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March 5, 1997

Ms. Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Documents Requested by Staff in Dockets 961407-EQ, 961477-EQ

Dear Ms. Bayó:

Enclosed in response to an oral request communicated to the undersigned by Lorna Wagner of the FPSC Legal Staff are the original and two copies of each of the following documents:

- \* "Gas Purchase Agreement between North Canadian Marketing Corporation and Lake Cogen, Ltd.," with amendments; and
- \* "Gas Purchase Agreement between North Canadian Marketing Corporation and Pasco Cogen, Ltd.," with amendments.

After reflecting on the matter, and in the interest of facilitating the proceeding, North Canadian Marketing Corporation has determined that it will not request confidential treatment of any portions these contracts, contrary to the statement in Footnote 3 of North Canadian's Intervention in the Pasco Proceeding, Docket 961407-EQ. None of the documents therefore need to be returned.

The Commission will separately receive copies of the Gas Purchase Agreements between North Canadian and Vastar Gas Marketing from counsel for Vastar. North Canadian's gas purchase agreements with Vastar are subject to a confidentiality agreement between the parties. Vastar has informed North Canadian that it prefers to invoke this provision and seek to preserve the confidentiality of these agreements in

ACK \_\_\_\_\_  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
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LUN \_\_\_\_\_  
OAG \_\_\_\_\_  
RCH \_\_\_\_\_  
SCL / \_\_\_\_\_  
WIS \_\_\_\_\_

DOCUMENT NUMBER-DATE

02476 MAR-66

FPSC-RECORDS/REPORTING

BRADY & BERLINER

Ms. Blanca S. Bayó

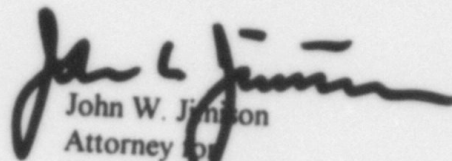
March 5, 1997

Page 2

providing them to the Commission. North Canadian is contractually bound to respect Vastar's request for confidential treatment of these documents, and will consent to any resolution in response to that request reached between the Commission and Vastar.

Thank you for your assistance in this matter.

Sincerely,



John W. Johnson

Attorney for

North Canadian Marketing Corp.

Attachments



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GAS PURCHASE AGREEMENT

between

NORTH CANADIAN MARKETING CORPORATION

and

PASCO COGEN, LTD.

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August 28, 1991

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#### EXHIBITS

Exhibit A	-	Form of Guarantee
Exhibit B	-	Point of Delivery
Exhibit C-1	-	Sample Price Formula Calculation
Exhibit C-2	-	Section 17.02 Schedule
Exhibit D	-	Maximum Daily Quantity
Exhibit E	-	Form of Seller's Assignment of Portfolio Gas Contracts to the Buyer
Exhibit F	-	Form of Seller's Consent to Buyer's Assignment of Portfolio Gas Contracts
Exhibit G	-	Form of Third-Party Consent



## GAS PURCHASE AGREEMENT

This Gas Purchase Agreement (this "Agreement") is made and entered into as of the 28th day of August, 1991, by and between NORTH CANADIAN MARKETING CORPORATION, a California corporation with its principal office at Houston, Texas ("Seller"), and PASCO COGEN, LTD., a Florida limited partnership with its principal office at Tampa, Florida ("Buyer").

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

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer, subject to the terms and conditions hereinafter set forth and on a firm basis, certain quantities of Gas; and

WHEREAS, the intent of the parties in entering into this Agreement is to ensure a firm supply of Gas to Buyer's Project in an amount up to the Maximum Daily Quantity (as defined herein); and

WHEREAS, Seller has agreed to sell and deliver Gas to Buyer, and Buyer has agreed to purchase and receive such Gas for the purposes of and in accordance with the terms of this Agreement.

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

### ARTICLE I

#### DEFINITIONS

1.01 The following terms, when used in this Agreement, shall have the following meanings:

(a) "Affiliate" means every existing and future Affiliate of Seller or Buyer, as the case may be, which meets any of the following criteria:

(i) one corporation is affiliated with another corporation if one of them is the subsidiary of the other, or both are subsidiaries of the same corporation, or each of them is controlled by the same person; and

(ii) if two corporations are affiliated with the same corporation at the same time, they are deemed to be affiliated with each other.

A corporation is controlled by a person if securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held by or for the benefit of that person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation. A corporation is a subsidiary of another corporation if it is controlled by that other corporation. A "corporation" includes a limited partnership or partnership of which a corporation (in respect of which the foregoing control tests are to be applied) is the general or controlling partner;

(b) "Agreement" means this agreement including all Exhibits and Appendices and all written amendments from time to time signed by the parties;

(c) "Authorization" when used in reference to a Regulatory Authority, includes a certificate, permit or license;

(d) "British Thermal Unit" means the amount of heat required to raise the temperature of one pound of distilled water from 59°F to 60°F at a constant pressure of 14.73 pounds per square inch absolute;

(e) "Business Day" means any day other than a Saturday, Sunday or a day which is a statutory holiday in the State of Florida or the State of Texas;

(f) "Buyer's UDCs" means Unutilized Demand Charges incurred by Buyer downstream of the Point of Delivery in connection with the performance of its obligations hereunder;

(g) "Charge" shall have the meaning ascribed to such term in clause 8.01;



(h) "Commencement of Commercial Operations" means 0800 hours EDT on the date that the Project achieves "Commercial In-Service Status" as defined in the Power Purchase Agreement;

(i) "day" means that period of time defined as a "Day" under FGT's FERC Gas Tariff;

(j) "Debt Repurchase Agreement" means the Debt Repurchase Agreement to be entered into by and between NCO and Prudential, as agent under the Master Agreement, as amended from time to time;

(k) "Dollars" or "\$" means the lawful currency of the United States of America unless otherwise indicated;

(l) "EDT" means Eastern Daylight Saving Time, regardless of the time which is in effect at the relevant time;

(m) "Equity Infusion Agreement" means the NCP Dade Equity Infusion Agreement (as defined in the Master Agreement), as amended from time to time;

(n) "Expected Completion Date" means June 6, 1993, provided that such date may be changed from time to time by Buyer's delivery to Seller of a notice indicating a change in such date;

(o) "FERC" means the Federal Energy Regulatory Commission or any successor agency;

(p) "FERC Gas Tariff" means the tariff on file with the FERC, as amended from time to time;

(q) "FERC Rate" means the rate prescribed by the FERC under the authority of the Natural Gas Act, as amended, pursuant to 18 CFR section 154.102(c)(2)(iii), as such regulation may be amended from time to time during the Term;

(r) "FGT" means Florida Gas Transmission Company or its successors;

(s) "FGT Service Agreement" means the Service Agreement, dated November 1, 1989, between FGT and PGS, as amended from time to time, pursuant to which



Buyer's Gas will be transported from the Point of Delivery;

(t) "force majeure" shall have the meaning ascribed to such term in clause 19.02;

(u) "FPC" means Florida Power Corporation or its successors;

(v) "Gas" means natural and/or residue gas comprised primarily of methane;

(w) "Gas Inventory Charge" or "GIC" has the meaning ascribed to this term in clause 8.01(a);

(x) "Gas Supply Portfolio" shall have the meaning ascribed to such term in clause 9.01(a);

(y) "Gator" means Gator Gas Marketing, Inc. or its successors;

(z) "Lender" means the entity or entities providing construction or permanent financing for the Project, including, without limitation, lending institutions, equity investors, owners, owner/trustees and persons that purchase the Project and lease such Project back to Buyer; -includes  
Collateral Agent  
-merchants  
(see Exhibit -  
19.02)

(aa) "LEI" means Lykes Energy, Inc. or its successors;

(ab) "Local Transportation Agreement" means that certain Gas Transportation Agreement, dated as of August 28, 1991, between Buyer and PGS, as amended from time to time;

(ac) "Major Facility Overhaul" means a Major System Repair (as defined in the O & M Agreement), including, without limitation, any such Major System Repair included in the Annual Budget (as defined in the O & M Agreement);

(ad) "Master Agreement" shall mean the Master Agreement dated January 15, 1992, among Buyer, Prudential as Agent, Bankers Trust Company, as Collateral Agent, certain listed institutional lenders, and bank lenders that may from time to time become a party thereto as amended from time to time;

(ae) "MCO" or "Monthly Contract Quantity" means 80% of the product of the MDQ and the number of days in the particular month;

(af) "MDQ" or "Maximum Daily Quantity" has the meaning ascribed to such term in clause 4.02(a);

(ag) "Mcf" means 1,000 standard cubic feet;

(ah) "MMCF" means 1,000,000 standard cubic feet;

(ai) "MMBTU" means 1,000,000 British Thermal Units;

(aj) "month" means that period of time defined as a "Month" under FGT's FERC tariff;

(ak) "Nomination" means Buyer's written notice to Seller that Buyer requires Seller to deliver a specified quantity of Gas to Buyer at the Point of Delivery on a given day and the word "Nominate" and its derivatives shall have a corresponding meaning;

(al) "NCO" means North Canadian Oils Limited or its successors;

(am) "O & M Agreement" means the Cogeneration Facility Operation and Maintenance Agreement, dated as of January 15, 199\_ between Stewart & Stevenson Operations, Inc. and Buyer, as amended from time to time;

(an) "party" or "parties" is a reference to Seller or to Buyer or to Seller and Buyer, as applicable (but not, under any circumstances unless otherwise expressly indicated, to Seller's Guarantor);

(ao) "person" means an individual, a partnership (including a limited partnership), an unincorporated syndicate or organization, any government (including any department, agency or authority of a government), a company, a corporation or a trust;

(ap) "PGS" means Peoples Gas System, Inc. and its successors;

(aq) "Point of Delivery" shall have the meaning ascribed to such term in clause 5.01;



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(ar) "Portfolio Gas Contracts" means the Portfolio Gas Supply Contracts and the Portfolio Transportation Contracts;

(as) "Portfolio Gas Supply Contracts" means those Gas supply contracts comprising the Gas Supply Portfolio that satisfy the requirements set forth in clauses 9.01(b) and (c), including (i) any guarantees issued by third parties in connection with such Gas supply contracts and (ii) any Substitute Portfolio Contracts that provide for the supply of Gas and that have been approved by Buyer pursuant to clause 9.01(h);

(at) "Portfolio Transportation Contracts" means those transportation contracts comprising the Gas Supply Portfolio that satisfy the requirements set forth in clause 9.01(d), including any Substitute Portfolio Contracts that provide for the transportation of Gas and that have been approved by Buyer pursuant to clause 9.01(h);

(au) "Power Purchase Agreement" means that certain Negotiated Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility entered into on March 13, 1991, by and between Buyer and FPC, as amended or modified from time to time;

(av) "Prime Rate" means the fluctuating per annum rate of interest announced publicly by CitiBank, N.A. in New York, New York, from time to time as its prime lending rate;

(aw) "Project" means the approximately 102 megawatt gas-fired combined cycle PURPA qualifying cogeneration facility to be financed, constructed, owned and operated by Buyer in Pasco County, Florida;

(ax) "Prudential" means The Prudential Insurance Company of America or its successors and assigns;

(ay) "Regulatory Authorities" means each governmental agency and other authority in Canada and/or the United States, whether federal, state, provincial, local, or otherwise, which from time to time has jurisdiction over the subject matter of this Agreement or any part thereof, or the transportation, movement, production, sale or removal of the Gas sold and purchased hereunder;



(az) "Seller's Guarantor" means North Canadian Oils Limited, a corporation amalgamated under the laws of Canada, having its principal offices in Calgary, Alberta, Canada;

(ba) "Seller's UDCs" means Unutilized Demand Charges incurred by Seller under the Portfolio Gas Contracts in connection with the performance of its obligations hereunder;

(bb) "Spot Gas" means Gas purchased on a short-term basis to accommodate seasonal peak requirements;

(bc) "standard cubic foot" or "cf" means that amount of Gas which occupies one cubic foot at a temperature of 60 degrees Fahrenheit and at a constant pressure of 14.73 pounds per square inch absolute;

(bd) "Steam Purchase Agreement" means that certain Thermal Energy Purchase and Sale Agreement to be entered into by and between Buyer and Lykes Pasco, Inc., as amended from time to time;

(be) "Substitute Portfolio Contracts" shall have the meaning ascribed to such term in clause 9.01(e);

(bf) "Term" has the meaning ascribed thereto in clause 3.01;

(bg) "Transportation Agreement" means that certain Agreement For Use Of Firm Capacity And Reimbursement Of Certain Charges, dated as of August 28, 1991, between Buyer and PGS, as amended from time to time; and

(bh) "Unutilized Demand Charges" or "UDCs" with respect to the monthly demand charges paid to a pipeline transporter for the reservation of firm transportation capacity, means that pro rata portion of such demand charges that is allocable to the percentage of such firm transportation capacity that has not been utilized by the shipper for the transportation of Gas.

## ARTICLE II

### CONDITIONS TO OBLIGATIONS

2.01 Conditions to Obligations. The continuation of the obligations of Seller and Buyer under this Agreement is subject to the satisfaction or waiver of each of the following conditions (in accordance with the terms of this Article II) by not later than January 31, 1992:

- (a) Buyer's having closed its construction financing transaction with Lender for the Project;
- (b) Buyer's having entered into all necessary agreements with third parties for the construction of the Project;
- (c) Seller's having obtained the approval of (i) its Board of Directors to the execution and delivery of this Agreement and the transactions contemplated hereby and (ii) the Board of Directors of Seller's Guarantor to the execution and delivery of this Agreement, the Guarantee substantially in the form of Exhibit A to this Agreement and the transactions contemplated hereby;
- (d) Seller's Guarantor having executed a Guarantee of Seller's obligations under this Agreement in substantially the form of Exhibit A to this Agreement; and
- (e) Buyer's having obtained all necessary partnership approvals and the approval of the Board of Directors of LEI to the execution and delivery of this Agreement and the transactions contemplated hereby.

2.02 Satisfaction of Conditions. Each party agrees to use commercially reasonable efforts and proceed in a timely manner to satisfy each of the conditions set forth in clause 2.01 for which it is responsible (or for which the parties are jointly responsible). Each authorization, agreement, or other matter to be obtained or completed pursuant to clause 2.01 must be obtained or completed (as applicable and acting in a commercially reasonable manner) to the satisfaction of the party responsible for obtaining same in accordance with clauses 2.04 and 2.05 by not later than the date set forth in clause 2.01.



2.03 Status Reports. Upon request by the other party, each of Seller and Buyer shall provide the other with a written status report (not more than once every month) outlining its progress in satisfying the conditions for which it is responsible. Each such report shall include information outlining any anticipated delay or impediment to the satisfaction of any such condition and, in the case of an anticipated delay, the report shall specify the expected length of the delay. However, any such anticipated delay shall not extend the time periods established in clause 2.01.

2.04 Failure to Complete Conditions. If any of the conditions are not satisfied or waived (by both parties) by the applicable date specified in clause 2.01, then at any time following such date and until such time as the condition is satisfied or waived, either Seller or Buyer shall be entitled to terminate this Agreement.

2.05 Notice of Completion of Conditions.  
(a) Each party shall forthwith give written notice to the other party when it believes that a condition in clause 2.01 has been satisfied. If requested to do so by the other party, the first party shall provide the other party with copies of the relevant consents, notices, or authorizations within five Business Days of such request. However, if the date for the satisfaction of the condition has not passed as of the time that the first party rejected the authorization or agreement which it obtained, then clause 2.02 shall continue to apply and the first party shall continue to use all commercially reasonable efforts to obtain an authorization or agreement (as applicable) which it is prepared to accept.

(b) Within 30 days from the receipt of notice from the first party pursuant to clause 2.05(a), including copies of the relevant consents, authorizations or agreements, as applicable, the other party shall advise of its acceptance or rejection thereof and, if rejected, detailed reasons for the rejection. If the other party has not provided the first party with written notice of its acceptance or rejection within such 30-day period, then the condition shall be deemed to have been satisfied in an acceptable manner to both Buyer and Seller. If the other party believes that the condition has not been satisfied, and gives reasons within such 30-day period as provided above, then this Agreement may be terminated by either party pursuant to clause 2.04 unless the date for the satisfaction of the condition has not passed. If a



replacement authorization or agreement (for the one rejected) is not obtained before the specified date for the completion of the condition, then clause 2.04 shall be applicable.

2.06 MEGA-NOPR Order. Upon the occurrence of a "MEGA-NOPR Order," as defined in the Equity Infusion Agreement, all of the obligations of the parties under this Agreement, including but not limited to Buyer's obligation to pay GICs and Seller's UDCs and Seller's obligations under clause 9.02(a), but excluding the obligation to pay amounts due and owing under this Agreement as of the date of such occurrence, shall be suspended immediately. If, following the occurrence of a MEGA-NOPR Order, (i) Buyer notifies Seller that Buyer has entered into alternative long-term firm transportation agreement(s) ("Alternative Transportation Arrangements") by which Gas purchased under this Agreement can be transported to the Facility and, (ii) if necessary, new and/or additional Points of Delivery have been added to Exhibit B hereto, the obligations of the parties under this Agreement shall resume; provided, however, that if an agreement is reached between Buyer, Seller and a third party by which the Gas contemplated to be sold to Buyer under this Agreement shall be sold to such third party for resale by such third party to Buyer, then this Agreement shall terminate. During the period that this Agreement is suspended under this clause 2.06, Buyer shall use commercially reasonable efforts to enter into Alternative Transportation Arrangements which are, individually and in the aggregate, consistent with the Base Case Forecast (as such term is defined in the Master Agreement). Notwithstanding the foregoing, this Agreement shall terminate if the period of suspension under this clause exceeds five (5) years, unless otherwise agreed by the parties.

← sub) to  
under contract  
see Contract - Ag

### ARTICLE III

#### TERM

3.01 Term. The Term of this Agreement shall begin on the date on which this Agreement has been signed by both parties and shall continue until the fifteenth anniversary of the Commencement of Commercial Operations (such fifteenth anniversary being currently estimated to be June 6, 2008), subject to the provisions of this Agreement relating to earlier termination or extension. Each party shall remain responsible for all obligations and liabilities which have accrued to the time of termination.

3.02 Extension. The parties recognize that they may agree in writing to extend the Term of this Agreement although neither party has the obligation to do so.

3.03 Amendments to Agreements. Unless required to do so by a final, non-appealable order of a court or Regulatory Authority having jurisdiction, neither Seller nor Buyer shall, without the consent of the other, make or acquiesce in any amendment or other variation in or to the Power Purchase Agreement, the Transportation Agreement, or any other such agreement if such amendment or variation would materially and adversely affect such other party's position (including its anticipated economic benefits) under this Agreement or if the variation is inconsistent with the terms of this Agreement.

#### ARTICLE IV

##### QUANTITY

4.01 Quantities Required Prior to the Commencement of Commercial Operations. At Seller's option, quantities of Gas required during the construction and testing of the Project may be supplied by Seller through Gator at a mutually agreeable price for Spot Gas in accordance with the terms of a letter agreement between Seller and Gator of even date herewith. Should Seller not elect to sell Gas to Buyer during the construction and testing of the Project, then Buyer shall have the right to purchase Gas from any other person during such period.

4.02 Quantities Required Beginning with Commencement of Commercial Operations. (a) ~~As of the date of~~

"(a) As of June 1, 1992, the parties:  
the MDQ or the Maximum Daily Quantity  
MMBTU per day."

its  
5 MMBtu  
written  
engineering

~~for the Project, Buyer shall have the right to, exercisable only once and by written notice to Seller, to either increase or decrease the MDQ by up to five percent (5%). Larger adjustments of the MDQ may be made with the written consent of both parties within such 10 Business Day period. After any adjustments provided for in this clause 4.02(a), the actual MDQ for the Project will be stated on Exhibit D.~~

(b) Subject to clause 4.05, and beginning with the Commencement of Commercial Operations and for each day during the Term, Seller shall deliver a quantity of Gas to



Buyer at the Point of Delivery equal to Buyer's Nomination for that day in accordance with the terms of this Agreement; provided, however, that Seller shall not be obligated to deliver, on any day, a quantity of Gas which exceeds the MDQ. Buyer shall at all times pay for all Gas Nominated by Buyer and delivered by Seller to the Point of Delivery (or made available for delivery by Seller, but not delivered due to actions by Buyer not excused by this Agreement), as such delivered quantities are measured and determined by FGT pursuant to Article VII hereof.

**4.03 MDQ Adjustment.** (a) At any time between the Commencement of Commercial Operations and the 365th day following the Commencement of Commercial Operations, Buyer shall have the option, exercisable only once and by written notice to Seller, to either increase or decrease the MDQ by up to ten percent (10%) in order to reflect the actual operating requirements of the Project (as distinct from Gas requirements based upon electrical or steam demand) as determined following actual operations. After any adjustments provided for in this clause 4.03(a), the revised MDQ for the Project will be stated on a revised Exhibit D hereto. Any change to the MDQ, pursuant to this clause 4.03, shall be effective upon the later to occur of:

(i) the date that is 90 days following the receipt by Seller of Buyer's notice adjusting the MDQ; or

(ii) (in the event of an increase in the MDQ) the date that both Seller and Buyer have obtained all necessary firm transportation service as well as any authorizations from Regulatory Authorities which may be necessary or desirable for the delivery of the increased quantities.

(b) Each party shall use commercially reasonable efforts and proceed in a timely manner to obtain the transportation arrangements and authorizations required in respect of the increase in the MDQ for the remainder of the Term. If all of the required firm transportation service and authorizations are not obtained within 180 days of Buyer's election to increase the MDQ pursuant to clause 4.03(a) or if either party rejects (acting reasonably) any such arrangements or authorizations obtained by either party, then the MDQ shall remain unchanged, and the rights of Buyer under this clause 4.03 shall expire.



(c) Notwithstanding any decrease in MDQ permitted by this clause 4.03, Buyer shall remain obligated to pay the GICs and any Seller's UDCs (both calculated using the original MDQ) to the extent required under the terms of this Agreement. Seller shall be under no obligation to eliminate or otherwise mitigate such GICs and Seller's UDCs, but shall exercise commercially reasonable efforts to do so; provided, however, that Seller shall not be required to incur any expense or other inconvenience in making such efforts (unless Buyer agrees to reimburse Seller for such expense). If Seller has not reduced such GICs and UDCs within 60 days of the effective date of any decrease in the MDQ permitted by this clause 4.03, then Buyer, upon 30 days' written notice to Seller, may cancel such decrease, whereupon the MDQ shall be restored to any amount designated by Buyer up to its original level.

**4.04 Supply Exclusivity.** (a) From and after the Commencement of Commercial Operations, and subject to clause 4.04(b), Seller has the sole and exclusive right to supply the total Gas requirements of the Project up to the MDQ. The foregoing, however, shall not limit or modify Buyer's ability to purchase replacement Gas for the period and in quantities necessary to meet the requirements of the Project during periods when (i) Seller is unable to provide Gas due to Seller's force majeure or a failure to perform its obligations under this Agreement, (ii) Buyer is unable to use Gas delivered hereunder due to Buyer's force majeure affecting Buyer's ability to have Gas transported from the Point of Delivery to the Project, or (iii) when Buyer is obligated to take Gas from PGS following curtailments under Section 13.4 of the Local Transportation Agreement. If Seller is unable to provide Gas due to Seller's force majeure or a failure to perform its obligations under this Agreement, Seller shall notify Buyer in writing as soon as practicable (including in its notice a good faith estimate of the period in which Seller believes it will be unable to deliver Gas to the Project), and shall use commercially reasonable efforts to assist Buyer in arranging alternate sources of Gas until Seller can resume deliveries to the Project.

(b) If and at any time that Gas is required to meet the daily Spot Gas requirements of the Project in excess of the MDQ (whether due to an unexpected requirement based on the original design, an expansion, a short term requirement, or otherwise), then Buyer shall include Seller in the list of Gas suppliers contacted by Buyer for the purpose of arranging the additional required supply. If

Buyer is seeking Spot Gas, then Buyer shall so advise Seller. Buyer agrees to purchase such Gas from Seller if the purchase price of the Gas offered by Seller does not exceed prices published in the table entitled "Prices of Spot Gas Delivered to Pipelines" in McGraw Hill's Inside FERC's Gas Market Report in the line entitled "Florida Gas Transmission Co. -- Louisiana," for comparable quantities of Gas to be delivered to the FGT system. If, during the term of this Agreement, Inside FERC's Gas Market Report is no longer published, or if such table or line is no longer included in Inside FERC's Gas Market Report, the parties shall agree to use the most nearly comparable publication or index, as applicable.

**4.05 Advance Notice - First Nomination.** Buyer's initial Nomination to Seller shall be effective for the day specified in such Nomination if:

(a) the specified day is at least 30 days subsequent to the receipt by Seller of Buyer's written Nomination (and, nevertheless, Buyer agrees to use commercially reasonable efforts to provide Seller with at least 90 days' advance notice of its first Nomination); and

(b) the specified day is on or subsequent to the Commencement of Commercial Operations.

Seller shall not be obligated to commence Gas deliveries to Buyer in accordance with clause 4.02 until Seller shall have received such advance written notice. Buyer shall keep Seller informed on a timely basis of the anticipated date for the Commencement of Commercial Operations.

**4.06 Nomination Procedure.** Buyer shall make a monthly Nomination to Seller for each month upon the earlier of:

(a) the Business Day before the latest date that Buyer is entitled to give a nomination to FGT to obtain service on the first day of the month; or

(b) 7 days prior to the commencement of the month.

Subject to the foregoing, Buyer shall be entitled to modify the monthly Nomination. Any monthly Nomination, or any change in that Nomination, shall remain in effect until subsequently changed by Buyer in accordance with this



clause 4.06. Subject to the other provisions of this clause 4.06, Seller shall not be required to recognize a change to any Nomination unless Seller has received the change to the Nomination from Buyer by not later than 1200 hours EDT at least two Business Days prior to the day that the change in Nomination is to take effect.

\*4.07

6.01  
Buyer shall conform to the specifications in effect from the Point of Delivery.

SECTION VII

#### MEASUREMENT AND TESTS

7.01 Acceptance of FGT Measurements and Tests.  
The parties shall accept measurements provided by FGT to PGS of quantities and heating value made at the Point of Delivery.



(a) Both Buyer and Seller recognize that deliveries of Gas cannot precisely match Nominations each day or over any month. For this reason, the quantity of Gas actually delivered may vary on a daily and monthly basis from the percentages of allowed variance set forth in the tariffs of Buyer's or Seller's transporters on file with and approved from time to time by the FERC or the appropriate state regulatory agency. Failure of either party to observe such allowed delivery variance limitations may expose the party so failing to liability for reimbursing the other party for penalty charges as described below. Both Buyer and Seller shall exercise due diligence and take any and all action reasonably requested by the other party to correct any imbalances in the quantity of Gas delivered to the Point of Delivery.

(b) The parties shall cooperate with each other in eliminating any accumulated imbalance in the quantity of Gas delivered to the transporter of such party within 45 days of the identification of such imbalances by the out of balance party. Each party shall seek to eliminate immediately any ongoing imbalances to the extent that such imbalances are directly related to the action of such party and known to that party.

6.01  
Buyer shall con-  
specifications  
in effect from  
the Point of De-

(c) In addition to subclause 4.07(b), if Buyer is assessed and pays any penalties or other charges or assessments to Buyer's transporter that are caused by the failure of Seller to deliver to Buyer at the Point of Delivery Gas volumes in a manner consistent with Buyer's Nominations, Buyer will request reimbursement of such penalties, charges or assessments in writing and provide data reasonably supporting Buyer's claim for reimbursement of such penalties or such other charges or assessments. Not later than 10 Business Days after Seller's receipt of such request, Seller will pay Buyer the full amount of the penalty or other charges or assessments made by Buyer's transporter against Buyer.

7.01  
The parties shall  
PGS of quantiti-

(d) In addition to subclause 4.07(b), if Seller is assessed and pays any penalties or other charges or assessments to Seller's transporter that are caused by the failure of Buyer to take from Seller at the Point of Delivery Gas volumes in a manner consistent with Buyer's Nominations, Seller will request reimbursement of such penalties, charges or assessments in writing and provide data reasonably supporting Seller's claim for reimbursement of such penalties or such other charges and assessments. Not later than 10 Business Days after Buyer's receipt of such request, Buyer will pay Seller the full amount of the penalty or other charges or assessments made by Seller's transporter against Seller.

(e) Payment of all amounts hereunder shall be by wire transfer or other immediately available funds. Should either party fail to pay the full amount when due, interest thereon shall accrue at the rate set forth in clause 11.03 until such amount is paid."

Delivery by FGT in accordance with its approved tariffs and general conditions, as final and correct for all purposes under this Agreement, subject only to any adjustments as may be agreed to by FGT. Buyer will provide Seller with the measurements referred to hereinabove within seven Business Days of Buyer's receipt of such measurements.

7.02 FGT Procedures. The policies and procedures in the FGT Service Agreement and FGT's approved tariff shall govern verification of measurement and correction of errors. Any conversion from volume units to heating units required for the purpose of this Agreement shall be based on the total heating value of the Gas at the Point of Delivery (it being understood that such Point of Delivery is also Buyer's receipt points on FGT's system) in the month of delivery and as detailed in FGT's invoice to PGS under the FGT Service Agreement.

## ARTICLE VIII

### GAS INVENTORY CHARGE

8.01 Calculation of GIC. (a) Buyer recognizes and agrees that Seller is entitled to receive a minimum level of cash flow under this Agreement to reasonably compensate Seller for the lost business opportunities and costs involved in maintaining, at its expense, Gas reserves, deliverability and access to transportation facilities in order to meet its daily obligations under this Agreement. As a result, beginning on August 6, 1993, Buyer shall pay to Seller, each month during the Term, the positive product of:

- (i) the Charge, times
  - (ii)  $[MCQ - (TVD + TVN + FMV + MSV)]$
- (the positive product of (i) and (ii) being called the "Gas Inventory Charge" or "GIC")

Where:

Charge = The Charge as of the Commencement of Commercial Operations shall be \$0.40. For each subsequent month, the Charge shall be increased or decreased from the amount then in effect for the prior month by the



percentage determined under clause 10.01 (it being understood, however, that such Charge shall never be less than \$0.40).

TVN -

The total quantity of Gas delivered by Seller and taken by Buyer during the applicable month in respect of which:

- (i) Seller is paid in full at the price in effect for the applicable month under this Agreement; or
- (ii) Buyer has paid the portion of Seller's invoice not disputed by Buyer and Buyer has paid any disputed amount to Seller to be held and disposed of by Seller in accordance with the requirements of clause 11.04.

FMV -

The total quantity of Gas Nominated by Buyer during the applicable month but not delivered by Seller for any reason, including, but not limited to force majeure.

TVN -

The total quantity of Gas which Buyer did not Nominate (but would have Nominated) during the applicable month (up to the MCQ) as a result of a force majeure event affecting Buyer's ability to receive or consume Gas at the Project. For the purposes of determining the quantity which Buyer would have but did not Nominate due to a force majeure occurrence claimed by Buyer, Buyer shall be deemed to have Nominated, each day during the force majeure occurrence, the daily average of Buyer's Nominations during the period of 20 consecutive days immediately preceding the force majeure occurrence claimed by Buyer; provided, however, that if

\* see 13.03  
JLC & K. P. M.



some electricity is produced at the Project during the period of the force majeure occurrence, then the quantity of Gas otherwise determined to be included in FMV shall be proportionately reduced based upon the daily average of electricity which is actually produced during the period of the force majeure occurrence in relation to the daily average of the electricity produced during such period of 20 consecutive days immediately preceding the force majeure occurrence.

MSV =

The total quantity of Gas (up to the MCQ) which Buyer did not Nominate (but would have Nominated) during the applicable month as a result of a regularly scheduled maintenance shutdown of the Project and which shutdown resulted in a reduction in the level of electricity produced at the Project. Seller shall be given 60 days' advance written notice of the date of each scheduled shutdown and the anticipated length of the shutdown. If Seller is not provided with such timely notice, then the quantity of gas to be included in the MSV shall be the amount which Buyer could have included therein had Buyer given the required notice, less 5% of such amount for each day that Seller was given less than the 60 days' required notice. For the purposes of determining the quantity which Buyer would have but did not Nominate due to a regularly scheduled maintenance shutdown, Buyer shall be deemed to have Nominated, each day during the regularly scheduled maintenance shutdown (in respect of which Seller was given timely notice), for the daily average of Buyer's

Nominations during the period of 20 consecutive days immediately preceding the regularly scheduled maintenance shutdown; provided, however, that if some electricity is produced during the period of the regularly scheduled maintenance shutdown, then the quantity of Gas otherwise determined to be included in MSV shall be proportionately reduced based upon the daily average of electricity which is actually produced during the period of the regularly scheduled maintenance shutdown in relation to the daily average of the electricity produced during such period of 20 consecutive days immediately preceding the regularly scheduled maintenance shutdown.

With the exception of any year in which all or any portion of a Major Facility Overhaul occurs, Buyer shall not be entitled to a credit to reduce the GIC (by inclusion of any amount in MSV) to the extent that the number of days for which Buyer wishes to include an amount in MSV exceeds 10 days in any calendar year.

When a Major Facility Overhaul occurs, the reference in the preceding paragraph to 10 days shall be increased by the number of days in the calendar year required by Buyer for a Major Facility Overhaul provided that:

- (i) the number of days which can be included in MSV for a Major Facility Overhaul shall not exceed 5 days; and
- (ii) if a Major Facility Overhaul occurs over the end of a calendar year, then the total number of days included in



MSV for a Major Facility Overhaul for the two consecutive calendar years over which the Major Facility Overhaul occurs shall not exceed the referenced 5 days.

Buyer shall only be able to increase MSV for a Major Facility Overhaul by the referenced 5 days once every 36 months following the Commencement of Commercial Operations. The provisions of the first paragraph of the definition of MSV shall apply, mutatis mutandis, in respect of each Major Facility Overhaul including, without limitation, (1) the calculation of the amount to be included in MSV during the Major Facility Overhaul, (2) the requirement of Buyer to provide at least 60 days' advance notice to Seller, and (3) the reduction of the amount to be included in MSV for a Major Facility Overhaul if Buyer gives Seller less than 60 days' advance notice.

Any quantity of Gas for which Buyer is entitled to be credited (in order to reduce the GIC) shall only be included in one of TVD, TVN, FMV and MSV to ensure that Buyer does not receive the benefit of a double credit against its GIC obligation in respect of the same item or quantity of Gas.

(b) The GIC shall be paid monthly in the manner provided for in Article XI and all of the provisions of such Article (including the interest provision for late payment) shall apply mutatis mutandis.

8.02 No Recapture of Payments. Buyer recognizes and agrees with the purposes of the Gas Inventory Charge as such purposes are set forth in clause 8.01(a). As a result, under no circumstances whatsoever shall such payments (or any portion thereof):



(a) be considered a penalty or otherwise be repayable to Buyer under any circumstances whatsoever other than pursuant to Article XVI,

(b) entitle Buyer to take Gas at a future time without the obligation to pay the price then in effect or to extend the Term,

(c) entitle Buyer to Nominate additional quantities of Gas, or

(d) entitle Buyer to any other right or benefit of any nature or kind whatsoever.

#### ARTICLE IX

##### GAS PORTFOLIO; TRANSPORTATION SERVICE ARRANGEMENTS

9.01 Gas Portfolio. (a) Seller will develop a "Gas Supply Portfolio" as described in this clause 9.01 as soon as practicable, but by no later than seven (7) months prior to the Expected Completion Date, consisting of Portfolio Gas Supply Contracts and Portfolio Transportation Contracts.

(b) The Portfolio Gas Supply Contracts must (i) on a rolling annual basis, provide Seller with the right to obtain a total quantity of Gas that is not less than the total quantity needed to deliver eighty percent (80%) of the MDQ over one-half of the then-remaining term of this Agreement, and (ii) ensure the deliverability, on a daily basis, of not less than eighty percent (80%) of the MDQ for a period equal to one-half of the then-remaining term of this Agreement; provided, however, that with respect to ~~any~~ any Portfolio Gas Supply Contract that is a

United States Gas suppliers backed up by corporate warranties and/or guarantees with transportation to the FGT system pursuant to a Portfolio Transportation Contract; or (iii) Gas from Canada without specific reserve dedication or license, but guaranteed by Seller's Guarantor pursuant to a written guarantee with transportation in place from the Canadian border to the FGT system pursuant to a Portfolio Transportation Contract. Pricing under the foregoing three options is not required to be on a fixed price basis.

(d) The Portfolio Transportation Contracts may consist of any combination of (i) firm transportation arrangements and (ii) firm swapping arrangements; provided, however, that Buyer may approve interruptible transportation or interruptible swapping arrangement(s) as a Portfolio Transportation Contract hereunder.

(e) Seller and Buyer shall develop a mutually agreeable list of at least four (4) independent consultants who are generally recognized experts on gas supply and transportation matters. Buyer shall choose one or more independent consultant(s) (collectively referred to herein as the "Gas Consultant") from this list. Seller and Buyer shall prepare this list, and Buyer shall complete its selection, as soon as practicable, but in no event later than twelve (12) months prior to the Expected Completion Date. Buyer shall pay all Gas Consultant fees hereunder and reimburse the Gas Consultant for his (or their) reasonable expenses. - Subj. to Kader's consent (see Consultant's list)

(f) Seller shall prepare a description of the Gas Supply Portfolio and deliver the same, together with copies of each of the Portfolio Gas Contracts, as applicable, comprising the Gas Supply Portfolio, to the extent available at the time of such preparation, to Buyer and the Gas Consultant (with a copy to the Lender) as soon as practicable but in any event not later than seven (7) months prior to the Expected Completion Date. Seller shall cooperate fully with Buyer and the Gas Consultant to assist them in understanding the various supply and transportation arrangements being proposed by Seller and will provide any further assistance required by the Gas Consultant in order to permit the Gas Consultant's recommendations to Buyer to be made within one (1) month of the Gas Consultant's receipt of the description of the Gas Supply Portfolio but in no event by later than six (6) months prior to the Expected Completion Date.



(g) By no later than thirty (30) days following receipt of the Gas Consultant's recommendations, Buyer shall provide to Seller comments on the Gas Supply Portfolio, including the Portfolio Gas Contracts (which comments shall be in writing and detail with reasonable specificity any objection to the Gas Supply Portfolio). If requested to do so by Seller, Buyer shall promptly confirm in writing the removal of any objection to the Gas Supply Portfolio, or any waiver of any objection (which waiver shall be made in Buyer's sole discretion). Seller shall use commercially reasonable efforts to work with the Gas Consultant to provide alternatives as soon as possible. Without limiting or modifying the foregoing, if the Gas Supply Portfolio is satisfactory to Buyer but (i) fully executed copies of any of the Portfolio Gas Contracts are not available, (ii) all regulatory approvals and consents, if any, necessary under Canadian and United States law to enable each of the parties to the Portfolio Gas Contracts (including Seller) to execute and deliver such Portfolio Gas Contracts, and specifically to perform such parties' respective obligations thereunder (such approval and consents being herein called the "Required Approvals") have not been obtained in final unappealable form, or (iii) the assignments of the Portfolio Gas Contracts and the respective consents to such assignments required by clause 9.01(i) have not been obtained and provided to Buyer, Buyer may condition its approval of the Gas Supply Portfolio upon Buyer's receipt, not later than thirty (30) days prior to the Expected Completion Date, of (a) fully-executed copies of such Portfolio Gas Contracts in the form in which such Portfolio Gas Contracts were submitted to the Gas Consultant and conditionally approved by Buyer, (b) (1) copies of all Required Approvals, (2) legal opinions of counsel to NCM, in form and substance satisfactory to Buyer and the Lenders in the exercise of their reasonable judgment, and containing such assumptions, exceptions, reliances, limitations and qualifications as are reasonable and customary, that (A) all Required Approvals required to be obtained by NCM either in Canada or the United States have been obtained, (B) all Required Approvals required to be obtained by NCM in the United States are in final, nonappealable form, and (C) based upon inquiries of NCM and each Canadian body providing a Required Approval to NCM, there is no proceeding pending or threatened of which NCM's counsel is aware which may result in the reversal, rescission, termination, adverse modification or suspension of any Required Approval required to be obtained by NCM in Canada, and (3) evidence satisfactory to all the Lenders in their reasonable judgment that all Required Approvals required to be obtained by

persons other than NCM have been obtained and are in final, nonappealable form, and (c) fully-executed copies of the assignments and consents referred to in clause 9.01(g)(iii) above. By not later than 40 days before the Expected Completion Date, the Gas Consultant shall deliver to Buyer (with copy to Seller and the Lender) his final written report on the status of the Gas Supply Portfolio, together with his recommendation as to whether Buyer should approve such Portfolio (it being understood that such Consultant may update his report to reflect satisfaction of requirements described in the preceding grammatical sentence). By not later than 30 days before the Expected Completion Date, Buyer shall have delivered to Seller a written notice that (x) the Gas Supply Portfolio is satisfactory, or (y) the Gas Supply Portfolio is unsatisfactory, in the exercise of Buyer's reasonable judgment. The sole consequence of Buyer's election of option (y) is set forth in the Debt Repurchase Agreement.

(h) Subject to the prior approval of Buyer, which approval shall not be unreasonably withheld, Seller shall be entitled to substitute: (i) the rights to alternative dedicated Gas reserves and/or Gas supply contracts with corporate warranties, in each case of equal or greater size for any Portfolio Gas Supply Contract; (ii) Gas from Canada without specific reserve dedication or license, but guaranteed by Seller's Guarantor with firm transportation in place from the Canadian border to the FGT system pursuant to a Portfolio Transportation Contract; and (iii) firm transportation and/or firm swapping arrangements for Portfolio Transportation Contracts (the contracts or arrangements in (i), (ii) and (iii) of this clause (h) being collectively referred to hereinafter as "Substitute Portfolio Contracts"). Seller shall submit a description of and a copy of any proposed Substitute Portfolio Contracts to the Lender, the Gas Consultant and the Buyer, along with such other information as they may reasonably request. By not later than thirty (30) days after receipt of such information, Buyer shall advise Seller in writing whether the proposed substitution has been approved. Seller shall cooperate fully with the Buyer and the Gas Consultant to assist them in understanding any Substitute Portfolio Contracts which are proposed and will provide any further assistance required by the Gas Consultant in connection with the preparation of its recommendations to Buyer.

(i) Subject to obtaining all regulatory approvals or consents, if any, that may be required by

- subject to  
Lender consent.  
(See Consents  
Agmt)



Canadian or United States law (whether federal, state, provincial, or local) in connection with, and at the time of, such assignments, Seller shall assign to Buyer (a) each of the Portfolio Gas Supply Contracts, (b) each of the Portfolio Transportation Contracts (subject to the provisions of the next succeeding grammatical sentence), and (c) any Substitute Portfolio Contracts (subject to the provisions hereafter set forth) as security for the performance of Seller's obligations hereunder, pursuant to the form of assignment attached hereto as Exhibit E (with such minor changes thereto as may be mutually agreed to by Buyer and Seller). Buyer acknowledges that it may be impracticable for Seller to assign Portfolio Transportation Contracts under certain circumstances (such as, by way of example and not limitation, circumstances in which portions of the Gas being transported under such Contracts is to be delivered to customers of Seller other than Buyer). Seller shall advise Buyer in writing of any such circumstances, and Seller and Buyer agree to negotiate in good faith to enter into mutually agreeable and commercially reasonable alternative arrangements, if practicable, for the transportation of such Gas (it being understood, however, that neither party shall be required to incur any expense pursuant to such arrangements). Seller acknowledges that Buyer will be required to assign each of the Portfolio Gas Contracts and other rights obtained from Seller, subject to the foregoing, to the Lender as security for the performance of Buyer's obligations under the loan provided by the Lender and agrees to execute a consent to the assignment of such Portfolio Gas Contracts, the form of which consent shall be in the form attached hereto as Exhibit F (with such minor changes thereto as may be mutually agreed to by Buyer and Seller). Seller also agrees to cause each third party that is a signatory party to any Portfolio Gas Contract to execute a consent to the assignment of such Contract, allowing the assignment of such Portfolio Gas Contract from Seller to Buyer and the subsequent assignment from Buyer to the Lender, the form of which consent shall be in the form attached hereto as Exhibit G (with such minor changes thereto as may be mutually agreed to by Buyer and Seller). Within thirty (30) days of the date that any Substitute Portfolio Contract has been substituted into the Gas Supply Portfolio in accordance with clause 9.01(h), Seller shall deliver to Buyer an assignment of such Portfolio Gas Contract and consents required by this clause 9.01(i). Within thirty (30) days of Buyer's receipt of such assignment and consents, Buyer agrees to release, and agrees to cause the Lender to release, back to Seller, subject to the regulatory approvals and consents described in the first sentence

of this clause 9.01(i), a Portfolio Gas Contract from the Gas Supply Portfolio if a Substitute Portfolio Contract approved by the Buyer has been substituted for such Portfolio Gas Contract.

(j) Within thirty (30) days after the beginning of each calendar year, Seller shall deliver to Buyer (with a copy to Buyer's Lenders) a certificate of an authorized officer of Seller certifying that the Portfolio Gas Supply Contracts in existence on the first day of such calendar year satisfy the requirements of clause 9.01(b) above.

**9.02 Seller's Transportation Arrangements.**

(a) Seller shall obtain and hold, in its name and from time to time, or shall cause third persons to obtain and hold in Seller's name or otherwise, all firm transportation service required on any pipeline to permit Seller to deliver each day to the Point of Delivery (collectively) a quantity of Gas equal to the MDQ. Seller's failure to obtain and hold such firm transportation service (or, to the extent consented to by Buyer pursuant to clause 9.01(d), interruptible transportation service) by the Commencement of Commercial Operations shall not constitute force majeure and shall not excuse Seller from its obligations hereunder. Other than reimbursements for Seller's UDCs provided for herein, Buyer shall not be responsible for the payment of any costs incurred by Seller prior to the Point of Delivery other than the price payable under Article X for quantities of Gas delivered to Buyer hereunder.

(b) Commencing with the month of September, 1993, Buyer shall each month reimburse Seller for all Seller's UDCs (if any) incurred during the previous month (provided, however, that for purposes of this Agreement, the first month for accrual of UDCs shall be deemed to commence on August 6, 1993) to obtain and hold the firm transportation service required under clause 9.02(a), unless Seller has failed to deliver Gas to the Project, for any reason, including but not limited to force majeure. If any Seller's UDCs incurred during a month are thereafter waived or reduced by Seller's transporter(s), or if Seller has received amounts from its supplier(s), whether as part of a final, non-appealable judgment of a tribunal having jurisdiction, or a settlement of any controversy between Seller and its supplier(s), in full or partial payment of such UDCs, Buyer shall be entitled to an adjustment to reflect such waiver or reduction in the month subsequent to such waiver or reduction by Seller's transporter(s), or the

u/c's



receipt of such amounts from Seller's supplier(s). It is specifically understood and agreed that Seller shall be under no obligation to seek relief from demand charge obligations to any transporter or to institute litigation or take other action with respect to any supplier in order to reduce the amount payable by Buyer to Seller for Seller's UDCs at any time, but shall exercise commercially reasonable efforts to do so; provided, however, that Seller shall not be required to incur any expense or other inconvenience in making such efforts (unless Buyer agrees to reimburse Seller for such expenses).

**9.03 Buyer's Transportation Arrangements.**

(a) Buyer shall obtain and hold, in its name, the Transportation Agreement with PGS. Subject to clause 2.06, Buyer's failure to obtain and hold the Transportation Agreement by the Commencement of Commercial Operations shall not constitute force majeure and shall not excuse Buyer from its obligations hereunder.

(b) Each month, Seller shall reimburse Buyer for the amount of Buyer's UDCs (if any) incurred during the previous month as a result of Seller's failure, for reasons not excused by this Agreement, to deliver quantities of Gas Nominated by Buyer or Buyer's designee. If any Buyer's UDCs incurred during a month are thereafter waived or reduced by Buyer's transporter(s), Seller shall be entitled to an adjustment to reflect such waiver or reduction in the month subsequent to such waiver or reduction by Buyer's transporter(s). Buyer shall be under no obligation to seek relief from demand charge obligations from PGS in order to reduce the amount payable by Seller to Buyer for Buyer's UDCs at any time, but shall exercise commercially reasonable efforts to do so; provided, however, that Buyer shall not be required to incur any expense or other inconvenience in making such efforts (unless Seller agrees to reimburse Buyer for such expense).

(c) Nothing in the Agreement shall be construed as giving Seller any right to an assignment by Buyer of any of Buyer's transportation service under the Transportation Agreement.

## ARTICLE X

### PRICE

10.01 Generally. Buyer shall pay Seller for all Gas delivered hereunder on or after the Commencement of Commercial Operations at the price determined pursuant to this clause 10.01. The price of Gas shall be \$2.315 per MMBTU as of January 1, 1992. For each subsequent month, subject to the provisions of Articles XI and XVI, the price of Gas shall be increased or decreased from the price in effect for the prior month by a percentage (P) determined as follows: \*

$$P = \frac{x-y}{y}$$

where:

x = The Composite Energy Rate for the Current Month  
y = The Composite Energy Rate for the Previous Month

The Composite Energy Rate is the mathematical summation of the monthly capacity rate, the hourly energy rate, and any adjustments, as described in column 3 of Appendix C, Schedule 4, "Payments for Avoided 1991 Pulverized Coal Unit," Option A, Article IX, paragraph 9.1.2, and Article XX, paragraph 20.1, respectively, in the Power Purchase Agreement, as such Agreement may be amended from time to time. Since the Composite Energy Rate is expressed in \$/Kw-hr, and the capacity rate is normally expressed in \$/Kw-month, the monthly capacity rate has to be converted into \$/Kw-hr by dividing the monthly capacity rate by the number of hours in one month.

If MCR = Monthly Capacity Rate in \$/Kw-month  
Hours = Number of Hours in the applicable Month  
ER = Energy Rate in \$/Kw-hr



where:

x = The Composite Energy Rate  
for the Current Month

y = The Composite Energy Rate  
for the Previous Month

The Composite Energy Rate is the mathematical summation of the monthly capacity rate, the hourly energy rate, and any adjustments, as described in column 3 of Appendix C, Schedule 4, "Payments for Avoided 1991 Pulverized Coal Unit," Option A (with respect to the monthly capacity rate), Article IX, paragraph 9.1.2 (with respect to the hourly energy rate), and Article XX, paragraph 20.1, respectively, of the Power Purchase Agreement, as such agreement may be amended from time to time in accordance with clause 3.03. Since the Composite Energy Rate is expressed in \$/Kw-hr, and the capacity rate is normally expressed in \$/Kw-month, the monthly capacity rate has to be converted into \$/Kw-hr by dividing the monthly capacity rate by the number of hours in one month.

Regulatory  
charges  
effective  
through  
1995.

If MCR = monthly capacity rate  
in \$/Kw-month;

Hours = Number of hours in the  
applicable Month;

ER = Energy rate in \$/Kw-hr; and

A = Any positive or negative adjustment made to the capacity and/or energy payment expressed in \$/Kw-hr (it being understood that no adjustment shall be made for factors relating to the technical or economic performance of the Project, such as, by way of example rather than enumeration, the Project's operation and maintenance costs or its operational performance);

then the Composite Energy Rate ("x" or "y") is equal to the following formula:

$$(MCR \div \text{Hours}) + ER + A$$

The operation of the foregoing formula is illustrated in Exhibit C-1.

10.02 Commission. In addition to the price payable to Seller pursuant to clause 10.01 with respect to Gas purchased by Buyer pursuant to this Agreement, Buyer shall pay to Seller each month during the Term (without the necessity for Seller's rendering to Buyer a statement therefor) a commission of five cents (\$.05) for each MMBTU of Gas delivered by Seller and purchased by Buyer hereunder and consumed by the Project during the preceding month. Payment of such commission shall be made by Buyer in the manner and at the time provided in clause 11.02 for the payment of Seller's invoices, and the provisions of clauses 11.03 through 11.05 shall apply mutatis mutandis to any failure by Buyer to make such payment within the time provided.

10.03 Gator Not Liable. Seller agrees that Gator Gas Marketing, Inc., a Florida corporation ("Gator"), shall not be responsible for the payment of any commission due to Seller from Buyer under clause 10.02 of the Agreement.

#### BILLINGS AND PAYMENTS

11.01 Seller's Invoice. Seller shall deliver an invoice to Buyer for Gas deliveries made to Buyer during the preceding month, calculated in accordance with the terms of this Agreement, and for any other amounts due to Seller including, without limitation, any amounts due Seller from Buyer for GICs and Seller's UDCs, no later than the 15th day after the last day of the preceding month (the "invoice date"). If Seller shall not have received all information required for the preparation of such invoice from any transporter or other person prior to the invoice date, Seller shall nevertheless invoice Buyer for the quantity of Gas Nominated by Buyer pursuant to Article IV, subject to adjustment in succeeding months.

11.02 Payment Due Day. Buyer shall pay Seller the amount stated in Seller's invoice, by wire transfer of funds in favor of Seller to its account at its bank as set forth in clause 21.02 of this Agreement on or before the 25th day of each month (or, if the 25th day is not a Business Day, on or before the next Business Day following the 25th day of the month). Buyer's obligation to make payment to Seller on or before such date shall be postponed by one day for each day beyond the invoice date that Seller delays in forwarding an invoice to Buyer.

11.03 Interest. If Buyer fails at any time to make each such payment when required in accordance with clause 11.02 or any other payment or amount due to Seller when required pursuant to any other provision of this Agreement, interest shall be calculated on the overdue amount at the annual rate of interest which is the lesser of (i) the Prime Rate plus one percent (1%) or (ii) the



FERC Rate, from the date such payment was due until it is paid in full (including all accrued interest).

11.04 Suspension and Termination. (a) If Buyer fails to pay an amount due under this Agreement, Seller, in addition to all other remedies available to Seller at law or in equity, shall have the right, on giving 10 Business Days' prior written notice thereof to Buyer, to suspend deliveries of Gas hereunder, unless the nonpayment is cured during such period. If such payment failure continues for 15 days after the date on which the suspension takes effect, the Seller, in addition to all other remedies available to Seller at law or in equity, may thereafter notify Buyer of Seller's intent to terminate this Agreement. Such termination shall be effective on the 30th day following the date of Seller's notice, unless the nonpayment is cured by Buyer during such period. Each party shall continue to be and shall remain liable for any and all obligations and liabilities which have accrued prior to the time of any termination of this Agreement by Seller pursuant to this provision, and Buyer shall remain liable for the reimbursement of any Seller's UDCs that Buyer is obliged to pay Seller under this Agreement, regardless of whether such Seller's UDCs relates to the period after the termination of this Agreement. If Seller's UDCs incurred during a month are thereafter waived or reduced by Seller's transporter(s), or if Seller has received amounts from its supplier(s), whether as part of a final, non-appealable judgment of a tribunal having jurisdiction, or settlement of any controversy between Seller and its supplier(s), in full or partial payment of such UDCs, Buyer shall be entitled to an adjustment to reflect such waiver or reduction in the month subsequent to such waiver or reduction by Seller's transporter(s), or the receipt of such amounts from Seller's supplier(s). It is specifically understood and agreed that Seller shall be under no obligation to seek relief from demand charge obligations to any transporter or to institute litigation or take other action with respect to any supplier in order to reduce the amount payable by Buyer to Seller for Seller's UDCs at any time, but shall exercise commercially reasonable efforts to do so; provided, however, that Seller shall not be required to incur any expense or other inconvenience in making such efforts (unless Buyer agrees to reimburse Seller for such expenses).

(b) If Buyer disputes in good faith the total amount of any invoice prepared by Seller and if Buyer has paid that portion of the total invoiced amount not disputed

by Buyer, then Buyer may suspend Seller's rights under clause 11.04(a) by delivering the amount in dispute to Seller to be held in escrow by Seller and thereafter distributed to either Buyer or Seller (with interest to follow principal) or to both Buyer and Seller in accordance with and based upon the final agreement of the parties or the final determination of the amount if any, owing to Seller (including interest) as determined by arbitration pursuant to Article XX.

**11.05 Errors or Estimates.** In the event an error is discovered or an estimate of quantities or purchase price is employed, an adjustment to correct the same shall be made as soon as possible but in no case later than 90 days after the date such error becomes known (or, in the case of estimates, no later than 60 days after the date the definitive quantities become known). Claims for errors shall be made promptly upon discovery, but in no event more than 24 months after the date of the billing in which such error arose.

## ARTICLE XII

### MAINTENANCE OF AUTHORIZATIONS AND CONTRACTS

**12.01 Generally.** Each party shall use commercially reasonable efforts to maintain in good standing and in full force and effect (i) all authorizations obtained from Regulatory Authorities, and (ii) the Power Purchase Agreement, the Steam Purchase Agreement, the Transportation Agreement, and any other agreement necessary for that party's performance of its obligations under this Agreement.

## ARTICLE XIII

### GAS SALES TO THIRD PARTIES

**13.01 Definitions.** In this Article:

(a) "**Buyer's GIC/Seller's UDC Obligations**" means the obligations of Buyer to pay Seller for GICs and/or to reimburse Seller for any Seller's UDCs incurred by Seller for transportation of Gas in amounts up to the MDQ to the Point of Delivery if Buyer is not utilizing all of the capacity reserved by Seller for Buyer's benefit under Seller's transportation arrangements.



(b) "Excess Quantity" means, on any day when Buyer is requesting that Seller deliver less than the MDQ, the difference between the MDQ and the total quantity of Gas Nominated by Buyer.

(c) "Unutilized Transportation" means that portion of Seller's transportation service arrangements described in the definition of "Buyer's GIC/Seller's UDC Obligations" which Seller is not utilizing on a particular day to ship Gas for delivery to Buyer at the Point of Delivery.

13.02 Purchases by Buyer or Buyer's Designee at Contract Price. Buyer or Buyer's designee shall be entitled to Nominate the Excess Quantity in accordance with clause 4.06 and to sell the Excess Quantity into any markets in order to mitigate Buyer's GIC/Seller's UDC Obligations if Seller is paid the price then in effect in accordance with Article X. Seller shall be obligated to deliver the Excess Quantity pursuant to the terms of this Agreement as if such Excess Quantity constituted sales of Gas for consumption at the Project at the price then in effect under this Agreement. All such sales of the Excess Quantity at the price then in effect under Article X shall represent:

(a) a credit against the GIC (and shall be included in TVD for that purpose); and

(b) a credit against the Seller's UDC calculation.

13.03 Purchases by Buyer or Buyer's Designee at Lower Prices. If Buyer or Buyer's designee wishes to purchase the Excess Quantity in order to mitigate Buyer's GIC/Seller's UDC Obligations at a price lower than the price then in effect under Article X, then Buyer or Buyer's designee may request that Seller sell the Excess Quantity to Buyer or Buyer's designee at a lower price and over a specified time period. Such request must be made in writing and delivered to Seller not later than 10 Business Days before the end of the month prior to the month for which such sales are contemplated to be made. If Seller accepts the lower price and the specified time period proposed by Buyer or Buyer's designee (and Seller is entitled to reject any such proposals in its sole discretion), then Seller shall be obligated to deliver the Excess Quantity pursuant to the terms of this Agreement. All such sales of the

Excess Quantity at the price pursuant to this clause 13.03 shall represent:

- (a) a credit against the GIC (and shall be included in TVD for that purpose); and
- (b) a credit against the Seller's UDC calculation.

#### ARTICLE XIV

##### INDEMNIFICATION AND TAXES

14.01 Seller's Indemnification. Seller agrees to indemnify Buyer and save Buyer harmless from and against any and all present and future royalties and taxes, including, without limitation, business transfer taxes, value added taxes, and all other forms of taxes, levies or assessments, whether or not similar or dissimilar to the foregoing, or license fees or charges on Gas sold hereunder, which are applicable up to the time that title to Gas passes from Seller to Buyer under this Agreement.

14.02 Buyer's Indemnification. Buyer agrees to indemnify Seller and save Seller harmless from and against any and all present and future royalties and taxes including, without limitation, business transfer taxes, value added taxes, and other forms of taxes, levies or assessments, whether or not similar or dissimilar to the foregoing, or license fees or charges on Gas sold hereunder, which are applicable after the time that title to Gas passes from Seller to Buyer under this Agreement.

#### ARTICLE XV

##### WARRANTY OF TITLE AND INDEMNIFICATION

15.01 Authorization. Each of the parties represents and warrants to the other that, subject to the corporate and partnership approvals referred to in Article II:

- (a) it has full right, power and authority to enter into this Agreement and to perform its respective obligations hereunder; and
- (b) this Agreement has been duly executed and delivered by such party.



15.02 Title Warranty. Seller represents and warrants that:

(a) it shall have good title or the right to sell to Buyer or Buyer's designee all Gas delivered to Buyer or Buyer's designee under this Agreement;

(b) all Gas sold and delivered under this Agreement to Buyer or Buyer's designee shall be free and clear from all liens and claims arising, attaching or accruing up to the time the Gas is delivered to Buyer or Buyer's designee; and

(c) it has no knowledge or information which indicates that Seller cannot provide Buyer or Buyer's designee with good title to the Gas to be sold and delivered under this Agreement.

15.03 Limitation of Warranties. Except as specifically set forth in this Agreement, SELLER MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED WITH RESPECT TO THE GAS TO BE DELIVERED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15.04 Seller's Indemnification. Seller shall indemnify Buyer and Buyer's designee and save Buyer or Buyer's designee harmless from and against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of the breach of Seller's representations and warranties in clause 15.02 and arising up to the time that title to the Gas passes from Seller to Buyer or Buyer's designee.

15.05 Buyer's Indemnification. Buyer shall indemnify Seller and save Seller harmless from and against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to Gas sold hereunder and arising after title to the Gas passes from Seller to Buyer or Buyer's designee.

## ARTICLE XVI

### RIGHT TO AUDIT

16.01 Right to Audit. From time to time but no more than once in a calendar quarter and upon prior notice

of not less than 15 Business Days, either party shall have the right, at its sole cost and expense to audit the records of the other party to the extent required for the purposes of verifying the accuracy of any invoice, statement, charge, computation or demand (including the accounting for amounts payable under the Power Purchase Agreement) under or relating to this Agreement. Such audit shall take place on Business Days, and during the regular business hours of the party being audited. The auditing party shall use commercially reasonable efforts to conduct its audit in a manner that is the least disruptive to the normal business operation of the party being audited, and the party being audited shall use commercially reasonable efforts to cooperate to the extent necessary to permit the auditing party to conduct its audit in an efficient manner. Such audit may be performed, at the election of the auditing party, by such party's employees or by a recognized firm of certified or chartered accountants (other than the firm used by that party for the preparation of its annual audited financial statements). The appointed auditor shall agree with the audited party, to treat as confidential, any information disclosed to the auditor or otherwise uncovered by the auditor in the course of the audit which is not directly relevant to the foregoing purposes of the audit.

**16.02 Errors Uncovered by Audit.** Any error uncovered by an auditor (pursuant to clause 16.01) shall be promptly reported to the party being audited and, upon the final determination by the parties of the existence and amount of the error, the party which is obligated to make payment shall pay to the other party the amount of the error.

**16.03 Limitation.** Notwithstanding clause 16.01, no adjustments shall be required in respect of any error which is not reported to the audited party within 24 months of the time that the error occurred.

**16.04 Arbitration.** If the parties have not finally agreed to the existence and the amount of any error within 30 Business Days of the existence of the alleged error having been communicated to the audited party, then either party shall have the right to refer the matter to binding arbitration pursuant to Article XX.



ARTICLE XVII

DELIVERY FAILURE

17.01 Failure to Deliver Gas - Compensation.

(a) If Seller fails to deliver any quantity of Gas Nominated by Buyer up to the MDQ, at the price provided for in Article X, when Seller's failure to deliver such undelivered quantity is not excused or permitted by the terms of this Agreement (such undelivered quantity being referred to in this clause as the "deficient quantity"), then Seller shall pay to Buyer the difference (if a positive number) between:

(i) the sum of:

(A) all reasonable out-of-pocket expenses incurred and paid by Buyer to third persons in obtaining Gas from another supplier or alternative fuel which is consumed at the Project in substitution for the deficient quantity (the "replacement fuel"); and

(B) the total price paid by Buyer for such replacement fuel, as delivered to the Project, net of any compensation or other benefits received by Buyer as a result of purchasing or consuming replacement fuel, less

(ii) the total of all costs, charges and expenses which Buyer would have incurred had Seller delivered the deficient quantity (including, without limitation, the price which Buyer would have been required to pay to Seller for the deficient quantity under this Agreement had Seller delivered the deficient quantity) and all costs, charges, and expenses which Buyer would have been required to pay to PGS in accordance with the terms of the Transportation Agreement and to other transporters between the Point of Delivery and the Project (including, without limitation, all demand and commodity charges) had Seller delivered the deficient quantity to Buyer in accordance with the terms of this Agreement.

(b) Buyer shall use commercially reasonable efforts to:

(i) purchase the lowest-priced replacement fuel reasonably available; and

(ii) use Buyer's rights under the Transportation Agreement for the transportation of replacement Gas unless Buyer is able to obtain the delivery of Gas to the Project more economically by using another transportation system.

(c) Any amounts which Buyer pays under this Article XVII to an Affiliate may be recovered from Seller only to the extent it would have been commercially reasonable to pay such amounts under the same circumstances to a person not Affiliated with Buyer.

(d) If Seller is unable to provide Gas for a reason not excused by this Agreement in clause 17.01(a), Seller shall notify Buyer in writing as soon as practicable (including in its notice a good faith estimate of the period in which Seller believes it will be unable to deliver Gas to the Project), and shall use commercially reasonable efforts to assist Buyer in arranging for alternate sources of Gas until Seller can resume deliveries to the Project.

17.02 Additional Compensation. (a) Buyer shall use commercially reasonable efforts to obtain replacement Gas or fuel from time to time when Seller does not deliver the deficient amount due to reasons not excused by this Agreement. In addition to any amount payable to Buyer pursuant to clause 17.01, Seller shall pay to Buyer the Buyer's UDCs. Such reimbursement shall be made subject to and in accordance with the provisions in clause 9.03 governing Seller's reimbursement of Buyer for any Buyer's UDCs.

(b) If Seller has failed to deliver any Gas to the Project for a reason not excused by this Agreement, and Buyer, after using commercially reasonable efforts, is not able to obtain and, consistent with all applicable permits and approvals, use replacement Gas or fuel at any price, then Seller shall pay to Buyer on account of damages an amount equal to the sum of (i) all reasonable out-of-pocket expenses incurred and paid by Buyer to third parties in its efforts to obtain replacement Gas or fuel, (ii) the product of (x) 1/365 times the amount set forth in the Revised Operating Budget, as defined below, and (y) the number of days in which Seller has failed to deliver Gas, and (iii) the product of (x) 1/365 times the amount set forth in Exhibit C for the calendar year in which Seller has failed to deliver Gas, and (y) the number of days in which Seller has failed to deliver Gas, provided, however, that in no



event shall the sum payable in any calendar year exceed the amount for that calendar year set forth in Exhibit C. For purposes of this clause 17.02(b), the term, "Revised Operating Budget" shall mean the annual budget prepared under Section 4.12(a) of the Master Agreement, provided that for purposes of this clause 17.02(b), the budget (1) shall be revised to exclude all variable costs, including, but not limited to, those Fuel Costs, as defined in the Master Agreement, which are variable and (2) for purposes of this Agreement, Buyer shall have the right, in its sole discretion, to revise such budget no more than once each calendar quarter. Notwithstanding any of the foregoing, if during any one of the thirteen (13) calendar months following the calendar month in which such non-delivery of Gas by Seller occurs, Buyer incurs any loss of revenues under the Power Purchase Agreement, and the total lost revenues for the twelve (12) calendar month period commencing with the calendar month in which the first date such lost revenues occurs is less than the total amount paid by Seller as provided for above, Buyer shall remit to Seller the difference between such amounts within ninety (90) days after the end of the applicable twelve (12) calendar month period.

(c) Subject to the limitations of clause 17.02(b), it is specifically understood and agreed that, in addition to any amount payable to Buyer pursuant to clause 17.01, clause 17.02(a), or 17.02(b), Seller shall pay Buyer all reasonable legal fees, costs, and expenses (excluding amounts in respect of consequential loss) which Buyer may be put to, incur or suffer as a result of a breach by Seller of its delivery obligations under this Agreement.

**17.03 Interest on Overdue Amounts.** (a) Seller shall reimburse Buyer for any amounts due Buyer under clauses 17.01 and 17.02 within 15 days of Seller's receipt of both an invoice from Buyer for the amount due and a detailed summary (with supporting third party invoices) of the costs, charges and expenses incurred by Buyer. If Seller does not reimburse Buyer for the amount set forth in Buyer's invoice by such 15th day, then interest shall accrue on the overdue amount from and after such 15th day at the rate and in the manner set forth in clause 11.03 until such amount is paid in full.

(b) If Seller fails to reimburse Buyer within 30 days following the 15 day period referred to in clause 17.03(a), then Buyer may, on 5 Business Days' written notice to Seller, elect to terminate this Agreement. If Seller disputes the total amount of any invoice prepared by

Buyer, then Seller shall nevertheless be obligated to pay Buyer the total amount set forth in Buyer's invoice within the 15-day period set forth in clause 17.03(a) above. Notwithstanding the payment by Seller of the total amount invoiced by Buyer, Seller shall have the right, for a period of 45 Business Days following the date of Seller's payment of Buyer's invoice, to initiate arbitration pursuant to Article XX hereof for the purposes of determining whether or not the total amount invoiced by Buyer was properly due and owing by Seller to Buyer under the terms hereof.

(c) Any termination of this Agreement pursuant to this clause shall be effective on the 30th day following the receipt by Seller of such termination notice unless Seller pays Buyer all amounts due within such 30 day period, in which event this Agreement shall be confirmed and ratified in all respects.

17.04 Limitation of Liability - Seller's Delivery Obligations. Seller's liability to Buyer for the failure to deliver any quantity of Gas Nominated by Buyer pursuant to this Agreement (when Seller's delivery failure was not otherwise excused) shall be limited to those costs, charges and expenses payable by Seller pursuant to clauses 17.01, 17.02 and 17.03 (such costs, charges, and expenses being herein called the "costs"). The liability of Seller's Guarantor shall be limited to the costs payable by Seller pursuant to clauses 17.01, 17.02 and 17.03 to the extent not paid by Seller, it being understood that Seller's Guarantor shall have no liability whatsoever for the costs except as provided herein and in the Guarantee executed and delivered to Buyer pursuant to clause 18.01 of this Agreement. Under no circumstances of any nature or kind whatsoever shall Seller or Seller's Guarantor be liable or in any way responsible for any other costs, charges, expenses, fees, losses or damages of any nature or kind whatsoever whether direct or indirect, foreseeable or not foreseeable, consequential or inconsequential and which are incurred or suffered by Buyer or any other person arising out of or in any way pertaining or attributable to Seller's failure to deliver Gas pursuant to the terms of this Agreement including, without limitation, any claims or damages of any Affiliate of Buyer, any of Buyer's Gas transporters, any Lender or other financial institution having a financial or security interest in the Project, any investor having an interest in the Project, any direct or indirect purchaser or consumer of electrical power or steam produced at the Project or otherwise.



17.05 Sole Remedies - Buyer. Buyer's rights to:

(a) obtain reimbursement for the costs of replacement fuel and other related costs from Seller and Seller's Guarantor pursuant to and in accordance with clauses 17.01 and 17.02;

(b) collect interest on the amounts described in clause 17.03(a) and terminate this Agreement pursuant to clause 17.03(b); and

(c) proceed against Seller's Guarantor in accordance with and subject to the terms of clause 17.04

shall be the sole and exclusive remedies available to Buyer against each of Seller and Seller's Guarantor for each and every breach or other non-performance by Seller of any nature or kind whatsoever under this Agreement and Buyer hereby waives, to the extent permitted by law, for all purposes whatsoever any other rights and remedies of any nature or kind whatsoever which Buyer may have or otherwise have had at any time against Seller and Seller's Guarantor whether at law, in equity or otherwise.

17.06 Limitation of Liability - Buyer's Payment Obligations. In the event that Buyer fails to make any payment in a timely manner in respect of any amount owed to Seller under this Agreement (whether for Gas delivered to Buyer, any GIC payments, any payments in respect of Seller's UDCs or otherwise), then Buyer's liability shall be limited to the amount owing therefor (including interest thereon at the rate set forth in clause 11.03). Under no circumstances of any nature or kind whatsoever shall Buyer be liable or in any way responsible for any other costs, charges, expenses, fees, losses or damages of any nature or kind whatsoever whether direct or indirect, foreseeable or not foreseeable, consequential or inconsequential and which are incurred or suffered by Seller or any other person arising out of or in any way pertaining or attributable to Buyer's failure to pay any amount due under this Agreement including, without limitation, any claims or damages of any Affiliate of Seller.

## ARTICLE XVIII

### GUARANTEE

18.01 Seller's Guarantor. Pursuant to clauses 2.01(d) and 17.04, Seller's Guarantor shall execute and deliver to Buyer the guarantee attached to this Agreement as Exhibit A.

## ARTICLE XIX

### FORCE MAJEURE

19.01 Suspension of Obligations. Subject to the other provisions of this Article XIX and this Agreement, if either party to this Agreement is unable, by reason of force majeure, to perform, in whole or in part, any obligation set forth in this Agreement, then such obligation shall be suspended to the extent necessary for the period of such force majeure condition; provided, however, that declarations of force majeure as a result of the failure of any specific individual well(s) or appurtenant facilities shall be limited to those quantities produced by such well(s) as have been relied upon by Seller for the performance of this Agreement; provided further, however, in no event shall the occurrence of an event of force majeure relieve either party from its obligation to pay amounts accrued prior to such occurrence.

19.02 Definition. For the purposes of this Agreement, the term "force majeure" shall mean a Force Majeure Event as defined under the Power Purchase Agreement, any acts of God, including, without limitation, lightning, hurricanes, earthquakes and storms and, in addition, shall mean any strikes, lockouts or other industrial disturbances, acts of the public enemy, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, floods, fires, washouts, arrests and restraints, civil disturbances, explosions, failure or breakages of or accidents to machinery, equipment, or lines of pipe, the termination or suspension of or reduction in quantities under any removal permit, export license or other authorization required by Seller to deliver Gas to Buyer (provided that and only to the extent Seller is not in breach of any covenant under this Agreement to maintain the affected authorization), hydrate obstructions of lines of pipe, freezing of wells or delivery facilities, well blowouts, craterings, mechanical breakdowns or accidents, the orders



of any court or other tribunal or Regulatory Authority, any suspension, curtailment, interruption or termination of transportation service by a transporter of Gas to or for Buyer or Seller or a failure of such a transporter to renew, extend or provide supplemental replacement transportation arrangements (other than due to the default of or omission by the applicable party under the transportation service arrangements and provided, however, that neither party may claim force majeure for interruption of transportation unless such party has reserved firm capacity for the transportation of the firm quantities hereunder), or any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which, by the exercise of due diligence, such party is unable to overcome.

19.03 Exceptions. Neither party shall be entitled to the benefit of the provision of clause 19.01 under any or all of the following circumstances:

(a) to the extent that the inability to perform was caused by the negligence or contributory negligence of the party claiming suspension; or

(b) to the extent that the inability to perform was caused by the party claiming suspension having failed to diligently attempt to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or

(c) if the inability to perform was caused by lack of funds or the non-payment of any amount or amounts due hereunder; or

(d) unless as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of force majeure and would affect the claiming party's ability to observe or perform any of its covenants or obligations under this Agreement, the party claiming suspension shall have given to the other party written notice, to the effect that such party is unable by reason of force majeure (the nature whereof shall be therein specified) to perform the particular covenants or obligations; or

(e) to the extent that the claimed force majeure occurrence pertains to an occurrence at a point downstream of the Project including, without limitation,

any loss of or reduction of or interruption under the Steam Purchase Agreement (but excluding the Power Purchase Agreement) howsoever occurring.

19.04 Notice of Rectification. The party claiming suspension shall likewise give notice, as soon as possible, after the force majeure condition shall have been remedied to the effect that the same has been remedied and that such party has resumed, or is then in a position to resume, the performance of its covenants and obligations.

19.05 Settlement of Strikes. Notwithstanding anything to the contrary in this Article XIX expressed or implied, the parties agree that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the particular party involved therein and such party shall make settlement thereof at such time and on such terms and conditions as it may deem to be advisable and no delay in making such settlement shall deprive such party of the benefit of clause 19.01.

19.06 No Extension of Term. The Term shall not be extended by the length of any force majeure occurrence claimed by either party.

19.07 Extension of Force Majeure. Either party shall be entitled to terminate this Agreement on 60 days' notice if the other party has claimed a force majeure occurrence which has remained in effect for 365 days. A party affected by an extended force majeure occurrence shall not manipulate its performance under this Agreement in order to avoid the application of this provision. The termination of this Agreement under this clause 19.07 shall not affect the rights and obligations of the parties hereunder which had accrued prior to the date of termination.

## ARTICLE XX

### ARBITRATION PROCEDURE

20.01 Arbitration. All disputes relating to this Agreement shall be submitted to arbitration and the following principles in this Article shall apply to such arbitration.

20.02 Appointment of Arbitrator. Upon written demand of either party, the parties shall meet and attempt to appoint a single arbitrator. If the parties are unable



to agree on a single arbitrator, or if one of the parties fails to meet within 10 days of a written demand being forwarded, then either party may apply to have the arbitrator appointed by the Houston Chapter of the American Arbitration Association.

**20.03 Qualification of Arbitrator.** The arbitrator selected to act hereunder shall be qualified by education or training to pass upon the particular question in dispute. No arbitrator shall be an officer, director, employee, agent, attorney or consultant of either party, or any of its respective Affiliates.

**20.04 Determination by Arbitrator.** The arbitrator chosen shall proceed immediately to hear and determine the question or questions in dispute at Houston, Texas. The decision of the arbitrator shall be made within 45 days after his appointment, subject to any reasonable delay due to unforeseen circumstances. Notwithstanding the foregoing, in the event that the arbitrator fails to make a decision within 60 days after his appointment, then either party may elect to have a new arbitrator chosen in like manner as if none had previously been selected.

**20.05 Decision in Writing.** The decision of the arbitrator shall be in writing and signed by the arbitrator and shall be final and binding upon the parties as to any question or questions so submitted to arbitration and the parties shall be bound by such decision and perform the terms and conditions thereof.

**20.06 Compensation of Arbitrator.** The compensation and expenses of the arbitrator (unless otherwise determined by the arbitrator) shall be paid by the party who does not prevail in the arbitration. Any out-of-pocket expenses incurred by a party to obtain the appointment of an arbitrator pursuant to clause 20.02 shall be shared equally by Buyer and Seller.

**20.07 Performance During Arbitration.** All performance required by both parties under this Agreement shall, if reasonably possible, continue during arbitration proceedings or during any legal proceedings.

**20.08 Special Case.** Every referral to arbitration pursuant to this Article shall contain a provision requiring the arbitrator, if so requested by either party, to state in the form of a special case for the opinion of

the Court any question of law arising in the course of the reference.

20.09 Arbitration Act. In all respects not provided for elsewhere in this Article, the provisions of the Texas Arbitration Act shall govern any dispute hereunder submitted to arbitration. If there is a conflict between this Agreement and such Act, the provisions of this Agreement shall prevail.

## ARTICLE XXI

### COMMUNICATIONS

21.01 Notices. Each request, notice, statement, communication, Nomination, invoice or payment (a "notice") provided for in this Agreement shall be in writing (in order to be effectively given) and shall be directed to the party to whom given, made or delivered at such party's address for service as specified in clause 21.02, unless otherwise advised in writing by such party, and may be served:

(a) personally by delivering it to the party on whom it is to be served, provided such delivery shall be during normal business hours of that party. Any personally served notice shall be deemed received by the addressee when actually delivered as aforesaid; or

(b) by facsimile (or by telecopier, telex or any other like method by which a written and recorded message may be sent) directly to the party on whom it is to be served, provided that a notice may not be sent by this method if the sender is aware that the addressee's receiving equipment is not functioning properly. Any notice so served shall be deemed received by the addressee thereof when actually received by it if received within the normal working hours of that Business Day, or at the commencement of the next ensuing Business Day following transmission thereof, whichever is the earlier; or

(c) by mailing it special delivery, registered mail, or certified mail (return receipt requested) postage prepaid, to the party on whom it is to be served, provided that a notice may not be sent by this method during threatened or actual postal disruptions in the United States. Any notice so served shall be deemed to be received by the



addressee at noon, EDT, on the earlier of the actual date of receipt or the fifth Business Day following the mailing thereof; or

(d) by Federal Express or other express mail service to the party on whom it is to be served. Any notice sent by this method shall be deemed to be received by the addressee on the next Business Day following the mailing of such notice. The time for payment of any invoice for amounts payable pursuant to this Agreement shall be calculated only from the date on which the party to which the invoice is directed receives such invoice, whether by facsimile or other method referred to in clause 21.01(b) or otherwise.

**21.02 Addresses.** The address for service of notices for each of the parties, which may be changed from time to time by written notice given as aforesaid, shall initially be as follows:

**SELLER:**

Invoices and Other Communications:  
North Canadian Marketing Corporation  
1600 Smith Street, Suite 3910  
Houston, Texas 77002  
Attention: Manager, Supply  
Telephone No.: (713) 759-0030  
Facsimile No.: (713) 753-0999

Payments:

112 4th Avenue, S.W.  
Calgary, Albert T2P4B  
Attention: North Canadian Marketing Accounting  
Telephone No.: (403) 261-4360  
Facsimile No.: (403) 261-4383

Via Wire Transfer:

Royal Bank of Canada  
Account Number: 405-787-3

**BUYER:**

Invoices:  
Pasco Cogen, Ltd.  
c/o Pas Power Co.  
111 East Madison Street, Suite 1700  
P.O. Box 2562

Tampa, Florida 33601  
Attention: E. Elliott White  
Telephone No.: (813) 272-0088  
Facsimile No.: (813) 272-0062

Other Communications:

Pasco Cogen, Ltd.  
111 East Madison Street, Suite 1700  
P.O. Box 2562  
Tampa, Florida 33601  
Attention: E. Elliott White  
Telephone No.: (813) 272-0088  
Facsimile No.: (813) 272-0062

ARTICLE XXII

MISCELLANEOUS

22.01 Further Assurances. Each party shall execute, acknowledge, verify and deliver any and all documents which from time to time may be reasonably requested by the other party to carry out the purposes and the intent of this Agreement.

22.02 Governing Law. All questions concerning the validity or meaning of this Agreement or relating to the rights and obligations of the parties with respect to performance under this Agreement shall be construed and resolved under the laws of the (State of Texas).

22.03 Severability. The intention of the parties is to comply fully with all applicable laws and this Agreement shall be construed consistently with such laws. If and to the extent that any court of competent jurisdiction determines that any provision of this Agreement is invalid, such determination shall in no way affect the validity of the other provisions of this Agreement, which shall remain in full force and effect.

22.04 Non-Waiver. No failure by any party to insist upon compliance with any term of this Agreement, to exercise any option, enforce any right, or seek any remedy upon any default by the other party shall affect, or constitute a waiver of, the first party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to the default or any prior, contemporaneous or subsequent default; nor shall any custom or practice of the parties at variance with any



provision of this Agreement affect, or constitute a waiver of, any party's right to demand strict compliance with all of the provisions of this Agreement.

22.05 Headings. The division of this Agreement into articles, clauses, sub-clauses, paragraphs and subparagraphs and the insertion of headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

22.06 Complete Agreement. This Agreement contains the entire agreement between the parties and supercedes all prior or contemporaneous discussions, negotiations, illustrations, representations or agreements relating to the subject matter of this Agreement. No changes to this Agreement shall be made or be binding upon any party unless made in writing and signed by each party.

22.07 Assignment. (a) Either party shall be entitled to assign its interest in this Agreement to an Affiliate provided that both the assigning party and the Affiliate first enter into a satisfactory agreement with the other party to this Agreement whereby the assigning party and the Affiliate agree with the other party to be severally as well as jointly and severally liable for the performance of all of the assigning party's obligations under this Agreement. The non-assigning party to this Agreement shall not be entitled to withhold its consent to any such assignment if the foregoing agreement is executed in favor of the non-assigning party.

(b) Either party shall be entitled to assign its interest in this Agreement to any entity which shall succeed, by purchase, merger, consolidation or other transfer, to substantially all of the assets of the assigning party;

(c) Except as provided for in clause 22.07(a) and (b), a party to this Agreement may assign, sell or transfer its interest under this Agreement (other than for security or related purposes) only upon receiving the prior written consent of the other party, which consent shall not be unreasonably withheld. Without limiting or restricting the generality of the foregoing, it shall not be unreasonable for a party to deny its consent where, in its opinion, acting reasonably, the proposed assignee, purchaser or transferee lacks the capacity or resources necessary to ensure the proper conduct and completion of its obligations under this Agreement over the remaining portion of the Term or if the proposed assignee does not enter into an agree-

ment with the non-assigning party whereby the proposed assignee agrees to perform all of the obligations of the assigning party under this Agreement.

(d) Nothing herein contained shall prevent or restrict either party, without the consent of the other, from pledging or granting a security interest in, or assigning as collateral all or any portion of such party's interest in this Agreement to secure any debt or obligation of such party under any mortgage, deed of trust, security agreement or similar instrument, provided that the rights of the secured party shall be subject to the terms of this Agreement. Notwithstanding the foregoing, no such assignment of this Agreement shall be construed as an undertaking of the non-assigning party to assume, guarantee, endorse, contingently agree to purchase or to provide funds for the payment of, or otherwise become liable in respect of, any present or future obligations of the assigning party to the secured party. Each party agrees to execute promptly upon request by the other party one or more consents to assignment for financing purposes reasonably acceptable to the party providing the consent and to the Lender.

(e) No assignment, whenever consented to or not under this Section 22.07, shall operate to release the assigning party from its obligations hereunder unless such party is expressly released from its obligations by the other party.

22.08 Joint Efforts. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties, and shall not be construed against one party or the other as a result of the preparation, submittal or other event of negotiation, drafting or execution thereof.

22.09 Time of the Essence. Time shall be of the essence hereof.

22.10 Inurement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing contained in this Agreement, express or implied, is intended to confer upon any other person or entity any benefits, rights or remedies.

22.11 Conflicting Agreements. If Seller learns that any agreements to which it is a party conflicts with this Agreement, Seller shall exercise commercially reason-



able efforts to amend such agreement to remove the conflicting provision or modify it in such a way that it no longer conflicts with this Agreement. If Seller cannot amend such agreement in accordance with the preceding sentence within 30 days after the date on which Seller learned of the conflict, then Seller shall terminate such agreement.

IN WITNESS WHEREOF the parties hereto have  
executed this Agreement as of the date first above written.

NORTH CANADIAN MARKETING  
CORPORATION

By *D. Garry Ramsden-Wood*  
Name: D. Garry Ramsden-Wood  
Title: President and Chief Operating Officer

By *Donald McKinnis*  
Name: DONALD MCKINNIS  
Title: VICE PRESIDENT

PASCO COGEN, LTD.

By: Pas Power Co., general  
partner

By *E Elliott White*  
Name: E ELLIOTT WHITE  
Title: Executive VP



FIRST AMENDMENT TO  
GAS PURCHASE AGREEMENT

This First Amendment to Gas Purchase Agreement (the "First Amendment") is made and entered into as of the 15th day of October, 1992, by and between North Canadian Marketing Corporation, a California corporation ("Seller") and Pasco Cogen, Ltd., a Florida limited partnership ("Buyer") to amend certain provisions of the Gas Purchase Agreement executed on January 24, 1992, and dated as of August 28, 1991 (the "Agreement") between Buyer and Seller.

WHEREAS, Buyer and Seller have agreed to (i) make certain changes to the Agreement once the price of Gas as of January 1, 1992, could be determined pursuant to the provisions of clause 10.01 of the Agreement, (ii) make certain changes as required by that certain letter agreement dated January 24, 1992, by and among North Canadian Oils Limited, Lykes Energy, Inc. and The Prudential Insurance Company of America and (iii) make certain other changes;

WHEREAS, the parties have determined that the price of Gas under the Agreement, as of January 1, 1992, is \$2.315 per MMBTU of Gas; and

WHEREAS, Buyer and Seller want to implement those certain changes to the Agreement.

NOW, THEREFORE, in light of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

SECOND AMENDMENT TO  
NATURAL GAS PURCHASE AGREEMENT

This Second Amendment to Natural Gas Purchase Agreement (the "Second Amendment") is made and entered into as of the 1st day of April, 1993, by and between North Canadian Marketing Corporation, a California corporation ("Seller") and Pasco Cogen, Ltd., a Florida limited partnership ("Buyer") to amend certain provisions of the Natural Gas Purchase Agreement executed on January 24, 1992, and dated as of August 28, 1991, as heretofore amended (the "Agreement") between Buyer and Seller.

WHEREAS, Buyer and Seller have agreed to change the various Points of Delivery (as defined in the Agreement) and the capacity at each Point of Delivery; and

WHEREAS, Buyer and Seller want to implement those certain changes to the Agreement.

NOW, THEREFORE, in light of the mutual premises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.
2. Buyer and Seller hereby agree to delete Exhibit B attached to the Agreement and to replace it with the Exhibit B attached to this Second Amendment.
3. Except as modified by this Second Amendment, the Agreement shall continue in full force and effect.



FOURTH AMENDMENT TO  
GAS PURCHASE AGREEMENT

This Fourth Amendment to Gas Purchase Agreement (this "Fourth Amendment") is made and entered into as of the 21st day of July, 1993, by and between North Canadian Marketing Corporation, a California corporation ("Seller") and Pasco Cogen, Ltd., a Florida limited partnership ("Buyer"), to amend certain provisions of the Gas Purchase Agreement executed on January 24, 1992, and dated as of August 28, 1991, as heretofore amended (the "Agreement") between Buyer and Seller.

WHEREAS, Section 10.03 of the Agreement provides for a reduction in the amount of the commission that is payable to Seller based upon the Coal Price calculated as of the Conversion Date and Schedule I attached to the First Amendment to Gas Purchase Agreement; and

WHEREAS, Buyer and Seller want to amend the Agreement to reflect the actual amount of the commission to be paid to Seller pursuant to Section 10.02 of the Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. All capitalized terms used and not otherwise defined herein shall have the meaning given to such terms in the Agreement.
2. Article X of the Agreement is hereby amended to read as follows:



ORIGINAL  
FILE COPY

GAS PURCHASE AGREEMENT

between

NORTH CANADIAN MARKETING  
CORPORATION

- and -

LAKE COGEN, LTD.

*signed copy which  
Linda checked against  
8/29/84/RGP*



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LIST OF EXHIBITS

- Exhibit A - Gas Guarantee and Agreement
- Exhibit B - Final MDQ
- Exhibit C - Points of Delivery
- Exhibit D - Assignment of Agreements
- Exhibit E - Consent and Agreement
- Exhibit F - Illustration of Gas Sales Price
- Exhibit G - Clause 17.01(c) Schedule

RGT  
Copy

## GAS PURCHASE AGREEMENT

This Gas Purchase Agreement (this "Agreement") is made and entered into as of July 29, 1992, between NORTH CANADIAN MARKETING CORPORATION, a California corporation with its principal office at Houston, Texas ("Seller"), and LAKE COGEN, LTD., a Florida limited partnership with its principal office at Tampa, Florida ("Buyer").

### WITNESSETH:

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer, subject to the terms and conditions hereinafter set forth and on a firm basis, certain quantities of Gas; and

WHEREAS, the intent of the parties in entering into this Agreement is to ensure a firm supply of Gas to Buyer's Project in an amount up to the Maximum Daily Quantity (as defined herein); and

WHEREAS, Seller has agreed to sell and deliver Gas to Buyer, and Buyer has agreed to purchase and receive such Gas for the purposes of and in accordance with the terms of this Agreement.

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

### ARTICLE I. DEFINITIONS

1.01 Terms. The following terms, when used in this Agreement, shall have the meanings set forth below. Other terms used in this Agreement are defined elsewhere.

- (a) "Affiliate" means every existing and future Affiliate of Seller or Buyer, as the case may be, which meets any of the following criteria:
- (i) one corporation is affiliated with another corporation if one of them is the subsidiary of the other, or both are subsidiaries of the same corporation, or each of them is controlled by the same person; and
  - (ii) if two corporations are affiliated with the same corporation at the same time, they are deemed to be affiliated with each other.

A corporation is controlled by a person if securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held by or for the benefit of that person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation. A corporation is a subsidiary of another corporation if it is controlled by that corporation. A "corporation" includes a limited partnership or



partnership of which a corporation (in respect of which the foregoing control tests are to be applied) is the general or controlling partner;

- (b) "Agreement" means this agreement including all Exhibits and Appendices and all written amendments hereto from time to time signed by the parties;
- (c) "Assignment of Partnership Interests" has the meaning ascribed to it in the Participation Agreement;
- (d) "authorization" when used in reference to a Regulatory Authority, includes a certificate, permit or license;
- (e) "Bankruptcy Event" shall mean any event of the type described in clause (n) or (o) of clause XVI of the form of lease attached as Appendix G to the Participation Agreement;
- (f) "Basic Term" has the meaning ascribed to it in clause 3.01;
- (g) "Basic Rent" has the meaning ascribed to such term in the Participation Agreement;
- (h) "British Thermal Unit" or "BTU" means the amount of heat required to raise the temperature of one pound of distilled water from 59°F to 60°F at a constant pressure of 14.73 pounds per square inch absolute;
- (i) "Business Day" means any day other than a Saturday, Sunday or a day which is a statutory holiday in the State of Florida or the State of Texas;
- (j) "Buyer's UDCs" means unutilized demand charges incurred by Buyer downstream of the Points of Delivery in connection with the performance of its obligations hereunder;
- (k) "Buyer Economic Extension Term" means the period during which this Agreement may be extended pursuant to subclause 3.02(a)(1) or 3.02(a)(2) of this Agreement;
- (l) "Buyer Non-Economic Extension Term" has the meaning ascribed to such term in clause 3.02(b);
- (m) "Charge" shall have the meaning ascribed to such term in clause 8.01;
- (n) "Cogeneration Services Agreement" means that certain Cogeneration Services Agreement to be entered into by and between Buyer and Golden Gem Growers, Inc.;
- (o) "Collection Account" has the meaning ascribed to such term in the Escrow Agreement;

- (p) "Commencement of Commercial Operations" means the day on which the Project achieves "Commercial In-Service Status" as defined in the Power Purchase Agreement;
- (q) "day" means a period of 24 consecutive hours, beginning and ending at 0800 hours EDT;
- (r) "Disbursement Date" has the meaning ascribed to it in the Escrow Agreement;
- (s) "Disbursement Period" has the meaning ascribed to such term in the Participation Agreement;
- (t) "Dollars" or "\$" means the lawful currency of the United States of America unless otherwise indicated;
- (u) "EDT" means Eastern Daylight Saving Time, regardless of the time which is in effect at the relevant time;
- (v) "Escrow Agreement" has the meaning ascribed to such term in the Participation Agreement, as amended from time to time;
- (w) "Expected Completion Date" means July 8, 1993, provided that such date may be changed from time to time by Buyer's delivery to Seller of a notice, which notice must be approved by Lender, indicating a change in such date;
- (x) "Extension Term" means any Buyer Economic Extension Term, any Buyer Non-Economic Extension Term, or any Seller Extension Term;
- (y) "FERC" means the Federal Energy Regulatory Commission or any successor agency;
- (z) "FERC Rate" means the rate prescribed by the FERC under the authority of the Natural Gas Act, as amended, pursuant to 18 CFR section 154.102(c)(2)(iii), as such regulation may be amended from time to time during the Term;
- (aa) "FGT" means Florida Gas Transmission Company or its successors;
- (ab) "FGT Service Agreement" means the Service Agreement dated November 1, 1989, between FGT and PGS pursuant to which Buyer's Gas will be transported from the Point of Delivery, or any successor agreement thereto, as the same may be amended from time to time;
- (ac) "force majeure" shall have the meaning ascribed to such term in clause 19.02;
- (ad) "EPC" means Florida Power Corporation or its successors;
- (ae) "Gas" means natural and/or residue Gas comprised primarily of methane;



- (af) "Gas Inventory Charge" or "GIC" has the meaning ascribed to this term in subclause 8.01(a);
- (ag) "Gas Supply Portfolio" has the meaning ascribed to this term in subclause 9.01(a);
- (ah) "Gator" means Gator Gas Marketing, Inc. or its successors;
- (ai) "GECC" means General Electric Capital Corporation, a New York corporation;
- (aj) "Guarantee" has the meaning ascribed to this term in clause 18.01;
- (ak) "Lease" has the meaning ascribed to it in the Participation Agreement, as amended from time to time;
- (al) "Lease Commencement Date" means the date on which the transactions contemplated by Article IV of the Participation Agreement shall be consummated;
- (am) "Lease Event of Default" has the meaning ascribed to it in the Participation Agreement;
- (an) "Lender" means the entity or entities providing construction or permanent financing for the Project, including, without limitation, lending institutions, equity investors, owners, owner/trustees and persons that purchase the Project and lease such Project back to Buyer and their respective permitted successors and assigns;
- (ao) "Local Transportation Agreement" means that certain Gas Transportation Agreement, dated as of July 29, 1992, between Buyer and PGS, as amended from time to time;
- (ap) "Major Facility Overhaul" means a Major System Repair (as defined in the O & M Agreement), including without limitation, any such Major System Repair included in the Annual Budget (as defined in the O & M Agreement);
- (aq) "Maturity Date" has the meaning ascribed to such term in the Participation Agreement;
- (ar) "MCO" or "Monthly Contract Quantity" means 80% of the product of the MDQ and the number of days in the particular month;
- (as) "MDQ" or "Maximum Daily Quantity" has the meaning ascribed to such term in subclause 4.02(a);
- (at) "Mcf" means 1,000 cubic feet;
- (au) "MMcf" means 1,000,000 cubic feet;

- (av) "MMBtu" means 1,000,000 British Thermal Units;
- (aw) "month" means a period beginning at 0800 hours EDT on the first day of a calendar month and ending 0800 hours EDT on the first day of the next succeeding calendar month;
- (ax) "NCP" means North Canadian Power Incorporated, a California corporation;
- (ay) "Nomination" means Buyer's written notice to Seller that Buyer requires Seller to deliver a specified quantity of Gas to Buyer at the Point of Delivery on a given day and the word "Nominate" and its derivatives shall have a corresponding meaning;
- (az) "O & M Agreement" means the Cogeneration Facility Operation and Maintenance Agreement dated as of February 5, 1992 by and between Stewart & Stevenson Operations, Inc. and Buyer, as amended from time to time;
- (ba) "Owner Participant" shall have the meaning given to such term in the Participation Agreement;
- (bb) "Owner Trustee" shall have the meaning given to such term in the Participation Agreement;
- (bc) "Participation Agreement" means that certain Participation Agreement dated as of July 29, 1992 among Lake Cogen, Ltd., The Citizens and Southern National Bank of Florida, as Owner Trustee, TIFD III-C, Inc. and GECC (including Appendix A attached thereto), as amended from time to time;
- (bd) "party" or "parties" is a reference to Seller or Buyer or Seller and Buyer, as applicable (but not, under any circumstances unless otherwise expressly indicated, to Seller's Guarantor);
- (be) "Peaking Spot Gas" means Gas purchased on a short-term basis to accommodate seasonal peak requirements;
- (bf) "person" includes an individual, a partnership (including a limited partnership), an unincorporated syndicate or organization, any government (including any department, agency or authority of a government), a company, a corporation and a trust;
- (bg) "PGS" means Peoples Gas System, Inc. and its successors;
- (bh) "Pledge Agreement" shall have the meaning given to such term in the Participation Agreement, as amended from time to time;
- (bi) "Point of Delivery" shall have the meaning ascribed to such term in clause 5.01;



- (bj) "Portfolio Gas Contracts" means the Portfolio Gas Supply Contracts and the Portfolio Transportation Contracts;
- (bk) "Portfolio Gas Supply Contracts" means those Gas supply contracts comprising the Gas Supply Portfolio that satisfy the requirements set forth in subclauses 9.01(b) and 9.01(c), including but not limited to (i) any guarantees issued by third parties in connection with such Gas supply contracts, and (ii) any Substitute Portfolio Contracts that provide for the supply of Gas;
- (bl) "Portfolio Transportation Contracts" means those transportation contracts comprising the Gas Supply Portfolio that satisfy the requirements set forth in subclause 9.01(d), including any Substitute Portfolio Contracts that provide for the transportation of Gas;
- (bm) "Power Purchase Agreement" means that certain Negotiated Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility entered into on March 13, 1991, by and between Buyer and FPC;
- (bn) "Prime Rate" means the fluctuating per annum rate of interest announced publicly by Citibank N.A. in New York, New York, from time to time as its prime lending rate;
- (bo) "Project Supply Contracts" shall have the meaning given to such term in clause 9.01(h);
- (bp) "Project" means the approximately 106 megawatt gas-fired combined cycle PURPA qualifying cogeneration facility to be financed, constructed, owned and operated by Buyer in Lake County, Florida;
- (bq) "Project Transportation Contracts" shall have the meaning given to such term in clause 9.01(h);
- (br) "PURPA" means the Public Utility Regulatory Policies Act;
- (bs) "Regulatory Authorities" means each governmental agency and other authority in Canada and/or the United States, whether federal, state, provincial, local, or otherwise, which from time to time has jurisdiction over the subject matter of this Agreement or any part thereof, or the transportation, movement, production, sale or removal of the Gas sold and purchased hereunder;
- (bt) "Rent" shall have the meaning ascribed to such term in the Participation Agreement;
- (bu) "Rent Obligations" shall mean the receipt by Lender as Basic Rent under the Lease for all periods that the Lease shall be in effect, from cash generated by the Project, of an amount equal to:

(i) if the Lease Commencement Date occurs,

(A) if the Lease shall remain in effect for the period commencing with the Maturity Date and ending on the sixteenth anniversary of the Maturity Date (the "Guarantee Term"), the aggregate amount of Basic Rent due and payable during the Guarantee Term, or

(B) if the Lease shall terminate prior to the end of the Guarantee Term, the aggregate amount of Basic Rent due and payable during the period in which the Lease shall be in effect plus, for the period beginning with the date on which the Lease shall terminate through the end of the Guarantee Term (the "Termination Period"), an amount equal to the aggregate amount of Basic Rent which would have been due and payable by Buyer to Lender during the Termination Period had the Lease not been terminated prior to the Termination Period,

plus, in the case of each of (A) and (B) above, an amount equal to (I) interest at the Stipulated Rate to the extent such amount or any part thereof is paid later than it would have been paid pursuant to the terms of the Lease plus (II) all expenses reasonably incurred by Lender in enforcing its right to receive any amounts included in this definition of "Rent Obligations"; or

(ii) if the Lease Commencement Date shall not occur, "Rent Obligations" shall mean the aggregate amount of Basic Rent which would have been payable by Buyer to Lender during the Guarantee Term had the Lease been in effect throughout the Guarantee Term (using, for purposes of Article IX of the Participation Agreement, an amount equal to \$100,000,000 for Lessor's Cost, and for all other purposes in respect of Article IX of the Participation Agreement a Lease Commencement Date shall be deemed to have occurred on the Maturity Date), plus an amount equal to (A) interest at the Stipulated Rate to the extent such amount or any part thereof would have been payable pursuant to the terms of the Lease, plus (B) all expenses reasonably incurred by Lender in enforcing its right to receive any amounts included in this definition of "Rent Obligations";

(bv) "Sale Event" shall mean the voluntary sale of the Project by the Buyer or Lender if at the time of such sale: (i) Buyer and Lender consent to such sale, (ii) no default or event of default shall have occurred and be continuing with respect to the construction or Long-Term Financing of the Project immediately prior to such sale and (iii) all the Long-Term Financing Obligations shall be satisfied in full on or prior to the consummation of such sale;

(bw) "Secured Parties" means GECC, Owner Participant, Owner Trustee, Lender and their respective permitted successors and assignees;

(bx) "Security Agreement" has the meaning ascribed to it in the Participation Agreement, as amended from time to time;



- (by) "Security Documents" means the Assignment of Partnership Interests, the Pledge Agreement, the Security Agreement, the Escrow Agreement, the remedies provisions of the Lease, or any other security documents relating to the Long-Term Financing Obligations (as such term is defined in subclause 3.02(a)(1));
- (bz) "Seller's Guarantor" means North Canadian Oils Limited, a corporation amalgamated under the laws of Canada, having its principal offices in Calgary, Alberta, Canada;
- (ca) "Seller's UDCs" means unutilized demand charges incurred by Seller upstream of the Points of Delivery in connection with the performance of its obligations hereunder;
- (cb) "Seller Extension Term" shall have the meaning ascribed to such term in clause 3.02(c);
- (cc) "Special Reimbursement Payments" has the meaning ascribed to such term in clause 11.06;
- (cd) "Special Transportation Payments" has the meaning ascribed to such term in clause 11.07; *M*
- (ce) "Spot Gas" means Gas purchased for a term of 31 days or less;
- (cf) "standard cubic foot" or "cf" means that amount of Gas which occupies one cubic foot at a temperature of 60 degrees Fahrenheit and at a constant pressure of 14.73 pounds per square inch absolute;
- (cg) "Stipulated Rate" shall have the meaning ascribed to such term in the Participation Agreement;
- (ch) "Substitute Portfolio Contracts" has the meaning ascribed to such term in subclause 9.01(g);
- (ci) "Term" means the Basic Term and, if applicable, the following: the Buyer Economic Extension Term, the Buyer Non-Economic Extension Term, or the Seller Extension Term;
- (cj) "Transportation Agreement" means that certain City Gate Gas Sales Agreement dated as of July 29, 1992 between Buyer and PGS, as amended from time to time (it being understood that, for all purposes hereunder, this Transportation Agreement shall be deemed an agreement which provides for the firm transportation of Gas);
- (ck) "Unutilized Demand Charges" or "UDCs" with respect to the monthly demand charges paid to a pipeline transporter for the reservation of firm capacity, means that pro rata portion of such demand charges that is allocable to the percentage

of such firm transportation capacity that has not been utilized by the shipper for the transportation of Gas.

## ARTICLE II. CONDITIONS TO OBLIGATIONS

### 2.01 Conditions to Obligations

The continuation of the obligations of Seller and Buyer under this Agreement is subject to the satisfaction or waiver of each of the following conditions (in accordance with the terms of this Article II) by not later than September 1, 1992:

- (a) Buyer's having closed its construction financing transaction with Lender for the Project;
- (b) Seller's having obtained the approval of (i) its Board of Directors to the execution and delivery of this Agreement and the transactions contemplated hereby and (ii) the Executive Committee of the Board of Directors of Seller's Guarantor to the execution and delivery of the Guarantee and the transactions contemplated hereby and thereby;
- (c) Seller's Guarantor having executed the Guarantee; and
- (d) Buyer's having obtained all necessary partnership approvals to the execution and delivery of this Agreement and the transactions contemplated hereby.

### 2.02 Satisfaction of Conditions

Each party agrees to use commercially reasonable efforts and proceed in a timely manner to satisfy each of the conditions set forth in clause 2.01 for which it is responsible (or for which the parties are jointly responsible). Each authorization, agreement, or other matter to be obtained or completed pursuant to clause 2.01 must be obtained or completed (as applicable and acting in a commercially reasonable manner) to the satisfaction of the party responsible for obtaining same in accordance with clauses 2.04 and 2.05 by not later than the date set forth in clause 2.01.

### 2.03 Status Reports

Upon request by the other party, each of Seller and Buyer shall provide the other with a written status report (not more than once every month) outlining its progress in satisfying the conditions for which it is responsible. Each such report shall include information outlining any anticipated delay or impediment to the satisfaction of any such condition and, in the case of an anticipated delay, the report shall specify the expected length of the delay. However, any such anticipated delay shall not extend the time periods established in clause 2.01.



#### 2.04 Failure to Complete Conditions

If any of the conditions are not satisfied or waived (by both parties) by the applicable date specified in clause 2.01, then at any time following such date and until such time as the condition is satisfied or waived, either Seller or Buyer shall be entitled to terminate this Agreement.

#### 2.05 Notice of Completion of Conditions

- (a) Each party shall forthwith give written notice to the other party when it believes that a condition in clause 2.01 has been satisfied. If requested to do so by the other party, the first party shall provide the other party with copies of the relevant consents, notices, or authorizations within five Business Days of such request. However, if the date for the satisfaction of the condition has not passed as of the time that the first party rejected the authorization or agreement which it obtained, then clause 2.02 shall continue to apply and the first party shall continue to use all commercially reasonable efforts to obtain an authorization or agreement (as applicable) which it is prepared to accept.
- (b) Within 30 days from the receipt of notice from the first party pursuant to subclause 2.05(a), including copies of the relevant consents, authorizations or agreements, as applicable, the other party shall advise of its acceptance or rejection thereof and, if rejected, detailed reasons for the rejection. If the other party has not provided the first party with written notice of its acceptance or rejection within such 30-day period, then the condition shall be deemed to have been satisfied in an acceptable manner to both Buyer and Seller. If the other party believes that the condition has not been satisfied, and gives reasons within such 30-day period as provided above, then this Agreement may be terminated by either party pursuant to clause 2.04 unless the date for the satisfaction of the condition has not passed. If a replacement authorization or agreement (for the one rejected) is not obtained before the specified date for the completion of the condition, then clause 2.04 shall be applicable.

### ARTICLE III. TERM

#### 3.01 Basic Term

The Basic Term of this Agreement shall begin on the date on which this Agreement has been signed by both parties and shall continue until the sixteenth anniversary of the Commencement of Commercial Operations (such sixteenth anniversary being currently estimated to be July 8, 2009), subject to the provisions of this Agreement relating to earlier termination or extension. Each party shall remain responsible for all obligations and liabilities which have accrued up to the time this Agreement has been terminated.

### 3.02 Extension

(a) Buyer Economic Extension Term. (1) In the event (A) GECC and/or one of its Affiliates (on its own or with one or more parties) (collectively, "GE Capital") shall enter into the Participation Agreement or another agreement with Buyer or one of Buyer's Affiliates providing long term financing for the Project (in the form of a sale-leaseback transaction, debt financing or otherwise) (the "Long-Term Financing") and (B) all financial obligations (the "Long-Term Financing Obligations") to GE Capital or its successors or assigns with respect to the Long-Term Financing which are required to be satisfied on or prior to the sixteenth anniversary of the closing of the Long-Term Financing shall not have been satisfied in full (which in the case of a sale-leaseback financial transaction shall relate to obligations due and payable for the basic term (16 years) of the Lease or the applicable lease, as the case may be, as such obligations are specified in the terms of any such lease on the date such lease is entered into), then Buyer shall have the one-time right, exercisable in its sole discretion, to extend the Basic Term for a period of up to the earlier of (i) the time that all such Long-Term Financing Obligations shall have been paid and performed in full (with interest at the Stipulated Rate in the case of payments not made when due) or GE Capital and/or its successors and assigns shall have received the cash equivalent thereof or (ii) the twentieth anniversary of the Commencement of Commercial Operations. Buyer may exercise such extension right not less than 130 days before the end of the Basic Term by giving Seller written notice of Buyer's intent to exercise such right. (2) In the event (A) GE Capital and/or one of its affiliates on its own or with one or more parties) shall enter into an agreement for Long-Term Financing with Buyer or one of Buyer's Affiliates and (B) either (i) Buyer is not in possession of the Project (as lessee or owner) on the sixteenth anniversary of the closing of the Long-Term Financing, (other than as a result of a Sale Event) or (ii) GE Capital and/or its successors or assigns shall have exercised remedies available to it under the documents evidencing or relating to the Long-Term Financing Obligations, then Buyer shall have the one-time right, exercisable in its sole discretion, to extend the Basic Term for up to four years until the twentieth anniversary of the Commencement of Commercial Operations. Buyer may exercise such extension right not less than 130 days before the end of the Basic Term, by giving Seller written Notice of Buyer's intent to exercise such right.

(b) Buyer Non-Economic Extension Term. If Buyer has not exercised its right to extend the Basic Term in accordance with subclause 3.02(a), then Buyer shall, in addition to the right set forth in such subclause 3.02(a), have the right, exercisable in its sole discretion, to extend the Basic Term one or more times, subject to this subclause 3.02(b), and subject further to Buyer, Seller and Lender agreeing on the purchase price to be paid for gas delivered during the term of any such extension pursuant to clause 10.03, by giving Seller written notice of Buyer's election to exercise such right not less than 125 days before the end of the Basic Term, if any, any Buyer Non-Economic Extension Term, or any Seller Extension Term, as the case may be. "Buyer Non-Economic Extension Term" shall refer to (i) the initial extension, if any, of this Agreement by Buyer pursuant to this subclause 3.02(b), and (ii) any subsequent extension of this Agreement by Buyer pursuant to this subclause 3.02(b). Subject to clause 10.03, any Buyer Non-Economic Extension Term shall be for a period of not less than six months and not more than four years, and in no event shall this Agreement be extended beyond the twentieth anniversary of the Commencement of Commercial Operations without the mutual consent of Buyer, Seller, and Lender.



(c) Seller Extension Term. If Buyer has not exercised its right to extend or further extend this Agreement in accordance with subclause 3.02(a) or subclause 3.02(b), then Seller shall have the right, exercisable in its sole discretion, to extend this Agreement one or more times, subject to this clause 3.02(c), subject to Buyer, Seller and Lender agreeing on the purchase price to be paid for gas delivered during the term of any such extension pursuant to clause 10.03, by giving Buyer written notice of Seller's election to exercise such right not less than 120 days before the end of the Basic Term, the Buyer Economic Extension Term, any Buyer Non-Economic Extension Term, or any Seller Extension Term, as the case may be. "Seller Extension Term" shall refer to (i) the initial extension, if any, of this Agreement by Seller in accordance with this subclause 3.02(c), and (ii) any subsequent extension of this Agreement by Seller in accordance with this subclause 3.02(c). Subject to clause 10.03, any Seller Extension Term shall be for a period of not less than six months and not more than four years, and in no event shall this Agreement be extended beyond the twentieth anniversary of the Commencement of Commercial Operations without the mutual consent of Buyer, Seller and Lender. *original to agree*

(d) Waiver of Extension Rights. Failure to deliver written notice extending the term of this Agreement within the period provided in subclause 3.02(a), subclause 3.02(b) or subclause 3.02(c), as the case may be, shall constitute a waiver of such party's option to extend this Agreement.

(e) Applicable Terms of Extension. The provisions of this Agreement shall apply during any extension of this Agreement pursuant to the provisions of subclause 3.02(a), 3.02(b), or 3.02(c), as applicable, with the exception of the price provisions of Article X, which shall be modified as therein set forth.

### 3.03 Amendments to Agreements *not make sense!*

(a) Each of Seller and Buyer shall not, without the prior written consent of the other party (not to be unreasonably withheld), make or acquiesce in any amendment or other variation in or to the Power Purchase Agreement or any successor to such Agreement if any such amendment or variation (whether by itself or when considered together with any other variation or variations at any time) could, at the time such amendment or variation is entered into, reasonably be expected to materially and adversely affect the other party's position (including its anticipated economic benefits) under this Agreement or if such amendment or variation is inconsistent with the terms of this Agreement, unless and only to the extent that such amendment or other variation was required by a final, non-appealable order of any court or Regulatory Authority having jurisdiction. *defined in E.A.?*

(b) Buyer agrees that, without the consent of Seller (not to be unreasonably withheld), it shall not (i) amend the Escrow Agreement to provide for the payment of Rentor amounts distributed to the Partnership pursuant to Section 4.04(viii) of the Escrow Agreement before the payment of amounts due and payable to Seller pursuant to clauses 10.01 and 10.03, or (ii) amend the Transportation Agreement to change the receipt points thereunder or the force majeure provisions thereof.

## ARTICLE IV. QUANTITY

### 4.01 Quantities Required Prior to the Commencement of Commercial Operations

At Seller's option, quantities of Gas required during the construction and testing of the Project may be supplied by Seller at a mutually agreeable price for Spot Gas in accordance with the terms of the Month to Month Gas Purchase Agreement of even date herewith between Seller and Gator. Should Seller not elect to sell Gas to Buyer during the construction and testing of the Project, then Buyer shall have the right to purchase Gas from any other person during such period.

### 4.02 Quantities Required Beginning with Commencement of Commercial Operations

- (a) As of the date of the execution of this Agreement, the parties anticipate that the MDQ or Maximum Daily Quantity will be 20,472 MMBtu per day. Upon completion of the final engineering for the Project, the parties shall, with the Lender's consent (which consent shall not be unreasonably withheld), agree upon the actual MDQ for the Project and shall state such amount on Exhibit B hereto. It is specifically agreed and understood that the actual MDQ shall not increase or decrease more than five percent (5%) of the MDQ contemplated by the first sentence of this subclause 4.02(a).
- (b) Subject to clauses 4.05 and 4.07, and beginning with the Commencement of Commercial Operations and for each day during the Term, Seller shall deliver a quantity of Gas to Buyer at the Point of Delivery equal to Buyer's Nomination for that day in accordance with the terms of this Agreement; provided, however, that Seller shall not be obligated to deliver, on any day, a quantity of Gas which exceeds the MDQ. Buyer shall at all times pay for all Gas Nominated by Buyer and delivered by Seller <sup>non notice balancing</sup> to the Point of Delivery, as such delivered quantities are measured and determined by FGT pursuant to Article VII hereof.

### 4.03 MDQ Adjustment

- (a) At any time between the Commencement of Commercial Operations and the 365th day following the Commencement of Commercial Operations, Buyer shall have the option, exercisable only once and by written notice to Seller, to either increase or decrease the MDQ by up to ten percent (10%) in order to reflect the actual operating requirements of the Project (as distinct from Gas requirements based upon electrical or steam demand) as determined following actual operations. Any such change to the MDQ shall be effective upon the later to occur of:
- (i) the date that is 90 days following the receipt by Seller of Buyer's notice adjusting the MDQ; or
- (ii) (in the event of an increase in the MDQ) the date that both Seller and Buyer have obtained all necessary firm transportation service (it being



understood that, for the purpose of this clause (ii), transportation pursuant to the Transportation Agreement shall be deemed firm transportation) as well as any authorizations from Regulatory Authorities which may be necessary or desirable for the delivery of the increased quantities.

- (b) Each party shall use commercially reasonable efforts and proceed in a timely manner to obtain the transportation arrangements and authorizations required in respect of the increase in the MDQ for the remainder of the Term. If all of the required firm transportation service and authorizations are not obtained within 180 days of Buyer's election to increase the MDQ pursuant to subclause 4.03(a) or if either party rejects (acting reasonably) any such arrangements or authorizations obtained by either party, then the MDQ shall remain unchanged, and the rights of Buyer under this clause 4.03 shall expire; provided, however, that if Seller elects not to, or is unable to supply, an increase in the MDQ, then Buyer shall have the right to purchase such increase from any other person.
- (c) Notwithstanding any decrease in MDQ permitted by this clause 4.03, Buyer shall remain obligated to pay the GICs and any Seller's UDCs (both calculated using the original MDQ), subject to clause 11.06. Seller shall be under no obligation to eliminate or otherwise mitigate such GICs and Seller's UDCs, but shall exercise commercially reasonable efforts to do so, provided, however, that Seller shall not be required to incur any expense or other inconvenience in making such efforts (unless Buyer agrees to reimburse Seller for such expense).

GIC &  
UDC  
mitigation  
long-keep  
in and if  
need to  
consider other  
such undertaker

#### 4.04 Supply Exclusivity

- (a) From and after the Commencement of Commercial Operations, Seller has the sole and exclusive right to supply the total Gas requirements of the Project up to the MDQ. The foregoing, however, shall not limit or modify Buyer's ability to purchase Gas from other persons ~~(i) if Seller elects not to, or is unable to supply, an increase in the MDQ as contemplated by subclause 4.03(b),~~ (ii) when Seller is unable to provide Gas due to Seller's force majeure or a failure to perform its obligations under this Agreement, (iii) when Buyer is unable to use Gas delivered hereunder due to Buyer's force majeure affecting Buyer's ability to have Gas transported from the Point of Delivery to the Project, (iv) when Buyer is obligated to take Gas from PGS following curtailments under Section 13.4 of the Local Transportation Agreement, or (v) if Buyer wishes to purchase shrinkage volumes from Gator pursuant to the Gator Agreement. If Seller is unable to provide Gas due to Seller's force majeure or a failure to perform its obligations under this Agreement, Seller shall notify Buyer in writing as soon as practicable (including in its notice a good faith estimate of the period in which Seller believes it will be unable to deliver Gas to the Project), and shall use commercially reasonable efforts to assist Buyer in arranging alternate sources of Gas until Seller can resume deliveries to the Project.
- (b) If at any time Gas is required to meet the daily Peaking Spot Gas requirements of the Project in excess of the MDQ (whether due to an unexpected requirement

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based on the original design, an expansion, a short term requirement, or otherwise), then Buyer shall include Seller in the list of Gas suppliers to be contacted by Buyer for the purpose of arranging the additional required supply. If Buyer is seeking Peaking Spot Gas, then Buyer shall so advise Seller. Buyer agrees to purchase such Peaking Spot Gas from Seller if the purchase price of such Gas is at or below any bona fide offer from a third person who is not an Affiliate of either party.

#### 4.05 Advance Notice - First Nomination

Buyer's initial Nomination to Seller shall be effective for the day specified in such Nomination if:

- (a) the specified day is at least 30 days subsequent to the receipt by Seller of Buyer's written Nomination (and, nevertheless, Buyer agrees to use commercially reasonable efforts to provide Seller with at least 90 days' advance notice of its first Nomination); and
- (b) the specified day is on or subsequent to the Commencement of Commercial Operations.

Seller shall not be obligated to commence Gas deliveries to Buyer in accordance with clause 4.02 until Seller shall have received such advance written notice. Buyer shall keep Seller informed on a timely basis of the anticipated date for the Commencement of Commercial Operations.

#### 4.06 Nomination Procedure

Buyer shall make a monthly Nomination to Seller for each month upon the earlier of:

- (a) the Business Day before the latest date that Buyer is entitled to give a nomination to FGT to obtain service on the first day of the month; or
- (b) 7 days prior to the commencement of the month.

Subject to the foregoing, Buyer shall be entitled to modify the monthly Nomination. Any monthly Nomination, or any change in that Nomination, shall remain in effect until subsequently changed by Buyer in accordance with this clause 4.06. Subject to the other provisions of this clause 4.06, Seller shall not be required to recognize a change to any Nomination unless Seller has received the change to the Nomination from Buyer by not later than 1200 hours EDT at least two Business Days prior to the day that the change in Nomination is to take effect.

#### 4.07 Balancing of Deliveries

- (a) Both Buyer and Seller recognize that deliveries of Gas cannot precisely match Nominations each day or over any month. For this reason and for the purpose of assessing responsibility for any imbalance penalties, the quantity of Gas actually delivered may vary on a daily and monthly basis in the percentages set forth in the tariffs of Buyer's or Seller's



transporters on file with and approved from time to time by the FERC or the appropriate state regulatory agency. Failure of either party to observe such delivery variance limitations may expose the party so failing to liability for reimbursing the other party for penalty charges as described below. Both Buyer and Seller shall exercise due diligence and take any and all action reasonably requested by the other party to correct any imbalances in the quantity of Gas delivered to the Point of Delivery.

(b) The parties shall cooperate with each other in eliminating any accumulated imbalance in the quantity of Gas delivered to the transporter of such party within 45 days of the identification of such imbalance as well as seek to eliminate immediately any ongoing imbalances to the extent that such imbalances are directly related to the action of such party.

(c) If Buyer is assessed any penalties by Buyer's transporter directly related to the failure of Seller to deliver to Buyer at the Point of Delivery Gas volumes in a manner consistent with Buyer's Nominations, but only to the extent Seller has failed to deliver Gas within the daily and monthly limits set out above, and Buyer's transporter seeks penalties from Buyer and Buyer pays such penalties, Buyer will request reimbursement of such penalties in writing and provide data reasonably satisfactory to Seller supporting such penalties and Seller will pay Buyer not later than 10 Business Days after Seller's receipt of such request the full amount of the penalty by Buyer's transporter against Buyer.

(d) If Seller is assessed any penalties by Seller's transporter directly related to the failure of Buyer to take from Seller at the Point of Delivery Gas volumes in a manner consistent with Buyer's Nominations, but only to the extent Buyer has failed to take Gas within the daily and monthly limits set out by Seller's transporters in its tariffs as set forth in subclause 4.07(a), and Seller's transporter assesses said penalties against Seller and Seller pays such penalties, Seller will request reimbursement of such penalties in writing and provide data reasonably satisfactory to Buyer supporting such penalties and Buyer will pay Seller not later than 10 Business Days after Buyer's receipt of such request the full amount of the penalty by Seller's transporter.

(e) Payment of all amounts hereunder shall be by wire transfer or other immediately available funds. Should either party fail to pay the full amount when due, interest thereon shall accrue at the rate set forth in clause 11.03 until such amount is paid.

## ARTICLE V. DELIVERY

### 5.01 Point of Delivery

The "Point of Delivery" for Gas sold and delivered by Seller to Buyer hereunder shall be those various receipt points on the FGT pipeline more particularly described in Exhibit C hereto, [including but not limited to the specific receipt points identified in such Exhibit.] ?

### 5.02 Title, Risk and Possession

Seller shall be deemed to be in possession and control of and have risk of loss for the Gas delivered under this Agreement until it shall have been delivered to or for the account of Buyer at the Point of Delivery, after which point Buyer shall be deemed to be in possession and control of and have risk for such Gas. Title to all Gas properly Nominated by Buyer and sold by Seller to Buyer shall pass from Seller to Buyer at the Point of Delivery. It is specifically understood and agreed that, after taking title to such Gas, Buyer shall have the right to transfer title to such Gas to any other person.

## ARTICLE VI. QUALITY AND PRESSURE

### 6.01 Specifications

Gas delivered by Seller to Buyer shall conform to the quality, pressure and other specifications which are contained in FGT's pipeline tariff in effect from time to time with regard to deliveries at the Point of Delivery.

## ARTICLE VII. MEASUREMENT AND TESTS

### 7.01 Acceptance of FGT Measurements and Tests

The parties shall accept measurements provided by FGT to PGS of quantities and heating value made at the Point of Delivery by FGT in accordance with its approved tariffs and general conditions, as final and correct for all purposes under this Agreement, subject only to any adjustments as may be agreed to by FGT. Buyer will provide Seller with the measurements referred to hereinabove within seven Business Days of Buyer's receipt of such measurements.

### 7.02 FGT Procedures

The policies and procedures in the FGT Service Agreement and FGT's approved tariff shall govern verification of measurement and correction of errors. Any conversion from volume units to heating units required for the purpose of this Agreement shall be based on the total heating value of the Gas at the Point of Delivery (it being understood that such Point of Delivery is also Buyer's receipt points on FGT's system) in the month of delivery and as detailed in FGT's invoice to PGS under the FGT Service Agreement.

## ARTICLE VIII. GAS INVENTORY CHARGE

### 8.01 Calculation of GIC

- (a) Buyer recognizes and agrees that Seller is entitled to receive a minimum level of cash flow under this Agreement to reasonably compensate Seller for the lost



business opportunities and costs involved in maintaining, at its expense, Gas reserves, deliverability and access to transportation facilities in order to meet its daily obligations under this Agreement. As a result, beginning with the Commencement of Commercial Operations, Buyer shall pay to Seller, each month during the Term, the positive product of:

- (i) The Charge, times  
80% / 100 x 30
- (ii)  $MCQ - (TVD + TVN + FMV + MSV)$

(the positive product of (i) and (ii) being called the "Gas Inventory Charge" or "GIC")

Where:

Charge = The Charge as of the Commencement of Commercial Operations shall be \$0.40. For each subsequent month, the Charge shall be increased or decreased from the amount then in effect for the prior month by the percentage determined under clause 10.01 (it being understood, however, that such Charge shall never be less than \$0.40).

TVD = The total quantity of Gas delivered by Seller and taken by Buyer during the applicable month in respect of which:

- (i) Seller is paid in full at the price in effect for the applicable month under this Agreement; or
- (ii) Buyer has paid the portion of Seller's invoice not disputed by Buyer and Buyer has paid any disputed amount to Seller to be held and disposed of by Seller in accordance with the requirements of clause 11.04.

TVN = The total quantity of Gas Nominated by Buyer during the applicable month but not delivered by Seller, provided that any quantity of Gas not delivered by Seller when Seller's delivery failure was excused by the terms of this Agreement shall be excluded from TVN.

FMV = The total quantity of Gas which Buyer did not Nominate (but would have Nominated) during the applicable month (up to the MCQ) as a result of a force majeure event affecting Buyer's ability to receive or consume Gas at the Project. For the purposes of determining the quantity which Buyer would have but did not Nominate due to a force majeure occurrence claimed by Buyer, Buyer shall be

deemed to have Nominated, each day during the force majeure occurrence, the daily average of Buyer's Nominations during the period of 20 consecutive days immediately preceding the force majeure occurrence claimed by Buyer, provided, however, that if some electricity is produced at the Project during the period of the force majeure occurrence, then the quantity of Gas otherwise determined to be included in FMV shall be proportionately reduced based upon the daily average of electricity which is actually produced during the period of the force majeure occurrence in relation to the daily average of the electricity produced during such period of 20 consecutive days immediately preceding the force majeure occurrence.

MSV = The total quantity of Gas (up to the MCC) which Buyer did not Nominate (but would have Nominated) during the applicable month as a result of a regularly scheduled maintenance shutdown of the Project and which shutdown resulted in a reduction in the level of electricity produced at the Project. Seller shall be given 60 days' advance written notice of the date of each scheduled shutdown and the anticipated length of the shutdown. If Seller is not provided with such timely notice, then the quantity of gas to be included in the MSV shall be the amount which Buyer could have included therein had Buyer given the required notice, less 5% of such amount for each day that Seller was given less than the 60 days' required notice. For the purposes of determining the quantity which Buyer would have but did not Nominate due to a regularly scheduled maintenance shutdown, Buyer shall be deemed to have Nominated, each day during the regularly scheduled maintenance shutdown (in respect of which Seller was given timely notice), the daily average of Buyer's Nominations during the period of 20 consecutive days immediately preceding the regularly scheduled maintenance shutdown, provided, however, that if some electricity is produced during the period of the regularly scheduled maintenance shutdown, then the quantity of Gas otherwise determined to be included in MSV shall be proportionately reduced based upon the daily average of electricity which is actually produced during the period of the regularly scheduled maintenance shutdown in relation to the daily average of the electricity produced during such period of 20 consecutive days immediately preceding the regularly scheduled maintenance shutdown.



With the exception of any year in which all or any portion of a Major Facility Overhaul occurs, Buyer shall not be entitled to a credit to reduce the GIC (by inclusion of any amount in MSV) to the extent that the number of days for which Buyer wishes to include an amount in MSV exceeds 10 days in any calendar year.

When a Major Facility Overhaul occurs, the reference in the preceding paragraph to 10 days shall be increased by the number of days in the calendar year required by Buyer for a Major Facility Overhaul provided that:

- (i) the number of days which can be included in MSV for a Major Facility Overhaul shall not exceed 15 days; and
- (ii) if a Major Facility Overhaul occurs over the end of a calendar year, then the total number of days included in MSV for a Major Facility Overhaul for the two consecutive calendar years over which the Major Facility Overhaul occurs shall not exceed the referenced 15 days.

Buyer shall only be able to increase MSV for a Major Facility Overhaul by the referenced 15 days once every 36 months following the Commencement of Commercial Operations. The provisions of the first paragraph of the definition of MSV shall apply, mutatis mutandis, in respect of each Major Facility Overhaul including, without limitation, (1) the calculation of the amount to be included in MSV during the Major Facility Overhaul, (2) the requirement of Buyer to provide at least 60 days' advance notice to Seller, and (3) the reduction of the amount to be included in MSV for a Major Facility Overhaul if Buyer gives Seller less than 60 days' advance notice.

Any quantity of Gas for which Buyer is entitled to be credited (in order to reduce the GIC) shall only be included in one of TVD, TVN, FMV and MSV to ensure that Buyer does not receive the benefit of a double credit against its GIC obligation in respect of the same item or quantity of Gas.

- (b) The GIC shall be paid monthly in the manner provided for in Article XI and all of the provisions of such Article (including the interest provision for late payment) shall apply mutatis mutandis.
- (c) Seller shall exercise commercially reasonable efforts to minimize any GIC charges due by Buyer hereunder.

*mitigation  
obligation*

8.02 No Recapture of Payments

Buyer recognizes and agrees with the purposes of the Gas Inventory Charge as such purposes are set forth in subclause 8.01(a). As a result, under no circumstances whatsoever shall such payments (or any portion thereof):

- (a) be considered a penalty or otherwise be repayable to Buyer under any circumstances whatsoever other than pursuant to Article XVI,
- (b) entitle Buyer to take Gas at a future time without the obligation to pay the price then in effect or to extend the Term,
- (c) entitle Buyer to Nominate additional quantities of Gas, or
- (d) entitle Buyer to any other right or benefit of any nature or kind whatsoever.

**ARTICLE IX.**

**GAS PORTFOLIO; TRANSPORTATION SERVICE ARRANGEMENTS**

9.01 Gas Portfolio

(a) Seller will develop a "Gas Supply Portfolio" in accordance with this clause 9.01 by not later than the Expected Completion Date consisting of the Portfolio Gas Supply Contracts and the Portfolio Transportation Contracts.

(b) The amount of the Gas supply required to be in the Gas Supply Portfolio shall be an amount which will, on a rolling annual basis, provide 75% of the total expected Gas supply requirements of the Project over the then remaining term of this Agreement.

(c) The Portfolio Gas Supply Contracts may consist of a combination of the following: (i) the rights to dedicated reserves of Gas located in the continental United States with transportation to the FGT system pursuant to a Portfolio Transportation Contract; (ii) Gas supply contracts from United States Gas suppliers backed up by corporate warranties and/or guarantees with transportation to the FGT system pursuant to a Portfolio Transportation Contract; or (iii) Gas from Canada without specific reserve dedication or license, but guaranteed by Seller's Guarantor with transportation in place from the Canadian-United States border to the FGT system pursuant to a Portfolio Transportation Contract. Pricing under the foregoing three options is not required to be on a fixed price basis.

(d) The Portfolio Transportation Contracts may consist of a combination of interruptible transportation arrangements and interruptible swapping arrangements, provided, however, that any Portfolio Transportation Contract for Gas to be transported from the Canadian-United States border to the FGT system shall provide for firm transportation arrangements and/or firm swapping arrangement(s) as a Portfolio Transportation Contract hereunder. It is specifically understood and agreed that the delivery points provided for in the Portfolio Transportation Contracts and the Portfolio Gas Supply Contracts shall match the receipt



points provided for in the Transportation Agreement, along with such volume restrictions as provided therein.

(e) Within 60 days after the date of the closing of the construction financing for the Project, Lender shall designate in writing a Gas consultant (the "Gas Consultant") for the purpose of assisting Lender in understanding the Gas supply arrangements for the Project.

(f) Beginning with the calendar month following the month in which the Gas Consultant is selected, Seller shall meet on a monthly basis with Lender, Buyer, and the Gas Consultant to report on Seller's progress in developing a plan for supplying Gas to the Project (the "Plan") and to discuss any questions, issues or concerns that Lender, Buyer, or Gas Consultant may have regarding such Plan. The Plan will be implemented by the Expected Completion Date. Seller shall cooperate fully with Buyer, Lender, and the Gas Consultant to assist them in understanding the various supply and transportation arrangements being proposed by Seller.

(g) Seller shall be entitled to substitute: (i) for any Portfolio Gas Supply Contract, one or more Gas Supply Contracts under which Seller shall have the rights to alternative dedicated Gas reserves and/or Gas supply contracts with corporate warranties, in each case of equal or greater size than the Portfolio Gas Supply Contract being replaced; (ii) for any Portfolio Gas Supply Contract, one or more Gas Supply Contracts under which Seller shall obtain gas from Canada without specific reserve dedication or license, but guaranteed by Seller's Guarantor with transportation in place from the Canadian border to the FGT system pursuant to a Portfolio Transportation Contract; and (iii) transportation and/or swapping arrangements for Portfolio Transportation Contracts (the contracts or arrangements in (i), (ii) and (iii) of this subclause (g) being collectively referred to hereinafter as "Substitute Portfolio Contracts"). Seller shall cooperate fully with Lender, Buyer, and the Gas Consultant to assist them in understanding any Substitute Portfolio Contracts which are proposed, and will inform them of any changes in the Plan.

(h) Subject to obtaining all regulatory approvals or consents, if any, that may be required by Canadian or United States law (whether federal, state, provincial, or local) in connection with, and at the time of, such assignments, Seller shall use commercially reasonable efforts to assign to Buyer (i) each of the Portfolio Gas Supply Contracts, and any additional gas supply contracts which Seller enters into for purposes of meeting its obligations to transport the MDQ to the Project (such Portfolio Gas Supply Contracts and additional contracts being hereinafter collectively referred to as the "Project Supply Contracts"), (ii) each of the Portfolio Transportation Contracts (subject to the provisions of the next succeeding grammatical sentence), and any additional gas transportation contracts which Seller enters into for purposes of meeting its obligations to transport the MDQ to the Project (such Portfolio Transportation Contracts and additional contracts being hereinafter collectively referred to as the "Project Transportation Contracts"), and (iii) any Substitute Portfolio Contracts, provided, however, that, notwithstanding anything to the contrary in this Agreement, Seller shall at all times after the Commencement of Commercial Operations have entered into and assigned to Buyer the contracts included in the Gas Supply Portfolio (and obtain all necessary consents for such assignments). Any assignment contemplated by the preceding grammatical sentence shall be made pursuant to an instrument in substantially the form attached hereto as Exhibit D with such further

modifications as may be mutually agreeable to Buyer and Seller). Buyer acknowledges that it may be impracticable for Seller to assign Portfolio Transportation Contracts under certain circumstances (such as, by way of example and not limitation, circumstances in which a portion of the Gas being transported under such Contracts is to be delivered to customers of Seller other than Buyer). Seller shall advise Buyer and Lender in writing of any such circumstances, and Seller, Buyer, and Lender agree to negotiate in good faith to enter into mutually agreeable and commercially reasonable alternative arrangements, if practicable, for the transportation of such Gas (it being understood, however, that neither party shall be required to incur any expense pursuant to such arrangements). Seller acknowledges that Buyer will be required to assign each of the Portfolio Gas Contracts, subject to the foregoing, to the Lender as security for Buyer's obligations under the loan provided by the Lender and agrees to execute a consent to the assignment of such contracts, the form of which consent shall be in substantially the form attached hereto as Exhibit E (with such further modifications as may be mutually agreeable to Buyer and Seller). Subject to the proviso included in the first sentence of this subclause 9.01(h), within 30 days of the date that any Substitute Portfolio Contract has been substituted into the Gas Supply Portfolio in accordance with this subclause 9.01(h), Seller shall deliver to Buyer an assignment of such Portfolio Gas Contract, including the third-party consent in substantially the form attached to the form of assignment attached hereto as Exhibit D, subject to the terms hereof. Within 30 days of Buyer's receipt of such assignment and consents, Buyer agrees to release, and agrees to cause the Lender to release, back to Seller, and subject to the regulatory approvals and consents described in the first grammatical sentence of this subclause 9.01(h), a Portfolio Gas Contract from the Gas Supply Portfolio if a Substitute Portfolio Contract has been substituted for such Portfolio Gas Contract.

(i) Any failure by Seller to comply with the provisions of this Article IX shall not impair any of Buyer's remedies for non-delivery of Gas pursuant to Article XVII of this Agreement.

(j) Seller acknowledges that Buyer has entered into the Transportation Agreement, pursuant to which Buyer has assigned certain of its rights hereunder to PGS, and Seller hereby consents to such assignment.

#### 9.02 Seller's Transportation Arrangements

- (a) Seller shall obtain and hold, in its name and from time to time, or shall cause third persons to obtain and hold in Seller's name or otherwise, all firm or interruptible transportation service required hereunder on any pipeline to permit Seller to deliver each day to the Point of Delivery a quantity of Gas equal to the MDQ. Other than reimbursements for GICs and Seller's UDCs provided for herein (subject to clause 11.06), Buyer shall not be responsible for the payment of any costs incurred by Seller prior to the Point of Delivery other than the price payable under Article X for quantities of Gas delivered to Buyer hereunder.
- (b) On each Disbursement Date subsequent to the Lease Commencement Date and on each Disbursement Date thereafter, Buyer shall pay all GICs due and payable under this Agreement and shall reimburse Seller for all Seller's UDCs (if any) incurred to obtain and hold the firm transportation service required under



*to the extent*

*Special  
Reimbursement  
Payments*

subclause 9.02(a), unless (i) Seller has failed, for reasons not excused by this Agreement, to deliver Gas to the Project, or (ii) Buyer is specifically relieved from all or a portion of such obligations in accordance with clause 8.01 (with respect to GICs), subclause 19.06(a) (with respect to Seller's UDCs) or subclause 19.06(b) (with respect to GICs). Buyer's obligations under the foregoing sentence are subject to clause 11.06. It is specifically understood and agreed that Buyer shall not be relieved of its obligation hereunder to reimburse Seller for Seller's UDCs if Seller's failure to deliver Gas to the Project was excused by the terms of this Agreement. If any Seller's UDCs incurred during a Disbursement Period are thereafter waived or reduced by Seller's transporter(s), Buyer shall be entitled to an adjustment in the Disbursement Period subsequent to such waiver or adjustment by Seller's transporter(s) to reflect such waiver or reduction, with such adjustment to be as of the preceding Disbursement Date. It is specifically understood and agreed that Seller shall be under no obligation to seek relief from demand charge obligations to any transporter in order to reduce the amount payable by Buyer to Seller for Seller's UDCs at any time, but shall exercise commercially reasonable efforts to do so, provided, however, that Seller shall not be required to incur any expense or other inconvenience in making such efforts (unless Buyer agrees to reimburse Seller for such expenses).

*UDC  
mitigation*

9.03 Buyer's Transportation Arrangements

- (a) Buyer represents and warrants that it has entered into the Local Transportation Agreement, a true and correct copy of which has been provided to Seller.
- (b) Each month, Seller shall reimburse Buyer for the amount of Buyer's UDCs (if any) incurred during the previous month as a result of Seller's failure, for reasons not excused by this Agreement, to deliver quantities of Gas Nominated by Buyer or Buyer's designee. If any Buyer's UDCs incurred during a month are thereafter waived or reduced by Buyer's transporter(s), Seller shall be entitled to an adjustment to reflect such waiver or reduction in the month subsequent to such waiver or reduction by Buyer's transporter(s). Buyer shall be under no obligation to seek relief from demand charge obligations from PGS in order to reduce the amount payable by Seller to Buyer for Buyer's UDCs at any time, but shall exercise commercially reasonable efforts to do so, provided, however, that Buyer shall not be required to incur any expense or other inconvenience in making such efforts (unless Seller agrees to reimburse Buyer for such expense).
- (c) Nothing in this Agreement shall be construed as giving Seller any right to an assignment by Buyer of any of Buyer's transportation service under the Local Transportation Agreement or the Transportation Agreement.

*Buyer  
UDC  
mitigation  
obligation*

ARTICLE X.  
PRICE

10.01 Generally

Buyer shall pay Seller for all Gas delivered hereunder on or after the Commencement of Commercial Operations (including, without limitation, during any Buyer Economic Extension Term) at the price determined pursuant to this Article X. The price of Gas shall be \$2.43 per MMBtu as of the Commencement of Commercial Operations. For each subsequent month, subject to the provisions of Articles XI and XVI, the price of Gas shall be increased or decreased from the price in effect for the prior month by a percentage (P) determined as follows:

where:

*14.72 - Column 3 of Appendix C, Schedule 4, Option A*

$$P = \frac{x-y}{y}$$

x = The Composite Energy Rate for the Current Month

y = The Composite Energy Rate for the Previous Month

*9.1.2 of PPA*

The Composite Energy Rate is the mathematical summation of the monthly capacity rate, the hourly energy rate, and any adjustments, as described in column 3 of Appendix C, Schedule 4, "Payments for Avoided 1991 Pulverized Coal Unit," Option A (with respect to the monthly capacity rate), Article IX, paragraph 9.1.2 (with respect to the hourly energy rate), and Article XX, paragraph 20.1, respectively, in the Power Purchase Agreement. Since the Composite Energy Rate is expressed in \$/Kw-hr, and the capacity rate is normally expressed in \$/Kw-month, the monthly capacity rate has to be converted into \$/Kw-hr by dividing the monthly capacity rate by the number of hours in one month.

If MCR = monthly capacity rate in \$/Kw-month

Hours = Number of hours in the applicable month

ER = Energy rate in \$/Kw-hr

A = Any positive or negative adjustment made to the capacity and/or energy payment expressed in \$/Kw-hr (it being understood that no adjustment shall be made for adjustments referenced in Schedules 5 and 6 to Appendix C of the Power Purchase Agreement);

then the Composite Energy Rate ("x", or "y") is equal to the following formula:

$$(MCR \div \text{Hours}) + ER + A$$

The operation of the foregoing formulas is illustrated in Exhibit F.

10.02 Additional Price from the End of the Basic Term Until the End of the Buyer Economic Extension Term



If this Agreement is extended pursuant to subclause 3.02(a)(1), in addition to the payments specified in clause 10.01, Buyer shall pay Seller an amount equal to the product of (x) all Gas delivered to the Project pursuant to this Agreement, and (y) the positive difference, if any, between the Reference Price and the price for the payments specified in clause 10.01. Any payments due and payable pursuant to this clause 10.02 (including interest due thereon pursuant to clause 11.03) shall be subject to the provisions of clause 11.06. Amounts payable pursuant to this clause 10.02 (including interest due thereon pursuant to clause 11.03) shall be referred to herein as "Special Purchase Payments". "Reference Price" shall mean:

- (a) if Gas is delivered to a Point of Delivery in either of FGT Zone 1 or FGT Zone 2, the price published in the table entitled "Prices of Spot Gas Delivered to Pipelines" in McGraw-Hill's Inside FERC's Gas Market Report for the date of delivery of such Gas applicable for these zones;
- (b) if any portion of such Gas is delivered to a Point of Delivery in FGT Zone 3 (instead of or in addition to either or both of FGT Zone 1 or FGT Zone 2), the weighted arithmetical average of the prices listed in Natural Gas Week for the date of delivery of such Gas, at the lines entitled "Florida Gas Transmission Co." across from Mustang Island (Tivoli) (for deliveries to Zone 1), Vermilion Parish, Louisiana (for deliveries to Zone 2), and St. Helena Park, Louisiana (for deliveries to Zone 3), under the column "This Week."

When and for so long as Inside FERC's Gas Market Report publishes a price for spot gas delivered into FGT Zone 3, then such price shall be used for all such Gas delivered to a Point of Delivery in Zone 3, and subclause 10.02(b) shall be suspended for that period of time. For the purposes of this subclause 10.02, all references to FGT Zones are taken from the FGT tariff in effect as of June 1, 1992. If, during the Term, (x) Inside FERC's Natural Gas Report or Natural Gas Week are no longer published, (y) any of the foregoing lines or columns are no longer included in such publications, or (z) the FGT zone designations no longer correspond to the foregoing price indices, then the parties shall agree, within 30 days of the occurrence of an event described in subclauses (x), (y) or (z) in this clause 10.02, to use the most nearly comparable publication for index.

#### 10.03 Price During any Other Extension Term

Buyer shall pay Seller for all Gas delivered hereunder, during any Buyer Non-Economic Extension Term or any Seller Extension Term, a price to be renegotiated and agreed upon among Buyer, Seller and Lender within 60 days after Buyer or Seller, as the case may be, has delivered written notice of the exercise of its right to extend this Agreement in accordance with the terms hereof. The price renegotiated and agreed upon by Buyer, Seller and Lender shall be effective the first day of such Extension Term. If Buyer, Seller, and Lender cannot agree upon such a price within such 60-day period, then the Agreement shall expire at the end of the Base Term or applicable Extension Term, as the case may be, subject to Seller's right of first refusal hereinafter set forth. Any disagreement on price pursuant to this clause 10.03 shall not be subject to the terms of clause 20.01.

10.04 Right of First Refusal.

(a) If, at any time during a period of six months after the expiration of this Agreement pursuant to clause 10.03 (but in no event after the twentieth anniversary of the Commencement of Commercial Operations), Buyer receives a bona fide offer to sell Gas to the Project (other than offers to sell Spot Gas, which shall be governed by clause 10.04(c)) from a third party ("Third Party Offer") Buyer shall notify Seller in writing of such Third Party Offer within three Business Days after Buyer's receipt thereof, and shall include in such notice a complete and accurate description of the following terms of such Third Party Offer: price, quantity, term, delivery points, and provisions (if any) for the reimbursement of GICs and UDCs. Such provisions shall be referred to herein as the "Offer Provisions." Seller shall have 15 days after receipt of Buyer's notice to notify Buyer in writing whether Seller will exercise its right of first refusal hereunder. If Seller shall not have notified Buyer within such 15-day period that Seller intends to exercise its right of first refusal hereunder, Seller shall be deemed to have given Buyer notice that Seller has elected not to exercise its right of first refusal. If Seller elects to exercise such right of first refusal, then Buyer and Seller shall enter into good faith negotiations for a mutually satisfactory definitive gas sales agreement (which shall include the Offer Provisions). If Seller elects not to exercise such right, or if, within 15 days after Seller's written notice exercising its right of first refusal hereunder Buyer and Seller, after engaging in good faith negotiations as herein provided, fail to execute and deliver a mutually satisfactory definitive gas sales agreement or, subject to the provisions of the next succeeding two sentences, Lender fails to approve such definitive gas sales agreement, then Buyer may proceed to enter into good faith negotiations for a mutually satisfactory definitive gas sales agreement (which shall include the Offer Provisions) with the Person (or any other Person) making the Third Party Offer (or any other Person making a bona fide offer which shall include the Offer Provisions), and Seller's right of first refusal with respect to such Third Party Offer shall expire if such Person (or any other Person making a bona fide offer which shall include the Offer Provisions) and Buyer have entered into a mutually satisfactory definitive gas sales agreement within 45 days after the later to occur of (i) the date that Buyer has received Seller's notice (or deemed to have received Seller's notice hereunder) that Seller will not exercise its right of first refusal hereunder and (ii) the expiration of the 15-day period described above. Any definitive gas sales agreement agreed upon by Buyer and Seller shall then be promptly submitted to Lender for its approval (which approval shall not be unreasonably withheld) and shall not be effective and enforceable until approved by Lender. If Lender does not provide notice to Buyer and Seller within 15 days after Lender's receipt of such definitive gas sales agreement of its objection to such gas sales agreement or any provision thereof, then Lender will be deemed for all purposes to have approved of such gas sales agreement. Subject to clause 10.04(b), it is specifically agreed and understood that any Material Change in the Offer Provisions shall be considered a new Third Party Offer, which shall also be subject to Seller's right of first refusal as herein set forth. "Material Change" shall mean any change in any of the Offer

*-under not a party*



Provisions, considered as a whole, which increases the Present Value of the initial Third Party Offer by 5% or more. "Present Value" shall mean the present value of a future payment, or stream of payments, discounted using full-year discounting for the calendar year in which such calculation is made at a discount rate equal to the Prime Rate plus 1%.

- (b) It is specifically agreed and understood that, promptly upon expiration of this Agreement pursuant to clause 10.03, Buyer shall seek, in good faith and with due diligence, alternative supplies of Gas for the Project on commercially reasonable terms.
- (c) Offers to sell Spot Gas to the Project shall be governed by the provisions of subclause 4.04(b), which are hereby incorporated mutatis mutandis. ROFR
- (d) It is specifically understood and agreed that Seller may exercise its audit rights under Article XVI to ensure Buyer's compliance with this clause 10.04, and may exercise such remedies for breach of this clause 10.04 as Seller may be entitled to hereunder, at law, or in equity.

## ARTICLE XI. BILLINGS AND PAYMENTS

### 11.01 Seller's Invoice

Seller shall deliver an invoice to Buyer for Gas deliveries made to Buyer during the preceding month, calculated in accordance with the terms of this Agreement, and for any other amounts due to Seller including, without limitation, any amounts due Seller from Buyer for GICs and Seller's UDCs, no later than the 15th day after the last day of the preceding month (the "invoice date"). Any amounts due and payable with respect to Special Purchase Payments shall be itemized separately on such invoice. If Seller shall not have received all information required for the preparation of such invoice from any transporter or other person prior to the invoice date, Seller shall nevertheless invoice Buyer for the quantity of Gas Nominated by Buyer pursuant to Article IV, subject to adjustment in succeeding months.

### 11.02 Payment Due Day

Buyer shall pay Seller the amount stated in Seller's invoice, by wire transfer of funds in favor of Seller to its account at its bank as set forth in clause 21.02 of this Agreement on or before the 25th day of each month (or, if the 25th day is not a Business Day, on or before the next Business Day following the 25th day of the month). Buyer's obligation to make payment to Seller on or before such date shall be postponed by one day for each day beyond the invoice date that Seller delays in forwarding an invoice to Buyer. Notwithstanding the foregoing (and subject to the provisions of clause 11.06), Special Purchase Payments shall not be due and payable until the Disbursement Date which occurs subsequent to the receipt by Buyer of the applicable invoice.

#### 11.03 Interest

If Buyer fails at any time to make each such payment when required in accordance with clause 11.02 or any other payment or amount due to Seller when required pursuant to any other provision of this Agreement, interest shall be calculated on the overdue amount at the annual rate of interest which is the lesser of (i) the Prime Rate plus one percent (1%) or (ii) the FERC Rate, from the date such payment was due until it is paid in full (including all accrued interest).

#### 11.04 Suspension and Termination

- (a) If any failure by Buyer to pay an amount due under this Agreement continues for three (3) Business Days, Seller, in addition to all other remedies available to Seller at law or in equity, shall have the right at any time, on giving written notice thereof to Buyer and Lender of not less than 10 days, to suspend deliveries of Gas hereunder. If such payment failure continues for 50 days after any suspension of deliveries by Seller, then Seller, in addition to all other remedies available to Seller at law or in equity, may terminate this Agreement upon 5 days' written notice to Buyer and Lender. Each party shall continue to be and remain liable for any and all obligations and liabilities which have accrued prior to the time of any termination of this Agreement by Seller pursuant to this provision, and Buyer shall remain liable for the reimbursement of any Seller's UDCs incurred by Seller under this Agreement, regardless of whether such Seller's UDCs relate to periods after the termination of this Agreement.
- (b) If Buyer disputes in good faith the total amount of any invoice prepared by Seller and if Buyer has paid that portion of the total invoiced amount not disputed by Buyer, then Buyer may suspend Seller's rights under subclause 11.04(a) by delivering the amount in dispute to Seller to be held in an escrow account at Royal Bank of Canada or another commercial bank of similar financial condition (as of the date of the execution and delivery of this Agreement) in the United States or Canada that is mutually acceptable to the parties, and such amount shall thereafter distributed to either Buyer or Seller (with interest to follow principal) or to both Buyer and Seller in accordance with and based upon the final agreement of the parties or the final determination of the amount, if any, owing to Seller (including interest) as determined pursuant to Article XX or by the final, nonappealable court order, as the case may be.

#### 11.05 Errors or Estimates

In the event an error is discovered or an estimate of quantities or purchase price is employed, an adjustment to correct the same shall be made as soon as possible but in no case later than 60 days after the date such error becomes known (or, in the case of estimates, no later than 60 days after the date the definitive quantities become known). Claims for errors shall be made promptly upon discovery, but in no event more than 24 months after the date of the billing in which such error arose.

#### 11.06 Special Reimburseme

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- (a) As used in this clause 11.06 the term "Special Reimbursement Payments" shall mean any and all amounts due by Buyer to Seller under the terms of this Agreement with respect to UDCs, GICs, and Special Purchase Payments.
- (b) Each of Buyer and Seller agree that notwithstanding any other provisions of this Agreement, the Special Reimbursement Payments shall only be due and payable on a Disbursement Date and only out of amounts, if any, distributed to Partnership pursuant to Section 4.04(viii) of the Escrow Agreement. Seller further agrees that in the event Buyer shall fail to pay amounts due to Seller on a Disbursement Date pursuant to the immediately preceding sentence, Seller shall not have any claim against Buyer for such amounts. *After payment of the Special Reimbursement Payments due to Seller under 10.1*
- (c) To the extent that Seller is not reimbursed for GICs, UDCs, and Special Purchase Payments on a Disbursement Date, the amount of the unreimbursed GICs, UDCs, and Special Purchase Payments (the "Special Reimbursement Payment Deficit Amount") shall be carried forward to the next Disbursement Date and added to the amount of GICs, UDCs, and Special Purchase Payments for which Seller is to be reimbursed for such succeeding Disbursement Date, along with accrued unpaid interest on such Special Reimbursement Payment Deficit Amount at the rate provided in clause 11.03. *under 10.1*
- (d) Buyer and Seller further agree that the obligation of Buyer to pay the Special Reimbursement Payments (past, present and future) and any amounts due with respect to the Special Reimbursement Payments shall only be payable subsequent to the Lease Commencement Date and that such obligation shall terminate upon the earlier to occur of (i) the termination of the Lease, (ii) the foreclosure of the Secured Parties' liens under any of the Security Documents, and (iii) the occurrence of a Bankruptcy Event with respect to Buyer or Buyer's general partner. It is specifically understood and agreed that neither Lender nor any permitted assignee of Lender shall have any liability whatsoever for any Special Reimbursement Payment Deficit Amounts.

## ARTICLE XII. MAINTENANCE OF AUTHORIZATIONS AND CONTRACTS

### 12.01 Generally

Each party shall use commercially reasonable efforts to maintain in good standing and in full force and effect (i) all authorizations obtained from Regulatory Authorities, and (ii) the Power Purchase Agreement, the Cogeneration Services Agreement, the Transportation Agreement, and any other agreement necessary for that party's performance of its obligations under this Agreement.

ARTICLE XIII.  
GAS SALES TO THIRD PARTIES

13.01 Definitions

In this Article:

- (a) "Buyer's GIC/Seller's UDC Obligations" means the obligations of Buyer to pay Seller for GICs or to reimburse Seller for any Seller's UDCs incurred by Seller for transportation of the MDQ to the Points of Delivery if Buyer is not utilizing all of the capacity reserved by Seller for Buyer's benefit under Seller's transportation arrangements. ] ? where is this at?
- (b) "Excess Quantity" means, on any day when Buyer is requesting that Seller deliver less than the MDQ, the difference between the MDQ and the total quantity of Gas Nominated by Buyer.
- (c) "Unutilized Transportation" means that portion of Seller's transportation service arrangements described in the definition of "Buyer's GIC/Seller's UDC Obligations" which Seller is not utilizing on a particular day to ship Gas for delivery to Buyer at the Point of Delivery.

13.02 Purchases by Buyer or Buyer's Designee at Contract Price

Buyer or Buyer's designee shall be entitled to Nominate the Excess Quantity in accordance with clause 4.06 and to sell the Excess Quantity into any markets at a price equal to or greater than the price then in effect in accordance with Article X in order to mitigate Buyer's GIC/Seller's UDC Obligations. Seller shall be obligated to deliver the Excess Quantity pursuant to the terms of this Agreement, and shall be entitled to payment therefor, as if such Excess Quantity constituted sales of Gas for consumption at the Project at the price then in effect under this Agreement. All such sales of the Excess Quantity at the price then in effect under Article X shall represent:

- (a) a credit against the GIC (and shall be included in TVD for that purpose); and
- (b) a credit against the Seller's UDC calculation.

13.03 Purchases by Buyer or Buyer's Designee at Lower Prices

If Buyer or Buyer's designee wishes to purchase the Excess Quantity in order to mitigate Buyer's GIC/Seller's UDC Obligations at a price lower than the price then in effect under Article X, then Buyer or Buyer's designee may request that Seller sell the Excess Quantity to Buyer or Buyer's designee at a lower price and over a specified time period. Such request must be made in writing and delivered to Seller not later than 10 Business Days before the end of the month prior to the month for which such sales are contemplated to be made. If Seller accepts the lower price and the specified time period proposed by Buyer or Buyer's designee (and Seller



is entitled to reject any such proposals in its sole discretion), then Seller shall be obligated to deliver the Excess Quantity pursuant to the terms of this Agreement.

#### ARTICLE XIV. INDEMNIFICATION AND TAXES

##### 14.01 Seller's Indemnification

Seller agrees to indemnify Buyer and save Buyer harmless from and against any and all present and future royalties and taxes, including, without limitation, business transfer taxes, value added taxes, and all other forms of taxes, levies or assessments, whether or not similar or dissimilar to the foregoing, or license fees or charges on Gas sold hereunder, which are applicable up to the time that title to Gas passes from Seller to Buyer under this Agreement.

##### 14.02 Buyer's Indemnification

Buyer agrees to indemnify Seller and save Seller harmless from and against any and all present and future royalties and taxes including, without limitation, business transfer taxes, value added taxes, and other forms of taxes, levies or assessments, whether or not similar or dissimilar to the foregoing, or license fees or charges on Gas sold hereunder which are applicable after the time that title to Gas passes from Seller to Buyer under this Agreement.

#### ARTICLE XV. WARRANTY OF TITLE AND INDEMNIFICATION

##### 15.01 Authorization

Each of the parties represents and warrants to the other that, subject to the corporate and partnership approvals referred to in Article II:

- (a) it has full right, power and authority to enter into this Agreement and to perform its respective obligations hereunder; and
- (b) this Agreement has been duly executed and delivered by such party.

##### 15.02 Title Warranty

Seller represents and warrants that:

- (a) it shall have good title or the right to sell to Buyer or Buyer's designee all Gas delivered to Buyer or Buyer's designee under this Agreement;
- (b) all Gas sold and delivered under this Agreement to Buyer or Buyer's designee shall be free and clear from all liens and claims arising, attaching or accruing up to the time the Gas is delivered to Buyer or Buyer's designee; and

- (c) it has no knowledge or information which indicates that Seller cannot provide Buyer or Buyer's designee with good title to the Gas to be sold and delivered under this Agreement.

15.03 Limitation of Warranties

Except as specifically set forth in this Agreement, SELLER MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED WITH RESPECT TO THE GAS TO BE DELIVERED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15.04 Seller's Indemnification

Seller shall indemnify Buyer and Buyer's designee and save Buyer or Buyer's designee harmless from and against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons in connection with or with respect to Gas sold hereunder and arising out of actions which occur or have occurred up to the time that title to the Gas passes from Seller to Buyer or Buyer's designee.

15.05 Buyer's Indemnification

Buyer shall indemnify Seller and save Seller harmless from and against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons in connection with or with respect to Gas sold hereunder and arising out of actions which occur or have occurred after title to the Gas passes from Seller to Buyer or Buyer's designee.

ARTICLE XVI.  
RIGHT TO AUDIT

16.01 Right to Audit

From time to time but no more than once in a calendar year (except in the case of audits confirming compliance with clause 10.04, which may occur as frequently as Seller deems advisable) and prior notice of not less than 15 Business Days, either party shall have the right, at its sole cost and expense to audit the records of the other party to the extent required for the purposes of confirming compliance with the provisions of clause 10.04 or verifying the accuracy of any invoice, statement, charge, computation or demand (including the accounting for amounts payable under the Power Purchase Agreement) under or relating to this Agreement. Such audit may be performed, at the election of the auditing party, by such party's employees or by a nationally recognized firm of certified accountants (other than the firm used by that party for the preparation of its annual audited financial statements). The appointed auditor shall agree with the audited party to treat as confidential any information disclosed to the auditor or otherwise uncovered by the auditor in the course of the audit which is not directly relevant to the foregoing purposes of the audit.

A  
3rd Amendment



16.02 Errors Uncovered by Audit

Any error uncovered by an auditor (pursuant to clause 16.01) shall be promptly reported to the party being audited and, upon the final determination by the parties of the existence and amount of the error, the party which is obligated to make payment shall pay to the other party the amount of the error.

16.03 Limitation

Notwithstanding clause 16.01, no adjustments shall be required in respect of any error which is not reported to the audited party within 24 months of the time that the error occurred.

16.04 Arbitration

If the parties have not finally agreed to the existence and the amount of any error within 30 Business Days of the existence of the alleged error having been communicated to the audited party, then either party shall have the right to refer to the matter to binding arbitration pursuant to Article XX, but subject to the limitations set forth in clause 20.01.

**ARTICLE XVII.  
DELIVERY FAILURE**

17.01 Failure to Deliver Gas - Compensation

- (a) If Seller fails to deliver to the Point of Delivery any quantity of Gas Nominated by Buyer up to the MDQ, at the price provided for in Article X, when Seller's delivery obligation in respect of such undelivered quantity has not been suspended, in whole or in part, by the terms of this Agreement or when Seller's failure to deliver such undelivered quantity is not otherwise excused or permitted by the terms of this Agreement (such undelivered quantity being referred to in this clause as the "deficient quantity"), then Seller shall pay damages suffered by Buyer not to exceed the difference (if a positive number) between:
- (i) the sum of:
    - A. all reasonable out-of-pocket expenses incurred and paid by Buyer to third persons in obtaining Gas from another supplier or alternative fuel which is consumed at the Project in substitution for the deficient quantity (the "replacement fuel"); and
    - B. the total cost to Buyer for such replacement fuel, including but not limited to transportation costs and Buyer's UDCs which Buyer incurs, but net of any compensation or other benefits received by Buyer as a result of purchasing or consuming replacement fuel,

less

- (ii) the total of all costs, charges and expenses which Buyer would have incurred had Seller delivered the deficient quantity (including, without limitation, the price which Buyer would have been required to pay to Seller pursuant to Sections 10.01 and 10.03 of this Agreement for the deficient quantity under this Agreement had Seller delivered the deficient quantity) and all costs, charges, and expenses which Buyer would have been required to pay to PGS in accordance with the terms of the Transportation Agreement and to other transporters between the Points of Delivery and the Project (including, without limitation, all demand and commodity charges) had Seller delivered the deficient quantity to Buyer in accordance with the terms of this Agreement.
- (b) Buyer shall use commercially reasonable efforts to:
- (i) purchase the lowest-priced replacement fuel reasonably available, whether from an Affiliate of either party or any other person; and
  - (ii) use Buyer's rights under the Transportation Agreement for the transportation of replacement Gas unless Buyer is able to obtain the delivery of Gas to the Project more economically by using another transportation system.
- (c) If Seller has failed to deliver Gas to the Project for a reason not excused by this Agreement, and Buyer, after using commercially reasonable efforts, is unable to obtain alternative fuel at any price in substitution for the deficient quantity, Seller shall pay damages suffered by Buyer not to exceed, for the period during which such deficiency shall be in effect, an amount equal to the sum of (i) all reasonable out-of-pocket expenses incurred and paid by Buyer to third persons in its efforts to obtain replacement Gas or fuel, (ii) the product of (x) 1/365 times the projected fixed cost of operating the Project for the year in which the Seller failed to deliver Gas less any savings and variable costs (including but not limited to the cost of Gas) arising from non-operation of the Project, and (y) the number of days in which Seller has failed to deliver Gas, and (iii) the product of (x) 1/365 times the amount of costs for items set forth in Exhibit G for the calendar year in which Seller has failed to deliver Gas, and (y) the number of days in which Seller has failed to deliver Gas, provided, however, that in no event shall the sum payable in any calendar year under subclauses 17.01(c)(i)-(iii) exceed the amount of costs for that calendar year for the items set forth in Exhibit G.

#### 17.02 Additional Compensation

Buyer shall use commercially reasonable efforts to obtain replacement fuel from time to time when Seller does not deliver the deficient quantity. If Buyer, after utilizing such efforts, is unable at any time to obtain replacement Gas or fuel equivalent to the deficient quantity, then in addition to any amount payable to Buyer pursuant to clause 17.01, Seller shall pay to Buyer the Buyer's UDCs payable by Buyer to PGS and attributable to that portion of the deficient quantity in respect of which Buyer was unable to obtain replacement Gas or fuel. Such

Non exposure if no replacement gas available



reimbursement shall be made subject to and in accordance with the provisions in clause 9.03 governing Seller's reimbursement of Buyer for any Buyer's UDCs.

17.03 Interest on Overdue Amounts

- (a) Seller shall reimburse Buyer for any amounts due Buyer under clauses 17.01 and 17.02 within 15 days of Seller's receipt of both an invoice from Buyer for the amount due and a detailed summary (with supporting third party invoices) of the costs, charges and expenses incurred by Buyer. Subject to subclause 17.03(b), if Seller does not reimburse Buyer for the amount set forth in Buyer's invoice by such 15th day, then interest shall accrue on the overdue amount from and after such 15th day at the rate and in the manner set forth in clause 11.03 until such amount is paid in full.
- (b) If Seller fails to reimburse Buyer within 30 days following the 15 day period referred to in subclause 17.03(a), then with the prior consent of Lender Buyer may, on 5 Business Days' written notice to Seller, elect to terminate this Agreement unless Seller has disputed in good faith the overdue amount. If Seller disputes in good faith the total amount of any invoice prepared by Buyer and if Seller has paid that portion of the total invoiced amount not disputed by Seller, then Seller may suspend Buyer's rights under subclause 17.03(a) by delivering the amount in dispute to Buyer to be held in escrow by Buyer and thereafter distributed to either Seller or Buyer (with interest to follow principal) or to both Seller and Buyer in accordance with and based upon the final agreement of the parties or the final determination of the amount if any, owing to Buyer (including interest) as determined by the final non-appealable order of a court or other tribunal having jurisdiction over the controversy between the parties.

Any termination of this Agreement pursuant to this clause shall be effective on the 30th day following the receipt by Seller of such termination notice unless Seller pays the disputed amount to Buyer within such 30 day period, in which event this Agreement shall be confirmed and ratified in all respects.

17.04 Limitation of Liability - Seller's Delivery Obligations

Seller's liability to Buyer for the failure to deliver any quantity of Gas Nominated by Buyer pursuant to this Agreement (when Seller's delivery failure was not otherwise excused) shall be limited to those costs, charges and expenses payable by Seller pursuant to clauses 17.01, 17.02 and 17.03 (such costs, charges, and expenses being herein called the "costs"). The liability of Seller's Guarantor shall be limited to the costs payable by Seller pursuant to clauses 17.01, 17.02 and 17.03 to the extent not paid by Seller, it being understood the Seller's Guarantor shall have no liability whatsoever for the costs except as described herein and as provided for in the Guarantee executed and delivered to Buyer pursuant to clause 18.01 of this Agreement. Under no circumstances of any nature or kind whatsoever shall Seller or Seller's Guarantor be liable or in any way responsible for any other costs, charges, expenses, fees, losses or damages of any nature or kind whatsoever, whether direct or indirect, foreseeable or not foreseeable, consequential or inconsequential and which are incurred or suffered by Buyer or

any other person arising out of or in any way pertaining or attributable to Seller's failure to deliver Gas pursuant to the terms of this Agreement including, without limitation, any claims or damages of any Affiliate of Buyer, any of Buyer's Gas transporters, any financial institution having a financial or security interest in the Project, any investor having an interest in the Project, any direct or indirect purchaser or consumer of electrical power or steam produced at the Project or otherwise.

#### 17.05 Sole Remedies - Buyer

Buyer's rights to:

- (a) obtain reimbursement for the costs of replacement fuel and other related costs from Seller and Seller's Guarantor pursuant to and in accordance with clauses 17.01 and 17.02;
- (b) collect interest on the amounts described in subclause 17.03(a) and terminate this Agreement pursuant to subclause 17.03(b); and
- (c) proceed against Seller's Guarantor in accordance with and subject to the terms of clause 17.04

shall be the sole and exclusive remedies available to Buyer against each of Seller and Seller's Guarantor for each and every breach or other non-performance by Seller of any nature or kind whatsoever under this Agreement and Buyer hereby waives, to the extent permitted by law, for all purposes whatsoever any other rights and remedies of any nature or kind whatsoever which Buyer may have or otherwise have had at any time against Seller and Seller's Guarantor whether at law, in equity or otherwise.

#### 17.06 Limitation of Liability - Buyer's Payment Obligations

In the event that Buyer fails to make any payment in a timely manner in respect of any amount owed to Seller under this Agreement (whether for Gas delivered to Buyer, any GIC payments, any payments in respect of Seller's UDCs or otherwise), then Buyer's liability shall be limited to the amount owing therefor (including interest thereon at the rate set forth in clause 11.03), subject in all respects, however, to clause 11.04. Under no circumstances of any nature or kind whatsoever shall Buyer be liable or in any way responsible for any other costs, charges, expenses, fees, losses or damages of any nature or kind whatsoever whether direct or indirect, foreseeable or not foreseeable, consequential or inconsequential and which are incurred or suffered by Seller or any other person arising out of or in any way pertaining or attributable to Buyer's failure to pay any amount due under this Agreement including, without limitation, any claims or damages of any Affiliate of Seller.



**ARTICLE XVIII.  
GUARANTEE**

18.01 Seller's Guarantor

Pursuant to subclause 2.01(c) and clause 17.04, Seller's Guarantor shall execute and deliver to Buyer the Gas Guarantee and Agreement in substantially the form attached to this Agreement as Exhibit A (the "Guarantee").

**ARTICLE XIX.  
FORCE MAJEURE**

19.01 Suspension of Obligations

Subject to the other provisions of this Article XIX and this Agreement, if either party to this Agreement is unable, by reason of force majeure, to perform, in whole or in part, any obligation set forth in this Agreement, then such obligation shall be suspended to the extent necessary for the period of such force majeure condition, provided, however, that declaration of force majeure as a result of the failure of any specific individual well(s) or appurtenant facilities shall be limited to those quantities produced by such well(s) as have been relied upon by Seller for the performance of this Agreement.

19.02 Definition

For the purposes of this Agreement, the term "force majeure" shall mean any acts of God, including, without limitation, lightning, hurricanes, earthquakes and storms and, in addition, shall mean any strikes, lockouts or other industrial disturbances, acts of the public enemy, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, floods, fires, washouts, arrests and restraints, civil disturbances, explosions, failure or breakages of or accidents to machinery or lines of pipe, the termination or suspension of or reduction in quantities under any removal permit, export license or other authorization required by Seller to deliver Gas to Buyer (provided that and only to the extent Seller is not in breach of any covenant under this Agreement to maintain the affected authorization), the termination or suspension of or reduction in volumes under any export or import authorization or other authorization required by Buyer to export or import Gas or consume Gas at the Project (provided that and only to the extent Buyer is not in breach of any covenant under this Agreement to maintain the affected authorization), hydrate obstructions of lines of pipe, freezing of wells or delivery facilities, well blowouts, craterings, mechanical breakdowns or accidents, the orders of any court or Regulatory Authority, any suspension, curtailment, or termination of transportation service by a transporter of Gas to or for Buyer or Seller or a failure of such a transporter to renew, extend or provide supplemental replacement transportation arrangements (other than due to the default of or omission by the applicable party under the transportation service arrangements and provided, however, that neither party may claim force majeure for interruption of transportation unless such party has reserved firm capacity for the transportation of quantities of Gas to be delivered or consumed hereunder), any failure by the power purchaser under the Power Purchase Agreement to purchase electricity due to permitted or excused unscheduled outages under the

irrelevant to  
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terms of the Power Purchase Agreement, or any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which, by the exercise of due diligence, such party is unable to overcome.

#### 19.03 Exceptions

Neither party shall be entitled to the benefit of the provision of clause 19.01 under any or all of the following circumstances:

- (a) to the extent that the inability to perform was caused by the negligence or contributory negligence of the party claiming suspension or as a result of a breach of an obligation to be performed by the party claiming suspension; or
- (b) to the extent that the inability to perform was caused by the party claiming suspension having failed to diligently attempt to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or
- (c) if the inability to perform was caused by lack of funds or the non-payment of any amount or amounts due hereunder; or
- (d) unless as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of force majeure and would affect the claiming party's ability to observe or perform any of its covenants or obligations under this Agreement, the party claiming suspension shall have given to the other party written notice, to the effect that such party is unable by reason of force majeure (the nature whereof shall be therein specified) to perform the particular covenants or obligations; or
- (e) to the extent that the claimed force majeure occurrence pertains to the Cogeneration Services Agreement howsoever occurring.

#### 19.04 Notice of Rectification

The party claiming suspension shall likewise give notice, as soon as possible, after the force majeure condition shall have been remedied to the effect that the same has been remedied and that such party has resumed, or is then in a position to resume, the performance of its covenants and obligations.

#### 19.05 Settlement of Strikes

Notwithstanding anything to the contrary in this Article XIX expressed or implied, the parties agree that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the particular party involved therein and such party shall make settlement thereof at such time and on such terms and conditions as it may deem to be advisable and no delay in making such settlement shall deprive such party of the benefit of clause 19.01.



19.06 Payment Obligations

*Special Reimbursement Agreements*  
Notwithstanding the foregoing (and, in the case of subclauses 19.06(a) and 19.06(b), subject to clause 11.06), the occurrence of any event which would otherwise constitute force majeure shall not relieve Buyer of the obligation, if any, to make timely payment to Seller for:

- (a) Seller's UDCs unless Seller was able to obtain relief from the transporter in the particular circumstances from the obligation to pay demand charges (it being understood, however, that, except as explicitly provided in subclause 9.02(a), Seller is under no obligation to expend any amount or to make any economic concessions whatsoever in order to obtain such relief). It is specifically understood and agreed that Seller's failure to obtain such relief or Buyer's failure or inability to accept deliveries of Gas by the Commencement of Commercial Operations for any reason whatsoever (other than Seller's failure to deliver Gas for reasons not permitted by this Agreement) shall not affect Buyer's obligation to make UDC payments. *soft mitigation on UDCs*
- (b) the Gas Inventory Charge (except to the extent that such charge is reduced, in accordance with the terms of subclause 8.01(a), for quantities not Nominated due to a force majeure occurrence). A force majeure occurrence which initially prevents or hinders Buyer from Nominating or taking or consuming Gas on the Commencement of Commercial Operations shall not entitle Buyer to a credit against the Gas Inventory Charge. In particular and without limitation, the failure of Buyer to obtain the right to commence firm deliveries under the Local Transportation Agreement by the Commencement of Commercial Operations shall not constitute a force majeure occurrence entitling Buyer to reduce its obligations in respect of the Gas Inventory Charge. It is specifically understood and agreed that the failure to obtain alternate transportation service arrangements or Buyer's failure or inability to accept deliveries of Gas by the Commencement of Commercial Operations for any reason whatsoever shall not affect Buyer's obligation to make Gas Inventory Charge payments; and
- (c) any amount due to Seller for Gas deliveries made to Buyer prior to the occurrence of force majeure [and Seller's receipt of written notice of such occurrence in accordance with clause 19.03(d)].

19.07 No Extension of Term

The Term shall not be extended by the length of any force majeure occurrence claimed by either party.

19.08 Extension of Force Majeure

Either party shall be entitled to terminate this Agreement on 60 days' notice if the other party has claimed a force majeure occurrence which has remained in effect for 365 days. A party affected by an extended force majeure occurrence shall not manipulate its performance under this Agreement in order to avoid the application of this provision. The termination of this

Agreement under this clause 19.08 shall not affect the rights and obligations of the parties hereunder which had accrued prior to the date of termination.

## ARTICLE XX. ARBITRATION PROCEDURE

### 20.01 Arbitration

Disputes arising under this Agreement for which the claim is reasonably likely to be up to the amount of \$250,000 (determined in good faith), shall be submitted to arbitration in accordance with the provisions of this Article. Any disputes regarding questions of law (regardless of amount), or for which the claim is reasonably likely to exceed \$250,000 (determined in good faith), are expressly excluded from this Article XX and the parties shall have such rights and remedies to which such parties may be entitled at law or in equity with respect to such disputes.

### 20.02 Appointment of Arbitrators

(a) Subject to clause 20.01, either party may seek arbitration of a dispute arising under this Agreement by giving written notice to the other party. In such notice, such party shall name one arbitrator. The party receiving notice shall, within 10 days after receipt of the other party's notice, name the second arbitrator. The two arbitrators so appointed shall within 10 days after the naming of the second arbitrator appoint the third.

(b) If the party receiving notice of arbitration should fail to appoint an arbitrator within 10 days after a request by the party issuing notice for such appointment, or if the two arbitrators so appointed should fail within 10 days after the appointment of the second of them to agree on a third arbitrator, the arbitrator or arbitrators necessary to complete a board of three arbitrators shall be appointed, upon application of the party who initially elected to exercise arbitration, to the active United States District Judge, senior in the point of service, of the United States District Court of the Southern District of New York. If the judge, within 30 days of application, should fail or refuse to act, then either party may request the New York chapter of the American Arbitration Association to select the arbitrator or arbitrators to complete the panel.

### 20.03 Qualification of Arbitrators

The arbitrator selected to act hereunder shall be qualified by education, experience, and training to pass upon the particular question in dispute. No arbitrator shall be an officer, director, employee, agent, attorney or consultant of either party, or any of its respective Affiliates.

### 20.04 Determination by Arbitrators

The arbitrators chosen shall proceed immediately to hear and determine the question or questions in dispute in New York City, New York. The decision of the arbitrators shall be



made within 60 days after the appointment of the third arbitrator. If the arbitrators fail to make a decision within 60 days after the appointment of the third arbitrator, then either party may elect to have a new panel chosen in like manner as if none had previously been selected.

#### 20.05 Decision in Writing

The decision of the arbitrators shall be in writing, signed by a majority of the arbitrators, and shall be final and binding upon the parties as to any question or questions so submitted to arbitration.

#### 20.06 Compensation of Arbitrators

The compensation and expenses of the arbitrators (unless otherwise determined by the arbitrator) shall be paid by the party who does not prevail in the arbitration. Notwithstanding the foregoing, any out-of-pocket expenses incurred by a party to obtain the appointment of one or more arbitrators pursuant to clause 20.02 shall be shared equally by Buyer and Seller.

#### 20.07 Performance During Arbitration

All performance required by both parties under this Agreement shall, if reasonably possible, continue during arbitration proceedings or during any legal proceedings.

#### 20.08 Applicable Rules

In all respects not provided for elsewhere in this Article, the arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association, except that (i) the American Arbitration Association shall not be constituted as the administrator of the arbitration, and (ii) if either party requests discovery hereunder, the Federal Rules of Civil Procedure shall apply to such discovery request. If there is a conflict between this Agreement and such Rules, the provisions of this Agreement shall prevail.

### ARTICLE XXI. COMMUNICATIONS

#### 21.01 Notices

Each request, notice, statement, communication, Nomination, invoice or payment (a "notice") provided for in this Agreement shall be in writing (in order to be effectively given) and shall be directed to the party to whom given, made or delivered at such party's address for service as specific in clause 21.02, unless otherwise advised in writing by such party, and may be served:

- (a) personally by delivering it to the party on whom it is to be served, provided such delivery shall be during normal business hours of that party. Any personally served notice shall be deemed received by the addressee when actually delivered as aforesaid; or

- (b) by facsimile (or by a telecopier, telex or any other like method by which a written and recorded message may be sent) directly to the party on whom it is to be served, provided that a notice may not be sent by this method if the sender is aware that the addressee's receiving equipment is not functioning properly. Any notice so served shall be deemed received by the addressee thereof when actually received by it if received within the normal working hours of that Business Day, or, if received after the conclusion of the normal working hours of that Business Day, at the commencement of the next ensuing Business Day following transmission thereof; or
- (c) by mailing it special delivery, registered mail, or certified mail (return receipt requested) postage prepaid, to the party on whom it is to be served, provided that a notice may not be sent by this method during threatened or actual postal disruptions in the United States. Any notice so served shall be deemed to be received by the addressee at noon, EDT, on the earlier of the actual date of receipt or the fifth Business Day following the mailing thereof; or
- (d) by Federal Express or other express mail service to the party on whom it is to be served. Any notice sent by this method shall be deemed to be received by the addressee on the next Business Day following the mailing of such notice. The time for payment of any invoice for amounts payable pursuant to this Agreement shall be calculated only from the date on which the party to which the invoice is directed receives such invoice, whether by facsimile or other method referred to in subclause 21.01(b) or otherwise.

#### 21.02 Addresses

The address for service of notices for each of the parties, which may be changed from time to time by written notice given as aforesaid, shall initially be as follows:

##### SELLER:

##### Invoices and Other Communications:

North Canadian Marketing Corporation  
1600 Smith Street, Suite 3910  
Houston, Texas 77002  
Attention: Manager, Gas Supply  
Telephone No.: (713) 753-0900  
Facsimile No.: (713) 753-0999

##### Payments:

North Canadian Marketing Corporation  
1600 Smith Street, Suite 3910  
Houston, Texas 77002  
Attention: Manager, Gas Supply



Telephone No.: (713) 753-0900

Facsimile No.: (713) 753-0999

Via Wire Transfer:

Royal Bank of Canada

Account Number: 405-787-3

BUYER:

Invoices and Other Communications:

Lake Cogen, Ltd.

c/o North Canadian Power Incorporated

1100 Town & Country Road, Suite 800

Orange, California 92668

Attention: Mr. Greg B. Lawyer

LENDER:

c/o TIFD III-C Inc.

c/o General Electric Capital Corporation

Transportation & Industrial Funding Division

1600 Summer Street, 6th Floor

Stamford, Connecticut 06927

Attention: Managing Counsel

## ARTICLE XXII. MISCELLANEOUS

### 22.01 Further Assurances

Each party shall execute, acknowledge, verify and deliver any and all documents which from time to time may be reasonably requested by the other party to carry out the purposes and the intent of this Agreement.

### 22.02 Governing Law: Exclusive Jurisdiction

(a) All questions concerning the validity or meaning of this Agreement or relating to the rights and obligations of the parties with respect to performance under this Agreement shall be construed and resolved under the laws of the State of Texas, without regard to the conflict of laws provisions thereof.

(b) Except as expressly provided in clause 20.01, exclusive jurisdiction as to all disputes hereunder shall be vested in the United States District Court for the Southern District of New York. Subject to the provisions of the foregoing sentence, each of the parties

irrevocably submits to the jurisdiction of such Court, and irrevocably waives (i) any objection which such party may have at any time to the laying of venue of any suit, action, or proceeding arising under or relating to this Agreement brought in such Court, (ii) any claim that any such suit, action or proceeding brought in such Court has been brought in an inconvenient forum, and (iii) the right to object, with respect to such claim, suit, action or proceeding, that such Court does not have jurisdiction over such party.

(c) The parties agree that, so long as this Agreement is in effect, each such party will maintain a place of business or an agent for service of process in New York City and give prompt notice to each other party hereto of the address of such place of business or such agent, as the case may be, and of any change of address of such place of business and of the name and address of any new agent appointed by it, as applicable. If there is for any reason no agent for service of process of a party available to be served, and if either party at that time has no place of business in New York City, then each such party irrevocably consents to service of process by registered or certified mail, postage prepaid, to such party's address as set forth in clause 21.02.

(d) Each party initially and irrevocably designates CT Corporation to receive for and on behalf of such party service of process in New York City with respect to this Agreement.

#### 22.03 Severability

The intention of the parties is to comply fully with all applicable laws and this Agreement shall be construed consistently with such laws. If and to the extent that any court of competent jurisdiction determines that any provision of this Agreement is invalid, such determination shall in no way affect the validity of the other provisions of this Agreement, which shall remain in full force and effect.

#### 22.04 Non-Waiver

No failure by any party to insist upon compliance with any term of this Agreement, to exercise any option, enforce any right, or seek any remedy upon any default by the other party shall affect, or constitute a waiver of, the first party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to the default or any prior, contemporaneous or subsequent default; nor shall any custom or practice of the parties at variance with any provision of this Agreement affect, or constitute a waiver of, any party's right to demand strict compliance with all of the provisions of this Agreement.

#### 22.05 Headings

The division of this Agreement into Articles, clauses, subclauses, paragraphs and subparagraphs and the insertion of headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

#### 22.06 Complete Agreement



This Agreement contains the entire agreement between the parties and supersedes all prior or contemporaneous discussions, negotiations, illustrations, representations or agreements relating to the subject matter of this Agreement. No changes to this Agreement shall be made or be binding upon any party unless made in writing and signed by each party.

#### 22.07 Assignment

- (a) Either party shall be entitled to assign its interest in this Agreement to an Affiliate provided that both the assigning party and the Affiliate first enter into a satisfactory agreement with the other party to this Agreement whereby the assigning party and the Affiliate agree with the other party to be severally as well as jointly and severally liable for the performance of all of the assigning party's obligations under this Agreement. The non-assigning party to this Agreement shall not be entitled to withhold its consent to any such assignment if the foregoing agreement is executed in favor of the non-assigning party.
- (b) Either party shall be entitled to assign its interest in this Agreement to any entity which shall succeed, by purchase, merger, consolidation or other transfer, to substantially all of the assets of the assigning party.
- (c) Except as provided for in subclauses 22.07(a) and (b), a party to this Agreement may assign, sell or transfer its interest under this Agreement (other than for security or related purposes) upon receiving the prior written consent of the other party, which consent shall not be unreasonably withheld. Without limiting or restricting the generality of the foregoing, it shall not be unreasonable for a party to deny its consent where, in its opinion, acting reasonably, the proposed assignee, purchaser or transferee lacks the capacity or resources necessary to ensure the proper conduct and completion of its obligations under this Agreement over the remaining portion of the Term or if the proposed assignee does not enter into an agreement with the non-assigning party whereby the proposed assignee agrees to perform all of the obligations of the assigning party under this Agreement.
- (d) Nothing herein contained shall prevent or restrict either party, without the consent of the other, from pledging or granting a security interest in, or assigning as collateral all or any portion of such party's interest in this Agreement to secure any debt or obligation of such party under any mortgage, deed of trust, security agreement or similar instrument, provided that the rights of the secured party shall be subject to the terms of this Agreement. Each party agrees to execute promptly upon request by the other party one or more consents to assignment for financing purposes reasonably acceptable to the party providing the consent and to the Lender.

#### 22.08 Joint Efforts

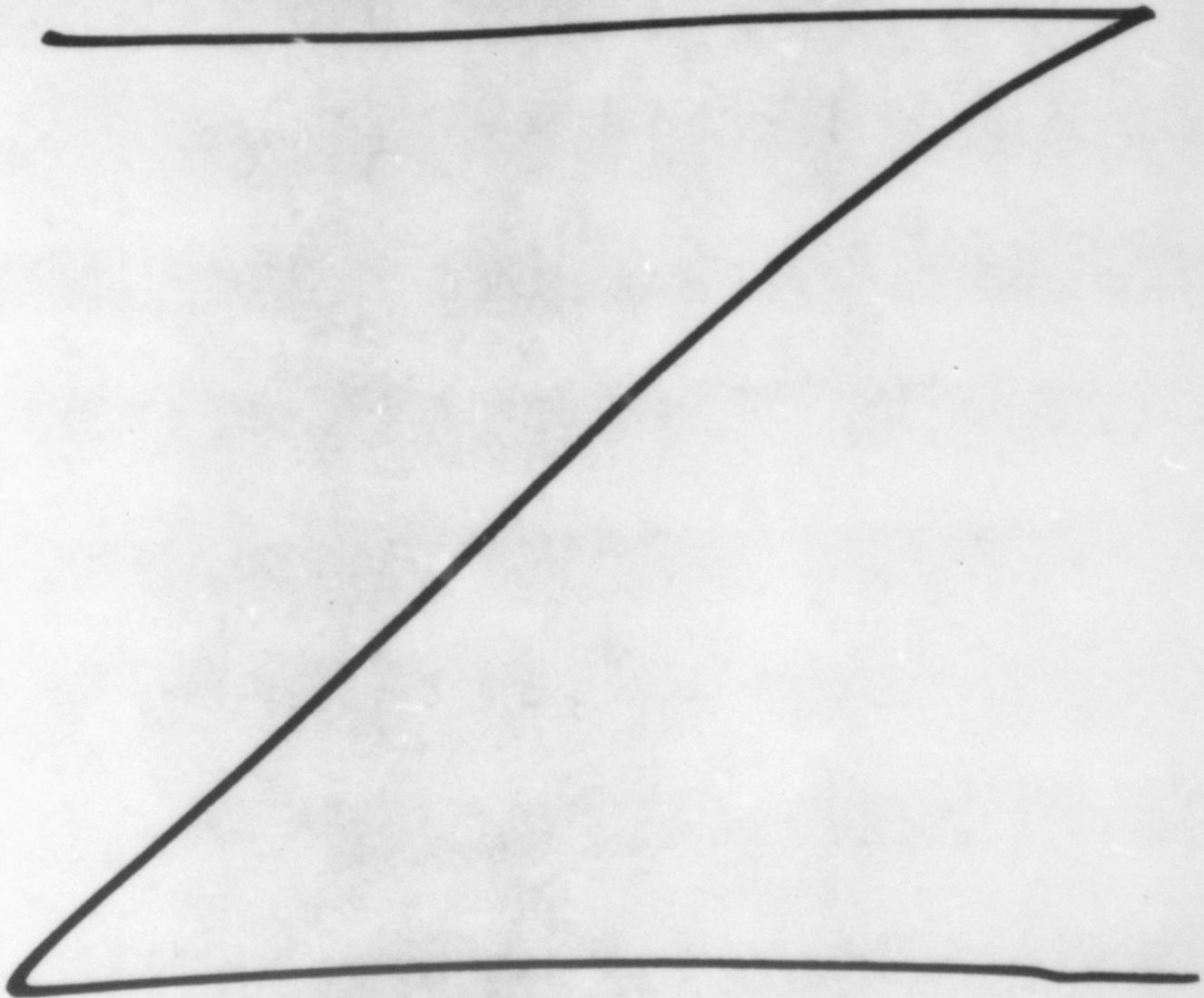
This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties, and shall not be construed against one party or the other as a result of the preparation, submittal or other event of negotiation, drafting or execution thereof.

22.09 Time of the Essence

Time shall be of the essence hereof.

22.10 Inurement

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, and the Lender shall be considered a third-party beneficiary hereunder. Nothing contained in this Agreement, express or implied, is intended to confer upon any other person or entity any benefits, rights or remedies.



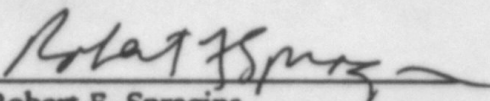


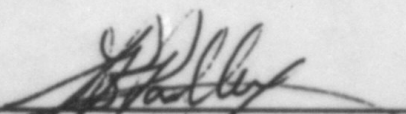
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IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

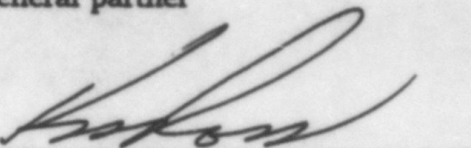
NORTH CANADIAN MARKETING  
CORPORATION

By:   
Robert F. Spragins  
Vice President, Supply Development

By:   
G. Barry Padley  
Corporate Secretary

LAKE COGEN, LTD.

By: NCP Lake Power Incorporated,  
general partner

By:   
Kenneth M. Ross, Vice President



## EXHIBIT A

GAS GUARANTEE AND AGREEMENT dated as of July 29, 1992, among NORTH CANADIAN OILS LIMITED, a corporation amalgamated under the laws of Canada (the "Guarantor"), THE CITIZENS AND SOUTHERN NATIONAL BANK OF FLORIDA, a national banking association, not in its individual capacity but solely as Owner Trustee ("Owner Trustee"), TIFD III-C INC., a Delaware corporation ("Owner Participant"), and LAKE COGEN, LTD., a Florida limited partnership ("Partnership").

WHEREAS, NCM and Partnership have entered into a Gas Purchase Agreement dated as of July 29, 1992 (the "Natural Gas Purchase Agreement");

WHEREAS, simultaneously with the execution and delivery of this Gas Guarantee and Agreement, certain of the parties hereto have entered into a Participation Agreement dated as of the date hereof, among Partnership, Owner Trustee, Owner Participant and General Electric Capital Corporation ("GECC") (the "Participation Agreement"), which contemplates, among other things, the execution and delivery by the parties hereto of this Gas Guarantee and Agreement.

NOW, THEREFORE, to induce each of Partnership, Owner Trustee, Owner Participant, and GECC to enter, and as partial consideration for each of Partnership, Owner Trustee, Owner Participant, and GECC, entering into the Operative Documents, the parties hereto hereby agree as follows:

SECTION 1. Definitions. Unless the context shall otherwise require, the capitalized terms used herein (and not otherwise defined herein) shall have the meanings assigned to them in Appendix A to the Participation Agreement, which also contains rules as to usage that shall be applicable herein; provided, however, that for purposes of Sections 5(g)(iii), 5(i), and 5(j) only, the definitions in Schedule I hereto shall govern, and shall supersede any conflicting definitions in Appendix A to the Participation Agreement.

### SECTION 2. Gas Purchase Obligations Guarantee: Certain Waivers: Reinstatement, etc.

(a) From and after the date hereof, Guarantor hereby unconditionally and irrevocably guarantees, as primary obligor under this Gas Guarantee and Agreement and not merely as surety, to pay to the Collection Account (or, if Partnership shall no longer be in possession of the Facility by virtue of the exercise by Secured Parties of any of the remedies available to them under any of the Security Documents, such other account designated by Owner Participant) all costs, charges, expenses and any other amounts which may become payable in accordance with and subject to Article XVII of the Natural Gas Purchase Agreement by NCM to Partnership (the "Gas Purchase Obligations");

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provided, however, that Partnership shall first make a claim against NCM for such amount by written notice delivered to NCM along with an invoice for the amount of the Gas Purchase Obligations in accordance with subclause 17.03(a) of the Natural Gas Purchase Agreement. Guarantor shall pay the Gas Purchase Obligations to Partnership within five Business Days of Guarantor's receipt of Partnership's written demand advising of NCM's failure to pay the Gas Purchase Obligations in accordance with subclause 17.03(a) of the Natural Gas Purchase Agreement and enclosing a true copy of the invoice for payment in accordance with the preceding sentence. Guarantor's payment in accordance with this guarantee of defaulted payments of NCM shall have the effect of curing such NCM default. Guarantor shall be liable as provided in Section 10 for any and all reasonable legal fees or other expenses which Partnership may reasonably incur as a result of a breach by Guarantor of its payment obligations under this Gas Guarantee and Agreement.

(b) Guarantor unconditionally and irrevocably waives promptness, diligence, presentment to, demand of payment from and protest to Partnership or any other Person of any of the Partnership's obligations guaranteed hereunder, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. Guarantor further agrees that its guarantee constitutes a guarantee of payment when due and not of collection, and waives any right to require that any resort be had by Owner Trustee, Owner Participant or GECC to any security held for payment of Partnership's obligations guaranteed hereunder or any balance of any deposit or trust account or credit on the books of any of the Secured Parties, Escrow Agent or any other Person in favor of Partnership or any other Person. Guarantor agrees that the obligations of Partnership guaranteed hereunder may be extended or renewed, in whole or in part, without notice to or further assent from Guarantor, and that Guarantor will remain bound by its obligations hereunder notwithstanding any extension or renewal of any of the obligations guaranteed hereunder.

(c) The obligations of Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason whatsoever, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or setoff, abatement, counterclaim or recoupment, or any impairment, reduction or termination whatsoever by reason of the dissolution, bankruptcy, insolvency or reorganization of Partnership or any other Transaction Party or the pendency of any case, suit or proceeding under any bankruptcy or insolvency law or any other law providing for the relief of debtors, the invalidity, illegality or unenforceability of Partnership's obligations guaranteed hereunder or otherwise or for any other reason whatsoever. Without limiting the generality of the foregoing, the obligations of Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of Owner Trustee, Owner Participant or any other Person to assert any claim or demand or to enforce any right or remedy under the provisions of any Operative Document or any other guarantee or agreement, any extension or renewal of any thereof, any rescission, waiver, amendment or modification of, or any release from, any of the



terms or provisions of any Operative Document or of any other agreement, the release of any security held by or on behalf of Owner Trustee, Owner Participant or any other Person for performance of Partnership's obligations guaranteed hereunder, the failure of Owner Trustee, Owner Participant or any other Person to exercise any right or remedy against any party to any Operative Document or against any other guarantor of any of the Obligations, any default, failure or delay, willful or otherwise, in the performance of Partnership's obligations guaranteed hereunder or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of Guarantor or would otherwise operate as a discharge of Guarantor as a matter of law or equity.

(d) Guarantor further agrees that this Gas Guarantee and Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any of Partnership's obligations guaranteed hereunder, or any part thereof, are rescinded or must otherwise be restored by Owner Trustee, Owner Participant or any other Person upon the dissolution, bankruptcy, insolvency or reorganization of Partnership or otherwise.

(e) In furtherance of the foregoing and not in limitation of any other right which Owner Trustee or Owner Participant may have at law or in equity against Guarantor by virtue hereof, upon the failure of Partnership to pay any of Partnership's obligations guaranteed hereunder, when and as the same shall become due (whether upon maturing, by acceleration or otherwise), Guarantor hereunder promises to and will, upon receipt of a written notice by Owner Trustee or Owner Participant, demanding that Guarantor forthwith pay, or cause to be paid, in cash, to or as directed by Owner Trustee or Owner Participant, as the case may be, an amount equal to the sum of (i) the unpaid amount of such obligations and (ii) interest thereon from the date of demand at the Stipulated Rate.

SECTION 3. Waiver of Subrogation. Notwithstanding any payment or payments made hereunder by or on behalf of Guarantor and notwithstanding any cost, expense or loss of economic benefit incurred by Guarantor or any of its respective Affiliates pursuant to Section 2 hereof, neither Guarantor nor any of its Affiliates shall have any claim against Partnership with respect to any such payments, expenses or loss of economic benefits, including by way of subrogation or similar right, or any rights to any of the collateral held by or for the benefit of any of Owner Trustee, Owner Participant, or GECC, and Guarantor hereby waives any claim it or any of its Affiliates may have against Owner Trustee, Owner Participant, GECC, or Partnership in respect thereof.

SECTION 4. Representations and Warranties of Guarantor. Guarantor represents and warrants at and as of the Construction Loan Closing Date, the date of each Loan, and the Lease Commencement Date that:

- (a) Organization, etc. It is duly organized and validly existing under the laws of Canada and it has the power and authority to carry on its business as then conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Gas Guarantee and Agreement.
- (b) Authorization: No Conflict. It has duly authorized by all necessary action the execution, delivery and performance of this Gas Guarantee and Agreement, and neither its execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with any of the terms and provisions thereof (i) does or will contravene any existing Governmental Rule applicable to or binding on it or any of its properties, (ii) does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any of its property under, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, loan or credit agreement, corporate charter, by-law or other agreement or instrument to which it is a party or by which it or any of its properties are bound or affected, or (iii) does or will require the taking of any Governmental Action, except such as have been duly obtained, made or taken.
- (c) Enforceability. It has duly executed and delivered this Gas Guarantee and Agreement, and this Gas Guarantee and Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws and judicial decisions of general applicability relating to or affecting creditors' rights and to general principles of equity.
- (d) No Adverse Proceedings. There is no action, suit or proceeding at law or in equity or by or before any court or administrative agency pending or threatened against or affecting it or its properties, the adverse determination of which, individually or in the aggregate, is reasonably likely to have a material adverse effect on the ability of Guarantor to enter into and carry out its obligations under this Gas Guarantee and Agreement.
- (e) Financial Statements. Its consolidated financial statements referred to in Appendix E to the Participation Agreement have been prepared in conformity with GAAP applied on a consistent basis and present fairly its consolidated financial condition as of the dates therein specified and the consolidated results of its operations for the periods therein specified. No material adverse change in its consolidated assets, liabilities, operations, financial condition or prospects has occurred from the date of the financial statements referred to in Appendix E to the Participation Agreement that would impair its ability to perform its obligations hereunder.
- (f) No Material Adverse Effect. No event or circumstance has occurred which could have a material adverse effect on its ability to perform its obligations hereunder.



SECTION 5. Covenants of Guarantor. Guarantor covenants that:

(a) Corporate Existence. Subject to Section 5(l), Guarantor will maintain its corporate existence in good standing under the laws of Canada and register and qualify and remain registered and qualified as an extra-provincial corporation under the laws of each jurisdiction in which the nature of any material business conducted by it or the character of any material properties and assets owned or leased by it requires such registration and qualification.

(b) Maintenance of Properties and Assets. Guarantor will maintain all its and its Consolidated Subsidiaries' material oil and gas properties operated by it or its Consolidated Subsidiaries in accordance with generally accepted oilfield practice and all other material assets and properties in accordance with good business practice.

(c) Notice of Defaults. Guarantor will provide Owner Participant with prompt, and in all cases within five Business Days, notice of any event of default under any of the Major Debt Agreements providing the lender or lenders thereunder with the right to accelerate its debt obligations under such Agreements.

(d) Maintenance of Books and Records. Guarantor will and will cause each of its Consolidated Subsidiaries to keep proper and adequate records and books of account in which true and complete entries will be made in a manner sufficient to enable the preparation of financial statements in accordance with GAAP.

(e) Year-End Consolidated Financial Statements. Guarantor will furnish to Owner Participant as soon as available and in any event within 120 days after the end of each fiscal year of Guarantor, a consolidated balance sheet of Guarantor as at the close of such fiscal year, a consolidated statement of income and retained earnings and a consolidated statement of changes in financial position of Guarantor for such fiscal year, setting forth in comparative form the corresponding figures of the preceding fiscal year together with an auditor's report, containing:

(i) such auditor's confirmation that its examinations of such consolidated financial statements were made in accordance with GAAP and accordingly included such tests and other procedures as they considered necessary in the circumstances; and

(ii) such auditor's opinion that such consolidated financial statements present fairly the consolidated financial position of Guarantor as of the close of such fiscal year and the results of its operations and the changes in its financial position for the year then ended in accordance with GAAP consistently applied.

(f) Quarterly Consolidated Financial Statements. Guarantor will furnish to Owner Participant as soon as available and in any event within 60 days after the end of

each of the first three fiscal quarters of each fiscal year of Guarantor, a consolidated balance sheet of Guarantor and its Consolidated Subsidiaries as at the end of such quarter, a consolidated statement of income, and a consolidated statement of changes in financial position of Guarantor and its Consolidated Subsidiaries for such period, prepared on a basis consistent with the corresponding period of the preceding fiscal year.

(g) Officer's Certificate. Guarantor shall furnish to Owner Participant, within 120 days after the end of each fiscal year of Guarantor and within 60 days after the end of each of the first three fiscal quarters of each fiscal year of Guarantor, an Officer's Certificate of Guarantor certifying that (i) Guarantor has complied with each of the covenants and agreements set forth herein, (ii) except as disclosed pursuant to Section 6(c), no event of default under any of the Major Debt Agreements has occurred, and (iii) as of the end of the fiscal year or quarter, as applicable, to which such Officer's Certificate relates, each of the Consolidated Interest Coverage Ratio, the ratio of Consolidated Long Term Debt to Consolidated Shareholders' Equity, the Consolidated Tangible Net Worth and the Available Guarantee Amount of Guarantor (the "Computed Amounts") is as set forth in such Officer's Certificate (which Officer's Certificate shall contain the computation of the Computed Amounts in detail reasonably acceptable to Owner Participant).

(h) Additional Information. If Owner Participant shall have determined, acting reasonably, that a material adverse change has occurred in respect of the business, affairs, operations or financial condition of Guarantor and its Consolidated Subsidiaries taken as a whole, Guarantor shall furnish to Owner Participant any additional information regarding the business, affairs, operations and financial condition of Guarantor and its Consolidated Subsidiaries as Owner Participant may reasonably request, but only if such information is available to the public or to any lender under any Major Debt Agreement.

(i) Consolidated Interest Coverage Ratio. Guarantor's Consolidated Interest Coverage Ratio will not be less than 1.5 to 1 as of the last day of each of its fiscal years.

(j) Consolidated Long Term Debt to Consolidated Shareholders' Equity Ratio. Guarantor's ratio of Consolidated Long Term Debt to Consolidated Shareholders' Equity as of the last day of each fiscal quarter of each of its fiscal years will not be in excess of 1.5 to 1.

(k) Consolidated Tangible Net Worth. Guarantor will ensure that its Consolidated Tangible Net Worth will not at any time be below Canadian \$100,000,000.

(l) Restrictions on Amalgamations, etc. Guarantor will not, directly or indirectly, in one or a series of related transactions, (i) sell or transfer all or substantially all of its assets, (ii) merge, amalgamate (except if such amalgamation results in the amalgamated company continuing by force of law to be liable for the obligations of each amalgamating company, in which case the provisions of clause (iii) shall apply) or



consolidate with any other Person, (iii) permit any other Person to merge into or amalgamate or consolidate with it, or acquire all or substantially all of the business of any other Person, or (iv) permit any one or more of its Consolidated Subsidiaries to consummate or enter into any of the foregoing transactions if (in the case of this clause (iv) only) the consummation of such transaction would result in all or substantially all of the consolidated assets of Guarantor being sold or transferred (each of the foregoing transactions a "Transfer Event"), except:

(A) Guarantor or any of its Consolidated Subsidiaries may consummate or enter into a Transfer Event described in clause (iii) above so long as: (1) Guarantor or such Consolidated Subsidiary, as the case may be, shall be the surviving corporation (or, in the case of any amalgamation under Canadian law, Guarantor or such Consolidated Subsidiary shall be an amalgamating company, and the amalgamated company shall continue by force of law to be liable for the obligations of each amalgamating company); (2) immediately before and after giving effect to the transaction, no Guarantor Default shall exist; and (3) in the case of an amalgamation, upon consummation of such amalgamation, Owner Participant shall have received both (x) an opinion of counsel covering the matters referred to in paragraph (B)(4) below (with the term "surviving corporation" being replaced by the term "amalgamated company") and (y) an Officer's Certificate of the amalgamated company, certifying that all of the conditions set forth in this Section 5(l) have been satisfied in full as of the date of such transaction;

(B) Guarantor and its Consolidated Subsidiaries may consummate or enter into a Transfer Event described in clause (i), (ii) or (iv) above so long as:

(1) the corporation which survives such merger or results from such amalgamation or consolidation or acquires such assets (the "surviving corporation") shall be organized under the laws of Canada, any province thereof, the United States of America, any state thereof or the District of Columbia;

(2) the surviving corporation shall assume, by an instrument satisfactory in form and substance to Owner Participant, the obligations of Guarantor under this Gas Guarantee and Agreement and each of the other Operative Documents to which Guarantor and, if applicable, such Consolidated Subsidiary are a party and shall cause each of the other Consolidated Subsidiaries to continue to be bound by the obligations of such Consolidated Subsidiary under each of the Operative Documents to which it is a party;

(3) immediately before and after giving effect to the transaction, no Guarantor Default shall exist;

(4) upon consummation of such transaction, an opinion of counsel satisfactory in form, scope and substance to Owner Participant shall be delivered to Owner Participant to the effect that this Gas Guarantee and Agreement and the other Operative Documents referred to in the foregoing subclause (2) are legal, valid and binding obligations of the surviving corporation and such Consolidated Subsidiaries (to the extent set forth in such subclause (2)), enforceable against the surviving corporation and such Consolidated Subsidiaries, as applicable, in accordance with their respective terms, and covering such other matters as are covered (and subject to such limitations, qualifications and assumptions as are set forth) in the opinions relating to such Operative Documents delivered on the Construction Loan Closing Date and/or the Lease Commencement Date; and

(5) upon consummation of the transaction, an Officer's Certificate of the surviving corporation shall be delivered to Owner Participant, certifying that all of the conditions set forth in this Section 5(l) have been satisfied in full as of the date of such transaction; and

(C) any Consolidated Subsidiary of Guarantor may merge, amalgamate with or consolidate into, or sell all or substantially all of its assets, to, (x) Guarantor or (y) any other Consolidated Subsidiary of Guarantor so long as, immediately before and after giving effect to the transaction, no Guarantor Default shall exist.

Notwithstanding the foregoing, Guarantor or any Consolidated Subsidiary may take any of the actions otherwise prohibited by this Section 5(l) if (and only if) Owner Participant shall have given its prior written consent thereto, which consent of Owner Participant shall not be unreasonably withheld.

The computation of the financial tests and components thereof with respect to any corporation shall be based on the most recently prepared quarterly financial statements of such corporation (or, in the case of any such computation to be made after giving effect to the occurrence of a Transfer Event, as reflected on pro forma financial statements which give effect to such Transfer Event), prepared on a consolidated basis in accordance with GAAP as in effect in the jurisdiction in which the principal place of business of such corporation is located, in each case certified by the chief financial officer, vice president of finance, treasurer, or controller of such corporation.

It is the understanding of the parties hereto with respect to the covenants contained in Sections 5(i), (j), and (k), that if at any time Guarantor shall propose modifications to all or any of such covenants and shall offer credit support for the obligations of Guarantor hereunder and under the NCO Guarantee in the form of one or both of the following: (i) delivering a letter of credit or other credit support and/or (ii) causing NCM to support its obligations to Partnership under the Natural Gas Purchase Agreement, in either or both cases as acceptable to Owner



Participant in its sole and absolute discretion, then such covenants shall be modified to the extent agreed to with Guarantor in writing by Owner Participant in its sole and absolute discretion.

**SECTION 6. Rights and Powers.** Guarantor hereby irrevocably authorizes and empowers each of Owner Trustee and Owner Participant, in its sole and absolute discretion, to take such proceedings, in its own name or otherwise, for the enforcement of or collection of any amounts due under this Gas Guarantee and Agreement, as Owner Trustee or Owner Participant may deem necessary or desirable. Each of Owner Trustee or Owner Participant may proceed, either in its own name or otherwise, to protect and enforce any or all of its rights under this Gas Guarantee and Agreement in equity, at law or by other appropriate proceedings, whether for the specific performance of any covenants or agreements contained in this Gas Guarantee and Agreement or otherwise, and shall be entitled to require and enforce the performance of all acts and things required to be performed hereunder by Guarantor.

**SECTION 7. Further Assurances.** Guarantor, at its own cost and expense, will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as Owner Trustee or Owner Participant may from time to time reasonably request in order to carry out more effectively the intent and purposes of this Gas Guarantee and Agreement and the transactions contemplated hereby.

**SECTION 8. Remedies Cumulative, etc.** No right, power or remedy herein conferred upon or reserved to Owner Trustee or Owner Participant is intended to be exclusive of any other right, power or remedy and, to the extent permitted by law, each and every right, power and remedy of Owner Trustee or Owner Participant pursuant to this Gas Guarantee and Agreement or the other Operative Documents or now or hereafter existing at law, in equity, by statute or otherwise, shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy pursuant to this Gas Guarantee and Agreement or the other Operative Documents, or now or hereafter existing at law, in equity, by statute or otherwise, and the exercise or beginning of the exercise by Owner Trustee or Owner Participant of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Owner Trustee or Owner Participant of any or all such rights, powers or remedies.

**SECTION 9. Assignment.** Except to the extent provided in Section 5(l), Guarantor may not assign this Gas Guarantee and Agreement. Each of Owner Trustee and Owner Participant may freely assign its rights and obligations hereunder; provided, however, that neither of Owner Trustee nor Owner Participant shall have the right to assign its rights and obligations under the Participation Agreement and the Construction Loan Agreement, as specified in Sections 12.05 and 12.07 of the Participation Agreement and Section 7.01 of the Construction Loan Agreement. Any purported assignment made in violation of this Section shall for all purposes be deemed null and void.

**SECTION 10. Attorneys' Fees: Late Payments.** In the event Owner Trustee or Owner Participant should employ attorneys or reasonably incur other fees or expenses for the collection

of payments or the performance of obligations under this Gas Guarantee and Agreement (including reasonable documented fees or expenses reasonably incurred in connection with any investigations, negotiations or discussions of any claims or alleged claims reasonably believed to exist hereunder), Guarantor agrees that it will on demand therefor pay to Owner Trustee or Owner Participant, as the case may be, all such expenses (with interest at the Stipulated Rate on such amounts following demand therefor) so incurred by Owner Trustee or Owner Participant. Any amounts due hereunder which shall not be paid when due shall be paid with interest thereon from the date due through the date paid at a rate per annum equal to the Stipulated Rate.

SECTION 11. Documentary Conventions. Except as expressly provided herein, this Gas Guarantee and Agreement shall be governed by all the Documentary Conventions.

SECTION 12. Termination. This Gas Guarantee and Agreement and all obligations of the parties set forth herein shall terminate one year and one day after the later of (i) the Lease Termination Date, (ii) the termination of the Natural Gas Purchase Agreement, and (iii) the indefeasible payment in full of all amounts that may from time to time become due hereunder.

SECTION 13. Submission to Jurisdiction: Service of Process.

(a) With respect to any claim hereunder (i) Guarantor irrevocably submits to the nonexclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, and (ii) Guarantor irrevocably waives any objection which it may have at any time to the laying of venue of any suit, action or proceeding arising under or relating to this Gas Guarantee and Agreement brought in any such court, irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum and further irrevocably waives the right to object, with respect to such claim, suit, action or proceeding brought in any such court, that such court does not have jurisdiction over such party; provided, however, that nothing herein shall be deemed to preclude any of the Secured Parties from bringing an action or proceeding in respect of this Gas Guarantee and Agreement in any other jurisdiction.

(b) Guarantor agrees that, so long as any of the Operative Documents are in effect, it will maintain a place of business or an agent for service of process in New York City and give prompt notice to each other party hereto of the address of such place of business or such agent, as the case may be, and of any change of address of such place of business and of the name and address of any new agent appointed by it, as applicable. Guarantor further agrees that the failure of its agent for service of process to give Guarantor notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of a party available to be served, and if Guarantor at that time has no place of business in New York City, then Guarantor



irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address set forth in Schedule I to the Participation Agreement.

(c) Guarantor initially and irrevocably designates CT Corporation to receive for and on behalf of Guarantor service of process in New York City with respect to this Gas Guarantee and Agreement.

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

**NORTH CANADIAN OILS LIMITED**

By: \_\_\_\_\_  
Donald D. McKechnie  
Vice President, Finance and  
Controller

By: \_\_\_\_\_  
G. Barry Padley  
Senior Vice President, Chief  
Financial Officer, and  
Corporate Secretary

**LAKE COGEN, LTD.**

By: NCP Lake Power Incorporated,  
General Partner

By: \_\_\_\_\_  
Kenneth M. Ross  
Vice President

**CITIZENS AND SOUTHERN NATIONAL  
BANK OF FLORIDA, not in its individual  
capacity but solely as Owner Trustee,**

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

**TIFD III-C INC., as Owner  
Participant**

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

*5/27/71*



EXHIBIT B

[This exhibit will be delivered at a later date in accordance with subclause 4.02(a) of the Agreement.]

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## EXHIBIT C

### POINTS OF DELIVERY

All capitalized terms not otherwise defined in this Exhibit C shall have the meanings given such terms in the Gas Purchase Agreement.

As of the date of execution of this Agreement, the parties anticipate that the Point of Delivery of Gas hereunder shall be at the following locations:

NAME	LOCATION	POL#
FGT MOPS Refugio/SNG/NNG	Refugio Co, TX	611
FGT NGPL Jefferson Co.	Jefferson Co, TX	10240
FGT TEXAS GAS Eunice	Acadia Ph, LA	10178
PLANT-UTOS Johnson's Bayou	Calcasieu Ph, LA	282
HPL-Galveston, Texas City	Galveston City, TX	8564
HPL-FGT Orange, Texoma	Orange Co, TX	8774
FGT Sabine Pipeline Kaplan	Vermillion Ph, LA	23062
FGT TETCO St. Landry Krotz	St. Landry Ph, LA	10147
VERMILLION TRUNKLINE/FGT	Vermillion Ph, LA	25405
LRC Vermillion, Kaplan Cow Island	Vermillion Ph, LA	16509
FGT UGPL St. Landry	St. Landry Ph, LA	10102
FGT SNG Franklinton Washington	Washington Ph, LA	10095
FGT TENN Stone Carnes	Stone Co, MS	10258
FGT TRANSCO St. Helena	St. Helena Ph, LA	10114
FGT UGPL St. Helena	St. Helena Ph, LA	10109

If it is necessary to do so, the parties agree to cooperate in good faith to choose one or more Points of Delivery, in addition to those listed above, which are consistent with Buyer's transportation arrangements, and to identify such Points on a revised Exhibit C to this Agreement. Buyer further agrees that, so long as the Points of Delivery hereunder are consistent with the receipt points under the Transportation Agreement, Buyer will use commercially reasonable efforts to (i) provide Seller with the same degree of flexibility in selecting delivery points on PGS's system as PGS provides Buyer under the Transportation Agreement, and (ii) provide Seller with a pro rata portion of the total receipt point capacity which PGS has provided Buyer under the Transportation Agreement, with such MDQ pro-rata portion being

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based on the relationship that the MDQ hereunder bears to the total amount of transportation capacity available to Buyer under the Transportation Agreement. If the parties cannot agree on the Points of Delivery to be used by Seller hereunder, the following receipt points on the FGT pipeline system shall be the Points of Delivery for purposes of this Agreement:

<u>NAME</u>	<u>P.O.L.#</u>	<u>CAPACITY/MMBtu/Day</u>
FGT NGPL Jefferson	10240	7,650
FGT Sabine Kaplan	23062	7,135
FGT SNG Franklinton	10095	6,400

Notwithstanding the foregoing, it is specifically agreed that the term "Points of Delivery" as used in this Agreement shall mean the Supplier Delivery Points (as defined in the Transportation Agreement) provided to Buyer pursuant to the terms of the Transportation Agreement, along with such volume restrictions as provided therein.

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## EXHIBIT D

ASSIGNMENT OF AGREEMENTS made as of \_\_\_\_\_, 1992, between NORTH CANADIAN MARKETING CORPORATION, a California corporation (the "Assignor") and LAKE COGEN, LTD., a Florida limited partnership (the "Assignee").

WHEREAS, Assignor and Assignee have entered into a Gas Purchase Agreement (as amended from time to time, the "Gas Purchase Agreement") dated as of July 29, 1992 under which Assignor has agreed to sell to Assignee certain quantities of natural gas; and

WHEREAS, in order to induce Assignee to enter into the Gas Purchase Agreement, Assignor has agreed to assign to Assignee all of its rights, benefits and interests in, to and under all of the gas supply contracts listed in Schedule "A" and any rights or agreements related thereto given by suppliers or any third parties in favor of Assignor which expressly support the performance of obligations of the suppliers under the gas supply agreements listed in Schedule "A" (all such contracts and agreements, whether now existing or hereafter entered into by or on behalf of Assignor, and as they may be amended, supplemented or otherwise modified as permitted hereby, being hereinafter collectively called the "Agreements").

NOW THEREFORE, in consideration of the performance by each of Assignor and Assignee of its respective obligations under the Gas Purchase Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby agree as follows:

### ARTICLE ONE ASSIGNMENT OF AGREEMENTS

#### 1.01 Assignment of Assignor's Rights.

- (a) Assignor hereby assigns to Assignee, all of its rights, benefits and interests in, to and under the Agreements, and all monies and other sums payable to or receivable by Assignor under or in respect of the Agreements (such monies and other sums being hereinafter collectively called the "Monies") and all of Assignor's Rights (as hereinafter defined) under the Agreements, with full power and authority to enforce performance of Assignor's Rights and to demand, sue for and collect damages in connection therewith at Assignee's option in the name of Assignor or in its own name. For the purposes of this Agreement, the term "Assignor's Rights" shall mean the benefits of all security, agreements, permissions, approvals, consents and licenses granted to Assignor under the
- 5-2-7.



Agreements, whether governmental or otherwise, and of all guarantees, covenants, terms, conditions, representations and warranties made or expressed therein or implied by law in relation thereto and all rights granted to Assignor under the Agreements to give consents or approvals, make selections, exercise options, participate in arbitration or other legal proceedings, give notices and declare defaults thereunder, provided that, in the case of any such government permits, consents or licenses that are not assignable without the approval of the applicable governmental authority, Assignor shall cooperate with Assignee to obtain the required approvals, and upon Assignor's obtaining such approvals, Assignor shall promptly assign such permits, consents or licenses in accordance with the terms of this Assignment. Without limiting the foregoing, in the event that the assignment of any of such government permits, consents or licenses is not effected prior to the occurrence of an Event of Default, then and upon the occurrence of an Event of Default, Assignor shall use all reasonable efforts to give Assignee the benefit of such unassigned permits, consents or licenses.

- (b) Assignee may assign all or any portion of its rights under this Assignment and any Agreement to its lenders and/or an owner participant and/or an owner trustee with whom Assignee enters into a sale/leaseback transaction (a "Sale-Leaseback Person") with respect to the Project (as such term is defined in the Gas Purchase Agreement; such lenders and any such Sale-Leaseback Person shall be referred to herein as a "Permitted Assignee"). Assignee or Permitted Assignee shall notify Assignor in writing of such transaction within 30 days after its consummation. The failure to timely deliver such notice in accordance with the foregoing sentence shall not affect the validity of any such assignment.
- (c) Permitted Assignee may further assign all or any portion of its rights under this Assignment or any Agreement (i) to any person or entity to secure any obligation of the Permitted Assignee also secured by an assignment of the Lease (as such term is defined in the Gas Purchase Agreement) and to any subsequent assignee through such person upon and after or in lieu of the exercise of its rights and enforcement of its remedies pursuant to any security agreement governing such assignment, at law, in equity or otherwise, (ii) to any person in connection with, subsequent to and/or in lieu of the exercise by the Permitted Assignee of its rights, or enforcement of its remedies, pursuant to any security document or other agreement relating to the Project, regardless of whether such assignment occurs pursuant to contract, agreement, waiver, by law in equity or otherwise, and (iii) to any person or entity in connection with the sale, conveyance, lease, transfer or assignment by Permitted Assignee to such person or entity of any or all of the Permitted Assignee's right, title and interest in and to the Project. Permitted

Assignee and its assignee shall jointly notify Assignor in writing of such transaction within 30 days after its consummation.

1.02 Re-assignment of Assignee's Rights. Subject to the provisions of Section 1.04 of this Assignment and, subject to the performance by Assignor of the covenants specified in Section 2.02 of this Assignment, Assignee hereby re-assigns to Assignor, all of its rights, benefits and interests in, to and under the Agreements, and all Monies and all of Assignee's Rights (as hereinafter defined) under the Agreements, with full power and authority to enforce performance of the Assignee's Rights and to demand, sue for and collect damages in connection therewith at the Assignor's option in the name of the Assignee or in its own name. For the purposes of this Agreement, the term "Assignee's Rights" shall mean the benefits of all Assignor's Rights assigned to Assignee pursuant to Section 1.01 of this Assignment.

1.03 Consents. This Assignment in respect of any particular Agreement shall be subject to and only be effective upon obtaining a consent, in substantially the form attached hereto as Schedule "B" (each a "Consent to Assignment"), with respect to the relevant Agreement (each, a "Necessary Consent"). Assignor shall forthwith use commercially reasonable efforts to obtain all Necessary Consents.

1.04 Events of Default. If

- (a)
  - (i) Assignor fails to pay any amount due and owing by Assignor to Assignee pursuant to Article XVII of the Gas Purchase Agreement; and
  - (ii) North Canadian Oils Limited ("NCO") fails to pay such amount in accordance with the terms of the Gas Guarantee and Agreement dated July 29, 1992 (the "Guarantee") among Assignee, NCO and certain other parties, as therein provided; or
- (b) Assignor has failed to perform any other obligation or fails to observe or perform any other term, covenant or agreement contained in the Gas Purchase Agreement or in this Assignment, which failure could reasonably be expected to have (i) a material adverse effect on the ability of Assignor to perform its obligations under the Gas Purchase Agreement or (ii) a material adverse effect on the rights of Assignee hereunder or under the Gas Purchase Agreement, and the same has not been waived by Assignee or cured or remedied by either Assignor or NCO within 30 days ("Cure Period") after Assignee notifies Assignor in writing of such failure ("Assignee's Default Notice"); or



- (c) Assignor or NCO takes or permits any action to be taken in respect of the dissolution, liquidation, winding up or other cancellation or suspension of its incorporation, makes any assignment, compromise or arrangement for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, becomes bankrupt, makes any proposal or assignment under any bankruptcy legislation of any applicable jurisdiction, filing or presenting a bankruptcy petition in respect of its properties, assets and undertakings, seeks to take the benefit of any insolvency legislation or legislation providing for the relief or aid of debtors, permits entry of a judgment or order by any court of competent jurisdiction approving such petition or any petition by it seeking reorganization, arrangement or composition in respect of its debts or obligations or permits or acquiesces in the appointment of a liquidator, custodian, receiver or receiver-manager, or any other official with similar powers in relation to its properties, assets and undertakings, or if any third party takes any action in respect of the foregoing (and NCO or Assignor does not *bona fide* dispute such action and diligently take the necessary steps to cause such action to be terminated and such action is not dismissed within 90 days), except that if any of the foregoing would apply to Assignor only it will not apply to Assignor if NCO assumes the obligations of Assignor under an assignment in a form and substance satisfactory to Assignee; (any of the events described in subclauses (a), (b), or (c) being herein referred to as an "Event of Default"); then the re-assignment of the Agreements to the Assignor pursuant to Section 1.02 of this Assignment shall terminate and the Agreements shall vest in and become the absolute property of Assignee without any further act, assignment or re-assignment by Assignor.

1.05 Termination. This Assignment shall terminate upon satisfaction in full of all obligations of Assignor under the Gas Purchase Agreement, and upon such termination all rights granted hereunder not theretofore accrued shall terminate and the rights and benefits of Assignor assigned hereby shall automatically be re-assigned from Assignee to Assignor.

## ARTICLE TWO

### ASSIGNOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

2.01 Representations. Assignor represents, warrants and covenants that:

- (a) except as permitted hereunder, or consented to by Assignee in writing, Assignor has not assigned, transferred or set over the Agreements or any of them nor any rights thereunder to any person or entity other than Assignee, nor has it performed any act or executed any other instrument which could reasonably be

- expected to prevent Assignor from performing the terms and conditions of the Gas Purchase Agreement or this Assignment;
- (b) the Agreements are now in full force and effect and that, (i) to Assignor's best knowledge, there is no default or dispute now existing thereunder except as noted in Schedule "A" (as such Schedule may be updated from time to time), and (ii) the same have not been amended, except as set forth in Schedule "A" (as such Schedule may be updated from time to time);
  - (c) Assignor has delivered to Assignee a true copy of each Agreement; and
  - (d) the Necessary Consents are the only consents required from third parties in respect of this Assignment provided, however, that with respect to any third party consents required to be obtained by third parties other than Assignor, such representation and warranty is based solely upon the representations and warranties made in the applicable Consent to Assignment.

2.02 Covenants.

- (a) Assignor hereby covenants that:
  - (i) Assignor shall notify Assignee in writing of any modification, waiver, amendment or termination of any Agreement or any Rights of Assignor thereunder (any such modification, waiver, amendment, or termination being hereinafter collectively referred to as a "Modification") within 10 business days after having made or entered into any Modification, provided, however, that notices need not be given of modifications, waivers, or amendments that will not in the reasonable judgment of Assignor, materially affect Assignee's or Assignor's interests under the Gas Purchase Agreement or the relevant Agreement.

Nothing herein shall prevent Assignor from making or entering into any Modification if such Modification will not, in the reasonable judgment of Assignor, materially and adversely affect Assignor's ability to fulfill its obligations under the Gas Purchase Agreement. If Assignee informs Assignor, in writing and within seven business days, of the receipt of the notice of any Modification, that Assignee does not approve of the Modification given by Assignor, then Assignee shall include with its notice to the Assignor detailed reasons in writing for its disapproval (the "Assignee's Modification Reasons"). The failure of Assignee to provide Assignee's



Modification Reasons in support of any disapproval of a Modification given by the Assignor shall be deemed to be a decision by the Assignee approving of the Modification. If Assignor disagrees with Assignee's Modification Reasons given by Assignee in respect of any Modification given by Assignor, then Assignor shall be entitled to respond to the Assignee's Modification Reasons by informing Assignee in writing of its detailed reasons (the "Assignor's Modification Reasons") why Assignee should not disapprove of the Modification. Assignee and Assignor shall thereupon attempt to resolve the dispute in good faith. If, within seven business days after the Assignee's receipt of Assignor's Modification Reasons, Assignor and Assignee shall not have resolved the issue, the issue may be referred to arbitration and Sections 3.01(a) and 3.01(b) shall apply *mutatis mutandis*. The arbitrator shall determine whether or not Assignor has reasonably determined that the Modification will not materially and adversely affect Assignor's ability to fulfill its obligations under the Gas Purchase Agreement;

- (ii) subject to Section 3.09, none of the rights or remedies of Assignee under the Gas Purchase Agreement shall be delayed or in any way prejudiced by this Assignment;
  - (iii) notwithstanding any modification of the terms of the Gas Purchase Agreement, or any extension of time for payment thereunder or any release of part or parts of any property encumbered thereby, this Assignment shall continue in effect in accordance with its terms;
  - (iv) without the prior written consent of Assignee, it will not subordinate or encumber its interest in any Agreement to any mortgagee; and
  - (v) it shall, at all times, observe and perform all of its obligations under the Agreements in all material respects.
- (b) Assignor hereby covenants that:
- (i) it shall promptly inform Assignee of any material default which may occur under any Agreement, but in no event later than 10 business days after learning of same; and
  - (ii) if so requested by Assignor and if a failure to enforce such remedies could reasonably be expected to materially and adversely affect Assignor's

ability to fulfill its obligations under the Gas Purchase Agreement (but subject always to Assignor's rights to (A) make or enter into any Modification in accordance with Section 2.02(a)(i)) and (B) substitute an Agreement in accordance with Section 2.02(e)), it shall enforce all remedies available to it to the extent provided for under the Agreements unless Modified as aforesaid. Assignor shall transmit to Assignee all material communications relating to default or termination of any Agreement which it is required or permitted to give or receive pursuant to any Agreement, contemporaneously with the giving or receipt of same.

- (c) At any time and from time to time, upon the written request of Assignee, and at Assignor's sole expense, Assignor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Assignee may reasonably deem necessary in obtaining the full benefits of this Assignment and of the rights and powers herein granted, including the filing of any financing or continuation statement under the relevant Uniform Commercial Code in effect in any jurisdiction with respect to the assignment made hereby.
- (d) Assignor hereby constitutes and appoints the President, any Vice President or Treasurer of each of Assignee and Permitted Assignee the true and lawful attorney of Assignor in respect of this Assignment and the Agreements only, irrevocable with full power of substitution to do, make and execute all such statements, assignments, documents, acts, matters or things in respect of this Assignment and the Agreements only with the right to use the name of Assignor in respect of this Assignment and the Agreements only, whenever and wherever it may be deemed necessary or expedient to further the provisions of this Assignment.
- (e)
  - (i) In the event that (A) an Agreement is terminated prior to the termination of the Gas Purchase Agreement, or (B) Assignor wishes to cease supplying gas to the Project from gas supplied to Assignor pursuant to a particular Agreement, Assignor may, subject in all respects to the Gas Purchase Agreement, enter into a replacement agreement (each a "Replacement Agreement") with a supplier for the terminated volumes on commercially reasonable terms. Assignor may offer all or a portion of any share of the delivery quantity available as a result of such termination to NCO without the consent of Assignee.
  - (ii) Subject in all respects to the Gas Purchase Agreement, Assignor shall not enter into a Replacement Agreement until Assignor has obtained a



Necessary Consent from the supplier in accordance with and subject to the terms of the Gas Purchase Agreement under the proposed Replacement Agreement relating to the Replacement Agreement and any rights or agreements in any way related thereto. In the event Assignor enters into a Replacement Agreement in accordance with the terms of this Assignment, such Replacement Agreement shall be deemed an Agreement hereunder.

- (f) Any and all Project Supply Contracts and Project Transportation contracts required to be assigned to Buyer pursuant to Section 9.01(h) of the Gas Purchase Agreement, shall, promptly after the same shall be entered into, be deemed an Agreement hereunder, and Assignor shall promptly deliver to Assignee a revised schedule A to reflect the addition of any such Agreement.

### ARTICLE THREE MISCELLANEOUS

#### 3.01 Arbitration.

- (a) Any arbitration pursuant to Section 2.02(a)(i) shall be conducted by a sole arbitrator, in accordance with the regulations made thereunder, and the Rules of the American Arbitration Association except as varied by the procedures specified herein. Upon written demand of either party, the parties shall meet and attempt to appoint a single arbitrator. If the parties are unable to agree upon a single arbitrator within thirty days, then either party may apply to have the arbitrator appointed by the New York City Chapter of the American Arbitration Association. The arbitrator appointed shall be qualified by education, experience, and training to decide the issue. The arbitrator shall not be an employee, consultant or agent of any of Assignor, Assignee, any lender to either Assignor or Assignee or any Affiliate to any of the foregoing (as the term "Affiliate" is defined in the Gas Purchase Agreement). The arbitrator chosen shall proceed immediately to hear and determine the question or questions in dispute in New York City, New York. The arbitrator's decision shall be made within forty-five days after his appointment, subject to any reasonable delay due to unforeseen circumstances, and shall be final and binding. If the arbitrator fails to make a decision within sixty days after his appointment, then either party may elect to have a new arbitrator chosen in a like manner as if none had been previously selected. If the arbitrator does not support Assignee's decision, then the Modification shall stand and Assignee will be deemed to have approved such amendment. If the arbitrator supports Assignee's decision, then Assignee shall

have such remedy for the Modification as it may be entitled to at law or in equity, except for specific performance or rescission.

- (b) The costs of any arbitration conducted pursuant to this Section shall be shared equally.

3.02 No Obligations. Assignee shall not be obligated to exercise any of the Assignor's Rights or to perform or discharge any obligation, duty or liability arising under any Agreement.

3.03 Severability. Any provision hereof which is prohibited or unenforceable in any applicable jurisdiction will be ineffective to the extent of such prohibition or unenforceability without invalidating any remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by law, the parties hereto hereby waive any provision of law which renders any such provision prohibited or unenforceable in any respect.

3.04 Amendments. Except as provided hereunder, neither this Assignment nor the rights nor duties of Assignee or of Assignor hereunder shall be changed, modified, waived, released or discharged in any way except by an instrument in writing signed, acknowledged and delivered by Assignee and Assignor. No waiver of any provision hereunder shall be valid unless effected by written instrument signed by the waiving party and any such waiver shall be effective only in the specific instance and for the purpose for which the same shall be given.

3.05 Cumulative Rights. No remedy herein conferred upon or reserved to Assignee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or thereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Assignee in exercising any right or power accruing under this Assignment shall impair any such right or power, or shall be construed to be a waiver or any acquiescence therein; and every power and remedy given by this Assignment may be exercised from time to time by Assignee as often as may be deemed expedient by Assignee.

3.06 Governing Law. Exclusive Jurisdiction.

- (a) The provisions of this Assignment shall be construed and interpreted in accordance with the laws of the State of Texas, without regard to the conflicts of laws provisions thereof, and shall be binding upon and inure to the benefit of Assignee, Assignor and their respective successors and assigns. All references to the parties herein shall include their respective successors and assigns. Except as provided in the immediately preceding sentence, nothing herein shall be deemed



to create any rights in, and this Assignment shall not be construed to be a contract in whole or in part for the benefit of, any person or entity not a party hereto.

- (b) With respect to any claim hereunder (except for those which are subject to arbitration under Section 3.01), exclusive jurisdiction as to all disputes hereunder shall be vested in the United States District Court for the Southern District of New York. Subject to the provisions of the foregoing sentence, each of the parties irrevocably submits to the exclusive jurisdiction of such Court, and irrevocably waives (i) any objection which such party may have at any time to the laying of venue of any suit, action or proceeding arising under or relating to this Assignment brought in any such Court, (ii) any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum, and (iii) the right to object, with respect to such claim, suit, action or proceeding brought in any such Court, that such court does not have jurisdiction over such party.
- (c) The parties agree that, so long as this Assignment is in effect, each such party will maintain a place of business or an agent for service of process in New York City and give prompt notice to each other party hereto of the address of such place of business or such agent, as the case may be, and of any change of address of such place of business and of the name and address of any new agent appointed by it, as applicable. If, despite the foregoing, there is for any reason no agent for service of process of a party available to be served, and if either party at that time has no place of business in New York City, then each such party irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address set forth in clause 21.02 of the Gas Purchase Agreement.
- (d) Each party initially and irrevocably designates CT Corporation to receive for and on behalf of such party service of process in New York City with respect to this Assignment.

3.07 Notices. Any notice or communication to be given hereunder may be effectively given by delivering the same in accordance with the Gas Purchase Agreement. Article XXI of the Gas Purchase Agreement shall apply mutatis mutandis to any notice required under this Assignment.

3.08 Additional Security. This Assignment is in addition to and not in substitution for any other security or securities which Assignee or the lenders of Assignee now or from time to time may hold or take from Assignor or from any person or persons whomsoever.

3.09 Conflict. In the event that there is any inconsistency between this Assignment and the Gas Purchase Agreement, the terms of the Gas Purchase Assignment shall prevail.

3.10 Inurement. The provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.



IN WITNESS WHEREOF the parties have executed and delivered this Assignment as of the day and year first above written.

NORTH CANADIAN MARKETING  
CORPORATION

By: \_\_\_\_\_  
Robert F. Spragins  
Vice President, Supply Development

By: \_\_\_\_\_  
G. Barry Padley  
Corporate Secretary

LAKE COGEN, LTD.  
By: NCP Lake Power Incorporated,  
General Partner

By: \_\_\_\_\_  
Kenneth M. Ross  
Vice President

5-7.

SCHEDULE "A"  
(to Exhibit D)

LIST OF AGREEMENTS

Contracting Party

Date of Agreement

Contracted Volume  
MMBtu

5/2/7



SCHEDULE "B"  
(to Exhibit D)

CONSENT TO ASSIGNMENT

TO: LAKE COGEN, LTD.

*2? instructs?*

The undersigned ("Consenter") hereby consents to the assignment by North Canadian Marketing Corporation (the "Assignor") to Lake Cogen, Ltd. (the "Assignee") of all of its rights, benefits and interests in, to and under the contract identified in Schedule "A" attached hereto (the "Agreement"). The undersigned also hereby consents to the subsequent assignments contemplated by Sections 1.02(b), 1.02(c) and 1.03 of the Assignment of Agreements dated as of [ ], 1992 between Assignor and Assignee (the "Assignment Agreement") (each assignee in any subsequent assignment shall be referred to herein as a "Permitted Assignee"). Any assignment contemplated by the immediately preceding sentence shall not require any further consent from the undersigned.

Notwithstanding any right Consenter may have under the Agreement, at law, in equity or otherwise, it shall not terminate or suspend the Agreement or any portion thereof or any of its obligations thereunder at any time unless it shall have given written notice to Assignee or the relevant Permitted Assignee, as the case may be, of its intention to so terminate or suspend and Assignee or the relevant Permitted Assignee, as the case may be, shall have had a period of up to (i) thirteen days, with respect to any suspension, or (ii) sixty-three days, with respect to termination, within which to cure any default giving rise to such termination or suspension, as applicable.

In the event that the Agreement is rejected by a debtor in possession or a trustee in bankruptcy or insolvency proceeding involving Assignor, then the undersigned, if requested by Assignee or the relevant Permitted Assignee shall, within thirty days of such request, execute and deliver to Assignee or the relevant Permitted Assignee, as the case may be, a new agreement (the "New Agreement") to be in effect (x) for the remainder of the term of the original Agreement, and (y) with substantially the same terms as those contained in the original Agreement. References herein to the "Agreement" shall be deemed also to refer to the New Agreement.

The undersigned acknowledges and agrees that until the relevant Permitted Assignee or any of its assigns shall have provided Assignor with written notice that it or Assignee has assumed the obligations of Assignor under the Agreement, neither Assignee, such Permitted Assignee nor any of their respective assigns shall be liable for any obligation or duty of Assignor under the Agreement nor shall any such assignment give rise to any duty or obligation on the part of any such assignee.

*Stu*

The undersigned represents and warrants that it is not required to obtain the consent of any third party to enter into the Agreement or this Consent to Assignment.

DATED \_\_\_\_\_, 1992.

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Name:

Title:

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Name:

Title:

*Stu T.*



## EXHIBIT E

CONSENT AND AGREEMENT dated as of August \_\_\_\_\_, 1992, among NORTH CANADIAN MARKETING CORPORATION, a California corporation (the "Consenter"); LAKE COGEN, LTD., a Florida limited partnership ("Partnership"); TIFD III-C INC., a Delaware corporation ("Owner Participant"); and THE CITIZENS AND SOUTHERN NATIONAL BANK OF FLORIDA, not in its individual capacity, but solely as Owner Trustee (the "Owner Trustee").

The parties hereto agree as follows:

SECTION 1. Definitions and Usage. Unless the context shall otherwise require, the terms used herein shall have the meanings assigned to them in Appendix A to the Participation Agreement dated as of July 29, 1992, among TIFD III-C Inc., The Citizens and Southern National Bank of Florida, Lake Cogen, Ltd. and General Electric Capital Corporation.

SECTION 2. Receipt of Documents. Consenter acknowledges receipt of a copy of the Participation Agreement (including the form of the Lease attached thereto), the Construction Loan Agreement, the Escrow Agreement, the Mortgage and the Security Agreement (the Mortgage and the Security Agreement collectively being referred to herein as the "Security Agreements").

SECTION 3. Assignment by Partnership. Partnership hereby consents to the (i) collateral pledge and assignment, to Owner Participant, pursuant to the Security Agreements, of all of Partnership's right, title and interest in, to and under (but, except as otherwise expressly provided in Section 6 below, not its obligations, liabilities or duties with respect to) (a) the Gas Purchase Agreement dated as of July 29, 1992 (the "Gas Purchase Agreement"), and [if applicable] (b) the Assignment of Agreements between Partnership and Consenter, a form of which is attached to the Gas Purchase Agreement as Exhibit D (the "NCM Assignment Agreement") (the Gas Purchase Agreement and Assignment Agreement being herein collectively referred to as the "Agreements"), and (ii) the absolute transfer and assignment to Owner Trustee (if and when the Lease Commencement Date shall occur), effective as of the Lease Commencement Date, of all of Partnership's right, title and interest in, to and under (but, except as expressly provided in Section 6 below, not its obligations, liabilities or duties with respect to) the Agreements as evidenced by an Assignment of Certain Facility Contracts to be dated as of the Lease Commencement Date which will be substantially in the form of Appendix I to the Participation Agreement.

SECTION 4. Further Assignment.

- (a) Each of Owner Participant and Owner Trustee may assign all or any portion of its rights under the Agreements or this Consent and Agreement (i) to any Person
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to secure any obligation of Owner Participant or Owner Trustee also secured by an assignment of the Lease and to any subsequent assignee through such Person upon and after or in lieu of the exercise of its rights and enforcement of its remedies pursuant to any security agreement governing such assignment, at law, in equity or otherwise, (ii) to any Person in connection with, subsequent to and/or in lieu of the exercise by Owner Participant or Owner Trustee of its rights, or enforcement of its remedies, pursuant to any security document or other agreement relating to the Facility, regardless of whether such assignment occurs pursuant to contract, agreement, waiver, by law, in equity or otherwise, (iii) to any Person in connection with the sale, conveyance, lease, transfer or assignment by Owner Participant or Owner Trustee to such Person of any or all of Owner Participant's or Owner Trustee's right, title and interest in and to the Facility, and (iv) to the Lessee pursuant to Section 2.01 of the Lease (if and when the Lease Commencement Date shall occur).

- (b) The assignment of the Agreement to any Person shall not relieve the assigning party from any duty, debt or obligation then owing to Consenter thereunder at the time of such assignment.

#### SECTION 5. Consent.

- (a) Consenter hereby consents to the assignments described in Section 3 and to any assignment described in Sections 4 or 9, and agrees to be bound by all of the terms and conditions of this Consent and Agreement applicable to it.
- (b) Any assignment contemplated by Section 4 or Section 9 shall not require any further consent from Consenter. Consenter shall not be required to recognize any such assignee until Owner Participant and Owner Trustee provide notice thereof to Consenter, but the failure to give such notice shall not otherwise affect Consenter's obligations hereunder.

#### SECTION 6. Waiver and Assurance.

- (a) (i) Each assignment described in Sections 3, 4 and 9 shall be fully effective against the Consenter and, where applicable, Partnership, (ii) no such assignment shall constitute a breach of or default under the Agreements, (iii) each representation, warranty, covenant, indemnity and agreement of Consenter in the Agreements shall continue in full force and effect and shall inure to the benefit of and be enforceable by each assignee permitted under Sections 3, 4 or 9 to the same extent as if such assignee were named in the place of Partnership in the Agreements, (iv) until such assignee shall have provided Consenter with written notice that it has assumed the obligations of Partnership under the Agreements (in which case liability in respect of any and all obligations thereunder shall be limited solely to such party's interest in the Facility), no such assignee shall be liable for any obligation or duty or Partnership under the Agreements nor shall



any such assignment give rise to any duty or obligation on the part of any such assignee, and (v) notwithstanding any assumption by Owner Participant or Owner Trustee of any obligation of Partnership with respect to the Agreements in accordance with this Section 6, Owner Participant and Owner Trustee shall be released from all such obligations from and after the date of any assignment by Owner Participant or Owner Trustee as contemplated by Section 4 above.

**SECTION 7. Payments.** Consenter hereby agrees to make all payments due from it in connection with the Gas Purchase Agreement by wire transfer to Escrow Agent at such account to which Owner Participant shall instruct Consenter in writing. If Owner Participant shall so instruct otherwise, such payments shall be made as instructed by Owner Participant in such notice. All parties hereto agree that the payment to the Escrow Agent in accordance with the Escrow Agreement of amounts due to Partnership from Consenter under the Gas Purchase Agreement, or payment of such amounts as directed by Owner Participant in a written notice to Consenter, shall satisfy the Consenter's payment obligations under the Gas Purchase Agreement.

**SECTION 8. Representations and Warranties.** Each of the Consenter and Partnership solely as to itself, represents and warrants that:

- (a) it is a Person duly organized and validly existing under the laws of its jurisdiction of organization with all corporate power and authority to enter into and perform the Agreements and this Consent and Agreement (the "Applicable Instruments"), in each case to the extent it is a party thereto;
- (b) it has duly authorized, executed and delivered each Applicable Instrument to which it is a party, and each Applicable Instrument to which it is a party is its legal, valid and binding obligation enforceable against it in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium and similar laws and judicial decisions of general applicability relating to or affecting creditors' rights, and (ii) general principles of equity;
- (c) neither its execution and delivery of any Applicable Instrument or its consummation of the transactions contemplated thereby or its compliance with any of the terms and provisions thereof does or will (i) require any approval of its partners, stockholders or board of directors (if applicable) or approval or consent of any trustee or holders of any of its indebtedness or obligations (except such as have been obtained), (ii) contravene any Governmental Rule applicable to or binding on it or any of its properties, (iii) contravene or result in any breach of or constitute any default, or result in the creation of any Lien upon any of its property, under any indenture, mortgage, chattel mortgage, deed of trust, conditional sale contract, bank loan, credit agreement, corporate charter (if applicable), by-law (if applicable) or other material agreement or instrument to which it is a party or by which it or any of its material properties may be bound or affected, (iv) does or will require any Governmental Action (except such as

have been obtained or are not yet required); and

- (d) Consenter has duly performed and complied in all material respects with all covenants, agreements and conditions contained in the Agreements and none of Partnership's rights under the Agreements has been waived.

SECTION 9. Permanent Financing. Each of Owner Participant and Owner Trustee shall have the right to assign all of its right, title and interest in, to and under the Agreements and this Consent and Agreement to any Permanent Lender and this Consent and Agreement shall inure to the benefit of any such Permanent Lender, *mutatis mutandis*, without any of Consenter, Partnership, Owner Trustee, Owner Participant or any such Permanent Lender being required to execute any further instruments; provided, however, that Consenter shall not be required to recognize any Permanent Lender until Owner Participant or Owner Trustee, as the case may be, provides notice to Consenter of the assignment of this Consent and Agreement to the Permanent Lender.

SECTION 10. Assigns. Subject to the terms and conditions hereof, this Consent and Agreement shall inure to the benefit of the parties hereto and their permitted assigns.

SECTION 11. Termination of Agreement; Amendment of Agreement.

- (a) Notwithstanding any right Consenter may have under the Agreements, at law, in equity or otherwise, it shall not terminate or suspend the Agreements at any time unless it shall have given written notice to Owner Participant and Owner Trustee, or any assignee of Owner Participant and Owner Trustee pursuant to clauses 3, 4 or 9, of its intention to so terminate or suspend and Owner Participant, Owner Trustee or such assignee shall have had a period of up to (i) 13 days, with respect to any suspension, or (ii) 63 days, with respect to termination, within which to cure any default giving rise to such termination or suspension, as applicable.
- (b) Partnership and Consenter shall not amend or modify any material provisions of the Agreement or agree to any amendment or modification of any material provision of the Agreement without the written consent of Owner Participant and no such amendment or modification shall be binding or effective without such consent (such consent not to be unreasonably withheld). Owner Participant shall be deemed to have consented to any amendment or modification unless Owner Participant or such assignee notifies Consenter within 10 days of being advised in writing of the proposed amendment or modification, that it objects to the proposed amendment or modification and provides detailed reasons at that time for its objection.

SECTION 12. Bankruptcy. In the event that (i) any of the Agreements is rejected by a debtor in possession or a trustee in bankruptcy in any bankruptcy or insolvency proceeding involving Partnership, and (ii) Owner Participant, Owner Trustee or a designee of Owner Participant or Owner Trustee, as the case may be, is in possession and control of the Facility,



then Consenter shall, if requested by Owner Participant or Owner Trustee, as the case may be, within 30 days after the conditions set forth in the foregoing clauses (i) and (ii) are satisfied, execute and deliver to Owner Participant, Owner Trustee, or such designee of Owner Participant or Owner Trustee, as the case may be, new agreements (the "New Agreements") to be in effect (x) for the remainder of the term of the original Agreements and (y) with substantially the same terms as those contained in the original Agreements. References to this Consent and Agreement to the "Agreements" shall be deemed also to refer to the New Agreements.

**SECTION 13. Modification to Agreement.** Notwithstanding anything to the contrary in the Agreements, the following provisions shall apply to the Agreements:

- (a) Any agreement with respect to the "MDQ" contemplated by clauses 4.02 or 4.03 of the Gas Purchase Agreement shall not become effective without the prior written approval of Owner Participant, such approval not to be unreasonably withheld.
- (b) Each of Owner Participant and its Affiliates shall be deemed a third party beneficiary of the Agreements.
- (c) Partnership shall not have the right to terminate any of the Agreements without the prior written consent of Owner Participant. Any termination rights exercised without such consent shall be null and void.
- (d) Notwithstanding anything to the contrary in the Gas Purchase Agreement, Buyer or Buyer's designee shall not purchase the Excess Quantity as contemplated by Section 13.03 thereof.
- (e) If instructed to do so by Owner Participant, Partnership shall extend the Term of the Gas Purchase Agreement in accordance with subclause 3.02(a)(1) or 3.02(a)(2) thereof. In addition, Owner Participant shall have the independent right to extend the Term of the Gas Purchase Agreement in accordance with subclause 3.02(a)(1) or 3.02(a)(2) thereof by giving written notice to Consenter. Any reference to Buyer in such subclause 3.02(a)(1) or 3.02(a)(2) shall include Owner Participant. In the event Owner Participant shall extend the term of the Gas Purchase Agreement in accordance with this Section 13(e), the parties shall be bound by such provision of the Gas Purchase Agreement during the term of such extension to the same extent as if the Partnership had chosen to extend the Term of the Gas Purchase Agreement.
- (f) Without the prior written consent of Owner Participant (not to be unreasonably withheld), Partnership shall not extend the Term of the Gas Purchase Agreement in accordance with subclause 3.02(b) thereof.
- (g) Without the prior written consent of Owner Participant (not to be unreasonably withheld), Consenter shall not extend the Term of the Gas Purchase Agreement

in accordance with subclause 3.02(c) thereof.

- (h) Any Portfolio Gas Contract shall be re-assigned to Consenter in accordance with subclause 9.01(h) of the Gas Purchase Agreement if a substitute Portfolio Contract has been substituted for such Portfolio Gas Contract, all as more specifically provided in the Gas Purchase Agreement.
- (i) If Consenter and Partnership agree upon the actual MDQ for the Project in accordance with subclause 4.02(a) of the Gas Purchase Agreement, Owner Participant shall not unreasonably withhold its consent to such actual MDQ.
- (j) If Consenter elects to exercise its right of first refusal to sell gas to the Project following expiration of the Gas Purchase Agreement, in accordance with subclause 10.04(a) thereof, Consenter and Partnership shall not enter into any definitive gas sales agreement without the prior approval of Owner Participant (which approval shall not be unreasonably withheld).
- (k) Owner Participant confirms that notices may be sent to the address provided for Lender (as defined in the Gas Purchase Agreement) in clause 21.02 of the Gas Purchase Agreement.

SECTION 14. Arbitration. Consenter and Partnership hereby agree and acknowledge that Owner Participant shall have the right, at its sole cost and expense, to participate and be heard in any arbitration of a dispute among Partnership and Consenter arising under the Agreements.

SECTION 15. Miscellaneous.

- (a) Notice. All notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms of this Consent and Agreement to be given to any person shall be in writing, and sent by telex, telecopy or other wire transmission containing a request for assurance of receipt in a manner typical with respect to communication of that type, or mailed by registered or certified mail, or transmitted by any other method permitted under the Gas Purchase Agreement.



The address for service of notices for each of the parties, which may be changed from time to time by written notice given as aforesaid, shall initially be as follows:

Consent:

North Canadian Marketing Corporation  
1600 Smith Street, Suite 3910  
Houston, Texas 77002  
Attention: Manager, Supply  
Telephone No.: (713) 753-0900  
Facsimile No.: (713) 753-0999

Partnership:

Lake Cogen, Ltd.  
c/o North Canadian Power Incorporated  
1100 Town & Country Road, Suite 800  
Orange, California 92668  
Attention: Mr. Greg B. Lawyer

Owner Participant:

TIFD III-C Inc., c/o General Electric Capital  
Corporation  
Transportation & Industrial Funding Division  
1600 Summer Street, 6th Floor  
Stamford, Connecticut 06927  
Attention: Managing Counsel

Owner Trustee:

The Citizens and Southern National Bank of Florida  
c/o NationsBank of Georgia, N.A.  
600 Peachtree Street, N.E., Suite 900  
Atlanta, Georgia 30308  
Attention: Leveraged Lease Administration

- (b) Severability. Any provision of this Consent and Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties to this Consent and Agreement hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

- (c) Amendment and Waiver. This Consent and Agreement may not be terminated, amended, supplemented, waived or modified unless pursuant to an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. Except as specifically provided herein, no failure or delay of Owner Participant or Owner Trustee in exercising any power or right under this Consent and Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power.
- (d) Further Assurances. Consenter hereby agrees that it shall cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as Owner Participant may from time to time reasonably request in order to (i) carry out more effectively the intent and purposes of the provisions of this Consent and Agreement and the Agreements, and (ii) establish and protect the rights created or intended to be created in favor of Owner Trustee or Owner Participant (as the case may be) pursuant to this Consent and Agreement and the Agreements.
- (e) Bring-down Certificate and Opinion. On or before the Lease Commencement Date, the Consenter shall provide to Partnership a bring-down officer's certificate and a bring-down opinion, each substantially in the form of the officer's certificate and opinion provided by Consenter to Partnership on the Construction Loan Closing Date.
- (f) Counterparts. This Consent and Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. All signatures need not be on the same counterpart.
- (g) Governing Law: Exclusive Jurisdiction.
- (i) This Consent and Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of Texas, without regard to the conflicts of laws provisions thereof.
- (ii) The provisions of this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, without regard to the conflicts of laws provisions thereof and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. All references to the parties herein shall include their respective successors and assigns. Except as provided in the immediately preceding sentence, nothing herein shall be deemed to create any rights in, and this Consent and Agreement shall not be construed to



be a contract in whole or in part for the benefit of, any person or entity not a party hereto.

- (iii) With respect to any claim hereunder (except for those which are subject to arbitration under Section 14), exclusive jurisdiction as to all disputes hereunder shall be vested in the United States District Court for the Southern District of New York. Subject to the provisions of the foregoing sentence, each of the parties (other than Owner Trustee) irrevocably submits to the exclusive jurisdiction of such Court, and irrevocably waives (i) any objection which such party may have at any time to the laying of venue of any suit, action or proceeding arising under or relating to this Consent and Agreement brought in any such Court, (ii) any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum, and (iii) the right to object, with respect to such claim, suit, action or proceeding brought in any such Court, that such court does not have jurisdiction over such party.
- (iv) The parties agree that, so long as this Consent and Agreement is in effect, each such party (other than Owner Trustee) will maintain a place of business or an agent for service of process in New York City and give prompt notice to each other party hereto of the address of such place of business or such agent, as the case may be, and of any change of address of such place of business and of the name and address of any new agent appointed by it, as applicable. If, despite the foregoing, there is for any reason no agent for service of process of a party available to be served, and if such party at that time has no place of business in New York City, then each such party irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address set forth in clause 21.02 of the Gas Purchase Agreement (with respect to Consenter and Partnership) or the address set forth in the Participation Agreement (with respect to Owner Participant).
- (v) Consenter and Partnership initially and irrevocably designate CT Corporation to receive for and on behalf of such party service of process in New York City with respect to this Consent and Agreement.
- (vi) Consents Not Unreasonably Withheld. Without limiting or modifying Section 13 of this Consent and Agreement, Owner Participant hereby acknowledges the provisions of clause 10.04 of the Gas Purchase Agreement (which provision states that Lender shall not unreasonably withhold its consent to the matters stated therein) and hereby agrees to be bound by such provisions.

IN WITNESS WHEREOF, the undersigned have caused this Consent and Agreement to be duly executed as of the day and year first above written.

**NORTH CANADIAN MARKETING  
CORPORATION**

By: Robert F. Spragins  
Vice President, Supply  
Development

By: G. Barry Padley  
Corporate Secretary

**LAKE COGEN, LTD.**  
By: NCP Lake Power Incorporated,  
General Partner

By: Kenneth M. Ross  
Vice President

**CITIZENS AND SOUTHERN NATIONAL  
BANK OF FLORIDA**, not in its  
individual capacity, but solely as  
Owner Trustee,

By:  
Name:  
Title:

**TIFD III-C INC.**

By:  
Name:  
Title:



## EXHIBIT F

### Lake Cogen Pricing Formula

The Base Price of Gas shall be \$2.43 per MMBtu at the Commencement of Commercial Operations. For each subsequent month, the price of Gas shall be changed from the price in effect for the prior month by a percent (P) determined as follows:

$$P = \frac{x - y}{y}$$

Where:

- (1) x = The Composite Energy Rate for the current month.
- (2) y = The Composite Energy Rate for the previous month.

Composite  
Energy Rate

$$(\$ / \text{Kw} \cdot \text{HR}) = \text{Monthly Capacity Payment} + \text{Fuel Component} + \text{O\&M Component} + \text{Voltage Delivery Adjustment} + \text{Adjustment Factor}$$

#### Definitions and Example Calculations:

- (1) Monthly Capacity Payment (\$/Kw•HR) =

$$\begin{aligned} & \text{Monthly Capacity Payment } (\$/\text{Kw} \cdot \text{Month})^{(a)} \times \left[ \frac{\text{Committed On-Peak Capacity Factor } (\%)^{(b)}}{\text{Minimum On-Peak Capacity Factor } (\%)^{(b)}} \right] \\ & \quad \text{Number of Days in Month} \times 24 \text{ Hours} \\ & = \frac{\text{\textsuperscript{1993}} \$12.07 / \text{Kw} \cdot \text{Month} \times (90/83)}{30 \text{ Days} \times 24 \text{ Hours}} \\ & = \$0.0182 / \text{Kw} \cdot \text{HR} \end{aligned}$$

- (2) Fuel Component (\$/Kw•HR) =

$$\begin{aligned} & \frac{\text{Cost of Coal to CR \# 1 \& 2 } (\$/\text{MMBtu})^{(a)} \times \text{Avoided Unit Heat Rate } (\text{Btu}/\text{Kw} \cdot \text{HR})^{(b)}}{1,000,000} \\ & = \frac{\$1.87 / \text{MMBtu} \times 9830 (\text{Btu}/\text{Kw} \cdot \text{HR})}{1,000,000} \\ & = \$0.0184 / \text{Kw} \cdot \text{HR} \end{aligned}$$

*Stu*

(3) O&M Component (\$/Kw•HR) =

$$\begin{aligned} & \frac{\text{O\&M } (\$/\text{Mw}\cdot\text{HR})^{\text{a}}}{1,000} \quad 273 \\ &= \frac{\$5.19/\text{Mw}\cdot\text{HR}}{1,000} \\ &= \$0.0052/\text{Kw}\cdot\text{HR} \end{aligned}$$

(4) Voltage Delivery Adjustment (\$/Kw•HR) =

$$\begin{aligned} & (\text{Fuel Component} + \text{O\&M Component}) \times \text{Voltage Adjustment}^{\text{b}} \\ &= (\$0.0184/\text{Kw}\cdot\text{HR} + \$0.0052/\text{Kw}\cdot\text{HR}) \times 0.035 \\ &= \$0.0008/\text{Kw}\cdot\text{HR} \end{aligned}$$

(5) Adjustment Factor = 0

Therefore,

$$\begin{aligned} (6) \text{ Composite Energy Rate } (\$/\text{Kw}\cdot\text{HR}) \\ &= .0182 + .0184 + .0052 + .0008 \\ &= \$0.0426/\text{Kw}\cdot\text{HR} \end{aligned}$$

Footnotes:

- (a) Negotiated Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility between Lake Cogen Limited and Florida Power Corporation ("PPA"); Appendix C, Schedule 4, Column 3, Page C-5.
- (b) PPA; Article VII: Capacity Commitment, Section 7.1. "The Committed Capacity shall be made available at the Point of Delivery from the Contract In-Service Date through the remaining Term of this Agreement at a Committed On-Peak Capacity Factor of 90%."
- (c) PPA; Appendix C, Schedule 3, Page C-4. "Minimum On-Peak Capacity Factor = 83%."
- (d) System Net Generation and Inventory Coal Chargeout Cost to CR #1 & 2, Schedule A-5; A monthly statement provided by Florida Power Corporation.
- (e) PPA; Appendix C, Schedule 3, Page C-4. "Avoided Unit Heat Rate = 9830 Btu/Kw•HR."
- (f) PPA; Appendix C; Schedule 4, Column 5, Page C-5.
- (g) Petition for the Approval of Contracts for the Purchase of Firm Capacity and Energy, Docket No. 910-401-EQ, Attachments F and I; Florida Public Service Commission.

*the 27.*



## APPENDIX C

RATES FOR PURCHASE OF FIRM CAPACITY AND ENERGY  
FROM A QUALIFYING FACILITY

## SCHEDULE 4

## Payments for Avoided 1991 Pulverized Coal Unit

## Option A

Fuel Multiplier = 1.0

(1) Calendar Year	(2) Capacity Payment - \$/KW/Month		(4) (5) (6) Energy Payment - \$/MWh (c)		
	Normal Payment Rate	Accelerated Payment Rate (b)	(estimated)		
			Fuel	O&M	Total
1991	10.92		21.07	4.70	25.77
1992	11.48		21.94	4.94	26.88
1993	12.07	12.07	22.86	5.19	28.05
1994	12.68	12.68	23.87	5.45	29.32
1995	13.32	13.32	25.09	5.73	30.82
1996	14.00	14.00	26.37	6.02	32.39
1997	14.72	14.72	27.71	6.33	34.04
1998	15.46	15.32	29.13	6.65	35.78
1999	16.25	15.93	30.61	6.99	37.60
2000	17.08	16.74	32.17	7.35	39.52
2001	17.95	17.60	33.81	7.73	41.54
2002	18.87	18.49	35.54	8.12	43.66
2003	19.83	19.33	37.35	8.53	45.88
2004	20.85	20.22	39.26	8.97	48.23
2005	21.91	21.25	41.26	9.43	50.69
2006	23.02	22.34	43.36	9.91	53.27
2007	24.20	23.47	45.57	10.41	55.98
2008	25.43	24.54	47.90	10.94	58.84
2009	26.74	25.66	50.34	11.50	61.84
2010	28.09	26.97	52.91	12.09	65.00
2011	29.53	28.35	55.61	12.70	68.31
2012	31.04	29.79	58.44	13.35	71.79
2013	32.61	31.32	61.42	14.03	75.45
2014	34.28		64.55	14.75	79.30
2015	36.03		67.85	15.50	83.35
2016	37.86		71.31	16.29	87.60
2017	39.80		74.94	17.12	92.06
2018	41.82		78.77	18.00	96.77
2019	43.96		82.78	18.91	101.69
2020	46.20		87.01	19.88	106.89
2021	48.56		91.45	20.89	112.34
2022	51.03		96.11	21.96	118.07
2023	53.64(a)		101.11	23.08	124.19

## NOTES:

- (a) If the Term of the Agreement is extended beyond 2023 pursuant to Article IV hereof, the normal payment rate schedule shall be escalated at 5.1% per year.

- (b) The QF may structure an accelerated payment rate schedule that has the same or lower net present value over the Term as the normal payment rate schedule using the discount rate specified in section 8.5.3 hereof and which assumes the Contract In-Service Date specified as of the Execution Date. At the request of the QF prior to the commencement of capacity payments or if the Contract In-Service Date differs from the date specified as of the Execution Date, the accelerated payment rate schedule in this schedule will be recalculated so that the ratio of the net present value as of January 1, 1991, of the recalculated schedule to the normal payment schedule over the Term is not increased.
- (c) Information provided is estimated and excludes the Delivery Voltage Adjustment.

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## APPENDIX C

RATES FOR PURCHASE OF FIRM CAPACITY AND ENERGY  
FROM A QUALIFYING FACILITYSCHEDULE 3  
GENERAL INFORMATION FOR 1991 PULVERIZED COAL UNITGeneral

Year of avoided unit = 1991

Avoided unit fuel reference plant = Crystal River units 1&2

Operating Data

Avoided unit variable O&M costs in 1/90 \$'s = \$4.36/MWH (Option A only)

Annual escalation rate of O&M costs = 5.10%

Minimum on-peak capacity factor = 83.0%

Avoided unit heat rate = 9,830 BTU/KWH

Type of fuel = coal with 1.15% sulfur by weight maximum at 11,000 BTU/lb., adjustable in direct proportion to the BTU/lb. of coal

On-Peak Hours

(1) For the calendar months of November through March, all days:

6:00 a.m. to 12:00 noon, and  
5:00 p.m. to 10:00 p.m.

(2) For the calendar months of April through October, all days:

11:00 a.m. to 10:00 p.m.

## EXHIBIT G

Costs incurred or (except as provided in item G) accrued for the following items shall be taken into determining the limitations of Seller's liability under subclause 17.01(c):

- A. Rent;
- B. Fixed costs under the O&M Agreement;
- C. Property taxes;
- D. Demand charges under the Transportation Agreement;
- E. Rent payments to Golden Gem Growers, Inc.;
- F. Insurance;
- G. Reasonably incurred general and administrative costs paid to third parties who are not Affiliates of Buyer. Such costs include, by way of example, rather than enumeration, attorneys' fees and costs pursuant to Article XVII.
- H. Fixed component of water and sewer costs;
- I. Electrical interconnect costs; and
- J. Payments pursuant to the Engine Support Agreement (as such term is defined in the Participation Agreement).



FIRST AMENDMENT AND CONFIRMATION AGREEMENT made as of May 17, 1993.

BETWEEN:

NORTH CANADIAN MARKETING CORPORATION,  
a California corporation with its  
principal office in Houston, Texas ("NCMC" or "Seller")

OF THE FIRST PART

and

LAKE COGEN, LTD.,  
a Florida Limited Partnership with its  
principal office in Tampa, Florida ("Lake" or "Buyer")

OF THE SECOND PART :

WHEREAS in accordance with NCMC's obligations to develop a "Gas Supply Portfolio" pursuant to the requirements of the Gas Purchase Agreement made as of July 29, 1992 between NCMC, as seller, and Lake, as buyer (the "Lake Gas Purchase Agreement"), NCMC has entered into:

- (a) a Gas Purchase Agreement made as of December 18, 1992 between ARCO Natural Gas Marketing, Inc., as seller, and NCMC, as buyer, as amended by the First Amendment to Gas Purchase Agreement dated as of April 6, 1993 (the "ARCO Gas Purchase Agreement");
- (b) a Gas Purchase Agreement made as of November 1, 1992 between North Canadian Marketing Inc. ("NCMI"), as seller, and NCMC, as buyer (the "NCMI Gas Purchase Agreement");

WHEREAS NCMI, in order to obtain a sufficient supply of Gas to deliver to NCMC pursuant to its obligations under the NCMI Gas Purchase Agreement, has entered into a gas purchase agreement made as of November 1, 1992 between North Canadian Oils Limited, as seller, and NCMI, as buyer (the "NCO Gas Purchase Agreement");

WHEREAS NCMI, as security for its performance under the NCMI Gas Purchase Agreement, has assigned to NCMC all of its interest in the NCO Gas Purchase Agreement;

WHEREAS NCMC is prepared to assign to Lake all of its interest in each of the ARCO Gas Purchase Agreement, the NCMI Gas Purchase Agreement and the NCO Gas Purchase Agreement (collectively, the "Gas Purchase Agreements") pursuant to an Assignment of Agreements made as of May 17, 1993 ("Assignment"); and

WHEREAS the parties are entering into this agreement in order to confirm that (1) the assignment by NCMC of its interest in each of the Gas Purchase Agreements to Lake satisfies NCM's obligations under the Lake Gas Purchase Agreement to develop and assign a "Gas Supply Portfolio" to Lake, and (2) provided that all of the Gas Purchase Agreements remain in full force and effect, NCMC shall not be obligated to assign any other Gas supply contracts which NCMC may enter into from time to time for the purposes of obtaining Gas supply for the Project.

NOW THEREFORE in consideration of \$1.00 paid by each party to the other and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

#### ARTICLE 1 DEFINITIONS

1.01 All capitalized terms not otherwise defined herein shall have the meanings ascribed to those terms in the Lake Gas Purchase Agreement.

#### ARTICLE 2 CONFIRMATION OF OBLIGATIONS

2.01 Buyer confirms that it has received and reviewed the Gas Purchase Agreements and that, as of the date of this Agreement, the Gas Purchase Agreements satisfy Seller's obligations respecting the Gas Supply Portfolio as set forth in clause 9.01 of the Lake Gas Purchase Agreement.

2.02 Concurrent with the execution of this Agreement, Seller shall assign the Gas Purchase Agreements to Buyer in accordance with its obligations under subclause 9.01(h) of the Lake Gas Purchase Agreement.



2.03 Subject to clause 2.04:

- (a) for as long as the Gas Purchase Agreements (or substitutes for those agreements meeting the requirements of clause 9.01 of the Lake Gas Purchase Agreement) remain in full force and effect, the assignment of the Gas Purchase Agreements by Seller to Buyer satisfies all of Seller's obligations under clause 9.01 of the Lake Gas Purchase Agreement to develop a Gas Supply Portfolio and to assign any contracts in the Gas Supply Portfolio to Buyer; and
- (b) Seller shall not be required at any time or under any circumstances whatsoever to assign to Buyer or to any other person any gas supply contracts (other than the Gas Purchase Agreements) or other arrangements (including, without limitation, gas supply or transportation arrangements) which Seller may obtain or enter into from time to time during the Basic Term notwithstanding that any of those contracts or other arrangements may be acquired or entered into by Seller for the purpose of supplying Gas to the Project pursuant to the Lake Gas Purchase Agreement or otherwise.

2.04 In the event that Seller, at any time during the Basic Term, enters into any contract in substitution for or in replacement of any of the Gas Purchase Agreements and which contract satisfies the requirements of subclause 9.01(g) of the Lake Gas Purchase Agreement, then Seller shall assign such Substitute Portfolio Contract to Buyer and Buyer shall release and cause the Lender to release back to the Seller the Gas Purchase Agreement to which the Substitute Portfolio Contract pertains, all in accordance with the terms of the Lake Gas Purchase Agreement.

### ARTICLE 3 LAKE GAS PURCHASE AGREEMENT

3.01 Any terms of the Lake Gas Purchase Agreement or the Assignment which conflict with or are inconsistent with any of the terms of this agreement shall be deemed to have been modified accordingly and any inconsistencies between any of the Lake Gas Purchase Agreement, the Assignment and this agreement shall be resolved in favor of this agreement.

3.02 Except as modified or amended in accordance with the terms of this agreement, all of the terms of the Lake Gas Purchase Agreement and the Assignment are specifically ratified and confirmed, and the Lake Gas Purchase Agreement and the Assignment remains in full force and effect in accordance with its terms as amended by this agreement.

ARTICLE 4  
MISCELLANEOUS

4.01 Each party shall execute, acknowledge, verify and deliver any and all documents which from time to time may be reasonably requested by any other party to carry out the purposes and the intent of this agreement.

4.02 ALL QUESTIONS CONCERNING THE VALIDITY OR MEANING OF THIS AGREEMENT OR RELATING TO THE RIGHTS AND OBLIGATIONS OF THE PARTIES WITH RESPECT TO PERFORMANCE UNDER THIS AGREEMENT SHALL BE CONSTRUED AND RESOLVED UNDER THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF.

4.03 The division of this agreement into articles and clauses and the insertion of headings or captions are for convenience of reference and administration only and shall not affect the construction or interpretation of this agreement.

4.04 This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing contained in this agreement, express or implied, is intended to confer upon any other person or entity any benefits, rights or remedies.

IN WITNESS WHEREOF the parties hereto have executed this agreement to be effective as of the date first above written.

NORTH CANADIAN MARKETING CORPORATION

By: \_\_\_\_\_

Robert F. Spradins  
Vice President,  
Supply Development

By: \_\_\_\_\_

D. Garry Ramsden-Wood,  
President

LAKE COGEN, LTD.

By: NCP Lake Power Incorporated,  
General Partner

By: \_\_\_\_\_

Donald D. McKechnie,  
President



## SECOND AMENDMENT TO GAS PURCHASE AGREEMENT

*Change Del Pts*

This Second Amendment to Gas Purchase Agreement (the "Second Amendment") dated as of August 10, 1993 by and between North Canadian Marketing Corporation, a California corporation ("Seller") and Lake Cogen, Ltd., a Florida limited partnership ("Buyer") to amend certain provisions of the Gas Purchase Agreement executed on July 29, 1992, as heretofor amended (the "Agreement") between Buyer and Seller.

WHEREAS, Buyer and Seller have agreed to change the various Points of Delivery (as defined in the Agreement) and the capacity at each Point of Delivery; and

WHEREAS, Buyer and Seller want to implement those certain changes to the Agreement.

NOW, THEREFORE, in light of the mutual premises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.
2. Buyer and Seller hereby agree to delete Exhibit C attached to the Agreement and to replace it with Exhibit C attached to this Second Amendment.
3. Except as modified by this Second Amendment, the Agreement shall continue in full force and effect.

NOV 8 1994 16:13

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the day and year first above written.

~~sls~~ NORTH CANADIAN MARKETING CORPORATION

By:

D. Garry Ramsden-Wood  
D. Garry Ramsden-Wood  
President

By:

Robert F. Spragins  
Robert F. Spragins  
Vice President, Supply Development

LAKE COGEN, LTD.  
NCP LAKE POWER INCORPORATED, General Partner

By:

Donald D. McKechnie  
Donald D. McKechnie  
President

THIS IS THE EXECUTION PAGE TO THE SECOND AMENDMENT OF THE GAS PURCHASE AGREEMENT BETWEEN NORTH CANADIAN MARKETING CORPORATION AND LAKE COGEN, LTD., EXECUTED JULY 29, 1992.



# EXHIBIT C

## POINTS OF DELIVERY AS OF AUGUST 10, 1993

All capitalized terms that are not otherwise defined in this Exhibit C shall have the meanings that are given to such terms in the Gas Purchase Agreement.

Unless otherwise agreed to by the parties, the Points of Delivery and the capacity at each such Point of Delivery shall be as follows:

Name	P.O.L. #	Capacity (MMBtu/Day)
FGT MOPS/Tivoli	611	5,118
FGT NGPL Jefferson Co.	10240	2,559
FGT Sabine Kaplan	23062	5,118
FGT NGPL Vermillion	57391	2,559
FGT United St. Helena	10109	5,118

Buyer further agrees that, so long as the Points of Delivery hereunder are consistent with the Supplier Delivery Points as defined and established under the Second Amended and Restated City Gas Sales Agreement dated as of August 10, 1993 (the "City Gate Sales Agreement") between Buyer and PGS or the Amended and Restated Pipeline Capacity Release Agreement dated as of August 10, 1993 (the "Capacity Release Agreement") between Buyer and PGS (whichever agreement may be applicable at the time), Buyer will provide Seller with (i) the same degree of flexibility in selecting delivery points on PGS's system as PGS provides to Buyer and (ii) a pro rata portion of the total Supplier Delivery Point capacity which PGS has provided Buyer under the City Gate Sales Agreement or the Capacity Release Agreement (whichever agreement may be applicable at the time) with such MDQ pro rata portion being based on the relationship that the MDQ hereunder bears to the total amount of firm transportation capacity available to Buyer under the City Gate Sales Agreement or the Capacity Release Agreement (whichever agreement may be applicable at the time).

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original Ex C*

THIRD AMENDMENT to GAS PURCHASE AGREEMENT is made and entered as of August 16, 1993 (the "Third Amendment"), between NORTH CANADIAN MARKETING CORPORATION, a California corporation ("Seller"), and LAKE COGEN, LTD., a Florida Limited partnership ("Buyer").

WHEREAS, Buyer and Seller entered into the Gas Purchase Agreement made and entered into as of July 29, 1992 (as amended prior to the date hereof, the "Agreement"; capitalized terms used herein and not defined herein have the meanings assigned to them therein); and

WHEREAS, Buyer and Seller desire to amend the Agreement on the terms and conditions set forth in this Third Amendment to Gas Purchase Agreement (this "Third Amendment");

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

SECTION 1. Additional Definitions. Clause 1.01 of the Agreement is hereby amended by inserting the following definitions in the appropriate alphabetical location in such clause 1.01:

"Coverage Ratio" shall have the meaning given to such term in the Participation Agreement.

"Escrow Agent" shall have the meaning given to such term in the Participation Agreement.

[2605-495-4/AM02.NEW/23WM/4306]



"Escrow Agreement" means the Amended and Restated Escrow Agreement dated as of August 16, 1993, among Lake Cogen, Ltd., TIFD III-C Inc. and NationsBank of Florida, National Association, formerly known as The Citizens and Southern National Bank of Florida, as Escrow Agent.

"Gas Deferral Amount" shall have the meaning given to such term in the Participation Agreement.

"Gas Price Reset Date" means the first day of the calendar month in which the last of the following two events shall have occurred: (i) the date on which Owner Participant shall have approved in writing, as provided in the definition of "Coverage Ratio," Partnership's calculation establishing that the Coverage Ratio for the one-year period consisting of four consecutive calendar quarters (each such quarter to commence on January 1, April 1, July 1 or October 1) immediately preceding such calendar month shall have been at least 1.10 to 1 and (ii) the Reset Amount Effective Date shall have occurred. For purposes of this Agreement, such calendar month shall conclusively be deemed to be the month identified as such in a written notice provided to Seller and executed by both Buyer and Owner Participant, absent manifest error; provided, however, that such notice shall not be provided to Seller (and the Gas Price Reset Date shall not go into effect for purposes of this Agreement) so long as any Default related to clause (a) or (b) of Article XVI of the Lease or any Event of Default has occurred and is continuing, it being understood that such notice shall be provided to Seller promptly at such time as no Event of Default is continuing and no Default related to clause (a) or (b) of Article XVI is continuing.

"Participation Agreement" means the Participation Agreement dated as of July 29, 1992, among Lake Cogen, Ltd., The Citizens and Southern National Bank of Florida (now known as NationsBank of Florida, National Association), as Owner Trustee, TIFD III-C Inc. and General Electric Capital Corporation, as amended by Amendment No. 1 to Participation Agreement dated as of August 16, 1993.

[2605-495-4/AM02.NEW/23WM/4306]

"Reset Amount" shall be a price per MMBtu determined using the Reset Amount Disk in accordance with the procedures set forth in Schedule II to the Participation Agreement, all as provided in Section 7.01(ee) of the Participation Agreement.

"Reset Amount Determination Date" means the date on which the Reset Amount is determined in accordance with the fourth sentence of Section 7.01(ee) of the Participation Agreement.

"Reset Amount Disk" means the computer disks, labelled as such, containing the pro forma cash flows to be used in determining the Reset Amount, two copies of which (one each for Partnership and Owner Participant) shall be held by Owner Trustee.

"Reset Amount Effective Date" means the first day of the calendar month in which the Reset Amount Determination Date occurs.

"Restated Special Adjustment Amount" means, for any period commencing on or after July 1, 1993, and ending on any day prior to the Gas Price Reset Date, an amount equal to the excess, if any, of (1) the aggregate amount that would have been payable pursuant to clause 10.01 for such period if the price per MMBtu set forth in the second sentence of clause 10.01 were the Reset Amount (instead of \$2.38 per MMBtu), subject to adjustment during such period as set forth in clause 10.01, over (2) the amount that is actually payable pursuant to clause 10.01 for such period.

"Special Adjustment Account" shall have the meaning given to such term in the Participation Agreement.

[2605-495-4/AM02.NEW/23WM/4306]



'Special Adjustment Amount' means, for any period commencing on July 1, 1993, and ending on any day prior to the Reset Amount Effective Date, the excess, if any, of (i) the aggregate amount that would have been payable pursuant to clause 10.01 for such period if the price per MMBtu set forth in the second sentence of clause 10.01 were \$2.44 per MMBtu (instead of \$2.38 per MMBtu), subject to adjustment during such period as provided in clause 10.01, ~~over~~ (ii) the amount that is actually payable pursuant to clause 10.01 for such period.

SECTION 2. Amendments to Clause 10.01 of the Agreement. Clause 10.01 of the Agreement is hereby amended (i) by deleting the amount "\$2.43" appearing therein and replacing it with the amount "\$2.38" and (ii) by inserting the following new paragraph at the end of such clause 10.01:

"Notwithstanding anything to the contrary set forth in the foregoing sentences of this clause 10.01: (i) for each month during the period beginning on July 1, 1993 and ending on the day immediately preceding the Reset Amount Effective Date, Seller shall also compute the amount that would have been due from Buyer for such month as if the price per MMBtu set forth in the second sentence of this clause 10.01 as of July 1, 1993 were \$2.44 per MMBtu (instead of \$2.38 per MMBtu), as such price per MMBtu would have been adjusted commencing on July 1, 1993 pursuant to the foregoing provisions of this clause 10.01, and Buyer shall, subject to the applicable provisions set forth in the Escrow Agreement (including the right to utilize any funds previously deposited into the Special Adjustment Account as provided in Section 4.22 of the Escrow Agreement), cause Escrow Agent to deposit the Special Adjustment Amount in the Special Adjustment Account as and to the extent provided in Section 4.04 of the Escrow Agreement; (ii) if the Reset Amount Effective Date does not occur on the same date as the Gas Price Reset Date, for each month during the period beginning on the Reset Amount Effective Date and ending on the day immediately preceding the Gas Price Reset Date, Seller shall

[2605-495-4/AM02.NEW/23WM/4306]

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What's on the date?*

compute the amount that would have been due from Buyer for such month as if the price per MMBtu set forth in the second sentence of this clause 10.01 as of July 1, 1993, were the Reset Amount (instead of \$2.38 per MMBtu), as such price per MMBtu would have been adjusted commencing on July 1, 1993, pursuant to the foregoing provisions of this clause 10.01, and Buyer shall, subject to the applicable provisions set forth in the Escrow Agreement (including the right to utilize any funds previously deposited into the Special Adjustment Account as provided in Section 4.22 of the Escrow Agreement), cause Escrow Agent to deposit the Restated Special Adjustment Amount in the Special Adjustment Account as and to the extent provided in Section 4.04 of the Escrow Agreement; and (iii) for each month commencing on or after the Gas Price Reset Date until the end of the Basic Term, the price of Gas shall be calculated in accordance with this clause 10.01 as if the price per MMBtu set forth in the second sentence of this clause 10.01 as of July 1, 1993 were the Reset Amount (instead of \$2.38 per MMBtu), as such price per MMBtu would have been adjusted commencing on July 1, 1993, pursuant to the foregoing provisions of this clause 10.01. It is specifically understood and agreed that Buyer shall provide Seller with such information as Seller may reasonably request for purposes of verifying the Reset Amount. Beginning on the first Disbursement Date on or immediately after the date of receipt by Seller of the notice referred to in the second sentence of the definition of "Gas Price Reset Date" and on each Disbursement Date thereafter, Buyer shall cause Escrow Agent pursuant to, and in accordance with, Section 4.22(c) of the Escrow Agreement to pay to Seller, from the cash available therefor in the Special Adjustment Account, an amount equal to the excess, if any, of the Gas Deferral Amount over the aggregate amount, if any, previously paid to Seller pursuant to such Section 4.22(c), until Seller shall have received an aggregate amount equal to the Gas Deferral Amount. It is specifically understood and agreed that (x) if there is no cash available in the Special Adjustment Account to make the payment to

*def is in  
Participation  
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[2605-495-4/AM02.NEW/23WM/4306]



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Seller required in accordance with the preceding sentence, Buyer shall make such payment out of any amounts distributed to Buyer in accordance with Section 4.04 (viii) of the Escrow Agreement, prior to making any Special Reimbursement Payments required under clause 11.06 and (y) subject to Sections 4.17, 4.18 and 4.22(d) of the Escrow Agreement, Buyer shall remain obligated under this Agreement to make payments of the Gas Deferral Amount to Seller in accordance with the preceding sentence out of either the Special Adjustment Account or amounts distributed to Buyer in accordance with Section 4.04 (viii) of the Escrow Agreement, notwithstanding the termination of this Agreement or the Lease.

### SECTION 3. Additional Invoice Information.

Clause 11.01 of the Agreement is hereby amended by inserting the following new paragraph at the end of such clause 11.01:

"Together with each invoice delivered by Seller to Buyer in accordance with this clause 11.01, Seller shall include the following calculations:

(a) in the invoice for each month during the periods covered by clauses (i) and (ii) of the last paragraph of clause 10.01, the additional amount computed by Seller in accordance with such clauses;

(b) in the first invoice provided by Seller following the Reset Amount Determination Date, the cumulative difference, if any, for the period commencing on July 1, 1993, and ending on the Reset Amount Effective Date, between the amount actually invoiced (based on the \$2.38 per MMBtu price set forth in the second sentence of clause 10.01) and the amount that would have been invoiced if the amount set forth in the second sentence of clause 10.01 had been the Reset Amount, as such amount would have been adjusted commencing on July 1, 1993 pursuant to the provisions of clause 10.01;

[2605-495-4/AM02.NEW/23WM/4306]

(c) in any invoice for any month commencing on or after the Gas Price Reset Date, a calculation showing the portion, if any, of the Gas Deferral Amount remaining unpaid;

(d) upon written request therefor from Buyer or Owner Participant, Seller shall promptly provide such person with any information reasonably requested by such person relating to any calculations made by Seller pursuant to subclauses (a), (b) and (c) set forth immediately above this subclause (d); and

(e) following the determination of the Reset Amount pursuant to Section 7.01(ee) of the Participation Agreement, Buyer shall promptly notify Seller of the amount thereof."

**SECTION 4. Subordination of Special Reimbursement Payments.** Clause 11.06 of the Agreement is hereby amended by inserting the following at the end of the first sentence of clause 11.06(b):

"after payment of Gas Deferral Amounts due to Seller under clause 10.01."

**SECTION 5. Additional Audit Rights.** Clause 16.01 of the Agreement is hereby amended by inserting the following at the end of the first sentence of such clause 16.01:

", including but not limited to Buyer's records with respect to the Reset Amount, the Special Adjustment Account, the Special Reimbursement Payments or the Gas Deferral Amount, all of which records, together with all other records of either party to this Agreement relating to any payment due to or from the other party, shall be retained by each such party for a period of four years after the date of any invoice relating to such payment.

[2605-495-4/AM02.NEW/23WM/4306]



SECTION 6. Amendments. Except as modified or amended in accordance with the terms of this Third Amendment, all of the terms of the Agreement are specifically ratified and confirmed, and the Agreement remains in full force and effect in accordance with its terms as amended by this Third Amendment.

SECTION 7. Governing Law. ALL QUESTIONS CONCERNING THE VALIDITY OR MEANING OF THIS THIRD AMENDMENT OR THE AGREEMENT AS AMENDED HEREBY OR RELATING TO THE RIGHTS AND OBLIGATIONS OF THE PARTIES WITH RESPECT TO PERFORMANCE UNDER THIS THIRD AMENDMENT OR THE AGREEMENT AS AMENDED HEREBY SHALL BE CONSTRUED AND RESOLVED UNDER THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF.

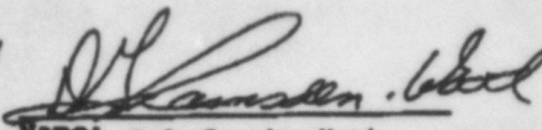
SECTION 8. Headings. The division of this Third Amendment into sections and clauses and the insertion of headings or captions are for convenience of reference and administration only and shall not affect the construction or interpretation of this Third Amendment.

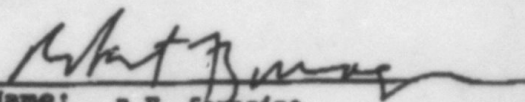
SECTION 9. Parties in Interest; Limitation Rights of Others. This Third Amendment shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing contained in this Third Amendment, express or implied, is intended to confer upon any other person or entity any benefits, rights or remedies.

[2605-495-4/AM02.NEW/23WM/4306]

IN WITNESS WHEREOF, the parties herein have each caused this Third Amendment to be duly executed, all on the day and year first above written.

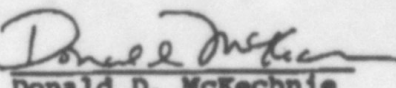
NORTH CANADIAN MARKETING CORPORATION,

by   
Name: D.G. Ramsden-Wood  
Title: President

by   
Name: R.F. Spragins  
Title: Vice President, Gas Supply

LAKE COGEN, LTD.

by: NCP Lake Power Incorporated, its General Partner

by   
Donald D. McKechnie  
President

This is the sole execution page to the "Third Amendment to Gas Purchase Agreement" dated August 16, 1993 and made between North Canadian Marketing Corporation ("Seller") and Lake Cogen, Ltd. ("Buyer").

[2605-495-4/AM02.NEW/23WM/4306]