

(a) that date when the Lessee files with the Trustee any statement, supplemental statement or other tax schedule, return or document (whether pursuant to Treasury Regulations Section 1.103-10(b)(2)(vi)(c), as the same may be amended or supplemented, or otherwise) which discloses that an Event of Taxability shall have in fact occurred;

(b) that date when the Lessee shall be advised in writing by the Commissioner or any District Director of Internal Revenue that, based upon any filings of the Lessee or upon any review or audit of the Lessee, or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(c) that the date when the Lessee shall receive notice from the Trustee in writing that the Trustee has been advised by (i) any holder or former holder of a Bond that the Internal Revenue Service has assessed as includable in the gross income of such holder or former holder the interest on his Bond due to the occurrence of an Event of Taxability, or (ii) the Commissioner or any District Director of Internal Revenue that the interest on the Bonds is includable in the gross income of any holder or former holder of a Bond due to the occurrence of an Event of Taxability.

No Determination of Taxability shall occur or be deemed to have occurred under subparagraph (b) or (c) above unless the Lessee has been afforded a reasonable opportunity, at its expense, to contest any such Determination of Taxability or such assessment either (i) through its own action (if permitted by law) or (ii) by or on behalf of one or more of the holders of the Bonds; and, further, no Determination of Taxability shall occur until such contest, if made, has been abandoned by the contesting party (or parties) or has been finally determined by a court of the United States from which no further appeal exists.

An "Event of Taxability" shall mean:

(a) the making or incurring of capital expenditures (other than those mentioned in Section 103(b)(6)(F) of the Internal Revenue Code of 1954, as amended, the "Code") with respect to "facilities" described in Section 103(b)(6)(D) of the Code, or which would be considered "contiguous or integrated" facilities under Section 103(b)(6)(E) of the Code, in an amount in excess of the amount permitted in Section 103(b)(6)(D) of the Code, which has the effect of causing the interest payable on the Bonds to become includable in the gross income for Federal income tax purposes of the holders or former holders of the Bonds; or

(b) the taking of any action by the Lessee, or the failure of the Lessee to take any action, or any misrepresentation of the Lessee contained in this Agreement

5950

4328 RV.2