
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

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

Date of Report (Date of earliest event reported): **May 22, 2009**

Oglethorpe Power Corporation
(An Electric Membership Corporation)
(Exact name of registrant as specified in its charter)

GEORGIA
(State or other jurisdiction
of incorporation)

33-7591
(Commission File Number)

58-1211925
(I.R.S. Employer
Identification No.)

2100 East Exchange Place
Tucker, Georgia
(Address of principal executive offices)

30084-5336
(Zip Code)

Registrant's telephone number, including area code: **(770) 270-7600**

None
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

As discussed in a Form 8-K Oglethorpe Power Corporation (An Electric Membership Corporation) ("Oglethorpe") filed with the SEC on November 21, 2008, a Form 8-K/A it filed with the SEC on February 3, 2009 and its Form 10-Q for the quarter ended March 31, 2009, Oglethorpe became obligated to provide replacement credit enhancement in connection with six long-term lease transactions that it had previously entered into relating to its undivided interest in the Rocky Mountain Pumped Storage Hydroelectric Facility as a result of recent credit rating downgrades of AMBAC Indemnity Corporation ("AMBAC").

On May 22, 2009, Oglethorpe entered into an agreement with Berkshire Hathaway Assurance Corporation ("Berkshire"), pursuant to which Berkshire will provide supplemental credit enhancement to the credit enhancement currently provided by AMBAC with respect to five of the six long-term lease transactions. As a result, Oglethorpe's obligation to provide replacement credit enhancement with respect to these five long-term lease transactions has been satisfied.

A copy of the material agreements entered into in connection with the supplemental credit enhancement transactions discussed above are attached hereto as Exhibits 10.1 to 10.8 and are incorporated by reference herein.

In addition, Oglethorpe expects to enter into an agreement with Berkshire for Berkshire to replace AMBAC as the credit enhancement provider with respect to the sixth long-term lease transaction. However, in the event that Oglethorpe is unable to implement this replacement credit enhancement within any additional time extensions granted by the investor in the owner trust formed to effectuate the sixth long-term lease transaction, then it may be required to purchase the equity interest of this investor in the owner trust. Oglethorpe currently estimates that the maximum aggregate amount of exposure it would have if it were required to purchase this equity interest is approximately \$25 million. This amount is net of the accreted value of the guaranteed investment contracts that were entered into with AIG Matched Funding Corp. in connection with the six long-term lease transactions. The actual value of the guaranteed investment contracts may be more or less than the accreted value as a result of changes in interest rates and market conditions. Oglethorpe expects to have adequate liquidity to purchase the equity interest based on the maximum aggregate amount of exposure of approximately \$25 million if it were required to do so.

The information contained in this Form 8-K contains forward-looking statements, including certain plans and expectations, which are subject to numerous assumptions, risks, and uncertainties. All forward-looking statements included in this Form 8-K are based on information available at the time of the report. Oglethorpe assumes no obligation to update any forward-looking statement.

Item 9.01 Financial Statements and Exhibits

- (a) Not applicable.
- (b) Not applicable
- (c) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amendment No. 2 to Participation Agreement (P1), dated as of May 22, 2009, by and among Oglethorpe, Rocky Mountain Leasing Corporation, U.S. Bank National Association, as Owner Trustee, U.S. Bank National Association, as Co-Trustee, the Owner Participant named therein and Utrecht-America Finance Co., as Lender, together with a Schedule identifying four other substantially identical Amendments No. 2 to Participation Agreement.
10.2	Amendment No. 1 to Deed to Secure Debt, Assignment of Surety Bond and Security Agreement (P1), dated as of May 22, 2009, by and between Rocky Mountain Leasing Corporation and U.S. Bank National Association, as Co-Trustee, together with a Schedule identifying four other substantially identical Amendments No. 1 to Deed to Secure Debt, Assignment of Surety Bond and Security Agreement.
10.3	Amendment No. 1 to Subordinated Deed to Secure Debt and Security Agreement (P1), dated as of May 22, 2009, by and among Oglethorpe, U.S. Bank National Association, as Co-Trustee, and Ambac Assurance Corporation, together with a Schedule identifying four other substantially identical Amendments No. 1 to Subordinated Deed to Secure Debt and Security Agreement.
10.4	Amendment No. 1 to Head Lease Agreement (P1), dated as of May 22, 2009, by and between Oglethorpe and U.S. Bank National Association, as Co-Trustee, together with a Schedule identifying four other substantially identical Amendments No. 1 to Head Lease Agreement.
10.5	Amendment No. 1 to Facility Lease Agreement (P1), dated as of May 22, 2009, by and between U.S. Bank National Association, as Co-Trustee, and Rocky Mountain Leasing Corporation, together with a Schedule identifying four other substantially identical Amendments No. 1 to Facility Lease Agreement.
10.6	Amendment No. 1 to Facility Sublease Agreement (P1), dated as of May 22, 2009, by and between Oglethorpe and Rocky Mountain Leasing Corporation, together with a Schedule identifying four other substantially identical Amendments No. 1 to Facility Sublease Agreement.
10.7	Surety Bond Implementation Agreement (P1), dated as of May 22, 2009, by and among Oglethorpe, Rocky Mountain Leasing Corporation, the Owner Participant named therein, U.S. Bank National Association, as Owner Trustee, U.S. Bank National Association, as Co-Trustee, Ambac Assurance Corporation and Berkshire Hathaway Assurance Corporation, together with a Schedule identifying four other substantially identical Surety Bond Implementation Agreements.
10.8	Berkshire Guaranty Agreement (P1), dated as of May 22, 2009, by and between Oglethorpe and Berkshire Hathaway Assurance Corporation, together with a Schedule identifying four other substantially identical Berkshire Guaranty Agreements.

AMENDMENT NO. 2 TO PARTICIPATION AGREEMENT (P1)

THIS AMENDMENT NO. 2 TO PARTICIPATION AGREEMENT (P1) (this "Amendment") is made as of May 22, 2009, by and among (i) **OGLETHORPE POWER CORPORATION (AN ELECTRIC MEMBERSHIP CORPORATION)**, an electric membership corporation organized under the laws of the State of Georgia (herein, together with its successors and permitted assigns, called "Oglethorpe"); (ii) **ROCKY MOUNTAIN LEASING CORPORATION**, a corporation organized under the laws of the State of Delaware (herein, together with its successors and permitted assigns, called "RMLC"); (iii) Philip Morris Capital Corporation, a corporation organized under the laws of the State of Delaware, as Owner Participant (herein, in such capacity, together with its successors and permitted assigns, called the "Owner Participant"); (iv) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, successor in interest to Fleet National Bank, not in its individual capacity, except as expressly provided herein, but solely as Owner Trustee under the Trust Agreement (herein in its capacity as a trustee under the Trust Agreement, together with its successors and permitted assigns, called the "Owner Trustee" and herein in its individual capacity, together with its successors and permitted assigns, called "Non-Georgia Trust Company"); (v) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, successor in interest to SunTrust Bank, Atlanta, not in its individual capacity, except as specifically provided herein, but solely as Co-Trustee under the Trust Agreement (herein in its capacity as a trustee under the Trust Agreement, together with its successors and permitted assigns, called the "Co-Trustee" and herein in its individual capacity, together with its successors and permitted assigns, called "Georgia Trust Company"), and (vi) **UTRECHT-AMERICA FINANCE CO.**, a corporation organized under the laws of the State of Delaware, as the lender (herein together with its successors and permitted assigns, called the "Lender"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Participation Agreement (as defined below) or in Appendix A thereto, as heretofore amended.

WITNESSETH THAT

WHEREAS, Oglethorpe, RMLC, the Owner Participant, the Owner Trustee, the Co-Trustee and the Lender are parties to the Participation Agreement (P1), dated as of December 30, 1996 (the "Participation Agreement");

WHEREAS, on December 31, 1996, in connection with the transactions contemplated by the Participation Agreement, Ambac Assurance Corporation, formerly known as AMBAC Indemnity Corporation ("AMBAC"), then constituting a Qualifying Surety Bond Provider, issued (a) Surety Bond (Head Lease-P1) No. SF0003BE in favor of the Head Lessee and the Owner Participant (the "AMBAC Head Lease Surety Bond") and (b) Surety Bond (Facility Sublease-P1) No. SF0004BE in favor of the Facility Sublessor and the Facility Lessor (the

“AMBAC Sublease Surety Bond” and, together with the AMBAC Head Lease Surety Bond, the “AMBAC Surety Bonds”);

WHEREAS, subsequent to the date of issuance of the AMBAC Surety Bonds, AMBAC ceased to be a Qualifying Surety Bond Provider as a result of a downgrade in AMBAC’s long term unsecured debt rating, and, consequently, Oglethorpe was required to either replace the AMBAC Surety Bonds or find other acceptable credit enhancement as required pursuant to Section 8.5 and Section 8.6 of the Participation Agreement;

WHEREAS, in order to satisfy its obligations under Section 8.5 and Section 8.6 of the Participation Agreement, Oglethorpe has caused Berkshire Hathaway Assurance Corporation (“Berkshire”) to deliver (a) to the Head Lessee and the Owner Participant, a Qualifying Head Lease Surety Bond (as amended from time to time, the “Berkshire Head Lease Surety Bond”), and (b) to the Facility Sublessor and the Facility Lessor, a Qualifying Sublease Surety Bond (as amended from time to time, the “Berkshire Sublease Surety Bond” and, together with the Berkshire Head Lease Surety Bond, the “Berkshire Surety Bonds”);

WHEREAS, each of the AMBAC Head Lease Surety Bond and the AMBAC Sublease Surety Bond, as each may be amended, or amended and restated, from time to time, will remain in place and the Berkshire Head Lease Surety Bond and the Berkshire Sublease Surety Bond will be issued in addition; and

WHEREAS, in connection with the issuance by Berkshire of the Berkshire Surety Bonds, each of the parties hereto wishes to amend the Participation Agreement upon the terms set forth herein.

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

Section 1. Amendments to Appendix A (Definitions) to the Participation Agreement. Appendix A to the Participation Agreement is hereby amended as follows:

(a) The defined term “AMBAC Indemnity” is hereby deleted in its entirety, and the definition of “AMBAC” is hereby replaced, in its entirety, with the following language:

“**AMBAC**” shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to “AMBAC Indemnity” shall be a reference to “AMBAC.”

(b) The definition of “Excepted Payments” is hereby replaced, in its entirety, with the following language:

“**Excepted Payments**” shall mean and include (i)(A) any indemnity (whether or not constituting Supplemental Rent or Sublease Supplemental Rent and whether or not an Event of Default exists) payable to either Trust Company, either Trustee or the Owner Participant or to their respective Indemnitees or RMLC Indemnitees and successors and permitted assigns (other than the Lender) pursuant to Section 2.3,

11.1, 11.2, 12.1 or 12.2 of the Participation Agreement, Section 7.01 of the Trust Agreement, and any payments under the Tax Indemnity Agreement or (B) any amount payable by the Facility Lessee or the Facility Sublessee to either Trustee or the Owner Participant to reimburse any such Person for its costs and expenses in exercising its rights under the Operative Documents, (ii)(A) insurance proceeds, if any, payable to either Trustee or the Owner Participant under insurance separately maintained by either Trustee or the Owner Participant with respect to the Facility as permitted by Section 11 of the Facility Lease or (B) proceeds of personal injury or property damage liability insurance maintained under any Operative Document for the benefit of either Trustee or the Owner Participant, (iii) any amount payable to the Owner Participant as the purchase price of the Owner Participant's right and interest in the Beneficial Interest, (iv) the Equity Portion of Termination Value, the Equity Portion of Basic Rent, the Equity Portion of the Sublease Basic Rent and the Equity Portion of Purchase Option Price payable (A) by the Facility Lessee under the Facility Lease to the extent of amounts payable under the Qualifying Equity Funding Agreement (in each case, whether the foregoing agreement was "qualifying" as of or after the Berkshire Surety Bond Date under the definitions herein or not) or through assignment of the Surety Bonds or any Qualifying Additional Security and/or (B) by the Head Lessor under the Head Lease or the Facility Sublessee under the Facility Sublease, in each case, to the extent of amounts payable under the Surety Bonds and any Qualifying Additional Security (in each case, whether any of the foregoing such agreements, arrangements, security or letters of credit was "qualifying" as of or after the Berkshire Surety Bond Date under the definitions herein or not), (v) any payments or distributions to either Trustee or the Owner Participant attributable to any Qualifying Equity Funding Agreement, Qualifying Additional Security, the AMBAC Head Lease Surety Bond, the AMBAC Sublease Surety Bond, the AMBAC Assignment Agreement, the Berkshire Head Lease Surety Bond, the Berkshire Sublease Surety Bond, the Berkshire Assignment Agreement, any Qualifying Surety Bond or any Qualifying Letter of Credit (in each case, whether any of the foregoing agreements, arrangements, security or letters of credit was "qualifying" as of or after the Berkshire Surety Bond Date under the definitions herein or not), (vi) any amounts payable to the Owner Participant upon exercise by it of the Special Equity Facility Lease Remedy pursuant to Section 16.1 of the Participation Agreement or the Special Equity Head Lease Remedy pursuant to Section 16.2 of the Participation Agreement and (vii) any payments in respect of interest, or any payments made on an After-Tax Basis, to the extent attributable to payments referred to in clause (i) through (vi) above that constitute Excepted Payments.

- (c) The definition of "Operative Documents" is hereby amended by:
 - (i) adding the phrase "the Consent, dated as of May 22, 2009, made by the Lender, the Implementation Agreement, the Berkshire Head Lease Surety Bond, the Berkshire Sublease Surety Bond, the Berkshire Assignment Agreement and the AMBAC Guaranty" after the phrase "the Subordinated Deed to Secure Debt and Security Agreement" in the fourteenth line therein; and

(ii) adding at the end of such definition the following sentence:

“The Agreement Regarding Surety Bonds and the Berkshire Guaranty Agreement shall constitute Operative Documents if and only if Berkshire or a designee of Berkshire shall, by subrogation, assignment, purchase or otherwise, acquire the Owner Participant’s Beneficial Interest or the Berkshire Subrogation Interest or the rights of the Owner Participant or the Head Lessee under the Operative Documents and, at the time of such acquisition or at the time that Berkshire or any designee of Berkshire shall be committed to make such acquisition or at any time thereafter, either (A) an Event of Default or a Head Lessor Event of Default shall exist or (B) Berkshire shall have received a demand for payment under either of the Berkshire Surety Bonds.”

(d) The definition of “Qualifying Head Lease Surety Bond” is hereby amended by adding the following sentence after the end thereof:

“On the Berkshire Surety Bond Date, the Berkshire Head Lease Surety Bond delivered on the Berkshire Surety Bond Date constitutes a Qualifying Head Lease Surety Bond.”

(e) The definition of “Qualifying Sublease Surety Bond” is hereby amended by adding the following sentence after the end thereof:

“On the Berkshire Surety Bond Date, the Berkshire Sublease Surety Bond delivered on the Berkshire Surety Bond Date constitutes a Qualifying Sublease Surety Bond.”

(f) The definition of “Subordinated Secured Parties” is hereby amended by adding the term “Berkshire,” after “AMBAC,” in the first line therein.

(g) The following new definitions are added:

“**Agreement Regarding Surety Bonds**” shall mean the Agreement Regarding Surety Bonds (P1), dated as of the Berkshire Surety Bond Date, among Oglethorpe, RMLC and Berkshire.

“**AMBAC Head Lease Surety Bond**” shall mean the Amended and Restated Surety Bond (Head Lease-P1) No. SF0003BE issued on May 22, 2009 by AMBAC in favor of the Head Lessee and the Owner Participant.

“**AMBAC Sublease Surety Bond**” shall mean the Amended and Restated Surety Bond (Facility Sublease-P1) No. SF0004BE issued on May 22, 2009 by AMBAC in favor of the Facility Sublessor and the Facility Lessor.

“**AMBAC Subrogation Interest**” shall mean (i) AMBAC’s right to be subrogated or to an assignment, as provided in Sections 6 and 11(f) of each of the AMBAC Surety Bonds, to the right, title and interest of the Head Lessee, the Facility Lessor, the Ground Lessee, the Ground Sublessor and the Owner Participant (as the

case may be) in, to and under the Head Lease, the Facility Lease, the Ground Lease, the Ground Sublease, the Rocky Mountain Agreements Assignment, the Rocky Mountain Agreements Re-Assignment or relating to or arising under the Operative Documents.

“AMBAC Surety Bonds” shall mean, collectively, the AMBAC Head Lease Surety Bond and the AMBAC Sublease Surety Bond.

“Amendment Agreements” shall mean the Amendment No. 2 to the Participation Agreement, the Amendment to the Facility Lease, the Amendment to the Head Lease, the Amendment to the Facility Sublease, the Amendment to the Facility Sublease Assignment Agreement, the Amendment to the Subordinated Deed to Secure Debt and Security Agreement and the Amendment to the Loan and Security Agreement.

“Amendment to the Facility Lease” shall mean the Amendment No. 1 to Facility Lease (P1), dated as of the Berkshire Surety Bond Date, between the Facility Lessor and the Facility Lessee, in substantially the form of Exhibit X to the Participation Agreement.

“Amendment to the Facility Sublease” shall mean the Amendment No. 1 to Facility Sublease (P1), dated as of the Berkshire Surety Bond Date, between the Facility Sublessor and the Facility Sublessee, in substantially the form of Exhibit Y to the Participation Agreement.

“Amendment to the Facility Sublease Assignment Agreement” shall mean the Amendment No. 1 to Deed to Secure Debt, Assignment of Surety Bond and Security Agreement (P1), dated as of the Berkshire Surety Bond Date, between RMLC, as grantor, and the Co-Trustee, as secured party, in substantially the form of Exhibit Z to the Participation Agreement.

“Amendment to the Head Lease” shall mean the Amendment No. 1 to Head Lease (P1), dated as of the Berkshire Surety Bond Date, between the Head Lessor and the Head Lessee, in substantially the form of Exhibit AA to the Participation Agreement.

“Amendment to the Loan and Security Agreement” shall mean the Amendment No. 1 to Loan and Security Agreement (P1), dated as of the Berkshire Surety Bond Date, between the Co-Trustee, the Owner Trustee and the Lender, in substantially the form of Exhibit BB to the Participation Agreement.

“Amendment No. 2 to the Participation Agreement” shall mean the Amendment No. 2 to Participation Agreement (P1), dated as of the Berkshire Surety Bond Date, among Oglethorpe, RMLC, the Georgia Trust Company in its individual capacity and as Co-Trustee, the Non-Georgia Trust Company in its individual capacity and as Owner Trustee, the Owner Participant and the Lender.

“Amendment to the Subordinated Deed to Secure Debt and Security Agreement” shall mean the Amendment No. 1 to Subordinated Deed to Secure Debt and Security Agreement (P1), dated as of the Berkshire Surety Bond Date, among Oglethorpe, as grantor, and Berkshire, AMBAC and the Co-Trustee, as subordinated secured parties, in substantially the form of Exhibit CC to the Participation Agreement.

“Berkshire” shall mean Berkshire Hathaway Assurance Corporation.

“Berkshire Additional Subrogation Interest” Berkshire’s right to be subrogated, (x) as provided in paragraphs 11(a) and 11(f) of the Berkshire Head Lease Surety Bond, to the right, title and interest of the Head Lessee and the Owner Participant in, to and under the AMBAC Head Lease Surety Bond and (y) as provided in paragraphs 11(a) and 11(f) of the Berkshire Sublease Surety Bond, to the right, title and interest of the Facility Sublessor and the Facility Lessor in, to and under the AMBAC Sublease Surety Bond.

“Berkshire Assignment Agreement” shall mean the Berkshire Agreement for Assignment on Default (P1), dated as of the Berkshire Surety Bond Date, among the Owner Participant, the Co-Trustee, the Owner Trustee and Berkshire.

“Berkshire Guaranty Agreement” shall mean the Berkshire Guaranty Agreement (P1), dated as of the Berkshire Surety Bond Date, between Oglethorpe and Berkshire.

“Berkshire Head Lease Surety Bond” shall mean the Surety Bond (Head Lease-P1) No. 98SRD102494 issued by Berkshire in favor of the Head Lessee and the Owner Participant.

“Berkshire Sublease Surety Bond” shall mean the Surety Bond (Facility Sublease-P1) No. 98SRD102495 issued by Berkshire in favor of the Facility Sublessor and the Facility Lessor.

“Berkshire Subrogation Interest” shall mean Berkshire’s right to be subrogated or to an assignment, as provided in paragraphs 6 and 11(f) of each of the Berkshire Surety Bonds, to the right, title and interest of the Head Lessee, the Facility Lessor, the Ground Lessee, the Ground Sublessor and the Owner Participant (as the case may be) in, to and under the Head Lease, the Facility Lease, the Ground Lease, the Ground Sublease, the Rocky Mountain Agreements Assignment and the Rocky Mountain Agreements Re-Assignment or relating to or arising under the Operative Documents.

“Berkshire Surety Bonds” shall mean, collectively, the Berkshire Head Lease Surety Bond and the Berkshire Sublease Surety Bond.

“Berkshire Surety Bond Date” shall mean May 22, 2009.

“Berkshire Surety Bond Documents” shall mean the Amendment Agreements, the Agreement Regarding Surety Bonds, the Berkshire Head Lease Surety Bond, the

Berkshire Sublease Surety Bond, the Berkshire Assignment Agreement, the Berkshire Guaranty Agreement and the Implementation Agreement.

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

“Implementation Agreement” shall mean the Surety Bond Implementation Agreement (P1), dated as of the Berkshire Surety Bond Date, among Oglethorpe, RMLC, the Co-Trustee, the Owner Trustee, the Owner Participant, AMBAC and Berkshire.

“Surety Bonds” shall mean, collectively, the AMBAC Head Lease Surety Bond, the AMBAC Sublease Surety Bond and the Berkshire Surety Bonds (in each case, whether any of the foregoing surety bonds was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not).

“Surety Bond Provider” shall mean a Person who issued any Surety Bond or a Qualifying Surety Bond whether or not such Person is still a Qualifying Surety Bond Provider.

“Surety Bond Provider Assignment Agreement” shall mean an Agreement for Assignment on Default entered into among any Person who, at the time such agreement is executed, is a Surety Bond Provider, the Owner Participant, the Co-Trustee and the Owner Trustee, and, if applicable, acknowledged and consented to by Oglethorpe and RMLC.

(h) The new and amended definitions in this Section 1 shall be effective for all purposes of each Operative Document, including each Operative Document to which Appendix A as the definitional appendix is attached.

Section 2. Other Amendments to the Participation Agreement

(a) Section 5.1(a) of the Participation Agreement is hereby amended by replacing the last two sentences thereof with the following:

“The parties hereto hereby acknowledge the right of AMBAC, Berkshire or any other Surety Bond Provider to purchase the Beneficial Interest in accordance with the provisions of the applicable Surety Bond Provider Assignment Agreement. Notwithstanding such acknowledgment, any Surety Bond Provider shall assume the duties and obligations of the Owner Participant under the Operative Documents with respect to the interest being transferred pursuant to an Assumption Agreement substantially in the form of Exhibit T hereto and meet the requirements of a permitted Transferee set forth in clauses (A) (only if the Loan has not been repaid), (B) and (C) of this Section 5.1(a) in order to exercise such rights. In addition, the parties hereto hereby acknowledge (1) Berkshire’s rights to acquire, as contemplated by the Berkshire Surety Bond Documents and subject

to the terms and conditions set forth therein, the Berkshire Subrogation Interest, including, for the avoidance of doubt, with respect to the Owner Participant's rights under Section 16.2 hereof, or the Berkshire Additional Subrogation Interest and (2) Berkshire's rights under Section 4(c) of the Implementation Agreement. For the avoidance of doubt, the transfer to Oglethorpe of the Beneficial Interest or the Berkshire Subrogation Interest pursuant to Section 4(c) of the Implementation Agreement, any acquisition by Berkshire of the Berkshire Subrogation Interest or the Berkshire Additional Subrogation Interest, any acquisition by AMBAC of the AMBAC Subrogation Interest, and any assignment pursuant to Section 6 of the AMBAC Surety Bonds or assignment substantially in the form of Exhibit A to a Demand for Avoided Payment pursuant to the Berkshire Surety Bonds or confirmation of transfer in the form of Attachment 2 to the AMBAC Surety Bonds or Attachment V of the Berkshire Surety Bonds, as applicable, are not subject to the restrictions of this Section 5.1."

(b) Section 8.5 of the Participation Agreement is hereby amended as follows:

(i) by replacing clause (c) thereof in its entirety with the following language:

"(c) Berkshire or any Surety Bond Provider that issues a Qualifying Head Lease Surety Bond in replacement of the Berkshire Head Lease Surety Bond (whether such surety bond continues to be "qualifying" after the date of such replacement under the definitions herein or not) (i) delivers to the Owner Participant and the Co-Trustee a notice exercising its purchase option under its Surety Bond Provider Assignment Agreement and (ii) is thereafter released by the Owner Participant and the Co-Trustee pursuant thereto from all of its obligations under the Berkshire Head Lease Surety Bond or such replacement Qualifying Head Lease Surety Bond, as applicable (whether the surety bond was "qualifying" on or after the Berkshire Surety Bond Date under the definitions herein or not);"

(ii) by adding a new sentence after the end thereof to read in its entirety as follows:

"Unless and until the Owner Participant and the Co-Trustee shall have issued a full and final release to Berkshire pursuant to Section 8.5-1(a)(i), the AMBAC Head Lease Surety Bond shall not be deemed to be a Qualifying Head Lease Surety Bond and Oglethorpe shall have no obligation to replace the AMBAC Head Lease Surety Bond under this Section 8.5. Simultaneously with the provision of a replacement Qualifying Head Lease Surety Bond (other than the Berkshire Head Lease Surety Bond), Qualifying Letter of Credit, other acceptable credit enhancement or any combination thereof pursuant to and in accordance with this Section 8.5, the Owner Participant and the Co-Trustee shall at the request of Oglethorpe, deliver (A) to issuer of the surety bond being replaced, a full and final release of all of its obligations thereunder and (B) to AMBAC a full and final release of its obligations under the AMBAC Head Lease Surety Bond. "

(c) The Participation Agreement is hereby further amended by adding a new Section 8.5-1 immediately after the completion of Section 8.5:

“Section 8.5-1: *Optional Replacement/Termination of Berkshire Head Lease Surety Bond.*”

(a) Without limiting Oglethorpe’s obligation under Section 8.5 to provide a replacement Qualifying Head Lease Surety Bond, Oglethorpe shall have the right to request that the Owner Participant and the Co-Trustee, and upon such request, the Owner Participant and the Co-Trustee shall, subject to the terms and conditions set forth in Section 8.5-1(b), deliver to Berkshire a full and final release of its obligations under the Berkshire Head Lease Surety Bond, if:

(i) The claims paying ability of AMBAC is rated “AAA” by S&P and “Aaa” by Moody’s, AMBAC is not on negative credit watch with either rating agency and the Owner Participant shall have consented thereto (such consent not to be unreasonably withheld or delayed); *provided*, that the AMBAC Head Lease Surety Bond shall not have been terminated; or

(ii) Oglethorpe provides (A) a replacement Qualifying Head Lease Surety Bond, (B) a Qualifying Letter of Credit supporting Oglethorpe’s obligations under Section 16 of the Head Lease and the Special Equity Head Lease Remedy having a maximum drawing amount from time to time equal to the Equity Exposure Amount, (C) other credit enhancement acceptable to the Owner Participant in its sole discretion or (D) a combination of the credit enhancements set forth in clauses (A), (B) and (C); *provided*, that no termination shall be permitted under this Section 8.5-1(a)(ii) prior to the fourth anniversary of the issuance of the Berkshire Head Lease Surety Bond without the consent of the Owner Participant; or

(iii) The Head Lease is terminated in accordance with its terms or otherwise and the Owner Participant and the Co-Trustee shall have been paid in full all amounts then due and payable by Oglethorpe thereunder and under the other Operative Documents, including, to the extent applicable, any termination or similar agreement to which the Owner Participant and Oglethorpe may enter into in connect therewith.

(b) The Owner Participant and the Co-Trustee shall have no obligation to deliver a release to Berkshire under this Section 8.5-1 unless:

(i) Berkshire is not in default in the payment of any claim that has been made under the Berkshire Head Lease Surety Bond;

(ii) Oglethorpe is not in default in the payment of any amounts owed to the Owner Participant or the Co-Trustee under the Head Lease or the other Operative Documents;

(iii) in the case of Section 8.5-1(a)(i), Oglethorpe shall deliver a favorable opinion of counsel (which may be from in-house counsel to AMBAC) confirming that the AMBAC Head Lease Surety Bond is valid and enforceable;

(iv) in the case of Section 8.5-1(a)(ii), Oglethorpe shall deliver a favorable opinion of counsel (such counsel and the form and substance of such opinion to be reasonably satisfactory to the Owner Participant) covering, without limitation, (i) in the case of a Qualifying Head Lease Surety Bond, the matters set forth in the opinion of counsel to AMBAC rendered on the Closing Date in connection with the AMBAC Head Lease Surety Bond, in respect of such Qualifying Head Lease Surety Bond or (ii) in the case of a Qualifying Letter of Credit, the opinion required under Section 8.7; and

(v) the Owner Participant shall be satisfied that the foregoing conditions have been satisfied by Oglethorpe or waived by the Owner Participant.

(c) Upon issuance of the full and final release to Berkshire pursuant to Section 8.5-1(a), the AMBAC Head Lease Surety Bond (in the case of subsection (a)(i)) or any replacement Qualifying Head Lease Surety Bond or Qualifying Letter of Credit (in the case of subsection (a)(ii)) shall, as of such date, constitute a Qualifying Head Lease Surety Bond or Qualifying Letter of Credit and shall thereafter be subject to replacement under Section 8.5 or 8.7, as applicable.

(d) Section 8.6 of the Participation Agreement is hereby amended as follows:

(i) by replacing clause (c) thereof in its entirety with the following language:

“(c) Berkshire or any Surety Bond Provider that issues a Qualifying Sublease Surety Bond in replacement of the Berkshire Sublease Surety Bond (whether such surety bond continues to be “qualifying” after the date of such replacement under the definitions herein or not) (i) delivers to the Co-Trustee (as secured party under the Facility Sublease Assignment Agreement) and RMLC a notice exercising its purchase option under its Surety Bond Provider Assignment Agreement and (ii) is thereafter released by the Co-Trustee and RMLC pursuant thereto from all of its obligations under the Berkshire Sublease Surety Bond or such replacement Qualifying Sublease Surety Bond, as applicable (whether the surety bond was “qualifying” on or after the Berkshire Surety Bond Date under the definitions herein or not);”

(ii) by adding a new sentence after the end thereof to read in its entirety as follows:

“Unless and until the Co-Trustee and RMLC shall have issued a full and final release to Berkshire pursuant to Section 8.6-1(a)(i), the AMBAC Sublease Surety Bond shall not be deemed to be a Qualifying Sublease Surety Bond and Oglethorpe shall have no obligation to replace the AMBAC Sublease Surety Bond under this Section 8.6. Simultaneously with the provision of a replacement Qualifying Sublease Surety Bond (other than the Berkshire Sublease Surety

Bond), Qualifying Letter of Credit, other acceptable credit enhancement or any combination thereof pursuant to and in accordance with this Section 8.6, the Co-Trustee and RMLC shall, at the request of Oglethorpe, deliver (A) to the issuer of the surety bond being replaced, a full and complete release of all of its obligations thereunder and (B) to AMBAC a full and final release of its obligations under the AMBAC Sublease Surety Bond.”

(e) Section 8.6 of the Participation Agreement is hereby further amended by adding the following paragraph, immediately after the completion of Section 8.6:

“Section 8.6-1: *Optional Replacement/Termination of Berkshire Sublease Surety Bond.*

(a) Without limiting Oglethorpe’s obligation under Section 8.6 to provide a replacement Qualifying Sublease Surety Bond, Oglethorpe shall have the right to request the Co-Trustee and RMLC, and upon such request, the Co-Trustee and RMLC shall, subject to the terms and conditions set forth in Section 8.6-1(b), deliver to Berkshire a full and final release of its obligations under the Berkshire Sublease Surety Bond, if:

(i) The claims paying ability of AMBAC is rated “AAA” by S&P and “Aaa” by Moody’s, AMBAC is not on negative credit watch with either rating agency and the Owner Participant shall have consented thereto (such consent not to be unreasonably withheld or delayed); *provided*, that the AMBAC Sublease Surety Bond shall not have been terminated; or

(ii) Oglethorpe provides (A) a replacement Qualifying Sublease Surety Bond, (B) a Qualifying Letter of Credit supporting Oglethorpe’s obligations under the Facility Sublease and the Special Equity Facility Lease Remedy having a maximum drawing amount from time to time equal to the Equity Exposure Amount, (C) other credit enhancement acceptable to the Owner Participant and RMLC in their sole discretion or (D) a combination of the credit enhancements set forth in clauses (A), (B) and (C); *provided*, that no termination shall be permitted under this Section 8.6-1(a)(ii) prior to the fourth anniversary of the issuance of the Berkshire Sublease Surety Bond without the consent of the Owner Participant; or

(iii) The Facility Sublease is terminated in accordance with its terms or otherwise and the Co-Trustee and RMLC shall have been paid in full all amounts then due and payable by Oglethorpe thereunder and under the other Operative Documents, including, to the extent applicable, any termination or similar agreement to which the Owner Participant and Oglethorpe may enter into in connect therewith.

(b) The Co-Trustee and RMLC shall have no obligation to deliver a release to Berkshire under this Section 8.6-1 unless:

(i) Berkshire is not in default in the payment of any claim that has been made under the Berkshire Sublease Surety Bond;

(ii) Oglethorpe is not in default in the payment of any amounts owed to the Co-Trustee or RMLC under the Facility Sublease or the other Operative Documents;

(iii) in the case of Section 8.6-1(a)(i), Oglethorpe shall deliver a favorable opinion of counsel (which may be from in-house counsel to AMBAC) confirming that the AMBAC Sublease Surety Bond is valid and enforceable;

(iv) in the case of Section 8.6-1(a)(ii), Oglethorpe shall deliver a favorable opinion of counsel (such counsel and the form and substance of such opinion to be reasonably satisfactory to RMLC and the Owner Participant) covering, without limitation, (i) in the case of a Qualifying Sublease Surety Bond, the matters set forth in the opinion of counsel to AMBAC rendered on the Closing Date in connection with the AMBAC Sublease Surety Bond, in respect of such Qualifying Sublease Surety Bond or (ii) in the case of a Qualifying Letter of Credit, the opinion required under Section 8.7; and

(v) the Owner Participant shall be satisfied that the foregoing conditions have been satisfied by Oglethorpe or waived by the Owner Participant.

(c) Upon issuance of the full and final release to Berkshire pursuant to Section 8.6-1(a), the AMBAC Sublease Surety Bond (in the case of subsection (a)(i)) or any replacement Sublease Surety Bond or Qualifying Letter of Credit (in the case of subsection (a)(ii)) shall, as of such date, constitute a Qualifying Sublease Surety Bond or Qualifying Letter of Credit and shall thereafter be subject to replacement under Section 8.6 or 8.7, as applicable.

(e) The first sentence of Section 16.1 of the Participation Agreement is hereby amended by inserting the following parenthetical immediately after the words “written notice to RMLC, Oglethorpe and the Lender”:

“(a copy of which notice may be delivered by the Owner Participant to Berkshire in accordance with Section 1(c) of the Berkshire Sublease Surety Bond as the “Oglethorpe Payment Demand” referred to therein)”.

(f) The first sentence of Section 16.2 of the Participation Agreement is hereby amended by inserting the following parenthetical immediately after the words “written notice to RMLC, Oglethorpe and the Lender”:

“(a copy of which notice may be delivered by the Owner Participant to Berkshire in accordance with Section 1(c) of the Berkshire Head Lease Surety Bond as the “Oglethorpe Payment Demand” referred to therein)”.

Section 3. Reference to Participation Agreement

Except as herein amended, the Participation Agreement shall remain in full force and effect. As amended hereby, the Participation Agreement is hereby ratified, approved and confirmed in all respects. On and after the date hereof, each reference to the Participation Agreement made in the Participation Agreement or in any agreement, document or instrument executed and delivered in connection therewith by the parties hereto, shall mean and be a reference to the Participation Agreement, as amended hereby and by Amendment No. 1 to the Participation Agreement, dated as of June 1, 2003.

Section 4. Consents to Amendment Agreements. Each party to this Amendment hereby consents to the execution of this Amendment and the other Amendment Agreements by each other party hereto or thereto and to the performance by such other parties of their respective obligations hereunder and thereunder.

Section 5. Amendments and Waivers

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

Section 6. Successors and Assigns

This Amendment shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof. Except as expressly provided herein or in the other Operative Documents, no party hereto may assign its interests herein without the consent of the other parties hereto.

Section 7. Governing Law

This Amendment has been delivered in the State of New York and shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance.

Section 8. Severability

If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 9. Counterparts

This Amendment may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

Section 10. Limitation of Liability

(a) None of the Georgia Trust Company, the Co-Trustee, the Owner Trustee, the Non-Georgia Trust Company or the Owner Participant shall have any obligation or duty to Oglethorpe or to others with respect to the transactions contemplated hereby, except those obligations or duties expressly set forth in this Amendment and the other Operative Documents, and neither the Co-Trustee, the Georgia Trust Company, the Owner Trustee, the Non-Georgia Trust Company, nor the Owner Participant shall be liable for performance by any other party hereto of such other party's obligations or duties hereunder. Without limitation of the generality of the foregoing, under no circumstances whatsoever shall the Owner Participant be liable to Oglethorpe for any action or inaction on the part of the Co-Trustee or the Owner Trustee in connection with the transactions contemplated herein, whether or not such action or inaction is caused by willful misconduct or gross negligence of the Co-Trustee, unless such action or inaction is at the direction of the Owner Participant. In addition, each of the parties hereto acknowledges and agrees that the Co-Trustee has been appointed by the Owner Participant and Owner Trustee for the limited purpose of exercising those trust powers in the State of Georgia which may not be exercised by the Owner Trustee under Applicable Law, and that, except as otherwise required by Applicable Law, the Co-Trustee shall not be obligated to take any action hereunder unless expressly directed in writing by the Owner Trustee or the Owner Participant in accordance with the terms of the Trust Agreement.

(b) Each Trust Company had entered or is entering into this Amendment and the other Operative Documents to which it is a party solely as trustee under the Trust Agreement and not in its individual capacity, except as expressly provided herein or therein, and in no case whatsoever shall either Trust Company be personally liable for, or for any loss in respect of, any of the statements, representations, warranties, agreements or obligations of Facility Lessor hereunder or under any other Operative Document, as to all of which the other parties hereto agree to look solely to the Trust Estate; *provided, however*, that each Trust Company shall be liable hereunder for its own gross negligence or willful misconduct.

(Signature pages follow)

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed as of the day and year first written above.

OGLETHORPE POWER CORPORATION (AN ELECTRIC MEMBERSHIP CORPORATION)

By: /s/ Thomas A. Smith
Name: Thomas A. Smith
Title: President and Chief Executive Officer

(CORPORATE SEAL)

Attest: /s/ Patricia N. Nash
Name: Patricia N. Nash
Title: Secretary

ROCKY MOUNTAIN LEASING CORPORATION

By: /s/ Elizabeth B. Higgins
Name: Elizabeth B. Higgins
Title: President

Attest: /s/ Patricia N. Nash
Name: Patricia N. Nash
Title: Assistant Secretary

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, except as expressly provided herein, but solely as Owner Trustee under the Trust Agreement

By: /s/ Mark A. Forgetta
Name: Mark A. Forgetta
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, except as expressly provided herein, but solely as Co-Trustee under the Trust Agreement

By: /s/ Jack Ellerin
Name: Jack Ellerin
Title: Vice President

PHILIP MORRIS CAPITAL CORPORATION

By: /s/ Alex T. Russo

Name: Alex T. Russo
Title: Vice President

UTRECHT-AMERICA FINANCE CO.

By: /s/ Brett Delfino

Name: Brett Delfino
Title: Assistant Secretary

By: /s/ Margaret Schaubeck

Name: Margaret Schaubeck
Title: Assistant Treasurer

Form of Amendment to the Facility Lease

**This instrument, when recorded,
should be returned to:**

Christopher J. Moore
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001

Cross Reference:
Book 1408
Page 496
Floyd County, Georgia

AMENDMENT NO. 1 TO FACILITY LEASE AGREEMENT (P1)

THIS AMENDMENT NO. 1 TO FACILITY LEASE AGREEMENT (P1) (this "Amendment") is made as of May 22, 2009, by and between (i) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, successor in interest to SunTrust Bank, Atlanta, not in its individual capacity but solely as Co-Trustee under the Trust Agreement (herein, together with its successors and permitted assigns, called the "Co-Trustee"), and (ii) **ROCKY MOUNTAIN LEASING CORPORATION**, a corporation organized under the laws of the State of Delaware (herein, together with its successors and permitted assigned, called "RMLC"). Capitalized terms used herein and not otherwise defined being used herein as defined in the Facility Lease (as defined below) or in Appendix A thereto, as heretofore amended.

W I T N E S S E T H T H A T

WHEREAS, on December 30, 1996, the Co-Trustee and RMLC entered into the Facility Lease Agreement (P1), filed for record on August 7, 1997 in Book 1408 Page 496 of the Floyd County, Georgia land records (the "Facility Lease"), pursuant to which the Co-Trustee leased to RMLC the Undivided Interest (leased to the Co-Trustee by Oglethorpe pursuant to the Head Lease) upon the terms and conditions set forth therein;

WHEREAS, pursuant to Section 8.5 and Section 8.6 of the Participation Agreement, Oglethorpe has caused Berkshire Hathaway Assurance Corporation ("Berkshire") to issue and deliver (a) to the Head Lessee and the Owner Participant, a Qualifying Head Lease Surety Bond (the "Berkshire Head Lease Surety Bond"), and (b) to the Facility Sublessor and the Facility

Lessor, a Qualifying Sublease Surety Bond (the “Berkshire Sublease Surety Bond” and, together with the Berkshire Head Lease Surety Bond, the “Berkshire Surety Bonds”); and

WHEREAS, in connection with the issuance by Berkshire of the Berkshire Surety Bonds, each of the parties hereto wishes to amend the Facility Lease.

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

Section 1. Amendments to Appendix A (Definitions) to the Facility Lease

Appendix A to the Facility Lease is hereby amended as follows:

(i) by deleting the defined term “AMBAC Indemnity” and replacing the definition of “AMBAC”, in its entirety, with the following language:

“**AMBAC**” shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to “AMBAC Indemnity” shall be a reference to “AMBAC.”

(ii) by adding the following definitions thereto:

“**AMBAC Sublease Surety Bond**” shall mean the Amended and Restated Surety Bond (Facility Sublease-P1) No. SF0004BE issued on May 22, 2009 by AMBAC in favor of the Facility Sublessor and the Facility Lessor.

“**Berkshire**” shall mean Berkshire Hathaway Assurance Corporation.

“**Berkshire Surety Bond Date**” shall mean May 22, 2009.

“**Implementation Agreement**” shall mean the Surety Bond Implementation Agreement (P1) dated as of the Berkshire Surety Bond Date among Oglethorpe, RMLC, the Co-Trustee, the Owner Trustee, the Owner Participant, AMBAC and Berkshire.

Section 2. Other Amendments to the Facility Lease

(a) The second sentence of Section 3.4(c) of the Facility Lease is hereby amended by replacing the words “and AMBAC” with “, Berkshire and AMBAC”.

(b) The first sentence of Section 5.3 of the Facility Lease is hereby amended by replacing the words “and AMBAC” with “, Berkshire and AMBAC”.

(c) The first sentence of Section 10.1 of the Facility Lease is hereby amended by replacing the words “and AMBAC” with “, Berkshire and AMBAC”.

(d) (i) Section 10.3(f)(4) of the Facility Lease is hereby amended by replacing the words “or AMBAC” with “, Berkshire or AMBAC”, (ii) Section 10.3(f)(5) is hereby amended

by replacing the words “and AMBAC” with “, Berkshire and AMBAC” and (iii) the last paragraph of Section 10.3 of the Facility Lease is hereby amended by replacing the words “and AMBAC” with “, Berkshire and AMBAC”.

(e) Section 17.1(f) of the Facility Lease is hereby replaced, in its entirety, with the following language:

“if the Facility Lessor shall have sold the Facility Lessor’s Rocky Mountain Interest pursuant to paragraph (c) above, the Facility Lessor may, if it shall so elect, demand that the Facility Lessee pay to the Facility Lessor, and the Facility Lessee shall pay to the Facility Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due for any periods subsequent to the date of such sale), an amount equal to (A) any unpaid Basic Rent due before the date of such sale and, (B)(i) if that date is a Rent Payment Date, the Basic Rent due on that date (to the extent payable in arrears), or, (ii) if that date is not a Rent Payment Date or a Termination Date, the daily equivalent (for the period from the previous Termination Date to the date of such sale) of Basic Rent due on the next Rent Payment Date (as if all such Basic Rent is payable and accruing in arrears with respect to the 6-month period preceding such Rent Payment Date, whether Basic Rent on such Rent Payment Date is payable in advance or in arrears), plus (C) the amount, if any, by which the Termination Value computed as of the Termination Date next preceding the date of such sale (or, if such sale occurs on a Rent Payment Date or a Termination Date, the Termination Value computed as of such date (provided that if such Termination Date is also a Rent Payment Date on which Basic Rent is payable in advance, such Termination Value shall be reduced by the amount of Basic Rent shown as advance Basic Rent opposite such date on Schedule 1 to the Facility Lease)), exceeds the net proceeds of such sale, and, upon payment of such amount, this Facility Lease and the Facility Lessee’s obligation to pay Basic Rent for any periods subsequent to the date of such payment shall terminate; or”

(f) Section 17.1(g) of the Facility Lease is hereby replaced, in its entirety, with the following language:

(a) The Facility Lessor may foreclose on, or to the extent permitted by the terms of the Qualifying Equity Funding Agreement, draw upon, the Qualifying Equity Funding Agreement. Any proceeds of the Qualifying Equity Funding Agreement shall be applied (as determined by the Owner Participant to the extent consistent with Applicable Law) to unpaid Rent and shall reduce the Facility Lessee’s obligations to pay Rent to the extent any such proceeds are received by the Facility Lessor.

(b) To the extent permitted by Applicable Law (including Part 6 of Article 9 of the applicable Uniform Commercial Code), the Facility Sublease, the Facility Sublease Assignment Agreement, and the terms, as applicable, of any Qualifying Additional Security that secures the Facility Sublessee’s obligations under the Facility Sublease, any Qualifying Letter of Credit that enhances the Facility Sublessee’s obligations under the Facility Sublease, any Qualifying Sublease

Surety Bond, the AMBAC Sublease Surety Bond and the Berkshire Sublease Surety Bond (in each case, whether any of the foregoing such agreements, arrangements, security or letters of credit was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not), the Facility Lessor may draw upon, foreclose upon, or realize upon any Qualifying Additional Security that secures the Facility Sublessee’s obligations under the Facility Sublease, any Qualifying Letter of Credit that enhances the Facility Sublessee’s obligations under the Facility Sublease, any Qualifying Sublease Surety Bond, the AMBAC Sublease Surety Bond, or the Berkshire Sublease Surety Bond (in each case, whether any of the foregoing such agreements, arrangements, security or letters of credit was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not). Any proceeds of any Qualifying Additional Security that secures the Facility Sublessee’s obligations under the Facility Sublease, any Qualifying Letter of Credit that enhances the Facility Sublessee’s obligations under the Facility Sublease, any Qualifying Sublease Surety Bond, the AMBAC Sublease Surety Bond, or the Berkshire Sublease Surety Bond (in each case, whether any of the foregoing such agreements, arrangements, security or letters of credit was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not) that are received by the Facility Lessor, as assignee of the Facility Lessee, shall be applied to Sublease Rent as provided therein and in the Facility Sublease, and as required by Applicable Law (including Part 6 of Article 9 of the applicable Uniform Commercial Code).

(c) If, as a result of the application of the amounts described in clause (2) in accordance with the provisions of clause (2), any such amounts are received as payments of Sublease Rent under the Facility Sublease by the Facility Lessor as assignee of the Facility Sublessor, such amounts shall be applied as determined by the Owner Participant to the extent consistent with the requirements of the Facility Sublease Assignment Agreement and Applicable Law (including Part 6 of Article 9 of the applicable Uniform Commercial Code) to unpaid Rent and shall reduce the Facility Lessee’s obligations to pay Rent to the extent any such amounts are so received by the Facility Lessor.

(g) The Facility Lease is hereby amended by adding a new Section 25-12:

“Section 25-12. *Certain Agreements Regarding Operative Documents.* RMLC agrees and acknowledges that the agreements made by RMLC under Section 4(b) of the Implementation Agreement are hereby incorporated herein by reference.”

Section 3. Reference to Facility Lease

Except as herein amended, the Facility Lease shall remain in full force and effect. As amended hereby, the Facility Lease is hereby ratified, approved and confirmed in all respects. On and after the date hereof, each reference to the Facility Lease in any agreement, document or instrument executed and delivered pursuant to the Facility Lease by the parties hereto, shall mean and be a reference to the Facility Lease, as amended hereby and by the Amendment, Release and Consent Agreement, dated as of July 30, 1999.

Section 4. Amendments and Waivers

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

Section 5. Successors and Assigns

- (a) This Amendment shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof.
- (b) Except as expressly provided herein or in the other Operative Documents, neither party hereto may assign its interests or transfer its obligations herein without the consent of the other party hereto.

Section 6. Governing Law

This Amendment shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance except to the extent the law of the State of Georgia is mandatorily applicable.

Section 7. Severability

If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 8. Counterparts

This Amendment may be executed by the parties hereto in separate counterparts, each of which, subject to Section 24 of the Facility Lease, when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 9. Limitation of Liability

It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Co-Trustee is made and intended not as personal representations, undertakings and agreements by U.S. Bank National Association but is made and intended for the purpose of binding only the Co-Trustee, (c) nothing herein contained shall be construed as creating any liability on U.S. Bank National Association, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall U.S. Bank National Association be personally liable

for the payment of any indebtedness or expenses of the Co-Trustee or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Co-Trustee under this Amendment. In addition, each of the parties hereto acknowledges and agrees that the Co-Trustee has been appointed by the Owner Participant and Owner Trustee for the purpose of exercising those trust powers in the State of Georgia which may not be exercised by the Owner Trustee under Applicable Law, and that, except as otherwise required by Applicable Law, the Co-Trustee shall not be obligated to take any action hereunder unless expressly directed in writing by the Owner Trustee or the Owner Participant in accordance with the terms of the Trust Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed as of the day and year first written above.

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, but solely as Co-Trustee under the Trust Agreement

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]

ROCKY MOUNTAIN LEASING CORPORATION

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]

Acknowledged and consented to by:

UTRECHT-AMERICA FINANCE CO.

By: _____
Name:
Title:

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]

Form of Amendment to the Facility Sublease

**This instrument, when recorded,
should be returned to:**

Christopher J. Moore
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001

Cross Reference:
Book 1408
Page 661
Floyd County, Georgia

AMENDMENT NO. 1 TO FACILITY SUBLEASE AGREEMENT (P1)

THIS AMENDMENT NO. 1 TO FACILITY SUBLEASE AGREEMENT (P1) (this "Amendment") is made as of May 22, 2009, by and between (i) **OGLETHORPE POWER CORPORATION, (AN ELECTRIC MEMBERSHIP CORPORATION)**, an electric membership corporation organized under the laws of the State of Georgia (herein, together with its successors and permitted assigned, called "Oglethorpe"), and (ii) **ROCKY MOUNTAIN LEASING CORPORATION**, a corporation organized under the laws of the State of Delaware (herein, together with its successors and permitted assigned, called "RMLC"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Facility Sublease (as defined below) or in Appendix A thereto, as heretofore amended.

WITNESSETH THAT

WHEREAS, on December 30, 1996, Oglethorpe and RMLC entered into the Facility Sublease Agreement (P1), filed for record on August 7, 1997 in Book 1408 Page 661 of the Floyd County, Georgia land records (the "Facility Sublease") pursuant to which RMLC leased to Oglethorpe the Undivided Interest (leased to RMLC by the Co-Trustee pursuant to the Facility Lease) upon the terms and conditions set forth therein;

WHEREAS, pursuant to Section 8.6 of the Participation Agreement, Oglethorpe has caused Berkshire Hathaway Assurance Corporation ("Berkshire") to issue a surety bond in favor of the Facility Sublessor and the Facility Lessor, with respect to certain obligations of Oglethorpe under the Facility Sublease and the obligations of Ambac Assurance Corporation,

formerly known as AMBAC Indemnity Corporation, under the Surety Bond (Facility Sublease-P1) No. SF0004BE, as may be amended, or amended and restated, from time to time; and

WHEREAS, in connection with the issuance by Berkshire of such surety bond, each of the parties hereto wishes to amend the Facility Sublease to include an additional Sublease Event of Default.

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

Section 1. Amendments to Appendix A to the Facility Sublease

Appendix A to the Facility Sublease is hereby amended as follows:

(i) by deleting the defined term “AMBAC Indemnity” and replacing the definition of “AMBAC”, in its entirety, with the following language:

“**AMBAC**” shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to “AMBAC Indemnity” shall be a reference to “AMBAC.”

(ii) by adding the following definitions thereto:

“**AMBAC Sublease Surety Bond**” shall mean the Amended and Restated Surety Bond (Facility Sublease-P1) No. SF0004BE issued on May 22, 2009 by AMBAC in favor of the Facility Sublessor and the Facility Lessor.

“**Berkshire**” shall mean Berkshire Hathaway Assurance Corporation.

“**Berkshire Sublease Surety Bond**” shall mean the Surety Bond (Facility Sublease-P1) No. 98SRD102495 issued by Berkshire in favor of the Facility Sublessor and the Facility Lessor.

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

Section 2. Other Amendments to the Facility Sublease

(a) Section 16 of the Facility Sublease is hereby amended by adding a new clause (t) after the end thereof to read in its entirety as follows:

“(t) Berkshire has delivered to the Facility Lessor or the Facility Sublessor a notice of termination for the non-payment of premiums in substantially the same form as Attachment III to the Berkshire Sublease Surety Bond and Berkshire has not received payment in full of the unpaid portion of the premium

within 14 days from the date of such notice of termination; *provided, however*, that no Facility Sublease Event of Default shall occur under this paragraph (t) if the Owner Participant notifies the Facility Lessor, the Facility Sublessor and the Lender in writing that the receipt of such notice of termination shall not constitute a Facility Sublease Event of Default.”

(b) Section 17.1(e) of the Facility Sublease is hereby amended by inserting the following parenthetical immediately after the words “by written notice to the Facility Sublessee”:

“(a copy of which notice may be delivered by the Facility Lessor to Berkshire in accordance with Section 1(c)(i) of the Berkshire Sublease Surety Bond and shall constitute the “Oglethorpe Payment Demand” referred to therein)”.

(c) Section 17.1(f) of the Facility Sublease is hereby replaced, in its entirety, with the following language:

“if the Facility Sublessor shall have sold the Facility Sublessor’s Rocky Mountain Interest pursuant to paragraph (c) above, the Facility Sublessor may, if it shall so elect, demand that the Facility Sublessee pay to the Facility Sublessor, and the Facility Sublessee shall pay to the Facility Sublessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Sublease Basic Rent due for any periods subsequent to the date of such sale), an amount equal to (A) any unpaid Sublease Basic Rent due before the date of such sale and, (B)(i) if that date is a Rent Payment Date, the Sublease Basic Rent due on that date (to the extent payable in arrears), or, (ii) if that date is not a Rent Payment Date or a Termination Date, the daily equivalent (for the period from the previous Termination Date to the date of such sale) of Sublease Basic Rent due on the next Rent Payment Date (as if all such Sublease Basic Rent is payable and accruing in arrears with respect to the 6-month period preceding such Rent Payment Date, whether Sublease Basic Rent on such Rent Payment Date is payable in advance or in arrears), plus (C) the amount, if any, by which the Sublease Termination Value computed as of the Termination Date next preceding the date of such sale (or, if such sale occurs on a Rent Payment Date or a Termination Date, then Sublease Termination Value computed as of such date (provided that if such Termination Date is also a Rent Payment Date on which Sublease Basic Rent is payable in advance, such Sublease Termination Value shall be reduced by the amount of Sublease Basic Rent shown as advance Sublease Basic Rent opposite such date on Schedule 2 to the Facility Sublease)), exceeds the net proceeds of such sale, and, upon payment of such amount, this Facility Sublease and the Facility Sublessee’s obligation to pay Sublease Basic Rent for any periods subsequent to the date of such payment shall terminate; or”

(d) Section 17.1(g) of the Facility Sublease is hereby replaced, in its entirety, with the following language:

“the Facility Sublessor or upon an Event of Default, the Facility Lessor, as security assignee, may draw upon any Qualifying Sublease Surety Bond, the AMBAC Sublease Surety Bond and/or the Berkshire Sublease Surety Bond (in each

case, whether any of the foregoing was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not) and all proceeds thereof shall be applied (as determined by the Facility Sublessor, or upon an Event of Default, the Owner Participant) to the Facility Sublessee’s obligations to pay Sublease Rent and, to the extent any such proceeds received are so applied by the Facility Sublessor or the Facility Lessor, as security assignee, such proceeds shall reduce the Facility Sublessee’s obligations to pay such Sublease Rent (provided that Sublease Termination Value shall not be reduced below the unpaid balance of principal and stated accrued interest under the Loan Agreement).”

(e) The Facility Sublease is hereby amended by adding a new Section 25-11:

“Section 25-11. *Certain Agreements Regarding Operative Documents.* Oglethorpe agrees and acknowledges that the agreements made by Oglethorpe under Section 4(b) of the Implementation Agreement (other than its agreements with respect to the Head Lease or any Qualifying Head Lease Surety Bond or Qualifying Letter of Credit issued in replacement therefor) are hereby incorporated herein by reference.”

Section 3. Reference to Facility Sublease

Except as herein amended, the Facility Sublease shall remain in full force and effect. As amended hereby, the Facility Sublease is hereby ratified, approved and confirmed in all respects. On and after the date hereof, each reference to the Facility Sublease made in the Facility Sublease or any agreement, document or instrument executed and delivered pursuant to the Facility Sublease by the parties hereto, shall mean and be a reference to the Facility Sublease as amended hereby and by the Amendment, Release and Consent Agreement, dated as of July 30, 1999.

Section 4. Governing Law

This Amendment shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance except to the extent the law of the State of Georgia is mandatorily applicable.

Section 5. Severability

If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 6. Successors and Assigns

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

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

Section 7. Amendments and Waivers

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

Section 8. Counterparts

This Amendment may be executed by the parties hereto in separate counterparts, each of which, subject to Section 24 of the Facility Sublease, when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(Signature pages follow)

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed as of the day and year first written above.

ROCKY MOUNTAIN LEASING CORPORATION

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]



**OGLETHORPE POWER CORPORATION (AN
ELECTRIC MEMBERSHIP CORPORATION)**

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]

Acknowledged and consented to by:

UTRECHT-AMERICA FINANCE CO.

By: _____
Name:
Title:

By: _____
Name:
Title:

Form of Amendment to the Facility Sublease Assignment Agreement

**This instrument, when recorded,
should be returned to:**

Christopher J. Moore
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001

Cross Reference:
Book 1409
Page 545
Floyd County, Georgia

**AMENDMENT NO. 1 TO DEED TO SECURE DEBT,
ASSIGNMENT OF SURETY BOND AND SECURITY AGREEMENT (P1)**

THIS AMENDMENT NO. 1 TO DEED TO SECURE DEBT, ASSIGNMENT OF SURETY BOND AND SECURITY AGREEMENT (P1) (this "**Amendment**") is made as of May 22, 2009, by and between (i) **ROCKY MOUNTAIN LEASING CORPORATION**, a corporation organized under the laws of the State of Delaware (herein, together with its successors and permitted assigned, called "**RMLC**"), and (ii) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, successor in interest to SunTrust Bank, Atlanta, not in its individual capacity but solely as Co-Trustee under the Trust Agreement (herein, together with its successors and permitted assigns, called the "**Co-Trustee**" or the "**Secured Party**"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Facility Sublease Assignment Agreement (as defined below) or in Appendix A thereto, as heretofore amended.

W I T N E S S E T H T H A T

WHEREAS, in connection with the transactions contemplated by the Participation Agreement, RMLC secured the payment, performance and observance of certain of its obligations under the Participation Agreement and the other Operative Documents, granting a lien, security interest and security title in favor of the Secured Party in and to the Sublease Collateral pursuant to the Deed to Secure Debt, Assignment of Surety Bond and Security Agreement (P1), dated as of December 30, 1996 and filed for record on August 7, 1997 in Book 1409 Page 545 of the Floyd County, Georgia land records (the "**Facility Sublease Assignment Agreement**");

WHEREAS, pursuant to Section 8.6 of the Participation Agreement, Oglethorpe has caused Berkshire Hathaway Assurance Corporation (“Berkshire”) to issue and deliver to the Facility Sublessor and the Facility Lessor, a Qualifying Sublease Surety Bond (the “Berkshire Sublease Surety Bond”) without releasing Surety Bond (Facility Sublease-P1) No. SF0004BE, issued on December 31, 1996 by Ambac Assurance Corporation, formerly known as AMBAC Indemnity Corporation; and

WHEREAS, in connection with the issuance by Berkshire of the Berkshire Sublease Surety Bond, each of the parties hereto wishes to amend the Facility Sublease Assignment Agreement in accordance with the terms set forth herein.

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

Section 1. Amendments to Appendix A (Definitions) to the Facility Sublease Assignment Agreement

Appendix A to the Facility Sublease Assignment Agreement is hereby amended as follows:

(i) by deleting the defined term “AMBAC Indemnity” and replacing the definition of “AMBAC”, in its entirety, with the following language:

“**AMBAC**” shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to “AMBAC Indemnity” shall be a reference to “AMBAC.”

(ii) by adding the following definitions thereto:

“**AMBAC Sublease Surety Bond**” shall mean the Amended and Restated Surety Bond (Facility Sublease-P1) No. SF0004BE issued on May 22, 2009 by AMBAC in favor of the Facility Sublessor and the Facility Lessor.

“**Berkshire**” shall mean Berkshire Hathaway Assurance Corporation.

Section 2. Other Amendments to the Facility Sublease Assignment Agreement

(a) The numbered paragraph 3 of the Granting Clause of the Facility Sublease Assignment Agreement is hereby amended by inserting the words “the AMBAC Sublease Surety Bond,” prior to the words “the Qualifying Sublease Surety Bond”.

(b) Section 4.1(A)(i) of the Facility Sublease Assignment Agreement is hereby amended by inserting the words “the AMBAC Sublease Surety Bond,” prior to the words “the Qualifying Sublease Surety Bond”.

(c) Clause (b) of Section 6 of the Facility Sublease Assignment Agreement is hereby amended by inserting the words “the AMBAC Sublease Surety Bond,” prior to the words “the Qualifying Sublease Surety Bond”.

(d) Clause (c) of Section 7 of the Facility Sublease Assignment Agreement is hereby amended and replaced in its entirety with the following:

“(c) terminate, amend or modify, or waive compliance with any term, covenant, agreement or condition of the Sublease Documents, the AMBAC Sublease Surety Bond, the Berkshire Sublease Surety Bond (or any Qualifying Sublease Surety Bond or Qualifying Letter of Credit issued in replacement of the Berkshire Sublease Surety Bond, whether such surety bond or letter of credit was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not) or Qualifying Additional Security or”.

Section 3. Reference to Facility Sublease Assignment Agreement

Except as herein amended, the Facility Sublease Assignment Agreement shall remain in full force and effect. As amended hereby, the Facility Sublease Assignment Agreement is hereby ratified, approved and confirmed in all respects. On and after the date hereof, each reference to the Facility Sublease Assignment Agreement made in the Facility Sublease Assignment Agreement or in any agreement, document or instrument executed and delivered by the parties hereto in connection therewith, shall mean and be a reference to the Facility Sublease Assignment Agreement, as amended hereby and by the Amendment, Release and Consent Agreement, dated as of July 30, 1999.

Section 4. Amendments and Waivers

No term, covenant, agreement or condition of this Amendment may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by the party against whom enforcement of such change is sought.

Section 5. Successors and Assigns

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

(b) Except as expressly provided herein or in any other Operative Documents, RMLC may not assign its interests herein without the consent of the Secured Party. Except as expressly provided in the Operative Documents, the Secured Party may not assign its interests herein during the Facility Sublease Term without the consent of RMLC.

Section 6. Governing Law

This Amendment shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance except to the extent the law of the State of Georgia is mandatorily applicable.

Section 7. Severability

If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 8. Counterparts

This Amendment may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

Section 9. Limitation of Liability

It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Co-Trustee is made and intended not as personal representations, undertakings and agreements by U.S. Bank National Association but is made and intended for the purpose of binding only the Co-Trustee, (c) nothing herein contained shall be construed as creating any liability on U.S. Bank National Association, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall U.S. Bank National Association be personally liable for the payment of any indebtedness or expenses of the Co-Trustee or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Co-Trustee under this Amendment. In addition, each of the parties hereto acknowledges and agrees that the Co-Trustee has been appointed by the Owner Participant and Owner Trustee for the purpose of exercising those trust powers in the State of Georgia which may not be exercised by the Owner Trustee under Applicable Law, and that, except as otherwise required by Applicable Law, the Co-Trustee shall not be obligated to take any action hereunder unless expressly directed in writing by the Owner Trustee or the Owner Participant in accordance with the terms of the Trust Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed as of the day and year first written above.

ROCKY MOUNTAIN LEASING CORPORATION

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, but solely as Co-Trustee under the Trust Agreement

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]

Acknowledged and consented to by:

UTRECHT-AMERICA FINANCE CO.

By: _____
Name:
Title:

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]

Form of Amendment to the Head Lease

**This instrument, when recorded,
should be returned to:**

Christopher J. Moore
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001

Cross Reference:
Book 1408
Page 369
Floyd County, Georgia

AMENDMENT NO. 1 TO HEAD LEASE AGREEMENT (P1)

THIS AMENDMENT NO. 1 TO HEAD LEASE AGREEMENT (P1) (this "Amendment") is made as of May 22, 2009, by and between (i) **OGLETHORPE POWER CORPORATION, (AN ELECTRIC MEMBERSHIP CORPORATION)**, an electric membership corporation organized under the laws of the State of Georgia (herein, together with its successors and permitted assigned, called "Oglethorpe"), and (ii) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, successor in interest to SunTrust Bank, Atlanta, not in its individual capacity but solely as Co-Trustee under the Trust Agreement (herein, together with its successors and permitted assigns, called the "Co-Trustee"). Capitalized terms used herein and not otherwise defined being used herein as defined in the Head Lease (as defined below) or in Appendix A thereto, as heretofore amended.

WITNESSETH THAT

WHEREAS, on December 30, 1996, Oglethorpe and the Co-Trustee entered into the Rocky Mountain Head Lease Agreement (P1), filed for record August 7, 1997 in Book 1408 Page 369 of the Floyd County, Georgia land records (the "Head Lease") pursuant to which Oglethorpe leased to the Co-Trustee the Undivided Interest upon the terms and conditions set forth therein;

WHEREAS, pursuant to Section 8.5 of the Participation Agreement, Oglethorpe has caused Berkshire Hathaway Assurance Corporation ("Berkshire") to issue a surety bond in favor of the Head Lessee and the Owner Participant with respect to certain of the Head Lessor's

obligations under the Head Lease and under the Participation Agreement and the obligations of Ambac Assurance Corporation, formerly known as AMBAC Indemnity Corporation, under the Surety Bond (Head Lease-P1) No. SF0003BE, as may be amended, or amended and restated, from time to time; and

WHEREAS, in connection with the issuance by Berkshire of such surety bond, each of the parties hereto wishes to amend the Head Lease to include an additional Head Lessor Event of Default.

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

Section 1. Amendments to Appendix A (Definitions) to Head Lease

Appendix A to the Head Lease is hereby amended as follows:

(i) by deleting the defined term “AMBAC Indemnity” and replacing the definition of “AMBAC”, in its entirety, with the following language:

“**AMBAC**” shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to “AMBAC Indemnity” shall be a reference to “AMBAC.”

(ii) by adding the following definitions thereto:

“**AMBAC Head Lease Surety Bond**” shall mean the Amended and Restated Surety Bond (Head Lease-P1) No. SF0003BE issued on May 22, 2009 by AMBAC in favor of the Head Lessee and the Owner Participant.

“**Berkshire**” shall mean Berkshire Hathaway Assurance Corporation.

“**Berkshire Head Lease Surety Bond**” shall mean the Surety Bond (Head Lease-P1) No. 98SRD102494 issued by Berkshire in favor of the Head Lessee and the Owner Participant.

“**Implementation Agreement**” shall mean the Surety Bond Implementation Agreement (P1), dated as of the date hereof, among Oglethorpe, RMLC, the Co-Trustee, the Owner Trustee, the Owner Participant, AMBAC and Berkshire.

Section 2. Other Amendments to Head Lease

(a) Section 11.1 of the Head Lease is hereby amended by adding a new clause (m) after the end thereof to read in its entirety as follows:

“(m) Berkshire has delivered to Head Lessee or the Owner Participant a notice of termination for the non-payment of premiums in substantially the same form as Attachment III to the Berkshire Head Lease Surety Bond and Berkshire has not

received payment in full of the unpaid portion of the premium within 14 days from the date of such notice of termination; *provided, however*, that no Head Lessor Event of Default shall occur under this paragraph (m) if the Owner Participant notifies the Head Lessee and the Lender in writing that the receipt of such notice of termination shall not constitute a Head Lessor Event of Default.”

(b) The first sentence of Section 11.2(a) of the Head Lease is hereby amended by inserting the following parenthetical immediately after the words “Head Lessee may demand by written notice to Head Lessor” in the first line therein:

“(a copy of which notice may be delivered by the Head Lessee to Berkshire in accordance with Section 1(c)(i) of the Berkshire Head Lease Surety Bond as the “Oglethorpe Payment Demand” referred to therein)”.

(c) Section 11.2(a) of the Head Lease is hereby further amended by inserting the words “or the AMBAC Head Lease Surety Bond” immediately after the words “Qualifying Head Lease Surety Bond” in clause (ii) therein.

(d) The Head Lease is hereby amended by adding a new Section 17.14:

“Section 17.14. *Certain Agreements Regarding Operative Documents.* Oglethorpe agrees and acknowledges that the agreements made by Oglethorpe under Section 4(b) of the Implementation Agreement relating to the Head Lease or any Qualifying Head Lease Surety Bond or Qualifying Letter of Credit or other credit enhancement issued in replacement therefor are hereby incorporated herein by reference.”

Section 3. Reference to Head Lease

Except as herein amended, the Head Lease shall remain in full force and effect. As amended hereby, the Head Lease is hereby ratified, approved and confirmed in all respects. On and after the date hereof, each reference to the Head Lease made in the Head Lease or any agreement, document or instrument executed and delivered pursuant to the Head Lease by the parties hereto, shall mean and be a reference to the Head Lease as amended hereby and by the Amendment, Release and Consent Agreement, dated as of July 30, 1999.

Section 4. Amendments and Waivers

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

Section 5. Successors and Assigns

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

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

Section 6. Governing Law

This Amendment shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance except to the extent the law of the State of Georgia is mandatorily applicable.

Section 7. Severability

If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 8. Counterparts

This Amendment may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

Section 9. Limitation of Liability

It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Co-Trustee is made and intended not as personal representations, undertakings and agreements by U.S. Bank National Association but is made and intended for the purpose of binding only the Co-Trustee, (c) nothing herein contained shall be construed as creating any liability on U.S. Bank National Association, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall U.S. Bank National Association be personally liable for the payment of any indebtedness or expenses of the Co-Trustee or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Co-Trustee under this Amendment. In addition, each of the parties hereto acknowledges and agrees that the Co-Trustee has been appointed by the Owner Participant and Owner Trustee for the purpose of exercising those trust powers in the State of Georgia which may not be exercised by the Owner Trustee under applicable law, and that, except as otherwise required by applicable law, the Co-Trustee shall not be obligated to take any action hereunder unless expressly directed in writing by the Owner Trustee or the Owner Participant in accordance with the terms of the Trust Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed as of the day and year first written above.

**OGLETHORPE POWER CORPORATION (AN
ELECTRIC MEMBERSHIP CORPORATION)**

By: _____
Name:
Title:

(CORPORATE SEAL)

Attest: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]



U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, but solely as Co-Trustee under the Trust Agreement

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]

Acknowledged and consented to by:

UTRECHT-AMERICA FINANCE CO.

By: _____
Name:
Title:

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]

Form of Amendment to the Loan and Security Agreement

AMENDMENT NO. 1 TO LOAN AND SECURITY AGREEMENT (P1)

THIS AMENDMENT NO. 1 TO LOAN AND SECURITY AGREEMENT (P1) (this "Amendment") is made as of May 22, 2009, by and among (i) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, successor in interest to Fleet National Bank, not in its individual capacity, but solely as the Owner Trustee (the "Owner Trustee") under the Trust Agreement, (ii) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, successor in interest to SunTrust Bank, Atlanta, not in its individual capacity, but solely as Co-Trustee under the Trust Agreement (the "Co-Trustee") and, collectively with the Owner Trustee, the "Trustees"), and (iii) **UTRECHT-AMERICA FINANCE CO.**, a corporation organized under the laws of the State of Delaware, as the lender (together with its successors and permitted assigns, the "Lender"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Participation Agreement (P1), dated as of December 30, 1996, by and among Oglethorpe Power Corporation (An Electric Membership Corporation), Rocky Mountain Leasing Corporation, Philip Morris Capital Corporation, a corporation organized under the laws of the State of Delaware (the "Owner Participant"), the Owner Trustee, the Co-Trustee and the Lender, or in Appendix A thereto, as amended by Amendment No. 1 to the Participation Agreement, dated as of June 1, 2003, and as further amended by Amendment No. 2 to the Participation Agreement, dated as of the date hereof (the "Participation Agreement").

W I T N E S S E T H A T

WHEREAS, the Owner Trustee, the Co-Trustee and the Lender are parties to that certain Loan and Security Agreement (P1), dated as of December 30, 1996 (the "Loan and Security Agreement"); and

WHEREAS, pursuant to Section 6.01 of the Loan and Security Agreement, the Owner Trustee, the Co-Trustee and the Lender desire to amend the Loan and Security Agreement, as more fully described herein.

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

Section 1. Amendments to Appendix A (Definitions) to Loan and Security Agreement

Appendix A to the Loan and Security Agreement is hereby amended as follows:

(i) by deleting the defined term “AMBAC Indemnity” and replacing the definition of “AMBAC”, in its entirety, with the following language:

“**AMBAC**” shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to “AMBAC Indemnity” shall be a reference to “AMBAC.”

(ii) by replacing the definition of “Excepted Payments”, in its entirety, with the following language:

“**Excepted Payments**” shall mean and include (i)(A) any indemnity (whether or not constituting Supplemental Rent or Sublease Supplemental Rent and whether or not an Event of Default exists) payable to either Trust Company, either Trustee or the Owner Participant or to their respective Indemnitees or RMLC Indemnitees and successors and permitted assigns (other than the Lender) pursuant to Section 2.3, 11.1, 11.2, 12.1 or 12.2 of the Participation Agreement, Section 7.01 of the Trust Agreement, and any payments under the Tax Indemnity Agreement or (B) any amount payable by the Facility Lessee or the Facility Sublessee to either Trustee or the Owner Participant to reimburse any such Person for its costs and expenses in exercising its rights under the Operative Documents, (ii)(A) insurance proceeds, if any, payable to either Trustee or the Owner Participant under insurance separately maintained by either Trustee or the Owner Participant with respect to the Facility as permitted by Section 11 of the Facility Lease or (B) proceeds of personal injury or property damage liability insurance maintained under any Operative Document for the benefit of either Trustee or the Owner Participant, (iii) any amount payable to the Owner Participant as the purchase price of the Owner Participant’s right and interest in the Beneficial Interest, (iv) the Equity Portion of Termination Value, the Equity Portion of Basic Rent, the Equity Portion of the Sublease Basic Rent and the Equity Portion of Purchase Option Price payable (A) by the Facility Lessee under the Facility Lease to the extent of amounts payable under the Qualifying Equity Funding Agreement (in each case, whether the foregoing agreement was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not) or through assignment of the Surety Bonds or any Qualifying Additional Security and/or (B) by the Head Lessor under the Head Lease or the Facility Sublessee under the Facility Sublease, in each case, to the extent of amounts payable under the Surety Bonds and any Qualifying Additional Security (in each case, whether any of the foregoing such agreements, arrangements, security or letters of credit was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not), (v) any payments or distributions to either Trustee or the Owner Participant attributable to any Qualifying Equity Funding Agreement, Qualifying Additional Security, the AMBAC Head Lease Surety Bond, the AMBAC Sublease Surety Bond, the AMBAC Assignment Agreement, the Berkshire Head Lease Surety Bond, the Berkshire

Sublease Surety Bond, the Berkshire Assignment Agreement, any Qualifying Surety Bond or any Qualifying Letter of Credit (in each case, whether any of the foregoing agreements, arrangements, security or letters of credit was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not), (vi) any amounts payable to the Owner Participant upon exercise by it of the Special Equity Facility Lease Remedy pursuant to Section 16.1 of the Participation Agreement or the Special Equity Head Lease Remedy pursuant to Section 16.2 of the Participation Agreement and (vii) any payments in respect of interest, or any payments made on an After-Tax Basis, to the extent attributable to payments referred to in clause (i) through (vi) above that constitute Excepted Payments.

(iii) by (A) adding the phrase “the Consent, dated as of May 22, 2009, made by the Lender, the Implementation Agreement, the Berkshire Head Lease Surety Bond, the Berkshire Sublease Surety Bond, the Berkshire Assignment Agreement and the AMBAC Guaranty” after the phrase “the Subordinated Deed to Secure Debt and Security Agreement” in the fourteenth line of the definition of “Operative Documents”; and (B) by adding at the end of such definition of “Operative Documents” the following sentence:

“The Agreement Regarding Surety Bonds and the Berkshire Guaranty Agreement shall constitute Operative Documents if and only if Berkshire or a designee of Berkshire shall, by subrogation, assignment, purchase or otherwise, acquire the Owner Participant’s Beneficial Interest or the Berkshire Subrogation Interest or the rights of the Owner Participant or the Head Lessee under the Operative Documents and, at the time of such acquisition or at the time that Berkshire or any designee of Berkshire shall be committed to make such acquisition or at any time thereafter, either (A) an Event of Default or a Head Lessor Event of Default shall exist or (B) Berkshire shall have received a demand for payment under either of the Berkshire Surety Bonds.”

(iv) by adding the following definitions thereto:

“**Agreement Regarding Surety Bonds**” shall mean the Agreement Regarding Surety Bonds (P1), dated as of the Berkshire Surety Bond Date, among Oglethorpe, RMLC and Berkshire.

“**AMBAC Head Lease Surety Bond**” shall mean the Amended and Restated Surety Bond (Head Lease-P1) No. SF0003BE issued on May 22, 2009 by AMBAC in favor of the Head Lessee and the Owner Participant.

“**AMBAC Sublease Surety Bond**” shall mean the Amended and Restated Surety Bond (Facility Sublease-P1) No. SF0004BE issued on May 22, 2009 by AMBAC in favor of the Facility Sublessor and the Facility Lessor.

“**Berkshire**” shall mean Berkshire Hathaway Assurance Corporation.

“Berkshire Assignment Agreement” shall mean the Berkshire Agreement for Assignment on Default (P1), dated as of the Berkshire Surety Bond Date, among the Owner Participant, the Co-Trustee, the Owner Trustee and Berkshire.

“Berkshire Guaranty Agreement” shall mean the Berkshire Guaranty Agreement (P1), dated as of the Berkshire Surety Bond Date, between Oglethorpe and Berkshire.

“Berkshire Head Lease Surety Bond” shall mean the Surety Bond (Head Lease-P1) No. 98SRD102494 issued by Berkshire in favor of the Head Lessee and the Owner Participant.

“Berkshire Sublease Surety Bond” shall mean the Surety Bond (Facility Sublease-P1) No. 98SRD102495 issued by Berkshire in favor of the Facility Sublessor and the Facility Lessor.

“Berkshire Subrogation Interest” shall mean Berkshire’s right to be subrogated or to an assignment, as provided in paragraphs 6 and 11(f) of each of the Berkshire Surety Bonds, to the right, title and interest of the Head Lessee, the Facility Lessor, the Ground Lessee, the Ground Sublessor and the Owner Participant (as the case may be) in, to and under the Head Lease, the Facility Lease, the Ground Lease, the Ground Sublease, the Rocky Mountain Agreements Assignment and the Rocky Mountain Agreements Re-Assignment or relating to or arising under the Operative Documents.

“Berkshire Surety Bonds” shall mean, collectively, the Berkshire Head Lease Surety Bond and the Berkshire Sublease Surety Bond.

“Berkshire Surety Bond Date” shall mean May 22, 2009.

“Implementation Agreement” shall mean the Surety Bond Implementation Agreement (P1), dated as of the Berkshire Surety Bond Date, among Oglethorpe, RMLC, the Co-Trustee, the Owner Trustee, the Owner Participant, AMBAC and Berkshire.

“Surety Bonds” shall mean, collectively, the AMBAC Head Lease Surety Bond, the AMBAC Sublease Surety Bond and the Berkshire Surety Bonds (in each case, whether any of the foregoing surety bonds was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not).

Section 2. Amendments to Loan Agreement

(a) Section 5.05(a) of the Loan and Security Agreement is hereby amended by replacing clause (vi), in its entirety, with the following language:

“(A) make the demand for the payment of Termination Value referred to in Section 11.2(a) of the Head Lease, (B) make the demand referred to in Section 17.1(e)(ii) of the Facility Lease and exercise the remedy and apply the proceeds as set forth in Section 17.1(g) of the Facility Lease, (C) take the actions referred to in

Sections 4.1(A)(i) and (ii) and Section 4.1(B) of the Facility Sublease Assignment Agreement and (D) make the demand referred to in Section 17.1(e)(ii) of the Facility Sublease and exercise the remedy and apply the proceeds as set forth in Section 17.1(g) of the Facility Sublease;”

(b) Section 5.05(c) of the Loan and Security Agreement is hereby replaced, in its entirety, with the following language:

“at all times each of the Trustees, each of the Trust Companies and the Owner Participant shall have the right, to the exclusion of the Lender, to (i) exercise the rights set forth in the Operative Documents necessary to recover Excepted Payments, including the right to demand, collect, sue for or otherwise receive and enforce payment in respect of any Excepted Payments due and payable to it and give and receive notices, waivers, approvals or consents under the AMBAC Head Lease Surety Bond, AMBAC Sublease Surety Bond, AMBAC Assignment Agreement, Berkshire Head Lease Surety Bond, Berkshire Sublease Surety Bond, Berkshire Assignment Agreement, the AIG Equity Funding Agreement, any Qualifying Additional Security, any Qualifying Equity Funding Agreement, any Qualifying Surety Bonds or any Qualifying Letter of Credit (in each case, whether any of the foregoing was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not) and to grant consents and waive rights relating thereto (including, to the extent, if any, such parties have such rights under Sections 8.5 through 8.8 of the Participation Agreement, Section 7(c) of the Facility Sublease Assignment Agreement (other than with respect to the Sublease Documents) and with respect to the ratings set forth in the definitions of Qualifying Surety Bond Provider and Qualifying Letter of Credit Bank) and otherwise relating to Excepted Payments, (ii) maintain separate insurance with respect to the Undivided Interest and the Ground Interest pursuant to Section 11 of each of the Facility Lease and the Facility Sublease and (iii) perform under Section 21 of each of the Facility Lease and the Facility Sublease.”

Section 3. Effect of Amendment

Except as herein amended, the Loan and Security Agreement shall remain in full force and effect. As amended hereby, the Loan and Security Agreement is hereby ratified, approved and confirmed in all respects. Upon the execution of this Amendment, the Loan and Security Agreement will be modified in accordance with the terms herewith and the Amendment will form a part of the Loan and Security Agreement for all purposes.

Section 4. Amendments and Waivers

Any provision of this Amendment may be amended or waived if, but only if, such Amendment is in writing and is signed by each Trustee and the Lender.

Section 5. Severability

The unenforceability or invalidity of any provision hereof shall not render any other provision or provisions herein contained unenforceable or invalid. Any provision found to be unenforceable shall be severable from this Amendment.

Section 6. Successors and Assigns

All covenants and agreements contained herein will be binding upon, and inure to the benefit of, each of the parties hereto and the successors and assigns of each, all as provided in the Loan and Security Agreement as amended hereby.

Section 7. Governing Law

THIS AMENDMENT SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 8. Counterparts

This Amendment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute but one and the same instrument. This Amendment shall be effective on and as of the date first written above.

Section 9. Liability of the Trustees Limited

All and each of the representations, warranties, undertakings and agreements made in the Loan and Security Agreement, as amended hereby, on the part of each Trustee are made and intended not as personal representations, warranties, undertakings and agreements by or for the purpose or with the intention of binding such Trustee personally, but are made and intended for the purpose of binding only the Trust, with all recourse being limited to the Collateral. This Amendment is executed and delivered by each Trustee solely in the exercise of the powers expressly conferred upon it under the Trust Agreement. Except as otherwise specifically provided in the Participation Agreement or any other Operative Document, no personal liability or responsibility is assumed by either Trustee hereunder and no such liability or responsibility shall at any time be imposed on either Trustee on account of any representation, warranty, undertaking or agreement in the Loan and Security Agreement, as amended hereby, of either Trustee either express or implied, all such personal liability, if any, being expressly waived by the Lender. Under no circumstances shall U.S. Bank National Association be liable in its individual capacity for any representation, warranty, undertaking or agreement made by the Trustees in the Loan and Security Agreement, as amended hereby.

(Signature pages follow)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective officers thereunto duly authorized as of the date first written above.

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, but solely as Owner Trustee

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, but solely as Co-Trustee

By: _____
Name:
Title:

UTRECHT-AMERICA FINANCE CO.

By: _____
Name:
Title:

By: _____
Name:
Title:

Form of Amendment to the Subordinated Deed to Secure Debt and Security Agreement

**This instrument, when recorded,
should be returned to:**

Christopher J. Moore
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001

Cross Reference:
Book 1409
Page 386
Floyd County, Georgia

**AMENDMENT NO. 1 TO SUBORDINATED DEED
TO SECURE DEBT AND SECURITY AGREEMENT (P1)**

THIS AMENDMENT NO. 1 TO SUBORDINATED DEED TO SECURE DEBT AND SECURITY AGREEMENT (P1) (this “Amendment”) is made as of May 22, 2009, by and among (i) **OGLETHORPE POWER CORPORATION, (AN ELECTRIC MEMBERSHIP CORPORATION)**, an electric membership corporation organized under the laws of the State of Georgia (herein, together with its successors and permitted assigns, called “Oglethorpe”), (ii) **AMBAC ASSURANCE CORPORATION** (formerly known as AMBAC Indemnity Corporation), a Wisconsin-domiciled stock insurance corporation (together with its successors and assigns, called “AMBAC”) and (iii) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, as successor in interest to Suntrust Bank, Atlanta, not in its individual capacity but solely as Co-Trustee under the Trust Agreement (herein, together with its successors and permitted assigns, called the “Co-Trustee” or the “Facility Lessor”, and together with AMBAC, the “Beneficiaries”). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Subordinated Deed (as defined below) or in Appendix A thereto, as heretofore amended.

W I T N E S S E T H A T

WHEREAS, in connection with the transactions contemplated by the Participation Agreement, Oglethorpe secured the payment, performance and observance of certain of its obligations under the Operative Documents and the AMBAC Guaranty to AMBAC and the Facility Lessor under the Subordinated Deed to Secure Debt and Security Agreement (P1), dated

as of December 30, 1996 and filed for record on August 7, 1997 in Book 1409 Page 386 of the Floyd County, Georgia land records (the "Subordinated Deed");

WHEREAS, the Secured Obligations are obligations such as reimbursement and indemnification obligations and not indebtedness evidenced by a note or for the payment of borrowed money and are therefore exempt from the payment of intangible recording tax under the laws of the State of Georgia;

WHEREAS, pursuant to Section 8.5 and Section 8.6 of the Participation Agreement, Oglethorpe has caused Berkshire to deliver (a) to the Head Lessee and the Owner Participant, the Surety Bond (Head Lease-P1) No. 98SRD102494 issued by Berkshire (as amended from time to time, the "Berkshire Head Lease Surety Bond"), and (b) to the Facility Sublessor and the Facility Lessor, Surety Bond (Facility Sublease-P1) No. 98SRD102495 issued by Berkshire (as amended from time to time, the "Berkshire Sublease Surety Bond" and, together with the Berkshire Head Lease Surety Bond, the "Berkshire Surety Bonds");

WHEREAS, pursuant to the Berkshire Guaranty Agreement, dated as of May 22, 2009, Oglethorpe has agreed to reimburse Berkshire for any payments made under the Berkshire Surety Bonds; and

WHEREAS, in connection with the issuance by Berkshire of the Berkshire Surety Bonds, Oglethorpe has agreed to grant Berkshire a security interest in the same collateral as the Beneficiaries, and Oglethorpe and the Beneficiaries have agreed to amend the Subordinated Deed to make Berkshire a secured party thereunder.

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

Section 1. Amendments to Appendix A (Definitions) to the Subordinated Deed

Appendix A to the Subordinated Deed is hereby amended as follows:

(i) by deleting the defined term "AMBAC Indemnity" and replacing the definition of "AMBAC", in its entirety, with the following language:

"**AMBAC**" shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to "AMBAC Indemnity" shall be a reference to "AMBAC."

(ii) by adding the following definitions thereto:

"**Berkshire**" shall mean Berkshire Hathaway Assurance Corporation.

"**Berkshire Guaranty Agreement**" shall mean the Berkshire Guaranty Agreement (P1), dated as of May 22, 2009, by and between Oglethorpe and Berkshire.

“Berkshire Head Lease Surety Bond” shall mean the Surety Bond (Head Lease-P1) No. 98SRD102494 issued by Berkshire in favor of the Head Lessee and the Owner Participant.

“Berkshire Sublease Surety Bond” shall mean the Surety Bond (Facility Sublease-P1) No. 98SRD102495 issued by Berkshire in favor of the Facility Sublessor and the Facility Lessor.

“Berkshire Surety Bonds” shall mean, collectively, the Berkshire Head Lease Surety Bond and the Berkshire Sublease Surety Bond.

Section 2. Other Amendments to the Subordinated Deed

(a) The seventh “WHEREAS” clause of the Subordinated Deed is hereby amended by replacing the words “Qualifying Surety Bonds” with “Surety Bonds (as defined in the AMBAC Guaranty”.

(b) The Subordinated Deed is hereby amended by adding the following “WHEREAS” clause after the seventh “WHEREAS” clause thereof:

“WHEREAS, pursuant to the Berkshire Guaranty Agreement, Oglethorpe has agreed to reimburse Berkshire for payments made under the Berkshire Surety Bonds and to secure such reimbursement obligation by providing a lien, security title and security interest identified in the fifth “WHEREAS” above.”

(c) The opening paragraph of the Granting Clause of the Subordinated Deed is hereby amended and replaced in its entirety with the following paragraph:

“To secure all of the due and punctual payment, performance and observance by Oglethorpe of all of (a) Oglethorpe’s obligations to the Facility Lessor and the Owner Participant under the Operative Documents, (b) Oglethorpe’s obligations to AMBAC under the AMBAC Guaranty, and (c) Oglethorpe’s obligations to Berkshire under the Berkshire Guaranty Agreement (items (a), (b) and (c) collectively referred to hereinafter as the “Secured Obligations”; it being acknowledged and agreed that the Secured Obligations are obligations such as reimbursement and indemnification obligations and are not indebtedness evidenced by a note or for the payment of borrowed money and are therefore exempt from the payment of intangible recording tax under the laws of the State of Georgia), Oglethorpe hereby grants, bargains, sells and conveys unto AMBAC, Berkshire and the Facility Lessor (for itself and for the benefit of the Owner Participant) (collectively, the “Subordinated Secured Parties”) all rights, title and interests of Oglethorpe in, to and under, and grants to the Subordinated Secured Parties a security interest in, each and all of the following described property, rights and privileges (such property, rights and privileges being hereinafter referred collectively, the “Subordinated Collateral”):”

(d) Section 2 of the Subordinated Deed is hereby amended and replaced in its entirety with the following paragraph:

“Any amounts received in respect of a sale of any of the Subordinated Collateral after a Subordinated Deed to Secure Debt Event of Default (as defined herein) shall have occurred and be continuing shall be applied or distributed ratably among (i) Berkshire (or if (x) the Berkshire Surety Bonds have been terminated and all amounts owing to Berkshire under the Berkshire Guaranty Agreement have been indefeasibly paid in full, or (y) no amounts are then owed to Berkshire under the Berkshire Guaranty Agreement, AMBAC), (ii) the Owner Participant and (iii) the Facility Lessor, *pari passu*, according to the Secured Obligations held by each.

Upon payment in full of the Secured Obligations, the balance, if any, of such amounts remaining shall be distributed to Oglethorpe.”

(e) Section 3.1 of the Subordinated Deed is hereby amended and replaced in its entirety with the following paragraph:

“The term “Subordinated Deed to Secure Debt Event of Default,” wherever used herein, shall mean the occurrence of a Head Lessor Event of Default or the failure of Oglethorpe to promptly perform any of its obligations under this Subordinated Deed to Secure Debt, the AMBAC Guaranty or the Berkshire Guaranty Agreement.”

(f) Section 6.3 of the Subordinated Deed is hereby amended by adding the following contact information:

“If to Berkshire:

Berkshire Hathaway Assurance Corporation
c/o Berkshire Hathaway Group
100 First Stamford Place
Stamford, CT 06902
Attn: General Counsel
Facsimile No.: (203) 363 5221

with copies to:

Berkshire Hathaway Assurance Corporation
3024 Harney Street
Omaha, NE 68131
Attention: President
Facsimile No.: (402) 916-3237

and

Robert E. Bennett
99 Mill Lane
Norwell, MA 02061
Facsimile No.: (781) 659-2491”

Section 3. Reference to Subordinated Deed

Except as herein amended, the Subordinated Deed shall remain in full force and effect. As amended hereby, the Subordinated Deed is hereby ratified, approved and confirmed in all respects. On and after the date hereof, each reference to the Subordinated Deed made in the Subordinated Deed or any agreement, document or instrument executed and delivered pursuant to the Subordinated Deed by the parties hereto, shall mean and be a reference to the Subordinated Deed as amended hereby and by the Amendment, Release and Consent Agreement, dated as of July 30, 1999.

Section 4. Successors and Assigns

This Amendment shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof. Except as expressly provided herein or in the other Operative Documents, no party hereto may assign its interests herein without the consent of the other parties hereto.

Section 5. Governing Law

This Amendment shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance, except to the extent the law of the State of Georgia is mandatorily applicable.

Section 6. Severability

If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 7. Counterparts

This Amendment may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Agreement.

Section 8. Limitation of Liability

It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Co-Trustee is made and intended not as personal representations, undertakings and agreements by the U.S. Bank National Association but is made and intended for the purpose of binding only the Co-Trustee, (c) nothing herein contained shall be construed as creating any liability on U.S. Bank National Association, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall U.S. Bank National Association be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Co-Trustee under this Amendment. In addition, each of the parties hereto acknowledges and agrees that the Co-Trustee has been appointed by the Owner Participant and the Owner Trustee for the purpose of exercising those trust powers in the State of Georgia which may not be exercised by the Owner Trustee under applicable law, and that, except as otherwise required by applicable law, the Co-Trustee shall not be obligated to take any action hereunder unless expressly directed in writing by the Owner Trustee or the Owner Participant in accordance with the terms of the Trust Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed as of the day and year first written above.

OGLETHORPE POWER CORPORATION (AN ELECTRIC MEMBERSHIP CORPORATION)

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]



U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, except as expressly provided herein, but solely as Co-Trustee under the Trust Agreement

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]

AMBAC ASSURANCE CORPORATION

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]

Acknowledged and consented to by:

UTRECHT-AMERICA FINANCE CO.

By: _____
Name:
Title:

By: _____
Name:
Title:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My commission expires: _____

[Notary Seal]



SCHEDULE TO EXHIBIT 10.1

AMENDMENT NO. 2 TO PARTICIPATION AGREEMENT (P1)

The following table indicates for each transaction the name of the corresponding Owner Participant:

Amendment to Agreement	Date	Owner Participant
P2	May 22, 2009	Philip Morris Capital Corporation
F3	May 22, 2009	First Chicago Leasing Corporation
F4	May 22, 2009	First Chicago Leasing Corporation
N6	May 22, 2009	Philip Morris Capital Corporation (transferee from NationsBanc Leasing & R.E. Corporation)

**This instrument, when recorded,
should be returned to:**

Christopher J. Moore
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001

Cross Reference:
Book 1409
Page 545
Floyd County, Georgia

**AMENDMENT NO. 1 TO DEED TO SECURE DEBT,
ASSIGNMENT OF SURETY BOND AND SECURITY AGREEMENT (P1)**

THIS AMENDMENT NO. 1 TO DEED TO SECURE DEBT, ASSIGNMENT OF SURETY BOND AND SECURITY AGREEMENT (P1) (this "Amendment") is made as of May 22, 2009, by and between (i) **ROCKY MOUNTAIN LEASING CORPORATION**, a corporation organized under the laws of the State of Delaware (herein, together with its successors and permitted assigned, called "RMLC"), and (ii) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, successor in interest to SunTrust Bank, Atlanta, not in its individual capacity but solely as Co-Trustee under the Trust Agreement (herein, together with its successors and permitted assigns, called the "Co-Trustee" or the "Secured Party"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Facility Sublease Assignment Agreement (as defined below) or in Appendix A thereto, as heretofore amended.

WITNESSETH THAT

WHEREAS, in connection with the transactions contemplated by the Participation Agreement, RMLC secured the payment, performance and observance of certain of its obligations under the Participation Agreement and the other Operative Documents, granting a lien, security interest and security title in favor of the Secured Party in and to the Sublease Collateral pursuant to the Deed to Secure Debt, Assignment of Surety Bond and Security Agreement (P1), dated as of December 30, 1996 and filed for record on August 7, 1997 in Book 1409 Page 545 of the Floyd County, Georgia land records (the "Facility Sublease Assignment Agreement");

WHEREAS, pursuant to Section 8.6 of the Participation Agreement, Oglethorpe has caused Berkshire Hathaway Assurance Corporation ("Berkshire") to issue and deliver to the Facility Sublessor and the Facility Lessor, a Qualifying Sublease Surety Bond (the "Berkshire Sublease Surety Bond") without releasing Surety Bond (Facility Sublease-P1) No. SF0004BE, issued on December 31, 1996 by Ambac Assurance Corporation, formerly known as AMBAC Indemnity Corporation; and

WHEREAS, in connection with the issuance by Berkshire of the Berkshire Sublease Surety Bond, each of the parties hereto wishes to amend the Facility Sublease Assignment Agreement in accordance with the terms set forth herein.

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

Section 1. Amendments to Appendix A (Definitions) to the Facility Sublease Assignment Agreement

Appendix A to the Facility Sublease Assignment Agreement is hereby amended as follows:

(i) by deleting the defined term “AMBAC Indemnity” and replacing the definition of “AMBAC”, in its entirety, with the following language:

“**AMBAC**” shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to “AMBAC Indemnity” shall be a reference to “AMBAC.”

(ii) by adding the following definitions thereto:

“**AMBAC Sublease Surety Bond**” shall mean the Amended and Restated Surety Bond (Facility Sublease-P1) No. SF0004BE issued on May 22, 2009 by AMBAC in favor of the Facility Sublessor and the Facility Lessor.

“**Berkshire**” shall mean Berkshire Hathaway Assurance Corporation.

Section 2. Other Amendments to the Facility Sublease Assignment Agreement

(a) The numbered paragraph 3 of the Granting Clause of the Facility Sublease Assignment Agreement is hereby amended by inserting the words “the AMBAC Sublease Surety Bond,” prior to the words “the Qualifying Sublease Surety Bond”.

(b) Section 4.1(A)(i) of the Facility Sublease Assignment Agreement is hereby amended by inserting the words “the AMBAC Sublease Surety Bond,” prior to the words “the Qualifying Sublease Surety Bond”.

(c) Clause (b) of Section 6 of the Facility Sublease Assignment Agreement is hereby amended by inserting the words “the AMBAC Sublease Surety Bond,” prior to the words “the Qualifying Sublease Surety Bond”.

(d) Clause (c) of Section 7 of the Facility Sublease Assignment Agreement is hereby amended and replaced in its entirety with the following:

“(c) terminate, amend or modify, or waive compliance with any term, covenant, agreement or condition of the Sublease Documents, the AMBAC Sublease Surety

Bond, the Berkshire Sublease Surety Bond (or any Qualifying Sublease Surety Bond or Qualifying Letter of Credit issued in replacement of the Berkshire Sublease Surety Bond, whether such surety bond or letter of credit was "qualifying" as of or after the Berkshire Surety Bond Date under the definitions herein or not) or Qualifying Additional Security or".

Section 3. Reference to Facility Sublease Assignment Agreement

Except as herein amended, the Facility Sublease Assignment Agreement shall remain in full force and effect. As amended hereby, the Facility Sublease Assignment Agreement is hereby ratified, approved and confirmed in all respects. On and after the date hereof, each reference to the Facility Sublease Assignment Agreement made in the Facility Sublease Assignment Agreement or in any agreement, document or instrument executed and delivered by the parties hereto in connection therewith, shall mean and be a reference to the Facility Sublease Assignment Agreement, as amended hereby and by the Amendment, Release and Consent Agreement, dated as of July 30, 1999.

Section 4. Amendments and Waivers

No term, covenant, agreement or condition of this Amendment may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by the party against whom enforcement of such change is sought.

Section 5. Successors and Assigns

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

(b) Except as expressly provided herein or in any other Operative Documents, RMLC may not assign its interests herein without the consent of the Secured Party. Except as expressly provided in the Operative Documents, the Secured Party may not assign its interests herein during the Facility Sublease Term without the consent of RMLC.

Section 6. Governing Law

This Amendment shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance except to the extent the law of the State of Georgia is mandatorily applicable.

Section 7. Severability

If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 8. Counterparts

This Amendment may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

Section 9. Limitation of Liability

It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Co-Trustee is made and intended not as personal representations, undertakings and agreements by U.S. Bank National Association but is made and intended for the purpose of binding only the Co-Trustee, (c) nothing herein contained shall be construed as creating any liability on U.S. Bank National Association, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall U.S. Bank National Association be personally liable for the payment of any indebtedness or expenses of the Co-Trustee or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Co-Trustee under this Amendment. In addition, each of the parties hereto acknowledges and agrees that the Co-Trustee has been appointed by the Owner Participant and Owner Trustee for the purpose of exercising those trust powers in the State of Georgia which may not be exercised by the Owner Trustee under Applicable Law, and that, except as otherwise required by Applicable Law, the Co-Trustee shall not be obligated to take any action hereunder unless expressly directed in writing by the Owner Trustee or the Owner Participant in accordance with the terms of the Trust Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed as of the day and year first written above.

ROCKY MOUNTAIN LEASING CORPORATION

By: /s/ Elizabeth B. Higgins
Name: Elizabeth B. Higgins
Title: President

Attest: /s/ Patricia N. Nash
Name: Patricia N. Nash
Title: Assistant Secretary

Signed, sealed and delivered in the presence of:

/s/ Thomas J. Brendiar
Unofficial Witness

/s/ Sharon H. Wright
Notary Public

My commission expires: October 14, 2011

[Notary Seal]

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, but solely as Co-Trustee under the Trust Agreement

By: /s/ Jack Ellerin
Name: Jack Ellerin
Title: Vice President

Signed, sealed and delivered in the presence of:

/s/ Muriel Shaw
Unofficial Witness

/s/ Sonia S. Henry
Notary Public

My commission expires: July 21, 2012

[Notary Seal]

Acknowledged and consented to by:

UTRECHT-AMERICA FINANCE CO.

By: /s/ Brett Delfino
Name: Brett Delfino
Title: Assistant Secretary

By: /s/ Margaret Schaubeck
Name: Margaret Schaubeck
Title: Assistant Treasurer

Signed, sealed and delivered in the presence of:

/s/ Geert C. Kortlandt
Unofficial Witness

/s/ Shannon Smith
Notary Public

My commission expires: November 5, 2011

[Notary Seal]

SCHEDULE TO EXHIBIT 10.2

AMENDMENT NO. 1 TO DEED TO SECURE DEBT, ASSIGNMENT OF SURETY BOND AND SECURITY AGREEMENT (P1)

The following table indicates for each transaction the name of the corresponding Owner Participant:

Amendment to Agreement	Date	Owner Participant
P2	May 22, 2009	Philip Morris Capital Corporation
F3	May 22, 2009	First Chicago Leasing Corporation
F4	May 22, 2009	First Chicago Leasing Corporation
N6	May 22, 2009	Philip Morris Capital Corporation (transferee from NationsBanc Leasing & R.E. Corporation)

**This instrument, when recorded,
should be returned to:**

Christopher J. Moore
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001

Cross Reference:
Book 1409
Page 386
Floyd County, Georgia

**AMENDMENT NO. 1 TO SUBORDINATED DEED
TO SECURE DEBT AND SECURITY AGREEMENT (P1)**

THIS AMENDMENT NO. 1 TO SUBORDINATED DEED TO SECURE DEBT AND SECURITY AGREEMENT (P1) (this "Amendment") is made as of May 22, 2009, by and among (i) **OGLETHORPE POWER CORPORATION, (AN ELECTRIC MEMBERSHIP CORPORATION)**, an electric membership corporation organized under the laws of the State of Georgia (herein, together with its successors and permitted assigns, called "Oglethorpe"), (ii) **AMBAC ASSURANCE CORPORATION** (formerly known as AMBAC Indemnity Corporation), a Wisconsin-domiciled stock insurance corporation (together with its successors and assigns, called "AMBAC") and (iii) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, as successor in interest to Suntrust Bank, Atlanta, not in its individual capacity but solely as Co-Trustee under the Trust Agreement (herein, together with its successors and permitted assigns, called the "Co-Trustee" or the "Facility Lessor", and together with AMBAC, the "Beneficiaries"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Subordinated Deed (as defined below) or in Appendix A thereto, as heretofore amended.

WITNESSETH THAT

WHEREAS, in connection with the transactions contemplated by the Participation Agreement, Oglethorpe secured the payment, performance and observance of certain of its obligations under the Operative Documents and the AMBAC Guaranty to AMBAC and the Facility Lessor under the Subordinated Deed to Secure Debt and Security Agreement (P1), dated as of December 30, 1996 and filed for record on August 7, 1997 in Book 1409 Page 386 of the Floyd County, Georgia land records (the "Subordinated Deed");

WHEREAS, the Secured Obligations are obligations such as reimbursement and indemnification obligations and not indebtedness evidenced by a note or for the payment of borrowed money and are therefore exempt from the payment of intangible recording tax under the laws of the State of Georgia;

WHEREAS, pursuant to Section 8.5 and Section 8.6 of the Participation Agreement, Oglethorpe has caused Berkshire to deliver (a) to the Head Lessee and the Owner Participant, the Surety Bond (Head Lease-P1) No. 98SRD102494 issued by Berkshire (as amended from time to time, the “Berkshire Head Lease Surety Bond”), and (b) to the Facility Sublessor and the Facility Lessor, Surety Bond (Facility Sublease-P1) No. 98SRD102495 issued by Berkshire (as amended from time to time, the “Berkshire Sublease Surety Bond” and, together with the Berkshire Head Lease Surety Bond, the “Berkshire Surety Bonds”);

WHEREAS, pursuant to the Berkshire Guaranty Agreement, dated as of May 22, 2009, Oglethorpe has agreed to reimburse Berkshire for any payments made under the Berkshire Surety Bonds; and

WHEREAS, in connection with the issuance by Berkshire of the Berkshire Surety Bonds, Oglethorpe has agreed to grant Berkshire a security interest in the same collateral as the Beneficiaries, and Oglethorpe and the Beneficiaries have agreed to amend the Subordinated Deed to make Berkshire a secured party thereunder.

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

Section 1. Amendments to Appendix A (Definitions) to the Subordinated Deed

Appendix A to the Subordinated Deed is hereby amended as follows:

(i) by deleting the defined term “AMBAC Indemnity” and replacing the definition of “AMBAC”, in its entirety, with the following language:

“**AMBAC**” shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to “AMBAC Indemnity” shall be a reference to “AMBAC.”

(ii) by adding the following definitions thereto:

“**Berkshire**” shall mean Berkshire Hathaway Assurance Corporation.

“**Berkshire Guaranty Agreement**” shall mean the Berkshire Guaranty Agreement (P1), dated as of May 22, 2009, by and between Oglethorpe and Berkshire.

“**Berkshire Head Lease Surety Bond**” shall mean the Surety Bond (Head Lease-P1) No. 98SRD102494 issued by Berkshire in favor of the Head Lessee and the Owner Participant.

“**Berkshire Sublease Surety Bond**” shall mean the Surety Bond (Facility Sublease-P1) No. 98SRD102495 issued by Berkshire in favor of the Facility Sublessor and the Facility Lessor.

“Berkshire Surety Bonds” shall mean, collectively, the Berkshire Head Lease Surety Bond and the Berkshire Sublease Surety Bond.

Section 2. Other Amendments to the Subordinated Deed

(a) The seventh “WHEREAS” clause of the Subordinated Deed is hereby amended by replacing the words “Qualifying Surety Bonds” with “Surety Bonds (as defined in the AMBAC Guaranty)”.

(b) The Subordinated Deed is hereby amended by adding the following “WHEREAS” clause after the seventh “WHEREAS” clause thereof:

“WHEREAS, pursuant to the Berkshire Guaranty Agreement, Oglethorpe has agreed to reimburse Berkshire for payments made under the Berkshire Surety Bonds and to secure such reimbursement obligation by providing a lien, security title and security interest identified in the fifth “WHEREAS” above.”

(c) The opening paragraph of the Granting Clause of the Subordinated Deed is hereby amended and replaced in its entirety with the following paragraph:

“To secure all of the due and punctual payment, performance and observance by Oglethorpe of all of (a) Oglethorpe’s obligations to the Facility Lessor and the Owner Participant under the Operative Documents, (b) Oglethorpe’s obligations to AMBAC under the AMBAC Guaranty, and (c) Oglethorpe’s obligations to Berkshire under the Berkshire Guaranty Agreement (items (a), (b) and (c) collectively referred to hereinafter as the “Secured Obligations”; it being acknowledged and agreed that the Secured Obligations are obligations such as reimbursement and indemnification obligations and are not indebtedness evidenced by a note or for the payment of borrowed money and are therefore exempt from the payment of intangible recording tax under the laws of the State of Georgia), Oglethorpe hereby grants, bargains, sells and conveys unto AMBAC, Berkshire and the Facility Lessor (for itself and for the benefit of the Owner Participant) (collectively, the “Subordinated Secured Parties”) all rights, title and interests of Oglethorpe in, to and under, and grants to the Subordinated Secured Parties a security interest in, each and all of the following described property, rights and privileges (such property, rights and privileges being hereinafter referred collectively, the “Subordinated Collateral”):”

(d) Section 2 of the Subordinated Deed is hereby amended and replaced in its entirety with the following paragraph:

“Any amounts received in respect of a sale of any of the Subordinated Collateral after a Subordinated Deed to Secure Debt Event of Default (as defined herein) shall have occurred and be continuing shall be applied or distributed ratably among (i) Berkshire (or if (x) the Berkshire Surety Bonds have been terminated and all amounts owing to Berkshire under the Berkshire Guaranty Agreement have been indefeasibly paid in full, or (y) no amounts are then owed

to Berkshire under the Berkshire Guaranty Agreement, AMBAC), (ii) the Owner Participant and (iii) the Facility Lessor, *pari passu*, according to the Secured Obligations held by each.

Upon payment in full of the Secured Obligations, the balance, if any, of such amounts remaining shall be distributed to Oglethorpe.”

(e) Section 3.1 of the Subordinated Deed is hereby amended and replaced in its entirety with the following paragraph:

“The term “Subordinated Deed to Secure Debt Event of Default,” wherever used herein, shall mean the occurrence of a Head Lessor Event of Default or the failure of Oglethorpe to promptly perform any of its obligations under this Subordinated Deed to Secure Debt, the AMBAC Guaranty or the Berkshire Guaranty Agreement.”

(f) Section 6.3 of the Subordinated Deed is hereby amended by adding the following contact information:

“If to Berkshire:

Berkshire Hathaway Assurance Corporation
c/o Berkshire Hathaway Group
100 First Stamford Place
Stamford, CT 06902
Attn: General Counsel
Facsimile No.: (203) 363 5221

with copies to:

Berkshire Hathaway Assurance Corporation
3024 Harney Street
Omaha, NE 68131
Attention: President
Facsimile No.: (402) 916-3237

and

Robert E. Bennett
99 Mill Lane
Norwell, MA 02061
Facsimile No.: (781) 659-2491”

Section 3. Reference to Subordinated Deed

Except as herein amended, the Subordinated Deed shall remain in full force and effect. As amended hereby, the Subordinated Deed is hereby ratified, approved and confirmed in all

respects. On and after the date hereof, each reference to the Subordinated Deed made in the Subordinated Deed or any agreement, document or instrument executed and delivered pursuant to the Subordinated Deed by the parties hereto, shall mean and be a reference to the Subordinated Deed as amended hereby and by the Amendment, Release and Consent Agreement, dated as of July 30, 1999.

Section 4. Successors and Assigns

This Amendment shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof. Except as expressly provided herein or in the other Operative Documents, no party hereto may assign its interests herein without the consent of the other parties hereto.

Section 5. Governing Law

This Amendment shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance, except to the extent the law of the State of Georgia is mandatorily applicable.

Section 6. Severability

If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 7. Counterparts

This Amendment may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Agreement.

Section 8. Limitation of Liability

It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Co-Trustee is made and intended not as personal representations, undertakings and agreements by the U.S. Bank National Association but is made and intended for the purpose of binding only the Co-Trustee, (c) nothing herein contained shall be construed as creating any liability on U.S. Bank National Association, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall U.S. Bank National Association be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Co-Trustee under this Amendment. In addition, each of the parties hereto acknowledges and agrees that the Co-Trustee has been appointed by the Owner Participant and the Owner Trustee

for the purpose of exercising those trust powers in the State of Georgia which may not be exercised by the Owner Trustee under applicable law, and that, except as otherwise required by applicable law, the Co-Trustee shall not be obligated to take any action hereunder unless expressly directed in writing by the Owner Trustee or the Owner Participant in accordance with the terms of the Trust Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed as of the day and year first written above.

OGLETHORPE POWER CORPORATION (AN ELECTRIC MEMBERSHIP CORPORATION)

By: /s/ Thomas A. Smith
Name: Thomas A. Smith
Title: President and Chief Executive Officer

(CORPORATE SEAL)

Attest: /s/ Patricia N. Nash
Name: Patricia N. Nash
Title: Secretary

Signed, sealed and delivered in the presence of:

/s/ Thomas J. Brendiar
Unofficial Witness

/s/ Sharon H. Wright
Notary Public

My commission expires: October 14, 2011

[Notary Seal]

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, except as expressly provided herein, but solely as Co-Trustee under the Trust Agreement

By: /s/ Jack Ellerin
Name: Jack Ellerin
Title: Vice President

Signed, sealed and delivered in the presence of:

/s/ Muriel Shaw
Unofficial Witness

/s/ Sonia S. Henry
Notary Public

My commission expires: July 21, 2012

[Notary Seal]

AMBAC ASSURANCE CORPORATION

By: /s/ Michael C. Morcom
Name: Michael C. Morcom
Title: First Vice President

Signed, sealed and delivered in the presence of:

/s/ [signature illegible]
Unofficial Witness

/s/ Jean Kim
Notary Public

My commission expires: December 27, 2012

[Notary Seal]

Acknowledged and consented to by:

UTRECHT-AMERICA FINANCE CO.

By: /s/ Brett Delfino
Name: Brett Delfino
Title: Assistant Secretary

By: /s/ Margaret Schaubeck
Name: Margaret Schaubeck
Title: Assistant Treasurer

Signed, sealed and delivered in the presence of:

/s/ Geert C. Kortlandt
Unofficial Witness

/s/ Shannon Smith
Notary Public

My commission expires: November 5, 2011

[Notary Seal]

SCHEDULE TO EXHIBIT 10.3

AMENDMENT NO. 1 TO SUBORDINATED DEED TO SECURE DEBT AND SECURITY AGREEMENT (P1)

The following table indicates for each transaction the name of the corresponding Owner Participant:

Amendment to Agreement	Date	Owner Participant
P2	May 22, 2009	Philip Morris Capital Corporation
F3	May 22, 2009	First Chicago Leasing Corporation
F4	May 22, 2009	First Chicago Leasing Corporation
N6	May 22, 2009	Philip Morris Capital Corporation (transferee from NationsBanc Leasing & R.E. Corporation)

**This instrument, when recorded,
should be returned to:**

Christopher J. Moore
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001

Cross Reference:
Book 1408
Page 369
Floyd County, Georgia

AMENDMENT NO. 1 TO HEAD LEASE AGREEMENT (P1)

THIS AMENDMENT NO. 1 TO HEAD LEASE AGREEMENT (P1) (this "Amendment") is made as of May 22, 2009, by and between (i) **OGLETHORPE POWER CORPORATION, (AN ELECTRIC MEMBERSHIP CORPORATION)**, an electric membership corporation organized under the laws of the State of Georgia (herein, together with its successors and permitted assigned, called "Oglethorpe"), and (ii) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, successor in interest to SunTrust Bank, Atlanta, not in its individual capacity but solely as Co-Trustee under the Trust Agreement (herein, together with its successors and permitted assigns, called the "Co-Trustee"). Capitalized terms used herein and not otherwise defined being used herein as defined in the Head Lease (as defined below) or in Appendix A thereto, as heretofore amended.

WITNESSETH THAT

WHEREAS, on December 30, 1996, Oglethorpe and the Co-Trustee entered into the Rocky Mountain Head Lease Agreement (P1), filed for record August 7, 1997 in Book 1408 Page 369 of the Floyd County, Georgia land records (the "Head Lease") pursuant to which Oglethorpe leased to the Co-Trustee the Undivided Interest upon the terms and conditions set forth therein;

WHEREAS, pursuant to Section 8.5 of the Participation Agreement, Oglethorpe has caused Berkshire Hathaway Assurance Corporation ("Berkshire") to issue a surety bond in favor of the Head Lessee and the Owner Participant with respect to certain of the Head Lessor's obligations under the Head Lease and under the Participation Agreement and the obligations of Ambac Assurance Corporation, formerly known as AMBAC Indemnity Corporation, under the Surety Bond (Head Lease-P1) No. SF0003BE, as may be amended, or amended and restated, from time to time; and

WHEREAS, in connection with the issuance by Berkshire of such surety bond, each of the parties hereto wishes to amend the Head Lease to include an additional Head Lessor Event of Default.

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

Section 1. Amendments to Appendix A (Definitions) to Head Lease

Appendix A to the Head Lease is hereby amended as follows:

(i) by deleting the defined term “AMBAC Indemnity” and replacing the definition of “AMBAC”, in its entirety, with the following language:

“**AMBAC**” shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to “AMBAC Indemnity” shall be a reference to “AMBAC.”

(ii) by adding the following definitions thereto:

“**AMBAC Head Lease Surety Bond**” shall mean the Amended and Restated Surety Bond (Head Lease-P1) No. SF0003BE issued on May 22, 2009 by AMBAC in favor of the Head Lessee and the Owner Participant.

“**Berkshire**” shall mean Berkshire Hathaway Assurance Corporation.

“**Berkshire Head Lease Surety Bond**” shall mean the Surety Bond (Head Lease-P1) No. 98SRD102494 issued by Berkshire in favor of the Head Lessee and the Owner Participant.

“**Implementation Agreement**” shall mean the Surety Bond Implementation Agreement (P1), dated as of the date hereof, among Oglethorpe, RMLC, the Co-Trustee, the Owner Trustee, the Owner Participant, AMBAC and Berkshire.

Section 2. Other Amendments to Head Lease

(a) Section 11.1 of the Head Lease is hereby amended by adding a new clause (m) after the end thereof to read in its entirety as follows:

“(m) Berkshire has delivered to Head Lessee or the Owner Participant a notice of termination for the non-payment of premiums in substantially the same form as Attachment III to the Berkshire Head Lease Surety Bond and Berkshire has not received payment in full of the unpaid portion of the premium within 14 days from the date of such notice of termination; *provided, however*, that no Head Lessor Event of Default shall occur under this paragraph (m) if the Owner Participant notifies the Head Lessee and the Lender in writing that the receipt of such notice of termination shall not constitute a Head Lessor Event of Default.”

(b) The first sentence of Section 11.2(a) of the Head Lease is hereby amended by inserting the following parenthetical immediately after the words “Head Lessee may demand by written notice to Head Lessor” in the first line therein:

“(a copy of which notice may be delivered by the Head Lessee to Berkshire in accordance with Section 1(c)(i) of the Berkshire Head Lease Surety Bond as the “Oglethorpe Payment Demand” referred to therein”).

(c) Section 11.2(a) of the Head Lease is hereby further amended by inserting the words “or the AMBAC Head Lease Surety Bond” immediately after the words “Qualifying Head Lease Surety Bond” in clause (ii) therein.

(d) The Head Lease is hereby amended by adding a new Section 17.14:

“Section 17.14. *Certain Agreements Regarding Operative Documents.* Oglethorpe agrees and acknowledges that the agreements made by Oglethorpe under Section 4(b) of the Implementation Agreement relating to the Head Lease or any Qualifying Head Lease Surety Bond or Qualifying Letter of Credit or other credit enhancement issued in replacement therefor are hereby incorporated herein by reference.”

Section 3. Reference to Head Lease

Except as herein amended, the Head Lease shall remain in full force and effect. As amended hereby, the Head Lease is hereby ratified, approved and confirmed in all respects. On and after the date hereof, each reference to the Head Lease made in the Head Lease or any agreement, document or instrument executed and delivered pursuant to the Head Lease by the parties hereto, shall mean and be a reference to the Head Lease as amended hereby and by the Amendment, Release and Consent Agreement, dated as of July 30, 1999.

Section 4. Amendments and Waivers

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

Section 5. Successors and Assigns

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

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

Section 6. Governing Law

This Amendment shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance except to the extent the law of the State of Georgia is mandatorily applicable.

Section 7. Severability

If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 8. Counterparts

This Amendment may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

Section 9. Limitation of Liability

It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Co-Trustee is made and intended not as personal representations, undertakings and agreements by U.S. Bank National Association but is made and intended for the purpose of binding only the Co-Trustee, (c) nothing herein contained shall be construed as creating any liability on U.S. Bank National Association, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall U.S. Bank National Association be personally liable for the payment of any indebtedness or expenses of the Co-Trustee or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Co-Trustee under this Amendment. In addition, each of the parties hereto acknowledges and agrees that the Co-Trustee has been appointed by the Owner Participant and Owner Trustee for the purpose of exercising those trust powers in the State of Georgia which may not be exercised by the Owner Trustee under applicable law, and that, except as otherwise required by applicable law, the Co-Trustee shall not be obligated to take any action hereunder unless expressly directed in writing by the Owner Trustee or the Owner Participant in accordance with the terms of the Trust Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed as of the day and year first written above.

OGLETHORPE POWER CORPORATION (AN ELECTRIC MEMBERSHIP CORPORATION)

By: /s/ Thomas A. Smith
Name: Thomas A. Smith
Title: President and Chief Executive Officer

(CORPORATE SEAL)

Attest: /s/ Patricia N. Nash
Name: Patricia N. Nash
Title: Secretary

Signed, sealed and delivered in the presence of:

 /s/ Thomas J. Brendiar
Unofficial Witness

 /s/ Sharon H. Wright
Notary Public

My commission expires: October 14, 2011

[Notary Seal]

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, but solely as Co-Trustee under the Trust Agreement

By: /s/ Jack Ellerin
Name: Jack Ellerin
Title: Vice President

Signed, sealed and delivered in the presence of:

/s/ Muriel Shaw
Unofficial Witness

/s/ Sonia S. Henry
Notary Public

My commission expires: July 21, 2012

[Notary Seal]

Acknowledged and consented to by:

UTRECHT-AMERICA FINANCE CO.

By: /s/ Brett Delfino
Name: Brett Delfino
Title: Assistant Secretary

By: /s/ Margaret Schaubeck
Name: Margaret Schaubeck
Title: Assistant Treasurer

Signed, sealed and delivered in the presence of:

/s/ Geert C. Kortlandt
Unofficial Witness

/s/ Shannon Smith
Notary Public

My commission expires: November 5, 2011

[Notary Seal]

SCHEDULE TO EXHIBIT 10.4

AMENDMENT NO. 1 TO HEAD LEASE AGREEMENT (P1)

The following table indicates for each transaction the name of the corresponding Owner Participant:

Amendment to Agreement	Date	Owner Participant
P2	May 22, 2009	Philip Morris Capital Corporation
F3	May 22, 2009	First Chicago Leasing Corporation
F4	May 22, 2009	First Chicago Leasing Corporation
N6	May 22, 2009	Philip Morris Capital Corporation (transferee from NationsBanc Leasing & R.E. Corporation)

**This instrument, when recorded,
should be returned to:**

Christopher J. Moore
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001

Cross Reference:
Book 1408
Page 496
Floyd County, Georgia

AMENDMENT NO. 1 TO FACILITY LEASE AGREEMENT (P1)

THIS AMENDMENT NO. 1 TO FACILITY LEASE AGREEMENT (P1) (this "Amendment") is made as of May 22, 2009, by and between (i) **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States, successor in interest to SunTrust Bank, Atlanta, not in its individual capacity but solely as Co-Trustee under the Trust Agreement (herein, together with its successors and permitted assigns, called the "Co-Trustee"), and (ii) **ROCKY MOUNTAIN LEASING CORPORATION**, a corporation organized under the laws of the State of Delaware (herein, together with its successors and permitted assigns, called "RMLC"). Capitalized terms used herein and not otherwise defined being used herein as defined in the Facility Lease (as defined below) or in Appendix A thereto, as heretofore amended.

WITNESSETH THAT

WHEREAS, on December 30, 1996, the Co-Trustee and RMLC entered into the Facility Lease Agreement (P1), filed for record on August 7, 1997 in Book 1408 Page 496 of the Floyd County, Georgia land records (the "Facility Lease"), pursuant to which the Co-Trustee leased to RMLC the Undivided Interest (leased to the Co-Trustee by Oglethorpe pursuant to the Head Lease) upon the terms and conditions set forth therein;

WHEREAS, pursuant to Section 8.5 and Section 8.6 of the Participation Agreement, Oglethorpe has caused Berkshire Hathaway Assurance Corporation ("Berkshire") to issue and deliver (a) to the Head Lessee and the Owner Participant, a Qualifying Head Lease Surety Bond (the "Berkshire Head Lease Surety Bond"), and (b) to the Facility Sublessor and the Facility Lessor, a Qualifying Sublease Surety Bond (the "Berkshire Sublease Surety Bond" and, together with the Berkshire Head Lease Surety Bond, the "Berkshire Surety Bonds"); and

WHEREAS, in connection with the issuance by Berkshire of the Berkshire Surety Bonds, each of the parties hereto wishes to amend the Facility Lease.

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

Section 1. Amendments to Appendix A (Definitions) to the Facility Lease

Appendix A to the Facility Lease is hereby amended as follows:

(i) by deleting the defined term “AMBAC Indemnity” and replacing the definition of “AMBAC”, in its entirety, with the following language:

“**AMBAC**” shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to “AMBAC Indemnity” shall be a reference to “AMBAC.”

(ii) by adding the following definitions thereto:

“**AMBAC Sublease Surety Bond**” shall mean the Amended and Restated Surety Bond (Facility Sublease-P1) No. SF0004BE issued on May 22, 2009 by AMBAC in favor of the Facility Sublessor and the Facility Lessor.

“**Berkshire**” shall mean Berkshire Hathaway Assurance Corporation.

“**Berkshire Surety Bond Date**” shall mean May 22, 2009.

“**Implementation Agreement**” shall mean the Surety Bond Implementation Agreement (P1) dated as of the Berkshire Surety Bond Date among Oglethorpe, RMLC, the Co-Trustee, the Owner Trustee, the Owner Participant, AMBAC and Berkshire.

Section 2. Other Amendments to the Facility Lease

(a) The second sentence of Section 3.4(c) of the Facility Lease is hereby amended by replacing the words “and AMBAC” with “, Berkshire and AMBAC”.

(b) The first sentence of Section 5.3 of the Facility Lease is hereby amended by replacing the words “and AMBAC” with “, Berkshire and AMBAC”.

(c) The first sentence of Section 10.1 of the Facility Lease is hereby amended by replacing the words “and AMBAC” with “, Berkshire and AMBAC”.

(d) (i) Section 10.3(f)(4) of the Facility Lease is hereby amended by replacing the words “or AMBAC” with “, Berkshire or AMBAC”, (ii) Section 10.3(f)(5) is hereby amended by replacing the words “and AMBAC” with “, Berkshire and AMBAC” and (iii) the last paragraph of Section 10.3 of the Facility Lease is hereby amended by replacing the words “and AMBAC” with “, Berkshire and AMBAC”.

- (e) Section 17.1(f) of the Facility Lease is hereby replaced, in its entirety, with the following language:

“if the Facility Lessor shall have sold the Facility Lessor’s Rocky Mountain Interest pursuant to paragraph (c) above, the Facility Lessor may, if it shall so elect, demand that the Facility Lessee pay to the Facility Lessor, and the Facility Lessee shall pay to the Facility Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due for any periods subsequent to the date of such sale), an amount equal to (A) any unpaid Basic Rent due before the date of such sale and, (B)(i) if that date is a Rent Payment Date, the Basic Rent due on that date (to the extent payable in arrears), or, (ii) if that date is not a Rent Payment Date or a Termination Date, the daily equivalent (for the period from the previous Termination Date to the date of such sale) of Basic Rent due on the next Rent Payment Date (as if all such Basic Rent is payable and accruing in arrears with respect to the 6-month period preceding such Rent Payment Date, whether Basic Rent on such Rent Payment Date is payable in advance or in arrears), plus (C) the amount, if any, by which the Termination Value computed as of the Termination Date next preceding the date of such sale (or, if such sale occurs on a Rent Payment Date or a Termination Date, the Termination Value computed as of such date (provided that if such Termination Date is also a Rent Payment Date on which Basic Rent is payable in advance, such Termination Value shall be reduced by the amount of Basic Rent shown as advance Basic Rent opposite such date on Schedule 1 to the Facility Lease)), exceeds the net proceeds of such sale, and, upon payment of such amount, this Facility Lease and the Facility Lessee’s obligation to pay Basic Rent for any periods subsequent to the date of such payment shall terminate; or”

- (f) Section 17.1(g) of the Facility Lease is hereby replaced, in its entirety, with the following language:

(a) The Facility Lessor may foreclose on, or to the extent permitted by the terms of the Qualifying Equity Funding Agreement, draw upon, the Qualifying Equity Funding Agreement. Any proceeds of the Qualifying Equity Funding Agreement shall be applied (as determined by the Owner Participant to the extent consistent with Applicable Law) to unpaid Rent and shall reduce the Facility Lessee’s obligations to pay Rent to the extent any such proceeds are received by the Facility Lessor.

(b) To the extent permitted by Applicable Law (including Part 6 of Article 9 of the applicable Uniform Commercial Code), the Facility Sublease, the Facility Sublease Assignment Agreement, and the terms, as applicable, of any Qualifying Additional Security that secures the Facility Sublessee’s obligations under the Facility Sublease, any Qualifying Letter of Credit that enhances the Facility Sublessee’s obligations under the Facility Sublease, any Qualifying Sublease Surety Bond, the AMBAC Sublease Surety Bond and the Berkshire Sublease Surety Bond (in each case, whether any of the foregoing such agreements, arrangements, security or letters of credit was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not), the Facility

Lessor may draw upon, foreclose upon, or realize upon any Qualifying Additional Security that secures the Facility Sublessee's obligations under the Facility Sublease, any Qualifying Letter of Credit that enhances the Facility Sublessee's obligations under the Facility Sublease, any Qualifying Sublease Surety Bond, the AMBAC Sublease Surety Bond, or the Berkshire Sublease Surety Bond (in each case, whether any of the foregoing such agreements, arrangements, security or letters of credit was "qualifying" as of or after the Berkshire Surety Bond Date under the definitions herein or not). Any proceeds of any Qualifying Additional Security that secures the Facility Sublessee's obligations under the Facility Sublease, any Qualifying Letter of Credit that enhances the Facility Sublessee's obligations under the Facility Sublease, any Qualifying Sublease Surety Bond, the AMBAC Sublease Surety Bond, or the Berkshire Sublease Surety Bond (in each case, whether any of the foregoing such agreements, arrangements, security or letters of credit was "qualifying" as of or after the Berkshire Surety Bond Date under the definitions herein or not) that are received by the Facility Lessor, as assignee of the Facility Lessee, shall be applied to Sublease Rent as provided therein and in the Facility Sublease, and as required by Applicable Law (including Part 6 of Article 9 of the applicable Uniform Commercial Code).

(c) If, as a result of the application of the amounts described in clause (2) in accordance with the provisions of clause (2), any such amounts are received as payments of Sublease Rent under the Facility Sublease by the Facility Lessor as assignee of the Facility Sublessor, such amounts shall be applied as determined by the Owner Participant to the extent consistent with the requirements of the Facility Sublease Assignment Agreement and Applicable Law (including Part 6 of Article 9 of the applicable Uniform Commercial Code) to unpaid Rent and shall reduce the Facility Lessee's obligations to pay Rent to the extent any such amounts are so received by the Facility Lessor.

(g) The Facility Lease is hereby amended by adding a new Section 25-12:

"Section 25-12. *Certain Agreements Regarding Operative Documents.* RMLC agrees and acknowledges that the agreements made by RMLC under Section 4(b) of the Implementation Agreement are hereby incorporated herein by reference."

Section 3. Reference to Facility Lease

Except as herein amended, the Facility Lease shall remain in full force and effect. As amended hereby, the Facility Lease is hereby ratified, approved and confirmed in all respects. On and after the date hereof, each reference to the Facility Lease in any agreement, document or instrument executed and delivered pursuant to the Facility Lease by the parties hereto, shall mean and be a reference to the Facility Lease, as amended hereby and by the Amendment, Release and Consent Agreement, dated as of July 30, 1999.

Section 4. Amendments and Waivers

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

Section 5. Successors and Assigns

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

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

Section 6. Governing Law

This Amendment shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance except to the extent the law of the State of Georgia is mandatorily applicable.

Section 7. Severability

If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 8. Counterparts

This Amendment may be executed by the parties hereto in separate counterparts, each of which, subject to Section 24 of the Facility Lease, when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 9. Limitation of Liability

It is expressly understood and agreed by the parties hereto that (a) this Amendment is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee under the Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Co-Trustee is made and intended not as personal representations, undertakings and agreements by U.S. Bank National Association but is made and intended for the purpose of binding only the Co-Trustee, (c) nothing herein contained shall be construed as creating any liability on U.S. Bank National Association, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall U.S. Bank National Association be personally liable

for the payment of any indebtedness or expenses of the Co-Trustee or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Co-Trustee under this Amendment. In addition, each of the parties hereto acknowledges and agrees that the Co-Trustee has been appointed by the Owner Participant and Owner Trustee for the purpose of exercising those trust powers in the State of Georgia which may not be exercised by the Owner Trustee under Applicable Law, and that, except as otherwise required by Applicable Law, the Co-Trustee shall not be obligated to take any action hereunder unless expressly directed in writing by the Owner Trustee or the Owner Participant in accordance with the terms of the Trust Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed as of the day and year first written above.

U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity, but solely as Co-Trustee under the Trust Agreement

By: /s/ Jack Ellerin
Name: Jack Ellerin
Title: Vice President

Signed, sealed and delivered in the presence of:

/s/ Muriel Shaw
Unofficial Witness

/s/ Sonia S. Henry
Notary Public

My commission expires: July 21, 2012

[Notary Seal]

ROCKY MOUNTAIN LEASING CORPORATION

By: /s/ Elizabeth B. Higgins
Name: Elizabeth B. Higgins
Title: President

Attest: /s/ Patricia N. Nash
Name: Patricia N. Nash
Title: Assistant Secretary

Signed, sealed and delivered in the presence of:

/s/ Thomas J. Brendiar
Unofficial Witness

/s/ Sharon H. Wright
Notary Public

My commission expires: October 14, 2011

[Notary Seal]

Acknowledged and consented to by:

UTRECHT-AMERICA FINANCE CO.

By: /s/ Brett Delfino
Name: Brett Delfino
Title: Assistant Secretary

By: /s/ Margaret Schaubeck
Name: Margaret Schaubeck
Title: Assistant Treasurer

Signed, sealed and delivered in the presence of:

/s/ Geert C. Kortlandt
Unofficial Witness

/s/ Shannon Smith
Notary Public

My commission expires: November 5, 2011

[Notary Seal]

SCHEDULE TO EXHIBIT 10.5

AMENDMENT NO. 1 TO FACILITY LEASE AGREEMENT (P1)

The following table indicates for each transaction the name of the corresponding Owner Participant:

Amendment to Agreement	Date	Owner Participant
P2	May 22, 2009	Philip Morris Capital Corporation
F3	May 22, 2009	First Chicago Leasing Corporation
F4	May 22, 2009	First Chicago Leasing Corporation
N6	May 22, 2009	Philip Morris Capital Corporation (transferee from NationsBanc Leasing & R.E. Corporation)

**This instrument, when recorded,
should be returned to:**

Christopher J. Moore
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001

Cross Reference:
Book 1408
Page 661
Floyd County, Georgia

AMENDMENT NO. 1 TO FACILITY SUBLEASE AGREEMENT (P1)

THIS AMENDMENT NO. 1 TO FACILITY SUBLEASE AGREEMENT (P1) (this "**Amendment**") is made as of May 22, 2009, by and between (i) **OGLETHORPE POWER CORPORATION, (AN ELECTRIC MEMBERSHIP CORPORATION)**, an electric membership corporation organized under the laws of the State of Georgia (herein, together with its successors and permitted assigned, called "**Oglethorpe**"), and (ii) **ROCKY MOUNTAIN LEASING CORPORATION**, a corporation organized under the laws of the State of Delaware (herein, together with its successors and permitted assigned, called "**RMLC**"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Facility Sublease (as defined below) or in Appendix A thereto, as heretofore amended.

W I T N E S S E T H T H A T

WHEREAS, on December 30, 1996, Oglethorpe and RMLC entered into the Facility Sublease Agreement (P1), filed for record on August 7, 1997 in Book 1408 Page 661 of the Floyd County, Georgia land records (the "**Facility Sublease**") pursuant to which RMLC leased to Oglethorpe the Undivided Interest (leased to RMLC by the Co-Trustee pursuant to the Facility Lease) upon the terms and conditions set forth therein;

WHEREAS, pursuant to Section 8.6 of the Participation Agreement, Oglethorpe has caused Berkshire Hathaway Assurance Corporation ("**Berkshire**") to issue a surety bond in favor of the Facility Sublessor and the Facility Lessor, with respect to certain obligations of Oglethorpe under the Facility Sublease and the obligations of Ambac Assurance Corporation, formerly known as AMBAC Indemnity Corporation, under the Surety Bond (Facility Sublease-P1) No. SF0004BE, as may be amended, or amended and restated, from time to time; and

WHEREAS, in connection with the issuance by Berkshire of such surety bond, each of the parties hereto wishes to amend the Facility Sublease to include an additional Sublease Event of Default.

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

Section 1. Amendments to Appendix A to the Facility Sublease

Appendix A to the Facility Sublease is hereby amended as follows:

(i) by deleting the defined term “AMBAC Indemnity” and replacing the definition of “AMBAC”, in its entirety, with the following language:

“**AMBAC**” shall mean Ambac Assurance Corporation (formerly named AMBAC Indemnity Corporation), a Wisconsin-domiciled stock-insurance corporation. Any reference herein to “AMBAC Indemnity” shall be a reference to “AMBAC.”

(ii) by adding the following definitions thereto:

“**AMBAC Sublease Surety Bond**” shall mean the Amended and Restated Surety Bond (Facility Sublease-P1) No. SF0004BE issued on May 22, 2009 by AMBAC in favor of the Facility Sublessor and the Facility Lessor.

“**Berkshire**” shall mean Berkshire Hathaway Assurance Corporation.

“**Berkshire Sublease Surety Bond**” shall mean the Surety Bond (Facility Sublease-P1) No. 98SRD102495 issued by Berkshire in favor of the Facility Sublessor and the Facility Lessor.

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

Section 2. Other Amendments to the Facility Sublease

(a) Section 16 of the Facility Sublease is hereby amended by adding a new clause (t) after the end thereof to read in its entirety as follows:

“(t) Berkshire has delivered to the Facility Lessor or the Facility Sublessor a notice of termination for the non-payment of premiums in substantially the same form as Attachment III to the Berkshire Sublease Surety Bond and Berkshire has not received payment in full of the unpaid portion of the premium within 14 days from the date of such notice of termination; *provided, however*, that no Facility Sublease Event of Default shall occur under this paragraph (t) if the Owner Participant notifies the Facility Lessor, the Facility Sublessor and the Lender in writing that the receipt of such notice of termination shall not constitute a Facility Sublease Event of Default.”

(b) Section 17.1(e) of the Facility Sublease is hereby amended by inserting the following parenthetical immediately after the words “by written notice to the Facility Sublessee”:

“(a copy of which notice may be delivered by the Facility Lessor to Berkshire in accordance with Section 1(c)(i) of the Berkshire Sublease Surety Bond and shall constitute the “Oglethorpe Payment Demand” referred to therein)”.

(c) Section 17.1(f) of the Facility Sublease is hereby replaced, in its entirety, with the following language:

“if the Facility Sublessor shall have sold the Facility Sublessor’s Rocky Mountain Interest pursuant to paragraph (c) above, the Facility Sublessor may, if it shall so elect, demand that the Facility Sublessee pay to the Facility Sublessor, and the Facility Sublessee shall pay to the Facility Sublessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Sublease Basic Rent due for any periods subsequent to the date of such sale), an amount equal to (A) any unpaid Sublease Basic Rent due before the date of such sale and, (B)(i) if that date is a Rent Payment Date, the Sublease Basic Rent due on that date (to the extent payable in arrears), or, (ii) if that date is not a Rent Payment Date or a Termination Date, the daily equivalent (for the period from the previous Termination Date to the date of such sale) of Sublease Basic Rent due on the next Rent Payment Date (as if all such Sublease Basic Rent is payable and accruing in arrears with respect to the 6-month period preceding such Rent Payment Date, whether Sublease Basic Rent on such Rent Payment Date is payable in advance or in arrears), plus (C) the amount, if any, by which the Sublease Termination Value computed as of the Termination Date next preceding the date of such sale (or, if such sale occurs on a Rent Payment Date or a Termination Date, then Sublease Termination Value computed as of such date (provided that if such Termination Date is also a Rent Payment Date on which Sublease Basic Rent is payable in advance, such Sublease Termination Value shall be reduced by the amount of Sublease Basic Rent shown as advance Sublease Basic Rent opposite such date on Schedule 2 to the Facility Sublease)), exceeds the net proceeds of such sale, and, upon payment of such amount, this Facility Sublease and the Facility Sublessee’s obligation to pay Sublease Basic Rent for any periods subsequent to the date of such payment shall terminate; or”

(d) Section 17.1(g) of the Facility Sublease is hereby replaced, in its entirety, with the following language:

“the Facility Sublessor or upon an Event of Default, the Facility Lessor, as security assignee, may draw upon any Qualifying Sublease Surety Bond, the AMBAC Sublease Surety Bond and/or the Berkshire Sublease Surety Bond (in each case, whether any of the foregoing was “qualifying” as of or after the Berkshire Surety Bond Date under the definitions herein or not) and all proceeds thereof shall be applied (as determined by the Facility Sublessor, or upon an Event of Default, the Owner Participant) to the Facility Sublessee’s obligations to pay Sublease Rent and, to the extent any such proceeds received are so applied by the Facility Sublessor or the Facility Lessor, as security assignee, such proceeds shall reduce the Facility

Sublessee's obligations to pay such Sublease Rent (provided that Sublease Termination Value shall not be reduced below the unpaid balance of principal and stated accrued interest under the Loan Agreement)."

(e) The Facility Sublease is hereby amended by adding a new Section 25-11:

"Section 25-11. *Certain Agreements Regarding Operative Documents.* Oglethorpe agrees and acknowledges that the agreements made by Oglethorpe under Section 4(b) of the Implementation Agreement (other than its agreements with respect to the Head Lease or any Qualifying Head Lease Surety Bond or Qualifying Letter of Credit issued in replacement therefor) are hereby incorporated herein by reference."

Section 3. Reference to Facility Sublease

Except as herein amended, the Facility Sublease shall remain in full force and effect. As amended hereby, the Facility Sublease is hereby ratified, approved and confirmed in all respects. On and after the date hereof, each reference to the Facility Sublease made in the Facility Sublease or any agreement, document or instrument executed and delivered pursuant to the Facility Sublease by the parties hereto, shall mean and be a reference to the Facility Sublease as amended hereby and by the Amendment, Release and Consent Agreement, dated as of July 30, 1999.

Section 4. Governing Law

This Amendment shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance except to the extent the law of the State of Georgia is mandatorily applicable.

Section 5. Severability

If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 6. Successors and Assigns

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

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

Section 7. Amendments and Waivers

No term, covenant, agreement or condition of this Amendment may be terminated, amended or compliance therewith waived (either generally or in a particular instance,

retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto.

Section 8. Counterparts

This Amendment may be executed by the parties hereto in separate counterparts, each of which, subject to Section 24 of the Facility Sublease, when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(Signature pages follow)

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed as of the day and year first written above.

ROCKY MOUNTAIN LEASING CORPORATION

By: /s/ Elizabeth B. Higgins
Name: Elizabeth B. Higgins
Title: President

Signed, sealed and delivered in the presence of:

/s/ Thomas J. Brendiar
Unofficial Witness

/s/ Sharon H. Wright
Notary Public

My commission expires: October 14, 2011

[Notary Seal]

**OGLETHORPE POWER CORPORATION (AN
ELECTRIC MEMBERSHIP CORPORATION)**

By: /s/ Thomas A. Smith
Name: Thomas A. Smith
Title: President and Chief Executive Officer

Signed, sealed and delivered in the presence of:

/s/ Thomas J. Brendiar
Unofficial Witness

/s/ Sharon H. Wright
Notary Public

My commission expires: October 14, 2011

[Notary Seal]

Acknowledged and consented to by:

UTRECHT-AMERICA FINANCE CO.

By: /s/ Brett Delfino
Name: Brett Delfino
Title: Assistant Secretary

By: /s/ Margaret Schaubeck
Name: Margaret Schaubeck
Title: Assistant Treasurer

Signed, sealed and delivered in the presence of:

/s/ Geert C. Kortlandt
Unofficial Witness

/s/ Shannon Smith
Notary Public

My commission expires: November 5, 2011

[Notary Seal]

SCHEDULE TO EXHIBIT 10.6

AMENDMENT NO. 1 TO FACILITY SUBLEASE AGREEMENT (P1)

The following table indicates for each transaction the name of the corresponding Owner Participant:

Amendment to Agreement	Date	Owner Participant
P2	May 22, 2009	Philip Morris Capital Corporation
F3	May 22, 2009	First Chicago Leasing Corporation
F4	May 22, 2009	First Chicago Leasing Corporation
N6	May 22, 2009	Philip Morris Capital Corporation (transferee from NationsBanc Leasing & R.E. Corporation)

SURETY BOND IMPLEMENTATION AGREEMENT
(P1)

This SURETY BOND IMPLEMENTATION AGREEMENT (P1), dated as of May 22, 2009 (“Agreement”), is made by and among:

- (a) OGLETHORPE POWER CORPORATION (AN ELECTRIC MEMBERSHIP CORPORATION), an electric membership corporation organized under the laws of the State of Georgia (“Oglethorpe”);
- (b) ROCKY MOUNTAIN LEASING CORPORATION, a corporation organized under the laws of the State of Delaware (“RMLC”);
- (c) PHILIP MORRIS CAPITAL CORPORATION, a corporation organized under the laws of the State of Delaware (the “Owner Participant”);
- (d) U.S. BANK NATIONAL ASSOCIATION (successor in interest to Fleet National Bank), a national banking association, not in its individual capacity, except as expressly provided herein, but solely as a trustee under the Trust Agreement (in such capacity, the “Owner Trustee”);
- (e) U.S. BANK NATIONAL ASSOCIATION (successor in interest to SunTrust Bank, Atlanta), a national banking association, not in its individual capacity, except as expressly provided herein, but solely as a trustee under the Trust Agreement (in such capacity, the “Co-Trustee”);
- (f) AMBAC ASSURANCE CORPORATION (formerly known as AMBAC Indemnity Corporation), a Wisconsin-domiciled stock insurance corporation (“AMBAC”); and
- (g) BERKSHIRE HATHAWAY ASSURANCE CORPORATION, an insurance company organized under the laws of the State of New York (“Berkshire”).

PRELIMINARY STATEMENTS

(1) Oglethorpe, RMLC, the Owner Participant, the Owner Trustee, the Co-Trustee and Utrecht-America Finance Co., a corporation organized under the laws of the State of Delaware (the “Lender”) are parties to a Participation Agreement (P1), dated as of December 30, 1996 (the “Participation Agreement”); capitalized terms used herein and not otherwise defined being used herein as defined in the Participation Agreement).

(2) On December 31, 1996, in connection with the transactions contemplated by the Participation Agreement, AMBAC issued two surety bonds,

consisting of (a) Surety Bond (Head Lease-P1) No. SF0003BE in favor of the Head Lessee and the Owner Participant (as amended and restated as of the date hereof, and as hereafter from time to time amended as permitted hereby, the "AMBAC Head Lease Surety Bond") and (b) Surety Bond (Facility Sublease-P1) No. SF0004BE in favor of the Facility Sublessor and the Facility Lessor (as amended and restated as of the date hereof, and as hereafter from time to time amended as permitted hereby, the "AMBAC Sublease Surety Bond") and, together with the AMBAC Head Lease Surety Bond, the "AMBAC Surety Bonds"; the Head Lessee, the Owner Participant, the Facility Lessor and (with respect to the AMBAC Sublease Surety Bond only) the Facility Sublessor, as beneficiaries under the AMBAC Surety Bonds, being collectively referred to herein as the "AMBAC Beneficiaries". On the date of issuance of the AMBAC Surety Bonds, AMBAC was a Qualifying Surety Bond Provider.

(3) In connection with the issuance of the AMBAC Surety Bonds, (a) the Owner Participant, the Owner Trustee, the Co-Trustee and AMBAC entered into the Agreement for Assignment on Default (P1) dated as of December 30, 1996 (as amended, and as hereafter from time to time amended as permitted hereby, the "AMBAC Assignment Agreement"), and (b) Oglethorpe and AMBAC entered into the Guaranty Agreement (P1) dated as of December 30, 1996 (the "AMBAC Guaranty Agreement") (the AMBAC Guaranty Agreement, together with the AMBAC Surety Bonds and the AMBAC Assignment Agreement, the "AMBAC Surety Documents").

(4) Subsequent to the date of issuance of the AMBAC Surety Bonds, AMBAC ceased to be a Qualifying Surety Bond Provider and, as a result, Oglethorpe is required to replace the AMBAC Head Lease Surety Bond and the AMBAC Sublease Surety Bond or provide other credit enhancement acceptable to the Owner Participant and, in the case of the AMBAC Sublease Surety Bond, RMLC, in their sole discretion, in each case as required by the terms of Sections 8.5 and 8.6, respectively, of the Participation Agreement.

(5) In order to satisfy its obligations under Sections 8.5 and 8.6 of the Participation Agreement, Oglethorpe has proposed to cause to be delivered (a) to the Head Lessee and the Owner Participant, a surety bond issued by Berkshire in the form of Exhibit A attached hereto (as amended from time to time, the "Berkshire Head Lease Surety Bond"), and (b) to the Facility Sublessor and the Facility Lessor, a surety bond issued by Berkshire in the form of Exhibit B attached hereto (as amended from time to time, the "Berkshire Sublease Surety Bond") and, together with the Berkshire Head Lease Surety Bond, the "Berkshire Surety Bonds"), in each case without releasing the AMBAC Surety Bonds.

(6) As a condition to the issuance of the Berkshire Surety Bonds, Berkshire has requested the execution and delivery of (a) this Agreement, (b) the Berkshire Agreement for Assignment on Default (P1) dated as of the date hereof among the Owner Participant, the Owner Trustee, the Co-Trustee and Berkshire (the "Berkshire Assignment Agreement") and, together with this Agreement and the Berkshire Surety Bonds, the "Berkshire Documents"), (c) the Agreement Regarding Surety Bonds (P1) dated as of the date hereof among Oglethorpe, RMLC and Berkshire (the "Agreement"),

Regarding Surety Bonds”), and (d) the Berkshire Guaranty Agreement (P1) dated as of the date hereof between Ogletorpe and Berkshire (the “Berkshire Guaranty Agreement”), in each case by the parties hereto and thereto in order to confirm, among other things, (i) Berkshire’s right to reimbursement from Ogletorpe for any amounts that may be paid by Berkshire under and in accordance with the terms of the Berkshire Surety Bonds, (ii) Berkshire’s right to acquire by assignment, subject to the terms and conditions set forth herein and in the other Berkshire Documents, the Owner Participant’s Beneficial Interest, (iii) Berkshire’s right to be subrogated or to receive an assignment, as provided in paragraphs 6 and 11(f) of each of the Berkshire Surety Bonds, to the right, title and interest of the Head Lessee, the Facility Lessor, the Ground Lessee, the Ground Sublessor and the Owner Participant (as the case may be) in, to and under the Head Lease, the Facility Lease, the Ground Lease, the Ground Sublease, the Rocky Mountain Agreements Assignment and the Rocky Mountain Agreements Re-assignment or relating to or arising under the Operative Documents (such right, title and interest, subject to any right, title and interest that shall have been assigned to AMBAC, or to which AMBAC shall have been subrogated, in accordance with the terms hereof and the terms of the AMBAC Surety Bonds, being the “Subrogation Interest”), and (iv) Berkshire’s right to be subrogated, (x) as provided in paragraphs 11(a) and 11(f) of the Berkshire Head Lease Surety Bond, to the right, title and interest of the Head Lessee and the Owner Participant in, to and under the AMBAC Head Lease Surety Bond and (y) as provided in paragraphs 11(a) and 11(f) of the Berkshire Sublease Surety Bond, to the right, title and interest of the Facility Sublessor and the Facility Lessor in, to and under the AMBAC Sublease Surety Bond (the “Additional Subrogation Interest”).

(7) Subject to the foregoing and to the terms and conditions set forth herein, (a) Berkshire has agreed to issue the Berkshire Surety Bonds, (b) AMBAC has agreed to issue its amendments and restatements as of the date hereof of the AMBAC Surety Bonds, and (c) the Owner Participant and, in the case of Section 8.6 of the Participation Agreement, RMLC, have agreed to accept the Berkshire Surety Bonds as additional credit enhancement for purposes of Sections 8.5 and 8.6 of the Participation Agreement.

AGREEMENT

Section 1. Acceptance of Berkshire Surety Bonds. The Owner Participant and, for purposes of Section 8.6 of the Participation Agreement, RMLC agree that the Berkshire Surety Bonds are, as of the date hereof, acceptable credit enhancement under clause (y) of Section 8.5 and clause (y) of Section 8.6 of the Participation Agreement. It is further agreed that as of the date hereof (a) the Berkshire Head Lease Surety Bond shall constitute a Qualifying Head Lease Surety Bond and (b) the Berkshire Sublease Surety Bond shall constitute a Qualifying Sublease Surety Bond.

Section 2. Reaffirmation of AMBAC Surety Bonds. Effective as of the Effective Date (as defined in the Agreement Regarding Surety Bonds), AMBAC is executing and delivering amendments and restatements of the AMBAC Surety Bonds (a) for the benefit of the obligees named therein and (b) in recognition of Berkshire’s subrogation and other rights set forth or referred to herein and/or in the Berkshire Surety

Bonds and/or arising in connection herewith or therewith, for the benefit of Berkshire on the terms set forth therein.

Section 3. Representations and Warranties. (a) Representations and Warranties of All Parties. Each of the parties hereto (other than AMBAC in respect of the AMBAC Surety Bonds) represents and warrants to the other parties that:

(i) it is duly authorized to enter into this Agreement and the transactions contemplated hereby;

(ii) each Surety Bond Document (as defined in the Agreement Regarding Surety Bonds) to which it is a party constitutes a legal, valid and binding obligation of it enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject as to enforceability to general principles of equity in a proceeding at law or in equity; and

(iii) its execution, delivery and performance of each Surety Bond Document to which it is a party does not and will not result in a breach or violation in any material respect of, or cause a default in any material respect under, (A) its articles of incorporation, articles of association, by-laws or other governing documents, or (B) any material provision of any applicable law, regulation, or order, or any material license, decree, judgment, indenture, contract or agreement binding upon it or its assets.

(b) Additional Representations and Warranties of AMBAC. AMBAC hereby represents and warrants to the other parties hereto as follows:

(i) AMBAC has full corporate power and authority to execute and deliver the AMBAC Surety Bonds, and the AMBAC Surety Bonds have been duly authorized, executed and delivered by AMBAC, and constitute legal, valid and binding obligations of AMBAC enforceable in accordance with their respective terms except to the extent that the enforceability (but not the validity) of such obligations may be limited by any applicable bankruptcy, insolvency, liquidation, rehabilitation or other similar law or enactment now or hereafter enacted affecting the enforcement of creditors' rights; and

(ii) the execution and delivery by AMBAC of the AMBAC Surety Bonds will not, and the satisfaction of the terms thereof will not, conflict with or result in a breach, in any material respect, of any of the terms, conditions or provisions of the Restated Articles of Incorporation or Restated Corporate By-Laws of AMBAC, or any restriction contained in any contract, agreement or instrument to which AMBAC is a party or by which it is bound or constitute a default, in any material respect, under any of the foregoing.

Section 4. Agreements Regarding Operative Documents. Effective as of the Effective Date:

(a) From and after the date hereof until the Berkshire Termination Date (as defined below), and so long as Berkshire is not in default in any material respect in the performance of its obligations under the Berkshire Surety Bonds:

(i) AMBAC shall not, without the prior written consent of Berkshire (which consent shall not be unreasonably withheld), supplement, modify or amend, or grant, provide or enter into any waiver, release or compromise (each, a “Modification”) under or in respect of any of the Operative Documents, to the extent that such action has or would reasonably be expected to have a material adverse effect on the rights and interests of Berkshire under the Berkshire Documents or the Operative Documents or the value of the Beneficial Interest or any part thereof, provided, however, that forbearance by AMBAC on a discretionary basis from exercising any right or remedy shall not require such consent; and *provided, further*, that nothing in this Section 4(a)(i) shall be construed to prevent AMBAC from consenting to (x) any waiver (whether or not such consent is required) of Oglethorpe’s obligations to replace the Berkshire Surety Bonds pursuant to Sections 8.5 and 8.6 of the Participation Agreement or (y) any replacement of the Berkshire Surety Bonds pursuant to Sections 8.5 and 8.6 or 8.5-1 and 8.6-1 of the Participation Agreement and so long as AMBAC is not in default in the payment of any amount owing under or in respect of the AMBAC Surety Bonds or the other AMBAC Surety Documents, Berkshire shall not, without the prior written consent of AMBAC (which consent shall not be unreasonably withheld), enter into any written Modification under or in respect of the Berkshire Documents, to the extent that such action has or would reasonably be expected to have a material adverse effect on the rights and interests of AMBAC under the AMBAC Surety Documents, provided, however, that the exercise by Berkshire or forbearance by Berkshire on a discretionary basis from exercising any rights or remedies under the Berkshire Documents shall not require such consent;

(ii) If Berkshire is not in default on any of its payment obligations under the Berkshire Documents at the time of any Modification under or in respect of any of the Operative Documents, such Modification shall be void and ineffective unless (i) Berkshire shall have consented to such Modification in writing or (ii) such Modification is permitted to be made without Berkshire’s prior consent pursuant to Sections 4(a)(i), (iii) and (iv) of this Agreement;

(iii) Each of Oglethorpe and RMLC agrees that, from and after the date hereof and until the Berkshire Termination Date, it will not, without the prior written consent of Berkshire, supplement, modify or amend any of the Operative Documents, consent to any departure by any other party from its obligations under any of the Operative Documents, waive or release any rights or interests under any of the Operative Documents, grant any other approval, consent or waiver under the Operative Documents or enter into any other agreement with

respect thereto or in connection therewith, or, to the extent that it has any right to object, accept or acquiesce in any such approval, consent, waiver or other agreement from or by any other party to the Operative Documents, in each case if such action has or would be reasonably expected to have a material adverse effect on the rights and interests of Berkshire under the Berkshire Documents or the value of the Beneficial Interest or the Subrogation Interest or any claims relating to or arising from any loss or impairment of the Beneficial Interest or the Subrogation Interest or, in the case of Oglethorpe, the Guaranty Agreement, including, without limitation, any such claims under the terms of the Head Lease and any remedies under Section 11.2(a) thereof; provided, however, that nothing in this Section 4(a)(iii) shall be construed to prevent Oglethorpe from requesting or agreeing to any waiver of its obligations to replace the Berkshire Surety Bonds (or prevent RMLC from consenting thereto) or from replacing the Berkshire Surety Bonds pursuant to Section 8.5 and 8.6 of the Participation Agreement or Oglethorpe or RMLC from taking action to the extent necessary to comply with any of its obligations under the Operative Documents; and

(iv) AMBAC shall not, without the prior written consent of Berkshire, supplement, modify or amend, or grant, provide or enter into or accept any waiver, release, compromise, approval, consent or other agreement under or in respect of, any of the AMBAC Surety Bonds or the AMBAC Assignment Agreement, to the extent that such action has or would reasonably be expected to have a material adverse effect on the rights and interest of Berkshire with respect thereto.

(b) (A) Each of RMLC and Oglethorpe agrees that, regardless whether RMLC's or Oglethorpe's obligations shall have been discharged under the terms of the Operative Documents, it shall be, or shall continue to be, unconditionally obligated to Berkshire or its designee (to the extent such person is subrogated to, or acquires, the Beneficial Interest pursuant to the Berkshire Assignment Agreement or the Subrogation Interest under either of the Surety Bonds) to perform and discharge, without duplication, (1) any and all of its obligations with respect to which any payment under any Berkshire Surety Bond or AMBAC Surety Bond is made or against which the proceeds thereof are applied, in each case to the same extent as though no payment had been made under any Berkshire Surety Bond or AMBAC Surety Bond, and (2) any and all of its other obligations that have not been performed by it or on its behalf (other than any such performance by Berkshire or AMBAC) and are or otherwise would be owing to the holder of the Beneficial Interest or the Subrogation Interest, as the case may be, and (B) Oglethorpe agrees that, without limitation on the foregoing, if (1) a payment has been made by Berkshire under either of the Berkshire Surety Bonds and Berkshire has not been reimbursed by Oglethorpe for the full amount thereof pursuant to the Berkshire Guaranty Agreement or (2) AMBAC has not paid the full amount of a conforming demand for payment under the AMBAC Surety Bonds, Oglethorpe shall, unless expressly waived in writing by Berkshire, immediately provide a new Qualifying Head Lease Surety Bond, Qualifying Letter of Credit or other credit enhancement as required by and in accordance with Section 8.5 of the Participation Agreement and a new Qualifying Sublease Surety Bond, Qualifying Letter of Credit or other credit enhancement as required by and in accordance with Section 8.6 of the Participation

Agreement (it being agreed that any failure to comply with the provisions of this clause (B) shall constitute a Head Lessor Event of Default in the case of Section 8.5 and a Sublease Event of Default in the case of Section 8.6). The agreements of RMLC in this Section 4(b) shall be deemed to be incorporated into the covenants of RMLC in the Facility Lease and the agreements of Oglethorpe in this Section 4(b) shall be deemed to be incorporated into the covenants of Oglethorpe in the Head Lease or the Facility Sublease, as applicable.

(c) In the event that Berkshire or its designee shall acquire, or shall be committed to acquire, as contemplated by the Berkshire Documents, the Owner Participant's Beneficial Interest and/or the Subrogation Interest or any part thereof and at the time of such acquisition or at the time when Berkshire or any designee of Berkshire shall have acquired or become committed to acquire such interest a Sublease Event of Default or a Head Lessor Event of Default shall have occurred and be continuing, Oglethorpe shall, unless expressly waived in writing by Berkshire, automatically be obligated, within ten Business Days thereafter or, if later, the date Berkshire acquires the Owner Participant's Beneficial Interest pursuant to the Berkshire Assignment Agreement or the Subrogation Interest under either of the Surety Bonds, to, at its option, either (A) cause the Lien of the Oglethorpe Mortgage to be released or modified, in each case in a manner acceptable to Berkshire, such that (1) the Lien thereof no longer attaches to or affects the Facility, the Rocky Mountain Site, the Undivided Interest or any other rights or interests of the Head Lessee or the Ground Lessee under the Head Lease or the Ground Lease, and (2) any foreclosure or other action in respect thereof will not disturb the possession of the Head Lessee, the Ground Lessee or their respective successors, assigns and lessees in and to the Facility, the Rocky Mountain Site and the Undivided Interest, and otherwise terminate and remove all other Liens (other than Permitted Liens of the type described in clauses (i) and (iii)-(xii) of the definition thereof) affecting the Facility, the Rocky Mountain Site and/or the Undivided Interest, or (B) to the extent that such interests have been transferred to Berkshire, purchase, as the case may be, the Owner Participant's Beneficial Interest from Berkshire or the Subrogation Interest from Berkshire, as applicable, pursuant to documentation reasonably acceptable to Berkshire, for an amount equal to the Estimated Market Value of the Leasehold Interest (as defined below) minus the sum of (x) the then unpaid principal balance of the Loan, (y) the amount of any indefeasible payment made at or prior to such time for the account of the Owner Participant or the Owner Trustee under the AIG Equity Funding Agreement or any other Qualifying Equity Funding Agreement or any replacement thereof or any Qualifying Additional Security (in each case, whether or not "qualifying"), and (z) without duplication of the amount described in clause (x) above, the amount of any indefeasible prepayment of the principal of the Loan made at or prior to such time pursuant to the Payment Undertaking Agreement. Upon the consummation of any purchase by Oglethorpe contemplated in clause (B) of the next preceding sentence (including indefeasible payment of the purchase price to Berkshire), Berkshire shall assign to Oglethorpe, without recourse and without representations or warranties of any kind, express, implied or otherwise, all of Berkshire's claims against Oglethorpe under the Operative Documents and the Berkshire Documents (other than indemnification claims). Without limiting Oglethorpe's indemnification obligations under Sections 11.1 and 11.2 of the Participation Agreement, Oglethorpe shall pay or reimburse Berkshire

and the other parties for any and all costs and expenses (including reasonable legal fees and expenses, all interest charges on amounts payable under the Operative Documents (including late payment of default interest), all filing and other procedural charges and fees of financial and technical professionals) incurred by Berkshire and the other parties in connection with the exercise by Oglethorpe of the purchase option under clause (B) above, as well as any taxes payable in connection with such purchase.

For purpose of this Section 4(c), “Estimated Market Value of the Leasehold Interest” shall be equal to \$462,399,033.60, which is the Facility Lessor’s pro rata portion of \$1.1 billion, or approximately equal to 101.22% of the Purchase Option Price under Section 15.1 of the Facility Sublease. The Purchase Option Price was based on the estimated market value of the Leasehold Interest at the end of the Facility Sublease Term as determined pursuant to an appraisal conducted by Deloitte & Touche, LLP Valuation Group prior to the Closing Date on behalf of the Owner Participant. Although the appraisal is confidential and neither Berkshire nor Oglethorpe have reviewed the appraisal or the underlying assumptions in the appraisal, they have agreed to base the Estimated Market Value of the Leasehold Interest on the Purchase Option Price since (i) the appraisal was performed by an independent third party with extensive experience in appraising electric generating facilities; (ii) the Purchase Option Price appears to Oglethorpe and Berkshire to be generally consistent with the results of Oglethorpe’s internal study, described below, and could reasonably be expected to represent, or be in the range of, the future market value of the Leasehold Interest under valuation assumptions similar to those used in Oglethorpe’s internal study referred to below; (iii) the procurement of a new appraisal from an independent appraiser would be inconsistent with the commercial objectives of the parties; and (iv) the Facility is unique in several material respects, and, in the absence of sales of comparable facilities, the range of potential valuations in the future is so broad as to create an unacceptable level of commercial uncertainty for the parties. In agreeing upon a liquidation of the Estimated Market Value of the Leasehold Interest, the parties have taken into account the results of an internal study performed by Oglethorpe in 2008, which provided an estimate for Oglethorpe’s interest in the Facility equal to \$1.03 billion at that time. Both Oglethorpe and Berkshire agree that (i) the determination of Estimated Market Value of the Leasehold Interest as specified above is reasonable, the Estimated Market Value of the Leasehold Interest set forth in the first sentence of this paragraph shall be binding and such Estimated Market Value shall apply regardless of any different number in use for any other purpose by Oglethorpe or Berkshire and (ii) neither shall have the right to seek an appraisal of the Leasehold Interest under this Section 4(c). Oglethorpe hereby represents to Berkshire that (1) in 2008 Oglethorpe’s estimate of market value of its entire interest in the Facility was \$1.03 billion, (2) such estimate was determined in the ordinary course, in connection with an internal valuation of all of its generating facilities, and not in anticipation of or in connection with the transactions contemplated pursuant to the Agreement Regarding Surety Bonds, (3) such estimate was performed using a discounted cash flow approach and assumptions that Oglethorpe believed, at the time of such determination, to be reasonable, (4) Oglethorpe believes that its estimate of market value continues to be within the range of values which could be deemed to be market for Oglethorpe’s interest in the Facility as of the Berkshire Surety Bond Date, and (5) as of

the Berkshire Surety Bond Date, Oglethorpe has not updated such estimate and continues to utilize such estimate internally for the purposes for which it was originally generated.

Section 5. Agreements Regarding Subrogation Rights, Etc. Anything contained in the AMBAC Surety Documents to the contrary notwithstanding:

(a) Each of Oglethorpe, RMLC, the Owner Participant, the Owner Trustee, the Co-Trustee and AMBAC acknowledges and agrees that in the event that a demand for payment is made under either of the Berkshire Surety Bonds and Berkshire pays the amount required by such demand in full (the payment by Berkshire in full of the amount required by such a demand being referred to as a “Berkshire Surety Payment”) (i) Berkshire shall immediately be fully subrogated to all rights of each of the respective AMBAC Beneficiaries in respect of AMBAC’s obligations with respect to such Berkshire Surety Payment, including any related Claimed Amount (as defined in the AMBAC Surety Bonds) that is unpaid under the AMBAC Surety Bonds, and the AMBAC Beneficiaries shall have no further obligation to AMBAC under the AMBAC Surety Bonds with respect to such Berkshire Surety Payment, (ii) Berkshire shall be entitled to exercise any and all rights and to enforce any and all remedies which any such AMBAC Beneficiary now has or may hereafter have against AMBAC with respect to such Berkshire Surety Payment, and (iii) Berkshire shall have, except as specified in the penultimate sentence of paragraph 11(f)(ii) of the Berkshire Surety Bonds, the sole and exclusive benefit of, and the sole and exclusive right to participate in, any claims or recoveries against AMBAC with respect to such Berkshire Surety Payment, in each case under clauses (i), (ii) and (iii) for its own benefit and to the exclusion of each of the AMBAC Beneficiaries or any other Person, and without any duty to account therefor to any other Person and (iv) each of the AMBAC Beneficiaries shall, upon request by and at the expense of Berkshire, execute and deliver to Berkshire or its designee such assignments and other agreements, in form and substance reasonably satisfactory to Berkshire, as Berkshire may reasonably require to evidence the transfer and assignment to Berkshire of all such rights and interests of each such AMBAC Beneficiary in, to and under the AMBAC Surety Bonds with respect to such Berkshire Surety Payment. Notwithstanding anything in the next preceding sentence to the contrary, in the event that, following any subrogation, transfer and assignment contemplated in such sentence, any payment with respect to a Covered Obligation (as defined in the Berkshire Head Lease Surety Bond or the Berkshire Sublease Surety Bond) shall become an Oglethorpe Avoided Payment, the AMBAC Beneficiaries shall retain all rights to draw under the AMBAC Surety Bonds with respect to such Oglethorpe Avoided Payment as are provided under such bonds and retain the proceeds of such drawing, provided, however, that in the event that AMBAC shall not honor such drawing and a drawing under the Berkshire Surety Bonds with respect to such Oglethorpe Avoided Payment shall be honored, Berkshire shall be subrogated and shall be entitled to transfer and assignment as specified in the next preceding sentence with respect to the rights of each such AMBAC Beneficiary under the AMBAC Surety Bonds with respect to such Oglethorpe Avoided Payment.

(b) AMBAC agrees that if a conforming demand for payment is made under either of the Berkshire Surety Bonds and Berkshire makes a Berkshire Surety Payment of

the amount demanded thereunder, AMBAC shall thereupon pay to Berkshire from time to time all amounts then due or to become due under either or both of the AMBAC Surety Bonds with respect to such Berkshire Surety Payment, in each case in accordance with their respective terms, and the AMBAC Beneficiaries acknowledge and agree to such payments by AMBAC, subject to the provisions of Section 5(a) hereof. AMBAC further agrees that the obligation of AMBAC to make any payments to Berkshire or its designee as subrogee, assignee or transferee of the AMBAC Beneficiaries under the AMBAC Surety Bonds, whether under this Section 5(b) or otherwise, shall be absolute, irrevocable and unconditional and not subject to any setoff, counterclaim or defense or any other requirement of any kind or nature, as and to the extent specified in the AMBAC Surety Bonds, each of which waivers of setoff, counterclaim and defense is hereby reaffirmed for the express benefit of Berkshire. Upon subrogation of Berkshire pursuant to Section 5(a) hereof, the AMBAC Beneficiaries shall cease to have any claim against AMBAC under the AMBAC Surety Bonds for such Berkshire Surety Payment.

(c) AMBAC irrevocably, absolutely and unconditionally waives all rights of reimbursement, contribution and subrogation against Berkshire, whether otherwise existing under or by virtue of any of the Berkshire Documents or any payments or other actions thereunder or by applicable law or otherwise. Nothing in this Section 5(c) shall be construed to prevent AMBAC from bringing a separate action against Berkshire for any breach by Berkshire of its obligations to AMBAC, if any, under any of the Berkshire Documents.

(d) Each of the parties hereto (i) consents to, agrees to recognize and will not interfere with, or cause, request or require any other party to interfere with, any rights of subrogation, contribution, purchase or reimbursement in favor of Berkshire set forth in the Berkshire Documents or (to the extent not expressly limited by the Berkshire Documents) applicable law (it being understood that any such subrogation rights shall include, without limitation, the right to enforce any obligations of Oglethorpe that have not been performed by Oglethorpe with respect to which any payment under any Berkshire Surety Bond is made or against which the proceeds thereof are otherwise applied, to the same extent as though no payment had been made under any Berkshire Surety Bond, so long as Berkshire has not been reimbursed by Oglethorpe pursuant to the Berkshire Guaranty Agreement and/or AMBAC has not paid, in installments or (at AMBAC's sole option) on an accelerated basis, under the AMBAC Surety Bonds, the full amount of all Berkshire Obligations (as defined below); provided, however, that causing, requesting or requiring any party hereto to perform its obligations hereunder or under any other Operative Document shall not constitute such interference, and (ii) upon the exercise of any such rights by Berkshire, agrees to recognize Berkshire as subrogee, purchaser or assignee, as the case may be. Nothing in this paragraph 5(d) shall be construed to be a representation on the part of the Owner Participant or Head Lessee as to the existence or extent of the right, title, interest and remedies to which Berkshire shall be subrogated pursuant to this Section 5 or applicable law, except that the Owner Participant and the Head Lessee shall be deemed to represent, severally as to itself, that it has not assigned such right, title, interest or remedies (other than, in the case of the Head Lessee, any grant to the Lender of a security interest in any such right, title, interest or remedies or any interest therein or other rights relating thereto under and as provided by the Loan

Agreement, and other than any assignment or grant of subrogation rights required under the terms of the AMBAC Surety Documents) and, in the case of the Owner Participant, that no Owner Participant's Lien or, in the case of the Head Lessee, that no Facility Lessor's Lien exists thereon. Upon payment of any demand for payment under the Berkshire Surety Bonds, Berkshire shall have no liability or duty to AMBAC, or to account to AMBAC, for the exercise of any rights and remedies, or failure to exercise any rights or remedies, or any other action taken by it or failure to act under the Berkshire Documents, the Berkshire Guaranty Agreement, the Operative Documents or applicable law or the effect of any such action; provided, however, that if AMBAC shall have made any payment under the AMBAC Surety Bonds that shall have not been reimbursed but shall have not made full payment of all amounts due under the AMBAC Surety Bonds, Berkshire shall, upon request by and at the expense of AMBAC, do either of the following (at the election of Berkshire): (1) turn over to AMBAC any excess of funds received by Berkshire to which Berkshire shall be entitled from the exercise of any remedies or other actions that result in the realization of proceeds of the Beneficial Interest or the Subrogation Interest (including any sale of the interest under Section 4(c)(B) hereof to Oglethorpe or its designee) over the full amount of the Berkshire Obligations, to the extent of such unreimbursed payments due to AMBAC plus any other amounts due to AMBAC under the AMBAC Guaranty Agreement, subject to such indemnities and other conditions as Berkshire may require, and without recourse and without representations or warranties of any kind, express, implied or otherwise, or (2) interplead such excess amount (or, if less, the amount claimed by AMBAC) with a court of competent jurisdiction in an action against AMBAC, Oglethorpe and such other parties as Berkshire may determine in its sole discretion.

(e) Unless and until the occurrence of the latest of (i) the date on which the Berkshire Surety Bonds are terminated, (ii) the full and final release of Berkshire from further liability under the Berkshire Documents by the other parties thereto, and (iii) indefeasible payment to Berkshire of all Berkshire Obligations (the latest of such dates being the "Berkshire Termination Date"), in the event that any conforming demand for payment shall be presented and paid in full under any of the Berkshire Surety Bonds, (A) AMBAC shall not be entitled to consummate any right of subrogation or purchase under the AMBAC Surety Bonds or under any other Operative Documents (any and all such rights being (except as specified in the second paragraph of Section 5(g) hereof) exercisable, if at all, solely by Berkshire as subrogee or purchaser for its sole benefit), (B) any and all rights of AMBAC of subrogation or purchase under the AMBAC Surety Documents or under any other Operative Documents, and any and all security provided for the benefit of AMBAC under the Operative Documents, shall be subject and subordinate in all respects to the rights of Berkshire under the Berkshire Documents and the Berkshire Guaranty Agreement and any such security provided under the Operative Documents, and, to the extent that the exercise of such rights by Berkshire (and performance by the Head Lessee, the Facility Lessor and the Owner Participant in favor of Berkshire) may impair or render ineffective any security provided for the benefit of AMBAC or any right of reimbursement of AMBAC under the AMBAC Surety Documents, AMBAC hereby consents to such impairment and/or ineffectiveness and waives any and all claims resulting therefrom, and (C) as between AMBAC and Berkshire, Berkshire shall be entitled to exercise any rights with respect to such security

and shall be entitled to receive, hold and apply any proceeds thereof to the exclusion of AMBAC, and AMBAC shall not be entitled to exercise such rights or to receive, hold and/or apply any such proceeds until the Berkshire Obligations have been satisfied in full.

In furtherance of the foregoing, AMBAC hereby subordinates any and all claims for amounts owed to AMBAC under the AMBAC Surety Documents (the "AMBAC Obligations") to any and all claims for amounts (including Post Petition Interest (as defined below)) owed from time to time to Berkshire under the Berkshire Documents and/or the Berkshire Guaranty Agreement (the "Berkshire Obligations") to the extent and in the manner hereinafter set forth in the following clauses (A)-(D):

(A) Except as set forth in the next succeeding paragraph, unless Berkshire otherwise agrees, AMBAC shall not demand, accept or take any action to collect any payment on account of the AMBAC Obligations other than, subject to clause (C) below, under the AMBAC Guaranty Agreement;

(B) In any proceeding under the Bankruptcy Code or any similar law (collectively, "Bankruptcy Law") relating to Oglethorpe, AMBAC agrees that, after payment by Berkshire of a demand for payment under the Berkshire Surety Bonds, Berkshire shall be entitled to receive payment in full in cash of all Berkshire Obligations (including all interest and expenses accruing after the commencement of a proceeding under any Bankruptcy Law, whether or not constituting an allowed claim in such proceeding ("Post Petition Interest")) before AMBAC receives payment of any AMBAC Obligations;

(C) After payment by Berkshire of a demand for payment under the Berkshire Surety Bonds, if AMBAC shall receive any payments on account of the AMBAC Obligations (including, for the avoidance of doubt, under the AMBAC Guaranty Agreement), AMBAC shall receive such payments as trustee for Berkshire and deliver such payments to Berkshire on account of the Berkshire Obligations (including all Post Petition Interest), together with any necessary endorsements or other instruments of transfer; and

(D) After any payment by Berkshire of a demand for payment under the Berkshire Surety Bonds, if AMBAC shall collect any amounts with respect to the AMBAC Obligations, it shall receive such amounts in trust for Berkshire and immediately pay such amounts over to Berkshire until all outstanding Berkshire Obligations shall have been paid in full.

In the event that (i) one or more demands for payment shall have been made under the AMBAC Surety Bonds and AMBAC shall have timely honored all such demands so that no demand for payment shall have been made under either of the Berkshire Surety Bonds, and provided that (x) AMBAC shall not be in default on its obligations to Berkshire under this Agreement or under either of the AMBAC Surety

Bonds and (y) no event shall have occurred and be continuing that would prevent or would reasonably be expected to prevent AMBAC from making payment of any amount required to be paid by AMBAC under the AMBAC Surety Bonds when due thereunder, or under any other surety bond implementation agreement or surety bonds issued in connection with the Facility, then, notwithstanding the next preceding paragraph, AMBAC may exercise all available rights under the Operative Documents and applicable law for the purpose of claiming reimbursement from Oglethorpe for amounts paid under either of the AMBAC Surety Bonds and for purposes of recovering such amount from any collateral available to AMBAC or through the exercise of any rights to which AMBAC has been subrogated.

(f) If at any time Oglethorpe shall provide or be required to provide any Qualifying Additional Security or other additional collateral in the nature of a letter of credit, guaranty or surety bond (or other collateral that may provide subrogation rights to any Person) for its obligations under the Operative Documents, Oglethorpe agrees that, unless each of Berkshire and AMBAC consents thereto (or shall have been released from liability under the Berkshire Surety Bonds or AMBAC Surety Bonds, as applicable, and shall have received payment in full of all amounts with respect thereto), it will ensure that (i) the issuer or provider of such Qualifying Additional Security or other collateral waives and agrees that it will not exercise any subrogation rights with respect thereto without the prior written consent of such Surety Bond Provider, and (ii) without limitation of any other rights of such Surety Bond Provider, such Qualifying Additional Security shall be issued on terms such that it shall be practicable for such Surety Bond Provider to benefit therefrom as part of the right, title and interest that such Surety Bond Provider shall acquire in the event that such Surety Bond Provider shall have acquired the Beneficial Interest or the Subrogation Interest in accordance with the terms of the Berkshire Documents or AMBAC Surety Documents, as applicable.

(g) The rules specified in this Section 5(g) are subject to the provisions of Section 5(e). In the event that Berkshire shall give notice of exercise of its purchase option under the Berkshire Assignment Agreement, Berkshire shall give prompt notice of such exercise to AMBAC, whereupon AMBAC shall have no further right to exercise its right under the AMBAC Assignment Agreement if Berkshire shall not be in default on its obligation to pay the purchase price under the Berkshire Assignment Agreement when due. In the event that AMBAC shall give notice of exercise of its purchase option under the AMBAC Assignment Agreement, AMBAC shall give prompt notice of such exercise to Berkshire, whereupon Berkshire shall have no further right to exercise its right under the Berkshire Assignment Agreement if AMBAC shall not be in default of its obligation to pay the purchase price under the AMBAC Assignment Agreement when due. In the event that Berkshire shall give notice of exercise of its purchase option under the Berkshire Assignment Agreement in accordance with the terms thereof and hereof and AMBAC shall give notice of exercise of its purchase option under the AMBAC Assignment Agreement in accordance with the terms thereof and hereof, then in each case such notice of exercise shall be ineffective if the Purchase Option Election (as defined in the Berkshire Assignment Agreement or the AMBAC Assignment Agreement) relating to such exercise by such party shall be received by the Owner Participant after the Owner Participant shall have received the Purchase Option Election relating to such

exercise by the other party. If the Purchase Option Election (as defined in the Berkshire Assignment Agreement) and the Purchase Option Election (as defined in the AMBAC Assignment Agreement) are received or deemed received simultaneously, the Purchase Option Election (as defined in the Berkshire Assignment Agreement) shall be ineffective.

Notwithstanding any provision to the contrary of the Berkshire Assignment Agreement or the AMBAC Assignment Agreement, if a conforming demand for payment has been made under the AMBAC Surety Bonds and AMBAC is not in default thereunder, Berkshire shall not (so long as no such default has occurred and shall be continuing) give notice that it is exercising or exercise its purchase option under the Berkshire Assignment Agreement, (ii) if a conforming demand for payment has been made under the AMBAC Surety Bonds that has not been paid by AMBAC and no demand for payment shall have been made under the Berkshire Surety Bonds, AMBAC may, in accordance with the terms of the AMBAC Assignment Agreement, give notice that it is exercising and exercise its purchase option thereunder (but any such exercise shall be subject to the rules in the preceding paragraph) and (iii) if a conforming demand for payment has been made under the Berkshire Surety Bonds and Berkshire shall not have been indefeasibly paid or reimbursed the full amount of all Berkshire Obligations, AMBAC shall not (until such circumstances shall no longer exist) exercise its purchase option under the AMBAC Assignment Agreement, and any attempt by AMBAC to exercise such purchase option in such circumstances shall be void, ineffective and deemed withdrawn. In addition, so long as AMBAC is not in default under the AMBAC Surety Bonds, if a Trigger Event (as defined in the Berkshire Assignment Agreement) (other than a Trigger Event described in clause (d) of the definition of that term) shall have occurred, Berkshire agrees that it shall not give notice of its exercise of its purchase option thereunder until the expiration of at least 21 days after the date of the occurrence of such Trigger Event or, if earlier, the date on which the provisions of this sentence are waived in writing by AMBAC.

In the event that (A) either (i) Berkshire shall have acquired the Beneficial Interest pursuant to the Berkshire Assignment Agreement and shall have paid the purchase price thereunder or (ii) Berkshire shall have acquired the Subrogation Interest under either of the Surety Bonds in consideration of Payment in Full (as defined therein), and (B) AMBAC shall have made one or more payments under the AMBAC Surety Bonds, then, if Berkshire shall subsequently dispose of the Beneficial Interest or the Subrogation Interest (including pursuant to Section 4(c) hereof) for an amount in excess of Unpaid Amount (as defined below), Berkshire shall, upon request by and at the expense of AMBAC, do either of the following (at the election of Berkshire): (1) pay to AMBAC an amount equal to the lesser of the amount of such excess to which Berkshire shall be entitled and the amount then owing to AMBAC under the AMBAC Surety Bonds or the AMBAC Guaranty Agreement (as certified by AMBAC), subject to such indemnities and other conditions as Berkshire may require, and without recourse and without representations or warranties of any kind, express, implied or otherwise, or (2) interplead such excess amount (or, if less, the amount claimed by AMBAC) with a court of competent jurisdiction in an action against AMBAC, Oglethorpe and such other parties as Berkshire may determine in its sole discretion.

In the event that (A) Berkshire shall have acquired the Beneficial Interest pursuant to the Berkshire Assignment Agreement and shall have paid the purchase price thereunder, or (B) Berkshire shall have acquired the Subrogation Interest under either of the Surety Bonds in consideration of Payment in Full (as defined therein), and AMBAC shall thereafter pay to Berkshire an amount equal to the Unpaid Amount, Berkshire shall, upon request by and at the expense of AMBAC, do either of the following (at the election of Berkshire): (1) assign to AMBAC all right, title and interest, if any, then held by Berkshire in the Beneficial Interest or such rights, as the case may be, without recourse and without representations or warranties of any kind, express, implied or otherwise, or (2) disclaim any remaining interest in the Subrogation Interest or the Beneficial Interest, as the case may be, and interplead such interest with a court of competent jurisdiction in an action against AMBAC, Oglethorpe and such other parties as Berkshire may determine in its sole discretion.

As used herein, the term "Unpaid Amount" means (1) the sum of (a) the purchase price and all other amounts paid by Berkshire in connection with its acquisition of the Beneficial Interest or the Subrogation Interest, as the case may be, (b) all other amounts owing to Berkshire under the Operative Documents, the Surety Bond Documents, the Berkshire Assignment Agreement and the Berkshire Guaranty Agreement, (c) all other amounts paid or incurred by Berkshire in connection with such acquisition and/or the exercise of rights and remedies under such documents and/or to liquidate or otherwise realize on the Beneficial Interest, the Subrogation Interest or any part thereof or to recover any amounts paid or incurred by or owing to it, including reasonable attorneys' fees and disbursements of counsel, and (d) interest accrued on all such amounts at the Overdue Rate from the date paid or incurred, minus (2) any amounts theretofore indefeasibly paid to or received by Berkshire in respect of the foregoing, including amounts paid by AMBAC to Berkshire under either of the AMBAC Surety Bonds.

In the event that the Owner Participant shall receive a notice of election of purchase option from AMBAC under the AMBAC Assignment Agreement or from Berkshire under the Berkshire Assignment Agreement and within three Business Days after the Owner Participant shall have received such notice the non-exercising Surety Bond Provider shall not deliver to the Owner Participant a notice stating in substance that the relevant notice of exercise is not consistent with the arrangements between such Surety Bond Providers specified in this Agreement, it shall be conclusively presumed that such notice of exercise is so consistent and the Owner Participants may rely thereon without further investigation. In the event that the non-exercising Surety Bond Provider shall deliver to it such a notice, then the Owner Participant may without liability suspend performance of its obligations under the AMBAC Assignment Agreement or the Berkshire Assignment Agreement, as the case may be, unless and until it shall have received evidence reasonably satisfactory to it (an order of a competent court shall be deemed satisfactory) that the relevant notice of exercise is so consistent or that it is not objected to by AMBAC or Berkshire, as the case may be; and any period with respect to the performance of obligations by all parties in consequence of the giving of such notice of exercise under the AMBAC Assignment Agreement or the Berkshire Assignment Agreement, as the case may be, shall be tolled during the period of such suspension. Each of AMBAC, Berkshire and the Owner Participant shall, in giving any notice

pursuant to this paragraph to any person, provide to whichever among AMBAC, Berkshire and the Owner Participant is neither the addressee nor the giver of such notice a copy of such notice substantially simultaneously with the giving thereof to the addressee thereof.

(h) If (i) the Owner Participant receives written notice that any motion or other proceeding has been instituted in any Insolvency Proceeding (as defined below) that claims or alleges that any payment that is an Excepted Payment that was made to the Owner Participant or the Head Lessee by or for the account of Oglethorpe under any Operative Document or by or for the account of AMBAC under any AMBAC Surety Document is avoided or should be avoided or that avoidance of any such payment has or should be deemed to have occurred or that any other event has occurred that would constitute an Avoidance Event as defined in either of the Berkshire Surety Bonds, and (ii) the Owner Participant, the Owner Trustee or the Co-Trustee shall have appeared in or shall be a party to such Insolvency Proceeding or to such motion or other proceeding, the Owner Participant shall use its good faith efforts to give notice thereof to Berkshire (and without liability for any failure to provide such notice unless the Owner Participant was not acting in good faith) and shall not object to any motion or other action by Berkshire to intervene or to participate in such motion or other proceeding at Berkshire's own expense to contest such claim or allegation. "Insolvency Proceeding" means the commencement, after the date hereof, of any bankruptcy, insolvency, readjustment of debt, reorganization, marshalling of assets and liabilities or similar proceedings by or against any person, or the commencement, after the date hereof, of any proceedings by or against any person for the winding up or the liquidation of its affairs, or the consent after the date hereof to the appointment of a trustee, conservator, receiver or liquidator in any bankruptcy, insolvency, readjustment of debt, reorganization, marshalling of assets and liabilities or proceedings similar to the foregoing relating to any person.

(i) Without limitation of the provisions of paragraph (a) of this Section 5, in the event that any payment by Berkshire pursuant to either of the Berkshire Surety Bonds shall be based upon an improper or incorrect determination by any of the beneficiaries thereof that there shall have existed a basis for the delivery of any demand for payment thereunder, Berkshire shall (to the extent not repaid) be deemed to have received an assignment from Oglethorpe of such right, if any, as Oglethorpe may have to recover an amount corresponding to such payment or any portion thereof; provided, however, that Berkshire shall have no right to recover any such amounts under the AMBAC Surety Bonds except to the extent that the amount thereof is otherwise payable thereunder.

(j) In the event that Berkshire shall give a Notice of Termination pursuant to paragraph 5 of either of the Surety Bonds, it shall promptly give notice to AMBAC and Oglethorpe thereof. Berkshire shall not enter into any amendment of the provisions of clause (vii) of paragraph 5 of either of the Surety Bonds pertaining to the delivery of Notices of Termination thereunder except with the written consent of AMBAC, provided that AMBAC shall not be in breach of its obligations under the AMBAC Surety Bonds. Oglethorpe hereby agrees to give notice to the Owner Participant and to AMBAC of Oglethorpe's payment of the Unpaid Premium Amount (as defined in the notice of Termination) and evidence thereof (which evidence shall be reasonably satisfactory to the

requesting party or parties) no later than one Business Day following a request by the Owner Participant or AMBAC, as the case may be, for such information.

Section 6. Miscellaneous.

(a) Consents. The Owner Participant covenants and agrees that it shall not unreasonably withhold its consent to any consent requested of the Facility Lessor under the terms of the Berkshire Documents that by its terms is not to be unreasonably withheld by the Facility Lessor. Each party to this Agreement hereby consents to the execution of this Agreement, the other Berkshire Documents and the AMBAC Surety Documents by each other party hereto or thereto and to the performance by such other parties of their respective obligations hereunder and thereunder. The Owner Participant agrees that it will not instruct the Owner Trustee or the Co-Trustee to take any action in violation of the express terms of this Agreement. RMLC irrevocably consents to the subrogation of and transfer by the RMLC Assignee to Berkshire of the Subrogation Interest and the Additional Subrogation Interest if, as and when provided hereunder and the Berkshire Sublease Surety Bond. Berkshire acknowledges that any reference in this Agreement or the Berkshire Surety Bonds to rights of RMLC and the Facility Lessor, respectively, to which Berkshire may be subrogated or of which it may receive an assignment shall be construed in a manner consistent with the grant by RMLC of a security interest pursuant to the Facility Sublease Assignment Agreement; and accordingly, without limitation, in the event that the Lien of the Facility Sublease Assignment Agreement shall have been discharged the rights of the Facility Lessor may have correspondingly reverted to RMLC.

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

(c) Operative Documents. The parties hereto acknowledge and agree that this Agreement, each of the Berkshire Documents and the AMBAC Surety Documents are and shall be Operative Documents, provided that the Agreement Regarding Surety Bonds and the Berkshire Guaranty Agreement shall be Operative Documents if and only if Berkshire or a designee of Berkshire shall acquire, by subrogation, assignment, purchase or otherwise, the Owner Participant's Beneficial Interest or the Subrogation Interest or the rights of the Owner Participant or the Head Lessee under the Operative Documents and, at the time of such acquisition or at the time that Berkshire or any designee of Berkshire shall be committed to make such acquisition or at any time thereafter, either (A) an Event of Default or a Head Lessor Event of Default shall exist or (B) Berkshire shall have received a demand for payment under either of the Berkshire Surety Bonds.

(d) Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the

case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to each party hereto at its address set forth in the Participation Agreement or, in the case of Berkshire, set forth in the Surety Bonds, or, in the case of any such party hereto, at such other address as such party may from time to time designate by written notice to the other parties hereto.

(e) Survival. All warranties, representations, indemnities and covenants made by any party hereto, herein or in any certificate or other instrument delivered by any such party or on behalf of any such party under this Agreement shall be considered to have been relied upon by each other party hereto and shall survive the consummation of the transactions contemplated hereby and in the other Berkshire Documents regardless of any investigation made by any such party or on behalf of any such party.

(f) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms of the Operative Documents, the Berkshire Documents or the AMBAC Surety Documents, as applicable. The Owner Participant covenants that prior to any transfer of its Beneficial Interest or any interest therein it will ensure that any transferee owner participant or transferee of any such interest (in each case other than AMBAC, but subject to the requirements of the Participation Agreement) executes an agreement assuming the obligations of the Owner Participant under this Agreement (including this Section).

(g) Governing Law. This Agreement has been delivered in the State of New York and shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance.

(h) Severability. If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Agreement.

(j) Headings and Table of Contents. The headings of the sections of this Agreement are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

(k) Limitation of Liability. The Trust Company is entering into the Operative Documents to which it is a party solely as trustee under the Trust Agreement and not in its individual capacity, except as expressly provided herein or therein, and in no case whatsoever shall either Trust Company be personally liable for, or for any loss in respect of, any of the statements, representations, warranties, agreements or obligations of Facility Lessor or Head Lessee, as applicable, hereunder or under any other Surety Bond Document, as to all of which the other parties hereto agree to look solely to the Trust

Estate; provided, however, that the Trust Company shall be liable hereunder for its own gross negligence or willful misconduct or for a breach of its representations, warranties and covenants made in its individual capacity in Section 3 hereof.

(l) Consent to Jurisdiction. Each of the parties hereto (i) hereby irrevocably submits to the nonexclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) and to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York for the purposes of any suit, action or other proceeding arising out of this Agreement, the other Berkshire Documents, or the subject matter hereof or thereof or any of the transactions contemplated hereby or thereby brought by any of the parties hereto or their successors or assigns; (ii) hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State court, or in such federal court; and (iii) to the extent permitted by Applicable Law, hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement, the other Berkshire Documents, or the subject matter hereof or thereof may not be enforced in or by such court.

(m) Waiver of Trial by Jury. To the extent permitted by applicable law, each of the parties hereto hereby irrevocably waives the right to demand a trial by jury, in any such suit, action or other proceeding arising out of this Agreement, the other Berkshire Documents, or the subject matter hereof or thereof or any of the transactions contemplated hereby or thereby brought by any of the parties hereto or their successors or assigns.

(n) Further Assurances. Each party hereto will promptly and duly execute and deliver such further documents to make such further assurances for and take such further action reasonably requested by and at the expense of any party to whom such first party is obligated, all as may be reasonably necessary to carry out more effectively the intent and purpose of this Agreement and the other Berkshire Documents and the AMBAC Surety Documents.

Section 7. Insurer Agreements Regarding Documents. AMBAC consents to the Owner Participant, the Owner Trustee and the Co-Trustee entering into and performing their obligations under the Berkshire Documents. Berkshire consents to the Owner Participant, the Owner Trustee and the Co-Trustee entering into and performing their obligations under the AMBAC Surety Documents.

Section 8. Lender's Rights and Liens Unaffected. (a) Notwithstanding anything in this Agreement, any other Berkshire Document or any AMBAC Surety Document to the contrary, each of the parties hereto agrees and acknowledges that nothing in the Berkshire Documents or the AMBAC Surety Documents shall affect the rights or obligations of the Lender under the Operative

Documents as in effect immediately prior to the date hereof except as expressly set forth in the Operative Documents (other than the Berkshire Documents, the Berkshire Guaranty Agreement, the AMBAC Surety Documents or this Agreement) as amended as of the date hereof;

(b) notwithstanding anything in this Agreement, any other Berkshire Document or any AMBAC Surety Document to the contrary, Berkshire (i) acknowledges the Lien of the Lender under the Loan Agreement and the Deed to Secure Debt over, *inter alia*, all of the rights and remedies of the Head Lessee and the Facility Lessor in and under the Operative Documents (except to the extent constituting Excepted Payments or Excepted Rights), and (ii) agrees that (A) such rights and remedies of the Head Lessee and the Facility Lessor to which Berkshire would be subrogated effective upon Berkshire's "Payment in Full" as is defined and set forth in paragraph 11(f) of each of the Berkshire Surety Bonds shall remain subject to such Lien of the Lender (except to the extent constituting Excepted Payments or Excepted Rights), for as long as the Loan Agreement or the Deed to Secure Debt shall not have been terminated pursuant to the terms thereof, and (B) that it will not exercise any rights of subrogation, assignment or similar rights created or permitted under the Berkshire Documents or this Agreement so as to interfere with the rights and remedies of the Lender under the Operative Documents as in effect immediately prior to the date hereof except as expressly set forth in the Operative Documents (other than the Berkshire Documents, the Berkshire Guaranty Agreement, the AMBAC Surety Documents, the Lender Consent (as defined in the Agreement Regarding Surety Bonds) or this Agreement) as amended as of the date hereof;

(c) notwithstanding anything in this Agreement, any other Berkshire Document or any AMBAC Surety Document to the contrary, AMBAC (i) acknowledges the Lien of the Lender under the Loan Agreement and the Deed to Secure Debt over all of the rights and remedies of the Head Lessee and the Facility Lessor in and under the Operative Documents (except to the extent constituting Excepted Payments or Excepted Rights), and (ii) agrees that (A) such rights and remedies of the Head Lessee and the Facility Lessor to which AMBAC would be subrogated effective upon AMBAC's "Payment in Full" as is defined and set forth in paragraph 11(f) of each of the AMBAC Surety Bonds shall remain subject to such Lien of the Lender (except to the extent constituting Excepted Payments or Excepted Rights), for as long as the Loan Agreement has not been terminated pursuant to the terms thereof, and (B) that it will not exercise any rights of subrogation, assignment or similar rights created or permitted under the AMBAC Surety Documents so as to interfere with the rights and remedies of the Lender under the Operative Documents as in effect immediately prior to the date hereof except as expressly set forth in the Operative Documents (other than the Berkshire Documents, the Berkshire Guaranty Agreement, the AMBAC Surety Documents, the Lender Consent or this Agreement) as amended as of the date hereof; and

(d) the parties hereto agree that the Lender shall be the intended third party beneficiary of this Section 8. This Section 8 cannot be amended, supplemented or otherwise modified without the prior written consent of the Lender.

Section 9. Termination Upon Release of Berkshire. This Implementation Agreement and the Berkshire Assignment Agreement and all rights and obligation of the parties hereunder and thereunder shall automatically terminate without any action by or liability of any of the parties hereto and be of no further force and effect on the first date on which all of the following conditions are satisfied: (x) the Berkshire Surety Bonds are terminated or released, (y) Berkshire shall have no further obligation or liability thereunder, hereunder or under the Berkshire Assignment Agreement and (z) Berkshire shall have received indefeasible payment of all amounts (if any) due under the Berkshire Guaranty Agreement (without regard to any limitation of the amounts so due by reason of applicable law) or any other Operative Document or Surety Bond Document. For the avoidance of doubt, nothing in this Section 9 shall affect or limit the indemnification obligations of Oglethorpe under Sections 11.1 and 11.2 of the Participation Agreement, Section 2.03 of the AMBAC Guaranty Agreement or Section 2.03 of the Berkshire Guaranty Agreement. Upon such termination, (i) all references to Berkshire in any Operative Document shall be disregarded (other than as provided in the preceding sentence) and such document shall be deemed modified accordingly and (ii) each of the parties hereto shall, at the request of any other party hereto but at the expense of Oglethorpe, execute and deliver an instrument in form and substance reasonably satisfactory to the parties thereto evidencing the termination of this Implementation Agreement, the Berkshire Assignment Agreement and the rights and obligations hereunder of the parties thereto.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Surety Bond Implementation Agreement (P1) to be executed and delivered by their respective officers thereunto duly authorized as of the day and year first written above.

**OGLETHORPE POWER CORPORATION
(AN ELECTRIC MEMBERSHIP CORPORATION)**

By: /s/ Thomas A. Smith
Name: Thomas A. Smith
Title: President and Chief Executive Officer

(CORPORATE SEAL)

Attest: /s/ Patricia N. Nash
Name: Patricia N. Nash
Title: Secretary

ROCKY MOUNTAIN LEASING CORPORATION

By: /s/ Elizabeth B. Higgins
Name: Elizabeth B. Higgins
Title: President

Attest: /s/ Patricia N. Nash
Name: Patricia N. Nash
Title: Assistant Secretary

U.S. BANK NATIONAL ASSOCIATION,
not in its individual capacity, except to the extent provided in
the Participation Agreement, but solely as Owner Trustee
under the Trust Agreement

By: /s/ Mark A. Forgetta
Name: Mark A. Forgetta
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,
not in its individual capacity, except to the extent provided in
the Participation Agreement, but solely as Co- Trustee under
the Trust Agreement

By: /s/ Jack Ellerin
Name: Jack Ellerin
Title: Vice President

PHILIP MORRIS CAPITAL CORPORATION

By: /s/ Alex T. Russo
Name: Alex T. Russo
Title: Vice President

AMBAC ASSURANCE CORPORATION

By: /s/ Michael C. Morcom
Name: Michael C. Morcom
Title: First Vice President

BERKSHIRE HATHAWAY ASSURANCE CORPORATION

By: /s/ Kara Raiguel
Name: Kara Raiguel
Title: Vice President

By: /s/ [signature illegible]
Name:
Title: Vice President

Form of Berkshire Head Lease Surety BondSURETY BOND
(Head Lease-P1)Berkshire Hathaway Assurance Corporation
3024 Harney Street
Omaha, NE 68131
Facsimile No.: (402) 916-3237

Effective Date: May 22, 2009

Policy No. 98SRD102494

Berkshire Hathaway Assurance Corporation (together with its successors and permitted assigns, "Berkshire"), in consideration of the payment to it on the date hereof and from time to time hereafter of the premium payable in respect of this Surety Bond as separately agreed between Berkshire and Oglethorpe Power Corporation (An Electric Membership Corporation) (together with its successors and permitted assigns, "Oglethorpe") (such payment and any future payments of premium in respect of this Surety Bond being collectively referred to as the "Premium"), receipt of which for the amount of such premium payable on the date hereof is hereby acknowledged, and subject to the terms of this Surety Bond, hereby unconditionally and irrevocably guarantees to (a) U.S. Bank National Association, successor in interest to SunTrust Bank, Atlanta, as Co-Trustee (together with its successors and assigns, the "Head Lessee") under the Rocky Mountain Head Lease Agreement (P1) dated as of December 30, 1996 by and between Oglethorpe and the Head Lessee (as amended, modified, supplemented and in effect from time to time, the "Head Lease"), and (b) Philip Morris Capital Corporation (together with its successors and assigns, the "Owner Participant") and, together with the Head Lessee, the "Guaranteed Parties"), the full and complete payment, without duplication, of (i) any and all amounts of (A) Termination Value and amounts computed by reference to Termination Value under the Head Lease and (B) the Oglethorpe Portion of Equity Termination Value and amounts computed by reference to the Oglethorpe Portion of Equity Termination Value under the Participation Agreement (P1) dated as of December 30, 1996, by and among Oglethorpe, Rocky Mountain Leasing Corporation ("RMLC"), the Head Lessee, U.S. Bank National Association, successor in interest to Fleet National Bank, as Owner Trustee, the Owner Participant and Utrecht-America Finance Co. ("Lender") (as amended, modified, supplemented and in effect from time to time, the "Participation Agreement") and, together with the Head Lease, the "Subject Agreements"), and (ii) all amounts payable by AMBAC Assurance Corporation (formerly known as AMBAC Indemnity Corporation) (together with its successors and permitted assigns, "AMBAC") under the Amended and Restated Surety Bond (Head Lease-P1) issued on May 22, 2009, Policy No. SF0003BE (the "AMBAC Surety Bond"), executed by AMBAC in favor of the Guaranteed Parties (all such amounts under clauses (i) and (ii) above, together with any other payments due (or, if payable upon demand, that shall be accrued and unpaid and, unless demand therefor shall have been stayed by operation of law, shall have been duly demanded) at such time constituting obligations of Oglethorpe under the Participation

Agreement or the other Operative Documents, being referred to as the “Covered Obligations”) as at any time such payments are (1) in the case of clause (i) above, due from Oglethorpe under the terms of the Head Lease, the Participation Agreement or any of the other Operative Documents but shall not be so paid, or are payable by, or the present payment of which are payable upon demand, and could be demanded from, Oglethorpe pursuant to the terms of the Head Lease, the Participation Agreement or any of the other Operative Documents absent the operation of a stay or other order issued in an Insolvency Proceeding (as hereinafter defined) pertaining to the insolvency of Oglethorpe, and have not been paid, or (2) in the case of clause (ii) above, due from AMBAC under the terms of the AMBAC Surety Bond and shall not be so paid, or are payable by, or the present payment of which could be demanded from, AMBAC under the terms of the AMBAC Surety Bond absent the operation of a stay or other order issued in an Insolvency Proceeding pertaining to the insolvency of AMBAC, but have not been paid; provided that, except in circumstances in which Payment in Full (as defined below) is payable in accordance with the terms hereof, the amount available at any particular time to be paid by Berkshire hereunder shall be not more than the Deficiency computed as provided in the form of Demand for Payment annexed hereto as Attachment I or the amount computed as provided in the form of Demand for Avoided Payment (as defined below) annexed hereto as Attachment II, as the case may be, and in either case not exceed (i) the Surety Bond Coverage (as defined in paragraph 7 hereof), plus (ii) interest at the Overdue Rate on any amounts due and payable by Berkshire hereunder from and including the date such amounts are due and payable by Berkshire hereunder plus (iii) expenses payable by Berkshire under paragraph 12 hereof. Capitalized terms used herein or in any Demand for Payment, Demand for Avoided Payment or Notice of Termination (as defined below) but not defined herein or therein shall have the respective meanings set forth in Appendix A to the Participation Agreement. The general provisions of such Appendix A shall apply to terms used in this Surety Bond and defined herein or therein.

1. Upon receipt by Berkshire of a demand for payment for a portion or all of the unpaid amount of the Covered Obligations in an amount up to and including, but not exceeding, the Surety Bond Coverage (the “Deficiency”) conforming to and in the form attached hereto as Attachment I (a “Demand for Payment”), with all blank spaces therein for variable information completed, duly executed by the Head Lessee and the Owner Participant and certifying that:

(a) either (i) at least two Business Days prior to the date of such Demand for Payment, the Head Lessee or the Owner Participant demanded in writing (such demand being the “Oglethorpe Payment Demand”) payment from Oglethorpe of an amount (the “Oglethorpe Claimed Amount”) not less than the Deficiency, and such Oglethorpe Claimed Amount was then due and payable and as of the date of the Demand for Payment hereunder continues to be due and payable, or (ii) for a period of at least two Business Days prior to the date of delivery of the Demand for Payment hereunder, the Head Lessee or the Owner Participant has been and continues to be stayed (as a consequence of an Insolvency Proceeding pertaining to the insolvency of Oglethorpe) or has been and continues to be otherwise legally prohibited from making an Oglethorpe Payment Demand, and but for the existence of such stay or other prohibition, the Head Lessee or the Owner Participant would have been entitled to make such Oglethorpe Payment Demand and the Oglethorpe Claimed Amount would thereupon have become due and payable by Oglethorpe; provided, however, that the certification set forth in this

clause (a) shall not be required in a Demand for Payment that is made after payment of the first Surety Bond Payment Amount, and

(b) either (i)(A) at least one Business Day prior to the date of such Demand for Payment hereunder, (1) the Head Lessee and the Owner Participant demanded in writing (such demand being the "AMBAC Payment Demand") payment from AMBAC of the unpaid portion of the Oglethorpe Claimed Amount or, if less, the maximum amount then payable under the AMBAC Surety Bond (the amount demanded under the AMBAC Surety Bond being the "AMBAC Claimed Amount") under and in compliance with the terms of the AMBAC Surety Bond, and (2) all or any portion of the AMBAC Claimed Amount was then due and payable under the terms of the AMBAC Surety Bond, and (B) such AMBAC Claimed Amount or any portion thereof remains unpaid, or (ii) for a period of at least one Business Day prior to the date of delivery of the Demand for Payment hereunder, the Head Lessee or the Owner Participant has been and continues to be stayed (as a consequence of an Insolvency Proceeding pertaining to the insolvency of AMBAC) or has been and continues to be otherwise legally prohibited from making an AMBAC Payment Demand, and but for the existence of such stay or other prohibition, the Head Lessee or the Owner Participant would have been entitled to make such AMBAC Payment Demand and the AMBAC Claimed Amount or the applicable Surety Bond Payment Amount then payable under the AMBAC Surety Bond would thereupon have become due and payable by AMBAC, and

(c) the Head Lessee or the Owner Participant has delivered to Berkshire (i) at least two Business Days prior to the date of such Demand for Payment, either a copy of the Oglethorpe Payment Demand or written notice that delivery thereof has been stayed or otherwise prohibited as contemplated above, except that no such certification or delivery shall be required in a Demand for Payment made after payment of the first Surety Bond Payment Amount, and (ii) at least one Business Day prior to the date of such Demand for Payment, either a copy of the AMBAC Payment Demand or written notice that delivery thereof has been stayed or otherwise prohibited as contemplated above, and

(d) as of the date of such Demand for Payment hereunder, a Deficiency exists, and

(e) neither Ambac nor any Affiliate of AMBAC shall have become the Owner Participant or shall be a party to any contract or arrangement (other than the AMBAC Surety Documents, the Implementation Agreement and, if applicable, the Loan Agreement, the Loan Certificate and the Deed to Secure Debt (collectively, the "AMBAC Documents")) with the Owner Participant or any Affiliate thereof or the Owner Trustee pursuant to which AMBAC or any such Affiliate of AMBAC shall have acquired or shall (other than as provided in the AMBAC Documents) have the right to acquire all or substantially all of the economic benefits attributable to the Beneficial Interest, the Trust Estate or the Leasehold Interest or any substantial part thereof or interest therein,

Berkshire will pay to the Head Lessee or the Owner Participant (as specified in such Demand for Payment and at the place of payment set forth in such Demand for Payment), on the Business Day following the date of receipt of such Demand for Payment, an amount equal to the

Deficiency (but in no event to exceed the Surety Bond Coverage), in each case by wire transfer as specified in such Demand for Payment. Berkshire shall also pay interest at the Overdue Rate on any amounts payable hereunder and on accrued but unpaid interest thereon (to the extent permitted by law) from and including the date such amounts are due and payable hereunder to (but excluding) the date of payment.

2. A Demand for Payment, a Demand for Avoided Payment, a copy of an Oglethorpe Payment Demand (or written notice that delivery thereof has been stayed or otherwise prohibited) delivered under clause (1)(c)(i) hereof, if required hereunder, or a copy of an AMBAC Payment Demand (or written notice that delivery thereof has been stayed or otherwise prohibited) delivered under clause (1)(c)(ii) hereof shall be personally delivered or sent by telecopy to Berkshire at Berkshire's "Address for Notice" set forth in paragraph 8 hereof. Any Demand for Payment, Demand for Avoided Payment or copy or notice pursuant to the next preceding sentence so received by Berkshire after 2:00 p.m. New York City time on any Business Day or on any day that is not a Business Day shall be deemed to have been received by Berkshire prior to 2:00 p.m., New York City time, on the next succeeding Business Day. As used herein, the term "Business Day" shall mean any day other than a Saturday, a Sunday or any day on which banking institutions in New York, New York are authorized or required by law to be closed. If a Demand for Payment or Demand for Avoided Payment made hereunder is not, in any instance, effected in accordance with the terms and conditions of this Surety Bond, Berkshire shall give notice to the Head Lessee and the Owner Participant, as promptly as reasonably practicable, that such Demand for Payment or Demand for Avoided Payment, as the case may be, was not effected in accordance with the terms and conditions of this Surety Bond and briefly state the reason(s) therefor. Upon being notified that such Demand for Payment or Demand for Avoided Payment was not effected in accordance with the terms and conditions of this Surety Bond, the Head Lessee or the Owner Participant may attempt to correct any such nonconforming Demand for Payment or Demand for Avoided Payment, as the case may be. Multiple Demands for Payment or Demands for Avoided Payment shall be permitted hereunder.

3. [Intentionally omitted]

4. Any service of process on Berkshire may be made to Berkshire at Berkshire's "Address for Notice" set forth in paragraph 8 hereof, and such service of process shall be valid and binding as to Berkshire.

5. This Surety Bond is noncancelable for any reason. Subject to paragraph 6 below, this Surety Bond and the obligations of Berkshire hereunder shall terminate on the earliest of (i) so long as Berkshire is not in default with respect to any of its obligations hereunder, January 11, 2027, (ii) two (2) days after the Surety Bond Coverage is reduced to zero dollars, (iii) upon receipt by Berkshire of written notice from the Head Lessee and the Owner Participant stating that Berkshire is released from its obligations under this Surety Bond, (iv) the date on which payment is made by Berkshire in full of the amount required to be paid pursuant to a Demand for Payment, (v) except with respect to coverage for Avoided Payments, the date on which payment is made in full of all Covered Obligations of Oglethorpe or AMBAC or the date on which Oglethorpe or AMBAC are released (in a writing signed by the Head Lessee or the Owner Participant) from further liability in respect of all Covered Obligations, other than with the written consent of Berkshire, (vi) the date, if any, on which Ambac or any Affiliate of AMBAC

shall have become the Owner Participant or shall be a party to any contract or arrangement (other than the AMBAC Documents) with the Owner Participant or any Affiliate thereof or the Owner Trustee pursuant to which AMBAC or any such Affiliate of AMBAC shall have acquired or shall (other than as provided in the AMBAC Documents) have the right to acquire all or substantially all of the economic benefits attributable to the Beneficial Interest, the Trust Estate or the Leasehold Interest or any substantial part thereof or interest therein, and (vii) 80 days (the "Cure Period") after the later of (x) the third Surety Bond Payment Date (as defined in the AMBAC Surety Bond) if AMBAC paid the first Surety Bond Payment Amount or (y) delivery by Berkshire to the Head Lessee and the Owner Participant (with a copy to AMBAC, unless delivery to AMBAC shall be stayed by law) of a notice in the form of Attachment III hereto (a "Notice of Termination") in accordance with the notice procedures in this paragraph 5 unless Berkshire shall have received prior to the expiration of the Cure Period the full amount of the unpaid portion of the Premium referred to in the Notice of Termination or a Demand for Payment.

Berkshire shall deliver a Notice of Termination upon the Head Lessee and the Owner Participant in the following manner:

- (i) The Notice of Termination shall be sent by FedEx or other similar courier service (FedEx and any such other courier service being referred to herein as the "Courier Service") to each of the Owner Participant and the Head Lessee at its address set forth in paragraph 8 hereof and to each of addressees listed on Exhibit A hereto at the addresses set forth on such Exhibit (as such Exhibit may be modified by written notice from the Owner Participant to Berkshire from time to time), and shall also be sent by email to the addressees listed on Exhibit A to the email addresses for such persons set forth on such Exhibit (as such Exhibit may be modified by written notice from the Owner Participant to Berkshire from time to time as provided above).
 - (ii) Each Notice of Termination sent by Courier Service pursuant to this paragraph 5 shall be accompanied by a notice (printed on red paper) affixed to the outside of the envelope containing such Notice of Termination in the form of Attachment IV hereof. Each notice sent by email shall also contain a notice in the form of Attachment IV.
 - (iii) On the Business Day immediately preceding, on or within two Business Days following the date on which the Notice of Termination is sent by Courier Service as provided above, an officer, employee, representative or agent of Berkshire shall, between the hours of 9:00 a.m. and 5:00 p.m., New York time, place a telephone call to each of the persons listed on Exhibit A to the phone numbers listed on such Exhibit (as such Exhibit may be modified by written notice from the Owner Participant to Berkshire from time to time), and shall (A) if such person is available and answers the phone at such time, inform such person that such person "will be receiving by Courier Service an important Notice of Termination regarding the Oglethorpe Leveraged Lease Transaction (P1)," or (B) if
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such person is not then available, use reasonable efforts to leave a voicemail message on such person's voicemail, and a message with any person who then answers such person's telephone, to the same effect as set forth in clause (A) above.

6. Notwithstanding the provisions of paragraph 5 hereof, (a) if the payment of any amount in respect of the Covered Obligations is avoided (an "Avoidance Event") under any applicable Insolvency Proceeding with respect to Oglethorpe or AMBAC, and, as a result of such Avoidance Event, the Head Lessee or the Owner Participant is required to return or turn over such avoided payment, or any portion of such avoided payment (an "AMBAC Avoided Payment" in the case of an Insolvency Proceeding with respect to AMBAC, an "Oglethorpe Avoided Payment" in the case of an Insolvency Proceeding with respect to Oglethorpe, and each an "Avoided Payment"), and (b) Berkshire has not theretofore made a payment of the maximum amount of the Surety Bond Coverage to the Head Lessee or the Owner Participant, Berkshire will pay (1) with respect to an Oglethorpe Avoided Payment, the amount thereof minus any payments (other than AMBAC Avoided Payments) with respect thereto made by AMBAC under the AMBAC Surety Bond, and (2) with respect to an AMBAC Avoided Payment, the sum of, without duplication, (x) the amount thereof plus (y) that portion of the Claimed Amount (as defined in the AMBAC Surety Bond) that remains unpaid as of the date the Demand for Avoided Payment relating thereto is given to Berkshire in accordance with paragraph 8 hereof, in each case out of the funds of Berkshire, when the applicable or related Avoided Payment is due to be paid pursuant to the Order referred to below, but in any event no earlier than the second Business Day following receipt by Berkshire of (i) a certified copy of an order of a court or other body exercising jurisdiction in such Insolvency Proceeding to the effect that the Head Lessee or the Owner Participant is required to return or pay over such Avoided Payment because such Avoided Payment was avoided as a preferential transfer or otherwise rescinded or required to be restored by the Head Lessee or the Owner Participant (the "Order"), (ii) a certificate by or on behalf of the Head Lessee or the Owner Participant that the Order has been entered and is not subject to any stay, and that the Head Lessee or the Owner Participant, as the case may be, has complied with or will timely comply with such order, (iii) an assignment, in the form of Exhibit A to the Demand for Avoided Payment, duly executed and delivered by the Head Lessee and the Owner Participant, irrevocably assigning to Berkshire all rights and claims of the Head Lessee and the Owner Participant (subject to the rights of the Lender as provided in the Loan Agreement) relating to or arising under the Operative Documents against (A) Oglethorpe or its estate, in the case of and with respect to an Oglethorpe Avoided Payment, or (B) AMBAC or its estate, in the case of and with respect to an AMBAC Avoided Payment and that portion of the Claimed Amount (as defined in the AMBAC Surety Bond) remaining unpaid as of the date of Demand for Avoided Payment and (iv) a demand for payment for a portion or all of the unpaid amount of the Avoided Payment and, in the case of an AMBAC Avoided Payment, any unpaid portion of the Claimed Amount, in an amount up to and including, but not exceeding, the amount set forth in the next succeeding paragraph, conforming to and in the form attached hereto as Attachment II (a "Demand for Avoided Payment"), with all blank spaces therein for variable information completed, duly executed by the Head Lessee and the Owner Participant, and containing the certifications set forth therein. Such payment shall be disbursed to the receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order, and not to the Head Lessee or the Owner Participant directly, unless and only to the extent the Head Lessee or the Owner Participant has made a payment of the Avoided Payment to the court or such receiver,

conservator, debtor-in-possession or trustee in bankruptcy named in the Order, in which case Berkshire will pay the Head Lessee or the Owner Participant, as applicable, provided, that there has been delivery of (a) the items referred to in clauses (i), (ii), (iii) and (iv) above to Berkshire and (b) evidence satisfactory to Berkshire that such payment has been made to such court or receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order. "Insolvency Proceeding" means the commencement, after the date hereof, of any bankruptcy, insolvency, readjustment of debt, reorganization, marshalling of assets and liabilities or similar proceedings by or against any person, or the commencement, after the date hereof, of any proceedings by or against any person for the winding up or the liquidation of its affairs, or the consent after the date hereof to the appointment of a trustee, conservator, receiver or liquidator in any bankruptcy, insolvency, readjustment of debt, reorganization, marshalling of assets and liabilities or proceedings similar to the foregoing relating to any person.

Notwithstanding anything to the contrary herein, in no event shall Berkshire be obligated to make any payment (other than the payment of interest and expenses as herein provided) pursuant to any Demand for Avoided Payment, which payment, when added to all other payments (other than the payment of interest and expenses as herein provided) made under this Surety Bond and the Sublease Surety Bond, would exceed the Surety Bond Coverage as of the date applicable to such payment under the definition of "Surety Bond Coverage" in paragraph 7(j) hereof.

Upon receipt by Berkshire of any payment in respect of the Premium or any portion thereof, neither such payment nor any part thereof shall be subject to rebate, reduction or refund for any reason or under any circumstances whatsoever, including, without limitation, the payment or prepayment of Oglethorpe's obligations under the Facility Sublease or any of the other Operative Documents or the obligations of AMBAC under the AMBAC Surety Bond or the AMBAC Sublease Surety Bond, or the termination or release of this Surety Bond or the AMBAC Surety Bond prior to the termination of the Subject Agreements.

7. As used herein, the following capitalized terms shall have the following meanings:

(a) "AMBAC Assignment Agreement" means the Agreement for Assignment on Default (P1) dated as of December 30, 1996 among the Owner Participant, the Owner Trustee, the Co-Trustee and AMBAC, as amended.

(b) "AMBAC Purchase Option" means the "Purchase Option" under and as defined in the AMBAC Assignment Agreement.

(c) "AMBAC Sublease Surety Bond" means the Amended and Restated Surety Bond (Facility Sublease-P1) issued on May 22, 2009, Policy No. SF0004BE, executed by AMBAC in favor of the "Guaranteed Parties" named therein.

(d) "AMBAC Surety Documents" means, collectively, the AMBAC Surety Bond, the AMBAC Sublease Surety Bond and the AMBAC Assignment Agreement.

(e) "Berkshire Assignment on Default" means the Berkshire Agreement for Assignment on Default (P1) dated as of the date hereof among Berkshire, the Co-Trustee, the Owner Trustee and the Owner Participant.

(f) “Berkshire Purchase Option” means the “Purchase Option” under and as defined in the Berkshire Assignment on Default.

(g) “Excluded Rights” means all rights, remedies and benefits under the Operative Documents of the Owner Participant in respect of the period on or prior to the date of Payment in Full (including, without limitation, under Sections 11 and 12 of the Participation Agreement and under the Tax Indemnity Agreement) that accrue in respect of or that are attributable to acts, omissions, facts or events existing or occurring on or prior to the time of Payment in Full, but excluding any amounts owing to the Owner Participant that are included in the calculation of the amount of such Payment in Full.

(h) “Implementation Agreement” means the Surety Bond Implementation Agreement (P1), dated as of the date hereof, among Oglethorpe, RMLC, the Owner Participant, the Owner Trustee, the Co-Trustee, AMBAC and Berkshire.

(i) “Sublease Surety Bond” means Surety Bond (Facility Sublease-P1) No. 98SRD102495 issued by Berkshire with respect to certain payment obligations of Oglethorpe under the Participation Agreement and certain payment obligations of AMBAC under the AMBAC Sublease Surety Bond.

(j) “Surety Bond Coverage” means, for any period set forth on Schedule A attached hereto with respect to the payment of any Deficiency and any Avoided Payment hereunder, (x) the amount shown opposite the period in which the date on which the Demand for Payment of such Deficiency or Avoided Payment is given to Berkshire in accordance with paragraph 8 hereof or deemed given to Berkshire as set forth below in this paragraph (j); minus (y) any amounts (other than amounts that constituted AMBAC Avoided Payments) previously paid hereunder and under the Sublease Surety Bond, the AMBAC Surety Bond and the AMBAC Sublease Surety Bond. The amount described in clause (y) above shall be determined without regard to any amounts previously paid comprising expenses payable under the AMBAC Surety Bond, the AMBAC Sublease Surety Bond, paragraph 12 hereof or under paragraph 12 of the Sublease Surety Bond or interest on amounts not paid by Berkshire when due and payable hereunder as provided in the last sentence of paragraph 1 hereof or the last sentence of paragraph 1 of the Sublease Surety Bond or interest on amounts not paid by AMBAC when due and payable under the AMBAC Surety Bond or the AMBAC Sublease Surety Bond (excluding any interest that could have been avoided under the AMBAC Surety Bond or the AMBAC Sublease Surety Bond had a Demand for Payment or Demand for Avoided Payment been made hereunder or under the Sublease Surety Bond at the earliest date provided for such a Demand for Payment or Demand for Avoided Payment, as the case may be, hereunder or thereunder). With respect to any AMBAC Avoided Payment, the date on which Demand for Payment of such AMBAC Avoided Payment is deemed given to Berkshire for purposes of the first sentence of this paragraph 7(j) shall be the Business Day next following the date on which such AMBAC Avoided Payment was first demanded from AMBAC. With respect to any Deficiency hereunder payable after AMBAC shall have paid the first Surety Bond Payment Amount, the date on which Demand for Payment of such Deficiency is deemed given to Berkshire for purposes of the first sentence of this

paragraph 7(j) shall be the Business Day next following the date on which such first Surety Bond Payment Amount was first demanded from AMBAC.

(k) “Surety Bond Payment Amount” has the meaning set forth in the AMBAC Surety Bond.

8. Except as otherwise provided in paragraph 5 hereof and subject to paragraph 2 hereof, all notices, requests and other communications provided for herein shall be given or made in writing (including, without limitation, by telecopy) delivered to the intended recipient at the following addresses or, as to Berkshire, the Head Lessee, the Owner Participant or Oglethorpe, at such other address as shall be designated by such Person in a notice to each other such Person (such address with respect to any party, including copies as specified below, being the “Address for Notice” of such party), and all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid:

Berkshire

Berkshire Hathaway Assurance Corporation
c/o Berkshire Hathaway Group
100 First Stamford Place
Stamford, CT 06902
Attn: General Counsel
Facsimile No.: (203) 363-5221

with copies to:

Berkshire Hathaway Assurance Corporation
3024 Harney Street
Omaha, NE 68131
Attention: President
Facsimile No.: (402) 916-3237

and

Robert E. Bennett
99 Mill Lane
Norwell, MA 02061
Facsimile No.: (781) 659-2491

Head Lessee

U.S. Bank National Association
EX-GA-ATPT
1349 W. Peachtree Street, Suite 1050
Atlanta, GA 30309
Facsimile No.: (404) 898-2467
Telephone No.: (404) 898-8830
Attention: Jack Ellerin

Owner Participant

Philip Morris Capital Corporation
225 High Ridge Road
Suite 300 West
Stamford, Connecticut 06905
Facsimile No.: (203) 708-8256
Telephone No.: (203) 708-8347
Attention: General Counsel

with a copy to:

Philip Morris Capital Corporation
225 High Ridge Road
Suite 300 West
Stamford, Connecticut 06905
Facsimile No.: (203) 708-8256
Telephone No.: (203) 708-8204
Attention: Alex Russo, Vice President/Asset and Portfolio Management

9. Berkshire's obligations under this Surety Bond (a) are absolute and unconditional, (b) constitute a guaranty of payment and not a guaranty of collection, (c) shall be a continuing guaranty of all present and future Covered Obligations and all amendments, modifications, supplements, renewals of or extensions to the Covered Obligations, whether such amendments, modifications, supplements, renewals or extensions are evidenced by new or additional instruments, documents or agreements, and (d) shall be irrevocable. The obligations of Berkshire to make any payment hereunder shall, to the extent permitted by Applicable Law, constitute separate and independent obligations of Berkshire, and give rise to separate and independent causes of action against Berkshire. Berkshire specifically agrees that, subject to receipt by Berkshire of a Demand for Payment or a Demand for Avoided Payment conforming to and in the form of Attachment I or II hereto, as the case may be, it shall not be necessary, and that Berkshire shall not be entitled to require, before or as a condition of enforcing the liability of Berkshire under this Surety Bond or requiring payment or performance of the Covered Obligations by Berkshire hereunder, or at any time thereafter, that any Person: (i) file suit or proceed to obtain or assert a claim for personal judgment against Oglethorpe, AMBAC or any

other Person that may be liable for any Covered Obligation, (ii) other than as set forth in paragraph 1 hereof, make any other effort to obtain payment or performance of any Covered Obligation from Oglethorpe, AMBAC or any other Person that may be liable for such Covered Obligation, (iii) foreclose against or seek to realize upon any security now or hereafter existing for such Covered Obligation, (iv) other than as set forth in paragraph 1 hereof, exercise or assert any other right or remedy to which such Person is or may be entitled in connection with any Covered Obligation or any security or other guaranty therefor, or (v) other than as set forth in paragraph 1 hereof, assert or file any claim against the assets of Oglethorpe, AMBAC or any other Person liable for any Covered Obligation.

10. THE OBLIGATIONS OF BERKSHIRE UNDER THIS SURETY BOND SHALL NOT BE REDUCED, LIMITED OR TERMINATED, NOR SHALL BERKSHIRE BE DISCHARGED FROM ANY THEREOF, FOR ANY REASON WHATSOEVER (other than by the payment of the Covered Obligations), including (and whether or not the same shall have occurred or failed to occur once or more than once and whether or not Berkshire shall have received notice thereof):

(a) (i) any increase of, (ii) any extension of the time of payment or performance of, (iii) any other amendment or modification of any of the other terms and provisions of, (iv) any release, composition or settlement (whether by way of acceptance of a plan of reorganization or otherwise) of, (v) any subordination (whether present or future or contractual or otherwise) of, or (vi) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of, the Covered Obligations; provided, however, in each case that Berkshire's obligation to make payments hereunder shall in no event be greater than the Surety Bond Coverage plus interest on amounts not paid by Berkshire when due and payable hereunder as provided in the last sentence of paragraph 1 hereof and expenses (other than expenses payable by AMBAC under the AMBAC Surety Bond or the AMBAC Sublease Surety Bond);

(b) (i) any failure to obtain or any release of, (ii) any failure to protect or preserve, (iii) any release, compromise, settlement or extension of the time of payment of any obligations constituting, (iv) any failure to perfect or maintain the perfection or priority of any Lien upon, (v) any subordination of any Lien upon, or (vi) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of, any Lien or intended Lien upon, any collateral now or hereafter securing the Covered Obligations;

(c) any invalidity or unenforceability of the Head Lease or any other Operative Document for any reason whatsoever, including any action taken pursuant to the Oglethorpe Mortgage;

(d) any exercise of, or any election not or failure to exercise, delay in the exercise of, waiver of, or forbearance or other indulgence with respect to, any right, remedy or power available to a Guaranteed Party, including (i) any election not or failure to exercise any right of set-off, recoupment or counterclaim, (ii) any acceptance of partial payments on the Covered Obligations, and (iii) any election of remedies effected by a Guaranteed Party, whether or not such election affects the right to obtain a deficiency judgment;

(e) receipt by the Guaranteed Parties (and holding thereby) of additional security or guaranties for the Covered Obligations or any part thereof;

(f) any bankruptcy, insolvency, reorganization, arrangement, adjustment, composition, dissolution, liquidation or the like with respect to, or in any manner affecting, RMLC, Oglethorpe, AMBAC, Berkshire or any other Person, or any obligation of Oglethorpe, RMLC or the RMLC Assignee under any Operative Document or of AMBAC under the AMBAC Surety Bond or any application of Section 502(b)(6) or other provision of the Bankruptcy Code that purports to limit Oglethorpe's or RMLC's obligations under the Operative Documents;

(g) any limitation of the remedies of the Guaranteed Parties under the Head Lease or the other Operative Documents, or any limitation of the liability of Oglethorpe under the Head Lease or the other Operative Documents or of AMBAC under the AMBAC Surety Bond, which may now or hereafter be imposed by any Applicable Law;

(h) any merger or consolidation of Oglethorpe, AMBAC or Berkshire into or with any other Person, or any transfer, conveyance, sale, lease or other disposition of any or all of the assets of Oglethorpe, AMBAC or Berkshire to any other Person, or any consent by the Head Lessee or the Owner Participant to any such merger, consolidation, transfer of assets or any other restructuring or termination of the corporate existence of Oglethorpe, AMBAC, Berkshire or any other Person;

(i) any debt of Oglethorpe or AMBAC to any Person, including Berkshire;

(j) any claim, set-off, deduction or defense AMBAC or Berkshire may have against any of the Head Lessee, the Owner Participant, Oglethorpe or the other parties to the Operative Documents or AMBAC, whether hereunder or under the Head Lease or the other Operative Documents or the AMBAC Surety Bond or independent of or unrelated to the transactions contemplated by the Head Lease or the other Operative Documents or the AMBAC Surety Bond (without prejudice to Berkshire's right to assert such claim, set-off, deduction or defense in a separate action unrelated to any action for enforcement of this Surety Bond or the Covered Obligations, so long as Berkshire does not set-off the amount of such claim, set-off, deduction or defense against its obligation to pay the Covered Obligations hereunder); or

(k) ANY OTHER ACT OR FAILURE TO ACT OR ANY OTHER EVENT OR CIRCUMSTANCE THAT (i) VARIES THE RISK OF BERKSHIRE UNDER THIS SURETY BOND OR (ii) BUT FOR THE PROVISIONS HEREOF, WOULD, AS A MATTER OF STATUTE OR RULE OF LAW OR EQUITY, OPERATE TO REDUCE, LIMIT OR TERMINATE THE OBLIGATIONS OF BERKSHIRE THEREUNDER OR DISCHARGE BERKSHIRE FROM ANY THEREOF.

Anything contained herein to the contrary notwithstanding, Berkshire shall be released from further liability hereunder to the extent that any of the Guaranteed Parties in writing releases, other than with the written consent of Berkshire, AMBAC in respect of its obligations under the AMBAC Surety Bond or the AMBAC Sublease Surety Bond.

11. (a) Berkshire waives any defense to, and any set-off, counterclaim and claim of recoupment against, the Covered Obligations that may at any time be available to Berkshire or any other guarantor (without prejudice to Berkshire's right to assert such defense, set-off, counterclaim or claim in a separate action unrelated to any action for enforcement of this Surety Bond or the Covered Obligations, so long as Berkshire does not set-off the amount of such defense, set-off, counterclaim or claim against its obligation to pay Covered Obligations hereunder). Except as set forth in paragraph 6 hereof and in this paragraph 11, (i) Berkshire agrees not to exercise any right of subrogation which may otherwise inure to its benefit as a result of any payment made by it under the Surety Bond until all obligations of RMLC and Oglethorpe to the Co-Trustee, the Owner Trustee and the Owner Participant under the Operative Documents have been fully discharged, and (ii) Berkshire waives until such time, to the fullest extent permitted by Applicable Law, (A) any right to enforce any remedy which any Guaranteed Party now has or may hereafter have against Oglethorpe in respect of any of the Covered Obligations, and (B) any benefit of, and any right to participate in, any collateral now or hereafter held by any Guaranteed Party for the Covered Obligations; provided, however, that if Berkshire shall have paid in full the amount required by any Demand for Payment or Demand for Avoided Payment hereunder, (1) Berkshire shall immediately be subrogated to all rights of the Guaranteed Parties in respect of AMBAC's obligations with respect to any related Claimed Amount (as defined in the AMBAC Surety Bond or the AMBAC Sublease Surety Bond) that is unpaid under the AMBAC Surety Bond and/or the AMBAC Sublease Surety Bond, (2) Berkshire shall be entitled to exercise any and all rights and to enforce any and all remedies which any Guaranteed Party now has or may hereafter have against AMBAC with respect to any related Claimed Amount that is unpaid under the AMBAC Surety Bond and/or the AMBAC Sublease Surety Bond, and (3) Berkshire shall have the sole and exclusive benefit of, and the sole and exclusive right to participate in, any claims or recoveries to the extent of such amount and with respect to any related Claimed Amount that is unpaid under the AMBAC Surety Bond and/or the AMBAC Sublease Surety Bond, in each case under clauses (1), (2) and (3) for its own benefit and to the exclusion of the Guaranteed Parties and any other Persons, except as otherwise provided in the penultimate sentence of paragraph 11(f)(ii) hereof.

(b) Berkshire waives: (i) notice of acceptance of and intention to rely on this Surety Bond, (ii) notice of the incurrence or renewal of any other Covered Obligation, (iii) notice of any of the matters referred to in paragraph 10 hereof, and (iv) all other notices that may be required by Applicable Law or otherwise to preserve any rights against Berkshire under this Surety Bond, including any notice of default, demand, dishonor, presentment or protest, in each case except as expressly provided herein. Berkshire assumes the responsibility for being and keeping informed of the financial condition of Oglethorpe and AMBAC and of all other circumstances bearing upon the risk of nonpayment of the Covered Obligations which diligent inquiry would reveal, and agrees that each Guaranteed Party shall have no duty beyond its obligations in the Operative Documents to advise Berkshire of information known to it regarding such condition or any such circumstances. It is not and shall not be necessary for any Guaranteed Party to inquire into the powers of either Oglethorpe or AMBAC or any of its agents acting or purporting to act on behalf thereof, and any Covered Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

(c) Except as set forth in paragraph 1 hereof, Berkshire waives any requirement, and any right to require, that any right or power be exercised or any action be taken against

Oglethorpe or AMBAC or any collateral for the Covered Obligations, and Berkshire waives the right to have the property of Oglethorpe or AMBAC first applied to the discharge of the Covered Obligations. Each of the Head Lessee and the Owner Participant may at its election exercise any right or remedy it may have against Oglethorpe or AMBAC or any collateral now or hereafter held by such Person, including, without limitation, the right to foreclose upon any such collateral by judicial or nonjudicial sale, without affecting or impairing in any way the liability of Berkshire hereunder. Berkshire waives: (i) any defense arising by reason of any disability or other defense of Oglethorpe or AMBAC or by reason of the cessation from any cause whatsoever of the liability, either in whole or in part, of Oglethorpe or AMBAC to each of the Head Lessee and the Owner Participant for the Covered Obligations (without prejudice to Berkshire's right to assert a claim based on such disability or other defense or cessation, in a separate action unrelated to any action for enforcement of this Surety Bond or the Covered Obligations, so long as Berkshire does not set-off the amount of such claim against its obligation to pay Covered Obligations hereunder), (ii) any defense based on the discharge of Oglethorpe or AMBAC by operation of law, notwithstanding any intervention or omission by the Head Lessee or the Owner Participant, and (iii) any defense based on or arising out of the absence, impairment or loss of any right of reimbursement, contribution, assignment or subrogation or any other right or remedy of Berkshire against Oglethorpe or AMBAC or any such collateral, whether resulting from such election by the Head Lessee or the Owner Participant or otherwise.

(d) Berkshire waives all rights, benefits or defenses under any Applicable Laws which: (i) reduce the obligation of a surety upon the acceptance by a creditor of anything in partial satisfaction of an obligation, (ii) exonerate the surety if by an act of the creditor, without the consent of the surety, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, are in any way suspended or impaired, (iii) exonerate the surety to the extent that the creditor does not proceed against the principal, or pursue any other remedy in the creditor's power which the surety cannot pursue, and which would lighten the surety's burden, and (iv) reduce the guaranteed obligation in proportion to the principal obligation; provided that this paragraph (d) shall not apply to (A) any voluntary release, voluntary reduction, voluntary amendment or voluntary termination of the AMBAC Surety Bond or the AMBAC Sublease Surety Bond entered into by the Owner Participant, the Owner Trustee or the Co-Trustee, as the case may be, or (B) any release, reduction, amendment or termination of the AMBAC Surety Bond or the AMBAC Sublease Surety Bond by the Owner Participant, the Owner Trustee or the Co-Trustee in violation of the Operative Documents or Applicable Law; provided further that, for all purposes of this Surety Bond, any Demand for Payment or any Demand for Avoided Payment, any court-ordered or legally required release, reduction, amendment or termination of the AMBAC Surety Bond or the AMBAC Sublease Surety Bond shall not be considered voluntary unless such court order was requested or consented to by the Owner Participant, the Owner Trustee or the Co-Trustee.

(e) Except as otherwise provided in paragraph 11(d) above, BERKSHIRE WAIVES ALL OTHER RIGHTS, BENEFITS AND DEFENSES UNDER APPLICABLE LAW THAT WOULD, BUT FOR THIS PARAGRAPH 11(e), BE AVAILABLE TO BERKSHIRE AS A DEFENSE AGAINST OR A REDUCTION OR LIMITATION OF ITS OBLIGATIONS UNDER THIS SURETY BOND (without prejudice to Berkshire's right to assert such rights, benefits or defenses in a separate action unrelated to any action for enforcement of this Surety

Bond or the Covered Obligations, so long as Berkshire does not set-off the amount of such rights, benefits or defenses against its obligation to pay Covered Obligations hereunder).

(f) (i) Berkshire agrees, and each of the Guaranteed Parties by acceptance of this Surety Bond and by submission of the Demand for Payment or Demand for Avoided Payment hereunder with respect to a Deficiency or an Avoided Payment, as the case may be, agrees, that concurrently upon the payment in full by Berkshire of such Deficiency or Avoided Payment and the balance of the Total Outstanding Amount (as defined in the Demand for Payment or Demand for Avoided Payment) (whether or not in excess of the Surety Bond Coverage, "Payment in Full"), Berkshire shall, subject to clause (ii) below, be subrogated to all of the rights and remedies of the Head Lessee and the Owner Participant (subject to the rights of the Lender as provided in the Loan Agreement and other than those rights to which AMBAC had previously been subrogated in accordance with the terms of the AMBAC Surety Documents and the Implementation Agreement) with respect to the Covered Obligations giving rise to such Deficiency or Avoided Payment and/or comprising the balance of the Total Outstanding Amount under the Participation Agreement and the other Operative Documents and all right, title and interest of the Head Lessee, the Facility Lessor, the Facility Sublessor (to the extent previously assigned to the RMLC Assignee) and the RMLC Assignee (as defined in the Sublease Surety Bond) under the Operative Documents (other than, in each and every case, Excluded Rights).

(ii) Upon Payment in Full, each of the Head Lessee and the Owner Participant shall cooperate as reasonably requested by Berkshire, at Berkshire's expense, in Berkshire's exercise of the subrogation and other rights contemplated by paragraph 11(a) and this paragraph 11(f) as may be reasonably necessary to carry out more effectively the intent and purpose of such subrogation and other rights; provided, however, that neither the Owner Participant nor the Head Lessee shall be required by this sentence to take any action that (A) may expose it to criminal or unindemnified civil liability or (B) that would reasonably be expected to have a material adverse effect on the Owner Participant to the extent not indemnified by Berkshire. Upon the request of Berkshire after Payment in Full, the Head Lessee and the Owner Participant shall confirm the transfer of such rights to Berkshire by executing an instrument substantially in the form of Attachment V. Without limiting the foregoing, from and after delivery of a Demand for Payment or Demand for Avoided Payment, (A) neither the Head Lessee nor the Owner Participant shall take any action with respect to enforcement of AMBAC's obligations under the AMBAC Surety Bond or the AMBAC Sublease Surety Bond with respect to any Claimed Amount that is unpaid thereunder (in each case except for any such action as may be reasonably requested by Berkshire), and Berkshire shall be entitled to control and direct the exercise of all remedies (including but not limited to all proceedings and settlements) in respect of the AMBAC Surety Bond and the AMBAC Sublease Surety Bond with respect to any such Claimed Amount, through counsel of Berkshire's choice, and in each case without any duty or liability to the Guaranteed Parties for any actions taken or not taken in connection therewith, and (B) if Payment in Full has been made (and not avoided under any bankruptcy or insolvency proceeding), except as specified in the next following sentence, neither the Head Lessee nor the Owner Participant shall take any action (other than any action that the Head Lessee or the Owner

Participant is required to take under the Operative Documents) with respect to enforcement of the Covered Obligations under the Head Lease, the Facility Sublease, the Participation Agreement or any other Operative Documents without the prior written consent of Berkshire (other than, in each and every case, Excluded Rights), and, subject to the rights of the Lender as provided in the Loan Agreement, Berkshire shall be entitled to control and direct the exercise of remedies (including but not limited to all proceedings and settlements) in respect of Covered Obligations (other than with respect to Excluded Rights) through counsel of Berkshire's choice; provided that any amounts recovered or realized by Berkshire pursuant to the exercise of the subrogation rights set forth in this paragraph 11(f), and in any case excluding any such rights in respect of the AMBAC Surety Bond or the AMBAC Sublease Surety Bond, shall be first applied and paid over to the Guaranteed Parties to discharge any and all unpaid obligations of Oglethorpe to such Persons under the Operative Documents, prior to any application of such amounts to any amounts owing to Berkshire with respect to payments made under this Surety Bond or other payments in respect of Oglethorpe's obligations. In the event that, following any Payment in Full, any amount paid by or on behalf of Oglethorpe or AMBAC to the Head Lessee or the Owner Participant that shall have been taken into account in computing the Total Outstanding Amount shall become an Avoided Payment, notwithstanding the next preceding sentence, the Head Lessee or Owner Participant, as applicable, may enforce its claim against Oglethorpe or AMBAC, after consultation with Berkshire and in continued consultation with Berkshire in order to avoid inefficient prosecution of the respective claims of Berkshire and the Head Lessee or Owner Participant, as applicable, with respect to that portion of such amount that shall remain unpaid after the maximum amount of the Surety Bond Coverage shall have been drawn hereunder, provided, that any recovery by the Head Lessee or the Owner Participant pursuant to such exercise in excess of the amount required to discharge any unpaid obligations of Oglethorpe or AMBAC to such Persons under the Operative Documents shall be paid over to Berkshire for application to any unpaid Berkshire Obligations (as defined in the Implementation Agreement). For the avoidance of doubt, no amounts recovered or realized by Berkshire from the exercise by Berkshire of its rights pursuant to the Berkshire Guaranty Agreement (P1) dated the date hereof between Oglethorpe and Berkshire or (following payment in full of the Deficiency (as defined in the Demand for Payment) or any amount due pursuant to a Demand for Avoided Payment and any interest payable hereunder) in respect of the AMBAC Surety Bond or the AMBAC Sublease Surety Bond, shall be subject to the order of distribution set forth in the penultimate sentence of this paragraph 11(f)(ii) or any other rights of the Guaranteed Parties.

- (iii) The existence of the subrogation rights in paragraph 11(a) hereof or this paragraph 11(f) shall not in any way give rise to any duty on the part of Berkshire, except as expressly set forth in such paragraph 11(a) or this paragraph 11(f).
 - (iv) Nothing in paragraph 11(a) or this paragraph 11(f) shall be construed to be a representation on the part of the Owner Participant or Head Lessee as to the
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existence or extent of the right, title, interest and remedies to which Berkshire shall be subrogated pursuant to such paragraphs, except as expressly set forth in the Assignment (substantially in the form of Exhibit A to the Demand for Avoided Payment) or the Confirmation of Transfer (substantially in the form of Attachment V) in respect of the Owner Participant's and Head Lessee's not having assigned any of the same (other than, in the case of the Owner Participant, the grant to AMBAC of the AMBAC Purchase Option and the grant to Berkshire of the Berkshire Purchase Option and, in the case of the Head Lessee, the grant to the Lender of a security interest in such Covered Obligations and other rights under and as provided by the Loan Agreement and other than any assignment or grant of subrogation rights required under the terms of the AMBAC Surety Documents) and as to the absence of Owner Participant's Liens and Facility Lessor's Liens, as the case may be.

12. In addition to Berkshire's obligations under paragraph 1 hereof, Berkshire agrees to pay on demand all fees and out of pocket expenses (including the reasonable fees and expenses of the Head Lessee's counsel and the Owner Participant's counsel) in any way relating to the enforcement of the rights of the Head Lessee or the Owner Participant hereunder or as otherwise specified under the Surety Bond Documents (as defined in the Agreement Regarding Surety Bonds (P1) dated the date hereof among Oglethorpe, RMLC and Berkshire); provided, that, except as expressly set forth in the Surety Bond Documents, Berkshire shall not be liable for any expenses of the Head Lessee or the Owner Participant if no payment under this Surety Bond is or was at any time due or if all payments are made in accordance with the terms hereof.

13. Each of the rights and remedies of the Head Lessee or the Owner Participant under this Surety Bond shall be in addition to all of its other rights and remedies under Applicable Law, and nothing in this Surety Bond shall be construed as limiting any such rights or remedies.

14. Any term, covenant, agreement or condition of this Surety Bond may be amended, and any right under this Surety Bond may be waived, if, but only if, such amendment or waiver is in writing and is signed by the Head Lessee and the Owner Participant and, in the case of an amendment, by Berkshire. No election not to exercise, failure to exercise or delay in exercising any right, nor any course of dealing or performance, shall operate as a waiver of any right of the Head Lessee or the Owner Participant under this Surety Bond or Applicable Law, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right of the Head Lessee or the Owner Participant under this Surety Bond or Applicable Law.

15. (a) Prior to payment of all amounts payable by Berkshire hereunder, Berkshire may not assign any of its rights or obligations under this Surety Bond without the prior written consent of the Head Lessee and the Owner Participant, and (b) no assignment of any such obligation shall release Berkshire therefrom unless Head Lessee and the Owner Participant shall have consented to such release in a writing specifically referring to the obligation from which Berkshire is to be released; provided, however, that Berkshire may procure any other surety to reinsure this Surety Bond.

16. THIS SURETY BOND AND ANY BREACH OR DISPUTE WITH RESPECT TO THIS SURETY BOND SHALL, PURSUANT TO NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1401, BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

17. Any provision of this Surety Bond that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by Applicable Law, Berkshire hereby waives any provision of Applicable Law that renders any provision of this Surety Bond prohibited or unenforceable in any respect.

18. All of the provisions of this Surety Bond shall be binding upon Berkshire and its successors and assigns and shall inure to the benefit of, and may be enforced by, each of the Head Lessee and the Owner Participant and their respective successors and permitted assigns under the provisions of the Operative Documents.

19. This Surety Bond may be assigned and transferred by the Head Lessee or the Owner Participant to any successor or permitted assigns under the provisions of the Operative Documents of the Head Lessee or the Owner Participant upon delivery to Berkshire of a certificate of an authorized officer of the applicable transferor and the transferee notifying Berkshire of such transfer.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Berkshire has caused this Surety Bond to be executed on its behalf this 22nd day of May, 2009.

BERKSHIRE HATHAWAY ASSURANCE CORPORATION

By: _____
Name:
Title:

Acknowledged and Consented to by:

OGLETHORPE POWER CORPORATION
(AN ELECTRIC MEMBERSHIP CORPORATION)

By: _____
Name:
Title:
Date:

[corporate seal]

Attest: _____
Name:
Title:
Date:

Exhibit A

Recipients of Notice of Termination on behalf of Owner Participant:

1. Alex T. Russo
Vice President
Asset and Portfolio Management
Philip Morris Capital Corporation
225 High Ridge Road, Suite 300 West
Stamford, Connecticut 06905
Telephone No.: (203) 708-8204
Alex.Russo@us.pm.com
 2. John M. Spera
Vice President, and Controller
Philip Morris Capital Corporation
225 High Ridge Road, Suite 300 West
Stamford, Connecticut 06905
John.Spera@us.pm.com
Telephone No.: (203) 708-8155
 3. Steven P. Seagriff
Vice President
Pricing, Compliance, and Credit
Philip Morris Capital Corporation
225 High Ridge Road, Suite 300 West
Stamford, Connecticut 06905
Telephone No.: (203) 708-8214
Steve.Seagriff@us.pm.com
 4. Douglas B. Levene
Vice President, General Counsel, and Secretary
Philip Morris Capital Corporation
225 High Ridge Road, Suite 300 West
Stamford, Connecticut 06905
Telephone No.: (203) 708-8347
Doug.Levene@us.pm.com
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Schedule A

Oglethorpe Power Corporation - Surety Bond Calculation

RMLC Trust P1

<u>Period Starting and Including Date</u>	<u>Period Ending and Including the Business Day Next Following Date</u>	<u>Surety Bond Coverage</u>
[05/22/09] *	[] [] [to come]	

* Date next following ending date of next preceding period described in this Schedule A.

continues to be stayed (as a consequence of an Insolvency Proceeding pertaining to the insolvency of AMBAC) or has been and continues to be otherwise legally prohibited from making an AMBAC Payment Demand, and but for the existence of such stay or other prohibition, the Head Lessee or the Owner Participant would have been entitled to make such AMBAC Payment Demand and the AMBAC Claimed Amount or the applicable Surety Bond Payment Amount then payable under the AMBAC Surety Bond would thereupon have become due and payable by AMBAC.

(c) The Head Lessee or the Owner Participant has delivered to Berkshire (i) at least two Business Days prior to the date of this Demand for Payment, either a copy of the Oglethorpe Payment Demand or written notice that delivery thereof has been stayed or otherwise prohibited as contemplated above, unless AMBAC has paid the first Surety Bond Payment Amount, in which case the delivery referred to in this clause (i) is not required, and (ii) at least one Business Day prior to the date of this Demand for Payment, either a copy of the AMBAC Payment Demand or written notice that delivery thereof has been stayed or otherwise prohibited as contemplated above.

(d) As of the date of this Demand for Payment, (i) \$[] (exclusive of interest and expenses) (the “Oglethorpe Payment”) has been paid to the Head Lessee or the Owner Participant by or on behalf of Oglethorpe with respect to the Amount Due and/or to or for the account of the Facility Lessor in respect of the Termination Value under the Head Lease and/or the Oglethorpe Portion of Equity Termination Value, and (ii) \$[] (exclusive of interest and expenses) (the “AMBAC Payment”) has been paid to the Head Lessee or the Owner Participant by AMBAC under the AMBAC Surety Bond and/or the AMBAC Sublease Surety Bond, (iii) \$[] has been paid and/or is the subject of a simultaneous outstanding demand for payment under the Sublease Surety Bond (the “Sublease Surety Bond Amount”); and (iv) \$[] (the “Avoided Payments”) of any such Oglethorpe Payment or AMBAC Payment has been returned or turned over as an avoided payment to Oglethorpe or AMBAC, respectively, or any other person by the Head Lessee or the Owner Participant as a result of an Avoidance Event in respect of any payment made by Oglethorpe under the Head Lease or AMBAC under the AMBAC Surety Bond.

(e) (i) As of the date hereof, the Covered Obligations that are (x) due and payable by Oglethorpe under the terms of the Head Lease, the Participation Agreement or any of the other Operative Documents (other than the Facility Lease or the Facility Sublease), or are payable upon demand but cannot be demanded from, Oglethorpe pursuant to the terms of the Head Lease, the Participation Agreement or any of the other Operative Documents (other than the Facility Lease or the Facility Sublease) by reason of the operation of a stay or other order issued in an Insolvency Proceeding pertaining to the insolvency of Oglethorpe, and, giving effect to the application of the Oglethorpe Payment (less the amount of any Avoided Payment with respect thereto), the AMBAC Payment (less the amount of any Avoided Payment with respect thereto) and the Sublease Surety Bond Amount, have not been paid, and (y) due and payable by AMBAC under the terms of the AMBAC Surety Bond, or the present payment of which cannot be demanded from AMBAC under the terms of the AMBAC Surety Bond by reason of the operation of a stay or other order issued in an Insolvency Proceeding pertaining to the insolvency of AMBAC, and have not been paid, are specified in the attachment hereto and are in the aggregate, without duplication, \$[] (the “Head Lease Outstanding Amount”).

(ii) The Surety Bond Coverage is \$[].

(iii) The lesser of the Head Lease Outstanding Amount and the Surety Bond Coverage is \$[] (the “Deficiency”).

(iv) As of the date hereof, the Sublease Outstanding Amount (as defined in the Sublease Surety Bond) is specified in an attachment hereto and is \$[].

(v) The sum of the Head Lease Outstanding Amount and of the Sublease Outstanding Amount, (taking into account any provision of the Operative Documents pursuant to which payment of amounts comprising the Head Lease Outstanding Amount are deemed to pay and satisfy other amounts comprising the Head Lease Outstanding Amount or the Sublease Outstanding Amount, and *vice versa*), is specified in an attachment hereto and is \$[] (the “Total Outstanding Amount”).

(f) Neither the Head Lessee nor the Owner Participant has been paid all or any part of the Deficiency by Berkshire; and neither the AMBAC Surety Bond nor the AMBAC Sublease Surety Bond has been voluntarily released by the undersigned or the Owner Trustee or terminated by voluntary agreement of the undersigned or the Owner Trustee.

(g) Neither Ambac nor any Affiliate of AMBAC has become the Owner Participant or is a party to any contract or arrangement (other than the AMBAC Documents) with the Owner Participant or any Affiliate thereof or the Owner Trustee pursuant to which AMBAC or any such Affiliate of AMBAC shall have acquired or shall (other than as provided in the AMBAC Documents) have the right to acquire all or substantially all of the economic benefits attributable to the Beneficial Interest, the Trust Estate or the Leasehold Interest or any substantial part thereof or interest therein.

The Head Lessee and the Owner Participant hereby request that payment of the Deficiency be made by Berkshire under the Surety Bond and direct that payment under the Surety Bond be made to the following account by bank wire transfer of federal or other immediately available funds in accordance with the terms of the Surety Bond:

Account Information:

U.S. Bank National Association,
not in its individual capacity,
but solely as Co-Trustee

By: _____
Title: _____

Philip Morris Capital Corporation

By: _____
Title:



AMBAC Surety Bond, and (2) all or any portion of the AMBAC Claimed Amount was then due and payable under the terms of the AMBAC Surety Bond, and (B) such AMBAC Claimed Amount or any portion thereof remains unpaid (the lesser of the Oglethorpe Avoided Payment and the portion of the AMBAC Claimed Amount that remains unpaid being the "Berkshire Claimed Amount"), or (ii) for a period of at least one Business Day prior to the date of delivery of this Demand for Avoided Payment, the [Head Lessee] / [Owner Participant] has been and continues to be stayed (as a consequence of an Insolvency Proceeding pertaining to the insolvency of AMBAC) or has been and continues to be otherwise legally prohibited from making an AMBAC Avoided Payment Demand, and but for the existence of such stay or other prohibition, the [Head Lessee] / [Owner Participant] would have been entitled to make such AMBAC Avoided Payment Demand and the AMBAC Claimed Amount or the applicable Surety Bond Payment Amount then payable under the AMBAC Surety Bond would thereupon have become due and payable by AMBAC.

(g) Neither the Head Lessee nor the Owner Participant has been paid all or any part of the Avoided Payment by Berkshire; neither the AMBAC Surety Bond nor the AMBAC Sublease Surety Bond has been voluntarily released by the undersigned or the Owner Trustee or terminated by voluntary agreement of the undersigned or the Owner Trustee.

(H) NEITHER AMBAC NOR ANY AFFILIATE OF AMBAC HAS BECOME THE OWNER PARTICIPANT OR IS A PARTY TO ANY CONTRACT OR ARRANGEMENT (OTHER THAN THE AMBAC DOCUMENTS) WITH THE OWNER PARTICIPANT OR ANY AFFILIATE THEREOF OR THE OWNER TRUSTEE PURSUANT TO WHICH AMBAC OR ANY SUCH AFFILIATE OF AMBAC SHALL HAVE ACQUIRED OR SHALL (OTHER THAN AS PROVIDED IN THE AMBAC DOCUMENTS) HAVE THE RIGHT TO ACQUIRE ALL OR SUBSTANTIALLY ALL OF THE ECONOMIC BENEFITS ATTRIBUTABLE TO THE BENEFICIAL INTEREST, THE TRUST ESTATE OR THE LEASEHOLD INTEREST OR ANY SUBSTANTIAL PART THEREOF OR INTEREST THEREIN.

The Head Lessee and the Owner Participant hereby request Berkshire to pay the amount of (x) if the Avoided Payment is an Oglethorpe Avoided Payment, the Berkshire Claimed Amount or (y) if the Avoided Payment is an AMBAC Avoided Payment, the sum of, without duplication, such Avoided Payment plus that portion of the Claimed Amount (as defined in the AMBAC Surety Bond) remaining unpaid as of the date hereof, in each case out of the funds of Berkshire, when the applicable Avoided Payment is due to be paid pursuant to the Order, provided that the amount of the payment requested hereunder, when added to all other payments made under the Surety Bond, the Sublease Surety Bond and (to the extent not the subject of an Avoidance Event) the AMBAC Surety Bond, shall not exceed the applicable Surety Bond Coverage; provided further, that Berkshire shall not be required to make such payment earlier than the second Business Day following receipt by Berkshire of this Demand for Avoided Payment and all attachments referred to herein. Such payment shall be disbursed to the receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order, and not to the Head Lessee or the Owner Participant directly, unless and only to the extent the Head Lessee or the Owner Participant has made a payment of the Avoided Payment to the court or such receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order, in which case Berkshire will pay the Head Lessee or the Owner Participant, as applicable, subject to the

delivery of evidence satisfactory to Berkshire that such payment has been made to such court or receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order.

U.S. Bank National Association,
not in its individual capacity,
but solely as Co-Trustee

By: _____
Title:

Philip Morris Capital Corporation

By: _____
Title:

ASSIGNMENT

Reference is made to the Participation Agreement (P1) dated as of December 30, 1996, by and among (a) Oglethorpe Power Corporation (An Electric Membership Corporation) ("Oglethorpe"), (b) Rocky Mountain Leasing Corporation ("RMLC"), (c) U.S. Bank National Association, successor in interest to SunTrust Bank, Atlanta, as Co-Trustee (together with its successors and assigns, the "Head Lessee") under the Rocky Mountain Head Lease Agreement (P1) dated as of December 30, 1996 by and between Oglethorpe and the Head Lessee, (d) U.S. Bank National Association, successor in interest to Fleet National Bank, as Owner Trustee (e) Philip Morris Capital Corporation (the "Owner Participant"), and (f) Utrecht-America Finance Co. (as amended, modified, supplemented and in effect from time to time, the "Participation Agreement"). Capitalized terms used herein and not otherwise defined are used herein as defined in the Participation Agreement.

FOR VALUE RECEIVED, each of the Owner Participant and the Head Lessee hereby irrevocably assigns and transfers to Berkshire Hathaway Assurance Corporation (the "Assignee"), (subject to (x) the rights of the Lender as provided in the Loan Agreement, (y) any right, title and interest that shall have been assigned to AMBAC, or to which AMBAC shall have been subrogated, in accordance with the terms of the Implementation Agreement, the AMBAC Surety Bond and the AMBAC Sublease Surety Bond and (z) the provisions of paragraph 11(f) of the Surety Bond), all rights and claims other than Excluded Rights (collectively, the "Assigned Rights") of the Head Lessee and the Owner Participant relating to or arising under the Operative Documents against [AMBAC Assurance Corporation] [Oglethorpe] or the estate thereof or otherwise with respect to the Avoided Payment [and that portion of the Claimed Amount (as defined in the AMBAC Surety Bond) remaining unpaid as of the date of the Demand for Avoided Payment relating to such Avoided Payment](1) described below. The Owner Participant represents and warrants that it has not assigned the Assigned Rights or any interest therein or other rights relating thereto to any other Person (subject to any right, title and interest that shall have been assigned to AMBAC, or to which AMBAC shall have been subrogated, in accordance with the terms of the Implementation Agreement, the AMBAC Surety Bond and the AMBAC Sublease Surety Bond) and that no Owner Participant's Lien exists thereon. The Head Lessee represents and warrants that it has not assigned such Assigned Rights or any interest therein or other rights relating thereto to any other Person (other than any grant to the Lender of a security interest in any Assigned Rights or any interest therein or other rights relating thereto under and as provided by the Loan Agreement and subject to any right, title and interest that shall have been assigned to AMBAC, or to which AMBAC shall have been subrogated, in accordance with the terms of the Implementation Agreement, the AMBAC Surety Bond and the AMBAC Sublease Surety Bond) and that no Facility Lessor's Lien exists thereon.

(1) Omit if assignment relates to an Oglethorpe Avoided Payment.

The Avoided Payment [and portion of the Claimed Amount](2) covered by this Assignment is described as follows:
[](3).

It is expressly understood and agreed that (a) this Assignment is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee and Head Lessee, (b) any representation, undertaking or agreement herein made on the part of the Head Lessee is made and intended not as a personal representation, undertaking and agreement by U.S. Bank National Association and (c) under no circumstances shall U.S. Bank National Association be personally liable for the payment of any indebtedness or expenses of the Head Lessee or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by Head Lessee hereunder.

U.S. Bank National Association,
not in its individual capacity,
but solely as Co-Trustee

By: _____
Title:

Philip Morris Capital Corporation

By: _____
Title:

- _____
(2) Omit if assignment relates to an Oglethorpe Avoided Payment.
(3) Include date of original payment(s), amounts paid, date of repayment, date repaid, and interest and other amounts constituting a part thereof. If assignment relates to an AMBAC Avoided Payment, include original Claimed Amount under AMBAC Surety Bond, date of demand therefor, and dates and amounts of payments (net of any AMBAC Avoided Payments) made with respect thereto.
-

Attachment III
(Head Lease-P1)
Surety Bond No. 98SRD102494

NOTICE OF TERMINATION

[Date]

U.S. Bank National Association, as Co-Trustee

[]
[]
[]

Philip Morris Capital Corporation

[]
[]
[]

Reference is made to the Surety Bond (Head Lease-P1) No. 98SRD102494 (the "Surety Bond") issued by Berkshire Hathaway Assurance Corporation ("Berkshire"). The terms which are capitalized herein and not otherwise defined have the meanings specified in the Surety Bond unless the context otherwise requires.

Berkshire hereby notifies the Head Lessee and the Owner Participant that (a) Berkshire has not received the portion of the Premium due and payable in respect of the Surety Bond on [] in the amount of \$[] (the "Unpaid Premium Amount") and (b) as a result of such non-payment, the Surety Bond will terminate effective 80 days after the date of this notice (the "Cure Period") unless Berkshire receives full payment of the Unpaid Premium Amount prior to the expiration of the Cure Period.

Berkshire Hathaway Assurance Corporation

By: _____
Title:



Attachment IV
(Head Lease-P1)
Surety Bond No. 98SRD102494

NOTICE OF TERMINATION COVER SHEET
(on red paper)

URGENT

THIS IS A NOTICE OF TERMINATION TO TERMINATE SURETY BOND POLICY NO. 98SRD102494. PLEASE
READ AND RESPOND.

THIS MAY BE AN EVENT OF DEFAULT.

Attachment V
(Head Lease-P1)
Surety Bond No. 98SRD102494

CONFIRMATION OF TRANSFER

Reference is made to the Participation Agreement (P1) dated as of December 30, 1996, by and among (a) Oglethorpe Power Corporation (An Electric Membership Corporation) ("Oglethorpe"), (b) Rocky Mountain Leasing Corporation ("RMLC"), (c) U.S. Bank National Association, successor in interest to SunTrust Bank, Atlanta, as Co-Trustee (together with its successors and assigns, the "Head Lessee") under the Rocky Mountain Head Lease Agreement (P1) dated as of December 30, 1996 by and between Oglethorpe and the Head Lessee, (d) U.S. Bank National Association, successor in interest to Fleet National Bank, as Owner Trustee (e) Philip Morris Capital Corporation (the "Owner Participant"), and (f) Utrecht-America Finance Co. (as amended, modified, supplemented and in effect from time to time, the "Participation Agreement"). Capitalized terms used herein and not otherwise defined are used herein as defined in the Participation Agreement or in the Surety Bond (Head Lease-P1) No. 98SRD102494 issued by Berkshire Hathaway Assurance Corporation (the "Subrogee").

FOR VALUE RECEIVED, each of the Owner Participant and the Head Lessee hereby irrevocably assigns and transfers to the Subrogee, and confirms the transfer and assignment to the Subrogee, by subrogation or otherwise, of, all of the rights, interests, claims and remedies of the Head Lessee and/or the Owner Participant with respect to the Covered Obligations giving rise to any Deficiency or Avoided Payment and/or comprising the balance of the Total Outstanding Amount (as defined in any Demand for Payment or Demand for Avoided Payment) under the Participation Agreement and the other Operative Documents and all right, title and interest of the Head Lessee, the Facility Lessor, the Facility Sublessor (to the extent previously assigned to the RMLC Assignee) and the RMLC Assignee (as defined in the Sublease Surety Bond) under the Operative Documents (other than, in each and every case, Excluded Rights and in each and every case, subject to (x) the rights of the Lender as provided in the Loan Agreement, (y) any right, title and interest that shall have been assigned to AMBAC, or to which AMBAC shall have been subrogated, in accordance with the terms of the Implementation Agreement, the AMBAC Surety Bond and the AMBAC Sublease Surety Bond and (z) the provisions of paragraph 11(f) of the Surety Bond). The Owner Participant hereby represents and warrants that it has not assigned such Covered Obligations or other rights to any other Person (other than the grant to AMBAC of the AMBAC Purchase Option and the grant to Berkshire of the Berkshire Purchase Option and that no Owner Participant's Lien exists thereon. The Head Lessee represents and warrants that it has not assigned such Covered Obligations or other rights to any other Person (other than the grant to the Lender of a security interest in such Covered Obligations and other rights under and as provided by the Loan Agreement) and that no Facility Lessor's Lien exists thereon.

It is expressly understood and agreed that (a) this Confirmation of Transfer is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee and Head Lessee, (b) any representation, undertaking or agreement herein made on the part of the Head Lessee is made and intended not as a personal representation, undertaking and agreement by U.S. Bank National Association and (c) under no circumstances shall U.S. Bank National Association be personally liable for the payment of any indebtedness or expenses of the Head Lessee or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by Head Lessee hereunder.

U.S. Bank National Association,
not in its individual capacity,
but solely as Co-Trustee

By: _____
Title:

Philip Morris Capital Corporation

By: _____
Title:

Form of Berkshire Sublease Surety Bond

SURETY BOND
(Facility Sublease-P1)

Berkshire Hathaway Assurance Corporation
3024 Harney Street
Omaha, NE 68131
Facsimile No.: (402) 916-3237

Effective Date: May 22, 2009

Policy No. 98SRD102495

Berkshire Hathaway Assurance Corporation (together with its successors and permitted assigns, "Berkshire"), in consideration of the payment to it on the date hereof and from time to time hereafter of the premium payable in respect of this Surety Bond as separately agreed between Berkshire and Oglethorpe Power Corporation (An Electric Membership Corporation) (together with its successors and permitted assigns, "Oglethorpe") (such payment and any future payments of premium in respect of this Surety Bond being collectively referred to as the "Premium"), receipt of which for the amount of such premium payable on the date hereof is hereby acknowledged, and subject to the terms of this Surety Bond, hereby unconditionally and irrevocably guarantees to Rocky Mountain Leasing Corporation (together with its successors and assigns, the "Facility Sublessor") and U.S. Bank National Association, successor in interest to SunTrust Bank, Atlanta, as Co-Trustee (together with its successors and assigns, the "Facility Lessor") as a Secured Party under the Facility Sublease Assignment Agreement (the "RMLC Assignee") (collectively, the "Guaranteed Parties"), the full and complete payment, without duplication, of (i) any and all amounts of Termination Value and amounts computed by reference to Termination Value under the Facility Sublease Agreement (P1) dated as of December 30, 1996 by and between Oglethorpe and the Facility Sublessor (as amended, modified, supplemented and in effect from time to time, the "Facility Sublease Agreement"), and (ii) all amounts payable by AMBAC Assurance Corporation (formerly known as AMBAC Indemnity Corporation) (together with its successors and permitted assigns, "AMBAC") under the Amended and Restated Surety Bond (Facility Sublease-P1) issued on May 22, 2009, Policy No. SF0004BE (the "AMBAC Surety Bond"), executed by AMBAC in favor of the Guaranteed Parties (all such amounts under clauses (i) and (ii) above, together with any other payments due (or, if payable upon demand, that shall be accrued and unpaid and, unless demand therefor shall have been stayed by operation of law, shall have been duly demanded) at such time constituting obligations of Oglethorpe under the Participation Agreement or the other Operative Documents, being referred to as the "Covered Obligations") as at any time such payments are (1) in the case of clause (i) above, due from Oglethorpe under the terms of the Facility Sublease, the Participation Agreement or any of the other Operative Documents but shall not be so paid, or are payable by, or the present payment of which are payable upon

demand, and could be demanded from, Oglethorpe pursuant to the terms of the Facility Sublease, the Participation Agreement or any of the other Operative Documents absent the operation of a stay or other order issued in an Insolvency Proceeding (as hereinafter defined) pertaining to the insolvency of Oglethorpe, and have not been paid, or (2) in the case of clause (ii) above, due from AMBAC under the terms of the AMBAC Surety Bond and shall not be so paid, or are payable by, or the present payment of which could be demanded from, AMBAC under the terms of the AMBAC Surety Bond absent the operation of a stay or other order issued in an Insolvency Proceeding pertaining to the insolvency of AMBAC, but have not been paid; provided that, except in circumstances in which Payment in Full (as defined below) is payable in accordance with the terms hereof, the amount available at any particular time to be paid by Berkshire hereunder shall be not more than the Deficiency computed as provided in the form of Demand for Payment annexed hereto as Attachment I or the amount computed as provided in the form of Demand for Avoided Payment (as defined below) annexed hereto as Attachment II, as the case may be, and in either case not exceed (i) the Surety Bond Coverage (as defined in paragraph 7 hereof), plus (ii) interest at the Overdue Rate on any amounts due and payable by Berkshire hereunder from and including the date such amounts are due and payable by Berkshire hereunder plus (iii) expenses payable by Berkshire under paragraph 12 hereof. Capitalized terms used herein or in any Demand for Payment, Demand for Avoided Payment or Notice of Termination (as defined below) but not defined herein or therein shall have the respective meanings set forth in Appendix A to the Participation Agreement (P1), dated as of December 30, 1996, by and among Oglethorpe, the Facility Sublessor, the Facility Lessor, U.S. Bank National Association, successor in interest to Fleet National Bank, as Owner Trustee and Utrecht-America Finance Co. (as amended, supplemented or otherwise modified and in effect from time to time, the "Participation Agreement"). The general provisions of such Appendix A shall apply to terms used in this Surety Bond and defined herein or therein.

1. Upon receipt by Berkshire of a demand for payment for a portion or all of the unpaid amount of the Covered Obligations in an amount up to and including, but not exceeding, the Surety Bond Coverage (the "Deficiency") conforming to and in the form attached hereto as Attachment I (a "Demand for Payment"), with all blank spaces therein for variable information completed, duly executed by the Facility Sublessor (subject to paragraph 20 hereof) or the RMLC Assignee and certifying that:

(a) either (i) at least two Business Days prior to the date of such Demand for Payment, the Facility Sublessor or the RMLC Assignee demanded in writing (such demand being the "Oglethorpe Payment Demand") payment from Oglethorpe of an amount (the "Oglethorpe Claimed Amount") not less than the Deficiency, and such Oglethorpe Claimed Amount was then due and payable and as of the date of the Demand for Payment hereunder continues to be due and payable, or (ii) for a period of at least two Business Days prior to the date of delivery of the Demand for Payment hereunder, the Facility Sublessor or the RMLC Assignee, as the case may be, has been and continues to be stayed (as a consequence of an Insolvency Proceeding pertaining to the insolvency of Oglethorpe or RMLC) or has been and continues to be otherwise legally prohibited from making an Oglethorpe Payment Demand, and but for the

existence of such stay or other prohibition, the Facility Sublessor or the RMLC Assignee, as the case may be, would have been entitled to make such Oglethorpe Payment Demand and the Oglethorpe Claimed Amount would thereupon have become due and payable by Oglethorpe; provided, however, that the certification set forth in this clause (a) shall not be required in a Demand for Payment that is made after payment of the first Surety Bond Payment Amount, and

(b) either (i)(A) at least one Business Day prior to the date of such Demand for Payment hereunder, (1) the Facility Sublessor or the RMLC Assignee (whichever is then authorized to do so under the terms of the AMBAC Surety Bond) demanded in writing (such demand being the “AMBAC Payment Demand”) payment from AMBAC of the unpaid portion of the Oglethorpe Claimed Amount or, if less, the maximum amount then payable under the AMBAC Surety Bond (the amount demanded under the AMBAC Surety Bond being the “AMBAC Claimed Amount”) under and in compliance with the terms of the AMBAC Surety Bond, and (2) all or any portion of the AMBAC Claimed Amount was then due and payable under the terms of the AMBAC Surety Bond, and (B) such AMBAC Claimed Amount or any portion thereof remains unpaid, or (ii) for a period of at least one Business Day prior to the date of delivery of the Demand for Payment hereunder, the Facility Sublessor or the RMLC Assignee, as the case may be, has been and continues to be stayed (as a consequence of an Insolvency Proceeding pertaining to the insolvency of AMBAC) or has been and continues to be otherwise legally prohibited from making an AMBAC Payment Demand, and but for the existence of such stay or other prohibition, the Facility Sublessor or the RMLC Assignee, as the case may be, would have been entitled to make such AMBAC Payment Demand and the AMBAC Claimed Amount or the applicable Surety Bond Payment Amount then payable under the AMBAC Surety Bond would thereupon have become due and payable by AMBAC, and

(c) the Facility Sublessor or the RMLC Assignee, as the case may be, has delivered to Berkshire (i) at least two Business Days prior to the date of such Demand for Payment, either a copy of the Oglethorpe Payment Demand or written notice that delivery thereof has been stayed or otherwise prohibited as contemplated above, except that no such certification or delivery shall be required in a Demand for Payment made after payment of the first Surety Bond Payment Amount, and (ii) at least one Business Day prior to the date of such Demand for Payment, either a copy of the AMBAC Payment Demand or written notice that delivery thereof has been stayed or otherwise prohibited as contemplated above, and

(d) as of the date of such Demand for Payment hereunder, a Deficiency exists, and

(e) neither Ambac nor any Affiliate of AMBAC shall have become the Owner Participant or shall be a party to any contract or arrangement (other than the AMBAC Surety Documents, the Implementation Agreement and, if applicable, the Loan Agreement, the Loan Certificate and the Deed to Secure Debt

(collectively, the “AMBAC Documents”) with the Owner Participant or any Affiliate thereof or the Owner Trustee pursuant to which AMBAC or any such Affiliate of AMBAC shall have acquired or shall (other than as provided in the AMBAC Documents) have the right to acquire all or substantially all of the economic benefits attributable to the Beneficial Interest, the Trust Estate or the Leasehold Interest or any substantial part thereof or interest therein,

Berkshire will pay to the Facility Sublessor or the RMLC Assignee (subject to paragraph 20 hereof, and as specified in such Demand for Payment and at the place of payment set forth in such Demand for Payment), on the Business Day following the date of receipt of such Demand for Payment, an amount equal to the Deficiency (but in no event to exceed the Surety Bond Coverage), in each case by wire transfer as specified in such Demand for Payment. Berkshire shall also pay interest at the Overdue Rate on any amounts payable hereunder and on accrued but unpaid interest thereon (to the extent permitted by law) from and including the date such amounts are due and payable hereunder to (but excluding) the date of payment.

2. A Demand for Payment, Demand for Avoided payment, a copy of an Oglethorpe Payment Demand (or written notice that delivery thereof has been stayed or otherwise prohibited) delivered under clause (1)(c)(i) hereof, if required hereunder, or a copy of an AMBAC Payment Demand (or written notice that delivery thereof has been stayed or otherwise prohibited) delivered under clause (1)(c)(ii) hereof shall be personally delivered or sent by telecopy to Berkshire at Berkshire’s “Address for Notice” set forth in paragraph 8 hereof. Any Demand for Payment, Demand for Avoided Payment or copy or notice pursuant to the next preceding sentence so received by Berkshire after 2:00 p.m. New York City time on any Business Day or on any day that is not a Business Day shall be deemed to have been received by Berkshire prior to 2:00 p.m., New York City time, on the next succeeding Business Day. As used herein, the term “Business Day” shall mean any day other than a Saturday, a Sunday or any day on which banking institutions in New York, New York are authorized or required by law to be closed. If a Demand for Payment or Demand for Avoided Payment made hereunder is not, in any instance, effected in accordance with the terms and conditions of this Surety Bond, Berkshire shall give notice to the Facility Sublessor or the RMLC Assignee, as applicable, as promptly as reasonably practicable, that such Demand for Payment or Demand for Avoided Payment, as the case may be, was not effected in accordance with the terms and conditions of this Surety Bond and briefly state the reason(s) therefor. Upon being notified that such Demand for Payment or Demand for Avoided Payment was not effected in accordance with the terms and conditions of this Surety Bond, the Facility Sublessor or the RMLC Assignee, as the case may be, may attempt to correct any such nonconforming Demand for Payment or Demand for Avoided Payment, as the case may be. Multiple Demands for Payment or Demands for Avoided Payment shall be permitted hereunder.

3. [Intentionally omitted]

4. Any service of process on Berkshire may be made to Berkshire at Berkshire’s “Address for Notice” set forth in paragraph 8 hereof, and such service of process shall be valid and binding as to Berkshire.

5. This Surety Bond is noncancelable for any reason. Subject to paragraph 6 below, this Surety Bond and the obligations of Berkshire hereunder shall terminate on the earliest of (i) so long as Berkshire is not in default with respect to any of its obligations hereunder, January 11, 2027, (ii) two (2) days after the Surety Bond Coverage is reduced to zero dollars, (iii) upon receipt by Berkshire of written notice from the Facility Sublessor and the RMLC Assignee stating that Berkshire is released from its obligations under this Surety Bond, (iv) the date on which payment is made by Berkshire in full of the amount required to be paid pursuant to a Demand for Payment, (v) except with respect to coverage for Avoided Payments, the date on which payment is made in full of all Covered Obligations of Oglethorpe or AMBAC or the date on which Oglethorpe or AMBAC are released (in a writing signed by the RMLC Assignee or, if the assignment by the Facility Sublessor of its rights hereunder to the RMLC Assignee shall have been terminated, the Facility Sublessor) from further liability in respect of all Covered Obligations, other than with the written consent of Berkshire, (vi) the date, if any, on which Ambac or any Affiliate of AMBAC shall have become the Owner Participant or shall be a party to any contract or arrangement (other than the AMBAC Documents) with the Owner Participant or any Affiliate thereof or the Owner Trustee pursuant to which AMBAC or any such Affiliate of AMBAC shall have acquired or shall (other than as provided in the AMBAC Documents) have the right to acquire all or substantially all of the economic benefits attributable to the Beneficial Interest, the Trust Estate or the Leasehold Interest or any substantial part thereof or interest therein, and (vii) 80 days (the "Cure Period") after the later of (x) the third Surety Bond Payment Date (as defined in the AMBAC Surety Bond) if AMBAC paid the first Surety Bond Payment Amount or (y) delivery by Berkshire to the Facility Sublessor, the RMLC Assignee and the Owner Participant (with a copy to AMBAC, unless delivery to AMBAC shall be stayed by law) of a notice in the form of Attachment III hereto (a "Notice of Termination") in accordance with the notice procedures in this paragraph 5 unless Berkshire shall have received prior to the expiration of the Cure Period the full amount of the unpaid portion of the Premium referred to in the Notice of Termination or a Demand for Payment.

Berkshire shall deliver a Notice of Termination upon the Facility Sublessor, the RMLC Assignee and the Owner Participant in the following manner:

- (i) The Notice of Termination shall be sent by FedEx or other similar courier service (FedEx and any such other courier service being referred to herein as the "Courier Service") to each of the Facility Sublessor, the RMLC Assignee and the Owner Participant at its address set forth in paragraph 8 hereof and to each of addressees listed on Exhibit A hereto at the addresses set forth on such Exhibit (as such Exhibit may be modified by written notice from the Owner Participant to Berkshire from time to time), and shall also be sent by email to the addressees listed on Exhibit A to the email addresses for such persons set forth on such Exhibit (as such Exhibit may be modified by written notice from the Owner Participant to Berkshire from time to time as provided above).
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- (ii) Each Notice of Termination sent by Courier Service pursuant to this paragraph 5 shall be accompanied by a notice (printed on red paper) affixed to the outside of the envelope containing such Notice of Termination in the form of Attachment IV hereof. Each notice sent by email shall also contain a notice in the form of Attachment IV.
- (iii) On the Business Day immediately preceding, on or within two Business Days following the date on which the Notice of Termination is sent by Courier Service as provided above, an officer, employee, representative or agent of Berkshire shall, between the hours of 9:00 a.m. and 5:00 p.m., New York time, place a telephone call to each of the persons listed on Exhibit A to the phone numbers listed on such Exhibit (as such Exhibit may be modified by written notice from the Owner Participant to Berkshire from time to time), and shall (A) if such person is available and answers the phone at such time, inform such person that such person "will be receiving by Courier Service an important Notice of Termination regarding the Oglethorpe Leveraged Lease Transaction (P1)," or (B) if such person is not then available, use reasonable efforts to leave a voicemail message on such person's voicemail, and a message with any person who then answers such person's telephone, to the same effect as set forth in clause (A) above.

6. Notwithstanding the provisions of paragraph 5 hereof, (a) if the payment of any amount in respect of the Covered Obligations is avoided (an "Avoidance Event") under any applicable Insolvency Proceeding with respect to Oglethorpe or AMBAC, and, as a result of such Avoidance Event, the Facility Sublessor or the RMLC Assignee is required to return or turn over such avoided payment, or any portion of such avoided payment (an "AMBAC Avoided Payment" in the case of an Insolvency Proceeding with respect to AMBAC, an "Oglethorpe Avoided Payment" in the case of an Insolvency Proceeding with respect to Oglethorpe, and each an "Avoided Payment"), and (b) Berkshire has not theretofore made a payment of the maximum amount of the Surety Bond Coverage to the Facility Sublessor or the RMLC Assignee, Berkshire will pay (1) with respect to an Oglethorpe Avoided Payment, the amount thereof minus any payments (other than AMBAC Avoided Payments) with respect thereto made by AMBAC under the AMBAC Surety Bond, and (2) with respect to an AMBAC Avoided Payment, the sum of, without duplication, (x) the amount thereof plus (y) that portion of the Claimed Amount (as defined in the AMBAC Surety Bond) that remains unpaid as of the date the Demand for Avoided Payment relating thereto is given to Berkshire in accordance with paragraph 8 hereof, in each case out of the funds of Berkshire, when the applicable or related Avoided Payment is due to be paid pursuant to the Order referred to below, but in any event no earlier than the second Business Day following receipt by Berkshire of (i) a certified copy of an order of a court or other body exercising jurisdiction in such Insolvency Proceeding to the effect that the Facility Sublessor or the RMLC Assignee is required to return or pay over such Avoided Payment because such Avoided Payment was avoided as a

preferential transfer or otherwise rescinded or required to be restored by the Facility Sublessor or the RMLC Assignee (the "Order"), (ii) a certificate by or on behalf of the Facility Sublessor or the RMLC Assignee that the Order has been entered and is not subject to any stay, and that the Facility Sublessor or the RMLC Assignee, as the case may be, has complied with or will timely comply with such order, (iii) an assignment in the form of Exhibit A to the Demand for Avoided Payment, duly executed and delivered by the Facility Sublessor or the RMLC Assignee, as the case may be, irrevocably assigning to Berkshire all rights and claims of the Facility Sublessor or the RMLC Assignee, as the case may be (subject to the rights of the Lender as provided in the Loan Agreement) relating to or arising under the Operative Documents against (A) Oglethorpe or its estate, in the case of and with respect to an Oglethorpe Avoided Payment, or (B) AMBAC or its estate, in the case of and with respect to an AMBAC Avoided Payment and that portion of the Claimed Amount (as defined in the AMBAC Surety Bond) remaining unpaid as of the date of Demand for Avoided Payment and (iv) a demand for payment for a portion or all of the unpaid amount of the Avoided Payment and, in the case of an AMBAC Avoided Payment, any unpaid portion of the Claimed Amount, in an amount up to and including, but not exceeding, the amount set forth in the next succeeding paragraph, conforming to and in the form attached hereto as Attachment II (a "Demand for Avoided Payment"), with all blank spaces therein for variable information completed, duly executed by the Facility Sublessor (subject to paragraph 20 hereof) or the RMLC Assignee, and containing the certifications set forth therein. In the event that Berkshire shall honor a Demand for Avoided Payment made by the RMLC Assignee, the Facility Sublessor shall, promptly upon Berkshire's demand, provide an assignment in the form of Exhibit A to the Demand for Avoided Payment with respect to the related Avoided Payment. Any failure on the part of the Facility Sublessor to perform its obligations under the preceding sentence shall not affect Berkshire's obligations to the RMLC Assignee hereunder. Such payment shall be disbursed to the receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order, and not to the Facility Sublessor or the RMLC Assignee directly, unless and only to the extent the Facility Sublessor or the RMLC Assignee has made a payment of the Avoided Payment to the court or such receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order, in which case Berkshire will pay the Facility Sublessor or the RMLC Assignee, as applicable, provided, that there has been delivery of (a) the items referred to in clauses (i), (ii), (iii) and (iv) above to Berkshire and (b) evidence satisfactory to Berkshire that such payment has been made to such court or receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order. "Insolvency Proceeding" means the commencement, after the date hereof, of any bankruptcy, insolvency, readjustment of debt, reorganization, marshalling of assets and liabilities or similar proceedings by or against any person, or the commencement, after the date hereof, of any proceedings by or against any person for the winding up or the liquidation of its affairs, or the consent after the date hereof to the appointment of a trustee, conservator, receiver or liquidator in any bankruptcy, insolvency, readjustment of debt, reorganization, marshalling of assets and liabilities or proceedings similar to the foregoing relating to any person.

Notwithstanding anything to the contrary herein, in no event shall Berkshire be obligated to make any payment (other than the payment of interest and expenses as herein

provided) pursuant to any Demand for Avoided Payment, which payment, when added to all other payments (other than the payment of interest and expenses as herein provided) made under this Surety Bond and the Head Lease Surety Bond, would exceed the Surety Bond Coverage as of the date applicable to such payment under the definition of "Surety Bond Coverage" in paragraph 7(j) hereof.

Upon receipt by Berkshire of any payment in respect of the Premium or any portion thereof, neither such payment nor any part thereof shall be subject to rebate, reduction or refund for any reason or under any circumstances whatsoever, including, without limitation, the payment or prepayment of Oglethorpe's obligations under the Facility Sublease or any of the other Operative Documents or the obligations of AMBAC under the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond, or the termination or release of this Surety Bond or the AMBAC Surety Bond prior to the termination of the Facility Sublease.

7. As used herein, the following capitalized terms shall have the following meanings:

(a) "AMBAC Assignment Agreement" means the Agreement for Assignment on Default (P1) dated as of December 30, 1996 among the Owner Participant, the Owner Trustee, the Co-Trustee and AMBAC, as amended.

(b) "AMBAC Head Lease Surety Bond" means the Amended and Restated Surety Bond (Head Lease-P1) issued on May 22, 2009, Policy No. SF0003BE, executed by AMBAC in favor of the "Guaranteed Parties" named therein.

(c) "AMBAC Purchase Option" means the "Purchase Option" under and as defined in the AMBAC Assignment Agreement.

(d) "AMBAC Surety Documents" means, collectively, the AMBAC Surety Bond, the AMBAC Head Lease Surety Bond and the AMBAC Assignment Agreement.

(e) "Berkshire Assignment on Default" means the Berkshire Agreement for Assignment on Default (P1) dated as of the date hereof among Berkshire, the Co-Trustee, the Owner Trustee and the Owner Participant.

(f) "Berkshire Purchase Option" means the "Purchase Option" under and as defined in the Berkshire Assignment on Default.

(g) "Excluded Rights" means all rights, remedies and benefits under the Operative Documents of the Owner Participant in respect of the period on or prior to the date of Payment in Full (including, without limitation, under Sections 11 and 12 of the Participation Agreement and under the Tax Indemnity Agreement) that accrue in respect of or that are attributable to acts, omissions, facts or events existing or occurring on or prior to the time of Payment in Full, but excluding any amounts owing to the Owner Participant that are included in the calculation of the amount of such Payment in Full.

(h) “Head Lease Surety Bond” means Surety Bond (Head Lease-P1) No. 98SRD102494 issued by Berkshire with respect to certain payment obligations of Oglethorpe under the Participation Agreement and certain payment obligations of AMBAC under the AMBAC Head Lease Surety Bond.

(i) “Implementation Agreement” means the Surety Bond Implementation Agreement (P1), dated as of the date hereof, among Oglethorpe, RMLC, the Owner Participant, the Owner Trustee, the Co-Trustee, AMBAC and Berkshire.

(j) “Surety Bond Coverage” means, for any period set forth on Schedule A attached hereto with respect to the payment of any Deficiency and any Avoided Payment hereunder, (x) the amount shown opposite the period in which the date on which the Demand for Payment of such Deficiency or Avoided Payment is given to Berkshire in accordance with paragraph 8 hereof or deemed given to Berkshire as set forth below in this paragraph (j); minus (y) any amounts (other than amounts that constituted AMBAC Avoided Payments) previously paid hereunder and under the Head Lease Surety Bond, the AMBAC Surety Bond and the AMBAC Head Lease Surety Bond. The amount described in clause (y) above shall be determined without regard to any amounts previously paid comprising expenses payable under the AMBAC Surety Bond, the AMBAC Head Lease Surety Bond, paragraph 12 hereof or under paragraph 12 of the Head Lease Surety Bond or interest on amounts not paid by Berkshire when due and payable hereunder as provided in the last sentence of paragraph 1 hereof or the last sentence of paragraph 1 of the Head Lease Surety Bond or interest on amounts not paid by AMBAC when due and payable under the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond (excluding any interest that could have been avoided under the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond had a Demand for Payment or Demand for Avoided Payment been made hereunder or under the Head Lease Surety Bond at the earliest date provided for such a Demand for Payment or Demand for Avoided Payment, as the case may be, hereunder or thereunder). With respect to any AMBAC Avoided Payment, the date on which Demand for Payment of such AMBAC Avoided Payment is deemed given to Berkshire for purposes of the first sentence of this paragraph 7(j) shall be the Business Day next following the date on which such AMBAC Avoided Payment was first demanded from AMBAC. With respect to any Deficiency hereunder payable after AMBAC shall have paid the first Surety Bond Payment Amount, the date on which Demand for Payment of such Deficiency is deemed given to Berkshire for purposes of the first sentence of this paragraph 7(j) shall be the Business Day next following the date on which such first Surety Bond Payment Amount was first demanded from AMBAC.

(k) “Surety Bond Payment Amount” has the meaning set forth in the AMBAC Surety Bond.

8. Except as otherwise provided in paragraph 5 hereof and subject to paragraph 2 hereof, all notices, requests and other communications provided for herein shall be given

or made in writing (including, without limitation, by telecopy) delivered to the intended recipient at the following addresses or, as to Berkshire, the Facility Sublessor, the RMLC Assignee, the Owner Participant or Oglethorpe, at such other address as shall be designated by such Person in a notice to each other such Person (such address with respect to any party, including copies as specified below, being the "Address for Notice" of such party), and all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid:

Berkshire

Berkshire Hathaway Assurance Corporation
c/o Berkshire Hathaway Group
100 First Stamford Place
Stamford, CT 06902
Attn: General Counsel
Facsimile No.: (203) 363-5221

with copies to:

Berkshire Hathaway Assurance Corporation
3024 Harney Street
Omaha, NE 68131
Attention: President
Facsimile No.: (402) 916-3237

and

Robert E. Bennett
99 Mill Lane
Norwell, MA 02061
Facsimile No.: (781) 659-2491

Facility Sublessor

Rocky Mountain Leasing Corporation
c/o Corporation Trust Center
1209 Orange Street, Room 123
Wilmington, Delaware 19801
Telecopier No.: (302) 688-5459
Confirmation No.: (302) 777-0250

RMLC Assignee

U.S. Bank National Association
EX-GA-ATPT
1349 W. Peachtree Street, Suite 1050
Atlanta, GA 30309
Facsimile No.: (404) 898-2467
Telephone No.: (404) 898-8830
Attention: Jack Ellerin

Owner Participant

Philip Morris Capital Corporation
225 High Ridge Road
Suite 300 West
Stamford, Connecticut 06905
Facsimile No.: (203) 708-8256
Telephone No.: (203) 708-8347
Attention: General Counsel

with a copy to:

Philip Morris Capital Corporation
225 High Ridge Road
Suite 300 West
Stamford, Connecticut 06905
Facsimile No.: (203) 708-8256
Telephone No.: (203) 708-8204
Attention: Alex Russo, Vice President/Asset and Portfolio Management

9. Berkshire's obligations under this Surety Bond (a) are absolute and unconditional, (b) constitute a guaranty of payment and not a guaranty of collection, (c) shall be a continuing guaranty of all present and future Covered Obligations and all amendments, modifications, supplements, renewals of or extensions to the Covered Obligations, whether such amendments, modifications, supplements, renewals or extensions are evidenced by new or additional instruments, documents or agreements, and (d) shall be irrevocable. The obligations of Berkshire to make any payment hereunder shall, to the extent permitted by Applicable Law, constitute separate and independent obligations of Berkshire, and give rise to separate and independent causes of action against Berkshire. Berkshire specifically agrees that, subject to receipt by Berkshire of a Demand for Payment or a Demand for Avoided Payment conforming to and in the form of Attachment I or II hereto, as the case may be, it shall not be necessary, and that Berkshire shall not be entitled to require, before or as a condition of enforcing the liability of Berkshire under this Surety Bond or requiring payment or performance of the Covered Obligations by Berkshire hereunder, or at any time thereafter, that any Person: (i) file suit or proceed to obtain or assert a claim for personal judgment against Oglethorpe, AMBAC or any other Person that may be liable for any Covered Obligation, (ii) other than as set forth in paragraph 1 hereof, make any other effort to obtain payment or performance of any Covered Obligation from Oglethorpe, AMBAC or any other Person that may be liable for such Covered Obligation, (iii) foreclose against or seek to realize

upon any security now or hereafter existing for such Covered Obligation, (iv) other than as set forth in paragraph 1 hereof, exercise or assert any other right or remedy to which such Person is or may be entitled in connection with any Covered Obligation or any security or other guaranty therefor, or (v) other than as set forth in paragraph 1 hereof, assert or file any claim against the assets of Oglethorpe, AMBAC or any other Person liable for any Covered Obligation.

10. THE OBLIGATIONS OF BERKSHIRE UNDER THIS SURETY BOND SHALL NOT BE REDUCED, LIMITED OR TERMINATED, NOR SHALL BERKSHIRE BE DISCHARGED FROM ANY THEREOF, FOR ANY REASON WHATSOEVER (other than by the payment of the Covered Obligations), including (and whether or not the same shall have occurred or failed to occur once or more than once and whether or not Berkshire shall have received notice thereof):

(a) (i) any increase of, (ii) any extension of the time of payment or performance of, (iii) any other amendment or modification of any of the other terms and provisions of, (iv) any release, composition or settlement (whether by way of acceptance of a plan of reorganization or otherwise) of, (v) any subordination (whether present or future or contractual or otherwise) of, or (vi) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of, the Covered Obligations; provided, however, in each case that Berkshire's obligation to make payments hereunder shall in no event be greater than the Surety Bond Coverage plus interest on amounts not paid by Berkshire when due and payable hereunder as provided in the last sentence of paragraph 1 hereof and expenses (other than expenses payable by AMBAC under the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond);

(b) (i) any failure to obtain or any release of, (ii) any failure to protect or preserve, (iii) any release, compromise, settlement or extension of the time of payment of any obligations constituting, (iv) any failure to perfect or maintain the perfection or priority of any Lien upon, (v) any subordination of any Lien upon, or (vi) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of, any Lien or intended Lien upon, any collateral now or hereafter securing the Covered Obligations;

(c) any invalidity or unenforceability of the Facility Sublease or any other Operative Document for any reason whatsoever, including any action taken pursuant to the Oglethorpe Mortgage;

(d) any exercise of, or any election not or failure to exercise, delay in the exercise of, waiver of, or forbearance or other indulgence with respect to, any right, remedy or power available to a Guaranteed Party, including (i) any election not or failure to exercise any right of set-off, recoupment or counterclaim, (ii) any acceptance of partial payments on the Covered Obligations, and (iii) any election of remedies effected by a Guaranteed Party, whether or not such election affects the right to obtain a deficiency judgment;

(e) receipt by the Guaranteed Parties (and holding thereby) of additional security or guaranties for the Covered Obligations or any part thereof;

(f) any bankruptcy, insolvency, reorganization, arrangement, adjustment, composition, dissolution, liquidation or the like with respect to, or in any manner affecting, RMLC, Oglethorpe, AMBAC, Berkshire or any other Person, or any obligation of Oglethorpe, RMLC or the RMLC Assignee under any Operative Document or of AMBAC under the AMBAC Surety Bond or any application of Section 502(b)(6) or other provision of the Bankruptcy Code that purports to limit Oglethorpe's or RMLC's obligations under the Operative Documents;

(g) any limitation of the remedies of the Guaranteed Parties under the Facility Sublease or the other Operative Documents, or any limitation of the liability of Oglethorpe under the Facility Sublease or the other Operative Documents or of AMBAC under the AMBAC Surety Bond, which may now or hereafter be imposed by any Applicable Law;

(h) any merger or consolidation of Oglethorpe, AMBAC or Berkshire into or with any other Person, or any transfer, conveyance, sale, lease or other disposition of any or all of the assets of Oglethorpe, AMBAC or Berkshire to any other Person, or any consent by the RMLC Assignee or the Facility Sublessor to any such merger, consolidation, transfer of assets or any other restructuring or termination of the corporate existence of Oglethorpe, AMBAC, Berkshire or any other Person;

(i) any debt of Oglethorpe or AMBAC to any Person, including Berkshire;

(j) any claim, set-off, deduction or defense AMBAC or Berkshire may have against any of the RMLC Assignee, the Facility Sublessor, Oglethorpe or the other parties to the Operative Documents or AMBAC, whether hereunder or under the Facility Sublease or the other Operative Documents or the AMBAC Surety Bond or independent of or unrelated to the transactions contemplated by the Facility Sublease or the other Operative Documents or the AMBAC Surety Bond (without prejudice to Berkshire's right to assert such claim, set-off, deduction or defense in a separate action unrelated to any action for enforcement of this Surety Bond or the Covered Obligations, so long as Berkshire does not set-off the amount of such claim, set-off, deduction or defense against its obligation to pay the Covered Obligations hereunder);

(k) in the case of obligations of Berkshire to the RMLC Assignee, any breach on the part of the Facility Sublessor of any representation, warranty or covenant in or pursuant to the Implementation Agreement or any Surety Bond; or

(l) ANY OTHER ACT OR FAILURE TO ACT OR ANY OTHER EVENT OR CIRCUMSTANCE THAT (i) VARIES THE RISK OF

BERKSHIRE UNDER THIS SURETY BOND OR (ii) BUT FOR THE PROVISIONS HEREOF, WOULD, AS A MATTER OF STATUTE OR RULE OF LAW OR EQUITY, OPERATE TO REDUCE, LIMIT OR TERMINATE THE OBLIGATIONS OF BERKSHIRE THEREUNDER OR DISCHARGE BERKSHIRE FROM ANY THEREOF.

Anything contained herein to the contrary notwithstanding, Berkshire shall be released from further liability hereunder in the event that the RMLC Assignee or, if the assignment by the Facility Sublessor of its rights hereunder to the RMLC Assignee shall have been terminated, the Facility Sublessor, in writing releases, other than with the written consent of Berkshire, AMBAC in respect of its obligations under the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond.

11. (a) Berkshire waives any defense to, and any set-off, counterclaim and claim of recoupment against, the Covered Obligations that may at any time be available to Berkshire or any other guarantor (without prejudice to Berkshire's right to assert such defense, set-off, counterclaim or claim in a separate action unrelated to any action for enforcement of this Surety Bond or the Covered Obligations, so long as Berkshire does not set-off the amount of such defense, set-off, counterclaim or claim against its obligation to pay Covered Obligations hereunder). Except as set forth in paragraph 6 hereof and in this paragraph 11, (i) Berkshire agrees not to exercise any right of subrogation which may otherwise inure to its benefit as a result of any payment made by it under the Surety Bond until all obligations of RMLC and Oglethorpe to the Co-Trustee, the Owner Trustee and the Owner Participant under the Operative Documents have been fully discharged, and (ii) Berkshire waives until such time, to the fullest extent permitted by Applicable Law, (A) any right to enforce any remedy which any Guaranteed Party now has or may hereafter have against Oglethorpe in respect of any of the Covered Obligations, and (B) any benefit of, and any right to participate in, any collateral now or hereafter held by any Guaranteed Party for the Covered Obligations; provided, however, that if Berkshire shall have paid in full the amount required by any Demand for Payment or Demand for Avoided Payment hereunder, (1) Berkshire shall immediately be subrogated to all rights of the Guaranteed Parties in respect of AMBAC's obligations with respect to any related Claimed Amount (as defined in the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond) that is unpaid under the AMBAC Surety Bond and/or the AMBAC Head Lease Surety Bond, (2) Berkshire shall be entitled to exercise any and all rights and to enforce any and all remedies which any Guaranteed Party now has or may hereafter have against AMBAC with respect to any related Claimed Amount that is unpaid under the AMBAC Surety Bond and/or the AMBAC Head Lease Surety Bond, and (3) Berkshire shall have the sole and exclusive benefit of, and the sole and exclusive right to participate in, any claims or recoveries to the extent of such amount and with respect to any related Claimed Amount that is unpaid under the AMBAC Surety Bond and/or the AMBAC Head Lease Surety Bond, in each case under clauses (1), (2) and (3) for its own benefit and to the exclusion of the Guaranteed Parties and any other Persons, except as otherwise provided in the penultimate sentence of paragraph 11(f)(ii) hereof.

(b) Berkshire waives: (i) notice of acceptance of and intention to rely on this Surety Bond, (ii) notice of the incurrence or renewal of any other Covered Obligation, (iii) notice of any of the matters referred to in paragraph 10 hereof, and (iv) all other notices that may be required by Applicable Law or otherwise to preserve any rights against Berkshire under this Surety Bond, including any notice of default, demand, dishonor, presentment or protest, in each case except as expressly provided herein. Berkshire assumes the responsibility for being and keeping informed of the financial condition of Oglethorpe and AMBAC and of all other circumstances bearing upon the risk of nonpayment of the Covered Obligations which diligent inquiry would reveal, and agrees that each Guaranteed Party shall have no duty beyond its obligations in the Operative Documents to advise Berkshire of information known to it regarding such condition or any such circumstances. It is not and shall not be necessary for any Guaranteed Party to inquire into the powers of either Oglethorpe or AMBAC or any of its agents acting or purporting to act on behalf thereof, and any Covered Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

(c) Except as set forth in paragraph 1 hereof, Berkshire waives any requirement, and any right to require, that any right or power be exercised or any action be taken against Oglethorpe or AMBAC or any collateral for the Covered Obligations, and Berkshire waives the right to have the property of Oglethorpe or AMBAC first applied to the discharge of the Covered Obligations. Each of the Facility Sublessor and the RMLC Assignee may at its election exercise any right or remedy it may have against Oglethorpe or AMBAC or any collateral now or hereafter held by such Person, including, without limitation, the right to foreclose upon any such collateral by judicial or nonjudicial sale, without affecting or impairing in any way the liability of Berkshire hereunder. Berkshire waives: (i) any defense arising by reason of any disability or other defense of Oglethorpe or AMBAC or by reason of the cessation from any cause whatsoever of the liability, either in whole or in part, of Oglethorpe or AMBAC to each of the Facility Sublessor and the RMLC Assignee for the Covered Obligations (without prejudice to Berkshire's right to assert a claim based on such disability or other defense or cessation, in a separate action unrelated to any action for enforcement of this Surety Bond or the Covered Obligations, so long as Berkshire does not set-off the amount of such claim against its obligation to pay Covered Obligations hereunder), (ii) any defense based on the discharge of Oglethorpe or AMBAC by operation of law, notwithstanding any intervention or omission by the Facility Sublessor or RMLC Assignee, and (iii) any defense based on or arising out of the absence, impairment or loss of any right of reimbursement, contribution, assignment or subrogation or any other right or remedy of Berkshire against Oglethorpe or AMBAC or any such collateral, whether resulting from such election by the Facility Sublessor or the RMLC Assignee or otherwise.

(d) Berkshire waives all rights, benefits or defenses under any Applicable Laws which: (i) reduce the obligation of a surety upon the acceptance by a creditor of anything in partial satisfaction of an obligation, (ii) exonerate the surety if by an act of the creditor, without the consent of the surety, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, are in any way suspended or impaired, (iii) exonerate the surety to the

extent that the creditor does not proceed against the principal, or pursue any other remedy in the creditor's power which the surety cannot pursue, and which would lighten the surety's burden, and (iv) reduce the guaranteed obligation in proportion to the principal obligation; provided that this paragraph (d) shall not apply to (A) any voluntary release, voluntary reduction, voluntary amendment or voluntary termination of the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond entered into by the Owner Participant, the Owner Trustee or the Co-Trustee, as the case may be, or (B) any release, reduction, amendment or termination of the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond by the Owner Participant, the Owner Trustee or the Co-Trustee in violation of the Operative Documents or Applicable Law; provided further that, for all purposes of this Surety Bond, any Demand for Payment or any Demand for Avoided Payment, any court-ordered or legally required release, reduction, amendment or termination of the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond shall not be considered voluntary unless such court order was requested or consented to by the Owner Participant, the Owner Trustee or the Co-Trustee.

(e) Except as otherwise provided in paragraph 11(d) above, BERKSHIRE WAIVES ALL OTHER RIGHTS, BENEFITS AND DEFENSES UNDER APPLICABLE LAW THAT WOULD, BUT FOR THIS PARAGRAPH 11(e), BE AVAILABLE TO BERKSHIRE AS A DEFENSE AGAINST OR A REDUCTION OR LIMITATION OF ITS OBLIGATIONS UNDER THIS SURETY BOND (without prejudice to Berkshire's right to assert such rights, benefits or defenses in a separate action unrelated to any action for enforcement of this Surety Bond or the Covered Obligations, so long as Berkshire does not set-off the amount of such rights, benefits or defenses against its obligation to pay Covered Obligations hereunder).

(f) (i) Berkshire agrees, and each of the Guaranteed Parties by acceptance of this Surety Bond and by submission of the Demand for Payment or Demand for Avoided Payment hereunder with respect to a Deficiency or an Avoided Payment, as the case may be, agrees, that concurrently upon the payment in full by Berkshire of such Deficiency or Avoided Payment and the balance of the Total Outstanding Amount (as defined in the Demand for Payment or Demand for Avoided Payment) (whether or not in excess of the Surety Bond Coverage, "Payment in Full"), Berkshire shall, subject to clause (ii) below, be subrogated to all of the rights and remedies of the RMLC Assignee and the Facility Sublessor (subject to the rights of the Lender as provided in the Loan Agreement and other than those rights to which AMBAC had previously been subrogated in accordance with the terms of the AMBAC Surety Documents and the Implementation Agreement) with respect to the Covered Obligations giving rise to such Deficiency or Avoided Payment and/or comprising the balance of the Total Outstanding Amount under the Participation Agreement and the other Operative Documents and all right, title and interest of the Head Lessee, the Facility Lessor, the Facility Sublessor and the RMLC Assignee under the Operative Documents (other than, in each and every case, Excluded Rights).

(ii) Upon Payment in Full, each of the Facility Sublessor and the RMLC Assignee shall cooperate as reasonably requested by Berkshire, at Berkshire's expense, in Berkshire's exercise of the subrogation and other

rights contemplated by paragraph 11(a) and this paragraph 11(f) as may be reasonably necessary to carry out more effectively the intent and purpose of such subrogation and other rights; provided, however, that neither the Facility Sublessor nor the RMLC Assignee shall be required by this sentence to take any action that (A) may expose it to criminal or unindemnified civil liability or (B) that would reasonably be expected to have a material adverse effect on the Owner Participant to the extent not indemnified by Berkshire. Upon the request of Berkshire after Payment in Full, each of the RMLC Assignee and the Facility Sublessor shall confirm the transfer of its respective portion of such rights to Berkshire by executing an instrument substantially in the form of Attachment V. Any failure on the part of the Facility Sublessor to perform its obligations under the preceding sentence shall not affect Berkshire's obligations to the RMLC Assignee hereunder. Without limiting the foregoing, from and after delivery of a Demand for Payment or Demand for Avoided Payment, (A) neither the Facility Sublessor nor the RMLC Assignee shall take any action with respect to enforcement of AMBAC's obligations under the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond with respect to any Claimed Amount that is unpaid thereunder (in each case except for any such action as may be reasonably requested by Berkshire), and Berkshire shall be entitled to control and direct the exercise of all remedies (including but not limited to all proceedings and settlements) in respect of the AMBAC Surety Bond and the AMBAC Head Lease Surety Bond with respect to any such Claimed Amount, through counsel of Berkshire's choice, and in each case without any duty or liability to the Guaranteed Parties for any actions taken or not taken in connection therewith, and (B) if Payment in Full has been made (and not avoided under any bankruptcy or insolvency proceeding), except as specified in the next following sentence, neither the Facility Sublessor nor the RMLC Assignee shall take any action (other than any action that the Facility Sublessor or the RMLC Assignee is required to take under the Operative Documents) with respect to enforcement of the Covered Obligations under the Facility Sublease, the Participation Agreement or any other Operative Documents without the prior written consent of Berkshire (other than, in each and every case, Excluded Rights), and, subject to the rights of the Lender as provided in the Loan Agreement, Berkshire shall be entitled to control and direct the exercise of remedies (including but not limited to all proceedings and settlements) in respect of Covered Obligations (other than with respect to Excluded Rights) through counsel of Berkshire's choice; provided that any amounts recovered or realized by Berkshire pursuant to the exercise of the subrogation rights set forth in this paragraph 11(f), and in any case excluding any such rights in respect of the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond, shall be first applied and paid over to the Guaranteed Parties to discharge any and all unpaid obligations of Oglethorpe to such Persons under the Operative Documents, prior to any application of such amounts to any amounts owing to

Berkshire with respect to payments made under this Surety Bond or other payments in respect of Oglethorpe's obligations. In the event that, following any Payment in Full, any amount paid by or on behalf of Oglethorpe or AMBAC to the Facility Sublessor or the RMLC Assignee that shall have been taken into account in computing the Total Outstanding Amount shall become an Avoided Payment, notwithstanding the next preceding sentence, the Facility Sublessor or the RMLC Assignee, as applicable, may enforce its claim against Oglethorpe or AMBAC, after consultation with Berkshire and in continued consultation with Berkshire in order to avoid inefficient prosecution of the respective claims of Berkshire and the Facility Sublessor or the RMLC Assignee, as applicable, with respect to that portion of such amount that shall remain unpaid after the maximum amount of the Surety Bond Coverage shall have been drawn hereunder, provided, that any recovery by the Facility Sublessor or the RMLC Assignee pursuant to such exercise in excess of the amount required to discharge any unpaid obligations of Oglethorpe or AMBAC to such Persons or the Owner Participant or any Affiliate thereof under the Operative Documents shall be paid over to Berkshire for application to any unpaid Berkshire Obligations (as defined in the Implementation Agreement). For the avoidance of doubt, no amounts recovered or realized by Berkshire from the exercise by Berkshire of its rights pursuant to the Berkshire Guaranty Agreement (P1) dated the date hereof between Oglethorpe and Berkshire or (following payment in full of the Deficiency (as defined in the Demand for Payment) or any amount due pursuant to a Demand for Avoided Payment and any interest payable hereunder) in respect of the AMBAC Surety Bond or the AMBAC Head Lease Surety Bond, shall be subject to the order of distribution set forth in the penultimate sentence of this paragraph 11(f)(ii) or any other rights of the Guaranteed Parties.

- (iii) The existence of the subrogation rights in paragraph 11(a) hereof or this paragraph 11(f) shall not in any way give rise to any duty on the part of Berkshire, except as expressly set forth in such paragraph 11(a) or this paragraph 11(f).
 - (iv) Nothing in paragraph 11(a) or this paragraph 11(f) shall be construed to be a representation on the part of the Facility Sublessor or RMLC Assignee as to the existence or extent of the right, title, interest and remedies to which Berkshire shall be subrogated pursuant to such paragraphs, except as expressly set forth in the Assignment (substantially in the form of Exhibit A to the Demand for Avoided Payment) or the Confirmation of Transfer (substantially in the form of Attachment V) in respect of the RMLC Assignee's or the Facility Sublessor's, as the case may be, not having assigned any of the same (other than, in the case of the Facility Sublessor, to the RMLC Assignee pursuant to the Facility Sublease Assignment Agreement and, in the case of the RMLC Assignee, the grant to the Lender of a security interest in such Covered Obligations and other
-

rights under and as provided by the Loan Agreement and other than any assignment or grant of subrogation rights required under the terms of the AMBAC Surety Documents) and as to the absence of Facility Lessor's Liens.

12. In addition to Berkshire's obligations under paragraph 1 hereof, Berkshire agrees to pay on demand all fees and out of pocket expenses (including the reasonable fees and expenses of the Facility Sublessor's counsel and the RMLC Assignee's counsel) in any way relating to the enforcement of the rights of the Facility Sublessor or RMLC Assignee hereunder or as otherwise specified under the Surety Bond Documents (as defined in the Agreement Regarding Surety Bonds (P1) dated the date hereof among Oglethorpe, RMLC and Berkshire); provided, that, except as expressly set forth in the Surety Bond Documents, Berkshire shall not be liable for any expenses of the Facility Sublessor or the RMLC Assignee if no payment under this Surety Bond is or was at any time due or if all payments are made in accordance with the terms hereof.

13. Each of the rights and remedies of the Facility Sublessor or the RMLC Assignee under this Surety Bond shall be in addition to all of its other rights and remedies under Applicable Law, and nothing in this Surety Bond shall be construed as limiting any such rights or remedies.

14. Any term, covenant, agreement or condition of this Surety Bond may be amended, and any right under this Surety Bond may be waived, if, but only if, such amendment or waiver is in writing and is signed by the Facility Sublessor and the RMLC Assignee and, in the case of an amendment, by Berkshire. No election not to exercise, failure to exercise or delay in exercising any right, nor any course of dealing or performance, shall operate as a waiver of any right of the Facility Sublessor or the RMLC Assignee under this Surety Bond or Applicable Law, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right of the Facility Sublessor or the RMLC Assignee under this Surety Bond or Applicable Law.

15. (a) Prior to payment of all amounts payable by Berkshire hereunder, Berkshire may not assign any of its rights or obligations under this Surety Bond without the prior written consent of the Facility Sublessor and the RMLC Assignee, and (b) no assignment of any such obligation shall release Berkshire therefrom unless the Facility Sublessor and the RMLC Assignee shall have consented to such release in a writing specifically referring to the obligation from which Berkshire is to be released; provided, however, that Berkshire may procure any other surety to reinsure this Surety Bond.

16. THIS SURETY BOND AND ANY BREACH OR DISPUTE WITH RESPECT TO THIS SURETY BOND SHALL, PURSUANT TO NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1401, BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

17. Any provision of this Surety Bond that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the

validity or enforceability of such provision in any other jurisdiction. To the extent permitted by Applicable Law, Berkshire hereby waives any provision of Applicable Law that renders any provision of this Surety Bond prohibited or unenforceable in any respect.

18. All of the provisions of this Surety Bond shall be binding upon Berkshire and its successors and assigns and shall inure to the benefit of, and (subject to paragraph 20 hereof) may be enforced by, each of the Facility Sublessor and the RMLC Assignee and their respective successors and permitted assigns under the provisions of the Operative Documents.

19. This Surety Bond may be assigned and transferred by the Facility Sublessor or the RMLC Assignee to any successor or permitted assigns under the provisions of the Operative Documents of the Facility Sublessor or the RMLC Assignee upon delivery to Berkshire of a certificate of an authorized officer of the applicable transferor and the transferee notifying Berkshire of such transfer.

20. Berkshire hereby consents to the collateral assignment by the Facility Sublessor to the RMLC Assignee of all of its rights under this Surety Bond pursuant to the Facility Sublease Assignment Agreement. Notwithstanding anything to the contrary herein, (A) each of Berkshire, the Facility Sublessor and the RMLC Assignee agrees that, unless and until the Facility Sublease Assignment Agreement shall have been discharged in accordance with Section 5 thereof, all payments by Berkshire hereunder, and all amounts to which the Facility Sublessor may become entitled hereunder, will be made to the RMLC Assignee (and not to the Facility Sublessor) and the RMLC Assignee shall have the sole and exclusive right to exercise any rights of the Facility Sublessor under this Surety Bond, and (B) unless and until the Facility Sublease Assignment Agreement shall have been discharged in accordance with Section 5 thereof, any demands for payment or other exercise of rights by the Facility Sublessor shall be ineffective for all purposes.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Berkshire has caused this Surety Bond to be executed on its behalf this 22nd day of May, 2009.

BERKSHIRE HATHAWAY ASSURANCE CORPORATION

By: _____
Name:
Title:

Acknowledged and Consented to by:

OGLETHORPE POWER CORPORATION
(AN ELECTRIC MEMBERSHIP CORPORATION)

By: _____
Name:
Title:
Date:

[corporate seal]

Attest: _____
Name:
Title:
Date:

Exhibit A

Recipients of Notice of Termination on behalf of Owner Participant:

1. Alex T. Russo
Vice President
Asset and Portfolio Management
Philip Morris Capital Corporation
225 High Ridge Road, Suite 300 West
Stamford, Connecticut 06905
Telephone No.: (203) 708-8204
Alex.Russo@us.pm.com
 2. John M. Spera
Vice President, and Controller
Philip Morris Capital Corporation
225 High Ridge Road, Suite 300 West
Stamford, Connecticut 06905
John.Spera@us.pm.com
Telephone No.: (203) 708-8155
 3. Steven P. Seagriff
Vice President
Pricing, Compliance, and Credit
Philip Morris Capital Corporation
225 High Ridge Road, Suite 300 West
Stamford, Connecticut 06905
Telephone No.: (203) 708-8214
Steve.Seagriff@us.pm.com
 4. Douglas B. Levene
Vice President, General Counsel, and Secretary
Philip Morris Capital Corporation
225 High Ridge Road, Suite 300 West
Stamford, Connecticut 06905
Telephone No.: (203) 708-8347
Doug.Levene@us.pm.com
-

Schedule A

Oglethorpe Power Corporation - Surety Bond Calculation

RMLC Trust P1

<u>Period Starting and Including Date</u>	<u>Period Ending and Including the Business Day Next Following Date</u>	<u>Surety Bond Coverage</u>
[05/22/09] *	[] [] [to come]	

* Date next following ending date of next preceding period described in this Schedule A.

may be, has been and continues to be stayed (as a consequence of an Insolvency Proceeding pertaining to the insolvency of AMBAC) or has been and continues to be otherwise legally prohibited from making an AMBAC Payment Demand, and but for the existence of such stay or other prohibition, the Facility Sublessor or RMLC Assignee would have been entitled to make such AMBAC Payment Demand and the AMBAC Claimed Amount or the applicable Surety Bond Payment Amount then payable under the AMBAC Surety Bond would thereupon have become due and payable by AMBAC.

(c) The Facility Sublessor or the RMLC Assignee has delivered to Berkshire (i) at least two Business Days prior to the date of this Demand for Payment, either a copy of the Oglethorpe Payment Demand or written notice that delivery thereof has been stayed or otherwise prohibited as contemplated above, unless AMBAC has paid the first Surety Bond Payment Amount, in which case the delivery referred to in this clause (i) is not required, and (ii) at least one Business Day prior to the date of this Demand for Payment, either a copy of the AMBAC Payment Demand or written notice that delivery thereof has been stayed or otherwise prohibited as contemplated above.

(d) As of the date of this Demand for Payment, (i) \$[] (exclusive of interest and expenses) (the "Oglethorpe Payment") has been paid to the Facility Sublessor or the RMLC Assignee by or on behalf of Oglethorpe with respect to the Amount Due and/or to or for the account of the Facility Lessor in respect of the Termination Value under the Facility Sublease, and (ii) \$[] (exclusive of interest and expenses) (the "AMBAC Payment") has been paid to the Facility Sublessor or the RMLC Assignee by AMBAC under the AMBAC Surety Bond and/or the AMBAC Head Lease Surety Bond, (iii) \$[] has been paid and/or is the subject of a simultaneous outstanding demand for payment under the Head Lease Surety Bond (the "Head Lease Surety Bond Amount"); and (iv) \$[] (the "Avoided Payments") of any such Oglethorpe Payment or AMBAC Payment has been returned or turned over as an avoided payment to Oglethorpe or AMBAC, respectively, or any other person by the Facility Sublessor or the RMLC Assignee as a result of an Avoidance Event in respect of any payment made by Oglethorpe under the Facility Sublease or AMBAC under the AMBAC Surety Bond.

(e) (i) As of the date hereof, the Covered Obligations that are (x) due and payable by Oglethorpe under the terms of the Facility Sublease, the Participation Agreement or any of the other Operative Documents (other than the Head Lease or the Facility Lease), or are payable upon demand but cannot be demanded from, Oglethorpe pursuant to the terms of the Facility Sublease, the Participation Agreement or any of the other Operative Documents (other than the Head Lease or the Facility Lease) by reason of the operation of a stay or other order issued in an Insolvency Proceeding pertaining to the insolvency of Oglethorpe or RMLC, and, giving effect to the application of the Oglethorpe Payment (less the amount of any Avoided Payment with respect thereto), the AMBAC Payment (less the amount of any Avoided Payment with respect thereto) and the Head Lease Surety Bond Amount, have not been paid, and (y) due and payable by AMBAC under the terms of the AMBAC Surety Bond, or the present payment of which cannot be demanded from AMBAC under the terms of the AMBAC Surety Bond by reason of the operation of a stay or other order issued in an Insolvency Proceeding pertaining to the insolvency of AMBAC, and have not been paid, are specified in the attachment hereto and are in the aggregate, without duplication, \$[] (the "Sublease Outstanding Amount").

(i) The Surety Bond Coverage is \$[].

(ii) The lesser of the Sublease Outstanding Amount and the Surety Bond Coverage is \$ (the “Deficiency”).

(iii) As of the date hereof, the Head Lease Outstanding Amount (as defined in the Head Lease Surety Bond) is specified in an attachment hereto and is \$[].

(iv) The sum of the Sublease Outstanding Amount and of the Head Lease Outstanding Amount, (taking into account any provision of the Operative Documents pursuant to which payment of amounts comprising the Sublease Outstanding Amount are deemed to pay and satisfy other amounts comprising the Sublease Outstanding Amount or the Head Lease Outstanding Amount, and *vice versa*), is specified in an attachment hereto and is \$[] (the “Total Outstanding Amount”).

(f) Neither the Facility Sublessor nor the RMLC Assignee has been paid all or any part of the Deficiency by Berkshire; and neither the AMBAC Surety Bond nor the AMBAC Head Lease Surety Bond has been voluntarily released by the undersigned[, the Owner Participant or the Owner Trustee](4) or terminated by voluntary agreement of the undersigned[, the Owner Participant or the Owner Trustee](5).

(g) Neither Ambac nor any Affiliate of AMBAC has become the Owner Participant or is a party to any contract or arrangement (other than the AMBAC Documents) with the Owner Participant or any Affiliate thereof or the Owner Trustee pursuant to which AMBAC or any such Affiliate of AMBAC shall have acquired or shall (other than as provided in the AMBAC Documents) have the right to acquire all or substantially all of the economic benefits attributable to the Beneficial Interest, the Trust Estate or the Leasehold Interest or any substantial part thereof or interest therein.

The [Facility Sublessor]/[RMLC Assignee] hereby requests that payment of the Deficiency be made by Berkshire under the Surety Bond and direct that payment under the Surety Bond be made to the following account by bank wire transfer of federal or other immediately available funds in accordance with the terms of the Surety Bond:

Account Information:

[Rocky Mountain Leasing Corporation, as Facility Sublessor

By: _____
Title:]

(4) Include if this demand is made by the Co-Trustee.
(5) Include if this demand is made by the Co-Trustee.

[U.S. Bank National Association,
not in its individual capacity,
but solely as Co-Trustee

By: _____
Title:]



the terms of the AMBAC Surety Bond, and (2) all or any portion of the AMBAC Claimed Amount was then due and payable under the terms of the AMBAC Surety Bond, and (B) such AMBAC Claimed Amount or any portion thereof remains unpaid (the lesser of the Oglethorpe Avoided Payment and the portion of the AMBAC Claimed Amount that remains unpaid being the “Berkshire Claimed Amount”), or (ii) for a period of at least one Business Day prior to the date of delivery of this Demand for Avoided Payment, the undersigned has been and continues to be stayed (as a consequence of an Insolvency Proceeding pertaining to the insolvency of AMBAC) or has been and continues to be otherwise legally prohibited from making an AMBAC Avoided Payment Demand, and but for the existence of such stay or other prohibition, the undersigned would have been entitled to make such AMBAC Avoided Payment Demand and the AMBAC Claimed Amount or the applicable Surety Bond Payment Amount then payable under the AMBAC Surety Bond would thereupon have become due and payable by AMBAC.

(g) Neither the Facility Sublessor nor the RMLC Assignee has been paid all or any part of the Avoided Payment by Berkshire; neither the AMBAC Surety Bond nor the AMBAC Head Lease Surety Bond has been voluntarily released by the undersigned[, the Owner Participant or the Owner Trustee](6) or terminated by voluntary agreement of the undersigned[, the Owner Participant or the Owner Trustee](7).

(h) Neither Ambac nor any Affiliate of AMBAC has become the Owner Participant or is a party to any contract or arrangement (other than the AMBAC Documents) with the Owner Participant or any Affiliate thereof or the Owner Trustee pursuant to which AMBAC or any such Affiliate of AMBAC shall have acquired or shall (other than as provided in the AMBAC Documents) have the right to acquire all or substantially all of the economic benefits attributable to the Beneficial Interest, the Trust Estate or the Leasehold Interest or any substantial part thereof or interest therein.

The [Facility Sublessor] [RMLC Assignee] hereby requests Berkshire to pay the amount of (x) if the Avoided Payment is an Oglethorpe Avoided Payment, the Berkshire Claimed Amount or (y) if the Avoided Payment is an AMBAC Avoided Payment, the sum of, without duplication, such Avoided Payment plus that portion of the Claimed Amount (as defined in the AMBAC Surety Bond) remaining unpaid as of the date hereof, in each case out of the funds of Berkshire, when the applicable Avoided Payment is due to be paid pursuant to the Order, provided that the amount of the payment requested hereunder, when added to all other payments made under the Surety Bond, the Head Lease Surety Bond and (to the extent not the subject of an Avoidance Event) the AMBAC Surety Bond, shall not exceed the applicable Surety Bond Coverage; provided, further, that Berkshire shall not be required to make such payment earlier than the second Business Day following receipt by Berkshire of this Demand for Avoided Payment and all attachments referred to herein. Such payment shall be disbursed to the receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order, and not to the Facility Sublessor or the RMLC Assignee directly, unless and only to the extent the Facility Sublessor or the RMLC Assignee has made a payment of the Avoided Payment to the court or such receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order, in which case Berkshire will pay the RMLC Assignee, unless such Avoided Payment shall have

(6) Include if this demand is made by the Co-Trustee

(7) Include if this demand is made by the Co-Trustee

been recovered from the Facility Sublessor and not from the RMLC Assignee, in which case Berkshire shall pay the Facility Sublessor, subject to the delivery of evidence satisfactory to Berkshire that such payment has been made to such court or receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order.

[U.S. Bank National Association,
not in its individual capacity,
but solely as Co-Trustee

By: _____
Title:]

[Rocky Mountain Leasing Corporation

By: _____
Title:]

ASSIGNMENT

Reference is made to the Participation Agreement (P1) dated as of December 30, 1996, by and among (a) Oglethorpe Power Corporation (An Electric Membership Corporation) ("Oglethorpe"), (b) Rocky Mountain Leasing Corporation ("RMLC"), (c) U.S. Bank National Association, successor in interest to SunTrust Bank, Atlanta, as Co-Trustee (together with its successors and assigns, the "Facility Lessor") under the Facility Lease Agreement (P1) dated as of December 30, 1996 by and between the Facility Lessor and RMLC, (d) U.S. Bank National Association, successor in interest to Fleet National Bank, as Owner Trustee (e) Philip Morris Capital Corporation (the "Owner Participant"), and (f) Utrecht-America Finance Co. (as amended, modified, supplemented and in effect from time to time, the "Participation Agreement"). Capitalized terms used herein and not otherwise defined are used herein as defined in the Participation Agreement.

FOR VALUE RECEIVED, [the Facility Lessor] / [RMLC] hereby irrevocably assigns and transfers to Berkshire Hathaway Assurance Corporation (the "Assignee"), (subject to (x) the rights of the Lender as provided in the Loan Agreement, (y) any right, title and interest that shall have been assigned to AMBAC, or to which AMBAC shall have been subrogated, in accordance with the terms of the Implementation Agreement, the AMBAC Surety Bond and the AMBAC Head Lease Surety Bond and (z) the provisions of paragraph 11(f) of the Surety Bond), all rights and claims other than Excluded Rights (collectively, the "Assigned Rights") of the Facility Lessor and RMLC relating to or arising under the Operative Documents against [AMBAC Assurance Corporation] [Oglethorpe] or the estate thereof or otherwise with respect to the Avoided Payment [and that portion of the Claimed Amount (as defined in the AMBAC Surety Bond) remaining unpaid as of the date of the Demand for Avoided Payment](8) described below. [RMLC represents and warrants that it has not assigned such Assigned Rights or any interest therein or other rights to relating thereto to any other Person (other than to the RMLC Assignee pursuant to the Facility Sublease Assignment Agreement and subject to any right, title and interest that shall have been assigned to AMBAC, or to which AMBAC shall have been subrogated, in accordance with the terms of the Implementation Agreement, the AMBAC Surety Bond and the AMBAC Head Lease Surety Bond) and that no Facility Sublessor's Lien exists thereon.] / [The Facility Lessor represents and warrants that it has not assigned such Assigned Rights or any interest therein or other rights to relating thereto to any other Person (other than any grant to the Lender of a security interest in any Assigned Rights or any interest therein or other rights relating thereto under and as provided by the Loan Agreement and subject to any right, title and interest that shall have been assigned to AMBAC, or to which AMBAC shall have been subrogated, in accordance with the terms of the Implementation Agreement, the AMBAC Surety Bond and the AMBAC Head Lease Surety Bond) and that no Facility Lessor's Lien exists thereon.]

(8) Omit if assignment relates to an Oglethorpe Avoided Payment.

The Avoided Payment [and portion of the Claimed Amount](9) covered by this Assignment is described as follows:
[(10).

[It is expressly understood and agreed that (a) this Assignment is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee and Facility Lessor, (b) any representation, undertaking or agreement herein made on the part of the Facility Lessor is made and intended not as a personal representation, undertaking and agreement by U.S. Bank National Association and (c) under no circumstances shall U.S. Bank National Association be personally liable for the payment of any indebtedness or expenses of the Facility Lessor or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by Facility Lessor hereunder.]

[U.S. Bank National Association,
not in its individual capacity,
but solely as Co-Trustee

By: _____
Title:]

[Rocky Mountain Leasing Corporation

By: _____
Title:]

(9) Omit if assignment relates to an Oglethorpe Avoided Payment.

(10) Include date of original payment(s), amounts paid, date of repayment, date repaid, and interest and other amounts constituting a part thereof. If assignment relates to an AMBAC Avoided Payment, include original Claimed Amount under AMBAC Surety Bond, date of demand therefor, and dates and amounts of payments (net of any AMBAC Avoided Payments) made with respect thereto.

Attachment III
(Facility Sublease-P1)
Surety Bond No. 98SRD102495

NOTICE OF TERMINATION

[Date]

Rocky Mountain Leasing Corporation

[]
[]
[]

U.S. Bank National Association, as Co-Trustee

[]
[]
[]

Philip Morris Capital Corporation

[]
[]
[]

Reference is made to the Surety Bond (Facility Sublease-P1) No. 98SRD102495 (the "Surety Bond") issued by Berkshire Hathaway Assurance Corporation ("Berkshire"). The terms which are capitalized herein and not otherwise defined have the meanings specified in the Surety Bond unless the context otherwise requires.

Berkshire hereby notifies the Facility Sublessor, the Facility Lessor and the Owner Participant that (a) Berkshire has not received the portion of the Premium due and payable in respect of the Surety Bond on [] in the amount of \$[] (the "Unpaid Premium Amount") and (b) as a result of such non-payment, the Surety Bond will terminate effective 80 days after the date of this notice (the "Cure Period") unless Berkshire receives full payment of the Unpaid Premium Amount prior to the expiration of the Cure Period.

Berkshire Hathaway Assurance Corporation

By: _____
Title:



Attachment IV
(Facility Sublease-P1)
Surety Bond No. 98SRD102495

NOTICE OF TERMINATION COVER SHEET
(on red paper)

URGENT

THIS IS A NOTICE OF TERMINATION TO TERMINATE SURETY BOND POLICY NO. 98SRD102495. PLEASE
READ AND RESPOND.

THIS MAY BE AN EVENT OF DEFAULT.

Attachment V
(Facility Sublease-P1)
Surety Bond No. 98SRD102495

CONFIRMATION OF TRANSFER

Reference is made to the Participation Agreement (P1) dated as of December 30, 1996, by and among (a) Oglethorpe Power Corporation (An Electric Membership Corporation) ("Oglethorpe"), (b) Rocky Mountain Leasing Corporation ("RMLC"), (c) U.S. Bank National Association, successor in interest to SunTrust Bank, Atlanta, as Co-Trustee (together with its successors and assigns, the "Facility Lessor") under the Facility Lease Agreement (P1) dated as of December 30, 1996 by and between the Facility Lessor and RMLC, (d) U.S. Bank National Association, successor in interest to Fleet National Bank, as Owner Trustee (e) Philip Morris Capital Corporation (the "Owner Participant"), and (f) Utrecht-America Finance Co. (as amended, modified, supplemented and in effect from time to time, the "Participation Agreement"). Capitalized terms used herein and not otherwise defined are used herein as defined in the Participation Agreement or in the Surety Bond (Facility Sublease-P1) No. 98SRD102495 issued by Berkshire Hathaway Assurance Corporation (the "Subrogee").

FOR VALUE RECEIVED, each of the Facility Lessor and RMLC hereby irrevocably assigns and transfers to the Subrogee, and confirms the transfer and assignment to the Subrogee, by subrogation or otherwise, of, all of the rights, interests, claims and remedies of the Facility Lessor and/or RMLC with respect to the Covered Obligations giving rise to any Deficiency or Avoided Payment and/or comprising the balance of the Total Outstanding Amount (as defined in any Demand for Payment or Demand for Avoided Payment) under the Participation Agreement and the other Operative Documents and all right, title and interest of the Head Lessee, the Facility Lessor, RMLC and the RMLC Assignee (as defined in the Surety Bond) under the Operative Documents (other than, in each and every case, Excluded Rights and in each and every case, subject to (x) the rights of the Lender as provided in the Loan Agreement, (y) any right, title and interest that shall have been assigned to AMBAC, or to which AMBAC shall have been subrogated, in accordance with the terms of the Implementation Agreement, the AMBAC Surety Bond and the AMBAC Head Lease Surety Bond and (z) the provisions of paragraph 11(f) of the Surety Bond). RMLC represents and warrants that it has not assigned such Covered Obligations or other rights to any other Person (other than to the RMLC Assignee pursuant to the Facility Sublease Assignment Agreement) and that no Facility Sublessor's Lien exists thereon. The Facility Lessor represents and warrants that it has not assigned such Covered Obligations or other rights to any other Person (other than the grant to the Lender of a security interest in such Covered Obligations and other rights under and as provided by the Loan Agreement) that no Facility Lessor's Lien exists thereon.

It is expressly understood and agreed that (a) this Confirmation of Transfer is executed and delivered by U.S. Bank National Association, not individually or personally but solely as Co-Trustee and Facility Lessor, (b) any representation, undertaking or agreement herein made on the part of the Facility Lessor is made and intended not as a personal representation, undertaking and agreement by U.S. Bank National Association and (c) under no circumstances shall U.S. Bank National Association be personally liable for the payment of any indebtedness or expenses

of the Facility Lessor or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Facility Lessor hereunder.

U.S. Bank National Association,
not in its individual capacity,
but solely as Co-Trustee

By: _____
Title:

Rocky Mountain Leasing Corporation

By: _____
Title:

SCHEDULE TO EXHIBIT 10.7

SURETY BOND IMPLEMENTATION AGREEMENT (P1)

The following table indicates for each transaction the name of the corresponding Owner Participant:

Agreement	Date	Owner Participant
P2	May 22, 2009	Philip Morris Capital Corporation
F3	May 22, 2009	First Chicago Leasing Corporation
F4	May 22, 2009	First Chicago Leasing Corporation
N6	May 22, 2009	Philip Morris Capital Corporation (transferee from NationsBanc Leasing & R.E. Corporation)

BERKSHIRE GUARANTY AGREEMENT (P1)

BERKSHIRE GUARANTY AGREEMENT (P1) dated as of May 22, 2009 by and between OGLETHORPE POWER CORPORATION (AN ELECTRIC MEMBERSHIP CORPORATION) ("Oglethorpe"), an electric membership generating and transmission corporation organized under the laws of the State of Georgia, and BERKSHIRE HATHAWAY ASSURANCE CORPORATION ("Berkshire"), a New York insurance company.

WITNESSETH:

WHEREAS, pursuant to a Participation Agreement (P1), dated as of December 30, 1996 (the "Participation Agreement"), by and among Oglethorpe, Rocky Mountain Leasing Corporation ("RMLC"), U.S. Bank National Association, successor to SunTrust Bank, Atlanta (the "Facility Lessor"), U.S. Bank National Association, successor to Fleet National Bank (the "Owner Trustee"), Philip Morris Capital Corporation (the "Owner Participant") and Utrecht-America Finance Co. (the "Lender"), (i) Oglethorpe has leased an undivided interest in its interest as tenant-in-common in the Facility to the Facility Lessor pursuant to the Head Lease, (ii) the Facility Lessor has leased such undivided interest in the Facility to RMLC pursuant to the Facility Lease, (iii) RMLC has leased such undivided interest in the Facility to Oglethorpe pursuant to the Facility Sublease, (iv) Oglethorpe has leased an undivided interest in its interest as a tenant-in-common in the Rocky Mountain Site to the Facility Lessor pursuant to the Ground Lease, (v) the Facility Lessor has leased such undivided interest in the Rocky Mountain Site to RMLC pursuant to the Ground Sublease, (vi) RMLC has leased such undivided interest in the Rocky Mountain Site to Oglethorpe pursuant to the Ground Sub-sublease, (vii) Oglethorpe has assigned a portion of its rights and obligations under the Rocky Mountain Agreements to the Facility Lessor, and the Facility Lessor has assumed such portion of Oglethorpe's obligations, pursuant to the Rocky Mountain Agreements Assignment, (viii) the Facility Lessor has assigned its rights and obligations under the Rocky Mountain Agreements to RMLC, and RMLC has assumed such obligation, pursuant to the Rocky Mountain Agreements Re-assignment, and (ix) RMLC has assigned its rights and obligations under the Rocky Mountain Agreements to Oglethorpe, and Oglethorpe has assumed such obligations, pursuant to the Rocky Mountain Agreements Second Re-assignment; and

WHEREAS, Berkshire has agreed to issue its Surety Bond (Facility Sublease-P1) No. 98SRD102495 (the "Facility Sublease Surety Bond"), guaranteeing certain payments required to be made by Oglethorpe pursuant to the Facility Sublease and certain obligations of AMBAC under the "AMBAC Surety Bond" (as defined in the Facility Sublease Surety Bond), subject to the terms and conditions of the Facility Sublease Surety Bond; and

WHEREAS, Berkshire has agreed to issue its Surety Bond (Head Lease-P1) No. 98SRD102494 (the "Head Lease Surety Bond" and, together with the Facility Sublease Surety Bond, the "Surety Bonds"), guaranteeing certain payments required to be made by Oglethorpe

pursuant to the Head Lease and the Participation Agreement and certain obligations of AMBAC under the “AMBAC Surety Bond” (as defined in the Head Lease Surety Bond), subject to the terms and conditions of the Head Lease Surety Bond; and

WHEREAS, to induce Berkshire to issue the Surety Bonds, Oglethorpe has agreed to (i) pay the Premium for such Surety Bonds and to pay certain of Berkshire’s expenses related to the Overall Transaction, (ii) reimburse Berkshire for all payments made by Berkshire pursuant to the Surety Bonds and/or the Berkshire Agreement for Assignment on Default (P1) dated as of the date hereof (the “Agreement for Assignment on Default”) among the Owner Participant, the Facility Lessor, the Owner Trustee and Berkshire, and (iii) secure its obligation to reimburse Berkshire pursuant to this Agreement in the manner hereinafter set forth; and

WHEREAS, Oglethorpe understands that Berkshire expressly requires the delivery of this Agreement as part of the consideration for the issuance by Berkshire of the Surety Bonds.

NOW, THEREFORE, in consideration of the premises and of the agreements herein contained and of the execution of the Surety Bonds, Oglethorpe and Berkshire agree as follows:

ARTICLE I

DEFINITIONS; SURETY BONDS; PREMIUM; CERTAIN COSTS

Section 1.01. Definitions. Except as otherwise expressly provided herein or unless the context otherwise requires, the terms which are capitalized herein shall have the meanings specified in Annex A hereto.

Section 1.02. Surety Bonds. The maximum liability of Berkshire under the Facility Sublease Surety Bond and the Head Lease Surety Bond, respectively, and the respective coverages and terms thereof shall be subject to and limited by the terms and conditions of the Facility Sublease Surety Bond and the Head Lease Surety Bond, respectively.

Section 1.03. Premium.

(a) In consideration of Berkshire’s agreeing to issue the Surety Bonds pursuant to the Agreement Regarding Surety Bonds, Oglethorpe hereby agrees to pay, or cause to be paid, to Berkshire, a premium (the “Premium”) equal to the sum of 1.25% of the average of the amounts shown on Schedule A hereto as the “Surety Bond Coverage” for January and July for each calendar year during the scheduled term of the Surety Bonds (i.e., from the date on which the Surety Bonds are issued through January 11, 2027 (the “Scheduled Termination Date”)), with the amount calculated for each calendar year being payable in advance on October 31 of the preceding calendar year or, in the case of calendar years 2009 and 2010, on the Closing Date, as the case may be, and prorated for the first and last years of the scheduled term of the Surety Bonds, in each case as follows:

(i) on the Closing Date, Oglethorpe will pay to Berkshire an amount equal to \$2,089,615.06, which represents the portion of the Premium calculated for 2009 and 2010, with the amount calculated for 2009 being prorated based on the weighted average of the amounts shown on Schedule A as the "Surety Bond Coverage" for May and July for the number of days remaining in such year;

(ii) for each calendar year subsequent to 2010 through 2026, Oglethorpe shall pay the portion of the Premium calculated for such calendar year in advance on October 31 of the preceding calendar year (or, if such day is not a Business Day, on the next succeeding Business Day); and

(iii) for the calendar year 2027, Oglethorpe shall pay the portion of the Premium calculated for such calendar year in advance on October 31 of the preceding calendar year (or, if such day is not a Business Day, on the next succeeding Business Day), in an amount equal to \$6,942.99, which represents the portion of the Premium calculated for such calendar year, with the amount payable for such calendar year being prorated based on the amount shown on Schedule A as the "Surety Bond Coverage" for January for the number of days from January 1 of such year to the Scheduled Termination Date.

(b) Anything contained herein to the contrary notwithstanding, the termination of either or both of the Surety Bonds prior to the Scheduled Termination Date shall not relieve Oglethorpe of its responsibility for payment of the full amount of the Premium for the full scheduled term of the Surety Bonds through the Scheduled Termination Date as provided above, provided that:

(i) if (A) either (1) the Overall Transaction is terminated, (2) the claims paying ability and senior debt obligations of AMBAC Assurance Corporation (formerly known as AMBAC Indemnity Corporation) ("AMBAC"), as applicable, are rated at least AA by S&P and Aa2 by Moody's (and not on credit watch by either rating agency) or (3) the Facility Lease is terminated pursuant to Section 14.1 or Section 17.1(b) thereof and the Facility Sublease is terminated pursuant to Section 14.1 or Section 17.1(b) thereof, (B) the Surety Bonds are released and terminated, (C) Oglethorpe has paid to Berkshire, within 10 Business Days after the occurrence of (A) and (B) above, all amounts in respect of the Premium due or to become due hereunder for the period commencing on the Closing Date and ending December 31, 2012, (D) if the Surety Bonds are being terminated after December 31, 2012, Oglethorpe has paid to Berkshire, within 10 Business Days after the occurrence of (A) and (B) above, all amounts in respect of the Premium due hereunder for the period commencing on January 1, 2013 and ending on December 31st of the year in which the termination occurs, (E) Oglethorpe is not otherwise in default in the payment of any amounts due hereunder (including, without limitation, if the Surety Bonds are being terminated between October 31st and December 31st of any year, amounts due on October 31st of such year in respect of the Premium for the succeeding calendar year) and (F) Oglethorpe pays to Berkshire, without duplication of the amounts payable in the parenthetical in clause (E) above, within 10 Business Days after the occurrence of (A) and (B) above, an amount equal to the portion of the Premium calculated for the calendar year succeeding the year in which the termination occurs (or,

if terminated on or prior to December 31, 2012, the calendar year ending December 31, 2013), together with interest, if any, at the Default Rate on any payments under this clause (i) from the date the Surety Bonds are terminated until the date paid, Oglethorpe shall not be required to pay any further amounts in respect of the Premium;

(ii) if (A) Oglethorpe delivers replacement Qualifying Surety Bonds or Qualifying Letters of Credit or other credit enhancement acceptable to the Owner Participant in accordance with the terms and conditions of Sections 8.5 and 8.6 of the Participation Agreement (other than as a result of a reduction of Berkshire's financial strength rating to less than AA by S&P and less than Aa2 by Moody's), (B) the Surety Bonds are released and terminated, (C) Oglethorpe has paid to Berkshire all amounts in respect of the Premium due or to become due hereunder for the period commencing on the Closing Date and ending December 31, 2012, (D) if the Surety Bonds are being terminated after December 31, 2012, Oglethorpe has paid to Berkshire, within 10 Business Days after the occurrence of (A) and (B) above, all amounts in respect of the Premium due hereunder for the period commencing on January 1, 2013 and ending on December 31st of the year in which the termination occurs, (E) Oglethorpe is not otherwise in default in the payment of any amounts due hereunder (including, without limitation, if the Surety Bonds are being terminated between October 31st and December 31st of any year, amounts due on October 31st of such year in respect of the Premium for the succeeding calendar year) and (F) Oglethorpe pays to Berkshire, without duplication of the amounts payable in the parenthetical in clause (E) above, within 10 Business Days after the occurrence of (A) and (B) above, an amount equal to the portion of the Premium calculated for the two years succeeding the year in which the termination occurs (or, if terminated on or prior to December 31, 2012, the calendar years ending December 31, 2013 and December 31, 2014), together with interest, if any, at the Default Rate on any payments under this clause (ii) from the date the Surety Bonds are terminated until the date paid, Oglethorpe shall not be required to pay any further amounts in respect of the Premium; and

(iii) if (A) the financial strength rating of Berkshire is less than AA by S&P and less than Aa2 by Moody's, (B) the Surety Bonds are released and terminated, (C) Oglethorpe has paid all amounts in respect of the Premium due hereunder prior to the date of such termination (including, without limitation, the portion of the Premium calculated for the calendar year in which the termination occurs) and is not otherwise in default in the payment of any amounts due hereunder (other than, if the Surety Bond is terminated between October 31st and December 31st of any year, the amount in respect of the Premium for the following year need not have been paid), Oglethorpe shall not be required to pay any further amounts in respect of the Premium.

(c) Once paid, neither any payment in respect of the Premium nor any part thereof or payment in respect of any portion thereof shall be subject to rebate, reduction or refund for any reason or under any circumstances whatsoever.

(d) Each payment in respect of the Premium shall be paid by Oglethorpe by wire transfer to the account of Berkshire designated in Section 5.07 as the "Account for Payments" or such other account or in such other manner as may be designated by Berkshire from time to time.

If Berkshire has not received payment of any amount in respect of the Premium as and when due and payable hereunder, Berkshire shall be authorized, without notice to or authorization from Oglethorpe, and without any liability to Oglethorpe, to deliver a Notice of Termination to the Beneficiaries under the Surety Bonds.

Section 1.04. Certain Other Expenses. Oglethorpe agrees to pay on the Closing Date, the fees and disbursements of Berkshire's counsel related to issuance of the Surety Bonds and the preparation, negotiation and execution of the Surety Bond Documents and all other documents and agreements relating thereto, in each case to the extent invoiced to Oglethorpe prior to the Closing Date.

ARTICLE II

REIMBURSEMENT OBLIGATIONS; SECURITY; EXPENSES; INDEMNITY; NOTICES; OTHER COVENANTS

Section 2.01. Reimbursement for Payments Under the Surety Bonds, Expenses and Indemnification.

(a) Oglethorpe will reimburse Berkshire immediately, without demand or notice by Berkshire to Oglethorpe or any other Person, to the extent of each Surety Bond Payment. If and to the extent that Oglethorpe fails to reimburse Berkshire immediately in respect of each such Surety Bond Payment, Oglethorpe shall pay on the first Business Day of each month, on the date of any demand therefor from time to time and on the date such reimbursement payment is made hereunder, interest on each such Surety Bond Payment from and including the Surety Bond Payment Date to the date of the reimbursement by Oglethorpe at the Default Rate. To the extent that interest payments due hereunder are not paid on the first Business Day of each month, or are not paid as each principal repayment is made, interest shall accrue on such unpaid amounts at a rate equal to the Default Rate.

(b) Oglethorpe also agrees to reimburse Berkshire immediately and unconditionally upon demand (in the case of enforcement expenses) and within 30 days after demand (in the case of other expenses) for all costs, fees and expenses (including reasonable fees and disbursements of Berkshire's counsel) incurred by Berkshire in connection with the Surety Bonds and the other Surety Bond Documents (including any amendment thereof) and/or the enforcement by Berkshire of this Agreement and/or any of the other Surety Bond Documents, in each case together with interest on all such expenses from and including the date of demand (in the case of enforcement expenses) or the date which is 30 days from the date a statement for such expenses is received by Oglethorpe (in the case of other expenses) to the date of payment at the Default Rate; provided, however, that Oglethorpe shall not be obligated to pay any expenses of Berkshire in terminating the Surety Bonds if at the time Berkshire's financial strength rating is less than AA by S&P and less than Aa2 by Moody's.

Section 2.02. Security for Payments; Instruments of Further Assurance.

(a) In order to secure its payment obligations to Berkshire hereunder, Oglethorpe has amended the Subordinated Mortgage. Oglethorpe hereby represents to Berkshire

that the Subordinated Mortgage grants to Berkshire a perfected security interest in the Subordinated Collateral.

(b) Oglethorpe agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all deeds of trust, mortgages and/or financing statements, if applicable, and all other further instruments as may be required by law, or as shall reasonably be requested by Berkshire, for the perfection of the security interest in the Subordinated Collateral granted to Berkshire pursuant to the Subordinated Mortgage and for the preservation and protection of all rights of Berkshire thereunder.

Section 2.03. Indemnification Rights. In addition to any and all rights of reimbursement, indemnification, subrogation and any other rights pursuant to this Agreement or any of the other Surety Bond Documents or at law or in equity, Oglethorpe agrees to pay and assume liability for, and to protect, defend, indemnify and save harmless Berkshire and its Affiliates, and their respective officers, directors, shareholders, employees, agents, attorneys and advisors, and each Person, if any, who controls Berkshire or any Affiliate of Berkshire within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from any against any and all claims, losses, liabilities, obligations, penalties, damages, suits, actions and other proceedings, costs and expenses (including, without limitation, fees and expenses of attorneys, consultants and auditors and costs of investigations) of any nature in any way arising out of or relating to the Overall Transaction, the Operative Documents, the AMBAC Guaranty and/or the Surety Bond Documents, or any of the transactions contemplated thereby or the enforcement thereof (including, without limitation, any claim (a) that any payment made or collateral delivered to Oglethorpe is subject to the claims of any other Person or subject to avoidance, disgorgement, repayment, redelivery or reimbursement or (b) arising out of any failure by Oglethorpe to perform or observe any covenant, condition or agreement in, or the falsity of any representation or warranty of Oglethorpe made in or pursuant to, this Agreement or any of the other Surety Bond Documents); provided, however, that, without limitation of the foregoing provisions of this Section 2.03, if Berkshire acquires the interests of the Owner Participant or any other Person under or in respect of any of the Operative Documents, Berkshire shall thereupon be entitled to all applicable indemnities contained in or provided under the terms of the Operative Documents; provided further, that Oglethorpe shall not be obligated to pay any expenses of Berkshire in terminating the Surety Bonds if at the time Berkshire's financial strength rating is less than AA by S&P and less than Aa2 by Moody's.

Section 2.04. Payments Generally. All payments to Berkshire hereunder shall be applied by Berkshire in such order and manner as Berkshire may determine in its sole discretion. All such payments shall in all events be made by Oglethorpe without setoff, deduction, counterclaim, withholding or any other reduction for any reason whatsoever.

Section 2.05. Unconditional Obligation. The obligations of Oglethorpe hereunder are absolute and unconditional and will be paid or performed strictly in accordance with this Agreement, irrespective of, and Oglethorpe waives any defense to the performance of its obligations hereunder as a result of:

(a) any lack of validity or enforceability of, or any amendment or other modification of, extension of time for performance under or compliance under, or waiver

with respect to, this Agreement, any of the Operative Documents, any of the AMBAC Surety Documents or any of the other Surety Bond Documents or any other instrument, document or agreement;

(b) any exchange, release or nonperfection of any security interest in property now or hereafter securing any obligation, whenever arising, under this Agreement, any of the Operative Documents, any of the AMBAC Surety Documents or any of the other Surety Bond Documents or any other instrument, document or agreement;

(c) any circumstances which might otherwise constitute a defense available to, or discharge of, Oglethorpe with respect to this Agreement, any of the Operative Documents, any of the AMBAC Surety Documents or any of the other Surety Bond Documents or any other instrument, document or agreement;

(d) whether or not any of the acts mentioned in any of the provisions of this Agreement, any of the Operative Documents, any of the AMBAC Surety Documents or any of the other Surety Bond Documents or any other instrument, document or agreement referred to herein or therein shall be done or omitted;

(e) whether the maturity of any Covered Obligations shall be accelerated, or any Covered Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Operative Documents, the Surety Bond Documents, the AMBAC Surety Documents or any other instrument, document or agreement referred to herein or therein shall be waived or any other guarantee for any Covered Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(f) any loss of possession of the Facility by Oglethorpe, whether by reason of the foreclosure of the Oglethorpe Mortgage or otherwise;

(g) the bankruptcy or insolvency of Oglethorpe, the Facility Lessor, the Owner Participant, AMBAC or Berkshire or any reorganization, arrangement, compromise, composition, liquidation or plan affecting Oglethorpe, the Facility Lessor, the Owner Participant, AMBAC or Berkshire shall occur; or

(h) whether this Agreement, any of the Surety Bond Documents, any Operative Document or other instrument, document or agreement referred to herein or therein shall be rejected or limited in any bankruptcy, insolvency or similar proceeding (nothing herein being a concession that any obligation hereunder or thereunder is properly classifiable as an executory obligation).

Oglethorpe assumes all risks of the acts or omissions of the Beneficiaries of the Surety Bonds with respect to their use of the Surety Bonds and the proceeds thereof. Neither Berkshire nor any of its Affiliates, nor any of their respective officers, directors, shareholders, employees, agents, attorneys and advisors, shall be liable or responsible for:

- (i) the use that may be made of the Surety Bonds or any acts or omissions of any of the Beneficiaries in connection therewith;
- (ii) the validity, sufficiency or genuineness of any Demand for Payment or Demand for Avoided Payment (each as defined in the Surety Bonds), even if the same should prove to be

in any or all respects invalid, insufficient, fraudulent or forged; (iii) payment by Berkshire against presentation of a Demand for Payment or Demand for Avoided Payment that does not comply with the terms of the applicable Surety Bond; or (iv) any other circumstances whatsoever in making or failing to make payment under either Surety Bond. In furtherance and not in limitation of the foregoing, Berkshire may accept a Demand for Payment or Demand for Avoided Payment that appears on its face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

In addition, Oglethorpe hereby expressly waives (a) demand of payment, presentment, protest, notice of dishonor, nonpayment or nonperformance on any and all forms of the obligations hereunder (except as provided in Sections 2.01(b) and 2.03 hereof); (b) all of its right to indemnification; (c) notice of acceptance of this Agreement and notice of any liability to which it may apply; (d) all other notices and demands of any kind and description relating to the obligations hereunder now or hereafter provided for by any agreement, statute, law, rule or regulation; and (e) any and all defenses pertaining to the obligations hereunder except for the defense of discharge by indefeasible payment. Oglethorpe shall not be exonerated with respect to its liabilities hereunder by any act or thing except indefeasible payment of the obligations hereunder, it being the purpose and intent of this Agreement that the obligations hereunder constitute the direct and primary obligations of Oglethorpe and that the covenants, agreements and all obligations of Oglethorpe hereunder be absolute, unconditional and irrevocable.

Section 2.06. Notices. Oglethorpe hereby agrees that until the termination or expiration of the Surety Bonds, it shall provide to Berkshire (a) on each December 30, a certificate of a Responsible Officer of Oglethorpe to the effect that there is no Transaction Event of Default or Transaction Default; (b) the annual audited financial statements of Oglethorpe within 145 days of the close of Oglethorpe's fiscal year; (c) written notice of any assertion to Oglethorpe by any party to the Transaction Documents that Sublease Supplemental Rent or any indemnity payment is owed by Oglethorpe pursuant to any of the Transaction Documents within 30 days of any such assertion, in either case, in an amount at least equal to \$250,000; (d) upon reasonable notice, the opportunity to meet with senior officers of Oglethorpe and to discuss the business and financial condition of Oglethorpe; and (e) immediate written notice of the occurrence of any Transaction Event of Default or Transaction Default, or any event that requires Oglethorpe to deliver Qualifying Additional Security pursuant to Section 8.8 of the Participation Agreement.

Section 2.07. Other Covenants of Oglethorpe. Oglethorpe agrees that, until the later of the termination or expiration of the Surety Bonds and the date on which all obligations owing to Berkshire under the Surety Bond Documents have been indefeasibly paid in full in cash:

(a) Oglethorpe will fulfill any and all obligations undertaken by it under each Operative Document (other than its obligation under Section 8.5 and Section 8.6 of the Participation Agreement to replace the Surety Bonds if the Surety Bonds cease to be Qualifying Surety Bonds) to which it is a party in accordance with the terms thereof (and, in the case of the obligations set forth in Section 7.1 of the Facility Sublease, subject to the additional time periods and contest rights set forth in the provisos in Section 16(e) of the Facility Sublease) with the same effect as if set forth specifically herein; provided that this Section 2.07(a) shall be deemed

to refer to the Operative Documents as amended, modified, supplemented or waived from time to time with the consent of Berkshire or as otherwise expressly permitted under Section 4(a) of the Implementation Agreement.

(b) Oglethorpe shall name Berkshire as an "Additional Insured" in each policy of insurance carried in accordance with Section 11 of the Facility Sublease and fulfill all other obligations with respect to such insurance as if Berkshire were listed as an "Additional Insured" with the other parties named in Section 11.3 of the Facility Sublease.

ARTICLE III

EVENTS OF DEFAULT; REMEDIES

Section 3.01. Events of Default. The following events shall constitute Events of Default hereunder:

(a) Oglethorpe shall fail to pay to Berkshire any amount payable under Section 1.03, 1.04 or 2.01(a) hereof on the date when due;

(b) Oglethorpe shall fail to pay when due to Berkshire any amount payable under any provision of this Agreement, other than Sections 1.03, 1.04 and 2.01(a) hereof, provided that such failure continues for more than 30 days after receipt by Oglethorpe of notice of such failure to pay;

(c) Any representation or warranty made by Oglethorpe in any of the Operative Documents, in the Subordinated Mortgage, in this Agreement or any of the other Surety Bond Documents or in any instrument, document or agreement provided by Oglethorpe in connection with any of the Surety Bond Documents shall have been materially false at the time when made;

(d) Except as otherwise provided in this Section 3.01, Oglethorpe shall fail to perform any of its other covenants or obligations in the Subordinated Mortgage or under this Agreement or any of the other Surety Bond Documents, provided that such failure continues for more than 30 days after receipt by Oglethorpe of notice of such failure to perform;

(e) Oglethorpe shall (i) voluntarily commence any proceeding or file any petition seeking relief under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency or similar law, or consent to any order for relief thereunder, (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for Oglethorpe or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take action for the purpose of effecting any of the foregoing;

(f) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of Oglethorpe, or of a substantial part of its property, under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency or similar law or (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for Oglethorpe or for a substantial part of its property; and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(g) The occurrence of any Head Lessor Event of Default under Section 11.1(a)-(c), (i) or (j) of the Head Lease or Sublease Event of Default under Section 16(j)-(m), (p) or (q) of the Facility Sublease; or

(h) The occurrence of any "Event of Default" under any "Berkshire Guaranty Agreement" between Berkshire and Oglethorpe with respect to any other transaction involving or relating to the Facility or any part thereof or interest therein.

Section 3.02. Remedies. If an Event of Default shall occur and be continuing, then Berkshire may take whatever action at law or in equity necessary or desirable to collect all amounts then or that may thereafter become due under this Agreement or any other Surety Bond Documents or any related instrument or to enforce any obligation, agreement or covenant of Oglethorpe under this Agreement or any of the other Surety Bond Documents or Operative Documents, including, without limitation, any and all rights and remedies available to Berkshire pursuant to the Subordinated Mortgage. All rights and remedies of Berkshire under this Section 3.02 are cumulative and the exercise of any one remedy does not preclude the exercise of one or more of the other available remedies.

ARTICLE IV

SETTLEMENT

If Berkshire shall have received a claim or made any payment under the Facility Sublease Surety Bond or the Head Lease Surety Bond, and Oglethorpe shall not have reimbursed Berkshire in full in cash (or all or any part of any such reimbursement has been avoided for any reason), Berkshire shall have the exclusive right to decide and determine whether any claim, liability, suit or judgment made or brought against Berkshire shall or shall not be paid, compromised, resisted, defended, tried or appealed, and Berkshire's decision thereon, if made in good faith, shall be final and binding upon Oglethorpe. An itemized statement of payments made by Berkshire that are described in Section 2.01(b) or 2.03, certified by an officer of Berkshire, or the voucher or vouchers for such payments, shall be prima facie evidence of the liability of Oglethorpe, and if Oglethorpe fails to reimburse Berkshire pursuant to Section 2.01 or 2.03 hereof upon the receipt of such statement of payments, interest shall be computed on such amount from the date of any payment made by Berkshire at the Default Rate.

ARTICLE V
MISCELLANEOUS

Section 5.01. Computations. All computations of the Premium, interest and fees hereunder shall be made on the basis of the actual number of days elapsed over a year of 360 days.

Section 5.02. Exercise of Rights. No failure or delay on the part of Berkshire to exercise any right, power or privilege under this Agreement and no course of dealing between Berkshire and Oglethorpe or any other party shall operate as a waiver of any such right, power or privilege, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which Berkshire would otherwise have pursuant to law or equity. No notice to or demand on any party in any case shall entitle such party to any other or further notice or demand in similar or other circumstances, or constitute a waiver of the right of the other party to any other or further action in any circumstances without notice or demand.

Section 5.03. Amendment and Waiver. Any provision of this Agreement may be amended, waived, supplemented, discharged or terminated only with the prior written consent of Oglethorpe and Berkshire.

Section 5.04. Successors and Assigns; Descriptive Headings.

(a) This Agreement shall bind, and the benefits hereof shall inure to, Oglethorpe and Berkshire and their respective successors and assigns; provided that Oglethorpe may not transfer or assign any or all of its rights and obligations hereunder without the prior written consent of Berkshire.

(b) The descriptive headings of the various provisions of this Agreement are inserted for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

Section 5.05. Other Sureties. If Berkshire shall procure any other surety to reinsure any portion of its exposure under any of the Surety Bonds, this Agreement shall inure to the benefit of such other surety, its successors and assigns, so as to give to it a direct right of action against Oglethorpe to enforce this Agreement, and "Berkshire," wherever used herein, shall be deemed to include such reinsuring surety, as its respective interests may appear, in each case to the extent agreed by Berkshire with such other surety; provided, however, that Oglethorpe shall not be required to give notices to, or to obtain the consent of, any such reinsurer; provided further, that Section 1.03, Section 1.04, Article 4 and Section 5.03 hereof shall only be for the benefit of Berkshire and shall not inure to the benefit of any other surety.

Section 5.06. Waiver. Oglethorpe waives any defense that this Agreement was executed subsequent to the date of issuance of the Surety Bonds, admitting and covenanting that

such Surety Bonds were executed pursuant to Oglethorpe's request and in reliance on Oglethorpe's promise to execute this Agreement.

Section 5.07. Notices, Requests, Demands. Except as otherwise expressly provided herein, all written notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been given or made when actually received, or in the case of telex or telecopier notice sent over a telecopier machine owned or operated by a party hereto, when sent, addressed as specified below or at such other address as either of the parties hereto may hereafter specify in writing to the others:

If to Oglethorpe:

Oglethorpe Power Corporation
2100 East Exchange Place
Tucker, Georgia 30085-1349
Attention: Vice President, Finance
Telephone: (770) 270-7325
Telecopier: (770) 270-7920

If to Berkshire:

Berkshire Hathaway Assurance Corporation
c/o Berkshire Hathaway Group
100 First Stamford Place
Stamford, CT 06902
Attn: General Counsel
Facsimile No.: (203) 363 5221

with copies to:

Berkshire Hathaway Assurance Corporation
3024 Harney Street
Omaha, NE 68131
Attention: President
Facsimile No.: (402) 916-3237

and

Robert E. Bennett
99 Mill Lane
Norwell, MA 02061
Facsimile No.: (781) 659-2491

Account for Payments:

Bank: JPMorgan Chase Bank
ABA No.: 021000021
Acct No.: 747499341
Acct Name: Berkshire Hathaway
Assurance Corporation
Reference: 98SRD102494 and
98SRD102495

Section 5.08. Survival of Representations and Warranties. All representations, warranties and obligations contained herein shall survive the execution and delivery of this Agreement and the Surety Bonds.

Section 5.09. Governing Law; Jurisdiction. (a) This Agreement and the rights and obligations of the parties under this Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

(b) Each of the parties hereto (i) hereby irrevocably submits to the nonexclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) and to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York for the purposes of any suit, action or other proceeding arising out of this Agreement, the other Surety Bond Documents, or the subject matter hereof or thereof or any of the transactions contemplated hereby or thereby brought by any of the parties hereto or their successors or assigns; (ii) hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State court, or in such federal court; and (iii) to the extent permitted by Applicable Law, hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement, the other Surety Bond Documents, or the subject matter hereof or thereof may not be enforced in or by such court.

Section 5.10. Counterparts. This Agreement may be executed in any number of copies and by the different parties hereto on the same or separate counterparts, each of which shall be deemed to be an original instrument.

Section 5.11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 5.12. Specific Performance. Oglethorpe agrees that the performances to be rendered by it pursuant to this Agreement are of a special, unique, and unusual character, the loss of which performances cannot reasonably or adequately be compensated in damages in an action at law, that a breach of any of the covenants contained herein will result in irreparable damage and harm to Berkshire, that Berkshire has no adequate remedy at law in respect of any such breach and, as a consequence, agrees that the covenants contained herein shall be specifically enforceable against Oglethorpe and Oglethorpe hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

OGLETHORPE POWER CORPORATION (AN ELECTRIC MEMBERSHIP CORPORATION)

By: /s/ Thomas A. Smith
Name: Thomas A. Smith
Title: President and Chief Executive Officer

Attest: /s/ Patricia N. Nash
Name: Patricia N. Nash
Title: Secretary

(CORPORATE SEAL)

BERKSHIRE HATHAWAY ASSURANCE CORPORATION

By: /s/ Kara Raiguel
Name: Kara Raiguel
Title: Vice President

By: /s/ [signature illegible]
Name:
Title: Vice President

ANNEX A
DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, all capitalized terms shall have the meaning as set out below. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in, or by reference in, Appendix A to the Participation Agreement, without giving effect to any change in the meaning of such terms due to any amendment or modification to such agreement unless such amendment or modification has been approved in writing by Berkshire. The general rules of usage set forth in such Appendix A shall also apply to this Agreement.

“Agreement” means this Berkshire Guaranty Agreement (P1).

“Agreement Regarding Surety Bonds” means the Agreement Regarding Surety Bonds (P1), dated as of the date of this Agreement, among Oglethorpe, RMLC and Berkshire.

“AMBAC Surety Documents” has the meaning given that term in the Implementation Agreement.

“Beneficiaries” means, collectively, the Owner Participant, the Facility Lessor, the Facility Sublessor, the RMLC Assignee and the Head Lessee, as beneficiaries of either or both of the Surety Bonds.

“Business Day” has the meaning given that term in the Surety Bonds.

“Closing Date” means May 22, 2009.

“Covered Obligations” has the meaning given that term in the Facility Sublease Surety Bond or the Head Lease Surety Bond, as applicable.

“Default Rate” means the lesser of the Reimbursement Rate or the maximum rate of interest permitted by then applicable law.

“Event of Default” means those events of default set forth in Section 3.01 of this Agreement.

“Implementation Agreement” means the Surety Bond Implementation Agreement (P1) dated as of the date of this Agreement among Oglethorpe, Berkshire, AMBAC, RMLC, the Owner Participant, U.S. Bank National Association, a national banking association, not in its individual capacity, except as expressly provided therein, but solely as a trustee under the Trust Agreement, as the Owner Trustee, and U.S. Bank National Association, a national banking association, not in its individual capacity, except as expressly provided therein, but solely as a trustee under the Trust Agreement, as the Co-Trustee.

“Notice of Termination” has the meaning given that term in the Surety Bonds.

“Reimbursement Rate” means, at any time, the sum of (a) the United States Prime Rate as most recently published by the Wall Street Journal or, if such rate is unavailable on any Business Day, at the option of Berkshire, the Reimbursement Rate at any time shall be the rate announced from time to time by the Reference Bank (as defined below) in New York, New York, as its prime rate or any substitute therefor, plus (b) 2.00 percent per annum. The rate of interest shall be calculated on the basis of a 360-day year. The term “Reference Bank” means, at any time, any major United States bank designated as such by Berkshire in good faith from time to time.

“RMLC Assignee” has the meaning given that term in the Facility Sublease Surety Bond.

“Subordinated Mortgage” means the Subordinated Deed to Secure Debt and Security Agreement (P1), dated as of December 30, 1996 from Oglethorpe, as grantor, to AMBAC and SunTrust Bank, Atlanta, as amended as of the date hereof.

“Subordinated Collateral” has the meaning given that term in the Subordinated Mortgage.

“Subrogation Interest” has the meaning given that term in the Implementation Agreement.

“Surety Bond Documents” means (a) this Agreement, (b) the Surety Bonds, (c) the Agreement for Assignment on Default, (d) the Implementation Agreement, and (e) the Agreement Regarding Surety Bonds.

“Surety Bond Payment” means, without duplication, (a) the amount of each payment made by Berkshire under or pursuant to any of the Surety Bonds, including, without limitation, any payments made pursuant to Section 11(f) thereof in order to exercise subrogation rights thereunder or otherwise to acquire the Beneficial Interest or the Subrogation Interest or any part thereof or interest therein, and (b) if a Sublease Event of Default or Head Lessor Event of Default has occurred and is continuing or a payment has been made by Berkshire under or pursuant to any of the Surety Bonds, the amount of each payment made by Berkshire under or pursuant to the Agreement for Assignment on Default, including, without limitation, any payments made pursuant to the terms thereof in order to acquire the Beneficial Interest or any part thereof or interest therein.

“Surety Bond Payment Date” means the date on which any particular Surety Bond Payment is made by Berkshire.

“Transaction Default” means any event which, with the giving of notice or the passage of time or both, could become a Transaction Event of Default.

“Transaction Event of Default” means any Event of Default, any Head Lessor Event of Default and any Sublease Event of Default.

SCHEDULE TO EXHIBIT 10.8

BERKSHIRE GUARANTY AGREEMENT (P1)

The following table indicates for each transaction the name of the corresponding Owner Participant:

Agreement	Date	Owner Participant
P2	May 22, 2009	Philip Morris Capital Corporation
F3	May 22, 2009	First Chicago Leasing Corporation
F4	May 22, 2009	First Chicago Leasing Corporation
N6	May 22, 2009	Philip Morris Capital Corporation (transferee from NationsBanc Leasing & R.E. Corporation)