of the Owner Trustee to authenticate and deliver such Additional Notes to or upon the order of the Person or Persons noted in such request at the address set forth therein, and in such principal amounts as are stated therein, upon payment to the Indenture Trustee, but for the account of the Owner Trustee, of the sum or sums specified in such request and authorization; and

(e) an opinion of counsel to the effect that the conditions precedent required under this Indenture for the issuance of such Additional Notes have been complied with.

When the documents referred to in the foregoing clauses (a) through (e) above shall have been filed with the Indenture Trustee and when the Additional Notes described in the above-mentioned order and authorization shall have been executed and authenticated as required by this Indenture, the Indenture Trustee shall deliver such Additional Notes in the manner described in clause (d) above, but only upon payment to the Indenture Trustee of the sum or sums specified in such request and authorization.



**SECTION 3.6. Security for and Parity of Notes.**

All Notes issued and Outstanding hereunder shall rank on a parity with each other and shall as to each other be secured equally and ratably by this Indenture, without preference, priority or distinction of any thereof over any other by reason of difference in time of issuance or otherwise. The maximum principal amount of Notes Outstanding and secured by this Indenture shall be the Maximum Outstanding Amount set forth in Schedule I hereto.

**SECTION 3.7. Source of Payments Limited.**

All payments to be made by the Owner Trustee under this Indenture or on the Notes shall be made only from the Lease Indenture Estate and the Trust Estate. Each Holder of a Note, by its acceptance of such Note, and the Indenture Trustee agree that they will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to such Holder or the Indenture Trustee as herein provided and that neither the Owner Participant nor, except as expressly provided in this Indenture, the Owner Trustee nor the Indenture Trustee, shall be personally liable to such Holder of a Note or the Indenture Trustee, as the case may be, for any amounts payable hereunder or under such Note; provided, however, that in the event that the Lessee shall assume all the obligations and liabilities of the Owner Trustee hereunder and under the Notes pursuant to Section 3.9(b), then all payments to be made under this Indenture and the Notes shall be made only from payments made by the Lessee under the Notes in accordance with the Assumption Agreement referred to in Section 3.9(b) and each Holder of a Note and the Indenture Trustee agree that in such event they will look solely to the Lessee for such payment. Nothing herein contained shall be interpreted as affecting the duties and obligations of the Indenture Trustee set forth in Section 7.4 hereof.

In furtherance of the foregoing, to the fullest extent permitted by law, each Holder of a Note (and each assignee of such Person), by its acceptance thereof, and the Indenture Trustee agree, as a condition to the Notes being secured under this Indenture, that neither such Holder nor the Indenture Trustee will exercise any statutory right to negate the agreements set forth in this Section 3.7.

#### SECTION 3.8. Place and Medium of Payment.

The principal of and premium, if any, and interest on each Note shall be payable at the Indenture Trustee's Office in immediately available funds in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Notwithstanding the foregoing or any provision in any Note to the contrary, if so requested by the Holder of any Note, by written notice to the Indenture Trustee, all amounts (other than the final payment) payable with respect to such obligation shall be paid by crediting the amount to be distributed to such Holder to an account maintained by such Holder with the Indenture Trustee or by the Indenture Trustee's transferring such amount by wire, with such wire transfer to be initiated by such time as to permit, to the extent practicable, oral confirmation thereof (specifying the wire number) to be given no later than 12:00 noon New York City time on the date scheduled for payment, but only to the extent of funds available for such wire transfer, to such other bank in the United States having wire transfer facilities, including a Federal Reserve Bank, as shall have been specified in such notice, for credit to the account of such Holder maintained at such bank, any such credit or transfer pursuant to this Section 3.8. to be in immediately available funds, without any presentment or surrender of such Note. Final payment of any such Note shall be made only against surrender of such Note at the Indenture Trustee's Office.

**SECTION 3.9. Prepayment of Notes; Assumption by Lessee; Notice of Assumption or Prepayment.**

(a) Notes shall be subject to prepayment (other than through application of the installment payments on such Notes) from time to time only as provided in this Indenture and as otherwise specifically provided, with respect to Notes of a particular series, in such Notes.

(b) In the event of the occurrence of a Deemed Loss Event, Event of Loss or Cure Option, and upon receipt by the Indenture Trustee of the documents listed below, all the obligations and liabilities of the Owner Trustee hereunder and under the Notes shall be assumed by the Lessee and the Owner Trustee shall be released and discharged without further act or formality whatsoever from all obligations and liabilities hereunder and under the Notes:

(1) a duly executed Assumption Agreement substantially in the form of Exhibit B to this Indenture;

(2) an opinion of counsel to the Lessee, addressed to the Indenture Trustee and the Holders of the Outstanding Notes, to the effect that the conditions precedent required by this Indenture for such assumption have been complied with, that the Assumption Agreement has been duly authorized, executed and delivered on behalf of the Lessee, that no Governmental Action is necessary or required in connection therewith (or if any such Governmental Action is necessary or required, that the same has been duly obtained and is in full force and effect), and that the Assumption Agreement is a legal, valid and binding agreement and obligation of the 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);

(3) copies of all Governmental Actions referred to in such opinion;

(4) an indenture supplemental to this Indenture which shall, among other things, confirm the release of the Owner Trustee and the Lease Indenture Estate thereby effected and contain provisions appropriately amending references to the Facility Lease in this Indenture;

(5) a certificate of a Responsible Officer of the Lessee stating that, to the best of his knowledge, (i) the conditions precedent required by this Indenture for such assumption have been complied with, (ii) no Indenture Event of Default has occurred and is continuing, (iii) such assumption is permitted by the provisions of the Lessee's Articles of Incorporation and By-Laws and (iv) the Lessee is not insolvent within the meaning of any applicable preferential transfer, fraudulent conveyance or bankruptcy law; and

(6) a certificate of a Responsible Officer of the Owner Trustee stating that, to the best of his knowledge, no Indenture Event of Default has occurred and is continuing.

(c) Notice of any assumption or prepayment of Notes shall be given as promptly as practicable after the Indenture Trustee is notified thereof, and, in the case of prepayment, in no event less than (i) 30 days before the date fixed for prepayment (provided the Indenture Trustee receives such notification at least three Business Days before such 30th day), in the event of the exercise by the Lessee or the Owner Trustee, as the case may be, of its option to terminate the Facility Lease pursuant to Section 14 thereof or in the event of the exercise by the Lessee of the Cure Option or (ii) one day before the date fixed for prepayment, in the event of the exercise by the Lessee of the Special Purchase Option pursuant to Section 13(c) of the Facility Lease to the registered Holders of the Notes which have been assumed or are to be prepaid (and any

assignee of a registered Holder which has given the Indenture Trustee written notice of such assignment).

(d) If the assumption described in paragraph (b) above has not occurred, then, as required by Section 9(j) of the Facility Lease, not less than 2 Business Days prior to any transfer referred to in Section 7(b)(4) of the Participation Agreement, the Owner Trustee will cause the Undivided Interest and the Real Property Interest to be subjected to the lien of this Indenture by executing and delivering to the Indenture Trustee an Undivided Interest Indenture Supplement substantially in the form of Exhibit C to this Indenture.

#### SECTION 3.10. Mutilated, Destroyed, Lost or Stolen Notes.

If any Note shall become mutilated or shall be destroyed, lost or stolen, the Owner Trustee shall, upon the written request of the Holder of such Note, execute, and the Indenture Trustee shall authenticate and deliver in replacement thereof, a new Note, payable in the same original principal amount and dated the same date and of the same series as the Note so mutilated, destroyed, lost or stolen. The Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal theretofore made on the Note so mutilated, destroyed, lost or stolen and the date to which interest on such old Note has been paid. If the Note being replaced has been mutilated, such Note shall be delivered to the Indenture Trustee who shall then deliver a certificate of destruction of the type required by Section 4.3 hereof. If the Note being replaced has been destroyed, lost or stolen, the Holder of such Note shall furnish to the Lessee, the Owner Trustee and the Indenture Trustee a bond or surety agreement of such Holder as shall be satisfactory to them to save the Lessee, the Owner Trustee, the Indenture Trustee, the Trust Estate and the Lease Indenture Estate harmless from any loss, however remote, including claims for principal of, and premium, if any, and interest on the purportedly destroyed, lost or stolen Note, together with evidence satisfactory to the Lessee, the Owner Trustee and the Indenture Trustee of the destruction,

loss or theft of such Note and of the ownership thereof; provided, however, that if the Holder of such Note is the Collateral Trust Trustee, the unsecured written undertaking of the Collateral Trust Trustee, in its individual capacity, shall be sufficient indemnity for purposes of this Section.

**SECTION 3.11. Allocation of Principal and Interest.**

In the case of each Note, each payment of principal thereof and interest thereon shall be applied, first, to the payment of accrued but unpaid interest on such Note (as well as any interest on overdue principal or, to the extent permitted by law, interest) to the date of such payment, second, to the payment of the principal amount of, and premium, if any, on such Note then due (including any overdue installment of principal) thereunder and third, the balance, if any, remaining thereafter, to the balance of the payment of the principal amount of, and premium, if any, on such Note.

**ARTICLE IV**

**REGISTRATION, TRANSFER, EXCHANGE,  
CANCELLATION AND OWNERSHIP OF  
NOTES**

**SECTION 4.1. Register of Notes.**

The Indenture Trustee on behalf of the Owner Trustee shall maintain at the Indenture Trustee's Office a register for the purpose of registration, and registration of transfer and exchange, of the Notes by series and in which shall be entered the names and addresses of the owners of such Notes and the principal amounts of the Notes owned by them, respectively. For these purposes, the Indenture Trustee is hereby appointed transfer agent and registrar for the Notes.

**SECTION 4.2. Registration of Transfer or Exchange of Notes.**

A Holder of a Note intending to register the transfer of any Outstanding Note held by such Holder (including any transfer in the form of a pledge or assignment) or to exchange any Outstanding Note held by such Holder for a new Note or Notes of the same series may surrender such Outstanding Note at the Indenture Trustee's Office, together with the written request of such Holder, or of its attorney duly authorized in writing, in each case with signatures guaranteed, for the registration of such Note in the name of any pledgee or assignee (in the case of a transfer in the form of a pledge or assignment) or for the issuance of a new Note or Notes of the same series, specifying the authorized denomination or denominations of any new Note or Notes to be issued and the name and address of the Person or Persons in whose name or names the Note or Notes are to be registered (either as pledgee or assignee or as owner). Promptly upon receipt by the Indenture Trustee of the foregoing and satisfaction of the requirements of Sections 4.5 and 4.6 hereof, the Indenture Trustee shall register such Note or Notes in the name or names of the Person or Persons as shall be specified in the written request and, in the case in which a new Note or Notes are to be issued, the Owner Trustee shall execute and the Indenture Trustee shall authenticate and deliver such new Note or Notes of the same series, in the same aggregate principal amount and dated the same date as the Outstanding Note surrendered, in such authorized denomination or denominations as shall be specified in the written request. The Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal theretofore made on the old Note or Notes in exchange or transfer for which any new Note has been issued and the date to which interest on such old Note or Notes has been paid.

#### SECTION 4.3. Cancellation of Notes.

All Notes surrendered to the Indenture Trustee for payment in full, prepayment in full or registration of transfer or exchange shall be cancelled by it; and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Indenture Trustee shall destroy cancelled Notes held by it in a manner satisfactory to the Owner Trustee and deliver a certificate of destruction to the Owner Trustee. If the Owner Trustee shall acquire any of the Notes, such acquisition shall not operate as a redemption of or the satisfaction of the indebtedness represented by such Notes, unless and until the same shall be delivered to the Indenture Trustee for cancellation.

#### SECTION 4.4. Limitation on Timing of Registration of Notes.

The Indenture Trustee shall not be required to register transfers or exchanges of Notes on any date fixed for the payment or prepayment of principal of or interest on the Notes or during the fifteen days preceding any such date.

#### SECTION 4.5. Restrictions on Transfer Resulting from Federal Securities Laws; Legend.

If not prohibited by the Securities Act, each Note shall be delivered to the initial Holder thereof without registration of such Note under the Securities Act and without qualification of this Indenture under the Trust Indenture Act. Prior to any transfer of any Note, in whole or in part, to any Person other than the Collateral Trust Trustee, the Holder thereof shall furnish to the Lessee, the Indenture Trustee and the Owner Trustee an opinion of counsel, which opinion and which counsel shall be reasonably satisfactory to the Indenture Trustee, the Owner Trustee and the Lessee, to the effect that such transfer will not violate the registration provisions of the Securities Act or require qualification of this Indenture under the Trust Indenture Act, and all 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 in violation of such Act.

**SECTION 4.6. Charges upon Transfer or Exchange of Notes.**

As a further condition to registration of transfer or exchange of any Note, the Indenture Trustee and the Owner Trustee may charge the Holder thereof for any stamp taxes or governmental charges required to be paid with respect to such registration of transfer or exchange.

**SECTION 4.7. Inspection of Register of Notes.**

The register of the Holders of the Notes referred to in Section 4.1 shall at all reasonable times be open for inspection by any Holder of a Note. Upon request by any Holder of a Note, or the Owner Trustee or the Lessee, the Indenture Trustee shall furnish such Person, at the expense of such Person, with a list of the names and addresses of all Holders of Notes entered on the register kept by the Indenture Trustee indicating the series, principal amount and number of each Note held by each such Holder.

**SECTION 4.8. Ownership of Notes.**

(a) Prior to due presentment for registration of transfer of any Note, the Owner Trustee and the Indenture Trustee may deem and treat the Holder of record of such Note as the absolute owner of such Note for the purpose of receiving payment of all amounts payable with respect to such Note and for all other purposes, and neither the Owner Trustee nor the Indenture Trustee shall be affected by any notice to the contrary.

(b) The Owner Trustee and the Indenture Trustee may, in their discretion, treat the Holder of record of any Note as the owner thereof without actual production of such Note for any purpose hereunder, except as provided in the last sentence of Section 3.8 hereof.

(c) Neither the Owner Trustee nor the Indenture Trustee shall be bound to take notice of or carry out the execution of any trust in respect of any Note, and may register the transfer of the same on the direction of the Holder of record thereof, whether named as trustee or otherwise, as though such Holder were the beneficial owner thereof.

(d) The receipt by the Holder of record of any Note of any payment of principal, premium or interest shall be a good discharge to the Owner Trustee and the Indenture Trustee for the same and neither the Owner Trustee nor the Indenture Trustee shall be bound to inquire into the title of any such Holder.

## ARTICLE V

### RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME AND PROCEEDS FROM THE LEASE INDENTURE ESTATE

#### SECTION 5.1. Basic Rent, Interest on Overdue Installments of Basic Rent and Prepayments of Interest.

Except as otherwise provided in Section 5.3 or 5.7 hereof, each payment of Basic Rent, as well as any payment of Supplemental Rent representing interest on overdue installments of Basic Rent, received by the Indenture Trustee at any time, shall be distributed by the Indenture Trustee in the following order of priority: first, so much of such payment as shall be required to pay in full the aggregate amount of the payment or payments of principal and/or interest (as well as any interest on overdue principal or, to the

extent permitted by law, interest) then due and unpaid on all Notes shall be distributed to the Holders of the Notes ratably, without priority of one over the other, in the proportion that the aggregate amount of such payment or payments then due and unpaid on all Notes held by each such Holder on such date bears to the aggregate amount of such payment or payments then due and unpaid on all Notes Outstanding on such date, without priority of interest over principal or principal over interest; and second, the balance, if any, of such payment remaining thereafter shall be distributed, concurrently with any distribution pursuant to clause first hereof, to the Owner Trustee or as the Owner Trustee may direct. If there shall not otherwise have been distributed on any date (or within any applicable period of grace), pursuant to this Section 5.1, the full amount then distributable pursuant to clause first of this Section 5.1, the Indenture Trustee shall distribute other payments of the character referred to in Sections 5.4 and 5.5 then held by it or thereafter received by it, except as otherwise provided in Section 5.3, to the Holders of all Notes to the extent necessary to enable it to make all the distributions then due pursuant to such clause first; provided that to the extent any distribution is made from amounts held pursuant to Section 5.4 hereof and the Lessee subsequently makes the payment of Basic Rent or Supplemental Rent in respect of which such distribution was made, such payment of Basic Rent or Supplemental Rent shall, unless a Default or Event of Default shall have occurred and be continuing, be applied to the purpose for which such amount held pursuant to Section 5.4 had been held, subject, in all cases, to the terms of Section 5.4. The portion of each such payment made to the Indenture Trustee which is to be distributed by the Indenture Trustee in payment of Notes shall be applied in accordance with Section 3.11. Any payment received by the Indenture Trustee pursuant to Section 6.8 shall be distributed to the Holders of the Notes, ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due and unpaid on all Notes held by each such Holder bears to the aggregate amount of the payments then due and unpaid on all Notes Outstanding. Amounts distributed by the Indenture Trustee pursuant to this

Section 5.1 shall be distributed as promptly as practicable after such amounts are actually received by the Indenture Trustee; provided, however, that in the event the Indenture Trustee shall be directed to make payments to the Holder of any Note by wire transfer in accordance with Section 3.8 hereof, any amounts received by the Indenture Trustee after 11:00 A.M., New York City time, may be distributed on the following Business Day.

**SECTION 5.2. Amounts Received as Result of Event of Loss, Deemed Loss Event, Exercise of Option to Terminate or Exercise of Cure or Special Purchase Option.**

If an Event of Loss or Deemed Loss Event shall occur or the Lessee shall exercise the Cure or Special Purchase Option, and if either the Assumption Agreement or the Undivided Interest Indenture Supplement shall have been executed and delivered, any amounts of Casualty Value, Special Casualty Value or Fair Market Sales Value received or held by the Indenture Trustee in respect of such Event of Loss or Deemed Loss Event or exercise of the Cure or the Special Purchase Option shall be distributed forthwith to the Owner Participant. If the Lessee or Owner Trustee, as the case may be, shall exercise its option to terminate the Facility Lease pursuant to Section 14 thereof, or the Lessee shall exercise the Special Purchase Option pursuant to Section 13(c) thereof, then there shall be prepaid, on the date payments or proceeds with respect thereto are received by the Indenture Trustee (or as soon thereafter as practicable) under Section 14 of the Facility Lease, the unpaid principal amount of all Notes, together with the premium, if any, and all accrued but unpaid interest thereon to the date of such prepayment. Notice of such prepayment shall be given as provided in Section 3.9(c) and may provide that it is subject to receipt of funds for such prepayment. Except as otherwise provided in Section 5.3 or 5.7, any payments received and amounts realized by the Indenture Trustee upon exercise of the Lessee's or the Owner Trustee's option to terminate the Facility Lease under Section 14 thereof shall in each case be distributed on

the date of prepayment as provided in clauses first, second and fifth of Section 5.3.

SECTION 5.3. Amounts Received After, or Held at Time of, Indenture Event of Default under Section 6.2.

Except as otherwise provided in Section 5.7, all payments received and amounts realized by the Indenture Trustee in respect of the Lease Indenture Estate (including any amounts realized by the Indenture Trustee from the exercise of any remedies pursuant to the Facility Lease or Article VI of this Indenture) after an Indenture Event of Default referred to in Section 6.2 shall have occurred and be continuing and the Notes have been accelerated pursuant to Section 7.1, as well as all payments thereafter received or amounts then held by the Indenture Trustee as part of the Lease Indenture Estate, shall be distributed by the Indenture Trustee in the following order of priority:

first, so much of such payments or amounts as shall be required to reimburse the Indenture Trustee for any Trustee's Expenses (to the extent not previously reimbursed) and to pay the reasonable remuneration of the Indenture Trustee, shall be applied by the Indenture Trustee to such reimbursement and payment;

second, so much of such payments or amounts remaining as shall be required to pay in full the aggregate unpaid principal amount of all Notes, together with premium, if any, plus accrued but unpaid interest (as well as interest on overdue principal and, to the extent permitted by law, on overdue interest) thereon to the date of distribution, shall be distributed to the Holders of such Notes and in case the aggregate amount so to be distributed shall be insufficient to pay all such Notes in full as aforesaid, then ratably, without priority of one over the other, in the proportion that the aggregate unpaid principal amount of all such Notes held by each such Holder, together with premium, if any, plus accrued but unpaid interest thereon to the

date of distribution bears to the aggregate unpaid principal amount of all Notes, together with premium, if any, plus accrued but unpaid interest thereon to the date of distribution;

third, so much of such payments or amounts remaining as shall be required to pay the present or former Holders of the Notes the amounts payable to them as Indemnitees (to the extent not previously reimbursed) shall be distributed to such Holders; and in case the aggregate amount so to be paid to all such Holders in accordance with this clause third shall be insufficient to pay all such amounts as aforesaid, then ratably, without priority of one over the other, in the proportion that the amount of such indemnity or other payments to which such Person is entitled bears to the aggregate amount of such indemnity or other payments to which all such Persons are entitled;

fourth, the balance, if any, of such payments or amounts remaining shall be applied to the payment of any other indebtedness at the time due and owing to the Indenture Trustee or the Holders of the Notes which this Indenture by its terms secures; and

fifth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to or upon the direction of the Owner Trustee.

#### SECTION 5.4. Amounts Received for Which Provision Is Made in a Transaction Document.

Except as otherwise provided in Section 5.1, 5.3 or 5.7 hereof, any payments received by the Indenture Trustee in respect of the Lease Indenture Estate for which provision as to the application thereof is made in a Transaction Document shall be applied to the purpose for which such payment was made in accordance with the terms of such Transaction Document, as determined, in the first instance from instructions or other information accompanying such payment, or, otherwise, in accordance with instructions from the payor of such payments.

**SECTION 5.5. Amounts Received for Which No Provision Is Made.**

Except as otherwise provided in Section 5.1, 5.3 or 5.7, any payments received and any amounts realized by the Indenture Trustee in respect of the Lease Indenture Estate

(a) for which no provision as to the application thereof is made in a Transaction Document or elsewhere in this Article V shall be held by the Indenture Trustee as part of the Lease Indenture Estate, and

(b) to the extent received or realized at any time after payment in full of the principal of and premium, if any, and interest on all the Notes, as well as any other amounts remaining as part of the Lease Indenture Estate after payment in full of the principal of and premium, if any, and interest on all the Notes, shall be distributed by the Indenture Trustee in the order of priority set forth in Section 5.3 (omitting clause second thereof).

**SECTION 5.6. Payments to Owner Trustee.**

Unless otherwise directed by the Owner Trustee, all payments to be made to the Owner Trustee hereunder shall be made to the Owner Participant by wire transfer of immediately available funds as soon as practicable but in any event no later than the close of business on the date of receipt (assuming the Indenture Trustee has received such funds prior to 11:00 a.m. New York City time on the same day), to such account at such bank or trust company as the Owner Participant shall from time to time designate in writing to the Indenture Trustee.

## **SECTION 5.7. Excepted Payments.**

Anything in this Article V or elsewhere in this Indenture to the contrary notwithstanding, any Excepted Payment received at any time by the Indenture Trustee shall be distributed as promptly as practicable to the Person entitled to receive such Payment (such entitlement to be conclusively determined by reference to payment instructions from such Person).

## **ARTICLE VI**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF OWNER TRUSTEE; EVENTS OF DEFAULT; REMEDIES OF THE INDENTURE TRUSTEE**

#### **SECTION 6.1. Representations, Warranties and Covenants of Owner Trustee.**

The Owner Trustee hereby covenants and agrees that (i) it will duly and punctually pay the principal of, and premium, if any, and interest on, the Notes in accordance with the terms thereof and this Indenture, (ii) it will not pledge, create a security interest in or mortgage, so long as this Indenture shall remain in effect, any of its estate, right, title or interest in and to the Lease Indenture Estate or otherwise constituting part of the Trust Estate, to anyone other than the Indenture Trustee, (iii) so long as this Indenture shall remain in effect, it will not purchase or agree to purchase any property or asset other than the Undivided Interest and the Real Property Interest and other than as contemplated by the Transaction Documents, (iv) it will not, except with the prior written concurrence of the Indenture Trustee or as expressly provided in or permitted by this Indenture or with respect to the Trust Agreement or any property not constituting part of the Lease Indenture Estate, take any action which would result in an impairment of any Note or the obligation of the Lessee to pay any amount under the Facility Lease



which is part of the Lease Indenture Estate (not in any event including in respect of Excepted Payments) or any of the other rights or security created or effected thereby, or (v) issue, or incur any obligation in respect of, indebtedness for borrowed money except for its obligations in respect of Notes.

A signed copy of any amendment or supplement to the Trust Agreement shall be delivered by the Owner Trustee to the Indenture Trustee and the Lessee. This Indenture and the Lease Indenture Estate shall not be affected by any action taken under or in respect of the Trust Agreement except as otherwise provided in or permitted by this Indenture. The Trust Agreement may not in any event be terminated by the Owner Participant or the Owner Trustee or revoked by the Owner Participant so long as any of the Notes or any unpaid obligations under this Indenture remain Outstanding. The Owner Trustee may resign as Owner Trustee, appoint a successor Owner Trustee and take all necessary and proper action to constitute one or more Persons as co-trustee(s) jointly with the Owner Trustee or as separate trustee(s), all in accordance with the terms and conditions of Article IX of the Trust Agreement.

#### SECTION 6.2. Indenture Events of Default.

The term Indenture Event of Default, wherever used herein, shall mean any of the following events (whatever the reason for such Indenture Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) any of the Events of Default specified in the following clauses of Section 15 of the Facility Lease: (1) clause (i)(y), except a failure of the Lessee to pay any amount which shall constitute an Excepted Payment; (2) clause (i)(x), except a failure of the Lessee to pay any amount which shall constitute an Excepted Payment or except where the Owner Trustee shall not have rescinded or terminated the Facility Lease

pursuant to Section 16(a)(i) of the Facility Lease; or  
(3) clause (vii); or

(b) the rescission or termination of, or the taking of action by the Owner Trustee or the Owner Participant the effect of which would be to rescind or terminate, the Facility Lease, whether pursuant to Section 16(a)(i) of the Facility Lease or otherwise; or

(c) any failure by the Lessee to perform and observe Section 10(b)(3)(iii) of the Participation Agreement; or

(d) the Owner Trustee shall fail to make any payment in respect of the principal of, or premium, if any, or interest on, the Notes within ten (10) Business Days after the same shall have become due (other than by virtue of any failure by the Lessee to make any payment of Rent therefor); or

(e) the Owner Trustee shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 6.1 of this Indenture, or the Owner Participant shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 7(b)(1) of the Participation Agreement and, in any such case, such failure shall continue for a period of 30 days after notice thereof shall have been given to the Owner Trustee and the Owner Participant and the Lessee by the Indenture Trustee, specifying such failure and requiring it to be remedied.

### SECTION 6.3. Enforcement of Remedies.

(a) In the event that an Indenture Event of Default shall have occurred and be continuing, then and in every such case the Indenture Trustee, subject to paragraph (b) of this Section 6.3 and Section 6.11, may, and when required pursuant to the provisions of Article VII hereof shall, exercise any or all of the rights and powers and pursue, subject to the rights of the Lessee under the Facility Lease, (x) in the event such Indenture Event of Default is referred to in paragraph (d) or (e) of Section 6.2, any or all of the remedies

then available pursuant to this Article VI and Article VII, or (y) in the event such Indenture Event of Default is referred to in paragraph (a), (b) or (c) of Section 6.2, any or all of such remedies concurrently with the exercise and pursuit by the Owner Trustee of any or all of the remedies then available to the Owner Trustee under the Facility Lease.

(b) Any provisions of the Facility Lease or this Indenture to the contrary notwithstanding, if the Lessee shall fail to pay any Excepted Payment to any Person entitled thereto as and when due, such Person shall have the right at all times, to the exclusion of the Indenture Trustee, to demand, collect, sue for, enforce performance of obligations relating to, or otherwise obtain all amounts due in respect of such Excepted Payment.

#### SECTION 6.4. Specific Remedies; Enforcement of Claims without Possession of Notes.

Subject to Sections 6.2, 6.3 and 6.11 hereof and the terms of the documents constituting a part of the Lease Indenture Estate, upon the occurrence and during the continuance of an Indenture Event of Default:

(a) The Indenture Trustee may, in order to enforce the rights of the Indenture Trustee and of the Holders of the Notes, direct payment to it of all moneys and enforce any agreement or undertaking constituting a part of the Lease Indenture Estate by any action, suit, remedy or proceeding authorized or permitted by this Indenture or by law or by equity, and whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by Applicable Law, and in addition may sell, assign, transfer and deliver, from time to time to the extent permitted by Applicable Law, all or any part of the Lease Indenture Estate or any interest therein, at any private sale or public auction with or without demand, advertisement or notice (except as herein required or as may be required by Applicable Law) of the

date, time and place of sale and any adjournment thereof, for cash or credit or other property, for immediate or future delivery and for such price or prices and on such terms as the Indenture Trustee, in its uncontrolled discretion, may determine, or as may be required by Applicable Law, so long as the Owner Participant and the Owner Trustee are afforded a commercially reasonable opportunity to bid for all or such part of the Lease Indenture Estate in connection therewith. It is agreed that 90 days' notice to the Owner Participant, the Owner Trustee and the Lessee of the date, time and place of any proposed sale by the Indenture Trustee of all or any part of the Lease Indenture Estate or interest therein is reasonable. The Indenture Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Indenture Trustee and of the Holders of the Notes asserted or upheld in any bankruptcy, receivership or other judicial proceedings.

(b) Without limiting the foregoing, the Indenture Trustee, its assigns and its legal representatives, subject to the rights of the Lessee under the Facility Lease, shall have as to such of the Lease Indenture Estate as is subject to the Uniform Commercial Code or similar law in each relevant jurisdiction all the remedies of a secured party under the Uniform Commercial Code or similar law in such jurisdiction and such further remedies as from time to time may hereafter be provided in such jurisdiction for a secured party.

(c) All rights of action and rights to assert claims under this Indenture or under any of the Notes may be enforced by the Indenture Trustee without the possession of the Notes at any trial or other proceedings instituted by the Indenture Trustee, and any such trial or other proceedings shall be brought in its own name as trustee of an express trust, and any recovery or judgment shall be for the ratable benefit of the Holders of the Notes as herein provided. In any proceedings brought by the Indenture Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Indenture

Trustee shall be a party) the Indenture Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any such Holders parties to such proceedings.

(d) The Indenture Trustee may exercise any other right or remedy that may be available to it under Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

#### SECTION 6.5. Rights and Remedies Cumulative.

Subject to Sections 6.2, 6.3 and 6.11 hereof, (a) each and every right, power and remedy herein specifically given to the Indenture Trustee under this Indenture shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Indenture Trustee and the exercise or the beginning of the exercise of any right, power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and (b) no delay or omission by the Indenture Trustee in the exercise of any right, power or remedy or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Owner Participant, the Owner Trustee or the Lessee or to be an acquiescence therein.

#### SECTION 6.6. Restoration of Rights and Remedies.

In case the Indenture Trustee shall have proceeded to enforce any right, power or remedy under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Indenture Trustee, then and in every such case

the Owner Trustee, the Owner Participant, the Indenture Trustee and the Lessee shall be restored to their former positions and rights hereunder with respect to the Lease Indenture Estate, and all rights, powers and remedies of the Indenture Trustee shall continue as if no such proceedings had been taken.

#### SECTION 6.7. Waiver of Past Defaults.

Any past Indenture Default or Indenture Event of Default and its consequences may be waived by the Indenture Trustee, except an Indenture Default or an Indenture Event of Default (i) in the payment of the principal of or interest on any Note, subject to the provisions of Section 7.1 hereof, or (ii) in respect of a covenant or provision hereof which, under Section 10.2 hereof, cannot be modified or amended without the consent of each Holder of a Note then Outstanding. Upon any such waiver, such Indenture Default or Indenture Event of Default shall cease to exist, and any other Indenture 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 Indenture Default or Indenture Event of Default or impair any right consequent thereon.

#### SECTION 6.8. Right of Owner Trustee to Pay Rent; Note Purchase; Substitute Lessee.

Anything in this Article VI or Article VII to the contrary notwithstanding:

(a) an Indenture Event of Default shall be deemed cured if such Indenture Event of Default results from non-payment of Basic Rent or Supplemental Rent under the Facility Lease, and the Owner Trustee or the Owner Participant shall have paid all principal of and interest on the Notes due (other than by acceleration) on the date such Basic Rent was payable (plus interest on such amount as required hereby) within 15 days after the receipt by the Owner Trustee of notice of such non-payment, such receipt to be evidenced by, among other things, any notice thereof given to the Owner Trustee in accordance with the notice provisions of the

Participation Agreement. The Owner Trustee or the Owner Participant, upon exercising cure rights under this paragraph (a), shall not obtain any Lien on any part of the Lease Indenture Estate on account of such payment for the costs and expenses incurred in connection therewith nor, except as expressly provided in the succeeding sentence, shall any claims of the Owner Trustee or the Owner Participant against the Lessee or any other Person for the repayment thereof impair the prior right and security interest of the Indenture Trustee in and to the Lease Indenture Estate. Upon any payment by the Owner Trustee or the Owner Participant pursuant to this Section 6.8, the Owner Trustee or the Owner Participant, as the case may be, shall (to the extent of such payment made by it) be subrogated to the rights of the Indenture Trustee and the Holders of the Notes to receive the payment of Rent with respect to which the Owner Trustee or the Owner Participant made such payment and interest on account of such Rent payment being overdue in the manner set forth in the next sentence. If the Indenture Trustee shall thereafter receive such payment of Rent or such interest, the Indenture Trustee shall, notwithstanding the requirements of Section 5.1, on the date such payment is received by the Indenture Trustee, remit such payment of Rent (to the extent of the payment made by the Owner Trustee or the Owner Participant pursuant to this Section 6.8) and such interest to the Owner Trustee or the Owner Participant, as the case may be, in reimbursement for the funds so advanced by it.

(b) Each Holder of a Note agrees, by acceptance thereof, that if the Notes have been accelerated pursuant to Section 7.1, and the Owner Trustee, within 30 days after receiving notice from the Indenture Trustee pursuant to Section 7.1 hereof, shall give written notice to the Indenture Trustee of the Owner Trustee's intention to purchase all of the Notes in accordance with this paragraph, accompanied by assurances of the Owner Trustee to purchase the Notes, then, upon receipt within 10 Business Days after such notice from the Owner Trustee of an amount equal to the aggregate unpaid principal amount of and any premium with respect to any unpaid Notes then held by such Holder, together with accrued but unpaid interest thereon to the

date of such receipt (as well as any interest on overdue principal and, to the extent permitted by law, interest), such Holder will forthwith sell, assign, transfer and convey to the Owner Trustee (without recourse or warranty of any kind other than of title to the Notes so conveyed) all of the right, title and interest of such Holder in and to the Lease Indenture Estate, this Indenture and all Notes held by such Holder; provided, that no such Holder shall be required so to convey unless (1) the Owner Trustee shall have simultaneously tendered payment for all other Notes issued by the Owner Trustee at the time Outstanding pursuant to this paragraph and (2) such conveyance is not in violation of any Applicable Law.

(c) Each Holder of a Note further agrees by its acceptance thereof that the Owner Trustee shall have the right, pursuant to Section 16 of the Facility Lease, to terminate the Facility Lease and, in connection therewith, to arrange for the substitution of another Person as lessee under a new lease substantially similar to the Facility Lease (hereinafter the Substituted Lessee) and, subject to: (i) any Indenture Event of Default under paragraphs (d) and (e) of Section 6.2 having been cured by the Owner Trustee, (ii) the Substituted Lessee's assuming all of the obligations under the Facility Lease and (iii) the Substituted Lessee's having an assigned credit rating by Standard & Poor's Corporation and Moody's Investors Service, Inc. (or, if either of such organizations shall not rate securities issued by such Substituted Lessee, by any other nationally recognized rating organization in the United States of America) with respect to at least one series of its debt obligations or preferred stock of the Substituted Lessee equal to or better than the ratings assigned, immediately prior to such substitution, by such organizations to comparable securities of the Lessee immediately prior to such substitution but in no event less than "investment grade" rating assigned by such organizations, then the Facility Lease between the Owner Trustee and such Substituted Lessee shall, for all purposes of this Indenture, be deemed to be the Facility Lease subject to the lien of this Indenture.



#### SECTION 6.9. Further Assurances.

Subject to Section 7.6 hereof, the Owner Trustee covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as shall be reasonably requested by the Indenture Trustee for the purpose of fully carrying out and effectuating this Indenture and the intent hereof.

#### SECTION 6.10. Right of Indenture Trustee To Perform Covenants, etc.

If the Owner Trustee shall fail to make any payment or perform any act required to be made or performed by it hereunder or under the Facility Lease or if the Owner Trustee shall fail to release any Lien affecting the Lease Indenture Estate which it is required to release by the terms of this Indenture, the Indenture Trustee, without notice to or demand upon the Owner Trustee and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Lease Indenture Estate. All sums so paid by the Indenture Trustee and all costs and expenses (including without limitation reasonable fees and expenses of legal counsel and other professionals) so incurred, together with interest thereon from the date of payment or occurrence, shall constitute additional indebtedness secured by this Indenture and shall be paid from the Lease Indenture Estate to the Indenture Trustee on demand. The Indenture Trustee shall not be liable for any damages resulting from any such payment or action unless such damages shall be a consequence of willful misconduct or gross negligence on the part of the Indenture Trustee.

#### SECTION 6.11. Certain Other Rights of the Owner Trustee.

Notwithstanding any provision to the contrary in this Indenture, the Owner Trustee shall at all times retain, to the exclusion of the Indenture Trustee, all rights of the Owner Trustee 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 take any other action under or in respect of the Facility Lease, as well as all rights, powers and remedies on the part of the Owner Trustee, whether arising under the Facility Lease or by statute or at law or in equity or otherwise, arising out of any Default or Event of Default subject, however, to Section 10.2. Without the prior written consent of the Indenture Trustee, the exercise of any of the aforesaid rights so retained by the Owner Trustee shall not be exercised in such a manner as to (i) reduce the amounts payable by the Lessee under the Facility Lease below the amounts necessary to provide the Owner Trustee with sufficient monies to make timely payments in full of amounts due with respect to the principal of and premium, if any, and interest on all Notes or (ii) rescind or terminate the Facility Lease pursuant to Section 16(a)(i) thereof. Nor shall the Owner Trustee exercise any other right or remedy under the Facility Lease the effect of which would be to effect such rescission or termination.

## ARTICLE VII

### CERTAIN DUTIES OF THE OWNER TRUSTEE AND THE INDENTURE TRUSTEE

#### SECTION 7.1. Duties in Respect of Events of Default, Deemed Loss Events and Events of Loss; Acceleration of Maturity.

In the event the Owner Trustee shall have actual knowledge of an Indenture Event of Default, an Event of Default, a Deemed Loss Event or an Event of Loss, the Owner Trustee shall give prompt written notice thereof to the Owner Participant, the Lessee and the Indenture Trustee. In the event the Indenture Trustee shall have actual knowledge of an Event of Default, an Indenture Event of Default, a Deemed Loss Event or an Event of Loss, the Indenture Trustee shall give prompt written notice thereof to the Owner Participant, the Owner Trustee, the Lessee and each Holder of a Note.

Subject to the terms of Sections 6.2, 6.3, 6.4, 6.8, 6.11 and 7.3 hereof, (a) the Indenture Trustee shall take such action (including the waiver of past Defaults in accordance with Section 6.7 hereof), or refrain from taking such action, with respect to any such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss as the Indenture Trustee shall be instructed by a Directive, (b) if the Indenture Trustee shall not have received instructions as above provided within 20 days after mailing by the Indenture Trustee of notice of such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss to the Persons referred to above, the Indenture Trustee may, subject to instructions thereafter received pursuant to the preceding sentence, take such action, or refrain from taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss as it shall determine advisable in the best interests of the Holders of the Notes of all series and (c) in the event that an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee in its discretion may, or upon receipt of a Directive shall, by written notice to the Owner Trustee, declare the unpaid principal amount of all Notes with accrued interest thereon to be immediately due and payable, upon which declaration such principal amount and such accrued interest shall immediately become due and payable without further act or notice of any kind. For all purposes of this Indenture, in the absence of actual knowledge, neither the Owner Trustee nor the Indenture Trustee shall be deemed to have knowledge of an Indenture Event of Default or Event of Default except that the Indenture Trustee shall be deemed to have knowledge of the failure of the Lessee to pay any installment of Basic Rent within 10 Business Days after the same shall become due. For purposes of this Section 7.1, neither the Owner Trustee nor the Indenture Trustee shall be deemed to have actual knowledge of any Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss unless it shall have received notice thereof pursuant to Section 11.6 hereof or such Indenture Event of Default or Event of Default shall actually be known by an

officer in the corporate trust department of the Owner Trustee or by an officer in the Corporate Trustee Administration Department of the Indenture Trustee, as the case may be.

**SECTION 7.2. Duties in Respect of Matters Specified in Directive.**

Subject to the terms of Sections 6.2, 6.3, 6.4, 6.8, 6.11, 7.1 and 7.3 hereof, upon receipt of a Directive, the Indenture Trustee shall take such of the following action as may be specified in such Directive: (i) give such notice or direction or exercise such right, remedy or power permitted hereunder or permitted with respect to the Facility Lease or in respect of any part or all of the Lease Indenture Estate as shall be specified in such Directive; and (ii) take such action to preserve or protect the Lease Indenture Estate as shall be specified in such Directive, it being agreed that without such a Directive, the Indenture Trustee shall not waive, consent to or approve any such matter as satisfactory to it.

**SECTION 7.3. Indemnification.**

The Indenture Trustee shall not be required to take or refrain from taking any action under Section 7.1 or 7.2 or Article VI hereof which shall require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability unless the Indenture Trustee shall have been indemnified by the Holders of the Notes against liability, cost or expense (including counsel fees) which may be incurred in connection therewith, or unless, in the reasonable judgment of the Indenture Trustee, the indemnities of the Lessee shall be adequate for such purpose; provided, however, that if the Holder of such Note is the Collateral Trust Trustee, the unsecured written undertaking of the Collateral Trust Trustee, in its individual capacity, shall be sufficient indemnity for purposes of this Section. The Indenture Trustee shall not be required to take any action under Section 7.1 or 7.2 or Article VI hereof nor shall any other provision of this Indenture be deemed to impose a duty on the Indenture Trustee to

take any action, if the Indenture Trustee shall reasonably determine, or shall have been advised by counsel, that such action is likely to result in personal liability or is contrary to the terms hereof or of the Facility Lease or is otherwise contrary to law.

**SECTION 7.4. Limitations on Duties; Discharge of Certain Liens Resulting from Claims Against Indenture Trustee.**

The Indenture Trustee shall have no duty or obligation to take or refrain from taking any action under, or in connection with, this Indenture or the Facility Lease, except as expressly provided by the terms of this Indenture. The Indenture Trustee nevertheless agrees that it will, in its individual capacity and at its own cost and expense, promptly take such action as may be necessary duly to discharge all Liens on any part of the Lease Indenture Estate which result from acts by or claims against it arising out of events or conditions not related to its rights in the Lease Indenture Estate or the administration of the Lease Indenture Estate or the transactions contemplated hereby.

**SECTION 7.5. Restrictions on Dealing with Lease Indenture Estate.**

— Except as provided in the Transaction Documents, the Owner Trustee shall not use, operate, store, lease, control, manage, sell, dispose of or otherwise deal with any part of the Lease Indenture Estate.

**SECTION 7.6. Filing of Financing Statements and Continuation Statements.**

Pursuant to Section 10(b)(2) of the Participation Agreement, the Lessee has covenanted to maintain the priority of the lien of this Indenture on the Lease Indenture Estate. The Indenture Trustee shall, at the request and expense of the Lessee as provided in the Participation Agreement, execute and deliver to the Lessee and the Lessee will file, if not

already filed, such financing statements or other documents and such continuation statements or other documents with respect to financing statements or other documents previously filed relating to the lien created under this Indenture in the Lease Indenture Estate as may be necessary to protect, perfect and preserve the lien created under this Indenture. At any time and from time to time, upon the request of the Lessee or the Indenture Trustee, at the expense of the Lessee as provided in the Participation Agreement (and upon receipt of the form of document so to be executed), the Owner Trustee shall promptly and duly execute and deliver any and all such further instruments and documents as the Lessee or the Indenture Trustee may request in order for the Indenture Trustee to obtain the full benefits of the security interest and assignment created or intended to be created hereby and of the rights and powers herein granted. Upon the reasonable instructions (which instructions shall be accompanied by the form of document to be filed) at any time and from time to time of the Lessee or the Indenture Trustee, the Owner Trustee shall execute and file any financing statement (and any continuation statement with respect to any such financing statement), any certificate of title or any other document, in each case relating to the security interest and assignment created by this Indenture as may be specified in such instructions. In addition, the Indenture Trustee and the Owner Trustee will execute such continuation statements with respect to financing statements and other documents relating to the lien created under this Indenture in the Lease Indenture Estate as may be reasonably specified from time to time in written instructions of any Holder of a Note (which instructions may, by their terms, be operative only at a future date and which shall be accompanied by the form of such continuation statement or other document so to be filed).

## ARTICLE VIII

### CONCERNING THE OWNER TRUSTEE AND THE INDENTURE TRUSTEE

#### SECTION 8.1. Acceptance of Trusts; Standard of Care.

The Indenture Trustee accepts the trusts hereby created and applicable to it and agrees to perform the same but only upon the terms of this Indenture and the Participation Agreement and agrees to receive and disburse all moneys constituting part of the Lease Indenture Estate in accordance with the provisions hereof, provided that no implied duties or obligations shall be read into this Indenture or the Participation Agreement against the Indenture Trustee. The Indenture Trustee shall enter into and perform its obligations under the Participation Agreement, and, at the request of the Owner Trustee, any other agreement relating to any transfer of the Undivided Interest or the Real Property Interest or the assignment of rights under the Assignment and Assumption or, at the request of the Owner Trustee, the purchase by any Person of Notes or Additional Notes issued hereunder, all as contemplated hereby. The Indenture Trustee shall not be liable under any circumstances, except for its own willful misconduct or gross negligence. If any Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee shall exercise such of the rights and remedies vested in it by this Indenture, subject to the provisions hereof, and shall use the same degree of care in their exercise as a prudent man would exercise or use in the circumstances in the conduct of his own affairs; provided that if in the opinion of the Indenture Trustee such action may tend to involve expense or liability, it shall not be obligated to take such action unless it is furnished with indemnity satisfactory to it.

#### **SECTION 8.2. No Duties of Maintenance, Etc.**

Except pursuant to Section 7.2 hereof and except as provided in, and without limiting the generality of, Sections 7.1 and 7.4 hereof, the Indenture Trustee shall have no duty (i) to see to any recording or filing of any Transaction Document, or to see to the maintenance of any such recording or filing, or (ii) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, or assessed or levied against, any part of the Lease Indenture Estate (except such as are required to be paid or discharged by it pursuant to this Indenture or any of the other Transaction Documents) or to make or file any reports or returns related thereto.

#### **SECTION 8.3. Representations and Warranties of Indenture Trustee and the Owner Trustee.**

NEITHER THE OWNER TRUSTEE NOR THE INDENTURE TRUSTEE MAKES ANY REPRESENTATION OR WARRANTY AS TO THE VALUE, CONDITION, MERCHANTABILITY OR FITNESS FOR USE OF UNIT 1, THE UNDIVIDED INTEREST OR ANY PART OF THE LEASE INDENTURE ESTATE OR AS TO ITS INTEREST THEREIN, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO UNIT 1, THE UNDIVIDED INTEREST OR ANY PART OF THE LEASE INDENTURE ESTATE WHATSOEVER. The Owner Trustee and the Indenture Trustee each represents and warrants, in its individual capacity, as to itself that this Indenture has been executed and delivered by one or more of its officers who are duly authorized to execute and deliver this Indenture on its behalf.

#### **SECTION 8.4. Moneys Held in Trust; Non-Segregation of Moneys.**

All moneys and securities deposited with and held by the Indenture Trustee under this Indenture for the purpose of paying, or securing the payment of, the principal of or premium or interest on the Notes shall be held in trust. Except as provided in Sections 2.3(c), 8.8 and 11.1 hereof, moneys received by the Indenture Trustee under this Indenture need not be



segregated in any manner except to the extent required by law, and may be deposited under such general conditions as may be prescribed by law; provided, however, that any payments received or applied hereunder by the Indenture Trustee shall be accounted for by the Indenture Trustee so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof. Except as otherwise expressly provided herein, the Indenture Trustee shall not be liable for any interest on any money held pursuant to this Indenture.

**SECTION 8.5. Reliance on Writings, Use of Agents, Etc.**

The Indenture Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, telegram, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. In the case of the Lessee, the Indenture Trustee may accept a copy of a resolution of the Board of Directors or any duly constituted and authorized committee of the Board of Directors of the Lessee, certified by the Secretary or an Assistant Secretary of the Lessee as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by such Board or Committee and that the same is in full force and effect. As to the aggregate unpaid principal amount of the Notes Outstanding as of any date, the Owner Trustee may for all purposes hereof rely on a certificate signed by any Authorized Officer of the Indenture Trustee. As to any fact or matter the manner of ascertainment of which is not specifically described herein, the Indenture Trustee may for all purposes hereof rely on a certificate, signed by the Chairman of the Board, the President, any Vice President and the Treasurer or the Secretary or any Assistant Treasurer or Assistant Secretary of the Lessee, or a Holder of a Note or any Responsible Officer of the Owner Trustee, as the case may be, as to such fact or matter, and such certificate shall constitute full protection to the Indenture Trustee for any action taken or omitted to be taken by

it in good faith in reliance thereon. The Indenture Trustee shall furnish to the Owner Trustee upon request such information and copies of such documents as the Indenture Trustee may have and as are necessary for the Owner Trustee to perform its duties under Article III hereof. In the administration of the trusts hereunder, the Indenture Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys selected by it in good faith and with reasonable care, and, with respect to matters relating to the Notes, the Lease Indenture Estate and its rights and duties under this Indenture and the other Transaction Documents, may, at the expense of the Lessee, or, if the Lessee shall have failed to pay or provide for the payment thereof, at the expense of the Lease Indenture Estate, consult with counsel, accountants and other skilled persons to be selected and employed by it in good faith and with reasonable care, and the Indenture Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons so selected. Unless otherwise specified herein or in any other Transaction Document, any opinion of counsel referred to in this Indenture or in such other Transaction Document may be relied on by the Indenture Trustee to the extent it is rendered by an attorney or firm of attorneys satisfactory to the Indenture Trustee (which may be counsel to the Owner Participant, the Owner Trustee, the Lessee or any party to any Transaction Document).

**SECTION 8.6. Indenture Trustee to Act Solely as Trustee.**

The Indenture Trustee acts hereunder solely as trustee as herein provided and not in any individual capacity, except as otherwise expressly provided herein; and except as provided in Sections 9(a) and 9(b) of the Participation Agreement or Section 7.4 or 8.1 hereof, all Persons having any claim against the Indenture Trustee arising from matters relating to the Notes by reason of the transactions contemplated hereby shall, subject to the lien and priorities of payment as herein

provided and to Sections 3.6 and 5.7, look only to the Lease Indenture Estate for payment or satisfaction thereof.

**SECTION 8.7. Limitation on Rights Against Registered Holders, the Owner Trustee or Lease Indenture Estate.**

The Indenture Trustee shall be entitled to be paid or reimbursed for Trustee's Expenses as provided herein and in the other Transaction Documents. Nonetheless, the Indenture Trustee agrees that it shall have no right against the Holders of the Notes, the Owner Trustee (except to the extent included in Transaction Expenses payable by the Owner Participant) or, except as provided in Article V and Section 6.4 or this Article VIII, the Lease Indenture Estate for any fee as compensation for its services hereunder.

**SECTION 8.8. Investment of Certain Payments Held by the Indenture Trustee.**

Any amounts held by the Indenture Trustee hereunder other than pursuant to Section 2.3(c) or 11.1 hereof shall be invested by the Indenture Trustee from time to time as directed in writing by the Owner Trustee or by the Owner Participant as agent of the Owner Trustee and at the expense and risk of the Owner Participant in (i) obligations of, or guaranteed as to interest and principal by, the United States Government maturing not more than 90 days after such investment, (ii) open market commercial paper of any corporation incorporated under the laws of the United States of America or any State thereof rated "prime-1" or its equivalent by Moody's Investors Service, Inc. or "A-1" or its equivalent by Standard & Poor's Corporation or (iii) certificates of deposit maturing within 90 days after such investment issued by commercial banks organized under the laws of the United States of America or of any political subdivision thereof having a combined capital and surplus in excess of \$500,000,000; provided, however, that the aggregate amount at any one time so invested (a) in open market commercial paper of any corporation shall not exceed \$2,000,000 and (b) in

certificates of deposit issued by any one bank shall not exceed \$10,000,000. Any income or gain realized as a result of any such investment shall be applied to make up any losses resulting from any such investment to the extent such losses shall not have been paid by the Owner Trustee or the Owner Participant pursuant to this Section 8.8. Any further income or gain so realized shall be promptly distributed (in no event later than the next Business Day) to the Owner Trustee or the Owner Participant, except after the occurrence and during the continuance of an Indenture Event of Default. The Indenture Trustee shall have no liability for any loss resulting from any investment made in accordance with this Section. Any such investment may be sold (without regard to maturity date) by the Indenture Trustee whenever necessary to make any distribution required by Article V hereof.

**SECTION 8.9. No Responsibility for Recitals, etc.**

The Indenture Trustee makes no representation or warranty as to the correctness of any statement, recital or representation made by any Person other than the Indenture Trustee in this Indenture, any other Transaction Document or the Notes.

**SECTION 8.10. Indenture Trustee May Engage in Certain Transactions.**

The Indenture Trustee may engage in or be interested in any financial or other transaction with the Lessee, the Owner Participant, the Owner Trustee and any other party to a Transaction Document, provided that if the Indenture Trustee determines that any such relation is in conflict with its duties under this Indenture, it shall eliminate the conflict or resign as Indenture Trustee.

**SECTION 8.11. Construction of Ambiguous Provisions.**

The Indenture Trustee, subject to Section 8.1 hereof, may construe any ambiguous or inconsistent provisions of this Indenture, and any such construction by the Indenture Trustee shall be binding upon the Noteholders. In construing any such provision, the Indenture Trustee will be entitled to rely upon opinions of counsel and will not be responsible for any loss or damage resulting from reliance in good faith thereon, except for its own gross negligence or willful misconduct.

**ARTICLE IX**

**SUCCESSOR TRUSTEES**

**SECTION 9.1. Resignation and Removal of Indenture Trustee; Appointment of Successor.**

(a) The Indenture Trustee may resign at any time without cause by giving at least 30 days' prior written notice to the Owner Participant, the Owner Trustee, the Lessee and to each Holder of a Note, such resignation to be effective upon the acceptance of such trusteeship by a successor. In addition, the Indenture Trustee may be removed without cause by a Directive delivered to the Owner Participant, the Owner Trustee, the Lessee and the Indenture Trustee, and the Indenture Trustee shall promptly give notice thereof in writing to each Holder of a Note. In the case of the resignation or removal of the Indenture Trustee, a successor trustee may be appointed by such a Directive. If a successor trustee shall not have been appointed within 30 days after such notice of resignation or removal, the Indenture Trustee, the Owner Trustee or any Holder of a Note may apply to any court of competent jurisdiction to appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided. The successor so appointed by such court shall

immediately and without further act be superseded by any successor appointed as above provided within one year from the date of the appointment by such court.

(b) Any successor trustee, however appointed, shall execute and deliver to its predecessor and to the Owner Trustee an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the estates, properties, rights, powers and duties of its predecessor hereunder in the trusts under this Indenture applicable to it with like effect as if originally named the Indenture Trustee; but, nevertheless, upon the written request of such successor trustee or receipt of a Directive, its predecessor shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressly applicable to it, all the estates, properties, rights and powers of such predecessor under this Indenture, and such predecessor shall duly assign, transfer, deliver and pay over to such successor trustee all moneys or other property then held by such predecessor under this Indenture.

(c) Any successor trustee, however appointed, shall be a bank or trust company organized under the laws of the United States or any jurisdiction thereof having a combined capital and surplus of at least \$100,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Indenture Trustee hereunder upon reasonable or customary terms.

(d) Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Indenture Trustee may be transferred, shall, subject to the terms of paragraph (c) of this Section 9.1, be the Indenture Trustee under this Indenture without further act.

## ARTICLE X

### SUPPLEMENTS AND AMENDMENTS TO THIS INDENTURE AND OTHER DOCUMENTS

#### SECTION 10.1. Supplements, Amendments and Modifications to This Indenture Without Consent of Holders of Notes.

The Indenture Trustee may, with the written consent of the Owner Trustee, from time to time and at any time execute a supplement to this Indenture without the consent of the Holders of Notes Outstanding in order to (i) cure any defect, omission or ambiguity in this Indenture or for any other purpose if such action does not adversely affect the interests of such Holders, (ii) grant or confer upon the Indenture Trustee for the benefit of such Holders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred and which are not contrary to or inconsistent with this Indenture, (iii) add to the covenants or agreements to be observed by the Owner Trustee and which are not contrary to this Indenture or surrender any right or power of the Owner Trustee, (iv) confirm or amplify, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, this Indenture, of the properties covered hereby, or subject to the lien or pledge of this Indenture additional revenues, properties or other collateral, including pursuant to an Undivided Interest Indenture Supplement, (v) qualify this Indenture under the provisions of the Trust Indenture Act, (vi) evidence the appointment of any successor Indenture Trustee pursuant to the terms hereof, (vii) evidence the assumption and release affected by the Assumption Agreement, or (viii) execute supplemental indentures to evidence the issuance of and to provide the terms of, Additional Notes to be issued hereunder in accordance with the terms hereof.

**SECTION 10.2. Supplements and Amendments to this Indenture and the Facility Lease With Consent of Holders of Notes.**

Except as provided in Section 10.1 hereof, at any time and from time to time, (i) upon receipt of a Directive, the Indenture Trustee shall execute a supplement to this Indenture for the purpose of adding provisions to, or changing or eliminating provisions of, this Indenture, but only as specified in such Directive and, (ii) upon receipt of a written instruction from the Lessee and the Owner Trustee, the Indenture Trustee shall consent to any amendment of or supplement to the Facility Lease or execute and deliver such written waiver or modification of the terms of the Facility Lease to which the Owner Trustee may agree; provided, however, that, without the consent of the Holders of all the Notes then Outstanding no such supplement or amendment to this Indenture or the Facility Lease, or waiver or modification of the terms of either thereof, shall (x) modify any of the provisions of this Section or of Section 7.1 or 7.2 hereof or Section 4 of the Facility Lease or of the definition of Directive contained in Appendix A hereto or the definition of Indenture Event of Default herein, reduce the amount of the Basic Rent, Casualty Value, Termination Value or any payment under or pursuant to Section 16 of the Facility Lease as set forth in the Facility Lease below such amount as is required to pay the full principal of, and premium, if any, and interest on, the Notes when due, or extend the time of payment thereof, (y) except as permitted by clause (x) above, modify, amend or supplement the Facility Lease or consent to the termination or any assignment thereof, in any case reducing the Lessee's obligations in respect of the payment of the Basic Rent, Casualty Value, Termination Value or any payment under or pursuant to Section 16 of the Facility Lease below the amount referred to in clause (x) above, or (z) deprive the Holders of any Note of the lien of this Indenture on the Lease Indenture Estate (except as contemplated by Section 3.9(b)) or materially adversely affect the rights and remedies for the benefit of such Holders provided in Article VI of this Indenture; and, provided, further, that, without the consent of the



Holders of all the Notes then Outstanding and affected thereby no such supplement or amendment to this Indenture or the Facility Lease, or waiver or modification of the terms of either thereof, shall reduce the amount or extend the time of payment of any amount payable under any Note, reduce or modify the provisions for the computation of the rate of interest owing or payable thereon, adversely alter or modify the provisions of Article V with respect to the order of priorities in which distributions thereunder with respect to the Notes shall be made, or reduce, modify or amend any indemnities in favor of the Holders of the Notes. Anything to the contrary contained herein notwithstanding, without the necessity of the consent of the Holders of Notes or the Indenture Trustee, (a) any indemnities in favor of the Owner Trustee or the Owner Participant may be modified, amended or changed and (b) the Owner Trustee may enter into any agreement with respect to the Lease Indenture Estate which by its terms does not become effective prior to the satisfaction and discharge of this Indenture, provided, however, that any agreement entered into by the Owner Trustee pursuant to this clause (b) shall not materially adversely affect the Indenture Trustee or the Holder of any Note.

**SECTION 10.3. Certain Limitations on Supplements and Amendments.**

If in the opinion of the Owner Trustee or the Indenture Trustee, each of which shall be entitled to rely on counsel for purposes of this Section 10.3, any document required to be executed by either of them pursuant to the terms of Section 10.1 or 10.2 does not comply with the provisions of this Indenture or adversely affects any right, immunity or indemnity in favor of, or increases any duty of, the Owner Trustee or the Indenture Trustee under this Indenture, the Facility Lease or the Participation Agreement, the Owner Trustee or the Indenture Trustee, as the case may be, may in its discretion decline to execute such document.

**SECTION 10.4. Directive Need Not Specify Particular Form of Supplement or Amendment.**

It shall not be necessary for any Directive furnished pursuant to Section 10.2 hereof to specify the particular form of the proposed documents to be executed pursuant to such Section, but it shall be sufficient if such request shall indicate the substance thereof.

**SECTION 10.5. Trustee to Furnish Copies of Supplement or Amendment.**

Promptly after the execution by the Owner Trustee or the Indenture Trustee of any document entered into pursuant to Section 10.2, the Indenture Trustee shall mail, by first-class mail, postage prepaid, a conformed copy thereof to each Holder of an Outstanding Note at the address of such Person set forth in the register kept pursuant to Section 4.1 but the failure of the Indenture Trustee to mail such conformed copies shall not impair or affect the validity of such document.

**ARTICLE XI**

**MISCELLANEOUS**

**SECTION 11.1. Moneys for Payments in Respect of Notes to be Held in Trust.**

In case the Holder of any Note shall fail to present the same for payment on any date on which the principal thereof or interest thereon becomes payable, the Indenture Trustee may set aside in trust the moneys then due thereon uninvested and shall pay such moneys to the Holder of such Note or such Person upon due presentation or surrender thereof in accordance with the provisions of this Indenture, subject always, however, to the provisions of Sections 3.8 and 11.2.

**SECTION 11.2. Disposition of Moneys Held for Payments of Notes.**

Any moneys set aside under Section 11.1 and not paid to Holders of Notes as provided in Section 11.2 shall be held by the Indenture Trustee in trust until the latest of (i) the date three years after the date of such setting aside, (ii) the date all other Holders of the Notes shall have received full payment of all principal of and interest and other sums payable to them on such Notes or the Indenture Trustee shall hold (and shall have notified such Persons that it holds) in trust for that purpose an amount sufficient to make full payment thereof when due and (iii) the date the Owner Trustee shall have fully performed and observed all its covenants and obligations contained in this Indenture with respect to the Notes; and thereafter shall be paid to the Owner Trustee by the Indenture Trustee on demand; and thereupon the Indenture Trustee shall be released from all further liability with respect to such moneys; and thereafter the Holders of the Notes in respect of which such moneys were so paid to the Owner Trustee shall have no rights in respect thereof except to obtain payment of such moneys from the Owner Trustee. Upon the setting aside of such moneys, interest thereon shall cease to accrue on the Notes.

**SECTION 11.3. Transfers Not to Affect Indenture or Trusts.**

No Holder of a Note shall have legal title to any part of the Lease Indenture Estate. No transfer, by operation of law or otherwise, of any Note or other right, title and interest of any Holder of a Note in and to the Lease Indenture Estate or hereunder shall operate to terminate this Indenture or the trusts hereunder with respect to such Note or entitle any successor or transferee of such Holder to an accounting or to the transfer to it of legal title to any part of the Lease Indenture Estate.

**SECTION 11.4. Binding Effect of Sale of Lease Indenture Estate.**

Any sale or other conveyance of the Lease Indenture Estate or any part thereof by the Indenture Trustee made pursuant to the terms of this Indenture or the Facility Lease shall bind the Holders of the Notes and shall be effective to transfer or convey all right, title and interest of the Indenture Trustee, the Owner Trustee and such Holders in and to the same. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Indenture Trustee.

**SECTION 11.5. Limitation as to Enforcement of Rights, Remedies and Claims.**

Nothing in this Indenture, whether express or implied, shall be construed to give to any Person, other than the Owner Trustee, the Owner Participant, the Lessee (to the extent Lessee's consent or other action by the Lessee is expressly provided for), the Indenture Trustee and the Holders of the Notes, any legal or equitable right, remedy or claim under or in respect of this Indenture or any Note.

**SECTION 11.6. Notices.**

Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices given hereunder to the Lessee, the Owner Trustee, the Owner Participant or the Indenture Trustee shall be given in the manner provided in Section 18 of the Participation Agreement. Notices by the Indenture Trustee to any Holder of a Note shall be in writing and shall be given in person or by means of telex, telecopy or other wire transmission (with request for assurance of receipt in a manner typical with respect to communications of that type), or mailed by registered or certified mail, addressed to such Holder at the address set forth in the register kept pursuant to Section 4.1. Whenever any notice in writing is required to be given

by the Indenture Trustee to any Holder of a Note such notice shall be effective (x) if sent by telex, telecopy or other wire transmission, on the date of transmission thereof, or (y) if sent by mail, three Business Days after being mailed.

#### SECTION 11.7. Separability of Provisions

In case any one or more of the provisions of this Indenture or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and any other application hereof shall not in any way be affected or impaired.

#### SECTION 11.8. Benefit of Parties, Successors and Assigns.

All representations, warranties, covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Owner Trustee, the Indenture Trustee and their respective successors and assigns and each Holder of a Note, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by any Holder of a Note shall bind the successors and assigns of such Holder and any Holder of a Note issued in transfer or exchange of such Note.

#### SECTION 11.9. Survival of Representations and Warranties.

All representations and warranties made with respect to the Notes shall survive the execution and delivery of this Indenture and the issue, sale and delivery of any Notes and shall continue in effect so long as any Note issued hereunder is Outstanding and unpaid.

**SECTION 11.10. Bankruptcy of the Owner Trustee.**

If (a) the Owner Trustee becomes a debtor subject to the reorganization provisions of the Bankruptcy Code, or any successor provision, (b) pursuant to such reorganization provisions the Owner Trustee is required, by reason of the Owner Trustee being held to have recourse liability directly or indirectly to the Holder of any Note or the Indenture Trustee, to make payment on account of any amount payable as principal or interest on such Note and (c) such Holder or the Indenture Trustee actually receives any Excess Amount (as hereinafter defined) which reflects any payment by the Owner Trustee on account of clause (b) of this Section, then such Holder or the Indenture Trustee, as the case may be, shall promptly refund to the Owner Trustee such Excess Amount. For purposes of this Section, "Excess Amount" means the amount by which such payment exceeds the amount which would have been received on or prior to the date of such payment by such Holder or the Indenture Trustee if the Owner Trustee had not become subject to the recourse liability referred to in clause (b) of this Section. Nothing contained in this Section shall prevent such Holder or the Indenture Trustee from enforcing any recourse obligation (and retaining the proceeds thereof) of the Owner Trustee expressly provided for under this Indenture or in the Notes.

**SECTION 11.11. Bankruptcy of the Owner Participant.**

The Indenture Trustee and the Holders of the Notes shall be bound by the provisions of Section 19(f) of the Participation Agreement.

**SECTION 11.12. Counterpart Execution.**

This Indenture and any amendment or supplement to this Indenture may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all

such counterparts shall together constitute but one and the same instrument.

SECTION 11.13. Dating of Indenture.

Although this Indenture is dated for convenience and for the purpose of reference as of the date mentioned, the actual date or dates of execution by the Owner Trustee and the Indenture Trustee are as indicated by their respective acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have each caused this Indenture to be duly executed by their respective officers thereunto duly authorized, all as of the date first set forth above.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual  
capacity, but solely as Owner  
Trustee under the Trust  
Agreement dated as of  
December 16, 1985, with the  
Owner Participant identified on  
Schedule 1 hereto

By 

Vice President

CHEMICAL BANK,

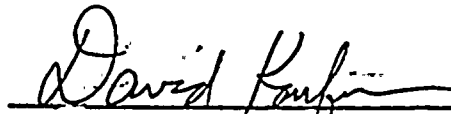
By 

Vice President



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

On the 31st day of December, 1985, before me personally came CLARK M. WHITCOMB, to me known, who, being by me duly sworn, did acknowledge, depose and say that he resides at Boston, Massachusetts; that he is Vice President of **THE FIRST NATIONAL BANK OF BOSTON**, a national banking association, described in and which executed the foregoing instrument; ~~that he knows the seal of said association; that the seal affixed to said instrument is such seal; that it was so affixed by~~ authority of the by-laws of said association; and that he signed his name thereto on behalf of said association by like order.

  
\_\_\_\_\_  
Notary Public

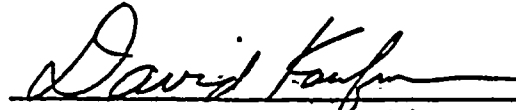
[NOTARIAL SEAL]

Term Expires:

DAVID KAUFMAN  
Notary Public, State of New York  
No. 31-4701418  
Qualified in New York County 87  
Commission Expires March 30, 1988

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

On the 31st day of December, 1985, before me personally came T.J. FOLEY, to me known, who, being by me duly sworn, did acknowledged, depose and say that he resides at Bethpage, New York; that he is Vice President of CHEMICAL BANK, a New York banking corporation, described in and which executed the foregoing instrument; ~~that he knows the seal of said corporation and that the seal affixed to said instrument is such seal; that it was so affixed by~~ authority of the by-laws of said corporation; and that he signed his name thereto on behalf of said corporation by like order.

  
\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

Term Expires:

DAVID KAUFMAN  
Notary Public, State of New York  
No. 31-470440  
Qualified in New York County  
Commission Expires March 30, 1987

## SCHEDULE I

### Owner Participant

1. The Owner Participant is Burnham Leasing Corporation, a New York corporation.

2. For purposes of Section 3.4(b) of the Indenture, the Maximum Principal Amount is \$77,000,000.

3. For purposes of Section 3.6 of the Indenture, the Maximum Outstanding Amount is \$200,000,000.

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EXHIBIT A

FORM OF INITIAL SERIES NOTE

The Initial Series Note shall be substantially in the following form, with such omissions, insertions and variations as the Owner Trustee may determine with the approval of the Indenture Trustee and are not inconsistent with the provisions of the Indenture or as may be provided for in the Indenture:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES

Issued at: New York, New York

Issue Date: December 31, 1985

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as owner trustee (Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with Burnham Leasing Corporation (the Owner Participant), hereby promises to pay to FIRST PV FUNDING CORPORATION, or registered assigns, the principal sum of (\$ ) on \_\_\_\_\_ 15, 20\_\_, and to pay interest on the remaining unpaid principal amount hereof from the date hereof, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 15 and July 15 in each year, commencing January 15, 1986, at the rate equal to the Variable Rate (as defined below) per annum, until the principal hereof is paid in full or made available for payment.

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Said principal shall be payable in installments consisting of \_\_\_\_ installments of principal commencing on July 15, 198\_, and on each January 15 and July 31 thereafter, to and including \_\_\_\_\_ 15, 20\_\_, each such principal installment to be equal to the percentage of the original principal amount hereof set forth in Schedule X hereto for the date such installment is due.

The "Variable Rate" shall mean the Applicable Percentage (as defined below) of the rate publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime or base lending rate (any change in the Variable Rate being effective on the date such change in the Variable Rate is so announced). The "Applicable Percentage" shall equal (i) 100% for the period from December 31, 1985 through June 30, 1986, (ii) 125% for the period from July 1, 1986 through September 30, 1986, (iii) 150% for the period from October 1, 1986 through December 31, 1986, and (iv) 200% thereafter. All payments of interest shall be computed on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 16, 1985, as at any time amended or supplemented in accordance with the provisions thereof (the Indenture), between The First National Bank of Boston, not in its individual capacity, but solely as Owner

Trustee (the Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with the Owner Participant and CHEMICAL BANK, as Trustee (the Indenture Trustee), shall be made only from the Lease Indenture Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee Office, or as otherwise provided in the Indenture.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is the Initial Series Note referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest

rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of the Initial Series Note.

This Initial Series Note is subject to mandatory prepayment in full as provided in Section 5.2 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment. In addition this Initial Series Note is subject to special prepayment, in whole only, on the date on which the Fixed Rate Note is issued in accordance with Section 3.5 of the Indenture, by giving written notice to the Indenture Trustee and the Holder of this Initial Series Note at least on Business Day prior to such date, such prepayment being with the following premiums (expressed as a percentage of principal amount of this Initial Series Note), together with accrued interest to the date of prepayment:

<u>Period</u>	<u>Premium</u>
January 1-10, 1986	.096%
January 11-17, 1986	.072%
January 18-24, 1986	.048%
January 25-31, 1986	.024%

and thereafter without premium.

In case an Indenture Event of Default shall occur and be continuing the unpaid balance of the principal of this Initial Series Note and any other Notes together with all accrued but unpaid interest thereon may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the Owner hereof for the purpose of receiving payments of principal of, and premium if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by the laws of the State of New York.



IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual  
capacity, but solely as Owner  
Trustee under a Trust Agreement  
dated as of December 16, 1985  
with Burnham Leasing  
Corporation

By \_\_\_\_\_  
Vice President

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**ASSIGNMENT**

Date: December 31, 1985

For value received, the undersigned hereby sells, assigns and transfers to **CHEMICAL BANK**, as Trustee pursuant to the Collateral Trust Indenture dated as of December 16, 1985, as amended and supplemented, among the undersigned, Public Service Company of New Mexico and said Trustee, without recourse, the within Initial Series Note and all rights thereunder.

**FIRST PV FUNDING CORPORATION**

By \_\_\_\_\_  
President

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## EXHIBIT B

### ASSUMPTION AGREEMENT

TO: The Holders (as defined below) from time to time of the Notes (as defined below) of The First National Bank of Boston, not in its individual capacity, but solely as owner trustee under a Trust Agreement dated as of December 16, 1985 with [name of owner participant] (in such capacity, the "Issuer") under the Trust Indenture, Mortgage, Security Agreement, and Assignment of Rents (the "Indenture") dated as of December 16, 1985 among the Issuer and Chemical Bank, as trustee (the "Trustee").

The undersigned, PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the "Obligor"), for the purpose of satisfying in part its obligation to make certain payments under that certain Facility Lease dated as of December 16, 1985 between the Issuer and the Obligor (the "Facility Lease"), does hereby covenant and agree with the Holders (as defined in the Indenture) from time to time of the Notes (as defined in the Indenture) as follows:

SECTION 1. The Obligor does hereby agree to, and does hereby, assume unconditionally the payment of the principal of the Notes and of the interest and premium (if any) thereon, at the rates provided in the Notes, when and as the same shall become due and payable, whether at maturity or upon mandatory prepayment or upon declaration or otherwise, according to the terms of the Notes and of the Indenture.

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SECTION 2. The assumption herein contained shall be binding upon the Obligor, its successors and assigns and shall remain in full force and effect irrespective of the power or authority of the Issuer to issue the Notes or to execute, acknowledge and deliver the Indenture or the validity of the Notes, or the Indenture, or of any defense whatsoever that the Issuer may or might have to the payment of the Notes (principal, interest or premium), or to the performance or observance of any of the provisions or conditions of the Indenture or any Note, or of the existence or continuance of the Issuer as a legal entity; nor shall said assumption be affected by the merger, consolidation, or other dissolution of the Issuer or the sale or other transfer of the property the Issuer or by of the Issuer as an entirety, or substantially so, to any other person; nor shall the assumption be discharged or impaired by any act, failure or omission whatsoever on the part of any Holder of any Notes or the Trustee, including, among other such acts, failures and omissions, the following:

(a) any failure to present any Note for payment or to demand payment thereof, or to give to the Obligor notice of dishonor and non-payment of any Note when and as the same may become due and payable, or notice of any failure on the part of the Issuer to do any act or thing or to perform or keep any covenant or agreement by it to be done, kept or performed under the terms of Notes or the Indenture;

(b) any extension of the obligation of any Note, either indefinitely or for any period of time, or any other modification in the obligations under any Note or the Indenture or of the Issuer thereon or in connection therewith;

(c) any act or failure to act with regard to any Note or the Indenture or anything which might vary the risk of the Obligor; and

(d) any action taken under the Indenture and the Notes in the exercise of any right or power thereby conferred or any failure or omission on the

part of the Trustee or the Holder of any Note to enforce any right or security given under the Indenture or any Note, or any waiver of any right or any failure or omission on the part of the Trustee or any Holder of any Note to enforce any right of any Holder of any Note against the Issuer;

provided, always, that the specific enumeration of the above mentioned acts, failures, waivers or omissions shall not be deemed to exclude any other acts, failures, waivers or omissions though not specifically mentioned herein, it being the purpose and intent of this Assumption Agreement that the obligation of the Obligor shall be absolute and unconditional to the extent herein specified and shall not be discharged, impaired or varied except by the payment of the principal of and interest on any Note and any premium thereon in case of prepayment, and then only to the extent of such payments.

SECTION 3. (a) Subject to the requirements of Sections 10(b)(3)(iii) and (b)(3)(iv) of the Participation Agreement and to the provisions of paragraph (b) of this Section, nothing contained in this Assumption Agreement shall prevent any consolidation or merger of the Obligor with or into any other corporation or corporations (whether or not affiliated with the Obligor), or successive consolidations or mergers in which the Obligor or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance or lease of all or substantially all the property of the Obligor, to any other corporation authorized to acquire and operate the same; provided, however, and the Obligor hereby covenants and agrees, that upon any such consolidation, merger, sale, conveyance or lease, all obligations of the Obligor under this Assumption Agreement on or in respect of any Note, and the due and punctual performance and observance of all of the covenants and conditions of this Assumption Agreement to be performed by the Obligor, shall be expressly and duly assumed, by an agreement reasonably satisfactory in form and substance to the Trustee, executed and delivered by the corporation (if other than the Obligor) formed by such consolidation, or into which the Obligor shall have

been merged, or by the corporation which shall have acquired such property.

(b) The Indenture Trustee (as defined in the Indenture), subject to applicable provisions of the Indenture, may rely upon an opinion of counsel to the Obligor as conclusive evidence that any such merger, consolidation, sale or conveyance complies with the provisions of this Section.

SECTION 4. The Obligor does hereby consent to all of the terms and conditions of each Note Series and of the Indenture, and hereby waives any and all rights of notice of any fact or facts or circumstance or circumstances whatsoever and consents to any extension or extensions of time of any payment or payments, or of any other act or thing which any Holder or Holders of any Note or the Issuer may agree to consent to, either expressly, by acquiescence or otherwise, and hereby agrees not to claim or enforce any rights of subrogation or any other right or privilege which might otherwise arise on account of any payment made by it or act or thing done by it on account of or in accordance with its assumption herein contained, unless and until all of the Notes have been fully paid and discharged.

SECTION 5. The assumption herein expressed may be transferred or assigned at any time or from time to time and shall be considered to be transferred and assigned upon the transfer of any Note, whether with or without the consent of or notice to the Obligor or the Issuer. The Obligor hereby agrees to execute and deliver such instruments and to do such acts and things requested by the Trustee as shall be reasonably necessary to carry out and effectuate the purposes and intents of this Assumption Agreement. This Assumption Agreement may not be amended or modified in any respect without the prior written consent (evidenced as provided in the Indenture) of the Holders of not less than a majority in principal amount of the Notes Outstanding (as defined in the Indenture); provided, however, that without the written consent of the Holders of all of the Notes Outstanding, no such amendment or modification shall be effective which will change any of the

provisions of Sections 1, 2, 4 or 5 of this Assumption Agreement. The Obligor agrees to file with the Indenture Trustee a duplicate original of each such consent.

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

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

ATTEST:

\_\_\_\_\_  
Title:

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EXHIBIT C

UNDIVIDED INTEREST SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE NO. \_\_\_\_\_ dated as of \_\_\_\_\_, \_\_\_\_\_, to the TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (hereinafter, together with supplements thereto, the Indenture) dated as of December 16, 1985, between THE FIRST NATIONAL BANK OF BOSTON (FNB), not in its individual capacity, but solely as trustee (the Owner Trustee) under a Trust Agreement, dated as of December 16, 1985, between FNB, whose address is 100 Federal Street, Boston, Massachusetts 02110, and BURNHAM LEASING CORPORATION, and CHEMICAL BANK, a New York banking corporation (the Indenture Trustee), whose address is 55 Water Street, New York, New York 10041.

W I T N E S S E T H:

WHEREAS, in accordance with Section 9(j) of the Facility Lease, the Owner Trustee is obligated, in certain cases, to cause the Undivided Interest and the Real Property Interest to be subjected to the Lien of the Indenture; and

WHEREAS, in order to further secure the obligations referred to in the Indenture, the Owner Trustee desires to grant to the Indenture Trustee the security interest and realty mortgage herein provided and the parties hereto desire that the Indenture be regarded (i) to the extent that the Undivided Interest constitutes personal property, as a "security agreement" and as a "financing statement" under the Uniform Commercial Code and (ii) to the extent that the Undivided Interest and the Real Property Interest constitute fixtures or real property, as a realty mortgage;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration,

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receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1.1. The Indenture. This Supplemental Indenture No. \_\_\_\_\_ shall be construed as supplemental to and amendatory of the Indenture and shall form a part thereof, and the Indenture is hereby incorporated by reference herein and is hereby ratified, approved and confirmed.

SECTION 1.2. Definitions. Capitalized terms used herein, but which are not otherwise defined herein shall have the meanings set forth in Appendix A to the Indenture.

SECTION 1.3. Recording Information. The Indenture was recorded on December 31, 1985, in Maricopa County, Arizona [describe] [specify other recorded documents] [specify other places of recordation].

SECTION 1.4. Governing Law. This Supplemental Indenture No. \_\_\_\_ and the Indenture shall, for all purposes, be construed in accordance with and governed by the laws of the State of New York except to the extent that the laws of the State of Arizona shall be mandatorily applicable thereto.

SECTION 1.5. Security Interest and Realty Mortgage. As further security for the due and punctual payment of the principal of and premium, if any, and interest on the Notes according to their respective terms and effect and the performance and observance by the Owner Trustee of all the covenants and agreements made by it or on its behalf in the Notes, the Participation Agreement and this Indenture, the Owner Trustee does, by its execution and delivery hereof, hereby grant a security interest in, bargain, convey, warrant, assign, transfer, mortgage, pledge and set over unto the Indenture Trustee, and to its successors and assigns in trust, the following (which shall be a part of the Lease Indenture Estate for all purposes of the Indenture and the other Transaction Documents):

(1) the Undivided Interest and the Real Property Interest, including, but without limitation, the Owner Trustee's Share of all Capital Improvements (including any which constitute fixtures under Applicable Law) now existing or which hereafter may become part of the Undivided Interest;

(2) all right, title and interest of the Owner Trustee in, to and under (a) the Bill of Sale, (b) the ANPP Participation Agreement, (c) the Deed and (d) the Assignment of Beneficial Interest, including, but without limitation, all amounts of Rent, insurance proceeds and condemnation, requisition and other awards and payments of any kind for or with respect to any part of the Lease Indenture Estate as contemplated in such documents;

(3) all other property of every kind and description, real, personal and mixed, and interests therein now held or hereafter acquired by the Owner Trustee pursuant to any term of any Transaction Document, whether or not subjected to the Lien of this Indenture by an indenture supplemental hereto; and

(4) all proceeds of the foregoing;

but excluding, however, from the Lease Indenture Estate any and all Excepted Payments; and subject, however, to (i) the terms and provisions of this Indenture and (ii) the rights of the Lessee under the Facility Lease.

TO HAVE AND TO HOLD all the aforesaid properties, rights and interests unto the Indenture Trustee, its successors and assigns forever, but in trust, nevertheless, for the use and purposes and with the power and authority and subject to the terms and conditions mentioned and set forth in this Indenture.

UPON CONDITION that, unless and until an Indenture Event of Default shall have occurred and be

continuing, the Owner Trustee shall be permitted, to the exclusion of the Indenture Trustee, to possess and use the Lease Indenture Estate and exercise all rights with respect thereto and, without limitation of the foregoing, the Owner Trustee may exercise all of its rights under the documents specified in clause (2) above to the same extent as if its right, title and interest therein had not been assigned to the Indenture Trustee to the extent set forth above, except that the Indenture Trustee shall receive all payments of Assigned Payments and all moneys and securities required to be held by or deposited with the Indenture Trustee hereunder.

The Owner Trustee hereby warrants and represents that it has not assigned or pledged any of its right, title or interest in and to the Lease Indenture Estate to anyone other than the Indenture Trustee.

**SECTION 1.6. Real Estate Remedies.** In addition to the remedies specified in the Indenture (including but without limitation Section 6.4 thereof) or otherwise available pursuant to Applicable Law, to the extent that any portion of the Lease Indenture Estate constitutes fixtures or real property, the Indenture and this Supplemental Indenture No. \_\_\_ shall be, and shall be deemed to be, a realty mortgage and assignment of rents with respect to all items of real property and fixtures and the Indenture Trustee shall have all the rights, remedies and benefits of a mortgagee of real property under Applicable Law (including, but without limitation, rights and remedies pursuant to Arizona Revised Statutes Section 33-702.B, or any comparable successor provision) and the Owner Trustee shall be and be deemed to be, a mortgagor with respect to such fixtures and real property.

**SECTION 1.7. Certain Releases.** In case a release from the security and other interests created by Section 1.5 hereof by the Indenture Trustee of a portion of the Undivided Interest shall be necessary in order to enable the Owner Trustee or the Lessee to perform its covenants and agreements set forth in the Transaction Documents or in the ANPP Participation Agreement or the Owner Trustee or the Lessee to carry out any action

required by Section 8 of the Facility Lease, the Indenture Trustee shall execute and deliver to, or as directed by, the Owner Trustee or the Lessee an appropriate instrument or instruments provided to the Indenture Trustee by the Owner Trustee or the Lessee (in due form for filing or recording), so releasing a portion of the Undivided Interest, provided, however, that the Indenture Trustee shall have first received an Officer's Certificate in form and substance reasonably satisfactory to the Indenture Trustee, executed by the Lessee, accompanied by an opinion of counsel reasonably satisfactory to the Indenture Trustee, each of which shall be to the effect that all necessary actions have been or are being taken simultaneously with such release in connection with the proposed action to comply with the terms of this Indenture and Section 8 of the Facility Lease.

**SECTION 1.8. Severance.** The parties hereto understand and agree that Unit 1 (including the Undivided Interest), each Capital Improvement and each part thereof is or shall be severed, and shall be and remain severed, from the real estate constituting the PVNGS Site and even if physically attached thereto, shall retain the character of personal property, shall be treated as personal property with respect to the rights of all persons whomsoever, shall not be or become fixtures or otherwise part of the real estate constituting the PVNGS Site, and, by virtue of its nature as personal property, shall not be affected in any way by any instrument dealing with the real estate constituting the PVNGS Site.

**SECTION 1.9. ANPP Participation Agreement.** The provision by the Owner Trustee to the Indenture Trustee of the realty mortgage and the security interest contemplated by this Supplemental Indenture No. \_\_\_ is in compliance with the provisions of the ANPP Participation Agreement, including, but without limitation, Section 15.6.3.2 thereof.

**SECTION 1.10. Appointment of Co-Trustees or Separate Trustees.**

(a) At any time or times, when necessary or prudent or for the purpose of meeting the legal requirements of any jurisdiction in which any part of the Lease Indenture Estate may, at any time, be located, the Indenture Trustee, except as set forth in subsection (b)(6) of this Section 1.10, may, and upon receipt of a Directive shall, appoint one or more Persons to act as co-trustee of all or any such part of the Lease Indenture Estate or to act as separate trustee of any property constituting part thereof, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons any property, title, right or power deemed necessary or desirable, subject to the remaining provisions of this Section 1.10. Except as set forth in subsection (b)(6) of this Section 1.10 the Owner Trustee shall join in any such appointment upon the request of the Indenture Trustee, but such joining will not be necessary for the effectiveness of such appointment.

(b) Every separate trustee or co-trustee shall be appointed subject to the following terms:

(1) The rights, powers, duties and obligations conferred or imposed upon any such separate trustee or co-trustee shall not be greater than those conferred or imposed upon the Indenture Trustee, and such rights and powers shall be exercisable only jointly with the Indenture Trustee, except to the extent that, under any law of any jurisdiction in which any particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event, except as set forth in subsection (b)(6) of this Section 1.10, such rights and powers shall be exercised by such separate trustee or co-trustee subject to the provisions of subsection (b)(4) of this Section 1.10.

(2) The Indenture Trustee may at any time, by an instrument in writing executed by it, accept the resignation of, and may (and

upon the receipt of a Directive, shall) remove any separate trustee or co-trustee appointed under this Section 1.10.

(3) No trustee under the Indenture and this Supplemental Indenture No. \_\_\_\_\_ shall be liable by reason of any act or omission of any other trustee or co-trustee under this Indenture.

(4) Except as set forth in subsection (b) (6) of this Section 1.10, no power given to such separate trustee or co-trustee shall be separately exercised hereunder by such separate trustee or co-trustee except with the consent in writing of the Indenture Trustee.

(5) The Indenture Trustee shall maintain custody of all money and securities.

(6) Notwithstanding anything contained to the contrary in this Section 1.10, to the extent the laws of any jurisdiction preclude the Indenture Trustee from taking any action hereunder either alone, jointly or through a separate trustee under the direction and control of the Indenture Trustee, the Owner Trustee, at the instruction of the Indenture Trustee, shall appoint a separate trustee for such jurisdiction, which separate trustee shall have full power and authority to take all action hereunder as to matters relating to such jurisdiction without the consent of the Indenture Trustee, but subject to the same limitations in any exercise of his power and authority as those to which the Indenture Trustee is subject.

(c) Upon the acceptance in writing of such appointment by any such separate trustee or co-trustee, it shall be vested with the estates or property to which its appointment relates as specified in the instrument of appointment, subject to all the terms of the Indenture and this Supplemental Indenture No. \_\_\_\_\_.



(d) Any separate trustee or co-trustee may, at any time, constitute the Indenture Trustee, its agent or attorney-in-fact, with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of the Indenture and this Supplemental Indenture No. \_\_\_\_\_ on its behalf and in its name. If a separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

**SECTION 1.11. Separability of Provisions.** In case any one or more of the provisions of this Supplemental Indenture No. \_\_\_\_ or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and the Indenture and any other application hereof and thereof shall not in any way be affected or impaired.

**SECTION 1.12. Counterpart Execution.** This Supplemental Indenture No. \_\_\_\_ may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have each caused this Indenture to be duly executed by their respective officers thereunto duly authorized, all as of the date first set forth above.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual  
capacity, but solely as Owner  
Trustee under the Trust  
Agreement dated as of  
December 16, 1985, with Burnham  
Leasing Corporation

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

CHEMICAL BANK

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



THIS NOTE HAS NOT BEEN REGISTERED UNDER THE  
SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED,  
SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES

Issued at: . New York, New York

Issue Date: December 31, 1985

No. R-1

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as owner trustee (Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with Burnham Leasing Corporation (the Owner Participant), hereby promises to pay to FIRST PV FUNDING CORPORATION, or registered assigns, the principal sum of Seventy Seven Million Dollars (\$77,000,000) on July 15, 2012, and to pay interest on the remaining unpaid principal amount hereof from the date hereof, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 15 and July 15 in each year, commencing January 15, 1986, at the rate equal to the Variable Rate (as defined below) per annum, until the principal hereof is paid in full or made available for payment.

Said principal shall be payable in installments consisting of 50 installments of principal commencing on January 15, 1988, and on each January 15 and July 15 thereafter, to and including July 15, 2012, each such principal installment to be equal to the percentage of the original principal amount hereof set forth in Schedule X hereto for the date such installment is due.

The "Variable Rate" shall mean the Applicable Percentage (as defined below) of the rate publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime or base lending rate (any change in the Variable Rate being effective on the date such change in the Variable Rate is so announced). The "Applicable Percentage" shall equal (i) 100% for the period from December 31, 1985

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through June 30, 1986, (ii) 125% for the period from July 1, 1986 through September 30, 1986, (iii) 150% for the period from October 1, 1986 through December 31, 1986, and (iv) 200% thereafter. All payments of interest shall be computed on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 16, 1985, as at any time amended or supplemented in accordance with the provisions thereof (the Indenture), between The First National Bank of Boston, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee) under a Trust Agreement dated as of December 16, 1985, with the Owner Participant and CHEMICAL BANK, as Trustee (the Indenture Trustee), shall be made only from the Lease Indenture Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to

the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee Office, or as otherwise provided in the Indenture.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is the Initial Series Note referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which

terms and conditions the Holder hereof agrees by its acceptance of the Initial Series Note.

This Initial Series Note is subject to mandatory prepayment in full as provided in Section 5.2 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment. In addition this Initial Series Note is subject to special prepayment, in whole only, on the date on which the Fixed Rate Note is issued in accordance with Section 3.5 of the Indenture, by giving written notice to the Indenture Trustee and the Holder of this Initial Series Note at least on Business Day prior to such date, such prepayment being with the following premiums (expressed as a percentage of principal amount of this Initial Series Note), together with accrued interest to the date of prepayment:

<u>Period</u>	<u>Premium</u>
January 1-10, 1986	.096%
January 11-17, 1986	.072%
January 18-24, 1986	.048%
January 25-31, 1986	.024%

and thereafter without premium.

In case an Indenture Event of Default shall occur and be continuing the unpaid balance of the principal of this Initial Series Note, and any other Notes together with all accrued but unpaid interest thereon may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities

sufficient to pay this Initial Series Note when due or an assumption of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the Owner hereof for the purpose of receiving payments of principal of, and premium if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by the laws of the State of New York.

S P E C I M E N



IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement dated as of December 16, 1985 with Burnham Leasing Corporation

By \_\_\_\_\_  
Vice President

SPECIMEN

ASSIGNMENT

Date: December 31, 1985

For value received, the undersigned hereby sells, assigns and transfers to CHEMICAL BANK, as Trustee pursuant to the Collateral Trust Indenture dated as of December 16, 1985, as amended and supplemented, among the undersigned, Public Service Company of New Mexico and said Trustee, without recourse, the within Initial Series Note and all rights thereunder.

FIRST PV FUNDING CORPORATION

By \_\_\_\_\_  
President

SPECIMEN



Date	Burnham
=====	=====
7/15/1986	0.00
1/15/1987	0.00
7/15/1987	0.00
1/15/1988	614,437.10
7/15/1988	738,737.70
1/15/1989	773,827.70
7/15/1989	810,584.50
1/15/1990	849,087.30
7/15/1990	889,419.00
1/15/1991	931,666.40
7/15/1991	975,920.50
1/15/1992	1,022,276.70
7/15/1992	1,070,834.90
1/15/1993	1,121,699.50
7/15/1993	1,174,980.30
1/15/1994	1,230,791.80
7/15/1994	1,289,254.40
1/15/1995	1,350,494.00
7/15/1995	1,414,642.50
1/15/1996	1,481,838.00
7/15/1996	1,552,225.30
1/15/1997	1,625,356.00
7/15/1997	1,703,288.90
1/15/1998	1,784,090.40
7/15/1998	1,868,834.70
1/15/1999	1,977,646.90
7/15/1999	2,075,539.70
1/15/2000	2,145,653.50
7/15/2000	2,219,832.10
1/15/2001	2,299,983.80
7/15/2001	2,382,090.00
1/15/2002	2,468,121.20
7/15/2002	2,554,409.70
1/15/2003	2,640,260.30
7/15/2003	2,728,896.60
1/15/2004	2,816,606.00
7/15/2004	2,905,661.90
1/15/2005	2,995,373.80
7/15/2005	3,085,628.80
1/15/2006	3,176,124.10
7/15/2006	3,267,264.50
1/15/2007	3,358,249.50
7/15/2007	3,449,046.80
1/15/2008	3,540,936.40
7/15/2008	3,633,112.90
1/15/2009	3,725,032.00
7/15/2009	3,817,997.50
1/15/2010	3,910,510.40
7/15/2010	4,003,468.30
1/15/2011	4,096,213.10
7/15/2011	4,189,925.70
1/15/2012	4,283,984.60
7/15/2012	4,377,642.30
1/15/2013	0.00
7/15/2013	0.00
1/15/2014	0.00
7/15/2014	0.00
1/15/2015	0.00
Total	77,000,000.00

SCHEDULE X  
Initial Series Not

S P E C I M E N



This Note is one of the series of Notes referred to therein and in the within-mentioned Indenture.

CHEMICAL BANK  
as Indenture Trustee

By \_\_\_\_\_  
Authorized Officer

SPECIMEN



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**ASSIGNMENT, ASSUMPTION**

**AND**

**FURTHER AGREEMENT**

dated as of December 16, 1985

between

**PUBLIC SERVICE COMPANY OF NEW MEXICO,**

and

**THE FIRST NATIONAL BANK OF BOSTON,**  
not in its individual capacity, but  
solely as Owner Trustee under a Trust  
Agreement, dated as of December 16,  
1985, with Burnham Leasing  
Corporation

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**Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities**

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**BURNHAM LEASING CORPORATION**





ASSIGNMENT, ASSUMPTION AND FURTHER AGREEMENT, dated as of December 16, 1985, between PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (PNM), and THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee), under a Trust Agreement, dated as of December 16, 1985, with the Owner Participant identified on Schedule 1 hereto.

W I T N E S S E T H :

WHEREAS, PNM and the other ANPP Participants are parties to the ANPP Participation Agreement (such terms and all other terms used in these recitals without definition having the respective definitions to which reference is made in Article I below); and

WHEREAS, PNM has sold, and the Owner Trustee has purchased, the Undivided Interest and the Real Property Interest for and in consideration of the payment to PNM by the Owner Trustee of the Purchase Price, the purchase price of the Real Property Interest and the assignments and assumptions herein set forth;

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

ARTICLE I

DEFINITIONS

For purposes hereof, capitalized terms used herein shall have the meanings assigned to such terms in Appendix A hereto. References in this Agreement to articles, sections, paragraphs and clauses are to articles, sections, paragraphs and clauses in this Agreement unless otherwise indicated.

## ARTICLE II

### NONPARTITIONMENT

**SECTION 2.01. Nonpartitionment.** The Owner Trustee hereby waives any rights it may have to partition Unit 1, whether by partitionment in kind or by sale and division of proceeds, and further agrees that it will not resort to any action in law or in equity to partition Unit 1, and it waives the benefits of all laws that may now or hereafter authorize such partition for a term (i) which shall be coterminous with the ANPP Participation Agreement or (ii) which shall be for such lesser period as may be required under Applicable Law.

## ARTICLE III

### ASSIGNMENTS; EXERCISE OF RIGHTS

**SECTION 3.01. Assignment of Warranties.** PNM hereby **ASSIGNS** to the Owner Trustee an undivided interest, equal to the Undivided Interest Percentage, in, to and under any and all warranties of and other claims against dealers, manufacturers, vendors, contractors and subcontractors relating to Unit 1.

**SECTION 3.02. Assignment of the ANPP Participation Agreement.** (a) PNM hereby **ASSIGNS** to the Owner Trustee an undivided interest, equal to the Undivided Interest Percentage in, to and under all of PNM's rights under the ANPP Participation Agreement, to the extent that such rights relate to the Undivided Interest (including, but without limitation, a percentage entitlement equal to the Undivided Interest Percentage to the Net Energy Generation and Available Generating Capability (as each such term is defined in the ANPP Participation Agreement) of Unit 1).

(b) The Owner Trustee hereby **ASSIGNS** to PNM the rights assigned under paragraph (a) until the Lease Termination Date.

**SECTION 3.03. Exercise of Rights as Participant under the ANPP Participation Agreement.**

(a) Except as provided in Sections 15.2.2, 15.6.4 and Section 15.10 of the ANPP Participation Agreement (or any comparable successor provision) PNM shall be and remain the sole "Participant" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind) in all dealings with the other ANPP Participants in relation to the Undivided Interest, the Real Property Interest and the rights assigned to the Owner Trustee pursuant to this Agreement; provided, however, that the foregoing shall not limit in any way any liability or obligation that PNM may incur to the Owner Trustee or the Owner Participant under any Transaction Document as a result of the exercise by PNM of rights as a "Participant" under the ANPP Participation Agreement.

(b) Unless the ANPP Participation Agreement shall otherwise permit, any right conferred on the Owner Trustee by Section 15.2.2 of the ANPP Participation Agreement shall be exercised as required by Section 15.6.3.3 of said Agreement.

(c) The provisions of this Section 3.03 shall remain in full force and effect until such time as the ANPP Administrative Committee or the ANPP Participants shall otherwise consent.

**ARTICLE IV**

**ASSUMPTION; RELEASE**

**SECTION 4.01. Assumption by Owner Trustee.** Except as contemplated by Section 5(a) of the Facility Lease, the Owner Trustee agrees that, effective on and as of the Lease Termination Date (unless a Transferee (Transferee) shall have qualified under Section 15.10 of the ANPP Participation Agreement or any comparable successor provision), unless a Default or Event of Default shall have occurred and be continuing or an Event of Loss or Deemed Loss Event shall have occurred, the Owner

Trustee shall assume and agree to pay, perform and discharge the Owner Trustee's Share of all liabilities and obligations of PNM under, or with respect to, the ANPP Project Agreements, attributable to Unit 1, other than any and all costs relating to, allocable to, or incurred in connection with, the decommissioning and retirement of Unit 1 from commercial service, including, but without limitation, (x) the cost of removal, decontamination and disposition of equipment and fixtures, the cost of safe storage for later removal, decontamination and disposal and the cost of entombment of equipment and fixtures, and (y) the cost of (i) the razing of PVNGS Unit 1, (ii) the removal and disposition of debris from the PVNGS Site, and (iii) the restoration of relevant portions of the PVNGS Site.

**SECTION 4.02. Release.** Upon the assumption and agreement by a Transferee pursuant to Section 4.01 (whether at the Lease Termination Date or thereafter), the Owner Trustee shall therewith and thereupon be released and discharged from its obligations under Section 4.01 arising on or after such assumption and agreement.

## **ARTICLE V**

### **NO RELEASE OF PNM; REIMBURSEMENT**

**SECTION 5.01. No Release of PNM.** Notwithstanding the provisions of Article IV or any other provision hereof or of any other Transaction Document, and except to the extent provided in Section 15.10 of the ANPP Participation Agreement (or any comparable successor provision), PNM shall not be released from any liability or obligation under the ANPP Project Agreements, or otherwise, with respect to PVNGS, and PNM shall remain liable for the payment and performance of all such liabilities and obligations, including, but without limitation, any and all liabilities and obligations not assumed by the Owner Trustee or a Transferee pursuant to Section 4.01.

**SECTION 5.02. Reimbursement.** Unless a Default or an Event of Default shall have occurred and be continuing or an Event of Loss or Deemed Loss Event shall have occurred, from and after the Lease Termination Date, upon the payment or performance by PNM of any liability or obligation in respect of which the Owner Trustee shall also have become obligated in consequence of Article IV or the ANPP Participation Agreement, and for so long as the Owner Trustee shall be so liable, PNM shall be entitled to prompt reimbursement by the Owner Trustee for all amounts expended in connection with such payment or performance.

## **ARTICLE VI**

### **FURTHER AGREEMENTS OF PNM**

**SECTION 6.01. Agreement to Sell or Lease Unit 1 Retained Assets.** Upon a transfer to a Transferee, PNM agrees in respect of the Undivided Interest and the Real Property Interest, (i) if the Transferee is a purchaser of the Undivided Interest and the Real Property Interest, to sell to the Transferee, at a price equal to the then Fair Market Sales Value thereof, an undivided interest, equal to the Undivided Interest Percentage, in and to the Unit 1 Retained Assets, or (ii) if the Transferee is a lessee of the Undivided Interest and the Real Property Interest, to lease or otherwise make available to the Transferee, at a rent equal to the then Fair Market Rental Value thereof, an undivided interest, equal to the Undivided Interest Percentage, in and to the Unit 1 Retained Assets. Any such sale or lease by PNM shall be accomplished by an appropriate bill of sale or lease.

**SECTION 6.02. Agreement to Assign or Make Available ANPP Project Agreements.** Upon a transfer to a Transferee, PNM agrees in respect of the Undivided Interest and the Real Property Interest, (i) if the Transferee is a purchaser of the Undivided Interest and the Real Property Interest, to assign to the Transferee an undivided interest, equal to the Undivided Interest

Percentage, in the ANPP Project Agreements (other than the ANPP Participation Agreement) to the extent relating to Unit 1 and the Unit 1 Retained Assets, and (ii) if the Transferee is a lessee of the Undivided Interest and the Real Property Interest, to assign for the term of such lease to the Transferee an undivided interest, equal to the Undivided Interest Percentage, in the ANPP Project Agreements (other than the ANPP Participation Agreement) to the extent relating to Unit 1 and the Unit 1 Retained Assets. Any assignment pursuant to this Section 6.02 shall be accomplished by an appropriate instrument of assignment.

**SECTION 6.03. Agreements to Seek Amendments to the ANPP Participation Agreement and the License.**

PNM agrees to use its best efforts to obtain any required amendments to the ANPP Participation Agreement and the License to permit PNM to act as Agent of the Owner Trustee in the manner contemplated by Section 7.01 hereof, if (i) PNM shall not have elected to purchase the Undivided Interest and the Real Property Interest as provided in Section 13(b) of the Facility Lease and (ii) there shall not be a Transferee in respect of the Undivided Interest and the Real Property Interest.

**ARTICLE VII**

**INTERIM AGENCY ARRANGEMENTS**

**SECTION 7.01. Designation of Agent.** From and after surrender of possession to the Owner Trustee (or its assigns) of the Undivided Interest and the Real Property Interest pursuant to Section 5(a) of the Facility Lease and until a transfer to a Transferee in respect of the Undivided Interest and the Real Property Interest (such period being referred to as the Agency Period), PNM shall be, and the Owner Trustee hereby designates PNM as, the initial agent (the Agent) of the Owner Trustee in the exercise of all rights assigned to the Owner Trustee hereunder.

**SECTION 7.02. Operation of Unit 1.** During the Agency Period, the Agent shall administer the operation of the Undivided Interest and the Real Property Interest in accordance with this Agreement and all instructions of the Owner Trustee in accordance with Applicable Law. If, however, the Owner Trustee and the User shall, prior to, or at any time during, the Agency Period, enter into any joint ownership and operating agreement with other Persons having a legal right to, or right to use, any other undivided interest in Unit 1, the Agent agrees to join in, and be bound by, the terms of such agreement if the Agent's performance thereunder shall not violate, or result in a violation of, any Applicable Law or the License. The Owner Trustee agrees to give the Agent reasonable prior written notice of the commencement of the negotiation of any such agreement.

**SECTION 7.03. ANPP Participation Agreement.** PNM agrees that, at all times during the Agency Period, it will perform all obligations and discharge all liability for which it is responsible as a "Participant" under the ANPP Participation Agreement in respect of the Undivided Interest and the Real Property Interest. In the performance of the foregoing agreement, PNM shall not exercise its rights as an ANPP Participant to cause Capital Improvements to be made to Unit 1 unless the Owner Trustee shall have agreed to provide funds for the payment of the Owner Trustee's Share of the cost of such Capital Improvements to PNM prior to the date on which such amounts shall be due with respect thereto under the ANPP Participation Agreement.

**SECTION 7.04. Support.** Except with respect to the Unit 1 Retained Assets for which provision is made in Section 7.06, PNM covenants and agrees that, at all times during the Agency Period, it will provide, or make available, to the Owner Trustee all PNM's rights in and to other assets owned by PNM and the ANPP Project Agreements to the extent relating to the Undivided Interest and the Real Property Interest.

**SECTION 7.05. Compensation.** As compensation for its obligations under Sections 7.02, 7.03 and 7.04,



PNM shall be entitled to receive, and the Owner Trustee hereby agrees to pay, an amount equal to the Owner Trustee's Share of the aggregate of (i) amounts paid by PNM as provided in Section 7.03 to the extent reasonably allocable to Unit 1 and (ii) reasonable compensation for the Unit 1 Retained Assets and (iii) out-of-pocket expenses incurred by PNM or the Agent, as the case may be, in connection with the performance of its agreements in this Article VII. Compensation under this Section 7.05 shall be paid promptly in cash upon receipt of an invoice from PNM.

**SECTION 7.06. Transmission; Transmission Agreement.** (a) PNM covenants and agrees that, at all times during the Agency Period, the Owner Trustee shall have the right to wheel, under normal transmission operating conditions, the Owner Trustee's Share of up to 1270 MW of power and energy, under normal transmission operating conditions, over transmission equipment in which PNM now owns or may hereafter acquire an ownership interest, between Unit 1 and the ANPP Switchyard.

(b) Based upon the respective rights, duties and obligations of the Owner Trustee and PNM set forth in Section 7.06(a), if PNM shall fail or decline to give the notice of renewal of the Facility Lease or purchase of the Undivided Interest, in each case as provided in Section 13(a) of the Facility Lease, PNM and the Owner Trustee shall forthwith commence the negotiation in good faith of a definitive transmission agreement, not inconsistent with the terms and provisions of Section 7.06(a), but containing sufficient detail for the proper wheeling of power and energy, under normal transmission operating conditions, over the equipment of PNM referred to in such Section 7.06(a) under then existing circumstances, for the exercise or stipulation, as the case may be, of the respective rights, duties and obligations of the Owner Trustee and PNM set forth in Section 7.06(a). PNM and the Owner Trustee shall complete such negotiations and execute such definitive transmission agreement prior to the Lease Termination Possession Date and such definitive transmission agreement shall provide for compensation to PNM for the

transmission services so provided at the Fair Market Sales Value thereof.

## **ARTICLE VIII**

### **MISCELLANEOUS**

**SECTION 8.01. Successors and Assigns.** This Agreement shall be binding upon the successors and assigns of each of PNM and the Owner Trustee.

**SECTION 8.02. Governing Law.** The interpretation of this Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the law of the State of New York.

**SECTION 8.03. Counterpart Execution.** This Agreement may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, all such counterparts together constituting but one and the same instrument.

**SECTION 8.04. Amendments.** The terms of this Agreement shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever, except by written instrument signed by PNM and the Owner Trustee.

**SECTION 8.05. Survival.** All agreements and covenants contained in this Agreement or any agreement, document or certificate delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement.

**SECTION 8.06. Severability of Provisions.** Any provision of this Agreement which may be determined by competent authority to be 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 no such prohibition or

unenforceability in any jurisdiction shall invalidate or render unenforceable such provisions in any other jurisdiction. To the extent permitted by Applicable Law, PNM hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

**SECTION 8.07. Headings.** The division of this Agreement into sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**SECTION 8.08. Disclosure of Beneficiary.** Pursuant to Arizona Revised Statutes s33-401, the beneficiary of the Trust Agreement is Burnham Leasing Corporation, a New York corporation, whose address is 60 Broad Street, New York, New York 10004, Attention: Chief Financial Officer. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts, 02110, Attention of Corporate Trust Division.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed in New York, New York by their respective officers thereunto duly authorized.

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

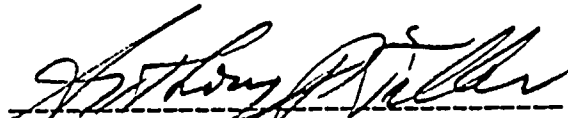
By: 67 Polun  
Senior Vice President and  
Chief Financial Officer

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of December 16, 1985, with Burnham Leasing Corporation

By: [Signature]  
Vice President

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

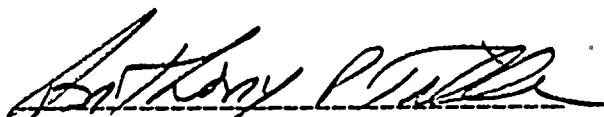
The foregoing instrument was acknowledged before me this 31st day of December, 1985, by A.J. Robison, the Senior Vice President and Chief Financial Officer of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, on behalf of the corporation.

  
\_\_\_\_\_  
Notary Public

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

ANTHONY P. RUTHER  
NOTARY PUBLIC, State of New York  
Residing at New York City, N.Y.  
New York Co. CTS No. 3147/844  
Commission Expires March 30, 1987

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by Clark M. Whitcomb, a Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association under that certain Trust Agreement dated as of December 16, 1985.

  
\_\_\_\_\_  
Notary Public

ANTHONY P. RUTHER  
NOTARY PUBLIC, State of New York  
Residing at New York City, N.Y.  
New York Co. CTS No. 3147/844  
Commission Expires March 30, 1987

When recorded, return to:

Greg R. Nielson  
Snell & Wilmer  
3100 Valley Bank Center  
Phoenix, Arizona 85073

---

DEED AND BILL OF SALE

dated December 31, 1985

between

PUBLIC SERVICE COMPANY OF NEW MEXICO,  
a New Mexico corporation,  
as Seller

and

THE FIRST NATIONAL BANK OF BOSTON, a national banking  
association, not in its individual capacity, but solely  
as Owner Trustee under a Trust Agreement, dated as of  
December 16, 1985, with Burnham Leasing Corporation,  
as Buyer

---

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DEED AND BILL OF SALE, dated as of December 16, 1985 between PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the Seller), and THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not in its individual capacity, but solely as Owner Trustee (in such capacity, the Owner Trustee) under the Trust Agreement, dated December 31, 1985, with the Owner Participant identified in paragraph 6 hereof (the Owner Participant, and the Owner Trustee in its capacity as owner trustee under the foregoing Trust Agreement being hereinafter referred to as the Buyer).

W I T N E S S E T H :

WHEREAS, the Seller desires to sell, and the Buyer desires to purchase, the Undivided Interest, for and in consideration of the amounts paid by the Buyer to the Seller pursuant to the Participation Agreement (as hereinafter defined);

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

1. For the purpose hereof, capitalized terms used herein, unless otherwise defined herein, shall have the meanings assigned to such terms in Appendix A attached hereto.

The property described on Exhibit B hereto is collectively referred to herein as Unit 1 and the undivided interests therein being conveyed pursuant hereto are referred to collectively herein as the Undivided Interest. Unit 1 is located on the PVNGS Site described in Exhibit A hereto.

2. The Seller does hereby GRANT, BARGAIN, CONVEY, SELL, ASSIGN, TRANSFER AND SET OVER unto the Buyer (i) a 2.266667% undivided interest in and to the property described in Exhibit B, Section A hereto (the Generating Unit) and (ii) a .755556% undivided interest in and to all of the property described on Exhibit B, Section B hereto (the Common Facilities) TO HAVE AND TO HOLD the same unto the Buyer, its successors and assigns, FOREVER. It is the intent of this Deed and Bill of Sale, that, from and after the date of this Deed and Bill of Sale, Buyer will own an undivided 2.266667% interest in the Generating Unit, as a tenant in common with the owners of the remaining undivided interests in the Generating Unit, and an undivided .755556% interest in the Common Facilities, as a tenant in common with the owners of the remaining undivided interests in the Common Facilities.

3. The Seller does hereby WARRANT AND COVENANT that it is the true and lawful owner of the Undivided Interest and has good right to sell the Undivided Interest, that title to the Undivided Interest is on the date of execution hereof free and clear of all claims, liens, security interests and encumbrances of any nature,

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other than Permitted Liens (other than those described in clause (ii) of the definition of such term and that portion of clause (iv) of such definition relating to liens for taxes being contested), that good, marketable and indefeasible title to the Undivided Interest is hereby conveyed to the Buyer, and that the Seller will forever warrant and defend such title against the claims of all Persons. The foregoing warranties of the Seller are to the restraint of any other covenant of the Seller otherwise arising by implication by virtue of Arizona Revised Statutes, Section 33-435.

4. The Seller and the Buyer hereby acknowledge and confirm that, as between the Seller and the Buyer, the Undivided Interest is and will remain personal property, and is not, and will not become, an accession to the PVNGS Site or to the Real Property Interest, title thereto being separate and distinct from title to such real property. The Buyer hereby waives any rights it may have to partition Unit 1, whether by partitionment in kind or by sale and division of proceeds, and further agrees that it will not resort to any action in law or in equity to partition Unit 1 and it waives the benefits of all laws that may now or hereafter authorize such partition for a term (i) which shall be coterminous with the ANPP Participation Agreement or (ii) which shall be for such lesser period as may be required by Applicable Law.

5. Pursuant to the Assignment and Assumption, the Seller has agreed to pay certain costs and expenses relating to Unit 1, including, but without limitation, with respect to decommissioning and retirement of Unit 1, and to perform and comply with certain obligations relating to transfers of interests in Unit 1. All such agreements and obligations of the Seller are hereby incorporated by reference in this Deed and Bill of Sale as if set forth in full herein.

6. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is Burnham Leasing Corporation, a New York corporation (the Owner Participant), whose address is 60 Broad Street, New York, New York 10004, Attention: Chief Financial Officer. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts, 02110, Attention of Corporate Trust Division.

IN WITNESS WHEREOF, the parties hereto have caused this Deed and Bill of Sale to be executed on this 31st day of December, 1985.

PUBLIC SERVICE COMPANY OF NEW MEXICO, a  
New Mexico corporation

By A J Robinson  
Senior Vice President and  
Chief Financial Officer

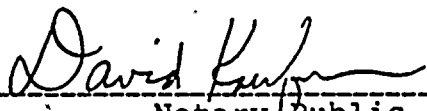
THE FIRST NATIONAL BANK OF BOSTON, a  
national banking association, not in  
its individual capacity, but solely as  
Owner Trustee under the Trust Agreement

By [Signature]  
Vice President



State of New York       )  
                                  ) ss:  
County of New York     )

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by A.J. ROBISON, the Senior Vice President and Chief Financial Officer of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, on behalf of the corporation.

  
\_\_\_\_\_  
Notary Public

DAVID KAUFMAN  
Notary Public, State of New York  
No. 31-57412  
Qualified to Notary Public  
Commission Expires 12/31/87 87

State of New York       )  
                                  ) ss:  
County of New York     )

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by CLARK M. WHITCOMB, a Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association as trustee under that certain Trust Agreement dated as of December 16, 1985.

  
\_\_\_\_\_  
Notary Public

DAVID KAUFMAN  
Notary Public, State of New York  
No. 31-57412  
Qualified to Notary Public  
Commission Expires 12/31/87 87

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EXHIBIT A  
to  
DEED AND  
BILL OF SALE

PVNGS SITE DESCRIPTION

I. PVNGS PLANT SITE

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the East half of the Southeast quarter thereof; and EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82, Maricopa County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and

EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County Records.

PARCEL NO. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

## II. HASSAYAMPA PUMPING STATION AND EFFLUENT PIPELINE

All real property, leases, licenses, easements, rights-of-way and other property held by USLife Title Company of Arizona Trust No. 530 established by that certain Trust Agreement dated October 15, 1975, as amended, but excluding therefrom all improvements.

## III. MISCELLANEOUS REAL PROPERTY INTERESTS

Those ANPP Project Agreements (as defined in the ANPP Participation Agreement), in addition to the Trust Agreement for USLife Title Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix Metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement).





EXHIBIT B  
to  
DEED AND  
BILL OF SALE

UNIT 1 DESCRIPTION

A. Unit 1 of the Palo Verde Nuclear Generating Station (PVNGS), located in Maricopa County, Arizona, approximately 55 miles west of the City of Phoenix, Arizona, and approximately 16 miles west of the City of Buckeye, Arizona, consisting of:

- I. Unit 1 Combustion Engineering "System 80" pressurized water reactor nuclear steam supply system (the NSSS). The NSSS is comprised of a reactor vessel containing 241 fuel assemblies with approximately 100 tons of enriched uranium (fuel assemblies, however, are not part of Unit 1 and are not included in the Undivided Interest being sold), two steam generators, four reactor coolant pumps and various additional systems and subsystems. The licensed thermal rating of the NSSS is 3800 MW.
- II. Unit 1 GE TC6F-43, 1800 RPM tandem-compound, six flow, reheat turbine-generator including turbine, generator, moisture separator-reheater, exciter, controls, and auxiliary subsystems. The turbine-generator is conductor cooled and rated at 1,554 MVA at 24,000 V, 3 phase, 60 Hz, 1.5 in Hg ABS back pressure, and approximately 1,363 MW maximum gross electric output.
- III. Unit 1 146 ft. inside diameter, steel-lined, prestressed concrete cylindrical containment building with a hemispherical dome designed for 60 psig. The containment building houses the reactor system.
- IV. Unit 1 auxiliary systems and equipment including engineered safeguards systems, reactor auxiliary systems and turbine-generator auxiliary systems associated with items I, II, and III above, extending to and including the Unit 1 start-up transformer.
- V. Unit 1 cooling tower system consisting of three (3) mechanical draft cooling towers, including a closed cycle circulating water system, make-up water systems and essential spray ponds.

- VI. Unit 1 radioactive waste treatment system, including liquid, gaseous, and solid waste subsystems, controls, instrumentation, storage, handling and shipment facilities.
- VII. Unit 1 emergency diesel-generator system, including a diesel-generator building which contains two diesel generators, fuel oil systems, storage tanks, control and instrumentation systems and other equipment.
- VIII. Unit 1 internal communication systems, including associated interconnections and computer data links.

**BUT EXCLUDING:**

- I. Nuclear fuel for Unit 1, including spare fuel assemblies.
- II. Spare Parts (Unit 1).
- III. Transmission facilities (including any and all facilities and equipment providing interconnection between the Unit 1 turbine generator and the ANPP High Voltage Switchyard, including step-up transformers and standby equipment and systems).
- IV. Oil and diesel fuel inventories (Unit 1).

**TO:** B. All PVNGS common facilities, INCLUDING BUT NOT LIMITED

- I. Surveillance systems, including associated radioactive monitoring systems and equipment.
- II. Water treatment facilities and transport systems for supply of waste water effluent.
- III. Warehouses and related storage facilities and equipment.

**BUT EXCLUDING:**

- I. Nuclear fuel, including spare fuel assemblies.
- II. All transmission and ANPP High Voltage Switchyard facilities.

- III. Administration Building.
- IV. Administration Annex Building.
- V. Technical Support Center.
- VI. Visitor Center.
- VII. External communication systems and equipment, including associated interconnections and computer data links.
- VIII. Parking lot improvements, road improvements, fencing and dikes.
- IX. Spare parts (Common Facilities).
- X. Simulator.
- XI. Oil and diesel fuel inventories.
- XII. Real property, beneficial interest in USLife Title Company of Arizona Trust No. 530, and Project Agreement interests described in Exhibit A.



When recorded, return to: Greg R. Nielson  
Snell & Wilmer  
3100 Valley Bank Center  
Phoenix, Arizona

**DEED**

For the consideration of Ten Dollars (\$10.00) and other valuable considerations, PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (Grantor), hereby grants, conveys, sells, transfers and assigns to THE FIRST NATIONAL BANK OF BOSTON, a national banking association, as Owner Trustee (the Owner Trustee) under that certain Trust Agreement (the Trust Agreement), with the beneficiary identified below, dated as of December 16, 1985 (the Owner Trustee being hereinafter referred to as Grantee), (A) an undivided .666667% interest in the land that is more particularly described on Exhibit A attached hereto and by this reference incorporated herein, and (B) an undivided .755556% interest in those ANPP Project Agreements (as defined in the Arizona Nuclear Power Project Participation Agreement dated August 23, 1973, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company and Southern California Public Power Authority, as amended (the "ANPP Participation Agreement")) in addition to the Trust Agreement for USLife Title Company of Arizona Trust 530, consisting of leases, licenses, easements and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to the Palo Verde Nuclear Generating Station (as defined in the ANPP Participation Agreement) from the 91st Avenue sewage treatment plant serving the Phoenix, Arizona metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement) (such ANPP Project Agreements being hereinafter referred to as the "Assigned Project Agreements", and the land described in Exhibit A together with the land subject to the Assigned Project Agreements being hereinafter collectively referred to as the "Land") together with all rights and privileges of Grantor appurtenant thereto, including but not limited to the perpetual right to locate, maintain and use the Improvements (as hereinafter defined) on the Land and the perpetual right of ingress and egress over,

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upon and across the Land to the Improvements, BUT excepting and excluding from the transfer being made pursuant to this Deed any and all facilities, structures, improvements, equipment and property of whatever kind and nature now or hereafter constructed, placed or affixed on the Land (collectively, the Improvements), Grantor and Grantee hereby acknowledging and agreeing that the interest in the Improvements to be acquired by Grantee shall be acquired pursuant to a separate Deed and Bill of Sale dated as of December 16, 1985, between Grantor and Grantee and not pursuant to this Deed.

1. The interest being transferred pursuant to this Deed is subject to the ANPP Participation Agreement; to the Project Agreements as defined in said ANPP Participation Agreement; and to the matters set forth on Exhibit B attached hereto and incorporated herein by this reference.

2. Grantor hereby warrants that it is the true and lawful owner of the undivided interest conveyed hereby in the property described on Exhibit A attached hereto and has good right to sell the undivided interest in such property; that Grantor has good and marketable title to the undivided interest in the property described on Exhibit A and that title to such property is on the date of execution hereof free and clear of all claims, liens, encumbrances, security interests, covenants, assessments, rights, reservations, easements, restrictions and conditions save and except only those matters set forth on Exhibit B attached hereto; that good, marketable and indefeasible title to the undivided interest in the property described on Exhibit A is hereby conveyed to Owner Trustee; and that, subject only to the matters set forth on Exhibit B attached hereto, Grantor hereby warrants, and will forever defend, the title against all persons whomsoever.

3. Grantor intends by this Deed that, from and after the recordation of this Deed, Grantee will own an undivided .666667% interest in the property described in Exhibit A, as a tenant in common with the owners of the remaining undivided interests in such property, and an undivided .755556% interest in the Assigned Project Agreements as a tenant in common with the owners of the remaining undivided interests in the Assigned Project Agreements.

4. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is Burnham Leasing Corporation, a New York corporation, whose address is 60 Broad Street, New York, New York 10004, Attention: Chief Financial Officer. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts, 02110, Attention of Corporate Trust Division.

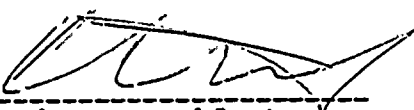
IN WITNESS WHEREOF, Grantor has caused this Deed to be executed on this 31st day of December, 1985.

PUBLIC SERVICE COMPANY OF NEW  
MEXICO, a New Mexico corporation,

By *A. J. Robison*  
Senior Vice President and  
Chief Financial Officer

Accepted and Agreed  
to:

THE FIRST NATIONAL BANK  
OF BOSTON, a national  
banking association,  
not in its individual  
capacity, but solely  
as Trustee of the  
Trust Agreement

By   
Vice President



State of New York     )  
                              ) ss.  
County of New York    )


The foregoing instrument was acknowledged before me this 31st day of December, 1985, by A. J. Robison, the Senior Vice President and Chief Financial Officer of Public Service Company of New Mexico, a New Mexico corporation, on behalf of the corporation.

  
\_\_\_\_\_  
Notary Public

ANTHONY P. TILLER  
NOTARY PUBLIC, State of New York  
Residing in New York County,  
New York Co. Cts No. 3-479,245  
Commission Expires March 30, 1987

State of New York     )  
                              ) ss.  
County of New York    )

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by Clark M. Whitcomb, Vice President of The First National Bank of Boston, a national banking association, on behalf of the banking association as Owner Trustee under that certain Trust Agreement dated as of December 16, 1985.

  
\_\_\_\_\_  
Notary Public

ANTHONY P. TILLER  
NOTARY PUBLIC, State of New York  
Residing in New York County,  
New York Co. Cts No. 3-479,245  
Commission Expires March 30, 1987

EXHIBIT A  
to  
DEED

PVNGS SITE DESCRIPTION

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the

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Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the East half of the Southeast quarter thereof; and EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82, Maricopa County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and

EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County Records.

PARCEL NO. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.



EXHIBIT B  
TO  
DEED

1. The right to enter upon, occupy and use, any part or all of that portion of the West half of the West half of Section 27, lying within 20 feet of the center line of the transmission line right of way of the Central Arizona Light and Power Company for the purposes provided in the Act of June 10, 1920 (41 STAT., 1063), and subject to the conditions and limitations of Section 24 of said Act, as Amended by the Act of August 26, 1935 (49 STAT., 846), as reserved unto the United States of America in instrument recorded September 30, 1949 in Docket 442, page 577. (Part of Parcel No. 5 - South half of said Section 27)
2. Roadway over the South 65 feet of said Sections 9 and 10, as shown on Book 13 of Road Maps, page 48. (Parcels 10 and 11)
3. Easement and rights incident thereto for electric lines approximately 28 feet South of the North line of said Section 34, as set forth in instrument recorded February 20, 1952 in Docket 878, page 548. (Parcel No. 8)
4. All the Oil and Gas in said lands, as reserved unto the United States of America, and the right to prospect for, mine and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of June 17, 1914 (38 Stat. 509), as set forth in Patent recorded June 4, 1957 in Docket 2194, page 409. (Part of Parcel No. 11)
5. Easement and rights incident thereto for transmission line over said Section 34, said easement being 10 feet in width, the centerline described as follows: Beginning at a point approximately 28 feet South and 2445.5 feet East of the Northwest corner of said Section 34; thence Southerly along, parallel to and approximately 2620 feet to a point; thence Easterly, along, parallel to, and approximately 2648 feet South of the North line of said Section 34, a distance of approximately 1556 feet to a point, as set forth in instrument recorded January 15, 1962 in Docket 3992, page 49. (Parcel No. 8)
6. One-Sixteenth of all gas, oil, metals and mineral rights as reserved unto the State of Arizona, in Patent recorded January 11, 1974 in Docket 10473, page 447. (Parcel 1)
7. Easement and rights incident thereto for highway purposes over the West 55 feet of the East half of said Section 4, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Parcel 3)
8. Easement and rights incident thereto for highway purposes over the West 55 feet of the Southeast quarter of said Section 28, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Parcel 6)

9. Easement and rights incident thereto for highway purposes over the West 55 feet of the East half of said Section 33, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Parcel 7)

10. Easement and rights incident thereto for highway purposes over the West 55 feet of the Southeast quarter of said Section 9, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Part of Parcel 10)

11. Easement and rights incident thereto for electric lines over the North 10 feet of the following described property: The Southeast quarter of Section 23, Township 1 North, Range 6 West; Except the West 55 feet thereof for roadway, as set forth in instrument recorded June 25, 1976 in Docket 11736, page 1090. (Parcel 6)

12. Easement for highway purposes over said premises, as granted to Maricopa County, a Political Subdivision, by instrument recorded December 15, 1977 in Docket 12602, page 575, described as follows:

The South 40 feet of the East one-half of the Southeast quarter of Section 9; the South 40 feet of the Southwest quarter of Section 10; the South 40 feet of the West one-half of the Southeast quarter of Section 10, the South 40 feet of the Southwest quarter of the Southeast quarter of Section 9; All being in Township 1 South, Range 6 West of the Gile and Salt River Base and Meridian, Maricopa County, Arizona.

13. A roadway of a width consistent with the right of way over the Southerly portion of Sections 9 and 10 of the within described property, and other property designated County Road on Book 25 of Road Maps, page 47, recorded December 26, 1978. (Also known as Hard Road from the Hassayampa Salome Highway to the South entrance of the Palo Verde Nuclear Generating Station)

14. Arizona Nuclear Power Project Agreement dated August 23, 1973, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company and Southern California Public Power Authority, as amended.

15. 1985 taxes not yet due and payable.

16. Easement and rights incident thereto for transmission line right of way over a portion of said premises, as set forth in instrument recorded November 15, 1985 in Document No. 85-544605. (Parcels 1, 2, 8, 9 and 11)

17. Easement and rights incident thereto for highway over a portion of said premises, as set forth in instrument recorded February 3, 1959, in Docket 2740, page 309, and as shown in Book 12 of Road Maps, page 82 (Parcel 12).

18. Easement and rights incident thereto for roadway 20 feet in width, over the East 20 feet of the within described property, by instrument recorded October 19, 1976, in Docket 11907, page 115 (Parcel 12).

When recorded, return to: Greg R. Nielson  
Snell & Wilmer  
3100 Valley Bank Center  
Phoenix, Arizona 85073

**DEED AND ASSIGNMENT OF BENEFICIAL INTEREST**

**USLIFE TITLE TRUST NO. 530**

PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (Assignor), as the present owner of an undivided 10.2% of the entire beneficial interest under US Life Title Company of Arizona Trust No. 530 (Trust 530) established by that certain Trust Agreement dated October 15, 1975 (the Trust 530 Agreement), for and in consideration of the sum of Ten and no/100 Dollars (\$10.00) and other valuable consideration, does by these presents sell, assign, convey, transfer and set over to THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee) under that certain Trust Agreement (the Trust Agreement) with the beneficiary identified below, dated as of December 16, 1985 (the Owner Trustee being referred to herein as the Assignee) an undivided .755556% beneficial interest in Trust 530.

1. It is the intent of this Deed and Assignment of Beneficial Interest that, from and after the date of this Deed and Assignment of Beneficial Interest, Assignee will own an undivided .755556% of the entire beneficial interest in Trust 530, as a tenant in common with other beneficiaries.

2. Assignor hereby warrants that it is the true and lawful owner of the beneficial interest being transferred hereby and has good right to sell such interest; that Assignor has good and marketable title to such beneficial interest and that title to such beneficial interest is on the date of execution hereof free and clear of all claims, liens, security interests, covenants, rights, restrictions, conditions and

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encumbrances of any nature, save and except only those matters set forth in paragraph 3 hereinbelow; that good, marketable and indefeasible title to such beneficial interest is hereby conveyed to Owner Trustee; and that, subject only to the matters set forth in paragraph 3 hereinbelow, Assignor warrants and will forever defend such title against the claims of all persons whomsoever.

3. This Deed and Assignment of Beneficial Interest is given and accepted with the understanding and agreement that Assignor and Assignee hereby ratify, confirm and approve all proper actions heretofore taken by USLife Title Company of Arizona, as Trustee of Trust 530 (the Trustee) and all proper disbursements heretofore made by the Trustee, and is given and accepted with the understanding and agreement that the interest in Trust 530 which is being transferred hereby is being transferred and assigned, and the property held under Trust 530 is, subject to all the terms and conditions of (i) the Arizona Nuclear Power Project Participation Agreement dated August 23, 1973, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company and Southern California Public Power Authority, as amended, (ii) the Project Agreements as defined in said Arizona Nuclear Power Project Participation Agreement and (iii) the Trust 530 Agreement, including all supplements and amendments thereto; and is subject to all obligations and liabilities under the Trust 530 Agreement heretofore accrued or hereafter arising under the terms thereof. Assignee hereby accepts, assumes and agrees to be bound by all of the terms, conditions, stipulations and obligations of Trust 530 Agreement. Trustee is authorized to substitute Assignee in place of Assignor under the Trust 530, to the extent of the interest hereby assigned to Assignee. ...

4. Assignee hereby advises the Trustee that, until further notice, Assignee's address for all Trust 530 purposes is:

100 Federal Street  
Boston, Massachusetts 02110  
Attention of Corporate Trust  
Division

5. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is Burnham Leasing Corporation, a New York corporation, whose address is 60 Broad Street, New York, New York 10004, Attention: Chief Financial Officer. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110; Attention of Corporate Trust Division.

IN WITNESS WHEREOF, Assignor has caused this Deed and Assignment of Beneficial Interest to be executed on this 31st day of December, 1985.

PUBLIC SERVICE COMPANY OF NEW  
MEXICO, a New Mexico corporation

By *A.J. Robison*  
Senior Vice President and  
Chief Financial Officer

State of New York                    )  
  ) ss.  
County of New York                )

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by A.J. Robison, the Senior Vice President and Chief Financial Officer of Public Service Company of New Mexico, a New Mexico corporation, on behalf of the corporation.

*Christine R. Delfino*  
Notary Public

CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 4814814

Qualified in New York County  
Commission Expires March 30, 1986

ACCEPTANCE BY ASSIGNEE

The foregoing Deed and Assignment of Beneficial Interest is hereby accepted and all terms and conditions are hereby approved, and Assignee hereby acknowledges receipt of a copy of the Trust 530 Agreement and all amendments and supplements thereto, and hereby agrees to be bound by and to comply with all the terms and obligations of the Trust 530 Agreement.

DATED as of the 31st day of December, 1985.

THE FIRST NATIONAL BANK OF  
BOSTON, a national banking  
association, not in its  
individual capacity but  
solely as Trustee under the  
Trust Agreement

By 

Vice President

State of New York )  
County of New York )

ss.

The foregoing instrument was acknowledged before me this 31st day of December, 1985, by Clark M. Whitcomb, a Vice President of First National Bank of Boston, a national banking association, on behalf of the banking association as Trustee under that certain Trust Agreement dated as of December 16, 1985.

  
Notary Public

CHRISTINE P. BRENNAN  
Notary Public, State of New York  
No. 40161  
Qualified in New York County  
Commission Expires March 30, 1986

ENDORSEMENT OF TRUSTEE

The foregoing Deed Assignment of Beneficial Interest is hereby accepted, and filed in Trust Department of USLIFE TITLE COMPANY of Arizona this \_\_\_\_ day of \_\_\_\_\_, 198\_\_.

USLIFE TITLE COMPANY OF  
ARIZONA, Trustee

By \_\_\_\_\_  
Authorized Signature

NOTE: Trustee's endorsement hereon shall be effective only after all assignment fees and other fees currently due Trustee with respect to the interest being assigned have been paid in full.

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of December, 1985, \_\_\_\_\_, a trust officer of USLIFE TITLE COMPANY of Arizona, an Arizona corporation, on behalf of the corporation, as Trustee under the Trust 530 Agreement.

\_\_\_\_\_  
Notary Public



December 31, 1985

**CHEMICAL BANK**

not in its individual  
capacity, but solely as Collateral  
Trust Trustee  
55 Water Street,  
New York, New York 10041  
Attention: Corporate Trustee Administration

**PUBLIC SERVICE COMPANY OF NEW MEXICO  
PALO VERDE NUCLEAR GENERATING STATION UNIT 1 LEASE**

Dear Sirs:

Reference is made to the Participation Agreement, dated as of December 16, 1985 (the Participation Agreement), among the parties whose signatures appear at the foot hereof. All capitalized terms used herein without definition shall have the meanings set forth in Appendix A to the Participation Agreement.

1. **Representations, Warranties and Agreements.** The Loan Participant, the Owner Participant, FNB, the Owner Trustee, the Indenture Trustee and Public Service Company of New Mexico (PNM) hereby confirm for your benefit that their respective representations and warranties (in the capacity given therein) and, in the case of PNM, agreements contained in Sections 6, 7, 8, 9, 10, 13 and 14 of the Participation Agreement and, in the case of the Owner Participant, the agreements contained in Section 14(a) of the Participation Agreement, are true and correct and hereby respectively repeat such representations, warranties and agreements, in the case of PNM and the Owner Participant, to the same extent as if such representations, warranties and agreements were set forth herein in full, whether or not the same are amended after the date hereof.

2. **Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements contained herein shall survive the execution and delivery of this letter.

3. **Successors and Assigns.** All terms and provisions of this letter shall inure to your benefit and the benefit of your successors and assigns and each holder from time to time of each Bond.

4. **Consequences of Breach.** A breach of the representations, warranties and agreements contained herein will not entitle you or any holder of a Bond to exercise remedies or take other action under the Participation Agreement or any other Transaction Document, but you may pursue all other rights you have at law or in equity in consequence of such a breach.

5. **Governing Law.** This letter shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.

BURNHAM LEASING CORPORATION

By: *R. L. Barnett*  
Assistant Treasurer

FIRST FV FUNDING CORPORATION

By: *Joseph B. Bailey*  
President

CHEMICAL BANK,  
as Indenture Trustee

By: *[Signature]*  
Vice President

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

By: *G. J. Robinson*  
Senior Vice President and  
Chief Financial Officer

THE FIRST NATIONAL BANK OF  
BOSTON

in its individual capacity  
and as Owner Trustee

By: *[Signature]*  
Vice President





INDENTURE OF PARTIAL RELEASE

THIS INDENTURE OF PARTIAL RELEASE, dated as of this 31 day of December, 1985, by IRVING TRUST COMPANY, a corporation organized and existing under the laws of the State of New York, as Trustee (hereinafter sometimes called "the Trustee"), to PUBLIC SERVICE COMPANY OF NEW MEXICO, a corporation organized and existing under the laws of the State of New Mexico (hereinafter sometimes called "the Company");

## W I T N E S S E T H

WHEREAS, a certain Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, executed and delivered by the Company to the Trustee to secure bonds of the Company issued and to be issued thereunder, was filed for record as a real property mortgage and as a financing statement in the Office of the County Recorder, County of Maricopa, State of Arizona, and has been supplemented by thirty-two supplemental indentures, the last such supplement being dated as of December 1, 1984, such supplemental indentures having been filed for record as real property mortgages and as financing statements in the Office of the County Recorder, County of Maricopa, State of Arizona (said Indenture of Mortgage and Deed of Trust and said supplemental indentures being hereinafter collectively referred to as the "Indenture"); and

WHEREAS, specific recording information pertaining to the aforementioned recordings is shown on Appendix I attached hereto and made a part hereof; and

WHEREAS, the Company has represented to the Trustee that it has agreed to transfer, sell and convey the property hereinafter described; and

WHEREAS, the Company has complied with all requirements of the Indenture which are prerequisite to the execution and delivery of this Indenture of Partial Release; and

WHEREAS, the Trustee has been requested to release the property hereinafter described from the lien of the Indenture, and the Indenture authorizes the execution of this Indenture of Partial Release;

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00) and other good and valuable consideration to it in hand paid by the Company, the receipt whereof is hereby acknowledged, Irving Trust Company, as Trustee as aforesaid, does hereby release and discharge from the lien of the Indenture and forever quitclaim and set over unto the said Public Service Company of New Mexico, a New Mexico corporation, its successors and assigns forever, all that certain property more particularly described in the Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the right, title and interest in said property hereby released, quitclaimed and set over unto Public Service Company of New Mexico, its successors and assigns forever, free and discharged from any lien, claim or interest whatsoever of said Irving Trust Company, as Trustee as aforesaid, by virtue of said Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, as supplemented as aforesaid; PROVIDED, HOWEVER, that the lien of said Indenture of Mortgage and Deed of Trust, as supplemented as aforesaid, as to all other property

covered thereby and not heretofore released, whether owned by Public Service Company of New Mexico at the time said Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, was executed or since acquired, is hereby reserved and unaffected by this instrument.

This instrument is made without warranty by, and without recourse to, the Trustee in any event whatsoever.

IN WITNESS WHEREOF, said Irving Trust Company, as Trustee as aforesaid, has caused its corporate name to be hereunto affixed by one of its ~~Assistant~~ Vice Presidents and the same to be attested by one of its Assistant Vice Presidents or Assistant Secretaries, and the due execution of this Indenture of Partial Release to be acknowledged, all as of the day and year first above written.

IRVING TRUST COMPANY  
as Trustee

By   
~~Assistant~~ Vice President

ATTEST:

  
Title: \_\_\_\_\_

STATE OF NEW YORK

COUNTY OF NEW YORK

) ss.

On this 30 day of December, 1985, before me appeared W. T. ... to me personally known, who being by me duly sworn, did say that he is an ~~Assistant~~ Vice President of Irving Trust Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said W. T. ... acknowledged said instrument to be the free act and deed of said corporation.

Marion Eichenwald  
NOTARY PUBLIC

My commission expires:

MARION EICHENWALD  
Notary Public, State of New York  
No. 31-304722  
Qualified in New York County  
Commission Expires March 20, 1987



EXHIBIT "A"

The following described property located in Maricopa County, Arizona:

Certain real property interests consisting of (i) an undivided two and 166,667/1,000,000 percent (2.166667%) fee interest in the Palo Verde Nuclear Generating Station ("PVNGS") Plant Site land described in Part I of Schedule 1 attached hereto and incorporated herein by reference; and (ii) an undivided two and 455,556/1,000,000 percent (2.455556%) beneficial interest in USLife Title Trust No. 530, more particularly described in Part II of said Schedule 1; and (iii) an undivided two and 455,556/1,000,000 percent (2.455556%) interest in certain PVNGS "Project Agreements" more particularly described in Part III of said Schedule 1.



## DESCRIPTION OF REAL PROPERTY

### I. PVNGS PLANT SITE

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northwest quarter of Section 27.



PARCEL NO 6: The Southeast quarter of Section Twenty-eight (28) Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the East half of the Southeast quarter thereof;  
and

EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, Page 82, Maricopa County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said

highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and

EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, Page 52, Maricopa County Records.

PARCEL 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

## II. HASSAYAMPA PUMPING STATION AND EFFLUENT PIPELINE

All real property, leases, licenses, easements, rights-of-way and other property held by USLife Title Company of Arizona Trust No. 530 established by that certain Trust Agreement dated

October 15, 1975, as amended, but excluding therefrom all improvements.

### III. MISCELLANEOUS REAL PROPERTY INTERESTS

Those Arizona Nuclear Power Project ("ANPP") Project Agreements (as defined in the ANPP Participation Agreement dated as of August 23, 1973, as amended), in addition to the Trust Agreement for US Life Title Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix Metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement).

8285C



INDENTURE OF PARTIAL RELEASE

THIS INDENTURE OF PARTIAL RELEASE, dated as of this 31 day of December, 1985, by IRVING TRUST COMPANY, a corporation organized and existing under the laws of the State of New York, as Trustee (hereinafter sometimes called "the Trustee"), to PUBLIC SERVICE COMPANY OF NEW MEXICO, a corporation organized and existing under the laws of the State of New Mexico (hereinafter sometimes called "the Company");

## W I T N E S S E T H

WHEREAS, a certain Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, executed and delivered by the Company to the Trustee to secure bonds of the Company issued and to be issued thereunder, was filed for record as a real property mortgage and as a financing statement in the Office of the County Recorder, County of Maricopa, State of Arizona, and has been supplemented by thirty-two supplemental indentures, the last such supplement being dated as of December 1, 1984, such supplemental indentures having been filed for record as real property mortgages and as financing statements in the Office of the County Recorder, County of Maricopa, State of Arizona (said Indenture of Mortgage and Deed of Trust and said supplemental indentures being hereinafter collectively referred to as the "Indenture"); and

WHEREAS, specific recording information pertaining to the aforementioned recordings is shown on Appendix I attached hereto and made a part hereof; and

WHEREAS, the Company has represented to the Trustee that it has agreed to transfer, sell and convey the property hereinafter described; and

WHEREAS, the Company has complied with all requirements of the Indenture which are prerequisite to the execution and delivery of this Indenture of Partial Release; and

WHEREAS, the Trustee has been requested to release the property hereinafter described from the lien of the Indenture, and the Indenture authorizes the execution of this Indenture of Partial Release;

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00) and other good and valuable consideration to it in hand paid by the Company, the receipt whereof is hereby acknowledged, Irving Trust Company, as Trustee as aforesaid, does hereby release and discharge from the lien of the Indenture and forever quitclaim and set over unto the said Public Service Company of New Mexico, a New Mexico corporation, its successors and assigns forever, all that certain property more particularly described in the Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the right, title and interest in said property hereby released, quitclaimed and set over unto Public Service Company of New Mexico, its successors and assigns forever, free and discharged from any lien, claim or interest whatsoever of said Irving Trust Company, as Trustee as aforesaid, by virtue of said Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, as supplemented as aforesaid; PROVIDED, HOWEVER, that the lien of said Indenture of Mortgage and Deed of Trust, as supplemented as aforesaid, as to all other property

covered thereby and not heretofore released, whether owned by Public Service Company of New Mexico at the time said Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, was executed or since acquired, is hereby reserved and unaffected by this instrument.


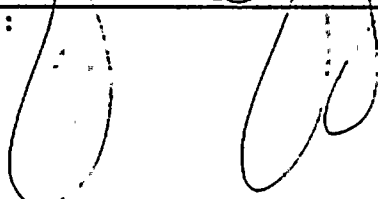
This instrument is made without warranty by, and without recourse to, the Trustee in any event whatsoever.

IN WITNESS WHEREOF, said Irving Trust Company, as Trustee as aforesaid, has caused its corporate name to be hereunto affixed by one of its ~~Assistant~~ Vice Presidents and the same to be attested by one of its Assistant Vice Presidents or Assistant Secretaries, and the due execution of this Indenture of Partial Release to be acknowledged, all as of the day and year first above written.

IRVING TRUST COMPANY  
as Trustee

By   
~~Assistant~~ Vice President

ATTEST:

  
Title: 

STATE OF NEW YORK

COUNTY OF NEW YORK

) ss.

On this 30<sup>th</sup> day of December, 1985, before me appeared  
W. T. COPELAND to me personally known, who being by me  
duly sworn, did say that he is an ~~Assistant~~ Vice President of Irving  
Trust Company, and that the seal affixed to said instrument is the  
corporate seal of said corporation, and that said instrument was signed  
and sealed in behalf of said corporation by authority of its Board of  
Directors, and said W. T. COPELAND acknowledged said instru-  
ment to be the free act and deed of said corporation.

Marion Eichenwald  
NOTARY PUBLIC

My commission expires:  
\_\_\_\_\_

MARION EICHENWALD  
Notary Public, State of New York  
No. 81-4812139  
Qualified in New York County  
Commission Expires March 30, 1987





EXHIBIT "A"

The following described property located in Maricopa County, Arizona:

- (1) An undivided seven and 366,667/1,000,000 percent (7.366667%) interest in "Unit 1" as described in Part A of Schedule 1 attached hereto and incorporated herein by reference;
- (2) an undivided two and 455,556/1,000,000 percent (2.455556%) interest in the Palo Verde Nuclear Generating Station ("PVNGS") Common Facilities described in Part B of said Schedule 1; and (3) the Generation Entitlement Share (as defined in the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, as amended (the "ANPP Participation Agreement")) and the related interest in the ANPP Participation Agreement associated with the above-described property.

A. Unit 1 of the Palo Verde Nuclear Generating Station ("PVNGS"), located in Maricopa County, Arizona, approximately 55 miles west of the City of Phoenix, Arizona, and approximately 16 miles west of the City of Buckeye, Arizona, CONSISTING OF:

- I. Unit 1 Combustion Engineering "System 80" pressurized water reactor nuclear steam supply system (the NSSS). The NSSS is comprised of a reactor vessel containing 241 fuel assemblies with approximately 100 tons of enriched uranium (fuel assemblies, however, are not a part of Unit 1 and will not be included in the Facilities being sold), two steam generators, four reactor coolant pumps and various additional systems and subsystems. The licensed thermal rating of the NSSS is 3800 MW.
- II. Unit 1 GE TC6F-43, 1800 RPM tandem-compound, six flow, reheat turbine-generator including turbine, generator, moisture separator-reheater, exciter, controls, and auxiliary subsystems. The turbine-generator is conductor cooled and rated at 1,554 MVA at 24,000 V, 3 phase, 60 Hz, 1.5 in Hg ABS back pressure, and approximately 1,363 MW maximum gross electric output.
- III. Unit 1 146 ft. inside diameter, steel-lined, prestressed concrete cylindrical containment building with a hemispherical dome designed for 60 psig. The containment building houses the reactor system.
- IV. Unit 1 auxiliary systems and equipment including engineered safeguards systems, reactor auxiliary systems and turbine-generator auxiliary systems associated with items I, II, and III above, extending to and including the Unit 1 start-up transformer.
- V. Unit 1 cooling tower system consisting of three (3) mechanical draft cooling towers, including a closed cycle circulating water system, make-up water systems and essential spray ponds.

#### SCHEDULE 1

- VI. Unit 1 radioactive waste treatment system, including liquid, gaseous, and solid waste subsystems, controls, instrumentation, storage, handling and shipment facilities.
- VII. Unit 1 emergency diesel-generator system, including a diesel-generator building which contains two diesel generators, fuel oil systems, storage tanks, control and instrumentation systems and other equipment.
- VIII. Unit 1 internal communication systems, including associated interconnections and computer data links.

BUT EXCLUDING:

- I. Nuclear fuel for Unit 1, including spare fuel assemblies.
- II. Spare parts (Unit 1).
- III. Transmission facilities (including any and all facilities and equipment providing interconnection between the Unit 1 turbine generator and the ANPP High Voltage Switchyard, including step-up transformers and standby equipment and systems).
- IV. Oil and diesel fuel inventories (Unit 1).

B. All PVNGS Common Facilities, INCLUDING BUT NOT

LIMITED TO:

- I. Surveillance systems, including associated radioactive monitoring systems and equipment.
- II. Water treatment facilities and transport systems for supply of waste water effluent.
- III. Warehouses and related storage facilities and equipment.

BUT EXCLUDING:

- I. Nuclear fuel, including spare fuel assemblies.
- II. All transmission and ANPP High Voltage Switchyard facilities.

- III. Administration building.
  - IV. Administration annex building.
  - V. Technical support center.
  - VI. Visitor center.
  - VII. External communication systems and equipment, including associated interconnections and computer data links.
  - VIII. Parking lot improvements, road improvements, fencing and dikes.
  - IX. Spare parts (Common Facilities).
  - X. Simulator.
  - XI. Oil and diesel fuel inventories.
  - XII. Real property, beneficial interest in USLife Title Company of Arizona Trust No. 530, and Project Agreement interests described in Schedule 2 attached hereto.
-

## DESCRIPTION OF REAL PROPERTY

### I. PVNGS PLANT SITE

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northwest quarter of Section 27.

PARCEL NO 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647; page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

### SCHEDULE 2

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the East half of the Southeast quarter thereof;

and

EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, Page 82, Maricopa County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof;

and

EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, Page 52, Maricopa County Records.

PARCEL 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

## II. HASSAYAMPA PUMPING STATION AND EFFLUENT PIPELINE

All real property, leases, licenses, easements, rights-of-way and other property held by USLife Title Company of Arizona Trust No. 530 established by that certain Trust Agreement dated October 15, 1975, as amended, but excluding therefrom all improvements.

## III. MISCELLANEOUS REAL PROPERTY INTERESTS

Those ANPP Project Agreements (as defined in the ANPP Participation Agreement), in addition to the Trust Agreement for US Life Title Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix Metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement).

8286C





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**TAX INDEMNIFICATION AGREEMENT**

dated as of December 16, 1985

between

**BURNHAM LEASING CORPORATION,  
as Owner Participant**

and :

**PUBLIC SERVICE COMPANY OF NEW MEXICO,  
as Lessee**

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**Sale and Leaseback of an Undivided Interest in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities**

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## TAX INDEMNIFICATION AGREEMENT

THIS TAX INDEMNIFICATION AGREEMENT, dated as of December 16, 1985, between BURNHAM LEASING CORPORATION, (the Owner Participant) and PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (the Lessee). Capitalized terms not otherwise defined herein shall have the meaning set forth in Appendix A to the Participation Agreement, dated as of December 16, 1985, among BURNHAM LEASING CORPORATION, Public Service Company of New Mexico, First PV Funding Corporation, the First National Bank of Boston, and Chemical Bank (the Participation Agreement).

### W I T N E S S E T H:

WHEREAS, the Owner Participant and the Lessee have executed the Participation Agreement pursuant to which the Owner Participant has agreed to cause the Owner Trustee to purchase from the Lessee, and the Lessee has agreed to sell to the Owner Trustee, the Undivided Interest and the Real Property Interest;

WHEREAS, the Owner Trustee and the Lessee have executed the Facility Lease pursuant to which the Owner Trustee has agreed to lease to the Lessee, and the Lessee has agreed to lease from the Owner Trustee, the Undivided Interest and the Real Property Interest;

WHEREAS, the Lessee understands that the Owner Participant has entered into the Transaction Documents based on the assumption that, for purposes of federal income tax laws, including any rules, regulations and procedures thereunder, the Owner Participant, as sole beneficiary of the Trust created under the Trust Agreement pursuant to which the Owner Trustee has purchased, and is the owner of, the Undivided Interest and the Real Property Interest, will be entitled to those items of income, loss, deduction and credit with respect to the Undivided Interest and the Real Property Interest as are provided to an owner of property; and

WHEREAS, the Owner Participant and the Lessee desire to clarify their respective rights and obligations with respect to such items of income, loss, deduction and credit for federal income tax purposes;

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

**SECTION 1. Tax Assumptions and Tax Representations.**

(a) Tax Assumptions. The Facility Lease has been entered into, and the Owner Participant's Net Economic Return has been computed, on the basis of the following assumed federal income tax benefits:

(1) The Facility Lease will be treated as a true lease under which the Owner Trustee will be the purchaser, owner and lessor of the Undivided Interest and the Real Property Interest and the Lessee will be treated as the lessee of the Undivided Interest and the Real Property Interest.

(2) The Owner Participant will be entitled to take into account in computing its federal income tax liability each item of income, gain, deduction, loss and credit of the trust created by the Trust Agreement.

(3) The Lessee will retain the investment credit. The transaction will constitute a "sale-and-leaseback transaction" for purposes of § 1.47-3(g) of the Regulations.

(4) The Owner Participant will be allowed deductions under the Accelerated Cost Recovery System with respect to the Undivided Interest pursuant to sections 168(a), 168(b)(1) and 168(f)(12) of the Code; the Owner Participant's taxable year in which the Closing Date occurs will be a full taxable year; the Owner Participant's aggregate adjusted

basis for purposes of computing such deductions will be equal to 100% of the Purchase Price; with respect to 92.8% of the Purchase Price, the Owner Participant will be entitled to take such deductions (resulting in a write-off of such percentage of the Purchase Price to a zero salvage value) in the following amounts at the following times:

Percentage (to be applied against  
- 92.8% of the Purchase Price)

1985	8%
1986	14%
1987	12%
1988	10%
1989	10%
1990	10%
1991	9%
1992	9%
1993	9%
1994	9%

and with respect to the remaining 7.2% of the Purchase Price, the Owner Participant will be entitled to take such deductions (resulting in a write-off of such percentage of the Purchase Price to a zero salvage value) in the following amounts at the following times:

Percentage (to be applied against  
- 7.2% of the Purchase Price)

1985	5%
1986	10%
1987	10%
1988	10%
1989	10%
1990	10%
1991	10%
1992	10%
1993	10%
1994	10%
1995	5%



(the deductions described in this paragraph (4) being hereinafter referred to as the ACRS Deductions).

(5) The indebtedness evidenced by the Notes will constitute a loan made to the Owner Trustee; all amounts paid with respect thereto other than payments of principal will be deductible, when paid or accrued, pursuant to section 163 of the Code and the Regulations in accordance with the method of accounting on the basis of which the Owner Participant regularly computes its income (the Interest Deductions).

(6) The Owner Participant will be allowed current deductions for amortization of an amount equal to the Transaction Expenses computed on a straight-line basis over the Basic Lease Term (the Amortization Deductions).

(7) The Owner Participant will have at all relevant times sufficient federal taxable income against which to apply the ACRS Deductions, the Interest Deductions and the Amortization Deductions.

(8) The Notes will bear interest pursuant to their terms at the rates applicable from time to time; the principal amount of the Notes will constitute no more than 80 percent of the Purchase Price; and the Notes will be amortized by certain payments of principal pursuant to the terms thereof.

(9) Basic Rent will be paid on the Basic Rent Payment Dates. Basic Rent will be payable in arrears in semi-annual installments during the Basic Lease Term and the Renewal Term as set forth in the Facility Lease.

(10) Neither the Owner Trustee nor the Owner Participant will at any time be required to include any amount in gross income for federal income tax

purposes with respect to the transactions contemplated by the Transaction Documents or the Financing Documents other than (a) payments of Basic Rent in the amounts and no earlier than at the times such payments are required to be made in accordance with the Facility Lease, which payments of Basic Rent shall be accrued ratably over the six-month period preceding the date on which such payment of Basic Rent is required to be made in accordance with the Facility Lease, (b) payments pursuant to the exercise of Lessee's options to purchase the Undivided Interest as described in the Facility Lease at the time such payments are made, and (c) any payments required to be made on an After-Tax Basis pursuant to the Transaction Documents at the time such payments are made.

(11) The Owner Participant's marginal federal rate of income tax is 46 percent, without giving effect to any credits against tax.

(12) The Owner Participant's cash investment in the Undivided Interest at the Closing Date will be an amount equal to the Investment Percentage of the Purchase Price.

(13) The Closing Date will be December 31, 1985.

(14) The Owner Trustee and the Owner Participant will be entitled to treat each item of income, gain, deduction, loss and credit with respect to the transactions contemplated by the Transaction Documents and the Financing Documents as derived from or allocable to sources within the United States.

(b) Tax Representations. The Lessee represents and warrants to and covenants with the Owner Participant that:

(1) On the Closing Date and throughout the Lease Term, the Undivided Interest will constitute "recovery property" and "10-year property" within

the meaning of sections 168(c)(1) and 168(c)(2)(C) of the Code as in effect on the date hereof.

(2) Unit 1 will be "placed in service" for the purposes of section 168 of the Code no later than the Closing Date, and each item of property constituting the Undivided Interest will be so placed-in-service no later than the Closing Date.

(3) Not more than 7.2% of the property constituting the Undivided Interest and not more than 7.2% of the Purchase Price shall be subject to the provisions of section 168(f)(12) of the Code, dealing with limitations on property financed with tax-exempt bonds.

(4) The Lessee has provided to the Appraiser all factual information in its possession which is relevant to such Appraiser's conclusions and such information is accurate and complete on the Closing Date. The Lessee has no reason to believe that the Appraiser's conclusions are inaccurate.

(5) Assuming that the Owner Participant is the owner of the Undivided Interest for federal income tax purposes, the Owner Participant will be entitled to the ACRS Deductions, the Interest Deductions and the Amortization Deductions.

(6) Neither the Owner Trustee nor the Owner Participant will at any time be required to include any amount in gross income for federal income tax purposes with respect to the transactions contemplated by the Transaction Documents or the Financing Documents other than the amounts described in Sections 1(a)(10)(a), (b) and (c) hereof at the respective times referred to therein.

(7) The Owner Trustee and the Owner Participant will be entitled to treat each item of income, gain, deduction, loss and credit with respect to the transactions contemplated by the Transaction Documents or the Financing Documents as

derived from or allocable to sources within the United States.

(8) The provisions of section 168(f)(10) of the Code as in effect on the Closing Date and as such section of the Code may be amended by any provision substantially similar to any provision set forth in section 1509(b) of H.R. 3838 will not apply to the transactions contemplated by the Transaction Documents in a manner that could cause a Loss and the Lessee will not take any action pursuant to section 168(b)(3) or 168(f)(2)(C) that is inconsistent with the Owner Participant's entitlement to the ACRS Deductions.

(9) Neither Unit 1 nor any item of property constituting the Undivided Interest was placed in service for federal income tax purposes prior to May 1, 1985.

(10) At all times prior to the closing on the Closing Date the Undivided Interest was owned by the Lessee.

(11) The provisions of Section 168(e) of the Code will not apply to the transactions contemplated by the Transaction Documents.

(12) Throughout the Lease Term the Undivided Interest shall not constitute "tax-exempt use property" within the meaning of section 168(j) of the Code as in effect on the Closing Date and as such section of the Code may be amended by any provision substantially similar to any provision set forth in section 1502(a) of H.R. 3838, and the provisions of section 168(j) of the Code as in effect on the Closing Date and as so amended will not apply to the transactions contemplated by the Transaction Documents.

(13) No part of the Undivided Interest will be used predominantly outside the United States within the meaning of Section 168(f)(2) of the Code.

(14) On the Closing Date, no improvements, modifications or additions to the Undivided Interest are required to render the Undivided Interest complete for its intended use by the Lessee.

(15) No part of the cost of the Undivided Interest or Real Property Interest paid for or incurred by the Lessee or any Affiliate thereof shall not have been reimbursed by the Owner Trustee.

(16) On the Closing Date, for federal income tax purposes, the fair market value of the Undivided Interest was \$100,000,000 and the fair market value of the Real Property Interest was \$47,214.

(17) (i) It is reasonable to expect (x) that the Undivided Interest will be useful to and useable by a Person other than the Lessee or any Person related to the Lessee at the end of the Basic Lease Term and the Renewal Term and capable of continued leasing or transfer to such a Person at that time, and (y) that it will be commercially feasible for the Owner Trustee or the Owner Participant to enter into such a lease or transfer at such time in a transaction pursuant to which the Owner Participant would realize, with respect to the Undivided Interest, the residual value set forth in the report of the Appraiser apart from any amounts that such a Person would be required to expend pursuant to the Assignment and Assumption or otherwise in connection with the acquisition or use of the Undivided Interest and apart from any amounts that such a Person would be required to expend in connection with the acquisition or use of the Real Property Interest and (ii) the Undivided Interest does not constitute, and will not constitute during the Lease Term, "limited use property" within the meaning of Revenue Procedure 76-30; provided, however, that this representation is not a representation that any residual value shall in fact exist at the end of the Basic Lease Term and Renewal Term.

## SECTION 2. Indemnification.

(a) Consistent Tax Returns. The Lessee agrees that neither it nor any Affiliate will at any time take any action, directly or indirectly, or file any returns or other documents inconsistent with the assumptions and representations set forth in Section 1 hereof, and that the Lessee and any such Affiliate will file such returns; maintain such records, take such actions and execute such documents, as reasonably requested by the Owner Participant from time to time, as may be appropriate to facilitate the realization of such assumptions by the Owner Participant. The Lessee covenants and agrees to maintain, or cause to be maintained, such other records as shall be reasonably requested by the Owner Participant, in each case in order to verify the factual basis for the matters referred to in this Tax Indemnification Agreement. The Lessee shall make the records referred to in the preceding sentences available, or cause such records to be made available, for inspection by the Owner Participant or its authorized agents, during normal business hours at the Lessee's office at Alvarado Square, Albuquerque, New Mexico 87158, Attention: A. J. Robison, Senior Vice President and Chief Financial Officer, upon request by, and five days' prior notice from, the Owner Participant. The Lessee shall, at its expense, upon request by the Owner Participant, provide to the Owner Participant a copy of such records which shall be certified to be a true copy by an affidavit attached thereto and executed by an officer of the Lessee. Notwithstanding the preceding sentence, the Owner Participant or its authorized agents shall have the right to make copies and extracts of any such records at the Owner Participant's sole expense. The Lessee may, in accordance with its record retention practice and consistent with the requirements of the NRC, after written notice to the Owner Participant at least 30 days prior thereto, destroy such records as are specified in such notice other than those identified by the Owner Participant by written notice to the Lessee prior to such destruction.

(b) Indemnification - Loss of Tax Benefits.  
The Lessee shall indemnify the Owner Participant on an After-Tax Basis for

(1) any loss, disallowance, delay in obtaining, or recapture of the federal income tax benefits described in Section 1(a) hereof resulting in whole or in part from any one or more of the following events or things:

(i) any representation or warranty of the Lessee in Section 1(b) hereof or elsewhere in this Tax Indemnification Agreement, the other Transaction Documents or the Financing Documents shall prove inaccurate at any time or the Lessee shall breach any of its covenants in Section 1(b) hereof or any of its agreements, covenants, duties, undertakings or other obligations under this Tax Indemnification Agreement or the other Transaction Documents or the Financing Documents, or

(ii) any act or failure to act by the Lessee or by any Affiliate, transferee, sublessee, or assignee of the Lessee or by any user of the Undivided Interest, or by any person to whom the Lessee or any Affiliate thereof shall sell power or energy generated at PVNGS, or by any person having custody or possession of Unit 1 or the Undivided Interest or by any ANPP Participant or by any Affiliate of any of the foregoing or by any subsequent transferee, sublessee or assignee or by any trustee, receiver, liquidator or debtor in possession of any of the foregoing, other than, in the case of the Lessee, the execution and delivery of one or more of the Transaction Documents or the Financing Documents and acts specifically required or expressly permitted to be performed by the Lessee under the Facility Lease or any Transaction Document or any Financing Document; provided, however, that (A) any act of the Lessee performed to

satisfy a general covenant to comply with Applicable Laws or prudent utility practice or to cause the Undivided Interest to be operated and maintained or to carry out obligations under the ANPP Participation Agreement and related agreements, (B) any act that is permitted by implication or because it is not required or prohibited by such documents, (C) any act that implements a general requirement or right on the part of the Lessee in a manner that is not specifically required or expressly permitted under such documents and (D) the making of any Capital Improvement shall each be an act or failure to act for which the Lessee is responsible under this paragraph (ii), or

(iii) the sale or other disposition of Unit 1, the Undivided Interest or any item of property comprising the Undivided Interest upon the exercise by the Owner Participant of its remedies under the Facility Lease upon the occurrence of an Event of Default thereunder, or

(iv) the bankruptcy, or other proceedings for the protection of debtors, of or involving the Lessee or any transferee, sublessee or assignee of the Lessee or any subsequent transferee, sublessee or assignee or any Affiliate of any of the foregoing, or any foreclosure on any property of any of the foregoing, or

(v) any damage to or destruction, loss of generating capacity, theft, nongovernmental taking or requisition or repair of or any addition, improvement, modification, alteration, replacement or substitution of or to Unit 1 or the Undivided Interest or the Real Property Interest, or any part of any thereof, or



(vi) any governmental taking or requisition of title, use or otherwise of Unit 1, the Undivided Interest or the Real Property Interest or any part of any thereof if such taking or requisition does not immediately constitute an Event of Loss under the Facility Lease, or

(vii) any payment by any manufacturer or any other vendor or supplier or contractor or subcontractor with respect to any part of Unit 1 or the Undivided Interest, but in the event of any such payment made to the Owner Participant, any indemnity hereunder shall take into account any economic benefit realized by the Owner Participant from the receipt of such payment without double counting for any economic loss for which such payment provided compensation, or

(viii) any issuance, defeasance, refinancing, refunding, redemption, purchase, repurchase, cancellation, retirement, reoptimization, substitution, releveraging, modification or remarketing of the Notes, or the Bonds, or any other debt securities issued or assumed pursuant to the Transaction Documents or the Financing Documents or any terms or provisions of any thereof or otherwise in connection with the financing, refinancing or any Supplemental Financing of Unit 1, any Capital Improvement or the Undivided Interest or the Real Property Interest or any part thereof or interest therein, including, without limitation, the purchase or deemed purchase by the Lessee or the Loan Participant of any such Notes, Bonds or securities, or

(ix) the presence of the Loan Participant, or any successor or assign thereof, in the transactions contemplated by the Transaction Documents and the Financing Documents, or

(x) the existence or operation of the ANPP Participation Agreement, the ANPP Project Agreements or any amendment to any of the foregoing (including without limitation the rights and remedies of the ANPP Participants) or any obligations of the Lessee or restriction of rights of the Owner Trustee or the Owner Participant or provisions of any of the Transaction Documents or the Financing Documents (including without limitation the provisions of the Assignment and Assumption) resulting from any of the foregoing, or

(xi) the existence, provisions or operation of the License, or

(xii) the existence, provisions or operation of USLife Title Insurance Company of Arizona Trust No. 530, or

(xiii) the existence or implementation of the provisions set forth in Section 10(b)(3)(xi) of the Participant Agreement, and

(2) any inclusion in the Owner Participant's gross income, for federal income tax purposes, of any amount in respect of any replacement or substitution of, any alteration to or modification in, or any addition or improvement to, any item of property comprising the Undivided Interest or any part or any expenditure made, or property furnished by the Lessee in respect of such item of property or pursuant to the Transaction Documents or Financing Documents (whether or not permitted or required under the Transaction Document or Financing Documents)

(any such loss, disallowance, delay in obtaining or recapture in respect of either subsection (1) above or this subsection (2) being referred to as a Loss).

(c) Indemnity Payment - After-Tax Basis.

(1) In the event of a Loss, the Owner Participant, unless pursuant to Section 5 hereof the Owner Participant is not entitled to payment with respect to such Loss, shall notify the Lessee of such Loss and the Lessee shall pay to the Owner Participant on an After-Tax Basis an amount (the Indemnity Payment) which shall be equal to the sum of the aggregate additional federal income taxes payable by the Owner Participant as a result of such Loss and any interest, penalties or additions to tax payable as a result of such Loss (except to the extent such penalties result from the Owner Participant's failure to file returns which are timely and proper insofar as they relate to matters unrelated to the transactions contemplated by the Transaction Documents).

(2) If the Owner Participant, as the result of a Loss occurring with respect to any year under circumstances that require the Lessee to indemnify the Owner Participant with respect to such Loss pursuant to Section 2(b) hereof, shall be entitled to claim (taking into account the assumptions set forth in Section 3 hereof) with respect to any subsequent year federal income tax savings that would not have been realized but for such Loss, the Owner Participant shall pay to the Lessee an amount equal to the sum of such federal income tax savings plus the amount of any federal, state or local income tax savings the Owner Participant is entitled to claim (taking into account the assumptions set forth in Section 3 hereof) as the result of any payment made pursuant to this sentence; provided, however, that such sum shall not be payable. (i) before such time as the Lessee shall have made all payments or indemnities then due pursuant to the Transaction Documents and (ii) while any Default or Event of Default shall have occurred and be continuing; provided further, however, that such sum shall not exceed the excess of the amounts previously paid by the Lessee to the Owner Participant pursuant to Section 2(c)(1) hereof with respect to the Loss that gave rise to such tax savings over the amounts previously paid by the Owner Participant to the

Lessee pursuant to this Section 2(c)(2) with respect to such Loss.

### SECTION 3. Determination of Payments.

Whenever it may be necessary for purposes of this Tax Indemnification Agreement to determine (a) the amount resulting from any Loss suffered by the Owner Participant or (b) the amount of any federal income tax savings referred to in Section 2 hereof, such determination shall be made on the assumptions that (a) the federal income taxes of the Owner Participant are payable at the highest marginal statutory tax rates in effect for corporate taxpayers such as the Owner Participant for the respective years to which any Loss or Losses relate (the Effective Rate), (b) in computing its federal income tax liability, the Owner Participant can concurrently fully utilize the tax benefits that are the subject of such Loss against taxes payable at the Effective Rate and (c) the Owner Participant can fully utilize any tax benefits resulting from a Loss against federal income taxes payable at the Effective Rate. For purposes of determining the amount of taxes payable by the Owner Participant upon receipt of any payment required to be made by the Lessee to the Owner Participant under this Tax Indemnification Agreement and the amount of any tax savings realized by the Owner Participant as a result of any payment made by the Owner Participant pursuant to Section 2 hereof, it shall be assumed that federal, state, local and foreign taxes are payable by the Owner Participant at the highest marginal statutory rates then in effect. The determination of the amount payable to or by the Owner Participant under this Tax Indemnification Agreement shall be made in the first instance by the Owner Participant, who shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount; and if requested by the Lessee, such determination shall be verified in writing by a firm of nationally recognized independent public accountants selected by the Owner Participant and acceptable to the Lessee. The costs of such verification shall be borne by the Lessee unless an error of 10 percent or more shall be discovered in which case such costs shall be

shared equally. Any statements furnished to the Lessee pursuant to Section 3 hereof shall (a) be signed by a Responsible Officer of the Owner Participant, (b) state in reasonable detail the basis upon which such amount or adjustment has been determined and (c) certify that such amount or adjustment has been determined pursuant to and in compliance with this Tax Indemnification Agreement. The Lessee agrees that it will not have the right to inspect the tax returns, books, records or any other documents of the Owner Participant or any Affiliate thereof in order to verify the basis or the accuracy of the calculations so made or of the amounts set forth in any such statement and that the determinations made by the independent accountants in accordance with this Section 3 shall be conclusive and binding.

#### SECTION 4. Effective Date.

An Indemnity Payment shall be payable not later than 20 days after demand by the Owner Participant, except as provided in Section 6.

#### SECTION 5. Excluded Events.

The Owner Participant shall be responsible for, and shall not be entitled to any payment in respect of, any Loss occurring solely as a direct result of one or more of the following events:

(a) a failure of the Owner Participant to claim in a proper or timely manner the ACRS Deductions, the Interest Deductions or the Amortization Deductions for the appropriate years (any disclosure or failure to make a disclosure pursuant to section 6661 of the Code shall not cause a claim to be considered improper), unless (i) the claiming of any such deductions would be inconsistent with any prior audit adjustment by the IRS with respect to which the Lessee is required to indemnify the Owner Participant under this Tax Indemnification Agreement (except to the extent such prior audit adjustment is being contested in accordance with the provisions of Section 6 hereof), (ii) the Owner Participant shall have furnished the Lessee with an opinion of independent tax counsel (mutually acceptable

to the Owner Participant and the Lessee, but not excluding the regular outside counsel of the Owner Participant or the Lessee) to the effect that as a result of a Tax Law Change, Event of Loss, Termination Event, or an act, omission or misrepresentation of the Lessee such claim would not be proper pursuant to the standards of ABA Formal Opinion 85-352 or (iii) such failure to claim any such deductions for the appropriate year is caused by a failure of the Lessee to take any action or provide the Owner Participant with any information or document that the Lessee is required to take or provide pursuant to the Transaction Documents or the Financing Documents;

(b) the failure of the Owner Participant to have sufficient federal taxable income to benefit from the ACRS Deductions, the Interest Deductions, or the Amortization Deductions;

(c) any voluntary sale by the Owner Participant or any involuntary sale or other disposition resulting from the bankruptcy of, the foreclosure against, or any similar proceeding against, the Owner Participant or the Owner Trustee (unless such bankruptcy, foreclosure or similar proceeding shall have been caused by the Lessee or any Affiliate thereof), of the Undivided Interest, the Trust Estate, or any beneficial interest therein, unless an Event of Default shall have occurred and be continuing;

(d) any Event of Loss whereby the Lessee is required under the Facility Lease to pay, and shall have paid in full, Casualty Value for all of the Undivided Interest, or any termination of the Facility Lease, whereby the Lessee is required under the Facility Lease to pay, and shall have paid in full, Termination Value for all of the Undivided Interest, except to the extent the payment made with respect to such Event of Loss or termination did not properly reflect the time of the occurrence of such Event of Loss or termination;

(e) any amendment, modification, deletion, addition or change in or to the provisions of the Code which shall occur after the Closing Date other than any

provision set forth in Title XV of H.R. 3838 or any provision substantially similar to any such provision and other than a Tax Law Change; provided, however, that such Loss is not a result in whole or in part of any act or failure to act, after the date of enactment of such amendment, modification, deletion, addition or change, by any Person referred to in Section 2(b)(1)(ii) hereof that is inconsistent with the provisions of such amendment, modification, deletion, addition or change in the Code or the representations, warranties or covenants made by the Lessee in Section 1(b) hereof;

(f) the Owner Participant or Lessor being treated as engaged in a partnership with any other person, except if such partnership arises as a result of an event or circumstance set forth in Section 2(b) hereof;

(g) the failure of the Owner Trust to be taxed as a conduit entity unless such failure arises as a result of an event or circumstance set forth in Section 2(b)(1)(viii), (ix), (x), or (xii);

(h) the inability of the Owner Participant to claim the ACRS Deductions, Interest Deductions or Amortization Deductions due to the the Owner Participant or any affiliate thereof, being or becoming an entity subject to the provisions set forth in Section 465 of the Code, a charitable organization, any agency or instrumentality of the United States, a State or political subdivision thereof or an international organization within the meaning of Section 168(j)(4)(C) of the Code;

(i) failure of the transaction to qualify as a "true lease" for federal income tax purposes, resulting in the Owner Participant not being treated as the owner of the the Undivided Interest for federal income tax purposes, except as a result of an event or circumstance set forth in Section 2(b) hereof; and

(j) failure of the Owner Participant to fulfill its material obligations to contest a proposed adjustment or adverse determination as provided in Section 6 hereof.

## SECTION 6. Contests.

(a) If the IRS proposes in writing an adjustment in the federal income tax liability of the Owner Participant, which adjustment if sustained would result in a Loss, the Owner Participant shall notify the Lessee promptly of such adjustment and of all action taken or proposed to be taken by the IRS and the Owner Participant shall for at least 30 days after giving such notice forbear, if such forbearance is permitted by law, payment of any tax (including interest, penalties and additions to tax thereon) asserted to be payable as a result of such proposed adjustment.

(b) If the Lessee requests within 30 days after the Owner Participant's notice pursuant to paragraph (a) of this Section 6 that the proposed adjustment be contested, the Owner Participant shall contest the proposed adjustment in good faith at the trial court level upon receipt of an opinion of independent tax counsel of nationally recognized standing selected by the Lessee and reasonably satisfactory to the Owner Participant to the effect that there exists a basis in law and fact under the standard imposed by ABA Formal Opinion 85-352 for such contest and at each appellate level upon receipt of an opinion of independent tax counsel of nationally recognized standing selected by the Lessee and reasonably satisfactory to the Owner Participant to the effect that there exists a substantial possibility that an appellate court will reverse or substantially modify the lower court decision, provided that (i) the Owner Participant shall be entitled to pursue or forego any administrative proceedings, shall be required to contest any proposed adjustment beyond the level of administrative proceedings only if timely requested by the Lessee and shall not be required to pursue any appeal to the United States Supreme Court, (ii) the Owner Participant shall determine the court of competent jurisdiction in which to contest the proposed adjustment either before or after payment of the tax asserted to be payable as a result thereof, and (iii) the Owner Participant shall keep the Lessee informed as to the progress of any litigation and, if requested by the Lessee, shall consult with the



Lessee's counsel (provided that the conduct of all administrative proceedings and litigation shall nevertheless remain within the sole discretion of the Owner Participant and its tax counsel exercised in good faith and provided, further, that the Owner Participant shall not unreasonably discriminate against any such proposed adjustment as compared to other proposed adjustments made by the IRS involving the potential tax liability of the Owner Participant). The Owner Participant shall not be required to take any action pursuant to this paragraph (b) of this Section 6 unless: (i) the amount of the Indemnity Payment arising from all proposed adjustments with respect to a taxable year, plus all indemnities that would arise by reason of the fact that the subject matter of any such adjustments is of a continuing nature, shall be in excess of \$250,000; (ii) the Lessee shall have agreed to indemnify the Owner Participant in a manner satisfactory to the Owner Participant for any expense which the Owner Participant may incur as a result of contesting such proposed adjustment; (iii) the Lessee shall have agreed to pay the Owner Participant on demand all reasonable costs and expenses that the Owner Participant may incur in connection with contesting such proposed adjustment (including, without limitation, reasonable legal and accounting fees, disbursements, penalties, interest and additions to tax); (iv) no Event of Default shall have occurred and be continuing; and (v) the Owner Participant shall have determined that the action to be taken will not result in any danger of sale, forfeiture or loss of, or the creation of any Lien (except for Liens permitted under the Transaction Documents and except if the Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of the Owner Participant in a manner satisfactory to the Owner Participant) on the Undivided Interest, the Real Property Interest, Unit 1 or any part thereof or interest therein. The Owner Participant shall also not be required to contest any proposed adjustment if the subject matter thereof shall be of a continuing nature and shall have previously been decided pursuant to the contest provisions of this Section 6, unless there shall have been a change in the law (including, without limitation, amendments to statutes or regulations,

administrative rulings and court decisions) after such previous contest shall have been so decided, and the Owner Participant shall have received an opinion of independent tax counsel selected as provided in this Section 6(b) and furnished at the Lessee's sole expense to the effect that the prior authorities are no longer determinative of the issue.

(c) If the Owner Participant shall elect to contest a proposed adjustment by paying the tax claimed (including such other amounts payable as interest, penalties, or additions to tax) and seeking a refund, and if the proposed adjustment would be a Loss with respect to which the Lessee could be required to indemnify the Owner Participant under this Tax Indemnification Agreement, then the Lessee shall advance to the Owner Participant on an interest-free basis and with no additional net after-tax cost to the Owner Participant the aggregate amount of such taxes, interest, penalties and additions to tax which the Owner Participant shall have elected to pay. If the Owner Participant subsequently receives a refund, in whole or in part, of such taxes, interest, penalties or additions to tax, or if the Loss is not one for which the Lessee is required to make an Indemnity Payment, the Owner Participant shall promptly pay to the Lessee the amount of such refunded or credited taxes, money advanced, interest, penalties or additions to tax plus the amount of any interest received by the Owner Participant from the taxing authority, or interest the payment of which is actually avoided with respect to such refunded taxes, interest, penalties, additions to tax or money advanced; provided, however, that the Owner Participant may offset the amount of such refunded taxes, interest, penalties or additions to tax against any amount due and owing by the Lessee to the Owner Participant pursuant to this Tax Indemnification Agreement.

(d) Notwithstanding anything to the contrary contained in this Section 6, the Owner Participant may at any time decline to take any further action with respect to a proposed adjustment; provided, however, that if the Lessee has properly requested such action pursuant to paragraph (b) of this Section 6 and shall

have duly complied with all of the terms of this Section 6, the Owner Participant shall notify the Lessee that the Owner Participant waives its right to any Indemnity Payment by the Lessee that would otherwise be payable by the Lessee pursuant to this Tax Indemnification Agreement in respect of such adjustment, including any indemnities arising solely from such adjustment in subsequent years or which would arise by reason of the fact that the subject matter of such adjustment is of a continuing nature. In such event, the Owner Participant shall, within 30 days of such notice, reimburse the Lessee for all amounts previously advanced by the Lessee to the Owner Participant pursuant to paragraph (c) of this Section 6 including any interest realized by the Owner Participant or the payment of which is actually avoided by reason of payment of the tax claimed with funds advanced by the Lessee.

(e) If the Lessee shall have appropriately requested the Owner Participant to contest any proposed adjustment as above provided and shall have duly complied with all of the terms of this Section 6, the fact of the Lessee's liability for indemnification to the extent required pursuant to this Tax Indemnification Agreement shall become fixed upon a Final Determination of the liability of the Owner Participant for the tax and any interest, penalties and additions to tax asserted to be payable as a result of such proposed adjustment. A "Final Determination" with respect to a Loss shall mean (i) a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., when all allowable appeals have been exhausted by either party to the action to the extent required by this Section 6) or, in any case where judicial review shall at the time be unavailable by reason of the proposed adjustment involving a decrease in a net operating loss carryforward, a decision, judgment, decree or other order of an administrative official or agency of competent jurisdiction, which has become final (i.e., all administrative appeals have been exhausted by either party to the extent required by this Section 6), (ii) a closing agreement entered into under Section 7121 of the Code or any other settlement agreement entered

into in connection with an administrative or judicial proceeding, or (iii) the expiration of the time for instituting a claim for refund, or if such a claim was filed, the expiration of the time for instituting suit with respect thereto. Notwithstanding anything in this Section 6 to the contrary hereinabove, the Owner Participant shall not be required to make any payments to the Lessee under this Section 6 while there shall be an amount due and owing by the Lessee to the Owner Participant under any of the Transaction Documents, or if and for so long as an Event of Default shall have occurred and be continuing. The amount payable to the Owner Participant pursuant to this Section 6 shall be paid pursuant to Section 3 hereof after receipt by the Lessee of a written demand therefor from the Owner Participant accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable.

#### SECTION 7. Adjustments.

The assumed federal income tax benefits set forth in Section 1(a) hereof shall be adjusted to reflect any Adjustments to Rent provided for in Section 3(d) of the Facility Lease.

#### SECTION 8. Affiliated Group.

For purposes of this Tax Indemnification Agreement, the term "Owner Participant" shall include any member of an affiliated group of corporations of which the Owner Participant is, or may become, a member if consolidated or combined returns are or shall be filed for such affiliated group for federal, state or local income tax purposes.

#### SECTION 9. Duration.

The obligations and liabilities of the Owner Participant and the Lessee arising under this Tax Indemnification Agreement shall continue in full force and effect, notwithstanding the expiration or early termination of the Facility Lease, until all such obligations have been met and such liabilities have been

paid in full, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

#### SECTION 10. Payments.

All payments to be made to the Owner Participant or the Lessee pursuant to this Tax Indemnification Agreement shall be made in immediately available funds to such bank and/or account in the continental United States for the account of the Owner Participant or the Lessee as from time to time the Owner Participant shall have directed the Lessee or the Lessee shall have directed the Owner Participant, as the case may be, in writing. If the date on which any payment to be made pursuant to this Tax Indemnification Agreement shall not be a Business Day, such payment shall be made on the next succeeding Business Day.

#### SECTION 11. Interest.

Interest at the Penalty Rate shall be payable on any amount not paid when due hereunder until such amount shall be paid.

#### SECTION 12. Notices.

All notices and other communications provided for herein shall be given to the Owner Participant or the Lessee, as the case may be, in the manner and to the appropriate address, and shall become effective, as provided in Section 17 of the Facility Lease.

#### SECTION 13. No Setoff.

Except in accordance with the express terms hereof, (a) no payment required to be made by the Lessee pursuant to this Tax Indemnification Agreement shall be subject to any right of setoff, counterclaim, defense, abatement, suspension, deferment or reduction, and (b) the Lessee shall have no right to terminate this Tax Indemnification Agreement, or to be released, relieved or discharged from any obligation or liability under

this Tax Indemnification Agreement for any reason whatsoever except as expressly provided herein.

#### SECTION 14. Governing Law.

This Tax Indemnification Agreement shall be governed by and construed in accordance with the laws of the State of New York.

#### SECTION 15. Counterparts.

This Tax Indemnification Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument.

#### SECTION 16. Headings.

The headings of the sections of this Tax Indemnification Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

#### SECTION 17. Amendments, Supplements, etc.

Neither this Tax Indemnification Agreement nor any of the terms hereof may be amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

#### SECTION 18. No Duplication of Payment.

Nothing contained in the terms of this Tax Indemnification Agreement or any other Transaction Document shall be construed to require the Lessee to make any payment with respect to any Loss more than once or to make any payments hereunder to the extent previously reflected in a rental adjustment pursuant to Section 3(d) of the Facility Lease.

IN WITNESS WHEREOF, the Owner Participant and the Lessee have caused this Tax Indemnification Agreement to be duly executed by their respective officers thereunto duly authorized as of the date set forth below.

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

By *Art Robinson*  
Vice President

Dated: December 31, 1985

BURNHAM LEASING CORPORATION

By *Helden Burnham*  
Assistant Treasurer

Dated: December 31, 1985

THE FIRST NATIONAL BANK OF BOSTON,  
not in its individual capacity, but  
solely as Owner Trustee under the  
Trust Agreement dated as of  
December 16, 1985, between The  
First National Bank of Boston and  
Burnham Leasing Corporation (the  
"Owner Participant")

December 31, 1985

Chemical Bank, as Indenture Trustee  
55 Water Street  
New York, N.Y. 10041

Dear Sirs: .

This letter is being delivered to you in connection with the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 16, 1985 (the "Indenture"), between The First National Bank of Boston, not in its individual capacity, but solely as Owner Trustee under the Trust Agreement referred to above, and Chemical Bank, as Indenture Trustee.

Capitalized terms used herein shall have the meanings set forth in Appendix A to the Indenture.

We hereby agree that, notwithstanding the provisions of Section 6.11 of the Indenture, so long as the Initial Series Bonds are outstanding, the Indenture Trustee, in addition to the Owner Trustee, shall have and retain the right to exercise remedies under the Facility Lease in connection with any Indenture Event of Default referred to in paragraph (a)(1) of Section 6.2 of the Indenture. For purposes of Section 6.3(a) of the Indenture, any such remedy exercised and pursued by the Indenture Trustee shall be deemed to have been exercised and pursued by the Owner Trustee.

The agreement set forth in this letter shall expire on December 31, 1986.

Very truly yours,

THE FIRST NATIONAL BANK OF BOSTON,  
not in its individual capacity,  
but solely as Owner Trustee under  
the Trust Agreement referred to  
above.

by

  
CLARK M. WHITCOMB, VICE PRESIDENT





BURNHAM

OWNER PARTICIPANT ESCROW LETTER

December 31, 1985

Chemical Bank  
55 Water Street  
New York, New York 10041  
Attention: Corporate Trustee Administration

Dear Sirs:

We have remitted to you immediately available funds in the amount of \$23,000,000. As our agent, you are hereby instructed to purchase for our account a Repurchase Agreement in the amount of \$23,000,000 (the Repurchase Agreement), fully collateralized by direct obligations of the United States of America, pursuant to which Merrill Lynch Government Securities Inc. is obligated to repurchase such obligations on January 2, 1986 (the Maturity Date) for an amount equal to \$23,009,200.

Unless our rights under the Repurchase Agreement have been assigned pursuant to the next succeeding paragraph, upon fulfillment by Merrill Lynch Government Securities Inc. of its obligations under the Repurchase Agreement on the Maturity Date, you are hereby instructed to remit the proceeds thereof to The First National Bank of Boston, as Owner Trustee under Trust Agreement No. 2, in its account at Chemical Bank.

Our rights hereunder and in the Repurchase Agreement may be assigned and reassigned, in whole but not in part, upon execution of

one or more of the assignments attached hereto and delivery to you of written notice of each such assignment.

Very truly yours,

Burnham Leasing Corporation, as  
Owner Participant

By Sheldon Barnett  
~~Vice President~~  
Assistant Treasurer

Acknowledged and Agreed:

Chemical Bank

By [Signature]  
Vice President

#### ASSIGNMENTS

Burnham Leasing Corporation, as Owner Participant, hereby assigns to The First National Bank of Boston, as Owner Trustee under Trust Agreement No. 2, dated as of December 16, 1985, an interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$23,009,200 in respect of the proceeds thereof.

Burnham Leasing Corporation, as  
Owner Participant

By Sheldon Barnett  
~~Vice President~~  
Assistant Treasurer

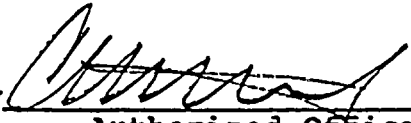
Acknowledged and Accepted:

The First National Bank of  
Boston, as Owner Trustee

By [Signature]  
Authorized Officer

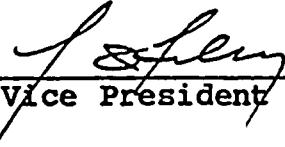
The First National Bank of Boston, as Owner Trustee under Trust Agreement No. 2, hereby assigns to Chemical Bank, ~~as Indenture Trustee under Trust Indenture, Mortgage, Security Agreement and Assignment of Rights in and to the property of the Company~~, an interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$23,009,200 in respect of the proceeds thereof.

The First National Bank of  
Boston, as Owner Trustee

By   
Authorized Officer

Acknowledged and Accepted:

Chemical Bank, ~~as Indenture Trustee~~

By:   
Vice President

Chemical Bank, ~~as Executor of the~~

By [Signature]  
Vice President

Public Service Company of New  
Mexico

By ag Bohrer  
Senior Vice President and  
Chief Financial Officer

Public Service Company of New Mexico hereby assigns to Irving Trust Company, as Trustee under the Indenture of Mortgage and Deed of Trust, dated as of June 1, 1947, between PNM and such Trustee, all interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$23,000,000. ~~as proceeds thereof, the balance thereof being~~

Public Service Company of New  
Mexico

By Greg Robison  
Senior Vice President and  
Chief Financial Officer

**Acknowledged and Accepted:**

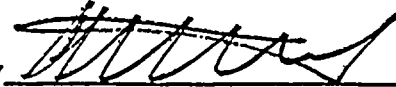
Irving Trust Company,  
as Trustee

By \_\_\_\_\_  
Vice President

The First National Bank of Boston, as Owner Trustee under the Trust Agreement dated as of December 16, 1985, with the above-named Owner Participant hereby acknowledges and agrees to the foregoing and further acknowledges that the foregoing is in full satisfaction of any right it may have to receive immediately available funds, whether by wire transfer or otherwise.

The First National Bank of  
Boston, not in its individual  
capacity but solely as Owner  
Trustee as a foresaid

By



Vice President



PUBLIC SERVICE COMPANY OF NEW MEXICO

Sale and Leaseback of three Undivided Interests in  
Palo Verde Nuclear Generating Station Unit 1  
and Certain Common Facilities

Interim Debt Financing  
December 31, 1985

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**TERM LOAN AGREEMENT**

**AMONG**

**FIRST PV FUNDING CORPORATION,  
PUBLIC SERVICE COMPANY OF NEW MEXICO**

**AND**

**THE BANKS NAMED ON THE SIGNATURE PAGES HEREOF.**

*Dated as of December 31, 1985*

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## TERM LOAN AGREEMENT

TERM LOAN AGREEMENT dated as of December 31, 1985 among First PV Funding Corporation, a Delaware corporation (hereinafter called the "Company"), Public Service Company of New Mexico, a New Mexico corporation (hereinafter called "PNM"), and the banks named on the signature pages hereof (hereinafter individually called a "Bank" and collectively called the "Banks").

The Company has requested term loans on the date hereof in the aggregate principal amount of \$250,250,000. The proceeds of such loans are to be used for the purposes set forth herein. The Banks are willing to make such term loans to the Company on the terms and conditions hereinafter set forth. Accordingly, the Company, PNM and the Banks agree as follows:

### I. DEFINITIONS

As used in this Agreement, the following words and terms shall have the meanings specified below:

"Bank of America" shall mean Bank of America National Trust & Savings Association, one of the Banks.

"Bank of America Loans" shall have the meaning specified in Section 2.01.

"Chemical Bank" shall mean Chemical Bank, a New York banking corporation, one of the Banks.

"Chemical Loans" shall have the meaning specified in Section 2.01.

"Dollars" or "\$" shall mean United States Dollars.

"Indenture" shall have the meaning specified in Section 2.02.

"Lease Obligation Bonds" shall mean the Lease Obligation Bonds, Series A, to be registered under the Registration Statement.

"Lessors" shall mean The First National Bank of Boston, as owner trustee under an owner trust agreement designated in Schedule 2 to Exhibit B hereto as Trust No. 1 ("Trust No. 1"); The First National Bank of Boston, as owner trustee under an owner trust agreement designated in such Schedule 2 as Trust No. 2 ("Trust No. 2"); and The First National Bank of Boston, as owner trustee under an

owner trust agreement designated in such Schedule 2 as Trust No. 3 ("Trust No. 3").

"Loans" shall mean the loans made by the Banks to the Company hereunder.

"Mellon Bank" shall mean Mellon Bank, N.A., one of the Banks.

"Mellon Loans" shall have the meaning specified in Section 2.01.

"1933 Act" shall mean the Securities Act of 1933, as amended.

"Notes" shall mean the promissory notes of the Company evidencing the Loans, executed and delivered under this Agreement and the Indenture.

"Participation Agreement" shall mean each of the three substantially identical Participation Agreements, each dated as of December 16, 1985, among the Company, PNM, a Lessor, Chemical Bank, as Indenture Trustee, and the Owner Participant named therein.

"person" shall mean any natural person, corporation, business trust, joint venture, association, company, partnership or government, or any agency or political subdivision thereof.

"Registration Statement" shall mean the Registration Statement on Form S-3 (File No. 33-2031), including the documents incorporated therein by reference, filed with the SEC under the 1933 Act by PNM with respect to the Lease Obligation Bonds, copies of which have been furnished to each of the Banks.

"SEC" shall mean the Securities and Exchange Commission.

Except as otherwise herein specifically provided, each accounting term used herein shall have the meaning given to it under generally accepted accounting principles applied on a consistent basis.

## II. THE LOANS

SECTION 2.01. *Loans.* Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Bank severally agrees to make Loans to the Company on the date hereof in the principal amount set forth opposite the name of such Bank on the signature pages hereof (the Loans to be made by Bank of America, Chemical Bank and Mellon Bank hereunder are hereinafter referred to individually as the

"Bank of America Loans", the "Chemical Loans" and the "Mellon Loans", respectively), against delivery to each Bank of an appropriate Note, as referred to in Section 2.02.

SECTION 2.02. *Indenture; Notes.* The Loans to be made by each Bank shall be evidenced by a Note or Notes issued under and pursuant to, and secured by, the Collateral Trust Indenture, dated as of December 16, 1985, among the Company, PNM and Chemical Bank, as Trustee (the "Trustee"), as supplemented by the Term Note Supplemental Indenture thereto, to be dated as of the date hereof, among the Company, PNM and the Trustee, in the forms attached hereto as Exhibits A and B, respectively (collectively, the "Indenture").

SECTION 2.03. *Interest; Other Terms.* The Notes shall bear interest on the unpaid principal amount thereof from time to time outstanding at the rate per annum set forth in the Indenture. The Notes shall contain such other terms and provisions as are set forth herein and in the Indenture.

### III. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Banks that:

SECTION 3.01. *Organization; Corporate Powers.* The Company is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has the corporate power and authority to carry on its business as presently conducted, to own its properties, to enter into and perform its obligations under this Agreement, each Participation Agreement and each other Transaction Document (said term being used herein as defined in the Participation Agreements) to which it is a party, to borrow hereunder and to execute and deliver the Notes.

SECTION 3.02. *Authorization; Validity.* The execution, delivery and performance of this Agreement, each Participation Agreement and each other Transaction Document to which it is a party, the borrowing hereunder and the execution and delivery of the Notes have been duly authorized by all necessary corporate action on the part of the Company and do not require the consent or approval of stockholders of the Company. This Agreement has been, and each Participation Agreement and each other Transaction Document to which it is a party have been, or on or before the closing date under each Participation Agreement will have been, duly executed and delivered by the Company and constitute, or upon execution and delivery will constitute, legal, valid and binding obligations of the



Company enforceable against it in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights.

**SECTION 3.03. *No Violation.*** Neither the execution, delivery or performance by the Company of this Agreement, each Participation Agreement or any other Transaction Document to which it is a party, nor the consummation by the Company of the transactions contemplated hereby or thereby, nor compliance by the Company with the provisions hereof or thereof, conflicts or will conflict with, or results or will result in the breach of any provision of, the Certificate of Incorporation or By-Laws of the Company or any order, rule or regulation applicable to the Company of any court or of any Federal or state regulatory body or administrative agency or other governmental body having jurisdiction over the Company or over any of its properties, or any statute of any jurisdiction applicable to the Company; there are no proceedings, at law or in equity, pending or, to the knowledge of the Company, threatened, which affect or may affect any of said transactions; and no consent, approval, authorization or other order of any Federal or state regulatory body or administrative agency or other governmental body is legally required for the consummation of said transactions except the approval of the New Mexico Public Service Commission, the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission.

**SECTION 3.04. *Business Activities.*** Except as contemplated by this Agreement, each Participation Agreement, the other Transaction Documents to which the Company is a party and the Company's application filed on September 20, 1985, as amended, copies of which have been furnished to each of the Banks, to the SEC for an order exempting it from the provisions of the Investment Company Act of 1940, as amended, the Company has not engaged, nor will it engage, in any business or activities of any type or kind whatever.

**SECTION 3.05. *Litigation.*** There are no actions, suits or proceedings at law or in equity or by or before any governmental instrumentality or other agency now pending or, to the knowledge of the Company, threatened against or affecting the Company or any property or rights of the Company.

**SECTION 3.06. *No Default.*** The Company is not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any governmental instrumentality or other agency.

SECTION 3.07. *Issuance of Notes.* The Notes have been duly authorized and, when issued and delivered pursuant to the Indenture, the Notes will have been duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of the Company entitled to the benefits of and secured by the Indenture; the Indenture has been duly authorized and, when executed and delivered by the Company, PNM and the Trustee, will constitute a valid and legally binding instrument enforceable against the Company in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights.

SECTION 3.08. *Investment Company Act; Public Utility Holding Company Act.* The Company is not an "investment company" as that term is defined in, or otherwise subject to regulation under, the Investment Company Act of 1940. The Company is not a "holding company" as that term is defined in, and is not otherwise subject to regulation under, the Public Utility Holding Company Act of 1935.

SECTION 3.09. *Federal Reserve Regulations.* The Company is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States), and no part of the proceeds of the Loans will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulations G, T, U or X of the Board of Governors. If requested by any Bank, the Company will furnish to such Bank a statement in conformity with the requirements of Federal Reserve Form U-1 referred to in said Regulation U.

SECTION 3.10. *No Material Misstatements.* No information furnished by or on behalf of the Company to the Banks or any of them pursuant to this Agreement or included herein contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein not misleading.

#### IV. REPRESENTATIONS AND WARRANTIES OF PNM

PNM represents and warrants to the Banks that:

SECTION 4.01. *Authorization.* The Indenture has been duly authorized by PNM and, when executed and delivered by PNM, the Company and the Trustee, will constitute a valid and legally binding instrument enforceable against PNM in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights.

SECTION 4.02. *No Violation.* The consummation of the transactions herein contemplated and fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement or instrument to which PNM is a party, or the charter or by laws of PNM, or any order, rule or regulation applicable to PNM of any court or of any Federal or state regulatory body or administrative agency or other governmental body having jurisdiction over PNM or over any of its properties, or any statute of any jurisdiction applicable to PNM, or the rules of any securities exchange or other non-governmental body applicable to PNM; there are no proceedings, at law or in equity, pending or, to the knowledge of PNM, threatened, which affect or may affect any of said transactions; and no consent, approval, authorization or other order of any Federal or state regulatory body or administrative agency or other governmental body is legally required for the consummation of said transactions except the approval of the New Mexico Public Service Commission, the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission.

SECTION 4.03. *No Material Misstatements.* No information furnished by or on behalf of PNM to the Banks or any of them pursuant to this Agreement or included herein contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein not misleading.

## V. CONDITIONS OF LENDING

The obligation of the Banks to make the Loans hereunder shall be subject to the following conditions precedent:

- (a) Immediately after the borrowing no Event of Default (as defined in the Indenture), nor any event which upon notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing. The borrowing shall constitute a representation by the Company that it is in compliance with this condition precedent.

(b) The Company shall have duly executed, and the Trustee shall have duly authenticated and delivered, the Notes.

(c) Each of the Banks shall have received an opinion of Keleher & McLeod, P.A., counsel for PNM, dated as of the date of the making of the Loans, to the effect that:

(i) PNM has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of New Mexico, has all corporate and other power and authority to own its properties and conduct its business as is presently conducted and is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which it owns or leases substantial properties or in which the conduct of its business requires such qualification;

(ii) The Indenture has been duly and validly authorized, executed and delivered by PNM, is in due and proper form and constitutes the legal, valid and binding agreement of PNM enforceable (except as limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights) in accordance with its terms;

(iii) PNM has executed such instruments and complied with such other formalities as are required by the Indenture as a condition precedent to the issuance of the Notes delivered on the date hereof;

(iv) Paragon Resources, Inc. has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of New Mexico, is not required to be qualified to do business as a foreign corporation in any other jurisdiction and all of its outstanding capital stock has been duly authorized and validly issued and is fully paid and nonassessable and owned, of record and beneficially, by PNM; Meadows Resources, Inc. has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of New Mexico, is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which it owns or leases substantial properties or in which the conduct of its business requires such qualification and all of its outstanding capital stock has been duly authorized and validly issued and is fully paid and nonassessable

and is owned, of record and beneficially, by PNM; Sunbelt Mining Company, Inc. has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of New Mexico, is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which it owns or leases substantial properties or in which the conduct of its business requires such qualification and all of its outstanding capital stock has been duly authorized and validly issued and is fully paid and nonassessable and owned, of record and beneficially, by PNM or by Meadows Resources, Inc.;

(v) The New Mexico Public Service Commission has authorized the participation of PNM in the issuance of the Notes, and no other consent, approval, authorization or other order of any regulatory body or administrative agency or other governmental body is legally required for the execution and delivery of the Indenture and issuance of the Notes to the Banks, except such as have been obtained or as may be required under state securities or Blue Sky laws; the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission have each approved, to the extent required by law, the transactions contemplated by each Participation Agreement;

(vi) The Administrative Committee established under the ANPP Participation Agreement (as defined in each Participation Agreement) has found, by unanimous resolution, the transactions contemplated by each Participation Agreement to be consistent with Section 15 of the ANPP Participation Agreement; the documents and agreements relating to the transactions contemplated by each Participation Agreement are in compliance with the relevant provisions of the ANPP Participation Agreement;

(vii) Such counsel does not know of any legal or governmental proceedings pending or threatened to which PNM is a party, or of which its property is the subject, of a character required to be disclosed in the Registration Statement which are not disclosed and properly described therein or otherwise disclosed in writing to the Banks;

(viii) This Agreement has been duly and validly authorized, executed and delivered by PNM and constitutes the legal, valid and binding agreement of PNM enforceable (except as limited by

bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights) in accordance with its terms;

(ix) Neither the execution and delivery by PNM of this Agreement or the Indenture nor the consummation of the transactions herein or therein contemplated, nor compliance with the provisions thereof, will conflict with, or result in a breach of, any of the terms, conditions or provisions of the Restated Articles of Incorporation or By-Laws of PNM or of any law or decree, or any regulation, order, writ, injunction, decree, determination or award of any court or arbitrator or of any governmental department, body, commission, board, bureau, agency or instrumentality or (so far as is known to such counsel) any agreement or instrument to which PNM is a party or otherwise subject or by which it or any of its property is affected or by which it is bound, or constitute a default thereunder; and

(x) The various franchises, licenses and permits of PNM are validly held by PNM and give to PNM all necessary authority for the conduct of the operations in which PNM is presently engaged and are free from all burdensome restrictions or conditions of an unusual character.

The opinion of Keleher & McLeod, P.A., may rely (x) as to matters of Arizona law, upon an opinion of Snell & Wilmer, Phoenix, Arizona, and (y) as to matters of New York law and as to matters pertaining to registration of the Notes under the 1933 Act and to qualification of the Indenture under the Trust Indenture Act of 1939, as amended (the "1939 Act"), upon an opinion of Mudge Rose Guthrie Alexander & Ferdon, New York, New York, copies of each of which shall be delivered to each of the Banks.

(d) Each of the Banks shall have received an opinion of Mudge Rose Guthrie Alexander & Ferdon, counsel for the Company, dated as of the date of the making of the Loans, to the effect that:

(i) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, has all corporate and other power and authority to own its properties and conduct its business as presently conducted and is duly qualified to do business as a foreign

corporation in good standing in all other jurisdictions in which it owns or leases substantial properties or in which the conduct of its business requires such qualification;

(ii) The Indenture has been duly and validly authorized, executed and delivered by the Company, is in due and proper form and constitutes the legal, valid and binding agreement of the Company enforceable (except as limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights) in accordance with its terms;

(iii) The Company has executed such instruments and complied with such other formalities as are required by the Indenture as a condition precedent to the issuance of the Notes delivered on the date hereof;

(iv) The Notes delivered on the date hereof have been duly authorized, executed, issued and delivered by the Company and duly authenticated by the Trustee, are the legal, valid and binding obligations of the Company enforceable (except as limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights) in accordance with their terms, and are entitled to the benefits and security afforded by the Indenture in accordance with the terms of the Indenture and the Notes;

(v) It is not necessary, in connection with the delivery to the Banks of the Notes being delivered today, to register any such Notes under the 1933 Act or to qualify the Indenture under the 1939 Act;

(vi) Such counsel does not know of any legal or governmental proceedings pending or threatened to which the Company is a party, or of which its property is the subject, of a character required to be disclosed in the Registration Statement which are not disclosed and properly described therein;

(vii) This Agreement has been duly and validly authorized, executed and delivered by the Company and constitutes the legal, valid and binding agreement of the Company enforceable (except as limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights) in accordance with its terms;

(viii) Assuming that no property of the types described in Granting Clause Second or Fourth of the Indenture has been subjected to the lien of the Indenture, neither the Indenture nor a financing statement with respect thereto is required by law to be recorded or filed for record in order to make valid the lien which it purports to create, subject to no liens prior to the lien of the Indenture; and

(ix) Neither the execution and delivery by the Company of this Agreement, the Notes or the Indenture nor the consummation of the transactions herein or therein contemplated, nor compliance with the provisions hereof or thereof, will conflict with, or result in a breach of, any of the terms, conditions or provisions of the Certificate of Incorporation or By-Laws of the Company or of any law or decree, or any regulation, order, writ, injunction, decree, determination or award of any court or arbitrator or of any governmental department, body, commission, board, bureau, agency or instrumentality or (so far as is known to such counsel) any agreement or instrument to which the Company is a party or otherwise subject or by which it or any of its property is affected or by which it is bound, or constitute a default thereunder.

(e) Each of the Banks shall have received such opinion or opinions of Willkie Farr & Gallagher, special counsel for the Banks, dated as of the date of the making of the Loans, with respect to the incorporation of the Company and of PNM, the validity of the Notes and other related matters as the Banks may require, and the Company and PNM shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

In giving the opinions under subparagraphs (c), (d) and (e), counsel may rely, to the extent they deem reliance proper, on certificates of officers of each of the Company, PNM, Paragon Resources, Inc., Meadows Resources, Inc. and Sunbelt Mining Company, Inc. as to where such corporation's properties and other assets are located and such corporation's business is conducted and as to other matters of fact concerning such corporation and on advice from state authorities as to such corporation's qualification to do business and good standing.

(f) Each of the Banks shall have received a letter addressed to such Bank from the Company and PNM in the form of Exhibit C attached hereto.



(g) The Banks shall have received such other certificates and documents as each of the Banks and their counsel may reasonably request.

## VI. COVENANTS

The Company and PNM each covenants and agrees with the Banks, so long as this Agreement shall remain in effect or the principal of or interest on the Notes or any other expenses or amounts payable hereunder shall be unpaid, unless the Banks shall otherwise consent in writing, as follows:

**SECTION 6.01. *Corporate Existence.*** The Company and PNM each will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its corporate existence and material rights and comply with all laws and regulations applicable to it.

**SECTION 6.02. *Registration Statement.*** PNM will file with the SEC one or more amendments to the Registration Statement and use its best efforts to cause the Registration Statement, as amended, to become effective, so as to permit the sale to the public on or before March 31, 1986 of Lease Obligation Bonds, the aggregate principal amount of which would be sufficient to prepay, in full, the aggregate principal amount of Notes then outstanding and, upon such effectiveness, to cause such Lease Obligation Bonds to be sold to the public. The Company agrees to apply proceeds received from the sale of such Lease Obligation Bonds to the prepayment, in full, of the Notes in the manner set forth in the Indenture.

**SECTION 6.03. *Use of Proceeds.*** The Company will apply the proceeds of the Loans made hereunder as follows: such proceeds shall be loaned by the Company, in the manner and for the purposes set forth in each Participation Agreement, to the Lessors indicated below:

<u>Bank</u>	<u>Lessors and Amounts</u>
Bank of America Loans ..	Trust No. 1- \$37,555,661
	Trust No. 2- \$22,761,006
	Trust No. 3- \$23,100,000
Chemical Loans .....	Trust No. 1- \$37,555,661
	Trust No. 2- \$22,761,006
	Trust No. 3- \$23,100,000
Mellon Loans .....	Trust No. 1- \$51,938,678
	Trust No. 2- \$31,477,988

SECTION 6.04. *Merger, etc.* PNM agrees that without the consent of the Banks, PNM will not consolidate with or merge with or into, or, except in connection with PNM's normal dividend policy, convey, transfer, lease or dividend more than 5% of its assets to, any person, unless immediately after giving effect to such transaction, the then outstanding first mortgage bonds of the lessee under the Leases (as such term is defined in the Indenture) shall have a rating from at least two nationally recognized rating agencies at least (a) equal to the rating by such rating agencies of PNM's first mortgage bonds outstanding immediately before such transaction and (b) "investment grade".

SECTION 6.05. *Commitment Fee.* Within three days from the date hereof, the Company shall pay to each of the Banks a commitment fee in an amount equal to  $\frac{1}{8}$  of 1% of their respective Loans.

## VII. MISCELLANEOUS

SECTION 7.01. *Notices.* Notices and other communications provided for herein shall be in writing and shall be delivered or mailed (or in the case of telegraphic communication, if by telegram, delivered to the telegraph company and, if by telex, graphic scanning or other telegraphic communications equipment of the sending party hereto, delivered by such equipment) addressed, (a) if to PNM, to it at Alvarado Square, Albuquerque, New Mexico 87158, Attention: Treasurer; (b) if to the Company, to it at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801; and (c) if to a Bank, to it at the address set forth on the signature pages hereof.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if hand delivered or three days after being sent by registered or certified mail, postage prepaid, return receipt requested, if by mail, or when delivered to the telegraph company, charges prepaid, if by telegram, or upon receipt, if by any telegraphic or telex communications equipment of the sender, in each case addressed to such party as provided in this Section or in accordance with the latest unrevoked direction from such party.

SECTION 7.02. *No Waivers; Amendments.* (a) No failure or delay of the Banks in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a

right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each of the Banks hereunder are cumulative and not exclusive of any rights or remedies which they would otherwise have. No waiver of any provision of this Agreement nor consent to any departure by the Company or PNM therefrom shall in any event be effective unless the same shall be in writing and signed by the Banks, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Company or PNM in any case shall entitle the Company or PNM to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be amended or modified except pursuant to an agreement or agreements in writing entered into by the Company, PNM and the Banks.

SECTION 7.03. *Governing Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of New York, without giving effect to principles of conflicts of law thereof.

SECTION 7.04. *Expenses; Documentary Taxes.* The Company and PNM, jointly and severally, agree to pay, or cause to be paid, in the currency in which they are incurred, all reasonable out-of-pocket expenses (i) incurred by any Bank in connection with the preparation of this Agreement (whether or not the transactions hereby contemplated shall be consummated) and (ii) incurred by any Bank in connection with the enforcement of the rights of such Bank in connection with this Agreement or with the Loans, and with respect to any action which may be instituted by any person against any Bank in respect of the foregoing, or as a result of any transaction, action or nonaction arising from the foregoing, including, but not limited to, the fees and disbursements of Willkie Farr & Gallagher, special counsel to the Banks. The Company agrees that it shall indemnify each Bank from and hold it harmless against any documentary taxes, assessments or charges made by any governmental authority by reason of the execution and delivery of this Agreement or the Notes. The obligations of the Company under this Section shall survive the termination of this Agreement and/or the payment of the Notes.

SECTION 7.05. *Survival of Agreements, Representations and Warranties, etc.* All warranties, representations and covenants made by the Company or PNM herein or in any certificate or other instrument delivered by it or on its behalf pursuant to this Agreement shall be considered to have

been relied upon by the Banks and shall survive the making of the Loans regardless of any investigation made by the Banks or on their behalf and shall continue in full force and effect so long as any amount due or to become due hereunder is outstanding and unpaid. All statements in any such certificate or other instrument shall constitute representations and warranties by the Company or PNM, as the case may be, hereunder.

SECTION 7.06. *Successors and Assigns.* (a) This Agreement shall be binding upon and inure to the benefit of the Company, PNM and the Banks and their respective successors and assigns. Neither the Company nor PNM may assign or transfer any of its rights or obligations hereunder without the written consent of the Banks.

(b) Notwithstanding anything herein to the contrary, each Bank may assign all or a part of its rights hereunder or sell participations or other interests in all or a part of its portion of the Loans made hereunder to one or more persons in its sole discretion.

SECTION 7.07. *Severability.* In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7.08. *Cover Page, Table of Contents and Section Headings.* The cover page, Table of Contents and section headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of or be taken into consideration in interpreting this Agreement.

SECTION 7.09. *Counterparts.* This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when copies hereof which, when taken together, bear the signatures of each of the parties hereto shall have been received by the Banks.

SECTION 7.10. *Jurisdiction; Service of Process.* Any legal action or proceeding with respect to this Agreement against PNM or the Company or either's assets may be brought, at the option of the Banks, in any of the courts of the State of New York or the Federal courts of the United States

of America located in the City of New York, and the Company and PNM hereby unconditionally accept the nonexclusive jurisdiction of the aforesaid courts, expressly waiving any other jurisdiction to which the Company or PNM may be entitled by reason of its respective present or future domiciles. The Company and PNM each irrevocably waives any objection it may now or hereafter have to the laying of venue of any such action or proceeding in any of the aforesaid courts and any claim it may now or hereafter have that any such action or proceeding has been brought in an inconvenient forum. The Company and PNM further irrevocably consent to the service of process out of any of the aforesaid courts in any such action or proceeding by the mailing of copies thereof by registered or certified airmail, to the Company or PNM at its address specified in Section 7.01. Nothing herein shall affect the right to serve process in any other manner permitted by law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered in the United States of America by their duly authorized officers as of the day and year first above written.

FIRST FV FUNDING CORPORATION

By: Joseph G. Barker  
President

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: aj Robinson  
Senior Vice President

CHEMICAL BANK

By: Thomas S. Keating  
Vice President

Principal Amount of Chemical  
Loans: \$83,416,667

Address for Notices:  
Chemical Bank  
277 Park Avenue  
New York, New York 10172  
Attention: Peter Bickford

BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION

By: \_\_\_\_\_  
Vice President

Principal Amount of Bank of  
America Loans: \$83,416,667

Address for Notices:  
Bank of America NT&SA  
555 South Flower Street  
Utilities No. 5164  
Los Angeles, California 90071  
Attention: Phil DeCarlo



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered in the United States of America by their duly authorized officers as of the day and year first above written.

FIRST PV FUNDING CORPORATION

By: \_\_\_\_\_  
President

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: \_\_\_\_\_  
Senior Vice President

CHEMICAL BANK

Principal Amount of Chemical  
 Loans \$83,416,667

By: \_\_\_\_\_  
Vice President

Address for Notices:  
 Chemical Bank  
 277 Park Avenue  
 New York, New York 10172  
 Attention: Peter Bickford

BANK OF AMERICA NATIONAL TRUST  
 & SAVINGS ASSOCIATION

Principal Amount of Bank of  
 America Loans \$83,416,667

By: \_\_\_\_\_  
Vice President

Address for Notices:  
 Bank of America NTISA  
 555 South Flower Street  
 Utilities No. 5164  
 Los Angeles, California 90071  
 Attention: Phil DeCarlo

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12-30-85 18:43 1-100000 ROSE 240 2000 4200 F02

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MELLON BANK, N.A.

Principal Amount of Mellon  
Loans \$83,416,666

By: *Robert L. Patton*

Vice President.

Address for Notices:  
Mellon Bank, N.A.  
555 South Flower Street  
Suite 4070  
Los Angeles, California 90071  
Attention: J. Blaine Shaum



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**COLLATERAL TRUST INDENTURE**

**dated as of December 16, 1985**

**Among**

**FIRST PV FUNDING CORPORATION,  
PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**CHEMICAL BANK,**

**as Trustee**

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**Providing for the Issuance from Time to Time of  
Securities To Be Issued in  
One or More Series'**

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**PALO VERDE NUCLEAR GENERATING STATION**



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FIRST PV FUNDING CORPORATION  
PUBLIC SERVICE COMPANY OF NEW MEXICO  
Reconciliation and tie between Indenture  
dated as of December 16, 1985  
and  
Trust Indenture Act of 1939

<u>Section of Act</u>	<u>Section of Indenture</u>
310(a)(1)	9.09
(2)	9.09
(3)	Inapplicable
(4)	Inapplicable
(b)	9.08, 9.10(a), 9.10(d), 9.10(e), 9.11
(c)	Inapplicable
311(a)(b)	9.13
(c)	Inapplicable
312(a)	10.01
	10.02(a)
(b)	10.02(b)
(c)	10.02(c)
313(a)	10.03(a)
313(b)(1)	10.03(b)(1)
(2)	10.03(b)
(c)	10.03(a) & (b)
(d)	10.03(c)
314(a)	10.04
(b)	5.06
(c)(1)	1.02
(2)	1.02
(3)	Inapplicable
(d)(1)	Inapplicable
(2)	Inapplicable
(3)	Inapplicable
(e)	1.02

<u>Section of Act</u>	<u>Section of Indenture</u>
315(a) (1)	9.01(a) (1)
(2)	9.01(a) (2)
315(a) (last clause)	9.01(a) (2)
(b)	9.02
(c)	9.01(b)
(d) (1)	9.01(c) (1)
(2)	9.01(c) (2)
(3)	9.01(c) (3)
(e)	8.10
316(a) (1) (A)	8.07
(B)	8.08
(2)	Inapplicable
(a) (last sentence)	1.01
(b)	("Outstanding")
	8.11
317(a) (1)	8.05(a)
(2)	8.05(d)
(b)	5.03
	9.14(c) (2)
318(a)	1.07

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NOTE: This reconciliation and tie shall not, for any purpose, be deemed to constitute a part of the Indenture.

COLLATERAL TRUST INDENTURE, dated as of December 16, 1985, among FIRST PV FUNDING CORPORATION, a Delaware corporation (hereinafter called the Company), having its principal office and mailing address at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, having its principal office and mailing address at Alvarado Square, Albuquerque, New Mexico 87158 (hereinafter called PNM), and CHEMICAL BANK, a New York banking corporation, as Trustee (hereinafter called the Trustee), having its corporate trust office at 55 Water Street, New York, New York 10041, Attention: Corporate Trustee Administration.

#### RECITALS

WHEREAS, the Company has duly authorized the creation of an issue of its debentures, notes or other evidences of indebtedness to be issued in one or more series (the Securities) up to such principal amount or amounts as may from time to time be authorized in accordance with the terms of this Indenture; and to secure the Securities and to provide for the authentication and delivery thereof by the Trustee, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, all acts necessary to make this Indenture a valid instrument for the security of the Securities, in accordance with its and their terms, have been done;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, to secure the payment of the principal of, premium (if any) and interest on all the Securities authenticated and delivered hereunder and issued by the Company and outstanding, and the performance of the covenants therein and herein contained, and in consideration of the premises and of the covenants herein contained and of the purchase of the Securities by the holders thereof, and of the sum of one dollar (\$1.00) paid to the Company by the Trustee at or before the delivery hereof, the receipt whereof is hereby acknowledged, the Company by these presents does grant, bargain, sell, release, convey, assign, pledge, transfer, mortgage, hypothecate,

6091.20.2898.53:1



and confirm unto the Trustee all and singular the following (which collectively are hereinafter called the Pledged Property), excluding, in any event, any moneys which are specifically stated herein not to constitute part of the Pledged Property, to wit:

#### CLAUSE FIRST

All Pledged Lessor Notes (as hereinafter defined) as shall be actually pledged and assigned by the Company to the Trustee, together with the interest of the Company (if any) in the Lease Indentures (as hereinafter defined) securing said Lessor Notes, pursuant to the Series Supplemental Indentures or other supplemental indentures to be executed and delivered as provided in this Indenture.

#### CLAUSE SECOND

All right, title and interest of the Company in, to and under any agreements with respect to commitment fees or other amounts payable by PNM entered into between PNM and the Company in connection with the issuance and sale of any series of Securities, if actually assigned by the Company to the Trustee pursuant to a Series Supplemental Indenture or other supplemental indentures to be executed and delivered as provided in this Indenture.

#### CLAUSE THIRD

All the proceeds received by the Company from the sale of the Securities, all the tolls, rents, issues, profits, products, revenues and other income of the property subjected or required to be subjected to the lien of this Indenture, and all the estate, right, title and interest of every nature whatsoever of the Company in and to the same and every part thereof.

#### CLAUSE FOURTH

Any property, including cash, that may, from time to time hereafter be subjected to the lien and/or pledge hereof by the Company or which pursuant to any provision of this Indenture or any Series Supplemental Indenture or other supplemental indentures to be executed and delivered as provided in this Indenture may become subjected to the lien and/or pledge hereof; and the Trustee is hereby authorized to receive the same at any time as additional security hereunder. Such subjection to the lien hereof of any such property as additional security may be made subject to any reservations, limitations or conditions which shall be set forth in a written instrument executed by the Company and/or by the Trustee respecting the scope or priority of such lien and/or pledge or the use and disposition of such property or the proceeds thereof.

TO HAVE AND TO HOLD the Pledged Property unto the Trustee and its successors and assigns forever subject to the terms of this Indenture, including, without limitation, Section 12.01.

BUT IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of the holders from time to time of all the Securities authenticated and delivered hereunder and issued by the Company and outstanding, without any priority of any one Security over any other.

AND UPON THE TRUSTS and subject to the covenants and conditions hereinafter set forth.

## ARTICLE ONE

### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION.

#### SECTION 1.01. Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(2) all other terms used herein which are defined in the Trust Indenture Act (as hereinafter defined), either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;

(4) all reference in this Indenture to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Indenture; and

(5) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

Certain terms, used principally in Article Nine, are defined in that Article.

"Act" when used with respect to any Holder has the meaning specified in Section 1.04.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Authorized Agent" means any Paying Agent or Security Registrar.

"Board of Directors" means the board of directors of the Company, when used with respect to the Company, and either the board of directors, or any committee of that board duly authorized to act for it hereunder, when used with respect to PNM.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company or PNM, as the case may be, to have been duly adopted by the Board of Directors of such entity and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in The City of New York, New York, the City of Boston, Massachusetts or the City of Albuquerque, New Mexico are authorized by law to remain closed.

"Change" with respect to any instrument means any consent, amendment, waiver, approval, notice or direction or the execution, grant or giving of any thereof.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, or if at any time after the execution of this instrument such

Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties on such date.

"Company" means the Person named as the "Company" in the first paragraph of this instrument until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor corporation.

"Company Request" and "Company Order" mean, respectively, a written request or order signed in the name of the Company by its President or one of its Vice Presidents, and by its Treasurer, Secretary, or one of its Assistant Treasurers or Assistant Secretaries, and delivered to the Trustee.

"Corporate Trust Office" means the principal office of the Trustee at which at any particular time corporate trust business of the Trustee shall be administered, which at the date of this Indenture is 55 Water Street, New York, N.Y. 10041, Attention: Corporate Trustee Administration.

"Equity Investor" means any Equity Investor identified in a Schedule to a Series Supplemental Indenture, until a successor or assignees thereof shall have become such pursuant to the applicable provisions of the Participation Agreement to which such Equity Investor is a party, and thereafter "Equity Investor" means such successor or assignees; "Equity Investors" means each and every Equity Investor.

"Event of Default" has the meaning specified in Section 8.01.

"Extension Letter" means the Extension Letter, to be dated the date of issue of a Pledged Lessor Note and addressed to the Trustee by the parties to the Participation Agreement, extending to the Trustee the representations, warranties and covenants of such parties set forth in the Participation Agreement.

"Holder" or "Securityholder" means a Person in whose name a Security is registered in the Security Register.

"Indenture" means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"Initial Interest Date" with respect to any series of Securities means the date of the Stated Maturity for the initial installment of interest on Securities of such series.

"Lease Indenture" means any Lease Indenture and any Lease Indenture Supplement identified in a Schedule to a Series Supplemental Indenture, as such Lease Indenture and Lease Indenture Supplement may be amended or supplemented from time to time pursuant to the applicable provisions thereof and of this Indenture; "Lease Indentures" means each and every Lease Indenture.

"Leases" means any Lease and any Lease Supplement identified in a Schedule to a Series Supplemental Indenture, as such Lease and Lease Supplement may be amended from time to time pursuant to the applicable provisions thereof and of this Indenture; "Leases" means each and every Lease.

"Lease Indenture Trustee" means the Lease Indenture Trustee identified in Schedule 1 to a Series Supplemental Indenture, until a successor Lease Indenture Trustee shall have become such pursuant to the applicable provisions of the Lease Indenture to which such Lease Indenture Trustee is a party, and thereafter "Lease Indenture Trustee" means the successor Lease Indenture Trustee; "Lease Indenture Trustees" means each and every Lease Indenture Trustee.

"Lease Payments" with respect to any Lease shall mean amounts payable by PNM under such lease in respect of (i) interim rent (if any), (ii) basic rent,

(iii) casualty value, (iv) special casualty value, (v) termination value or (vi) any other amounts payable in connection with termination of the Lease, in each case as more fully described in and assigned pursuant to the related Lease Indenture; "Lease Payments" with respect to all Leases means the aggregate of Lease Payments under any and all Leases.

"Lessee Request" and "Lessee Order" mean, respectively, a written request and a written order signed in the name of PNM by its President or one of its Vice Presidents or Assistant Vice Presidents and by its Treasurer or Secretary or one of its Assistant Treasurers or Assistant Secretaries, or by any authorized agent of PNM, and delivered to the Trustee.

"Lessor" or "Owner Trustee" means any Lessor or Owner Trustee identified in a Schedule to a Series Supplemental Indenture, until a successor shall have become such pursuant to the applicable provisions of the related Trust Agreement identified in said Schedule, and thereafter "Lessor" or "Owner Trustee" means such successor; "Lessors" or "Owner Trustees" means each and every Lessor or Owner Trustee.

"Lien of this Indenture" or "lien hereof" means the lien created by these presents, or created by any concurrent or subsequent conveyance to the Trustee (whether made by the Company or any other Person and whether pursuant to a Series Supplemental Indenture or otherwise), or otherwise created, constituting any property a part of the Pledged Property held by the Trustee for the benefit of the Securities Outstanding hereunder.

"Obligor", when used with reference to the Securities or this Indenture, means PNM and any successor to the obligations of PNM under a Lease, and does not include the Trustee, the Lease Indenture Trustee, an Owner Trustee or an Equity Investor so long as they have not assumed such obligations; provided, however, that no reference to PNM as an Obligor herein shall be construed as implying any guaranty by PNM of the Securities.

"Officers' Certificate" means a certificate signed by the President or a Vice President, and by the Treasurer, the Secretary, or one of the Assistant Treasurers or Assistant Secretaries, of PNM, any Lessor or the Company, as the case may be, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel for any Person either expressly referred to herein or otherwise satisfactory to the Trustee which may include, without limitation, counsel to the Company, any Lessor, the Lease Indenture Trustee, any Equity Investor or PNM, whether or not such counsel is an employee of any of them.

"Outstanding" when used with respect to Securities means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee in trust for the Holders of such Securities as provided in Section 12.01, provided that, if such Securities are to be redeemed (otherwise than through the operation of the Sinking Fund), notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities paid in full or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture unless held by a Holder in whose hands such Securities constitute valid obligations of the Company;



provided, however, that in determining whether the Holders of the requisite principal amount of Securities Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or owned by PNM, any Lessor or any Equity Investor, or any Affiliate of PNM, of any Lessor or of any Equity Investor, shall be disregarded and deemed not to be Outstanding, unless such Persons own 100% of the Securities owned by all Persons, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or PNM, any Lessor or any Equity Investor or any Affiliate of the Company, of PNM, of any Lessor or of any Equity Investor.

"Participation Agreement" means any Participation Agreement or other similar Lessor Note purchase document to which the Company is a party identified in a Schedule to a Series Supplemental Indenture, as such Participation Agreement or other purchase document may be amended from time to time pursuant to the applicable provisions thereof and of this Indenture; "Participation Agreements" means each and every Participation Agreement.

"Paying Agent" means any Person acting as Paying Agent hereunder pursuant to Section 9.14.

"Permitted Investment" means (i) direct obligations of the United States of America, or (ii) obligations fully guaranteed by the United States of America, or (iii) certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the States thereof (but not exceeding \$15,000,000 in principal amount of all certificates of

deposit and time deposits at any given time for any one bank, trust company or national banking association) having a combined capital and surplus of at least \$300,000,000 (including the Trustee, any Lease Indenture Trustee, any Lessor and any Paying Agent if such conditions are met), or (iv) commercial paper of companies incorporated or doing business under the laws of the United States of America or one of the States thereof (but not exceeding \$15,000,000 in principal amount at any given time for any one company) and in each case having a rating assigned to such commercial paper by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization, or (v) repurchase agreements fully collateralized by an obligation of the type described in clause (i) or (iv) above, pursuant to which a bank, trust company or national banking association referred to in clause (iii) above or another financial institution having a net worth of at least \$200,000,000 is obligated to repurchase any such obligation not later than 90 days after the purchase of any such obligation.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment", when used with respect to the Securities of any series, means the corporate trust office of the Trustee and such other place or places, if any, where the principal of (and premium, if any) and interest on the Securities of that series are payable as specified in the Series Supplemental Indenture setting forth the terms of the Securities of such series.

"Pledged Lessor Note" means any Lessor Note identified in a Schedule to a Series Supplemental Indenture, as such Lessor Note may be amended or supplemented from time to time pursuant to the applicable provisions thereof, of the related Lease Indenture and of

this Indenture; "Pledged Lessor Notes" means each and every Pledged Lessor Note.

"Pledged Property" has the meaning set forth in the Granting Clauses.

"PNM" means Public Service Company of New Mexico, a New Mexico corporation, and, subject to the provisions hereof, its successors and assigns.

"Predecessor Securities" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.09 in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same debt as the lost, destroyed or stolen Security.

"Principal Instruments" means the Pledged Lessor Notes, the Lease Indentures, the Participation Agreements and the Leases.

"Redemption Date" when used with respect to any Security to be redeemed means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price" when used with respect to any Security to be redeemed means the price (inclusive of accrued interest) at which it is to be redeemed pursuant to this Indenture and the terms of such Security.

"Regular Record Date" for the Stated Maturity of any installment of interest means the 15th day (whether or not a Business Day) next preceding such Stated Maturity.

"Responsible Officer" when used with respect to the Trustee means any officer of the Trustee customarily performing corporate trust functions.

"Security Register" has the meaning specified in Section 2.08.

"Security Registrar" means any Person acting as Security Registrar hereunder pursuant to Section 9.14.

"Series Supplemental Indenture" means an indenture supplemental to this Indenture, for the purpose of specifying, in accordance with Article Two hereof, the form of the Securities of any series, and/or for the purpose of subjecting to the Lien of this Indenture the Pledged Lessor Notes related to such series; "Series Supplemental Indentures" means each and every Series Supplemental Indenture.

"Sinking Fund" has the meaning specified in Section 7.01.

"Special Record Date" for the payment of any defaulted interest means a date fixed by the Trustee pursuant to Section 2.10.

"Stated Maturity" when used with respect to any Security or any installment of interest thereon means the date specified in such Security as the fixed date on which the principal of such Security or such installment of interest is due and payable.

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed, except as provided in Section 11.06.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor Trustee.

#### SECTION 1.02. Compliance Certificates and Opinions.

Upon any application or request by the Company, any Lessor or PNM to the Trustee to take any action under any provision of this Indenture, the Company, such Lessor or PNM, as the case may be, shall

furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished; provided that any action which may be taken under any provision of this Indenture by a Lessor may be taken by PNM on behalf of such Lessor pursuant to the agency granted to PNM pursuant to the Participation Agreement unless and until the Trustee has been notified of the revocation of such agency.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) 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;

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

**SECTION 1.03. Form of Documents Delivered to Trustee.**

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company, of any Lessor or of PNM may be based, in so far as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, in so far as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company, of any Lessor or of PNM, as the case may be, stating that the information with respect to such factual matters is in the possession of the Company, such Lessor or PNM, respectively, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

Any Opinion of Counsel stated to be based on the opinion of other counsel shall be accompanied by a copy of such other opinion.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

#### SECTION 1.04. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company and to PNM. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Trustee, the Company and PNM, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction authorized to take acknowledgments of deeds or administer oaths that the Person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer and where such execution is by an officer or a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind the Holder of every Security issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such action is made upon such Security.

SECTION 1.05. Notices, etc., to Trustee, PNM and Company.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder, by the Company, by PNM or by an Authorized Agent shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, or

(2) the Company by the Trustee, by any Holder, by PNM or by an Authorized Agent shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee and PNM by the Company for such purpose, or

(3) PNM by the Trustee, by any Holder, by the Company or by an Authorized Agent shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, to PNM addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee and the Company by PNM for such purpose.



#### SECTION 1.06. Notices to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders, and any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given.

#### SECTION 1.07. Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Indenture by any of the provisions of the TIA, such required provision shall control. Notwithstanding the foregoing, the provisions of the TIA contained in Sections 9.08, 9.13 and 10.03 shall not become operative under this Indenture until this Indenture shall have been qualified under the TIA.

#### SECTION 1.08. Effect of Heading and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

#### **SECTION 1.09. Successors and Assigns.**

All covenants, agreements, representations and warranties in this Indenture by the Trustee, PNM and the Company shall bind and, to the extent permitted hereby, shall inure to the benefit of and be enforceable by their respective successors and assigns, whether so expressed or not.

#### **SECTION 1.10. Separability Clause.**

In case any provision in this Indenture or in the Securities 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 1.11. Benefits of Indenture.**

Nothing in this Indenture or in the Securities, expressed or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the Holders of Securities, and the Lessors and the Equity Investors as expressly provided herein, any benefit or any legal or equitable right, remedy or claim under this Indenture.

#### **SECTION 1.12. Governing Law.**

This Indenture and each Security are being executed and delivered in the State of New York, shall be deemed to be contracts made in such State and for all purposes shall be construed in accordance with and governed by the laws of the State of New York.

#### **SECTION 1.13. Legal Holidays.**

In any case where the Redemption Date or the Stated Maturity of any Security or of any installment of interest, or any date on which any defaulted interest is proposed to be paid, shall not be a Business Day, then (notwithstanding any other provision of this Indenture) payment of interest and/or principal (and premium, if any) need not be made on such date, but may be made on

the next succeeding Business Day with the same force and effect as if made on the Redemption Date or at the Stated Maturity, or on the date on which the defaulted interest is proposed to be paid, and no interest shall accrue for the period from and after such Redemption Date or Stated Maturity, or date for the payment of defaulted interest, as the case may be.

## ARTICLE TWO

### THE SECURITIES

#### SECTION 2.01. Forms Generally.

The Securities of each series shall be in the form (not inconsistent with this Indenture) as shall be established in one or more Series Supplemental Indentures, in each case with such appropriate insertions, omissions, substitutions and other variations in and to such form as are required or permitted by this Indenture and may have imprinted or otherwise reproduced thereon such legend or legends, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations pursuant thereto, or with any rules of any securities exchange or to conform to general usage, all as may be determined by the officers executing such Securities, as evidenced by their execution thereof.

#### SECTION 2.02. Form of Trustee's Authentication.

The Trustee's certificate of authentication on all Securities shall be in substantially the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

CHEMICAL BANK  
as Trustee

By \_\_\_\_\_  
Authorized Officer

**SECTION 2.03. Amount Unlimited; Issuable in Series; Limitations on Issuance.**

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. Securities may be issued hereunder up to the aggregate principal amount which may be authorized from time to time by the Board of Directors of the Company.

The terms of any series of Securities relative to payment of principal thereof, and premium (if any) and interest thereon, need not correspond exactly to the schedule for such payments under the related Pledged Lessor Notes.

The Securities may be issued in one or more series. There shall be established in one or more Series Supplemental Indentures, prior to the issuance of Securities of any series,

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from all other Securities) and the form or forms of Securities of such series;

(2) any limit upon the aggregate principal amount of the Securities of such series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu

of, other Securities of such series pursuant to Section 2.07, 2.08, 2.09, 6.06 or 11.07);

(3) the date or dates on which the principal of the Securities of such series is payable;

(4) the rate or rates at which the Securities of such series shall bear interest, or the method by which such rate shall be determined, the date or dates from which such interest shall accrue, the interest payment dates on which such interest shall be payable and the record dates for the determination of Holders to whom interest is payable;

(5) the place or places where the principal and interest on Securities of such series shall be payable (if other than as provided in Section 5.02);

(6) the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of such series may be redeemed, in whole or in part, at the option of the Company, pursuant to any sinking fund or otherwise;

(7) the obligation, if any, of the Company to redeem, purchase or repay Securities of such series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the price or prices at which and the period or periods within which and the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

(8) if other than denominations of \$1,000 and any multiple thereof, the denominations in which Securities of such series shall be issuable;

(9) any other terms of such series (which terms shall not be inconsistent with the provisions of this Indenture); and

(10) any trustees, authenticating or paying agents, warrant agents, transfer agents or registrars with respect to the Securities of such series;

provided, however, that, after giving effect to the issuance of a new series of the Securities and the subjection to the Lien of this Indenture of the related Pledged Lessor Notes, the average of the daily balance of Excess Funds for each fiscal year of the Company shall not exceed 10% of the average of the aggregate principal amount of Securities Outstanding on each day in such fiscal year. For purposes of the foregoing proviso, "Excess Funds" shall mean, for any day, amounts actually paid to the Trustee under the Pledged Lessor Notes in excess of amounts then due and payable in respect of Securities.

#### SECTION 2.04. Authentication and Delivery of Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee shall thereupon authenticate and deliver such Securities in accordance with such Company Order, without any further action by the Company. In authenticating such Securities and accepting the additional responsibilities under this Indenture in relation to such Securities the Trustee shall be entitled to receive, and (subject to Section 9.01) shall be fully protected in relying upon:

(1) an executed Series Supplemental Indenture;

(2) an Officers' Certificate of the Company (a) certifying as to resolutions of

the Board of Directors of the Company by or pursuant to which the terms of the Securities of such series were established, (b) certifying that all conditions precedent under this Indenture to the Trustee's authentication and delivery of such Securities have been complied with and (c) certifying that (x) the terms of the documents referred to in clauses (3) and (4) below are not inconsistent with the terms of this Indenture as then and theretofore supplemented and (y) such documents comply with Exhibit A hereto. (if applicable);

(3) fully executed counterparts (but not the original thereof) of (a) the Lease Indentures under which were issued the Pledged Lessor Notes relating to such series of Securities and (b) the Leases relating to such Pledged Lessor Notes;

(4) the original of the Pledged Lessor Notes relating to such series of Securities;

(5) signed copies, either addressed to the Trustee or accompanied by statements that the Trustee may rely on such documents, of all certificates and opinions of counsel delivered to the Company in connection with its purchase pursuant to the applicable Participation Agreements of the Pledged Lessor Notes relating to such series of Securities and, to the extent not covered by such opinions, Opinions of Counsel (x) to the effect that: (a) the form or forms and the terms of such Securities have been established by a Series Supplemental Indenture as permitted by Sections 2.01 and 2.03 in conformity with the provisions of this Indenture; (b) such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company; and (c) all laws

and requirements in respect of the execution and delivery by the Company of the Securities have been complied with; and (y) covering such other matters as the Trustee may reasonably request; and

(6) duly executed Extension Letters relating to the Pledged Lessor Notes;

provided, however, that if a series of Securities is to be authenticated by the Trustee in advance of the actual delivery to the Trustee of the Pledged Lessor Notes relating thereto, (X) the documents described in the foregoing clauses (2)(c), (3), (4), (5) (other than the opinion described in subclauses (x) and (y)) and (6) need not be delivered in connection with such authentication, but shall be delivered in connection with the release of the proceeds of the sale of such series of Securities in accordance with Sections 2.15 and 13.01 hereof and (Y) the form of the Series Supplemental Indenture shall be appropriately modified to reflect the later delivery and pledge of the related Pledged Lessor Notes.

Receipt by the Trustee of the Officer's Certificate referred to in clause (2) above shall be conclusively presumed for all purposes of this Indenture to establish that the Lease Indentures, the Leases and the Pledged Lessor Notes referred to in such certification comply with the requirements of Exhibit A hereto.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken by the Company or if the Trustee in good faith by its board of directors or board of trustees, executive committee, or a trust committee of directors or trustees and/or responsible officers shall determine that such action would expose the Trustee to personal liability.



## SECTION 2.05. Form and Denominations.

The Securities of each series shall be in registered form and may have such letters, numbers or other marks of identification and such legends or endorsements printed, lithographed or engraved thereon, as may be required to comply with the rules of any securities exchange or to conform to any usage in respect thereof, or as may, consistently herewith, be prescribed by the Board of Directors of the Company or by the officers executing such Securities, such determination by said officers to be evidenced by their signing the Securities.

The definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods on steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

All Securities of any one series shall be substantially identical except as to denomination and Stated Maturity and except as may otherwise be provided herein or in the Series Supplemental Indenture setting forth the terms of the Securities of such series.

## SECTION 2.06. Execution of Securities.

The Securities shall be executed on behalf of the Company by its President or one of its Vice Presidents under its corporate seal reproduced thereon and attested by its Secretary or one of its Assistant Secretaries. The signature of any such officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at the time such signatures were affixed the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such

Securities or did not hold such offices at the date of such Securities.

#### SECTION 2.07. Temporary Securities.

Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities of such series which are printed, lithographed, typewritten, photocopied or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company, for such purpose, in the Place of Payment, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like aggregate principal amount of definitive Securities of such series of authorized denominations. Until so exchanged such temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

#### SECTION 2.08. Registration, Transfer and Exchange.

The Trustee shall cause to be kept at the Corporate Trust Office a register in which, subject to such reasonable regulations as the Company may prescribe, the Company shall provide for the registration of Securities and of registration of transfers and

exchanges of Securities. This register and, if there shall be more than one Security Registrar, the combined registers maintained by all such Security Registrars, are herein sometimes referred to as the "Security Register".

Upon surrender for registration of transfer of any Security of any series at the Corporate Trust Office, or at any office or agency maintained for such purpose pursuant to Section 9.14(a), the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series and of the same Stated Maturity for principal and interest and of a like aggregate principal amount.

At the option of the Holders, Securities of any series may be exchanged for an equal aggregate principal amount of Securities of the same series and of the same Stated Maturity for principal and interest and of any authorized denominations, upon surrender of the Securities to be exchanged at the Corporate Trust Office, or at any office or agency maintained for such purpose pursuant to Section 9.14(a). Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee or any other Authenticating Agent shall authenticate and deliver, the Securities which the Securityholder making the exchange is entitled to receive.

All Securities issued upon any transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

Every Security presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Security Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be required of any Securityholders participating in any transfer or exchange of Securities in respect of such transfer or exchange, but the Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities, other than exchanges pursuant to Sections 2.07, 6.06 or 11.07 not involving any transfer.

The Security Registrar shall not be required (i) to issue, transfer or exchange any Security of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of such series selected for redemption under Section 6.02 or 7.02 and ending at the close of business on the day of such mailing, or (ii) to transfer or exchange any Security so selected for redemption in whole or in part except the unredeemed portion of any Security selected for redemption in part.

#### **SECTION 2.09. Mutilated, Destroyed, Lost and Stolen Securities.**

If (i) any mutilated Security is surrendered to the Trustee, or the Company, the Security Registrar and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and (ii) there is delivered to the Company, to the Security Registrar and to the Trustee evidence to their satisfaction of the ownership and authenticity thereof, and such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company, to the Security Registrar or to the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and upon its request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company may, upon satisfaction of the conditions set forth in clauses (i) and (ii) of the preceding paragraph, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section, the Security Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith.

Every new Security issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the security and benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

#### **SECTION 2.10. Payment of Interest; Interest Rights Preserved.**

Interest on any Security which is payable, and is punctually paid or duly provided for, at any Stated Maturity of an installment of interest shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest. At the option of the Company, payment of interest on any Security may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, at any Stated Maturity of an installment of interest shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder; and such defaulted interest may be paid by the Company, at its election in each case, as provided in paragraph (1) or paragraph (2) below:

(1) The Company may elect, which election shall be at the direction of any Lessor whose Pledged Lessor Note is in default in respect of the payment of interest and who is proposing to make payment of all or part of such defaulted interest, to make payment of any defaulted interest to the Persons in whose names the Securities of such series in respect of which interest is in default (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such defaulted interest, which shall be fixed in the following manner. Such Lessor shall notify the Trustee and the Paying Agent in writing of the amount of defaulted interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time there shall be deposited with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or there shall be made arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as in this paragraph provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such defaulted interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company and

the Security Registrar of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such defaulted interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each holder of a Security of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such defaulted interest and the Special Record Date therefor having been mailed as aforesaid, such defaulted interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered on such Special Record Date and shall no longer be payable pursuant to the following paragraph (2).

(2) The Company may make, or cause to be made, payment of any defaulted interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities in respect of which interest is in default may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this paragraph, such payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security, and each such Security shall bear interest from whatever date shall be necessary so that neither gain nor loss in interest shall result from such transfer, exchange or replacement.

#### **SECTION 2.11. Persons Deemed Owners.**

Prior to due presentment for registration of transfer, the Person in whose name any Security is registered shall be deemed to be the owner of such Security for the purpose of receiving payment of principal of (and premium, if any), and (subject to Section 2.10) interest on, such Security and for all other purposes whatsoever, whether or not such Security be overdue, regardless of any notice to anyone to the contrary.

#### **SECTION 2.12. Cancellation.**

All Securities surrendered for payment, redemption, credit against any Sinking Fund payment or redemption payment, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee for cancellation. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be destroyed and certification of their destruction delivered to the Company unless, by Company Request, the Company otherwise directs.

#### **SECTION 2.13. Dating of Securities; Authentication.**

Each Security of any series shall be dated the date of the original issuance of the Securities of such series by the Company, which date shall be specified by the Company in the Company Order delivered to the Trustee pursuant to Section 2.04 in connection with the original authentication and delivery of the Securities of such series. No Security shall be secured by or entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication, in the



form provided for herein, executed by the Trustee by the manual signature of one of its Responsible Officers, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

**SECTION 2.14. Source of Payments: Rights and Liabilities of Lessors and Equity Investors.**

All payments of principal and premium (if any) and interest to be made under the Securities and this Indenture (other than payments made in connection with an optional redemption by a Lessor) shall be made only from assets subject to the lien of this Indenture or the income and proceeds received by the Trustee therefrom. Each Holder, by its acceptance of a Security, agrees that (x) it will look solely to the assets subject to the lien of this Indenture or the income and proceeds received by the Trustee therefrom to the extent available for distribution to such Holder as herein provided and (y) none of any Equity Investor, any Lessor, any Lease Indenture Trustee or the Trustee is liable to any Holder or, in the case of any Equity Investor, Lessor and Lease Indenture Trustee, to the Trustee for any amounts payable under any Security or, except as provided herein with respect to the Trustee, for any liability under this Indenture. An Equity Investor, Lessor or Lease Indenture Trustee shall not have any duty or responsibility under this Indenture or the Securities to any Holder or to the Trustee.

**SECTION 2.15. Sale of Securities; and Application of Proceeds from the Sale of Securities.**

(a) Promptly upon receipt by the Company of the proceeds from any sale of a series of the Securities, the Company shall deposit such proceeds with the Trustee. The funds so deposited shall be held by the Trustee in a separate account as part of the Pledged Property and shall be invested, applied and distributed by the Trustee as provided herein.

(b) Subject to the provisions of Section 13.01, upon the issuance of the Pledged Lessor

Notes related to any series of Securities and the delivery thereof to the Trustee to be subjected to the Lien of this Indenture pursuant to a Series Supplemental Indenture, the Trustee shall pay to the Lessor obligated in respect of any such Pledged Lessor Note, out of funds held by the Trustee in such separate account as Pledged Property, an amount equal to the principal amount of such Pledged Lessor Note in respect of which such Lessor is obligated. All payments to be made by the Trustee to any Lessor shall be made in immediately available funds at the respective offices designated by such Lessor.

### ARTICLE THREE

#### PROVISIONS AS TO PLEDGED PROPERTY

##### SECTION 3.01. Holding of Pledged Securities.

The Trustee is authorized in its discretion to cause to be registered in its name, as Trustee, or in the name of its nominee, any and all coupon bonds which it may receive as part of the Pledged Property, or it may cause the same to be exchanged for registered bonds without coupons of any denomination. The Trustee may cause to be transferred into its name, as Trustee, or into the name of its nominee, any and all registered bonds which it may receive as part of the Pledged Property, or may cause such registered bonds to be exchanged for coupon bonds. All Pledged Lessor Notes assigned to and pledged with the Trustee pursuant to any provision of this Indenture or any Series Supplemental Indenture shall be endorsed in blank for transfer or be accompanied by proper instruments of assignment satisfactory to the Trustee, duly executed by the Company. The Company will deliver promptly to the Trustee such documents, certificates and opinions as the Trustee may reasonably request in connection with subjection of any securities to the Lien of this Indenture to the extent contemplated hereby.

**SECTION 3.02. Disposition of Payments on Pledged Property.**

Unless and until all Outstanding Securities have been paid in full or provision for the payment of such Securities has been made in accordance with this Indenture, the Trustee shall be entitled to receive all principal, premium (if any) and interest paid in respect of any Pledged Lessor Notes and interest paid on bonds or other obligations or indebtedness which may be subject to the lien of this Indenture and shall apply the same to the payment of the principal of, and premium (if any) and interest on, the Securities when and as they become due and payable pursuant to, and in accordance with, this Indenture. The Trustee shall duly note on the Schedules attached to the Pledged Lessor Notes or by other appropriate means all payments of principal, premium, if any, and interest made on the Pledged Lessor Notes.

**SECTION 3.03. Exercise of Rights and Powers Under Pledged Lessor Notes and Lease Indentures.**

The Trustee shall not take any action as the holder of the Pledged Lessor Notes to direct any Lease Indenture Trustee in any respect or to vote any Pledged Lessor Note or any portion thereof except as specified in this Section. The Trustee shall give notice to the Securityholders of the occurrence of any Indenture Event of Default or Indenture Default under any Lease Indenture (as defined therein), and of every Event of Loss, Deemed Loss Event, or Special Loss Event occurring under a Lease, but only to the extent the same shall actually be known by an officer in the corporate trustee administration department of the Trustee. The Trustee may, at any time, and shall, upon the request of any Lease Indenture Trustee made to the Trustee to give any direction or to vote its interest in the Pledged Lessor Notes, request from Securityholders directions as to (i) whether or not to direct such Lease Indenture Trustee to take or refrain from taking any action which holders of a Pledged Lessor Note have the option to direct and (ii) how to vote any Pledged Lessor Note if a vote has been called for with respect thereto. In addition, any

Securityholder may at any time request the Trustee to direct, or to participate in the direction of, any action under any Lease Indenture to the extent that the Trustee may do so under such Lease Indenture. In directing any action or casting any vote as the holder of a Pledged Lessor Note, the Trustee shall specify to the Lease Indenture Trustee the principal amount of the Pledged Lessor Note which is in favor of the action or vote, the principal amount of the Pledged Lessor Note which is opposed to the action or vote, and the principal amount of the Pledged Lessor Note which is not taking any position for the action or vote. Such principal amounts shall be determined by allocating the total principal amount of the Pledged Lessor Note with respect to which direction was requested in accordance with the principal amount of Securities taking corresponding positions or not taking any position. In addition, the Trustee shall certify to the Lease Indenture Trustee that the principal amounts of Securities taking such corresponding positions or not taking any position was determined in accordance with the provisions of this Indenture.

#### **SECTION 3.04. Certain Actions in Case of Judicial Proceedings.**

In case all or any part of the property of any Lessor or any other Person which may be deemed an obligor in respect of the Pledged Lessor Notes shall be sold at any judicial or other involuntary sale, the Trustee shall receive any portion of the proceeds of such sale accruing on the Pledged Property held hereunder, and such proceeds shall be held as provided in Section 3.05.

#### **SECTION 3.05. Cash Held by Trustee Treated as a Deposit.**

Any and all cash held by the Trustee under any provision of this Indenture may be treated by the Trustee, until required to be paid out hereunder, as a deposit, in trust, without any liability for interest.

## ARTICLE FOUR

### WITHDRAWAL OF COLLATERAL.

#### SECTION 4.01. Withdrawal of Collateral.

Except as provided in Section 4.02 and Article Thirteen, none of the Pledged Property shall be subject to withdrawal unless and until all Outstanding Securities have been paid in full or provision for such payment has been made in accordance with the terms of this Indenture and the Trustee shall have received the documents and opinions required by Article Twelve.

#### SECTION 4.02. Reassignment of Pledged Lessor Notes upon Payment.

Upon receipt of payment in full of the principal of, and premium (if any) and interest on, any Pledged Lessor Note held by the Trustee, the Trustee shall deliver to the Company said Pledged Lessor Note and any instrument of transfer or assignment necessary to reassign to the Company said Pledged Lessor Note and the interest of the Company (if any) in the Lease Indenture relating thereto; provided that nothing herein contained shall prevent the Trustee from presenting any Pledged Lessor Note to a Lease Indenture Trustee for final payment in accordance with the applicable provisions of the related Lease Indenture.

## ARTICLE FIVE

### COVENANTS

#### SECTION 5.01. Payment of Principal, Premium (if any) and Interest.

The Company will duly and punctually pay, or cause to be paid, the principal of, and premium, if any, and interest on, the Securities in accordance with the terms of the Securities and this Indenture.

**SECTION 5.02. Maintenance of Office or Agency.**

The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for transfer or exchange and where notices and demands to or upon the Company in respect of Securities and this Indenture may be served. PNM will give prompt written notice to the Trustee of the location, and of any change in the location, of each such office or agency. If at any time the Company shall fail to maintain any such office or agency or the Company or PNM 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, and the Company hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

**SECTION 5.03. Money for Security Payments to be Held in Trust.**

All moneys deposited with the Trustee or with any Paying Agent for the purpose of paying the principal of or premium, if any, or interest on Securities shall be deposited and held in trust for the benefit of the Holders of the Securities entitled to such principal, premium, if any, or interest, subject to the provisions of this Section. Moneys so deposited and held in trust shall not be a part of the Pledged Property but shall constitute a separate trust fund for the benefit of the Holders of the relevant Securities.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or direct any Paying Agent to pay, to the Trustee all sums held in trust by such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying

Agent shall be released from all further liability with respect to such money. .

Any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or premium, if any, or interest on any Security and remaining unclaimed for three years (or such lesser period as may be required by law to give effect to this provision) after such principal, premium or interest has become due and payable shall be paid to the Company on Company Request (to the extent such monies shall have been deposited by the Company) or to any other Person on its request (to the extent such monies shall have been deposited by such other Person); and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company or such other Person, to the extent such monies shall have been paid to the Company or such other Person, as the case may be, for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money 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 or, to the extent such monies are to be paid to another Person, such other Person cause to be mailed to each such Holder 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 mailing, any unclaimed balance of such money then remaining will be repaid to the Company or such other Person.

#### SECTION 5.04. Maintenance of Corporate Existence.

The Company, at its own cost and expense, will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights and franchises, except as otherwise specifically permitted in this Indenture; provided, however, that the Company shall not be required to preserve any right or franchise if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not

disadvantageous in any material respect to the Securityholders.

**SECTION 5.05. Protection of Pledged Property.**

The Company and PNM will from time to time execute and deliver all such supplements and amendments hereto and all such financing statements, continuation statements, instruments of further assurance, and other instruments necessary to

(i) grant more effectively all or any portion of the Pledged Property,

(ii) maintain or preserve the lien of this Indenture or carry out more effectively the purposes hereof,

(iii) perfect, publish notice of, or protect the validity of, any grant made or to be made by this Indenture,

(iv) enforce any of the Securities, or

(v) preserve and defend title to any Securities or other instrument included in the Pledged Property and the rights of the Trustee, and of the Securityholders, in such Securities or other instrument against the claims of all persons and parties.

The Company hereby designates the Trustee its agent and attorney-in-fact to execute any financing statement, continuation statement or other instrument required pursuant to this Section.

**SECTION 5.06. Opinions as to Pledged Property.**

Promptly after the execution and delivery of this Indenture and of each Series Supplemental Indenture or other supplemental indenture or other instrument of further assurance, the Company shall furnish to the Trustee an Opinion of Counsel stating that, in the



opinion of such Counsel, this Indenture and all such Series Supplemental Indentures, other supplemental indentures and other instruments of further assurance have been properly recorded, registered and filed to the extent necessary to make effective the lien intended to be created by this Indenture, and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary fully to preserve and protect the rights of the Securityholders and the Trustee, or stating that, in the opinion of such Counsel, no such action is necessary to make such lien effective.

On or before May 1, in each calendar year, beginning with the first calendar year commencing more than three months after the date of authentication and delivery of any Securities, the Company shall furnish to the Trustee an Opinion of Counsel either stating that, in the opinion of such counsel, such action has been taken with respect to the recording, filing, re-recording and re-filing of this Indenture, any Series Supplemental Indenture and any other requisite documents and with respect to the execution and filing of any financing statements and continuation statements as is necessary to maintain the lien and security interest created by this Indenture with respect to the Pledged Property and reciting the details of such action or stating that in the opinion of such counsel no such action is necessary to maintain such lien and security interest. Such Opinion of Counsel shall also describe the recording, filing, re-recording and re-filing of this Indenture, any Series Supplemental Indenture and any other requisite documents and the execution and filing of any financing statements and continuation statements that will, in the opinion of such counsel, be required to maintain the lien and security interest of this Indenture with respect to the Pledged Property until May 1 in the following calendar year.

#### SECTION 5.07. Performance of Obligations

(a) Neither the Company nor PNM will take any action or permit any action to be taken by others which would release any Person from any of such Person's covenants or obligations under any instrument included in the Pledged Property, or which would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument, except as expressly provided in this Indenture.

(b) PNM will fully perform all of its obligations under the Leases.

#### SECTION 5.08. Negative Covenants

During such time as any Security issued hereunder is Outstanding, the Company will not:

(i) sell, transfer, exchange or otherwise dispose of any portion of the Pledged Property except as expressly permitted by this Indenture;

(ii) engage in any business or activity other than in connection with, or relating to, the issuance of Securities pursuant to this Indenture or amend Article Third, Fourth or Sixth of its Certificate of Incorporation as in effect on the date of execution and delivery of this Indenture, without, in each case, the consent of the Holders of not less than 66 2/3% of the aggregate principal amount of the Securities then Outstanding; notwithstanding the foregoing, however, the Company may, with respect to one or more series of Securities (or one or more Stated Maturities within any series), enter into credit or liquidity support facilities (including, but without limitation, bank letters of credit, bank lines of credit and bonds of insurance) and may engage in interest rate swaps;

(iii) issue bonds, notes or other evidences of indebtedness other than (i) Securities issued hereunder or (ii) bonds, notes or other evidences of indebtedness secured by a pledge of Securities issued hereunder or evidencing indebtedness permitted by clause (ii) above;

(iv) incur, assume or guaranty any indebtedness of any Person;

(v) dissolve or liquidate in whole or in part;

(vi) take any action which would (1) permit the validity or effectiveness of this Indenture or any grant of any of the Pledged Property to be impaired, or permit the Lien of this Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenant or obligation under this Indenture, (2) permit any Lien, charge, security, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise upon or burden the Pledged Property or any part thereof or any interest therein or the proceeds thereof, or (3) permit the Lien of this Indenture not to constitute a valid first priority security interest in the Pledged Property; or

(vii) institute any proceedings to be adjudicated a bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against it, or file a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Act or any other applicable federal or state law or law of the District of Columbia, or consent to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or

any substantial part of its property, or make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or take any corporate action in furtherance of the foregoing.

**SECTION 5.09.. Administration of Principal Instruments.**

(a) Without the consent of the Holders of a majority in principal amount of Outstanding Securities (or, in the case of Changes to a Support Facility, the series (or the Stated Maturity Dates within a series) of outstanding Securities benefiting from such Support Facility), the Trustee shall not consent to any Change in any Principal Instrument; provided, however, that the Trustee may consent to any Change in any Principal Instrument if such Change is permitted by subsection (b) of this Section 5.09.

(b) Subject to the provisions of subsection (c) of this Section 5.09, the Trustee may consent to any Change in any Principal Instrument if such Change is:

(1) to cure any ambiguity, to correct or supplement any provision in such Principal Instrument which may be defective or inconsistent with any other provision in such Principal Instrument or any related Principal Instrument, or to make any other provisions with respect to matters arising under any such Principal Instrument, provided, in each instance, that such action shall not materially adversely affect the interests of Holders of Securities; or

(2) to add to the covenants and agreements of the parties to such Principal Instrument other covenants and agreements thereafter to be observed by any such party, or to surrender any right or power therein reserved to or conferred upon the Company; or

(3) to amend or supplement such Principal Instrument, or to give any consent or grant any waiver thereunder, so long as thereafter such Principal Instrument will comply with the requirements (if any) of Exhibit A hereto; provided that such action does not materially adversely affect the interests of Holders of Securities; or

(4) in any other manner not inconsistent with Exhibit A hereto; provided that such action does not materially adversely affect the interests of Holders of Securities; or

(5) a Change in the Lease permitted by applicable provisions of the related Lease Indenture; or

(6) to describe more fully and to amplify or correct the description of any property or rights assigned or pledged by such Principal Instrument or intended so to be, or to assign, pledge, mortgage or grant a security interest in any additional property, rights and interests, subject to such liens, restrictions or other encumbrances, if any, as shall be therein specifically described; or

(7) in the case of a Lease Indenture, to enable the Lease Indenture Trustee thereunder to confer upon holders of Pledged Lessor Notes any additional rights, remedies, powers or authorities that may lawfully be granted or conferred upon such holders; or

(8) to evidence the appointment of a separate or co-Lease Indenture Trustee or the succession of a new Lease Indenture Trustee; or

(9) to evidence the succession of or assumption by a successor or assignee Lessee under the Leases and the Participation Agreements or to evidence the succession of a

new Lessor or Owner Trustee under any Principal Document to which it is a party; or

(10) permitted by the terms of such Principal Instrument to be made without the consent of or notice to the holders of the related Pledged Lessor Notes; or

(11) to provide for the issuance of Lessor Notes in addition to the Pledged Lessor Notes relating to such Principal Instruments in accordance with the applicable provisions of the related Principal Instruments.

(c) No Change with respect to a Principal Instrument, whether effected pursuant to subsection (a) or pursuant to subsection (b) of this Section 5.09, and anything in such subsections or elsewhere in this Indenture to the contrary notwithstanding, shall, without the consent of the Holder of each Outstanding Security affected thereby:

(1) except as provided in any Lease, change such Lease in such a way as to change the timing or reduce the amount of any Lease Payment, or otherwise to release, except as provided in such Lease, PNM from its obligation under such Lease in respect of payment of Lease Payments; or

(2) modify, amend or supplement the Participation Agreements in such a way as to, or give any consent, waiver, authorization or approval which would, release any Equity Investor from its payment obligations contained in said Participation Agreements.;

(d) Except during the continuance of an Event of Default hereunder, upon request of the Company or PNM, the Trustee shall consent to any Change described in this Section 5.09, and shall execute any instrument requested by the Company or PNM, as the case may be, for the purpose of confirming such consent, but only upon receipt by the Trustee of an Officers' Certificate and

an Opinion of Counsel of the Company or PNM, as the case may be, each stating that such Change is authorized by this Indenture and that execution of such instrument is appropriate to confirm such consent, unless such Change adversely affects the Trustee's rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may, in its discretion, but shall not be obligated to, give such consent and the Trustee shall be fully protected in relying on such Officers' Certificate and Opinion of Counsel.

**SECTION 5.10. Annual Statement as to Compliance.**

(a) PNM and the Company each will deliver to the Trustee, on or before 120 days after the end of each of its fiscal years, a written statement (which need not comply with Section 1.02) signed by its President or one of its Vice Presidents and by its Treasurer or one of its Assistance Treasurers or its Comptroller or one of its Assistant Comptrollers, stating, as to each signer thereof, that

(1) a review of the activities of PNM or the Company, as the case may be, required during such year of PNM or the Company, as the case may be, under this Indenture has been made under his supervision; and

(2) to the best of his knowledge, based on such review, PNM or the Company, as the case may be, has fulfilled all its obligations under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to such officer and the nature and status thereof.

(b) PNM and the Company each will deliver to the Trustee, promptly after having obtained knowledge thereof, but in no event later than five days thereafter, written notice of any event which with the giving of notice or lapse of time, or both, would become an Event of Default under Section 8.01.

## ARTICLE SIX

### REDEMPTION OF SECURITIES

The provisions of this Article Six shall be applicable to the Securities of any series which are redeemable before their Stated Maturity of principal except as otherwise provided in such Securities or the Series Supplemental Indenture with respect thereto as contemplated by Section 2.03.

#### SECTION 6.01. Notice to Trustee of Redemption.

In case of any redemption of any Securities of any series otherwise than through the operation of an applicable Sinking Fund, the Company shall, at least 45 days prior to the scheduled Redemption Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of Securities of such series to be redeemed.

#### SECTION 6.02. Selection by Trustee of Securities to be Redeemed.

If fewer than all the Securities of any series are to be redeemed, other than through the operation of an applicable Sinking Fund, the particular Securities of such series to be redeemed shall be selected following receipt by the Trustee of the notice required by Section 6.01, but not more than 60 days prior to the Redemption Date, by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal of Securities of any denomination larger than \$1,000; provided, however, that for purposes of selecting Securities of any series for redemption pursuant to this Section, Securities of such series shall be redeemed from each Stated Maturity of principal of Securities of such series as nearly as practicable in the proportion that the aggregate principal amount of Securities of



such series of such Stated Maturity of principal Outstanding immediately prior to the Redemption Date shall bear to the aggregate principal amount of Securities of such series of all Stated Maturities of principal then Outstanding, in each case taking into account in the determination of Securities Outstanding the Securities of such series subject to such redemption; provided further, however, that when Securities are being redeemed pursuant to any applicable optional (rather than mandatory) redemption provisions, the Securities to be redeemed shall be selected solely from the Securities of the series and of the Stated Maturity of principal in respect of which a Company Order has been received. If Securities are to be selected for any redemption pursuant to this Section, the Trustee may make such adjustments as it shall deem necessary so that the principal amount of Securities redeemed shall be \$1,000 or an integral multiple thereof, such adjustments to be made by the Trustee in such manner as the Trustee in its sole discretion deems appropriate.

The Trustee shall promptly notify the Company, PNM, the Security Registrar and the Paying Agent in writing of the Securities selected for redemption and, in the case of any Security selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal of such Security which has been or is to be redeemed.

#### SECTION 6.03. Notice of Redemption.

Notice of redemption (including redemption through the operation of any applicable Sinking Fund) shall be given by first-class mail, postage prepaid, mailed not less than 20 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price,
- (3) if fewer than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the particular Securities, including the series and the Stated Maturity of principal of such Securities, to be redeemed,
- (4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security, and that interest thereon shall cease to accrue from and after said date,
- (5) the place where such Securities are to be surrendered for payment of the Redemption Price, and
- (6) that the redemption is through the operation of a Sinking Fund, if such is the case.

Notice of redemption of Securities to be redeemed shall be given by the Trustee in the name of the Company.

#### SECTION 6.04. Deposit of Redemption Price.

Prior to any Redemption Date, the Company shall deposit, or cause to be deposited, with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Securities which are to be redeemed on that date.

**SECTION 6.05. Securities Payable on Redemption Date.**

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the corporate trust office of the Paying Agent (or, if such office is not in the Borough of Manhattan, the City of New York, at either such office or an office to be maintained in such Borough) at the Redemption Price therein specified and from and after such date (unless there shall be a default in the payment of the Redemption Price) such Securities shall cease to bear interest. Upon surrender of such Securities for redemption in accordance with said notice, such Securities shall be paid at the Redemption Price, exclusive, however, of installments of interest maturing on or prior to the Redemption Date, payment of which shall have been made or duly provided for to the Holders of such Securities registered as such on the relevant Record Dates, or otherwise, according to their terms and the provisions of Section 2.10.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, continue to bear interest from the Redemption Date at the rate borne by the Security in respect of overdue payments.

**SECTION 6.06. Securities Redeemed in Part.**

Any Security which is to be redeemed only in part shall be surrendered at the corporate trust office of the Paying Agent (or, if such office is not in the Borough of Manhattan, the City of New York, at either such office or an office to be maintained in such Borough) (with due endorsement by, or a written instrument of transfer in form satisfactory to the Security Registrar duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Paying Agent for delivery to the Holder of such Security a new Security or Securities of the

same series and the same Stated Maturity of principal, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

## ARTICLE SEVEN

### SINKING FUNDS

#### SECTION 7.01. Sinking Funds for Securities.

The amount of any sinking fund payment provided for by the terms of Securities of any series (and any Stated Maturity of principal within a series) is herein referred to as a "Sinking Fund", and the date on which a Sinking Fund payment is to be made is herein referred to as a "Sinking Fund Date." Each such Sinking Fund payment shall be applied to the redemption of Securities of the appropriate series and the appropriate Stated Maturity of principal on the appropriate Sinking Fund Date.

In the event that there shall have been any partial redemption of a series of Securities (other than pursuant to an applicable Sinking Fund), the amount of each applicable Sinking Fund payment of a particular Stated Maturity of principal within such series subsequent to such redemption shall be reduced by an amount equal to the amount obtained by (i) multiplying the amount of such Sinking Fund payment with respect to such Stated Maturity of principal as in effect prior to such redemption by a fraction of which the numerator shall be the aggregate principal amount of Securities of such Stated Maturity of such series redeemed pursuant to such partial redemption, and the denominator shall be the aggregate principal amount of Securities of such Stated Maturity of such series Outstanding immediately prior to such redemption, and (ii) rounding the amount indicated in (i) to the nearest \$1,000, subject to necessary adjustment so that the total amount of such reduction is equal to the total principal amount of Securities redeemed pursuant to such partial redemption, such

adjustment to be made by the Trustee in such manner as the Trustee in its sole discretion deems appropriate.

**SECTION 7.02. Selection by Trustee of Securities to be Redeemed Through Operation of Sinking Fund.**

In the case of Securities to be redeemed through operation of the Sinking Fund, the particular Securities to be redeemed shall be selected no more than 60 days nor less than 30 days prior to the Redemption Date by the Trustee from the outstanding Securities of the same series and of the same Stated Maturity of principal not previously called for redemption by prorating, as nearly as may be, the principal amount of Securities to be redeemed among the Holders of Securities of the same series and of the same Stated Maturity of principal registered in their respective names. In any proration pursuant to this Section, the Trustee shall make such adjustments, reallocations and eliminations as it shall deem proper so that the principal amount of Securities so prorated shall be \$1,000 or an integral multiple thereof, by increasing or decreasing or eliminating the amount which would be allocable to any Holder on the basis of exact proportion by an amount not exceeding \$1,000. The Trustee in its discretion may determine the particular Securities of a Stated Maturity of principal registered in the name of any Holder which are to be redeemed, in whole or in part.

Notwithstanding the provisions of the preceding paragraph, if, at the time of any such selection, there shall be any Holders of less than \$1,000,000 aggregate principal amount of Outstanding Securities of the series and of the Stated Maturity of principal to be so redeemed, the selection of the particular Securities to be so redeemed shall be made in the following manner:

(a) the Trustee shall first prorate the principal amount of Securities of such series and of such Stated Maturity to be so redeemed between (i) Holders of Securities in aggregate principal amounts of \$1,000,000 or more and

(ii) Holders of Securities in aggregate principal amounts of less than \$1,000,000; such proration to be effected in accordance with the respective aggregate principal amounts of such Securities held by the Holders referred to in the foregoing items (i) and (ii), respectively;

(b) the Trustee shall then select for redemption in the manner hereinabove in the first paragraph of this Section 7.02 provided, from the Securities of such series and Stated Maturity held by the Holders referred to in item (i) of clause (a) above, particular Securities (or portions thereof) in the principal amount prorated to such Holders pursuant to said clause (a); and

(c) the Trustee shall then select for redemption in the manner provided in Section 6.02 hereof, from the Securities of such series and Stated Maturity held by the Holders referred to in item (ii) of said clause (a), particular Securities (or portions thereof) in the principal amount prorated to such Holders pursuant to said clause (a);

provided, however, in any such prorating pursuant to this paragraph the Trustee may, according to such method as it shall deem proper in its discretion, make such adjustments by increasing or decreasing by not more than \$1,000 the amount which would be allocable on the basis of an exact proportion, as may be necessary to the end that the principal amount so prorated shall be in each instance an integral multiple of \$1,000.

## ARTICLE EIGHT

### EVENTS OF DEFAULT; REMEDIES

#### SECTION 8.01. Events of Default.

"Events of Default", wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to a judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest upon any Security when it becomes due and payable, and continuance of such default for a period of ten (10) days; or

(2) default in the payment of the principal of (or premium, if any, on) any Security at its Stated Maturity, or upon call for redemption or otherwise, and continuance of such default for a period of ten (10) days; or

(3) default in the making of any Sinking Fund payment, and continuance of such default for a period of ten (10) days; or

(4) default in the performance, or breach, of any covenant of PNM or the Company contained herein and continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to PNM and the Company by the Trustee, or to PNM, the Company and the Trustee by the Holders of at least 25% in principal amount of Outstanding Securities, a written notice specifying such failure and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) the occurrence of an "Indenture Event of Default" under any Lease Indenture and the declaration as a result thereof that any Pledged Lessor Note is due and payable; or

(6) the entry of a decree or order by a court having jurisdiction in the premises adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under the Federal Bankruptcy Act or any other applicable federal or state law or law of the District of Columbia, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(7) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Act or any other applicable federal or state law or law of the District of Columbia, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action.



**SECTION 8.02. Acceleration of Maturity;  
Rescission and Annulment.**

Upon the occurrence of an Event of Default, (i) if such Event of Default is one referred to in clause (1), (2), (3), (4), (6) or (7) of Section 8.01, the Trustee may, and upon the direction of the Holders of not less than 25% in principal amount of the Securities Outstanding shall, and (ii) if such Event of Default is the one referred to in clause (5) of Section 8.01 (including without limitation an event of default under any Lease which has resulted in an Event of Default referred to in clause (1), (2), or (3) of Section 8.01), the Trustee shall, declare the principal of all the Securities to be due and payable immediately, by a notice in writing to PNM and the Company, and upon any such declaration such principal shall become immediately due and payable; provided that no such declaration shall be made (and no action under Section 8.03 or 8.05 shall be taken) in cases in which the Event of Default is one referred to in clause (1), (2), or (3) of Section 8.01 which resulted directly from a failure of PNM to make any payment of rent under any Lease until such time as the Lessor under such Lease has been given the opportunity to exercise its rights, if any, under provisions of the related Lease Indenture analogous to Section 6.8 of the Lease Indentures dated as of December 16, 1985.

At any time after such a declaration of acceleration has been made and before any sale of the Pledged Property, or any part thereof, shall have been made pursuant to any power of sale as hereinafter in this Article; provided, the Holders of a majority in principal amount of the Securities Outstanding, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) there shall have been paid to or deposited with the Trustee a sum sufficient to pay

(A) all overdue installments of interest on all Securities,

(B) the principal of (and premium, if any, on) any Securities which have become due otherwise than by such declaration of acceleration and interest thereon at the respective rates provided in the Securities for late payments of principal or premium,

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the respective rates provided in the Securities for late payments of interest, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default, other than the non-payment of the principal of Securities which have become due solely by such acceleration, have been cured or waived as provided in Section 8.08.

No such rescission shall affect any subsequent default or impair any right consequent thereon and no such annulment shall take place unless all declarations of acceleration of all Pledged Lessor Notes theretofore given have also been annulled in accordance with the terms of the applicable Lease Indentures.

Notwithstanding anything in this Section to the contrary, the Trustee shall rescind any acceleration of maturity of the principal of and interest on the Securities as a consequence of an Event of Default which resulted from an event of default under any Lease and which resulted in a declaration of acceleration of the Pledged Lessor Notes issued under the related Lease Indenture, if the declaration of acceleration of such Pledged Lessor Notes has been rescinded in accordance with the terms of such Lease Indenture and the

conditions set forth in paragraphs (1) and (2) of this Section have been met.

**SECTION 8.03. Trustee's Power of Sale of Pledged Property; Notice Required; Power to Bring Suit.**

If an Event of Default shall have occurred and be continuing, subject to the provisions of Sections 8.06 and 8.07 and the proviso to the first paragraph of Section 8.02, the Trustee, by such officer or agent as it may appoint, may:

(1) sell, to the extent permitted by law, without recourse, for cash, or credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Trustee in its discretion may determine, the Pledged Property as an entirety, or in any such portions as the Holders of a majority in aggregate principal amount of the Securities then Outstanding shall request by an Act of Securityholders, or, in the absence of such request, as the Trustee in its discretion shall deem expedient in the interest of the Securityholders, at public or private sale; and/or

(2) proceed by one or more suits, actions or proceedings at law or in equity or otherwise or by any other appropriate remedy, to enforce payment of the Securities or Pledged Lessor Notes, or to foreclose this Indenture or to sell the Pledged Property under a judgment or decree of a court or courts of competent jurisdiction, or by the enforcement of any such other appropriate legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of its rights or powers or any of the rights or powers of the Securityholders.

In the event that the Trustee shall deem it advisable to sell any of or all the Pledged Property in

accordance with the provisions of this Section, PNM and the Company agree that if registration of any such Pledged Property shall be required, in the opinion of counsel for the Trustee, under the Securities Act of 1933 or other applicable law, and regulations promulgated thereunder, and if PNM shall not effect, or cause to be effected, such registration promptly, the Trustee may sell any such Pledged Property at a private sale, and no Person shall attempt to maintain that the prices at which such Pledged Property is sold are inadequate by reason of the failure to sell at public sale, or hold the Trustee liable therefor.

**SECTION 8.04. Incidents of Sale of Pledged Property.**

Upon any sale of all or any part of the Pledged Property made either under the power of sale given under this Indenture or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this Indenture, the following shall be applicable:

(1) **Securities Due and Payable.** The principal of, and premium, if any, and accrued interest on, the Securities, if not previously due, shall immediately become and be due and payable.

(2) **Trustee Appointed Attorney of Company to Make Conveyances.** The Trustee is hereby irrevocably appointed the true and lawful attorney of the Company, in its name and stead, to make all necessary deeds, bills of sale and instruments of assignment, transfer or conveyance of the property thus sold; and for that purpose the Trustee may execute all such documents and instruments and may substitute one or more persons with like power; and the Company hereby ratifies and confirms all that its said attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof.

(3) Company to Confirm Sales and Conveyances. If so requested by the Trustee or by any purchaser, the Company shall ratify and confirm any such sale or transfer by executing and delivering to the Trustee or to such purchaser or purchasers all proper deeds, bills of sale, instruments of assignment, conveyance or transfer and releases as may be designated in any such request.

(4) Securityholders and Trustee May Purchase Pledged Property. Any Securityholder or the Trustee may bid for and purchase any of the Pledged Property, and upon compliance with the terms of sale, may hold, retain, possess and dispose of such Pledged Property in his or its own absolute right without further accountability.

(5) Purchaser at Sale May Apply Securities to Purchase Price. Any purchaser at any such sale may, in paying the purchase price, deliver any of the Securities then Outstanding in lieu of cash and apply to the purchase price the amount which shall, upon distribution of the net proceeds of such sale, after application to the costs of the action and any other sums which the Trustee is authorized to deduct under this Indenture, be payable on such Securities so delivered in respect of principal, premium, if any, and interest. In case the amount so payable on such Securities shall be less than the amount due thereon, duly executed and authenticated Securities shall be delivered in exchange therefor to the Holder thereof for the balance of the amount due on such Securities so delivered by such Holder.

(6) Receipt of Trustee Shall Discharge Purchaser. The receipt of the Trustee or of the officer making such sale under judicial proceedings shall be a sufficient discharge to any purchaser for his purchase money, and,

after paying such purchase money and receiving such receipt, such purchaser or his personal representative or assigns shall not be obliged to see to the application of such purchase money, or be in any way answerable for any loss, misapplication or non-application thereof.

(7) **Sale To Divest Rights of Company in Property Sold.** Any such sale shall operate to divest the Company of all right, title, interest, claim and demand whatsoever, either at law or in equity or otherwise, in and to the Pledged Property so sold, and shall be a perpetual bar both at law and in equity or otherwise against the Company, and its successors and assigns, and any and all persons claiming or who may claim the Pledged Property sold or any part thereof from, through or under the Company, or its successors and assigns.

(8) **Application of Moneys Received upon Sale.** Any moneys collected by the Trustee upon any sale made either under the power of sale given by this Indenture or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this Indenture, shall be applied as provided in Section 8.12.

#### **SECTION 8.05. Judicial Proceedings Instituted by Trustee**

(a) **Trustee May Bring Suit.** If there shall be a failure to make payment of the principal of any Security at its Stated Maturity or upon declaration of acceleration, call for redemption or otherwise, or of any Sinking Fund payment when due and payable by the terms hereof or of such Security, or if there shall be a failure to pay the premium, if any, or interest on any Security when the same becomes due and payable, then the Trustee, if any such failure shall continue for 15 days, in its own name, and as trustee of an express trust,

shall be entitled, and empowered subject to the proviso to the first paragraph of Section 8.02 to institute any suits, actions or proceedings at law, in equity or otherwise, for the collection of the sums so due and unpaid on the Securities, and may prosecute any such claim or proceeding to judgment or final decree, and may enforce any such judgment or final decree and collect the moneys adjudged or decreed to be payable in any manner provided by law, whether before or after or during the pendency of any proceedings for the enforcement of the Lien of this Indenture, or of any of the Trustee's rights or the rights of the Securityholders under this Indenture, and such power of the Trustee shall not be affected by any sale hereunder or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture or for the foreclosure of the lien hereof.

(b) **Trustee May Recover Unpaid Indebtedness after Sale of Pledged Property.** In the case of a sale of the Pledged Property and of the application of the proceeds of such sale to the payment of the indebtedness secured by this Indenture, the Trustee in its own name, and as trustee of an express trust, shall be entitled and empowered, by any appropriate means, legal, equitable or otherwise, to enforce payment of, and to receive all amounts then remaining due and unpaid upon, all or any of the Securities, for the benefit of the Holders thereof, and upon any other portion of the indebtedness remaining unpaid, with interest at the rates specified in the respective Securities on the overdue principal of and premium, if any, and (to the extent that payment of such interest is legally enforceable) on the overdue installments of interest.

(c) **Recovery of Judgment Does Not Affect Lien of this Indenture or Other Rights.** No recovery of any such judgment or final decree by the Trustee and no levy of any execution under any such judgment upon any of the Pledged Property, or upon any other property, shall in any manner or to any extent affect the Lien of this Indenture upon any of the Pledged Property, or any rights, powers or remedies of the Trustee, or any liens, rights, powers or remedies of the Securityholders, but

all such liens, rights, powers and remedies shall continue unimpaired as before.

(d) **Trustee May File Proofs of Claim; Appointment of Trustee as Attorney-in-Fact in Judicial Proceedings.** The Trustee in its own name, or as trustee of an express trust, or as attorney-in-fact for the Securityholders, or in any one or more of such capacities (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand for the payment of overdue principal, premium (if any) or interest), shall be entitled and empowered 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 and of the Securityholders (whether such claims be based upon the provisions of the Securities or of this Indenture) allowed in any equity, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization or any other judicial proceedings relative to the Company or any obligor on the Securities (within the meaning of the TIA), the creditors of the Company or any such obligor, the Pledged Property or any other property of the Company or any such obligor and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Securityholder 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 Securityholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel. The Trustee is hereby irrevocably appointed (and the successive respective Holders of the Securities, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective Securityholders, with authority to (i) make and file in the respective names of the Securityholders (subject to deduction from any such claims of the amounts of any claims filed by any of the Securityholders themselves), any claim, proof of claim or amendment thereof, debt, proof of debt or



amendment thereof, petition or other document in any such proceedings and to receive payment of any amounts distributable on account thereof, (ii) execute any such other papers and documents and to do and perform any and all such acts and things for and on behalf of such Securityholders, as may be necessary or advisable in order to have the respective claims of the Trustee and of the Securityholders against the Company or any such obligor, the Pledged Property or any other property of the Company or any such obligor allowed in any such proceeding and (iii) receive payment of or on account of such claims and debt; provided, however, that nothing contained in this Indenture shall be deemed to give to the Trustee any right to accept or consent to any plan of reorganization or otherwise by action of any character in any such proceeding to waive or change in any way any right of any Securityholder. Any moneys collected by the Trustee under this Section shall be applied as provided in Section 8.12.

(e) **Trustee Need Not Have Possession of Securities.** All rights of action and of asserting claims under this Indenture or under any of the Securities enforceable by the Trustee may be enforced by the Trustee without possession of any of such Securities or the production thereof at the trial or other proceedings relative thereto.

(f) **Suit To Be Brought for Ratable Benefit of Securityholders.** Any suit, action or other proceeding at law, in equity or otherwise which shall be instituted by the Trustee under any of the provisions of this Indenture shall be for the equal, ratable and common benefit of all the Securityholders, subject to the provisions of this Indenture.

(g) **Trustee May Be Restored to Former Position and Rights in Certain Circumstances.** In case the Trustee shall have proceeded to enforce any right under this Indenture by suit, foreclosure or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then in every such case, PNM, the Company and the Trustee shall be restored without

further act to their respective former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken.

**SECTION 8.06. Securityholders May Demand Enforcement of Rights by Trustee.**

If an Event of Default shall have occurred and shall be continuing, the Trustee shall, upon the written request of the Holders of a majority in aggregate principal amount of the Securities then Outstanding and upon the offering of indemnity as provided in Section 9.03(e), but subject in all cases to the provisions of Section 3.03 and the proviso to the first paragraph of Section 8.02, proceed to institute one or more suits, actions or proceedings at law, in equity or otherwise, or take any other appropriate remedy, to enforce payment of the principal of, or premium, if any, or interest on, the Securities or Pledged Lessor Notes or to foreclose this Indenture or to sell the Pledged Property under a judgment or decree of a court or courts of competent jurisdiction or under the power of sale herein granted, or take such other appropriate legal, equitable or other remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of the rights or powers of the Trustee or the Securityholders, or, in case such Securityholders shall have requested a specific method of enforcement permitted hereunder, in the manner requested, provided that such action shall not be otherwise than in accordance with law and the provisions of this Indenture, and the Trustee, subject to such indemnity provisions, shall have the right to decline to follow any such request if the Trustee in good faith shall determine that the suit, proceeding or exercise of the remedy so requested would involve the Trustee in personal liability or expense.

**SECTION 8.07. Control by Securityholders.**

The Holders of a majority in principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or

exercising any trust or power conferred on the Trustee, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture, and

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

#### SECTION 8.08. Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Securities may on behalf of the Holders of all the Securities waive any past default hereunder and its consequences, except that only the Holders of all Securities affected thereby may waive a default

(1) in the payment of the principal of (or premium, if any) or interest on such Securities, or

(2) in respect of a covenant or provision hereof which under Article Eleven cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

Upon any such waiver, 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 8.09. Securityholder May Not Bring Suit Except under Certain Conditions.

A Securityholder shall not have the right to institute any suit, action or proceeding at law or in equity or otherwise for the foreclosure of this Indenture, for the appointment of a receiver or for the

enforcement of any other remedy under or upon this Indenture, unless:

(1) such Securityholder previously shall have given written notice to the Trustee of a continuing Event of Default;

(2) the Holders of at least 25% in aggregate principal amount of the Securities then Outstanding shall have requested the Trustee in writing to institute such action, suit or proceeding and shall have offered to the Trustee indemnity as provided in Section 9.03(e);

(3) the Trustee shall have refused or neglected to institute any such action, suit or proceeding for 60 days after receipt of such notice, request and offer of indemnity; and

(4) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of outstanding Securities.

It is understood and intended that no one or more of the Securityholders shall have any right in any manner whatever hereunder or under the Securities to (i) surrender, impair, waive, affect, disturb or prejudice the Lien of this Indenture on any property subject thereto or the rights of the Holders of any other Securities, (ii) obtain or seek to obtain priority or preference over any other such Holder or (iii) enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all the Securityholders subject to the provisions of this Indenture.

**SECTION 8.10. Undertaking To Pay Court Costs.**

All parties to this Indenture, and each Securityholder by his acceptance of a Security, shall be deemed to have agreed that any court may in its discretion require, in any suit, action or proceeding for the enforcement of any right or remedy under this Indenture, or in any suit, action or proceeding against the Trustee for any action taken or omitted by it as Trustee hereunder, the filing by any party litigant in such suit, action or proceeding of an undertaking to pay the costs of such suit, action or proceeding, and that such court may, in its discretion, assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, action or proceeding, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, however, that the provisions of this Section shall not apply to (a) any suit, action or proceeding instituted by the Trustee, (b) any suit, action or proceeding instituted by any Securityholder or group of Securityholders holding in the aggregate more than 10% in aggregate principal amount of the Securities then Outstanding or (c) any suit, action or proceeding instituted by any Securityholder for the enforcement of the payment of the principal of, or premium, if any, or interest on, any of the Securities, on or after the respective due dates expressed therein.

**SECTION 8.11. Right of Securityholders To Receive Payment Not To Be Impaired.**

Anything in this Indenture to the contrary notwithstanding, the right of any Holder of any Security to receive payment of the principal of, and premium, if any, and interest on, such Security, on or after the respective due dates expressed in such Security (or, in case of redemption, on the Redemption Date fixed for such Security), or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

**SECTION 8.12. Application of Moneys Collected by Trustee.**

Any moneys collected or to be applied by the Trustee pursuant to this Article, together with any other moneys which may then be held by the Trustee under any of the provisions of this Indenture as security for the Securities (other than moneys at the time required to be held for the payment of specific Securities at their Stated Maturities or at a time fixed for the redemption thereof) shall be applied in the following order from time to time, on the date or dates fixed by the Trustee and, in the case of a distribution of such moneys on account of principal, premium, if any, or interest, upon presentation of the several Outstanding Securities, and stamping thereon of payment, if only partially paid, and upon surrender thereof, if fully paid:

**FIRST:** to the payment of all taxes, assessments or liens prior to the Lien of this Indenture, except those subject to which any sale shall have been made, all reasonable costs and expenses of collection, including the reasonable costs and expenses of handling the Pledged Property and of any sale thereof pursuant to the provisions of this Article and of the enforcement of any remedies hereunder or under any Lease Indenture, and to the payment of all amounts due the Trustee or any predecessor Trustee under Section 9.07, or through the Trustee by any Securityholder or Securityholders;

**SECOND:** in case the principal of the Securities or any of them shall not have become due, to the payment of any interest in default, in the order of the maturity of the installments of such interest, with interest at the rates specified in the respective Securities in respect of overdue payments (to the extent that payment of such interest shall be legally enforceable) on the overdue installments thereof;

THIRD: in case the principal of any of but not all the Securities shall have become due at their Stated Maturities, upon redemption or otherwise, first to the payment of accrued interest in the order of the maturity of the installments thereof with interest at the respective rates specified in the Securities in respect of payments on overdue principal, premium, if any, and (to the extent that payment of such interest shall be legally enforceable) on overdue installments of interest, and next to the payment of the principal of all Securities then due;

FOURTH: in case the principal of all the Securities shall have become due at their Stated Maturities, by declaration, upon redemption or otherwise, to the payment of the whole amount then due and unpaid upon the Securities then Outstanding for principal, premium, if any, and interest, together with interest at the respective rates specified in the Securities in respect of overdue payments on principal, premium, if any, and (to the extent that payment of such interest shall be legally enforceable) on overdue installments of interest, and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal, premium, if any, and interest ratably, without discrimination or preference; and

FIFTH: in case the principal of all the Securities shall have become due at their Stated Maturities, by declaration, upon redemption or otherwise, and all of such Securities shall have been fully paid, together with all interest (including any interest on overdue payments) and premium, if any, thereon, any surplus then remaining shall be paid to the Company, its successors or assigns, or to whomsoever may be lawfully

entitled to receive the same, or as a court of competent jurisdiction may direct;

provided, however, that all payments to be made pursuant to this Section shall be made ratably to the persons entitled thereto, without discrimination or preference.

**SECTION 8.13. Securities Held by Certain Persons Not To Share in Distribution.**

Any Securities known to the Trustee to be owned or held by, or for the account or benefit of, PNM, the Company or any Affiliate of any thereof shall not be entitled to share in any payment or distribution provided for in this Article until all Securities held by other Persons have been paid in full.

**SECTION 8.14. Waiver of Appraisement, Valuation, Stay, Right to Marshalling.**

To the extent it may lawfully do so, each of PNM and the Company, for itself and for any Person who may claim through or under it, hereby:

(1) agrees that neither it nor any such Person will set up, plead, claim or in any manner whatsoever take advantage of, any appraisement, valuation, stay, extension or redemption laws, now or hereafter in force in any jurisdiction, which may delay, prevent or otherwise hinder (i) the performance or enforcement or foreclosure of this Indenture, (ii) the sale of any of the Pledged Property, or (iii) the putting of the purchaser or purchasers thereof into possession of such property immediately after the sale thereof;

(2) waives all benefit or advantage of any such laws;

(3) waives and releases all rights to have the Pledged Property marshalled upon any foreclosure, sale or other enforcement of this Indenture; and



(4) consents and agrees that all the Pledged Property may at any such sale be sold by the Trustee as an entirety.

**SECTION 8.15. Remedies Cumulative; Delay or Omission Not a Waiver.**

Every remedy given hereunder to the Trustee or to any of the Securityholders shall not be exclusive of any other remedy or remedies, and every such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter given by statute, law, equity or otherwise. The Trustee may exercise all or any of the powers, rights or remedies given to it hereunder or which may now or hereafter be given by statute, law or equity or otherwise, in its absolute discretion. No course of dealing between PNM or the Company and the Trustee or the Securityholders or any delay or omission of the Trustee or of any Securityholder to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver of any such Event of Default or of any right of the Trustee or of the Securityholders or acquiescence therein, and, subject to the provisions of Section 8.07, every right, remedy and power given by this Article to the Trustee or to the Securityholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Securityholders.

**ARTICLE NINE**

**THE TRUSTEE**

**SECTION 9.01. Certain Duties and Responsibilities.**

(a) Except during the continuance of an Event of Default,

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and

no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) 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; but in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case 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 their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(1) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in

principal amount of the Outstanding Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not herein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

#### SECTION 9.02. Notice of Defaults.

In addition to its obligation to give notice to Securityholders as provided in Section 3.03, as promptly as practicable after, and in any event within 90 days after, the occurrence of any default hereunder, the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Security or in the payment of any Sinking Fund installment, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Securityholders; and provided, further, that in the case of any default of the character specified in Section

8.01(4) no such notice to Securityholders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

#### SECTION 9.03.. Certain Rights of Trustee.

Except as otherwise provided in Section 9.01:

(a) the Trustee may rely and shall be protected in acting or refraining from acting in reliance upon any resolution, certificate, statement, instrument, opinion, report; notice, request, direction, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of PNM or the Company mentioned herein shall be sufficiently evidenced by a PNM or Company Request or Order, in the case of a request or direction of PNM, the Company, as the case may be and any resolution of the Board of Directors of PNM or the Company may be sufficiently evidenced by a Board Resolution of PNM or the Company, as the case may be;

(c) 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 of PNM or the Company;

(d) the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) 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 Securityholders pursuant to this Indenture, unless such Securityholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or 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 PNM or the Company, personally or by agent or attorney; and

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

#### **SECTION 9.04. Not Responsible for Recitals or Issuance of Securities.**

The recitals contained herein and in the Securities, except the certificates of authentication, shall not be taken as the statements of the Trustee, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture, the Pledged Property or the Securities, except that the Trustee hereby represents and warrants that this Indenture has been executed and delivered by one of its officers who is duly authorized to execute and deliver such document on its behalf. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

#### SECTION 9.05. May Hold Securities.

The Trustee, any Paying Agent, Security Registrar or any other agent of PNM or the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 9.08 and 9.13, may otherwise deal with PNM and the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such other agent.

#### SECTION 9.06. Funds May Be Held by Trustee or Paying Agent; Investments.

(a) Subject to subsection (b) of this Section 9.06, any monies held by the Trustee or the Paying Agent hereunder as part of the Pledged Property may, until paid out by the Trustee or the Paying Agent as herein provided, be carried by the Trustee or the Paying Agent on deposit with itself, and neither the Trustee nor the Paying Agent shall have any liability for interest upon any such monies.

(b) At any time and from time to time prior to payment in full of any amounts to be paid by the Trustee pursuant to Section 2.15(b) in respect of any series of Securities (or prior to payment in full of any amount required to be paid by the Trustee in respect of such series of Securities pursuant to Section 6.07), if at the time no Event of Default has occurred and is continuing, the Trustee shall, on Company Request, invest and reinvest in Permitted Investments as specified in such Company Request any monies from the sale of the Securities of such series at the time on deposit with the Trustee as part of the Pledged Property, together with any income and gains from the investment and reinvestment thereof, and sell any Permitted Investments, in either case, at such prices, including accrued interest, as are set forth in such Company Request, and such Permitted Investments shall be held by the Trustee until so sold in trust as part of the Pledged Property. The Trustee shall, on Company Request, sell such Permitted Investments as may be specified therein, and the Trustee shall, without Company Request, in the event monies are

required for payment of any amounts to be paid by the Trustee pursuant to Section 2.15(b) in respect of any series of Securities and for any Stated Maturity of any installment of interest on any series of Securities becoming due and payable prior to the thirtieth day following the Termination Date applicable to such series, sell such Permitted Investments as are required to restore to cash as part of the Pledged Property such amounts as are needed for any such payment. The Trustee shall not be responsible for any losses on any investments or sales of Permitted Investments made pursuant to the procedure specified in this subsection (b).

#### SECTION 9.07. Compensation and Reimbursement

The Company agrees

(1) to pay, or cause to be paid, to each of the Trustee and any Authorized Agent from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) to reimburse, or cause to be reimbursed, each of the Trustee and any Authorized Agent upon its request for all expenses, disbursements and advances incurred or made by it in accordance with any provision of this Indenture (including the compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its own negligence, willful misconduct or bad faith; and

(3) to indemnify, or cause to be indemnified, each of the Trustee, any predecessor Trustee and any Authorized Agent for, and to hold it harmless against, any loss, liability or expense incurred without negligence, willful misconduct or bad faith on its part, arising out of or in connection with the

acceptance or administration of this trust or the performance of its duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

As security for the performance of the obligations of the Company under this Section the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (and premium, if any) or interest on particular Securities.

**SECTION 9.08. Disqualification; Conflicting Interests.**

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect hereinafter specified in this Article.

(b) In the event that the Trustee shall fail to comply with the provisions of Subsection (a) of this Section the Trustee shall, within 10 days after the expiration of such 90-day period, transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, notice of such failure.

(c) For the purposes of this Section, the Trustee shall be deemed to have a conflicting interest if

(1) the Trustee is trustee under another Indenture under which any other securities, or certificates of interest or participation in any other securities, of any obligor on the Securities are outstanding, unless (A) the Securities are collateral trust bonds under which the only collateral consists of securities issued under such other indenture,



or (B) such other indenture is a collateral trust indenture under which the only collateral consists of Securities issued under this Indenture, provided that there shall be excluded from the operation of this paragraph any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of such obligor are outstanding, if such obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures;

(2) the Trustee or any of its directors or executive officers is an obligor upon the Securities or an underwriter for such obligor;

(3) the Trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with any obligor on the Securities or an underwriter for such obligor;

(4) the Trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee or representative of any obligor on the Securities, or of an underwriter (other than the Trustee itself) for such obligor who is currently engaged in the business of underwriting, except that (i) one individual may be a director or an executive officer, or both, of the Trustee and a director or an executive officer, or both, of an obligor on the Securities but may not be at the same time an executive officer of both the Trustee and such obligor; (ii) if and so long as the number of directors of the Trustee in

office is more than nine, one additional individual may be director or an executive officer, or both, of the Trustee and a director of an obligor on the Securities; and (iii) the Trustee may be designated by an obligor on the Securities or by any underwriter for such obligor to act in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depository, or in any other similar capacity, or, subject to the provisions of paragraph (1) of this Subsection, to act as trustee, whether under an indenture or otherwise;

(5) 10% or more of the voting securities of the Trustee is beneficially owned either by any director, partner, or executive officer thereof, or 20% or more of such voting securities is beneficially owned, collectively, by any two or more of such persons; or 10% or more of the voting securities of the Trustee is beneficially owned either by an underwriter for any obligor on the Securities or by any director, partner or executive officer thereof, or is beneficially owned collectively by any two or more such persons;

(6) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default (as hereinafter in this Subsection defined), (i) 5% or more of the voting securities, or 10% or more of any other class of security, of any obligor on the Securities not including the Securities issued under this Indenture and securities issued under any other indenture under which the Trustee is also trustee, or (ii) 10% or more of any class of security of an underwriter for any obligor on the Securities;

(7) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default (as hereinafter in this Subsection defined), 5% or more of the

voting securities of any person who, to the knowledge of the Trustee, owns 10% or more of the voting securities of, or controls directly or indirectly or is under direct or indirect common control with, any obligor on the Securities;

(8) the Trustee is the beneficial owner of, or holds collateral security for an obligation which is in default (as hereinafter in this Subsection defined), 10% or more of any class of security of any person who, to the knowledge of the Trustee, owns 50% or more of the voting securities of any obligor on the Securities; or

(9) the Trustee owns, on May 15 in any calendar year, in the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of 25% or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a specified percentage of which would have constituted a conflicting interest under paragraphs (6), (7) or (8) of this Subsection. As to any such securities of which the Trustee acquired ownership through becoming executor, administrator, or testamentary trustee of an estate which included them, the provisions of the preceding sentence shall not apply, for a period of two years from the date of such acquisition to the extent that such securities included in such estate do not exceed 25% of such voting securities or 25% of any such class of security. Promptly after May 15 in each calendar year, the Trustee shall make a check of its holdings of such securities in any of the above mentioned capacities as of such May 15. If any obligor upon the Securities fails to make payment in full of the principal of, or the premium, if any, or interest on, any of the Securities when and as the same becomes due and payable,

and such failure continues for 30 days thereafter, the Trustee shall make a prompt check of its holdings of such securities in any of the above mentioned capacities as of the date of the expiration of such 30 day period, and after such date, notwithstanding the foregoing provisions of this paragraph, all such securities so held by the Trustee, with sole or joint control over such securities vested in it, shall, but only so long as such failure shall continue, be considered as though beneficially owned by the Trustee for the purposes of paragraphs (6), (7) and (8) of this Subsection.

The specification of percentages in paragraphs (5) to (9) inclusive, of this Subsection, shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of paragraph (3) or (7) of this Subsection.

For the purposes of paragraphs (6), (7), (8) and (9) of this Subsection only, (i) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys loaned to a person by one or more banks, trust companies or banking firms, or any certificate of interest or participation in any such note or evidence or indebtedness; (ii) an obligation shall be deemed to be "in default" when a default in payment of principal shall have continued for 30 days or more and shall not have been cured; and (iii) the Trustee shall not be deemed to be the owner or holder of (A) any security which it holds as collateral security, as trustee or otherwise, for an obligation which is not in default as defined in clause (ii) above, or (B) any security which it holds as collateral security under this Indenture, irrespective of any default hereunder, or (C) any security which it holds as agent for collection, or as

custodian, escrow agent, or depositary, or in any similar representative capacity.

Except as provided in the next preceding paragraph, the word "security" or "securities" as used in this Indenture shall mean any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to purchase, any of the foregoing.

(d) For the purposes of this Section:

(1) The term "underwriter" when used with reference to any obligor on the Securities means every person who, within three years prior to the time as of which the determination is made, has purchased from such obligor with a view to, or has offered or sold for such obligor in connection with, the distribution of any security of such obligor outstanding at such time, or has participated or has had a direct or indirect participation in any such undertaking, or has participated or has had a participation in the direct or indirect underwriting of any such undertaking, but such term shall not include a person whose interest was limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

(2) The term "director" means any director of a corporation, or any individual performing similar functions with respect to any

organization whether incorporated or unincorporated.

(3) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, or a government or political subdivision thereof. As used in this paragraph, the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(4) The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust, agreement or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a person.

(5) The term "obligor" means any obligor upon the Securities within the meaning of TIA.

(6) The term "executive officer" means the president, every vice president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not include the chairman of the board of directors.

(e) The percentages of the voting securities and other securities specified in this Section shall be calculated in accordance with the following provisions:

(1) A specified percentage of the voting securities of the Trustee, any obligor or any

other person referred to in this Section (each of whom is referred to as a "person" in this paragraph) means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(2) A specified percentage of a class of securities of a person means such percentage of the aggregate amount of securities of the class outstanding.

(3) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to capital shares and the number of units if relating to any other kind of security.

(4) The term "outstanding" means issued and not held by or for the account of the issuer. The following securities shall not be deemed outstanding within the meaning of this definition:

(i) securities of an issuer held in a sinking fund relating to securities of the issuer of the same class;

(ii) securities of an issuer held in a sinking fund relating to another class of securities of the issuer, if the obligation evidenced by such other class of securities is not in default as to principal or interest or otherwise;

(iii) securities pledged by the issuer thereof as security for an obligation of the issuer not in default as to principal or interest or otherwise; and

(iv) securities held in escrow if placed in escrow by the issuer thereof;

provided, however, that any voting securities of an issuer shall be deemed outstanding if any person other than the issuer is entitled to exercise the voting rights thereof.

(5) A security shall be deemed to be of the same class as another security if both securities confer upon the holder or holders substantially the same rights and privileges; provided, however, that in the case of secured evidences of indebtedness, all of which are issued under a single indenture, differences in the interest rates or maturity dates of various series thereof shall not be deemed sufficient to constitute such series different classes; and provided, further, that, in the case of unsecured evidences of indebtedness, differences in the interest rates or maturity dates thereof shall not be deemed sufficient to constitute them securities of different classes, whether or not they are issued under a single indenture.

#### **SECTION 9.09. Corporate Trustee Required; Eligibility.**

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance



with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

**SECTION 9.10. Resignation and Removal; Appointment of Successor.**

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 9.11.

(b) The Trustee may resign at any time by giving written notice thereof to PNM and the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to PNM, the Company and the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act. of the Holders of a majority in principal amount of the Outstanding Securities, delivered to the Trustee, PNM and to the Company.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 9.08(a) after written request therefor by any Lessor or by any Securityholder who has been a bona fide Holder of a Security for at least 6 months, or

(ii) the Trustee shall cease to be eligible under Section 9.09 and shall fail to resign after written request therefor by any Lessor or by any such Securityholder, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public

officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) PNM, acting after consultation with the Company, may remove the Trustee by Board Resolution or (ii) subject to Section 8.10, any Securityholder who has been a bona fide Holder of a Security for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, PNM, acting after consultation with the Company, shall promptly appoint by Board Resolution a successor Trustee. If, within 1 year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities delivered to PNM, the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by PNM. If no successor Trustee shall have been so appointed by PNM, acting after consultation with the Company, or by the Securityholders, and accepted appointment in the manner hereinafter provided, any Securityholder who has been a bona fide Holder of a Security for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities as their names and addresses appear in the Security Register. Each notice

shall include the name of the successor Trustee and the address of its Corporate Trust Office.

**SECTION 9.11. Acceptance of Appointment by Successor.**

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to PNM, the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of any Lessor, the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 9.07. Upon request of any such successor Trustee, PNM and the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

**SECTION 9.12. Merger, Conversion, Consolidation or Succession to Business.**

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise

qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

**SECTION 9.13. Preferential Collection of Claims against any Obligor.**

(a) Subject to Subsection (b) of this Section, if the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of any obligor on the Securities (as defined in Subsection (c) of this Section) within 4 months prior to a default, as defined in Subsection (c) of this Section, or subsequent to such a default, then, unless and until such default shall be cured, the Trustee shall set apart and hold in a special account for the benefit of the Trustee individually, the Holders of the Securities and the holders of other indenture securities (as defined in Subsection (c) of this Section):

(i) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such 4 month period and valid as against any obligor on the Securities and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (ii) of this Subsection, or from the exercise of any right of set-off which the Trustee could have exercised if a petition in bankruptcy had been filed by or against any such obligor upon the date of such default; and

(ii) all property received by the Trustee in respect of any claim as such creditor,

either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such 4 month period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of any obligor on the Securities and its other creditors in such property or such proceeds.

Nothing herein contained, however, shall affect the right of the Trustee

(A) to retain for its own account  
(i) payments made on account of any such claim by any Person (other than an obligor on the Securities) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the Trustee to a third person, and (iii) distributions made in cash, securities or other property in respect of claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such 4 month period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such 4 month period and such property was received as security therefor simultaneously with the creation thereof, and if the Trustee shall sustain the burden of proving that at the time such property was so received the Trustee had no reasonable cause to

believe that a default as defined in Subsection (c) of this Section would occur within 4 months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C), against the release of any property held as security for such claim as provided in paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C) and (D), property substituted after the beginning of such 4 month period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any pre-existing claim of the Trustee as such creditor, such claim shall have the same status as such pre-existing claim.

If the Trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the Trustee, the Securityholders and the holders of other indenture securities in such manner that the Trustee, the Securityholders and the holders of other indenture securities realize, as a result of payments from such special account and payments of dividends on claims filed against the obligor on the Securities in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the Trustee anything on account of the receipt by it from such obligor of the funds and property in such special account and before crediting to the respective claims of the Trustee and the Securityholders and the holders of other indenture securities dividends on claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal

Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership or proceedings for reorganization is pending shall have jurisdiction (i) to apportion between the Trustee and the Securityholders and the holders of other indenture securities, in accordance with the provisions of this paragraph, the funds and property held in such special account and proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the Trustee and the Securityholders and the holders of other indenture securities with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any Trustee which has resigned or been removed after the beginning of such 4 month period shall be subject to the provisions of this Subsection as though such resignation or removal had not occurred. If any Trustee has resigned or been removed prior to the beginning of such 4 month period, it shall be subject to the provisions of this Subsection if and only if the following conditions exist:

(i) the receipt of property or reduction of claim, which would have given rise to the obligation to account if such Trustee had continued as Trustee, occurred after the beginning of such 4 month period; and

(ii) such receipt of property or reduction of claim occurred within 4 months after such resignation or removal.

(b) There shall be excluded from the operation of Subsection (a) of this Section a creditor relationship arising from

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the Trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by this Indenture, for the purpose of preserving any property which shall at any time be subject to the lien of this Indenture or of discharging tax liens or other prior liens or encumbrances thereon, if notice of such advances and of the circumstances surrounding the making thereof is given to the Securityholders at the time and in the manner provided in this Indenture;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in Subsection (c) of this Section;



(5) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of PNM; or

(6) the acquisition, ownership, acceptance or negotiation of any drafts, bills of exchange, acceptances or obligations which fall within the classification of self-liquidating paper as defined in Subsection (c) of this Section.

(c) For the purposes of this Section only:

(1) The term "default" means any failure to make payment in full of the principal of or interest on any of the Securities or upon the other indenture securities when and as such principal or interest becomes due and payable.

(2) The term "other indenture securities" means securities upon which the Person obligated thereunder is an obligor (as defined in the Trust Indenture Act) outstanding under any other indenture (i) under which the Trustee is also trustee, (ii) which contains provisions substantially similar to the provisions of this Section, and (iii) under which a default exists at the time of the apportionment of the funds and property held in a special account as provided in Subsection (a) of this Section.

(3) The term "cash transaction" means any transaction in which full payment for goods or securities sold is made within 7 days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand.

(4) The term "self-liquidating paper" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by any obligor on the Securities for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with such obligor arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

(5) The term "obligor" means any obligor upon the Securities within the meaning of the TIA.

#### SECTION 9.14. Maintenance of Agencies.

(a) There shall at all times be maintained in the Borough of Manhattan, the City of New York, an office or agency where Securities may be presented or surrendered for transfer or exchange or for the registration thereof, and for payment of principal, premium (if any) and interest and where notices and demands to or upon the Trustee in respect of the Securities or of this Indenture may be served. Such office or agency shall be initially at the Corporate Trust Office of Chemical Bank. Written notice of the location of each such other office or agency and of any change of location thereof shall be given to the Company and to the Trustee. In the event that no such office or agency shall be maintained or no such notice of location or of change of location shall be given, presentations and demands may be made and notices may be served at the Corporate Trust Office.

(b) There shall at all times be a Security Registrar and a Paying Agent hereunder. Each such Authorized Agent shall be a bank or trust company, shall be a corporation organized and doing business under the laws of the United States or any State thereof, with a combined capital and surplus of at least \$50,000,000, and shall be authorized under such laws to exercise corporate trust powers, subject to supervision by Federal or State authorities. Chemical Bank is hereby appointed as Paying Agent and Security Registrar hereunder. Each Security Registrar (other than the Trustee) shall furnish to the Trustee, at stated intervals of not more than 6 months, and at such other times as the Trustee may request in writing, a copy of the Security Register.

(c) Any Paying Agent (other than the Trustee) from time to time appointed hereunder shall execute and deliver to the Trustee an instrument in which said Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will

(1) hold all sums held by it for the payment of principal of, and premium (if any) and interest on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee within five days thereafter notice of any default by any obligor upon the Securities in the making of any such payment of principal, premium (if any) or interest; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

Notwithstanding any other provision of this Indenture, any payment required to be made to or received or held

by the Trustee may, to the extent authorized by written instructions of the Trustee, be made to or received or held by a Paying Agent in the Borough of Manhattan, the City of New York, for the account of the Trustee.

(d) Any corporation into which any Authorized Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Authorized Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authorized Agent, shall be the successor of such Authorized Agent hereunder, if such successor corporation is otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authorized Agent or such successor corporation.

(e) Any Authorized Agent may at any time resign by giving written notice of resignation to the Trustee, PNM and the Company. The Company may, and at the request of the Trustee or any Lessor shall, at any time, terminate the agency of any Authorized Agent by giving written notice of termination to such Authorized Agent and to the Trustee. Upon the resignation or termination of an Authorized Agent or in case at any time any such Authorized Agent shall cease to be eligible under this Section (when, in either case, no other Authorized Agent performing the functions of such Authorized Agent shall have been appointed), the Company shall promptly appoint one or more qualified successor Authorized Agents approved by the Trustee and each Lessor to perform the functions of the Authorized Agent which has resigned or whose agency has been terminated or who shall have ceased to be eligible under this Section. The Company shall give written notice of any such appointment to all Holders as their names and addresses appear on the Security Register.

## ARTICLE TEN

### SECURITYHOLDERS' LISTS AND REPORTS BY TRUSTEE AND PNM

#### SECTION 10.01. PNM to Furnish Trustee Names and Addresses of Securityholders.

PNM will furnish or cause to be furnished to the Trustee semiannually, between January 15 and January 30, inclusive, and between July 15 and July 30, inclusive, in each year, and at such other times as the Trustee may request in writing, within 30 days after receipt by PNM of any such request, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities, in each case as of a date not more than 15 days prior to the time such list is furnished; provided, however, that so long as the Trustee is the sole Security Registrar, no such list need be furnished for so long as a copy of the Security Register is being furnished to the Trustee pursuant to Section 9.14(b).

#### SECTION 10.02. Preservation of Information; Communications to Securityholders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders of Securities contained in the most recent list furnished to the Trustee as provided in Section 9.14(b) or Section 10.01, as the case may be, and the names and addresses of Holders of Securities received by the Trustee in its capacity as Security Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 9.14(b) or Section 10.01, as the case may be, upon receipt of a new list so furnished.

(b) If three or more Holders of Securities (hereinafter referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states that

the applicants desire to communicate with other Holders of Securities with respect to their rights under this Indenture or under the Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within 5 Business Days after the receipt of such application, at its election, either:

(i) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 10.02(a), or

(ii) inform such applicants as to the approximate number of Holders of Securities whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 10.02(a), and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Securityholder whose name and address appear in the information preserved at the time by the Trustee in accordance with Section 10.02(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Securities or would be in violation of applicable law. Such written statement shall specify the basis of such opinions. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of

such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Securityholders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Every Holder of Securities, by receiving and holding the same, agrees with PNM and the Trustee that neither PNM nor the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 10.02(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 10.02(b).

#### SECTION 10.03. Reports by Trustee.

(a) Within 60 days after May 15 in each year, commencing with 1986, the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report dated as of such May 15 with respect to:

(1) its eligibility under Section 9.09 and its qualifications under Section 9.08, or in lieu thereof, if to the best of its knowledge it has continued to be eligible and qualified under said Sections, a written statement to such effect;

(2) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it

claims or may claim a lien or charge, prior to that of the Securities, on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than 1/2 of 1% of the principal amount of the Securities Outstanding on the date of such report;

(3) the amount, interest rate and maturity date of all other indebtedness owing by an obligor on the Securities within the meaning of the TIA to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in Section 9.13(b)(2), (3), (4) or (6);

(4) the property and funds, if any, physically in the possession of the Trustee as such on the date of such report;

(5) any release, or release and substitution, of property subject to the lien of this Indenture (and the consideration therefor, if any) which the Trustee has not previously reported;

(6) any additional issue of Securities which the Trustee has not previously reported; and

(7) any action taken by the Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Securities, except action in respect of a default, notice of which has been or is to be withheld by the Trustee in accordance with Section 9.02.



(b) The Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report with respect to:

(1) the release, or release and substitution, of property subject to the Lien of this Indenture (and the consideration therefor, if any), such report to be transmitted within 90 days of such time; and

(2) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to Subsection (a) of this Section (or if no such report has yet been so transmitted, since the date of execution of this instrument) for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Securities, on property or funds held or collected by it as Trustee, and which it has not previously reported pursuant to this Subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances remaining unpaid at any time aggregate 10% or less of the principal amount of the Securities Outstanding at such time, such report to be transmitted within 90 days after such time.

(c) A copy of each such report shall, at the time of such transmission to Securityholders, be filed by the Trustee with each stock exchange upon which the Securities are listed, and also with the Commission. PNM will notify the Trustee when the Securities are listed on any stock exchange.

#### SECTION 10.04. Reports by PNM.

PNM will

(1) file with the Trustee, within 15 days after PNM is required to file the same

with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which PNM may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934: or, if PNM is not required to file information, documents or reports pursuant to either of said Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by PNM with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by PNM pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

## ARTICLE ELEVEN

### SUPPLEMENTAL INDENTURES

#### SECTION 11.01. Supplemental Indentures Without Consent of Securityholders.

Without the consent of the Holders of any Securities, PNM, when authorized by a Board Resolution, the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto (a "Series Supplemental Indenture" in the case of item 1 below), in form satisfactory to the Trustee, for any of the following purposes:

(1) to establish the form and terms of Securities of any series of Securities permitted by Sections 2.01 and 2.03; or

(2) to evidence the succession of another corporation to PNM, and the assumption by any such successor of the covenants of PNM herein contained, or to evidence the succession of another corporation to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Securities contained; or

(3) to add to the covenants of PNM or the Company, for the benefit of the Holders of the Securities, or to surrender any right or power herein conferred upon PNM or the Company; or

(4) to convey, transfer and assign to the Trustee, and to subject to the Lien of this Indenture, with the same force and effect as though included in the Granting Clauses hereof, additional Pledged Lessor Notes or additional properties or assets, and to correct or amplify the description of any property at any time subject to the Lien of this Indenture or to assure, convey and confirm unto the Trustee any property subject or

required to be subject to the Lien of this Indenture; or

(5) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to continue the qualification of this Indenture (including any supplemental indenture) under the TIA, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by the TIA, excluding, however, the provisions referred to in Section 316(a)(2) of the TIA as in effect at the date as of which this instrument was executed or any corresponding provision in any similar federal statute hereafter enacted; or

(6) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided such action shall not adversely affect the interest of the Holders of the Securities.

#### **SECTION 11.02. Supplemental Indenture With Consent of Securityholders.**

With the consent of (i) the Holders of not less than a majority in principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, and (ii) PNM, when authorized by a Board Resolution, and the Company may and the Trustee, subject to Section 11.03 shall, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner the rights and obligations of the Holders of the Securities and of PNM and the Company under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of interest on, or the dates or circumstances of payment of premium (if any) on, any Security, or reduce the principal amount thereof or the interest thereon or any premium payable upon the redemption thereof, or change the place of payment where, or the coin or currency in which, any Security or the premium (if any) or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment of principal or interest on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date) or such payment of premium (if any) on or after the date such premium becomes due and payable or change the dates or the amounts of payments to be made through the operation of the Sinking Fund in respect of such Securities, or

(2) except with respect to additional series of Securities issued in accordance with the terms of this Indenture, permit the creation of any lien prior to or *pari passu* with the Lien of this Indenture with respect to any of the Pledged Property, or terminate the Lien of this Indenture on any Pledged Property (except in each case as permitted by, and pursuant to, Article Four) or deprive any Securityholder of the security afforded by the Lien of this Indenture, or

(3) reduce the percentage in principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or

(4) modify any of the provisions of this Section or Section 8.09, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security affected thereby.

Upon receipt by the Trustee of Board Resolutions of PNM and the Company and such other documentation as the Trustee may reasonably require and upon the filing with the Trustee of evidence of the Act of said Holders, the Trustee shall join in the execution of such supplemental indenture or other instrument, as the case may be, subject to the provisions of Sections 11.03 and 11.04.

It shall not be necessary for any Act of Securityholders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

**SECTION 11.03. Documents Affecting Immunity or Indemnity.**

If in the opinion of the Company or the Trustee any document required to be executed by it pursuant to the terms of Section 11.02 affects any interest, right, duty, immunity or indemnity in favor of the Company or the Trustee under this Indenture or any of the Participation Agreements, the Company or the Trustee, as the case may be, may in its discretion decline to execute such document.

**SECTION 11.04. Execution of Supplemental Indentures.**

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 9.01) shall be fully protected in relying upon, an Opinion of

Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture.

**SECTION 11.05. Effect of Supplemental Indentures.**

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

**SECTION 11.06. Conformity with Trust Indenture Act.**

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the TIA as then in effect.

**SECTION 11.07. Reference in Securities to Supplemental Indentures.**

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by any Lessor or the Company, bear a notation in form approved by such Lessor, the Company and the Trustee as to any matter provided for in such supplemental indenture; and, in such case, suitable notation may be made upon Outstanding Securities after proper presentation and demand. If any Lessor or the Company shall so determine, new Securities so modified as to conform, in the opinion of such Lessor, the Company and the Trustee, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

## ARTICLE TWELVE

### DEFEASANCE

#### SECTION 12.01. Payment of Indebtedness; Satisfaction and Discharge of this Indenture.

This Indenture shall cease to be of further effect, (except as to any rights of registration of transfer or exchange of Securities herein expressly provided for and the rights of the Trustee, any predecessor Trustee and any Authorized Agent under Section 9.07), and the Trustee, on demand and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or redeemed as provided in Section 2.09 and (ii) Securities for the payment of which money held in trust hereunder has been paid to the Company and discharged from such trust, as provided in Section 5.03) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity of principal within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the



giving of notice of redemption by the Trustee in the name and at the expense of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee in trust (subject to Section 9.06 hereof) for the purpose of paying and discharging the entire indebtedness on such Securities not theretofore cancelled by the Trustee or delivered to the Trustee for cancellation, an amount sufficient to discharge such indebtedness, including principal, premium (if any) and interest to the date of such deposit (in the case of Securities which have become due and payable), or to the Stated Maturity of principal or Redemption Date, as the case may be;

(2) All other sums then due and payable hereunder have been paid; and

(3) PNM or the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

#### **SECTION 12.02. Application of Deposited Money.**

All money deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment to the Persons entitled thereto of the principal, premium (if any), and interest for the payment of which such money has been deposited with the Trustee.

## ARTICLE THIRTEEN

### RELEASE OF FUNDS BY THE TRUSTEE FOR PAYMENT OF THE PLEDGED LESSOR NOTES AND RELEASE AND SUBSTITUTION OF PLEDGED PROPERTY

SECTION 13.01. Conditions Precedent to Release of Funds by the Trustee for Payment of the Pledged Lessor Notes.

The obligation of the Trustee to make payments to the Lessors pursuant to Section 2.15(b) hereof is subject to the receipt by the Trustee of the following:

(a) an executed counterpart of a supplemental indenture appropriate to subject to the Lien of this Indenture the related Pledged Lessor Notes;

(b) the documents, opinions and certificates specified in the proviso to Section 2.04;

(c) a written notice of the Company, dated as of the closing date under the applicable Participation Agreements (the Closing Date), of the Closing Date;

(d) a certificate of each Lessor dated as of the Closing Date under the related Participation Agreement (i) specifying the principal amount of the Pledged Lessor Note to be issued thereby and (ii) stating that (A) such Lessor has received the amount of the Equity Investor's investment pursuant to applicable provisions of such Participation Agreement and that such amount is available for use by such Lessor pursuant to applicable provisions of such Participation Agreement upon receipt of the amount to be paid by the Trustee with respect to such Pledged Lessor Note pursuant to Section 2.15(b) hereof; (B) to the best knowledge of such Lessor no event has occurred and is continuing which constitutes an Indenture Event of Default, or would constitute an Indenture Event of Default after notice or lapse of time or both under the related Lease Indenture and (C) the Pledged Lessor Note of such Lessor has been duly authorized, executed and delivered by such

Lessor and is a valid and binding obligation of such Lessor; and

(e) such other documents and evidence with respect to the Lessors and the Company as the Trustee may reasonably request.

#### ARTICLE FOURTEEN

#### SUNDRY PROVISIONS

##### SECTION 14.01. Execution in Counterparts.

This instrument may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

FIRST PV FUNDING CORPORATION

By

  
President

Attest:

  
Assistant Secretary

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

By A. J. Robinson  
Senior Vice President  
and Chief Financial Officer

Attest:  
[Signature]  
Assistant Secretary

CHEMICAL BANK

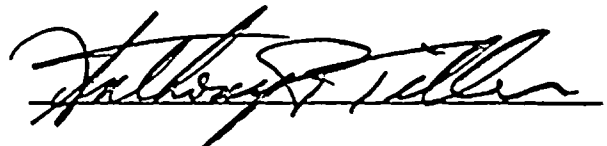
By [Signature]  
Vice President

Attest:  
[Signature]  
Assistant Secretary

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

On this 31st day of December, 1985, before me personally came J. A. Barbera, to me known, who, being by me duly sworn, did depose and say that he resides at Wilmington, Delaware; that he is the President of FIRST PV FUNDING CORPORATION, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

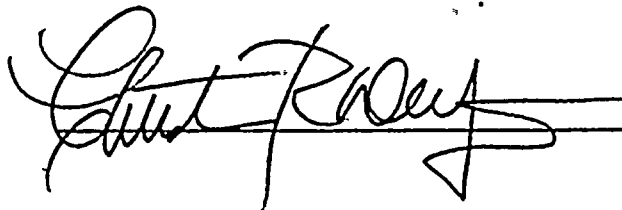


ANTHONY P. TILLER  
NOTARY PUBLIC, State of New York  
Residing in New York County  
New York Co. CIL's No. 31-4794245  
Commission Expires March 30, 1987

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

On this 31st day of December, 1985, before me personally came A. J. Robison, to me known, who, being by me duly sworn, did depose and say that he resides at Albuquerque, New Mexico; that he is the Senior Vice President and Chief Financial Officer of PUBLIC SERVICE COMPANY OF NEW MEXICO, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

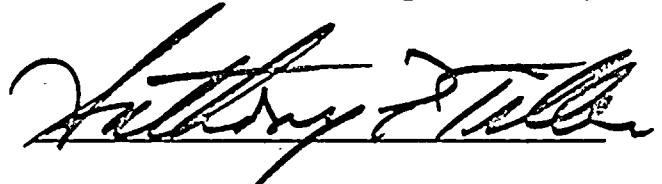


CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 4814814  
Qualified in New York County  
Commission Expires March 30, 1986

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

On the 31st day of December, 1985, before me personally came Thomas J. Foley, to me known who, being by me duly sworn, did depose and say that he resides at Bethpage, New York; that he is a Vice-President of CHEMICAL BANK, a New York banking corporation and one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto on behalf of said corporation by like order.

[NOTARIAL SEAL]



ANTHONY P. TILLER  
NOTARY PUBLIC, State of New York  
Residing in New York County  
New York Co. Clk's No. 31-4794245  
Commission Expires March 30, 1987

EXHIBIT A  
TO  
COLLATERAL TRUST  
INDENTURE

REQUIREMENTS FOR PLEDGED LESSOR  
NOTES AND LEASE INDENTURES

The Pledged Lessor Notes and the Lease Indentures relating to any series of Securities shall contain the provisions summarized below or other provisions substantially as protective or more protective of the interests of Holders of Outstanding Securities. Notwithstanding the foregoing, (i) the Principal Instruments in connection with the initial series of Securities issued under this Indenture shall be deemed to satisfy all criteria set forth in this Exhibit A and (ii) the Principal Instruments in connection with any subsequent series of Securities, if substantially similar in form and substance to the Principal Instruments in connection with such initial series of Securities, shall also be deemed to satisfy all criteria set forth in this Exhibit A.

I. Each Pledged Lessor Note will:

(i) be duly issued pursuant to, and be secured by, the related Lease Indenture;

(ii) provide for the payment to the registered holder thereof, not later than when due, of amounts at least equal to that portion of all principal of and premium, if any, and interest on the series of Securities issued in connection with and relating to the pledge thereof under the Indenture, such payment to be without defenses or set-offs and otherwise unconditional;



(iii) (A) if such Pledged Lessor Note is the initial series issued under the related Lease Indenture, the principal amount thereof shall not exceed an amount equal to 90% of sum of the aggregate purchase price of the property being purchased with the proceeds of the issuance and sale of such Lessor Note; and (B) if such Pledged Lessor Note is of an additional series issued under the related Lease Indenture, the sum of the principal amount thereof and the principal amount of Pledged Lessor Notes theretofore issued under such Lease Indenture shall not exceed an amount equal to 90% of the sum of (1) the aggregate purchase price of property being purchased with the proceeds of the issuance and sale of such Lessor Note and (2) the aggregate purchase price of the property purchased with the proceeds of the issuance and sale of each Pledged Lessor Note theretofore issued; and

(iv) provide that no Change to the Pledged Lessor Note may be made without the consent of the holder thereof.

## II. Each Lease Indenture will:

(i) assign to the Lease Indenture Trustee obligations under the related Lease to which the Owner Trustee then or thereafter is entitled at least sufficient to pay the principal of, premium, if any, and interest on the related Pledged Lessor Note; and

(ii) contain provisions no less protective of the interests of Holders of Securities than the following provisions of the Lease Indentures in connection with the initial series of Securities: Article II, Sections 3.4, 3.5, 3.6, 3.8, 3.11, Article V, Article VI and Article VII.

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**FIRST PV FUNDING CORPORATION,  
PUBLIC SERVICE COMPANY OF NEW MEXICO**

**AND**

**CHEMICAL BANK,  
as Trustee**

---

**TERM NOTE SUPPLEMENTAL INDENTURE**

**dated as of December 31, 1985**

**to**

**COLLATERAL TRUST INDENTURE**

**dated as of December 16, 1985**

---

**Providing for the Issuance of  
\$250,250,000 Aggregate Amount  
of Term Lease Obligation Notes, Series 1985  
with the Interest Rates  
Set Forth Herein**

---

**PALO VERDE NUCLEAR GENERATING STATION**

**6091.20.2898.66A:1**



**TERM NOTE SUPPLEMENTAL INDENTURE** dated as of December 31, 1985 among **FIRST PV FUNDING CORPORATION** (the Company), Public Service Company of New Mexico (PNM) and Chemical Bank, as trustee (the Trustee).

WHEREAS, the Company and PNM have heretofore executed and delivered to the Trustee an indenture dated as of December 16, 1985 (herein being called the Original Indenture), to provide for the issue from time to time of the Company's debentures, notes or other evidences of indebtedness to be issued in one or more series (the Securities); and

WHEREAS, Section 2.03 of the Original Indenture provides, among other things, that PNM, the Company and the Trustee may enter into indentures supplemental to the Original Indenture for, among other things, the purpose of establishing the form or terms of Securities of any series as permitted by Section 2.03 of the Original Indenture; and

WHEREAS, PNM and the Company desire the issuance by the Company of a series of Securities and have requested the Trustee to enter into this supplemental Indenture for the purpose of establishing the form and terms of the Securities of such series; and

WHEREAS, all action on the part of the Company necessary to authorize the issuance of \$250,250,000 principal amount of its Term Lease Obligation Notes, Series 1985 (the Series 1985 Securities) under the Original Indenture and this Term Note Supplemental Indenture (said Original Indenture as supplemented by this Term Note Supplemental Indenture being hereinafter called the Indenture) has been duly taken; and

WHEREAS, the Series 1985 Securities are to be substantially in the form annexed as Schedule 1 hereto; and

WHEREAS, all acts and things necessary to make the Series 1985 Securities in the aggregate principal amount of \$250,250,000, when executed by the Company and authenticated and delivered by the Trustee as in the Indenture provided, the valid, binding and legal

obligations of the Company, and to constitute these presents a valid and binding supplemental indenture and agreement according to its terms, have been done and performed, and the execution of this Term Note Supplemental Indenture and the creation and issuance under the Indenture of \$250,250,000 aggregate principal amount of the Series 1985 Securities have in all respects been duly authorized, and the Company, in the exercise of legal right and power in it vested, executes this Term Note Supplemental Indenture and proposes to create, execute, issue and deliver the Series 1985 Securities:

**NOW, THEREFORE, THIS TERM NOTE SUPPLEMENTAL  
INDENTURE WITNESSETH:**

That in order to establish the form and terms of and to authorize the authentication and delivery of the Series 1985 Securities, and in consideration of the premises, of the loans made under and pursuant to the Term Loan Agreement, and acceptance of the Series 1985 Securities, by the holders thereof and of the sum of one dollar to it duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged, the Company and PNM each covenants and agrees with the Trustee, for the equal and proportionate benefit of the respective holders from time to time of the Series 1985 Securities, as follows:

**ARTICLE ONE**

**THE SERIES 1985 SECURITIES**

**SECTION 1.01. Terms of the Series 1985 Securities.**

There is hereby created a series of Securities designated the Term Lease Obligation Notes, Series 1985 (hereinafter called the "Series 1985 Securities"). Series 1985 Securities for the aggregate principal amount of \$250,250,000 may forthwith be executed by the Company and delivered to the Trustee for authentication

and delivery by the Trustee in accordance with the provisions of Section 2.04 of the Original Indenture. Subject to the exceptions referred to in the Original Indenture, the aggregate principal amount of the Series 1985 Securities that may be authenticated and delivered under the Indenture is limited to \$250,250,000. The Series 1985 Securities shall be payable, bear interest and have and be subject to such other terms as provided in the form of Series 1985 Securities attached as Schedule 1 hereto.

**SECTION 1.02. Mandatory Redemption of the Series 1985 Securities.**

(a) In the event that there shall occur under Section 14 of any Lease specified in Schedule 2 hereto a termination of such Lease, the Series 1985 Securities shall be redeemed, in part, in proportion to the principal amount of the Pledged Lessor Note related to such Lease prepaid in accordance with its terms and Section 5.2 of the Lease Indenture under which such Pledged Lessor Note is issued. Any such redemption shall be on the same date on which, and shall be made to the same extent that, the related Pledged Lessor Note is so prepaid. The Redemption Price for any Series 1985 Security so to be redeemed shall be 100% of the principal amount thereof, together with accrued interest to the Redemption Date.

(b) In the event that the special purchase option specified in Section 13(c) of any Lease specified in Schedule 2 hereto shall be exercised, the Series 1985 Securities shall be redeemed, in part, in proportion to the principal amount of the Pledged Lessor Note related to such Lease prepaid in accordance with its terms and Section 5.2 of the Lease Indenture under which such Pledged Lessor Note is issued. Any such redemption shall be on the same date on which, and shall be made to the same extent that, the related Pledged Lessor Note is so prepaid. The Redemption Price for any Series 1985 Security so to be redeemed shall be 100% of the principal amount thereof, together with accrued interest to the Redemption Date.

**SECTION 1.03. Special Redemption of the Series 1985 Securities.**

Article Six of the Original Indenture to the contrary notwithstanding, the Series 1985 Securities shall be redeemed, as a whole only, on any date in connection with the issuance of a series of Securities to effect a refunding of the Series 1985 Securities, such series to be in an aggregate principal amount sufficient to effect such refunding, by giving written notice to the Trustee and each Holder of a Series 1985 Security at least one Business Day prior to a date specified in such notice as the Redemption Date. The Series 1985 Securities shall be redeemed at the following redemption prices (expressed as a percentage of principal amount), together with interest accrued to the Redemption Date so specified:

<u>Period</u>	<u>Redemption Price</u>
January 1-10, 1986	100.096%
January 11-17, 1986	100.072%
January 18-24, 1986	100.043%
January 25-31, 1986	100.024%

and thereafter at the principal amount thereof, together with interest accrued to the Redemption Date.

**SECTION 1.04. Special Provisions Relating to the Series 1985 Securities.**

(a) Section 3.03 of the Original Indenture to the contrary notwithstanding, for so long as the Series 1985 Securities is the only series of Securities Outstanding under this Indenture, the Trustee may take no action in respect of any Pledged Lessor Note unless so directed by Holders of 100% of the principal amount of the Series 1985 Securities Outstanding; provided, however, that in respect of the Pledged Lessor Note payable by Owner Trustee No. 3 (as specified on

Schedule 2 hereto), the Trustee may take such action if otherwise in accordance with Section 3.03 of the Original Indenture if so directed by Holders of Series 1985 Securities Outstanding who shall have made loans under the Term Loan Agreement in respect of Owner Trustee No. 3.

(b) The Series 1985 Securities are issuable in integral multiples of \$1.00.

## ARTICLE TWO

### PLEDGE OF LESSOR NOTES

#### SECTION 2.01. Pledge of Lessor Notes.

To secure the payment of the principal of, premium (if any) and interest on all the Securities from time to time Outstanding under the Indenture, and the performance of the covenants therein and herein contained, the Company by these presents does grant, bargain, sell, release, convey, assign, transfer, mortgage, hypothecate, pledge, confirm and create a security interest in, unto the Trustee, the Lessor Notes identified on Schedule 2 hereto (herein referred to as the "Pledged Lessor Notes").

TO HAVE AND TO HOLD the aforesaid Pledged Lessor Notes unto the Trustee and its successors and assigns forever, in trust and for the uses and purposes and subject to the covenants and conditions set forth in the Indenture.



## ARTICLE THREE

### MISCELLANEOUS

#### SECTION 3.01. Execution as Supplemental Indenture.

This Term Note Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture and, as provided in the Original Indenture, this Term Note Supplemental Indenture forms a part thereof. Except as herein expressly otherwise defined, the use of the terms and expressions herein is in accordance with the definitions, uses and constructions contained in the Original Indenture. Certain terms used in the form of Series 1985 Security are defined in Schedule 2 hereto.

#### SECTION 3.02. Responsibility for Recitals, Etc.

The recitals contained herein and in the Series 1985 Securities, except the Trustee's certificate of authentication, shall be taken as the statements of the Company and PNM, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the validity or sufficiency of this Term Note Supplemental Indenture or the Series 1985 Securities.

#### SECTION 3.03. Provisions Binding on Successors.

All the covenants, stipulations, promises and agreements in this Term Note Supplemental Indenture contained by or in behalf of the Company shall bind its successors and assigns, whether so expressed or not.

**SECTION 3.04. New York Contract.**

This Term Note Supplemental Indenture and each Series 1985 Security shall be deemed to be a contract under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said state, except as may otherwise be required by mandatory provisions of law.

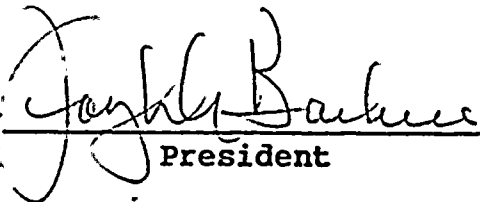
**SECTION 3.05. Counterparts.**

This Term Note Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Company, PNM and the Trustee have caused this Term Note Supplemental Indenture to be duly executed by its officers thereunto duly authorized, as of the date and year first above written.

**FIRST PV FUNDING CORPORATION**

[CORPORATE SEAL]

By   
President

Attest:

  
as Secretary



PUBLIC SERVICE COMPANY OF NEW  
MEXICO

[CORPORATE SEAL]

By 471 Robert  
Senior Vice President and  
Chief Financial Officer

Attest:

[Signature]  
Secretary

CHEMICAL BANK,  
as Trustee

[CORPORATE SEAL]

By [Signature]  
Vice President

Attest:

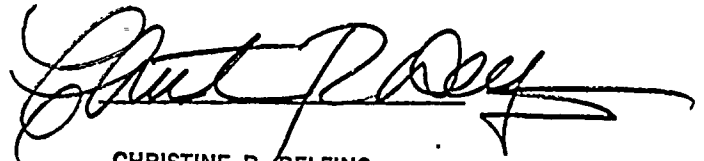
[Signature]  
Assistant Secretary



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

On this 31st day of December, 1985, before me personally came JOSEPH A. BARBERA, to me known, who, being by me duly sworn, did depose and say that he resides at Wilmington, Delaware; that he is the President of FIRST PV FUNDING CORPORATION, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]



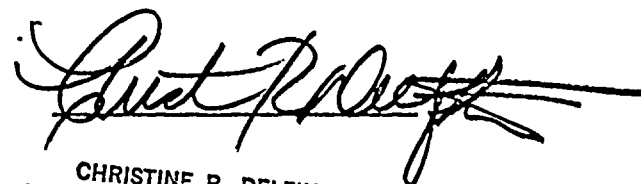
CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 4814814  
Qualified in New York County  
Commission Expires March 30, 1986

6091.20.2898.66A:1

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

On this 31st day of December, 1985, before me personally came A. J. ROBISON, to me known, who, being by me duly sworn, did depose and say that he resides at Albuquerque, New Mexico; that he is a Senior Vice President and Chief Financial Officer of PUBLIC SERVICE COMPANY OF NEW MEXICO, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]



CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 4814814  
Qualified in New York County  
Commission Expires March 30, 1986



6091.20.2898.66A:1





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

On this 31st day of December, 1985, before me personally came T. J. FOLEY, to me known, who, being by me duly sworn, did depose and say that he resides at Bethpage, New York; that he is a Vice President of CHEMICAL BANK, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]



CHRISTINE R. DELFINO  
Notary Public, State of New York  
No. 4814814  
Qualified in New York County  
Commission Expires March 30, 1986

6091.20.2898.66A:1



SCHEDULE 1  
to  
TERM NOTE  
SUPPLEMENTAL INDENTURE

No. R-

§

FIRST PV FUNDING CORPORATION

TERM LEASE OBLIGATION NOTE, SERIES 1985

FIRST PV FUNDING CORPORATION, a Delaware corporation (hereinafter called the "Company", which term includes any successor corporation under the Indenture referred to below), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \_\_\_\_\_ Dollars on January 15, 2015, and to pay interest on the remaining unpaid principal amount hereof from the date hereof, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 15 and July 15 in each year, commencing January 15, 1986, at the rate equal to the Variable Rate (as defined below) per annum, until the principal hereof is paid in full or made available for payment.

Said principal shall be payable in installments consisting of 58 installments of principal commencing on July 15, 1986, and on each January 15 and July 15 thereafter, to and including January 15, 2015, each such principal installment to be equal to the percentage of the original principal amount hereof set forth in Schedule X hereto for the date such installment is due.

The "Variable Rate" shall mean the Applicable Percentage (as defined below) of the rate publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime rate (any change in the Variable Rate being effective on the date such change in the Variable Rate is so announced). The "Applicable Percentage" shall equal (i) 100% for the period from December 31, 1985 through June 30, 1986,

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(ii) 125% for the period from July 1, 1986 through September 30, 1986, (iii) 150% for the period from October 1, 1986 through December 31, 1986, and (iv) 200% thereafter. All payments of interest shall be computed on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

This Security is one of an authorized issue of Securities of the Company known as its "Term Lease Obligation Notes, Series 1985" issued under, and all equally and ratably secured by, an Indenture dated as of December 16, 1985 among the Company, Public Service Company of New Mexico, a New Mexico corporation (herein called "PNM"), and Chemical Bank, as Trustee (herein called the "Trustee", which term includes any successor Trustee under the Indenture), as supplemented by the Term Note Supplemental Indenture thereto dated December 31, 1985 among such parties (collectively, the "Indenture") to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the nature and extent of the securities and other property assigned, pledged, transferred and mortgaged thereunder, the respective rights of the holders of said Securities and of the Trustee and the Company in respect of such security, and the terms upon which said Securities are and are to be authenticated and delivered.

The principal of, and premium, if any, and interest on, this Security are payable from, and secured by, the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, and all payments of principal, premium (if any) and interest shall be made in accordance with the terms of the Indenture. Each Holder hereof, by its acceptance of this Security, agrees (x) that it will look solely to the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, to the extent available for distribution to the Holder hereof as provided in the Indenture and (y) that none of an Equity Investor, a Lessor, the Lease Indenture Trustee (as said terms are defined in the Indenture) or the Trustee is liable to the Holder hereof or, in the

case of an Equity Investor, a Lessor and the Lease Indenture Trustee, to the Trustee for any amounts payable under this Security or, except as provided in the Indenture with respect to the Trustee, for any liability under the Indenture. An Equity Investor shall not have any duty or responsibility under the Indenture or the Securities to any Holder or to the Trustee.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of PNM and the Company and the rights of the Holders of the Securities under the Indenture at any time by PNM and the Company with the consent of the Holders of a specified percentage in aggregate principal amount of the Securities at the time Outstanding, as defined in the Indenture. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by PNM and the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the transfer hereof or in exchange herefor or in lieu hereof whether or not notation of such consent or waiver is made upon this Security.

The Securities of this series are subject to mandatory redemption in part in the event that there shall occur (i) under Section 14 of any Lease described in the Indenture a termination of such Lease, or (ii) under Section 13(c) of any Lease described in the Indenture any exercise of the option specified in such Section 13(c) of such Lease, in proportion to the principal amount of the Pledged Lessor Note prepaid in accordance with its terms and Section 5.2 of the Lease Indenture under which such Pledged Lessor Note is issued, on not less than 20 days' notice given as provided in the Indenture at a redemption price equal to the principal amount of the Securities to be redeemed,

plus accrued interest to the redemption date, on the same date on which, and to the same extent that, any Pledged Lessor Note is prepaid as provided in the Lease Indenture under which it was issued, but only if such prepayment is made under the circumstances described in the Indenture.

The Securities of this series are also subject to special redemption in the event of a refunding of Securities of this series as provided in the Indenture.

In the case of any redemption of Securities of this series, unpaid interest installments whose Stated Maturity, as defined in the Indenture, is on or prior to the redemption date will be payable to the Holders of such Securities or one or more Predecessor Securities of record at the close of business on the relevant Regular or Special Record Date (as said terms are defined in the Indenture).

If an Event of Default, as defined in the Indenture, shall occur, the principal of this Security may become or be declared due and payable, in the manner and with the effect provided in the Indenture.

This Security is transferable by the registered owner hereof in person or by attorney authorized in writing, at the corporate trust office of the Security Registrar, Chemical Bank (or if such office is not in the Borough of Manhattan, The City of New York, at either such office or an office to be maintained in such Borough), upon surrender of this Security, and upon any such transfer a new Security of this series of the same Stated Maturity of principal, and, for the same aggregate principal amount of principal, and, will be issued to the transferee in exchange herefor.

The Securities are issuable only as registered Securities without coupons.

No service charge will be made to any holder of Securities for any such transfer or exchange, but the Security Registrar may require payment of a sum

sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment for registration of transfer, the person in whose name this Security is registered shall be deemed to be the owner hereof for the purpose of receiving payment as herein provided and for all other purposes whether or not this Security be overdue, regardless of any notice to anyone to the contrary.

As provided in the Indenture, the Indenture and the Securities shall be construed in accordance with and governed by the laws of the State of New York.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Security shall not be entitled to any benefit under such Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: December 31, 1985

FIRST PV FUNDING CORPORATION

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

CHEMICAL BANK  
as Trustee

By \_\_\_\_\_  
Authorized Officer



Date	Percent of	to
=====	Original Principal	Term Lease
	=====	Obligation No
		Series 1985
7/15/1986	0.15153%	
1/15/1987	0.15873%	
7/15/1987	0.28330%	
1/15/1988	0.89393%	
7/15/1988	0.97440%	
1/15/1989	1.02068%	
7/15/1989	1.06916%	
1/15/1990	1.11995%	
7/15/1990	1.17315%	
1/15/1991	1.22887%	
7/15/1991	1.28724%	
1/15/1992	1.34839%	
7/15/1992	1.41244%	
1/15/1993	1.47953%	
7/15/1993	1.54980%	
1/15/1994	1.62342%	
7/15/1994	1.70053%	
1/15/1995	1.78131%	
7/15/1995	1.86592%	
1/15/1996	1.95455%	
7/15/1996	2.04739%	
1/15/1997	1.96671%	
7/15/1997	2.06827%	
1/15/1998	2.11993%	
7/15/1998	1.99676%	
1/15/1999	1.69148%	
7/15/1999	1.06868%	
1/15/2000	1.77312%	
7/15/2000	1.12322%	
1/15/2001	1.86435%	
7/15/2001	1.18058%	
1/15/2002	1.96027%	
7/15/2002	1.24088%	
1/15/2003	2.06111%	
7/15/2003	1.30429%	
1/15/2004	2.31868%	
7/15/2004	1.57318%	
1/15/2005	2.07399%	
7/15/2005	1.88022%	
1/15/2006	2.04740%	
7/15/2006	1.87260%	
1/15/2007	2.15179%	
7/15/2007	1.96787%	
1/15/2008	2.26169%	
7/15/2008	2.06829%	
1/15/2009	2.47338%	
7/15/2009	3.33508%	
1/15/2010	3.56442%	
7/15/2010	4.33490%	
1/15/2011	4.45109%	
7/15/2011	4.73533%	
1/15/2012	3.23051%	
7/15/2012	1.48639%	
1/15/2013	0.44204%	
7/15/2013	0.54356%	
1/15/2014	0.46507%	
7/15/2014	0.57183%	
1/15/2015	0.60683%	
	-----	
	100.00000%	
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SCHEDULE 2  
to  
TERM NOTE SUPPLEMENTAL INDENTURE

A. As used in this Series Supplemental Indenture, the following terms have the following meanings:

(1) Lease Indenture means each of:

(i) The Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 16, 1985 between the Indenture Trustee and Owner Trustee No. 1;

(ii) The Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 16, 1985 between the Indenture Trustee and Owner Trustee No. 2; and

(iii) The Trust Indenture, Mortgage, Security Agreement, and Assignment of Rents dated as of December 16, 1985 between the Indenture Trustee and Owner Trustee No. 3.

(2) Lessor Note means each of:

(i) The Nonrecourse Promissory Note, Initial Series in the amount of \$127,050,000 dated December 31, 1985, payable by Owner Trustee No. 1 to the Company;

(ii) The Nonrecourse Promissory Note, Initial Series in the amount of \$77,000,000 dated December 31, 1985, payable by Owner Trustee No. 2 to the Company; and

(iii) The Nonrecourse Promissory Note, Initial Series in the amount of \$46,200,000 dated December 31, 1985,

payable by Owner Trustee No. 3 to the Company;

(3) Lessor or Owner Trustee means The First National Bank of Boston, a national banking association, in its capacity as owner trustee under a separate Trust Agreement, dated as of December 16, 1986, with each of the equity investors named therein, in such capacity Owner Trustee No. 1, Owner Trustee No. 2 and Owner Trustee No. 3, respectively.

(4) Indenture Trustee means Chemical Bank, a New York banking corporation, as Trustee.

(5) Lease means each of:

(i) the Facility Lease, dated as of December 16, 1985, between PNM, as lessee, and Owner Trustee No. 1, as lessor;

(ii) the Facility Lease, dated as of December 16, 1985, between PNM, as lessee, and Owner Trustee No. 2, as lessor; and

(iii) the Facility Lease, dated as of December 16, 1985, between PNM, as lessee, and Owner Trustee No. 3, as lessor.

(6) Term Loan Agreement means the Term Loan Agreement, dated as of December 31, 1985, among the Company, PNM and the Banks named on the signature page thereof.

## FIRST PV FUNDING CORPORATION

## TERM LEASE OBLIGATION NOTE, SERIES 1985

FIRST PV FUNDING CORPORATION, a Delaware corporation (hereinafter called the "Company", which term includes any successor corporation under the Indenture referred to below), for value received, hereby promises to pay to Chemical Bank, or registered assigns, the principal sum of \$83,416,667 Dollars on January 15, 2015, and to pay interest on the remaining unpaid principal amount hereof from the date hereof, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 15 and July 15 in each year commencing January 15, 1986, at the rate equal to the Variable Rate (as defined below) per annum, until the principal hereof is paid in full or made available for payment.

Said principal shall be payable in installments consisting of 58 installments of principal commencing on July 15, 1986, and on each January 15 and July 15 thereafter, to and including January 15, 2015, each such principal installment to be equal to the percentage of the original principal amount hereof set forth in Schedule X hereto for the date such installment is due.

The "Variable Rate" shall mean the Applicable Percentage (as defined below) of the rate publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime rate (any change in the Variable Rate being effective on the date such change in the Variable Rate is so announced). The "Applicable Percentage" shall equal (i) 100% for the period from December 31, 1985 through June 30, 1986, (ii) 125% for the period from July 1, 1986 through September 30, 1986, (iii) 150% for the period from October 1, 1986 through December 31, 1986, and (iv) 200% thereafter. All payments of interest shall be computed on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

This Security is one of an authorized issue of Securities of the Company known as its "Term Lease Obligation Notes, Series 1985" issued under, and all equally and ratably secured by, an Indenture dated as of December 16, 1985 among the Company, Public Service Company of New Mexico, a New Mexico corporation (herein called "PNM"), and Chemical Bank, as Trustee (herein called the "Trustee", which term includes any successor Trustee under the Indenture), as supplemented by the Term Note Supplemental Indenture thereto dated December 31, 1985 among such parties (collectively, the "Indenture") to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the nature and extent of the securities and other property assigned, pledged, transferred and mortgaged thereunder, the respective rights of the holders of said Securities and of the Trustee and the Company in respect of such security, and the terms upon which said Securities are and are to be authenticated and delivered.

The principal of, and premium, if any, and interest on, this Security are payable from, and secured by, the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, and all payments of principal, premium (if any) and interest shall be made in accordance with the terms of the Indenture. Each Holder hereof, by its acceptance of this Security, agrees (x) that it will look solely to the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, to the extent available for distribution to the Holder hereof as provided in the Indenture and (y) that none of an Equity Investor, a Lessor, the Lease Indenture Trustee (as said terms are defined in the Indenture) or the Trustee is liable to the Holder hereof or, in the case of an Equity Investor, a Lessor and the Lease Indenture Trustee, to the Trustee for any amounts payable under this Security or, except as provided in the Indenture with respect to the Trustee, for any liability under the Indenture. An Equity Investor shall not have any duty or responsibility under the Indenture or the Securities to any Holder or to the Trustee.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of PNM and the Company and the rights of the Holders of the Securities under the Indenture at any time by PNM and the Company with the consent of the Holders of a specified percentage in aggregate principal amount of the Securities at the time Outstanding, as defined in the Indenture. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by PNM and the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the transfer hereof or in exchange herefor or in lieu hereof whether or not notation of such consent or waiver is made upon this Security.

The Securities of this series are subject to mandatory redemption in part in the event that there shall occur (i) under Section 14 of any Lease described in the Indenture a termination of such Lease, or (ii) under Section 13(c) of any Lease described in the Indenture any exercise of the option specified in such Section 13(c) of such Lease, in proportion to the principal amount of the Pledged Lessor Note prepaid in accordance with its terms and Section 5.2 of the Lease Indenture under which such Pledged Lessor Note is issued, on not less than 20 days' notice given as provided in the Indenture at a redemption price equal to the principal amount of the Securities to be redeemed, plus accrued interest to the redemption date, on the same date on which, and to the same extent that, any Pledged Lessor Note is prepaid as provided in the Lease Indenture under which it was issued, but only if such prepayment is made under the circumstances described in the Indenture..

The Securities of this series are also subject to special redemption in the event of a refunding of Securities of this series as provided in the Indenture.

In the case of any redemption of Securities of this series, unpaid interest installments whose Stated Maturity, as defined in the Indenture, is on or prior to the redemption date will be payable to the Holders of such Securities or one or more Predecessor Securities of record at the close of business on the relevant Regular or Special Record Date (as said terms are defined in the Indenture).

If an Event of Default, as defined in the Indenture, shall occur, the principal of this Security may become or be declared due and payable, in the manner and with the effect provided in the Indenture.

This Security is transferable by the registered owner hereof in person or by attorney authorized in writing, at the corporate trust office of the Security Registrar, Chemical Bank (or if such office is not in the Borough of Manhattan, the City of New York, at either such office or an office to be maintained in such Borough), upon surrender of this Security, and upon any such transfer a new Security of this series of the same Stated Maturity of principal, and, for the same aggregate principal amount of principal, and, will be issued to the transferee in exchange herefor.

The Securities are issuable only as registered Securities without coupons.

No service charge will be made to any holder of Securities for any such transfer or exchange, but the Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment for registration of transfer, the person in whose name this Security is registered shall be deemed to be the owner hereof for the purpose of receiving payment as herein provided and for

all other purposes whether or not this Security be overdue, regardless of any notice to anyone to the contrary.

As provided in the Indenture, the Indenture and the Securities shall be construed in accordance with and governed by the laws of the State of New York.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Security shall not be entitled to any benefit under such Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: December 31, 1985

FIRST PV FENDING CORPORATION

By

President

Attest:

Secretary





Date  
=====

Percent of  
=====

7/15/1986	0.15153%
1/15/1987	0.15873%
7/15/1987	0.28330%
1/15/1988	0.89393%
7/15/1988	0.97440%
1/15/1989	1.02068%
7/15/1989	1.06916%
1/15/1990	1.11995%
7/15/1990	1.17315%
1/15/1991	1.22887%
7/15/1991	1.28724%
1/15/1992	1.34839%
7/15/1992	1.41244%
1/15/1993	1.47953%
7/15/1993	1.54980%
1/15/1994	1.62342%
7/15/1994	1.70053%
1/15/1995	1.78131%
7/15/1995	1.86592%
1/15/1996	1.95455%
7/15/1996	2.04739%
1/15/1997	1.96671%
7/15/1997	2.06827%
1/15/1998	2.11993%
7/15/1998	1.99676%
1/15/1999	1.69148%
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1/15/2002	1.96027%
7/15/2002	1.24088%
1/15/2003	2.06111%
7/15/2003	1.30429%
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1/15/2005	2.07399%
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1/15/2013	0.44204%
7/15/2013	0.54356%
1/15/2014	0.46507%
7/15/2014	0.57183%
1/15/2015	0.60683%

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100.00000%  
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## FIRST PV FUNDING CORPORATION

## TERM LEASE OBLIGATION NOTE, SERIES 1985

FIRST PV FUNDING CORPORATION, a Delaware corporation (hereinafter called the "Company", which term includes any successor corporation under the Indenture referred to below), for value received, hereby promises to pay to Bank of America National Trust and Savings Association, or registered assigns, the principal sum of \$83,416,667 Dollars on January 15, 2015, and to pay interest on the remaining unpaid principal amount hereof from the date hereof, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 15 and July 15 in each year, commencing January 15, 1986, at the rate equal to the Variable Rate (as defined below) per annum, until the principal hereof is paid in full or made available for payment.

Said principal shall be payable in installments consisting of 58 installments of principal commencing on July 15, 1986, and on each January 15 and July 15 thereafter, to and including January 15, 2015, each such principal installment to be equal to the percentage of the original principal amount hereof set forth in Schedule X hereto for the date such installment is due.

The "Variable Rate" shall mean the Applicable Percentage (as defined below) of the rate publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime rate (any change in the Variable Rate being effective on the date such change in the Variable Rate is so announced). The "Applicable Percentage" shall equal (i) 100% for the period from December 31, 1985 through June 30, 1986, (ii) 125% for the period from July 1, 1986 through September 30, 1986, (iii) 150% for the period from October 1, 1986 through December 31, 1986, and (iv) 200% thereafter. All payments of interest shall be computed on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

This Security is one of an authorized issue of Securities of the Company known as its "Term Lease Obligation Notes, Series 1985" issued under, and all equally and ratably secured by, an Indenture dated as of December 16, 1985 among the Company, Public Service Company of New Mexico, a New Mexico corporation (herein called "PNM"), and Chemical Bank, as Trustee (herein called the "Trustee", which term includes any successor Trustee under the Indenture), as supplemented by the Term Note Supplemental Indenture thereto dated December 31, 1985 among such parties (collectively, the "Indenture") to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the nature and extent of the securities and other property assigned, pledged, transferred and mortgaged thereunder, the respective rights of the holders of said Securities and of the Trustee and the Company in respect of such security, and the terms upon which said Securities are and are to be authenticated and delivered.

The principal of, and premium, if any, and interest on, this Security are payable from, and secured by, the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, and all payments of principal, premium (if any) and interest shall be made in accordance with the terms of the Indenture. Each Holder hereof, by its acceptance of this Security, agrees that it will look solely to the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, to the extent available for distribution to the Holder hereof as provided in the Indenture and (y) that none of an Equity Investor, a Lessor, the Lease Indenture Trustee (as said terms are defined in the Indenture) or the Trustee is liable to the Holder hereof or, in the case of an Equity Investor, a Lessor and the Lease Indenture Trustee, to the Trustee for any amounts payable under this Security or, except as provided in the Indenture with respect to the Trustee, for any liability under the Indenture. An Equity Investor shall not have any duty or responsibility under the Indenture or the Securities to any Holder or to the Trustee.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of PNM and the Company and the rights of the Holders of the Securities under the Indenture at any time by PNM and the Company with the consent of the Holders of a specified percentage in aggregate principal amount of the Securities at the time Outstanding, as defined in the Indenture. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by PNM and the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the transfer hereof or in exchange herefor or in lieu hereof whether or not notation of such consent or waiver is made upon this Security.

The Securities of this series are subject to mandatory redemption in part in the event that there shall occur (i) under Section 14 of any Lease described in the Indenture a termination of such Lease, or (ii) under Section 13(c) of any Lease described in the Indenture any exercise of the option specified in such Section 13(c) of such Lease, in proportion to the principal amount of the Pledged Lessor Note prepaid in accordance with its terms and Section 5.2 of the Lease Indenture under which such Pledged Lessor Note is issued, on not less than 20 days' notice given as provided in the Indenture at a redemption price equal to the principal amount of the Securities to be redeemed, plus accrued interest to the redemption date, on the same date on which, and to the same extent that, any Pledged Lessor Note is prepaid as provided in the Lease Indenture under which it was issued, but only if such prepayment is made under the circumstances described in the Indenture.

The Securities of this series are also subject to special redemption in the event of a refunding of Securities of this series as provided in the Indenture.

In the case of any redemption of Securities of this series, unpaid interest installments whose Stated Maturity, as defined in the Indenture, is on or prior to the redemption date will be payable to the Holders of such Securities or one or more Predecessor Securities of record at the close of business on the relevant Regular or Special Record Date (as said terms are defined in the Indenture).

If an Event of Default, as defined in the Indenture, shall occur, the principal of this Security may become or be declared due and payable, in the manner and with the effect provided in the Indenture.

This Security is transferable by the registered owner hereof in person or by attorney authorized in writing, at the corporate trust office of the Security Registrar, Chemical Bank, or if such office is not in the Borough of Manhattan, the City of New York, at either such office or an office to be maintained in such Borough), upon surrender of this Security, and upon any such transfer a new Security of this series of the same Stated Maturity of principal, and, for the same aggregate principal amount of principal, and, will be issued to the transferee in exchange herefor.

The Securities are issuable only as registered Securities without coupons.

No service charge will be made to any holder of Securities for any such transfer or exchange, but the Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment for registration of transfer, the person in whose name this Security is registered shall be deemed to be the owner hereof for the purpose of receiving payment as herein provided and for

all other purposes whether or not this Security be overdue, regardless of any notice to anyone to the contrary.

As provided in the Indenture, the Indenture and the Securities shall be construed in accordance with and governed by the laws of the State of New York.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Security shall not be entitled to any benefit under such Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: December 31, 1985

FIRST PV FUNDING CORPORATION

By

President

Attest:

Secretary



This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

CHEMICAL BANK  
as Trustee

By \_\_\_\_\_  
Authorized Officer

SPECIMEN

Percent of  
Original Principal Obligation No  
Series 1985

Date  
=====

7/15/1986	0.15153%
1/15/1987	0.15873%
7/15/1987	0.28330%
1/15/1988	0.89393%
7/15/1988	0.97440%
1/15/1989	1.02068%
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1/15/2014	0.46507%
7/15/2014	0.57183%
1/15/2015	0.60683%

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100.00000%  
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## FIRST PV FUNDING CORPORATION

## TERM LEASE OBLIGATION NOTE, SERIES 1985

FIRST PV FUNDING CORPORATION, a Delaware corporation (hereinafter called the "Company", which term includes any successor corporation under the Indenture referred to below), for value received, hereby promises to pay to Mellon Bank, N.A., or registered assigns, the principal sum of \$83,416,666 Dollars on January 15, 2015, and to pay interest on the remaining unpaid principal amount hereof from the date hereof, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 15 and July 15 in each year, commencing January 15, 1986, at the rate equal to the Variable Rate (as defined below) per annum, until the principal hereof is paid in full or made available for payment.

Said principal shall be payable in installments consisting of 58 installments of principal commencing on July 15, 1986, and on each January 15 and July 15 thereafter, to and including January 15, 2015, each such principal installment to be equal to the percentage of the original principal amount hereof set forth in Schedule X hereto for the date such installment is due.

The "Variable Rate" shall mean the Applicable Percentage (as defined below) of the rate publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime rate (any change in the Variable Rate being effective on the date such change in the Variable Rate is so announced). The "Applicable Percentage" shall equal (i) 100% for the period from December 31, 1985 through June 30, 1986, (ii) 125% for the period from July 1, 1986 through September 30, 1986, (iii) 150% for the period from October 1, 1986 through December 31, 1986, and (iv) 200% thereafter. All payments of interest shall be computed on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

This Security is one of an authorized issue of Securities of the Company known as its "Term Lease Obligation Notes, Series 1985" issued under, and all equally and ratably secured by, an Indenture dated as of December 16, 1985 among the Company, Public Service Company of New Mexico, a New Mexico corporation (herein called "PNM"), and Chemical Bank, as Trustee (herein called the "Trustee", which term includes any successor Trustee under the Indenture), as supplemented by the Term Note Supplemental Indenture thereto dated December 31, 1985 among such parties (collectively, the "Indenture") to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the nature and extent of the securities and other property assigned, pledged, transferred and mortgaged thereunder, the respective rights of the holders of said Securities and of the Trustee and the Company in respect of such security, and the terms upon which said Securities are and are to be authenticated and delivered.

The principal of, and premium, if any, and interest on, this Security are payable from, and secured by, the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, and all payments of principal, premium (if any) and interest shall be made in accordance with the terms of the Indenture. Each Holder hereof, by its acceptance of this Security, agrees (x) that it will look solely to the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, to the extent available for distribution to the Holder hereof as provided in the Indenture and (y) that none of an Equity Investor, a Lessor, the Lease Indenture Trustee (as said terms are defined in the Indenture) or the Trustee is liable to the Holder hereof or, in the case of an Equity Investor, a Lessor and the Lease Indenture Trustee, to the Trustee for any amounts payable under this Security or, except as provided in the Indenture with respect to the Trustee, for any liability under the Indenture. An Equity Investor shall not have any duty or responsibility under the Indenture or the Securities to any Holder or to the Trustee.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of PNM and the Company and the rights of the Holders of the Securities under the Indenture at any time by PNM and the Company with the consent of the Holders of a specified percentage in aggregate principal amount of the Securities at the time Outstanding, as defined in the Indenture. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by PNM and the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the transfer hereof or in exchange hereof or in lieu hereof whether or not notation of such consent or waiver is made upon this Security.

The Securities of this series are subject to mandatory redemption in part in the event that there shall occur (i) under Section 14 of any Lease described in the Indenture a termination of such Lease, or (ii) under Section 13(c) of any Lease described in the Indenture any exercise of the option specified in such Section 13(c) of such Lease, in proportion to the principal amount of the Pledged Lessor Note prepaid in accordance with its terms and Section 5.2 of the Lease Indenture under which such Pledged Lessor Note is issued, on not less than 20 days' notice given as provided in the Indenture at a redemption price equal to the principal amount of the Securities to be redeemed, plus accrued interest to the redemption date, on the same date on which, and to the same extent that, any Pledged Lessor Note is prepaid as provided in the Lease Indenture under which it was issued, but only if such prepayment is made under the circumstances described in the Indenture.

The Securities of this series are also subject to special redemption in the event of a refunding of Securities of this series as provided in the Indenture.

In the case of any redemption of Securities of this series, unpaid interest installments whose Stated Maturity, as defined in the Indenture, is on or prior to the redemption date will be payable to the Holders of such Securities or one or more Predecessor Securities of record at the close of business on the relevant Regular or Special Record Date (as said terms are defined in the Indenture).

If an Event of Default, as defined in the Indenture, shall occur, the principal of this Security may become or be declared due and payable, in the manner and with the effect provided in the Indenture.

This Security is transferable by the registered owner hereof in person or by attorney authorized in writing, at the corporate trust office of the Security Registrar, Chemical Bank, or if such office is not in the Borough of Manhattan, the City of New York, at either such office or an office to be maintained in such Borough), upon surrender of this Security, and upon any such transfer a new Security of this series of the same Stated Maturity of principal, and, for the same aggregate principal amount of principal, and, will be issued to the transferee in exchange herefor.

The Securities are issuable only as registered Securities without coupons.

No service charge will be made to any holder of Securities for any such transfer or exchange, but the Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment for registration of transfer, the person in whose name this Security is registered shall be deemed to be the owner hereof for the purpose of receiving payment as herein provided and for

all other purposes whether or not this Security be overdue, regardless of any notice to anyone to the contrary.

As provided in the Indenture, the Indenture and the Securities shall be construed in accordance with and governed by the laws of the State of New York.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Security shall not be entitled to any benefit under such Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: December 31, 1985

FIRST PV FUNDING CORPORATION

By

\_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary



This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

CHEMICAL BANK  
as Trustee

By \_\_\_\_\_  
Authorized Officer

SPECIMEN

## SCHEDULE

to

Term Lease

Original Principal Obligation Not  
Series 1985

Date	Percent of
=====	=====
7/15/1986	0.15153%
1/15/1987	0.15873%
7/15/1987	0.28330%
1/15/1988	0.89393%
7/15/1988	0.97440%
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7/15/2013	0.54356%
1/15/2014	0.46507%
7/15/2014	0.57183%
1/15/2015	0.60683%

100.00000%



THIS NOTE HAS NOT BEEN REGISTERED UNDER THE  
SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED,  
SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES

Issued at: New York, New York

Issue Date: December 31, 1985

No. R-1

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as owner trustee (Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with Burnham Leasing Corporation (the Owner Participant), hereby promises to pay to FIRST PV FUNDING CORPORATION, or registered assigns, the principal sum of Seventy Seven Million Dollars (\$77,000,000) on July 15, 2012, and to pay interest on the remaining unpaid principal amount hereof from the date hereof, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 15 and July 15 in each year, commencing January 15, 1986, at the rate equal to the Variable Rate (as defined below) per annum, until the principal hereof is paid in full or made available for payment.

Said principal shall be payable in installments consisting of 50 installments of principal commencing on January 15, 1988, and on each January 15 and July 15 thereafter, to and including July 15, 2012, each such principal installment to be equal to the percentage of the original principal amount hereof set forth in Schedule X hereto for the date such installment is due.

The "Variable Rate" shall mean the Applicable Percentage (as defined below) of the rate publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime or base lending rate (any change in the Variable Rate being effective on the date such change in the Variable Rate is so announced). The "Applicable Percentage" shall equal (i) 100% for the period from December 31, 1985

6091.BURNHAM.2898.51C:3

through June 30, 1986, (ii) 125% for the period from July 1, 1986 through September 30, 1986, (iii) 150% for the period from October 1, 1986 through December 31, 1986, and (iv) 200% thereafter. All payments of interest shall be computed on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 16, 1985, as at any time amended or supplemented in accordance with the provisions thereof (the Indenture), between The First National Bank of Boston, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee) under a Trust Agreement dated as of December 16, 1985, with the Owner Participant and CHEMICAL BANK, as Trustee (the Indenture Trustee), shall be made only from the Lease Indenture Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to

the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee Office, or as otherwise provided in the Indenture.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is the Initial Series Note referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which

terms and conditions the Holder hereof agrees by its acceptance of the Initial Series Note.

This Initial Series Note is subject to mandatory prepayment in full as provided in Section 5.2 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment. In addition this Initial Series Note is subject to special prepayment, in whole only, on the date on which the Fixed Rate Note is issued in accordance with Section 3.5 of the Indenture, by giving written notice to the Indenture Trustee and the Holder of this Initial Series Note at least on Business Day prior to such date, such prepayment being with the following premiums (expressed as a percentage of principal amount of this Initial Series Note), together with accrued interest to the date of prepayment:

<u>Period</u>	<u>Premium</u>
January 1-10, 1986	.096%
January 11-17, 1986	.072%
January 18-24, 1986	.048%
January 25-31, 1986	.024%

and thereafter without premium.

In case an Indenture Event of Default shall occur and be continuing the unpaid balance of the principal of this Initial Series Note and any other Notes together with all accrued but unpaid interest thereon may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities

sufficient to pay this Initial Series Note when due or an assumption of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the Owner hereof for the purpose of receiving payments of principal of, and premium if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by the laws of the State of New York.

S P E C I M E N





IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement dated as of December 16, 1985 with Burnham Leasing Corporation

By \_\_\_\_\_  
Vice President

SPECIMEN

ASSIGNMENT

Date: December 31, 1985

For value received, the undersigned hereby sells, assigns and transfers to CHEMICAL BANK, as Trustee pursuant to the Collateral Trust Indenture dated as of December 16, 1985, as amended and supplemented, among the undersigned, Public Service Company of New Mexico and said Trustee, without recourse, the within Initial Series Note and all rights thereunder.

FIRST PV FUNDING CORPORATION

By \_\_\_\_\_  
President

SPECIMEN



Date	Burnham	SCHEDULE X Initial Series Note
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7/15/1986	0.00
1/15/1987	0.00
7/15/1987	0.00
1/15/1988	614,437.10
7/15/1988	738,737.70
1/15/1989	773,827.70
7/15/1989	810,584.50
1/15/1990	849,087.30
7/15/1990	889,419.00
1/15/1991	931,666.40
7/15/1991	975,920.50
1/15/1992	1,022,276.70
7/15/1992	1,070,834.90
1/15/1993	1,121,699.50
7/15/1993	1,174,980.30
1/15/1994	1,230,791.80
7/15/1994	1,289,254.40
1/15/1995	1,350,494.00
7/15/1995	1,414,642.50
1/15/1996	1,481,838.00
7/15/1996	1,552,225.30
1/15/1997	1,623,356.00
7/15/1997	1,703,188.90
1/15/1998	1,784,090.40
7/15/1998	1,868,834.70
1/15/1999	1,977,646.90
7/15/1999	2,075,539.70
1/15/2000	2,145,653.50
7/15/2000	2,291,832.10
1/15/2001	2,519,983.80
7/15/2001	2,832,090.00
1/15/2002	2,598,121.20
7/15/2002	2,874,409.70
1/15/2003	2,680,260.30
7/15/2003	2,918,896.60
1/15/2004	2,766,606.00
7/15/2004	2,965,661.90
1/15/2005	2,857,373.80
7/15/2005	3,058,628.80
1/15/2006	2,621,124.10
7/15/2006	2,807,264.50
1/15/2007	2,703,249.50
7/15/2007	2,948,046.80
1/15/2008	2,789,936.40
7/15/2008	3,053,112.90
1/15/2009	2,881,032.00
7/15/2009	3,131,997.50
1/15/2010	2,100,510.40
7/15/2010	3,531,468.30
1/15/2011	3,699,213.10
7/15/2011	3,874,925.70
1/15/2012	4,058,984.60
7/15/2012	4,426,642.30
1/15/2013	0.00
7/15/2013	0.00
1/15/2014	0.00
7/15/2014	0.00
1/15/2015	0.00

Total

77,000,000.00



This Note is one of the series of Notes referred to therein and in the within-mentioned Indenture.

CHEMICAL BANK  
as Indenture Trustee

By \_\_\_\_\_  
Authorized Officer

SPECIMEN





THIS NOTE HAS NOT BEEN REGISTERED UNDER THE  
SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED,  
SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES

Issued at: New York, New York

Issue Date: December 31, 1985

No. R-1

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as owner trustee (Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with Chrysler Financial Corporation (the Owner Participant), hereby promises to pay to FIRST PV FUNDING CORPORATION, or registered assigns, the principal sum of One Hundred and Twenty Seven Million and Fifty Thousand Dollars (\$127,050,000) on January 15, 2012, and to pay interest on the remaining unpaid principal amount hereof from the date hereof, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 15 and July 15 in each year, commencing January 15, 1986, at the rate equal to the Variable Rate (as defined below) per annum, until the principal hereof is paid in full or made available for payment.

Said principal shall be payable in installments consisting of 50 installments of principal commencing on July 1, 1987, and on each January 15 and July 15 thereafter, to and including January 15, 2012, each such principal installment to be equal to the percentage of the original principal amount hereof set forth in Schedule X hereto for the date such installment is due.

The "Variable Rate" shall mean the Applicable Percentage (as defined below) of the rate publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime or base lending rate (any change in the Variable Rate being effective on the date such change in the Variable Rate

6091.CHRYSLER.2898.51B:1

is so announced). The "Applicable Percentage" shall equal (i) 100% for the period from December 31, 1985 through June 30, 1986, (ii) 125% for the period from July 1, 1986 through September 30, 1986, (iii) 150% for the period from October 1, 1986 through December 31, 1986, and (iv) 200% thereafter. All payments of interest shall be computed on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 16, 1985, as at any time amended or supplemented in accordance with the provisions thereof (the Indenture), between The First National Bank of Boston, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with the Owner Participant and CHEMICAL BANK, as Trustee (the Indenture Trustee), shall be made only from the Lease Indenture Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and

that neither the Owner Participant, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee Office, or as otherwise provided in the Indenture.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is the Initial Series Note referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as

well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of the Initial Series Note.

This Initial Series Note is subject to mandatory prepayment in full as provided in Section 5.2 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment. In addition this Initial Series Note is subject to special prepayment, in whole only, on the date on which the Fixed Rate Note is issued in accordance with Section 3.5 of the Indenture, by giving written notice to the Indenture Trustee and the Holder of this Initial Series Note at least on Business Day prior to such date, such prepayment being with the following premiums (expressed as a percentage of principal amount of this Initial Series Note), together with accrued interest to the date of prepayment:

<u>Period</u>	<u>Premium</u>
January 1-10, 1986	.096%
January 11-17, 1986	.072%
January 18-24, 1986	.048%
January 25-31, 1986	.024%

and thereafter without premium.

In case an Indenture Event of Default shall occur and be continuing the unpaid balance of the principal of this Initial Series Note and any other Notes together with all accrued but unpaid interest thereon may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the Owner hereof for the purpose of receiving payments of principal of, and premium if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement dated as of December 16, 1985 with Chrysler Financial Corporation

By \_\_\_\_\_  
Vice President

SPECIMEN

ASSIGNMENT

Date: December 31, 1985

For value received, the undersigned hereby sells, assigns and transfers to CHEMICAL BANK, as Trustee pursuant to the Collateral Trust Indenture dated as of December 16, 1985, as amended and supplemented, among the undersigned, Public Service Company of New Mexico and said Trustee, without recourse, the within Initial Series Note and all rights thereunder.

FIRST PV FUNDING CORPORATION

By \_\_\_\_\_  
President

SPECIMEN





SCHEDULE X  
Initial Series Note

Date	Chrysler
7/15/1986	0.00
1/15/1987	0.00
7/15/1987	292,861.24
1/15/1988	1,136,769.40
7/15/1988	1,243,140.94
1/15/1989	1,302,190.14
7/15/1989	1,364,044.17
1/15/1990	1,428,836.27
7/15/1990	1,496,705.99
1/15/1991	1,567,799.52
7/15/1991	1,642,270.00
1/15/1992	1,720,277.83
7/15/1992	1,801,991.02
1/15/1993	1,887,585.60
7/15/1993	1,977,245.91
1/15/1994	2,071,165.09
7/15/1994	2,169,545.43
1/15/1995	2,272,598.84
7/15/1995	2,380,547.89
1/15/1996	2,493,622.23
7/15/1996	2,612,070.89
1/15/1997	2,736,143.73
7/15/1997	2,866,210.56
1/15/1998	3,002,250.82
7/15/1998	2,490,198.17
1/15/1999	2,809,763.10
7/15/1999	1,550,047.44
1/15/2000	2,417,925.91
7/15/2000	1,313,602.74
1/15/2001	2,542,292.20
7/15/2001	1,380,426.42
1/15/2002	2,673,036.58
7/15/2002	1,450,673.99
1/15/2003	2,810,480.04
7/15/2003	1,524,520.91
1/15/2004	3,334,202.47
7/15/2004	2,108,212.12
1/15/2005	2,594,796.54
7/15/2005	2,211,969.01
1/15/2006	2,726,301.77
7/15/2006	2,324,268.43
1/15/2007	2,865,228.45
7/15/2007	2,442,453.14
1/15/2008	3,011,229.96
7/15/2008	2,566,654.90
1/15/2009	3,405,334.53
7/15/2009	5,603,154.64
1/15/2010	5,869,304.48
7/15/2010	6,148,096.45
1/15/2011	6,440,131.01
7/15/2011	6,746,037.24
1/15/2012	2,973,883.90
7/15/2012	0.00
1/15/2013	0.00
7/15/2013	0.00
1/15/2014	0.00
7/15/2014	0.00
1/15/2015	0.00
	127,050,000.00



This Note is one of the series of Notes referred to therein and in the within-mentioned Indenture.

CHEMICAL BANK  
as Indenture Trustee

By \_\_\_\_\_  
Authorized Officer

SPECIMEN



THIS NOTE HAS NOT BEEN REGISTERED UNDER THE  
SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED,  
SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES

Issued at: New York, New York

Issue Date: December 31, 1985

No. R-1

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as owner trustee (Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with MFS Leasing Corp. (the Owner Participant), hereby promises to pay to FIRST PV FUNDING CORPORATION, or registered assigns, the principal sum of Forty-Six Million and Two Hundred Thousand Dollars (\$46,200,000) on January 15, 2015, and to pay interest on the remaining unpaid principal amount hereof from the date hereof, or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 15 and July 15 in each year, commencing January 15, 1986, at the rate equal to the Variable Rate (as defined below) per annum, until the principal hereof is paid in full or made available for payment.

Said principal shall be payable in installments consisting of 38 installments of principal commencing on July 15, 1986, and on each January 15 and July 15 thereafter, to and including January 15, 2015, each such principal installment to be equal to the percentage of the original principal amount hereof set forth in Schedule X hereto for the date such installment is due.

The "Variable Rate" shall mean the Applicable Percentage (as defined below) of the rate publicly announced from time to time by Chemical Bank at its principal office in New York City as its prime or base lending rate (any change in the Variable Rate being effective on the date such change in the Variable Rate

6091.MFS.2898.51B:2

is so announced). The "Applicable Percentage" shall equal (i) 100% for the period from December 31, 1985 through June 30, 1986, (ii) 125% for the period from July 1, 1986 through September 30, 1986, (iii) 150% for the period from October 1, 1986 through December 31, 1986, and (iv) 200% thereafter. All payments of interest shall be computed on the basis of the actual number of days elapsed in a year of 365 or 366 days, as the case may be.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 16, 1985, as at any time amended or supplemented in accordance with the provisions thereof (the Indenture), between The First National Bank of Boston, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee) under a Trust Agreement dated as of December 16, 1985 with the Owner Participant and CHEMICAL BANK, as Trustee (the Indenture Trustee), shall be made only from the Lease Indenture Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and

that neither the Owner Participant, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee Office, or as otherwise provided in the Indenture.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is the Initial Series Note referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as

well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of the Initial Series Note.

This Initial Series Note is subject to mandatory prepayment in full as provided in Section 5.2 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment. In addition this Initial Series Note is subject to special prepayment, in whole only, on the date on which the Fixed Rate Note is issued in accordance with Section 3.5 of the Indenture, by giving written notice to the Indenture Trustee and the Holder of this Initial Series Note at least on Business Day prior to such date, such prepayment being with the following premiums (expressed as a percentage of principal amount of this Initial Series Note), together with accrued interest to the date of prepayment:

<u>Period</u>	<u>Premium</u>
January 1-10, 1986	.096%
January 11-17, 1986	.072%
January 18-24, 1986	.048%
January 25-31, 1986	.024%

and thereafter without premium.

In case an Indenture Event of Default shall occur and be continuing the unpaid balance of the principal of this Initial Series Note and any other Notes together with all accrued but unpaid interest thereon may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.



The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the Owner hereof for the purpose of receiving payments of principal of, and premium if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF  
BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement dated as of December 16, 1985 with MFS Leasing Corp.

By \_\_\_\_\_  
Vice President

SPECIMEN

# ASSIGNMENT

Date: December 31, 1985

For value received, the undersigned hereby sells, assigns and transfers to CHEMICAL BANK, as Trustee pursuant to the Collateral Trust Indenture dated as of December 16, 1985, as amended and supplemented, among the undersigned, Public Service Company of New Mexico and said Trustee, without recourse, the within Initial Series Note and all rights thereunder.

FIRST PV FUNDING CORPORATION

By \_\_\_\_\_

President

SPECIMEN

SCHEDULE X  
Initial Series Note

Date	Mellon
7/15/1986	379,205.60
1/15/1987	397,217.87
7/15/1987	416,085.71
1/15/1988	435,849.79
7/15/1988	456,552.65
1/15/1989	478,238.90
7/15/1989	500,955.25
1/15/1990	524,750.62
7/15/1990	549,676.28
1/15/1991	575,785.90
7/15/1991	603,135.73
1/15/1992	631,784.68
7/15/1992	661,794.45
1/15/1993	693,229.69
7/15/1993	726,158.10
1/15/1994	760,650.61
7/15/1994	796,781.51
1/15/1995	834,628.63
7/15/1995	874,823.49
1/15/1996	915,348.48
7/15/1996	959,382.06
1/15/1997	559,584.63
7/15/1997	606,547.54
1/15/1998	558,788.54
7/15/1998	637,853.57
1/15/1999	545,528.73
7/15/1999	670,785.58
1/15/2000	573,662.97
7/15/2000	705,429.24
1/15/2001	603,265.22
7/15/2001	741,874.85
1/15/2002	634,413.47
7/15/2002	780,217.61
1/15/2003	667,189.99
7/15/2003	820,557.89
1/15/2004	701,681.58
7/15/2004	863,001.51
1/15/2005	737,979.83
7/15/2005	907,660.09
1/15/2006	776,181.38
7/15/2006	954,651.34
1/15/2007	816,388.25
7/15/2007	1,004,099.42
1/15/2008	858,708.12
7/15/2008	1,056,135.33
1/15/2009	903,254.70
7/15/2009	1,110,897.30
1/15/2010	950,148.05
7/15/2010	1,168,531.20
1/15/2011	999,514.98
7/15/2011	1,229,191.02
1/15/2012	1,051,489.48
7/15/2012	1,293,039.28
1/15/2013	1,106,213.10
7/15/2013	1,360,247.61
1/15/2014	1,163,835.43
7/15/2014	1,430,997.26
1/15/2015	1,518,594.91
	46,200,000.00



This Note is one of the series of Notes referred to therein and in the within-mentioned Indenture.

CHEMICAL BANK  
as Indenture Trustee

By \_\_\_\_\_  
Authorized Officer

SPECIMEN



December 31, 1985

To each of the Banks party  
to the Term Loan Agreement  
dated as of December 31, 1985  
with First PV Funding Corporation  
c/o Chemical Bank  
277 Park Avenue  
New York, New York 10172

**PUBLIC SERVICE COMPANY OF NEW MEXICO  
PALO VERDE NUCLEAR GENERATING STATION UNIT 1 LEASES**

Dear Sirs:

Reference is made to the three Participation Agreements, dated as of December 16, 1985 (the Participation Agreement), among Public Service Company of New Mexico (PNM), First PV Funding Corporation, The First National Bank of Boston, in its individual capacity and as Owner Trustee, Chemical Bank, in its individual capacity and as Indenture Trustee, and the respective Owner Participants named therein. All capitalized terms used herein without definition shall have the meanings set forth in Appendix A to the Participation Agreement.

1. **Representations, Warranties and Agreements.** The Loan Participant and PNM hereby confirm for your benefit that their respective representations and warranties and, in the case of PNM, agreements contained in Sections 6, 10, 13 and 14 of the Participation Agreement are true and correct and hereby respectively repeat such representations, warranties and agreements, in the case of PNM to the same extent as if such representations, warranties and agreements were set forth herein in full, whether or not the same are amended after the date hereof.

2. **Survival of Representations, Warranties and Agreements.** All representations, warranties and

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agreements contained herein shall survive the execution and delivery of this letter.

3. Successors and Assigns. All terms and provisions of this letter shall inure to your benefit and the benefit of your successors and assigns and each holder from time to time of each Bond.

4. Consequences of Breach. A breach of the representations, warranties and agreements contained herein will not entitle you or any holder of a Bond to exercise remedies or take other action under the Participation Agreement or any other Transaction Document, but you may pursue all other rights you have at law or in equity in consequence of such a breach.

5. Governing Law. This letter shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.

FIRST PV FUNDING CORPORATION

By: 

President

PUBLIC SERVICE COMPANY OF NEW  
MEXICO

By: 

Senior Vice President and  
Chief Financial Officer

COLLATERAL TRUST ESCROW LETTER

December 31, 1985

Chemical Bank  
55 Water Street  
New York, New York 10041  
Attention: Corporate Trustee Administration

Dear Sirs:

We have remitted to you immediately available funds in the amount of \$250,250,000. As our agent, you are hereby instructed to purchase for our account a Repurchase Agreement in the amount of \$250,250,000 (the Repurchase Agreement), fully collateralized by direct obligations of the United States of America, pursuant to which Merrill Lynch Government Securities Inc. is obligated to repurchase such obligations on January 2, 1986 (the Maturity Date) for an amount equal to \$250,350,100.

Unless our rights under the Repurchase Agreement have been assigned pursuant to the next succeeding paragraph, upon fulfillment by Merrill Lynch Government Securities Inc. of its obligations under the Repurchase Agreement on the Maturity Date, you are hereby instructed to remit the proceeds thereof to us at our account at Chemical Bank.

Our rights hereunder and in the Repurchase Agreement may be assigned and reassigned, in whole or in part, upon execution of one

or more of the assignments attached hereto and delivery to you of written notice of each such assignment.

Very truly yours,

Chemical Bank, as Trustee under  
a Collateral Trust Indenture,  
dated as of December 16, 1985


By

  
Vice President

Acknowledged and Agreed:


Chemical Bank

By

  
Vice President

Chemical Bank, as Collateral Trust Trustee, hereby assigns to Chemical Bank, as Indenture Trustee under Trust Indenture, Mortgage, Security Agreement and Assignments of Rents No. 1, dated as of December 16, 1985, an interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$127,100,820 in respect of the proceeds thereof.

Chemical Bank, as Collateral  
Trustee Trustee

By   
Vice President


**Acknowledged and Accepted:**

Chemical Bank, as Indenture  
Trustee

Trustee \_\_\_\_\_  
By *[Signature]* \_\_\_\_\_  
Vice President


Chemical Bank, as Collateral Trust Trustee hereby assigns to Chemical Bank, as Indenture Trustee under Trust Indenture, Mortgage, Security Agreement and Assignments of Rents No. 2, dated as of December 16, 1985, an interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$77,030,800 in respect of the proceeds thereof.

Chemical Bank, as Collateral  
Trust Trustee

By   
Vice President

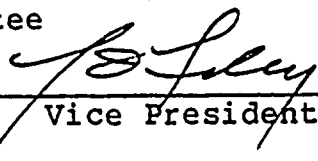
Chemical Bank, as Collateral Trust Trustee hereby assigns to Chemical Bank, as Indenture Trustee under Trust Indenture Mortgage, Security Agreement and Assignments of Rents No. 3, dated as of December 16, 1985, an interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$46,218,480 in respect of the proceeds thereof.

Chemical Bank, as Collateral  
Trust Trustee.

By   
Vice President

Acknowledged and Accepted:

Chemical Bank, as Indenture  
Trustee

By   
Vice President

Chemical Bank, as Indenture Trustee under Trust Indenture Mortgage, Security Agreement and Assignment of Rents No. 1, hereby assigns to Public Service Company of New Mexico, an interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$127,100,820 in respect of the proceeds thereof.

Chemical Bank, as Indenture  
Trustee

By   
Vice President

Acknowledged and Accepted:

Public Service Company of New  
Mexico

By   
Senior Vice President and  
Chief Financial Officer

16  
Chemical Bank, as Indenture Trustee under Trust Indenture, Mortgage, Security Agreement and Assignment of Rents No 2, hereby assigns to Public Service Company of New Mexico, an interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$77,030,800 in respect of the proceeds thereof.

Chemical Bank, as Indenture  
Trustee


By

  
Vice President

Acknowledged and Accepted:

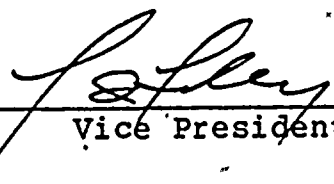
Public Service Company of New  
Mexico

By

  
Senior Vice President and  
Chief Financial Officer


Chemical Bank, as Indenture Trustee under Trust Indenture Mortgage, Security Agreement and Assignment of Rents No 3, hereby assigns to Public Service Company of New Mexico, an interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$46,218,480 in respect of the proceeds thereof.

Chemical Bank, as Indenture  
Trustee

By   
Vice President


Acknowledged and Accepted:

Public Service Company of New  
Mexico

By   
Senior Vice President and  
Chief Financial Officer

Public Service Company of New Mexico hereby assigns to Irving Trust Company, as Trustee under the Indenture of Mortgage and Deed of Trust, dated as of June 1, 1947, between PNM and such Trustee, all interest in the foregoing letter agreement and the Repurchase Agreement to the extent of \$250,350,100 in respect of the proceeds thereof.

Public Service Company of New  
Mexico

By   
Senior Vice President and  
Chief Financial Officer

Acknowledged and Accepted:

Irving Trust Company,  
as Trustee

By \_\_\_\_\_  
Vice President

10 The First National Bank of Boston, as Owner Trustee under substantially similar Trust Agreements dated as of December 16, 1985, with the several Owner Participants identified therein, hereby acknowledges and agrees to the foregoing and hereby confirms that the foregoing is in full satisfaction of any right it has to receive payments in immediately available funds, whether by wire transfer or otherwise. 1362

The First National Bank of  
Boston, not in its individual  
capacity but solely as Owner  
Trustee as aforesaid

By 

Vice President



