

February 13, 2017

**VIA ELECTRONIC FILING**

Hon. Kathleen H. Burgess  
Secretary to the Commission  
New York State Public Service Commission  
Agency Building 3  
Albany, NY 12223-1350

Re: Case 99-F-1625 – Application by KeySpan Energy for a Certificate of Environmental Compatibility and Public Need to Construct and Operate a 250 Megawatt, Cogeneration, Combustion Turbine Electric Generating Facility to be Developed at the Existing Ravenswood Generating Station in Long Island City, Borough of Queens

Dear Secretary Burgess:

Attached for filing in the above-captioned docket please find the “Request of TransCanada Facility USA, Inc. and Helix Generation, LLC for a Minor Change in Compliance Filing to Substitute Guarantors.” Pursuant to Rule 1002.2(j) of the Rules of the New York State Public Service Commission, electronic copies of this filing are being served on the New York State Department of Environmental Conservation (“NYSDEC”). Please contact me with any questions.

Respectfully submitted,

COUCH WHITE, LLP

*Leonard H. Singer*

Leonard H. Singer

LHS/glm  
Attachment

cc: Brian Ossias, Esq. (via email; w/att.)  
Jennifer Maglienti, Esq., NYSDEC Office of General Counsel (via email; w/att.)  
NYSDEC Division of Environmental Permits (via email; w/att.)

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**NEW YORK STATE  
PUBLIC SERVICE COMMISSION**

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Application by KeySpan Energy for a Certificate of  
Environmental Compatibility and Public Need to  
Construct and Operate a 250 Megawatt, Cogeneration,  
Combustion Turbine Electric Generating Facility  
to be Developed at the Existing Ravenswood Generating  
Station in Long Island City, Borough of Queens

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**Case 99-F-1625**

**REQUEST OF TRANSCANADA FACILITY USA, INC. AND  
HELIX GENERATION, LLC FOR A MINOR CHANGE IN COMPLIANCE FILING  
TO SUBSTITUTE GUARANTORS**

TransCanada Facility USA, Inc. (“TransCanada Facility”) and Helix Generation, LLC (“Helix Generation” and collectively with TransCanada Facility, the “Petitioners”) respectfully submit this Request for a Minor Change in Compliance Filing to Substitute Guarantors pursuant to Rule 1002.2(j) of the Rules of the New York State Public Service Commission (“Commission”), 16 N.Y.C.R.R. § 1002.2(j) (2016), section VII of the Certificate of Environmental Compatibility and Public Need for the Ravenswood Cogeneration Facility Unit 40 issued by the New York State Board on Generating Siting and the Environment (“Siting Board”) in this proceeding on September 7, 2001 (the “Unit 40 Certificate”),<sup>1</sup> and the Commission’s Order in this proceeding dated September 4, 2008 (the “September 2008 Order”).<sup>2</sup>

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<sup>1</sup> Case 99-F-1625, *Application by KeySpan Energy for a Certificate of Environmental Compatibility and Public Need to Construct and Operate a 250 Megawatt, Cogeneration, Combustion Turbine Electric Generating Facility to be Developed at the Existing Ravenswood Generating Station in Long Island City, Borough of Queens*, Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (issued September 7, 2001).

<sup>2</sup> Case 99-F-1625, *supra*, Order Accepting Compliance Filing and Providing for Additional Procedures (issued September 4, 2008) (confirmed pursuant to Confirming Order issued on September 17, 2008).

## **INTRODUCTION AND BACKGROUND**

TransCanada Facility is a Delaware corporation and a direct, wholly owned subsidiary of TransCanada Energy USA, Inc. (“TransCanada USA”), which in turn, is a Delaware corporation that is wholly owned by TransCanada Pipelines Limited (“TCPL”). TCPL is a wholly owned subsidiary of TransCanada Corporation (“TransCanada”).

In 2008, TransCanada Facility acquired all of the membership interests in TC Ravenswood, LLC (“TC Ravenswood”), a lightly regulated electric corporation subject to the Commission’s jurisdiction under the Public Service Law (“PSL”), that owns or holds the leasehold interest in and operates the electric generation facilities known as Ravenswood Generating Station.<sup>3</sup> Ravenswood Generating Station is located in Long Island City, Queens, New York and generally comprises certain electric generation facilities, including Units 10, 20, 30 and 40, along with certain ancillary equipment, interconnection and other facilities and related real property, located in the Borough of Queens, New York. TC Ravenswood is the holder of the Unit 40 Certificate.

In the Unit 40 Certificate, the Siting Board authorized TC Ravenswood’s predecessor in interest, KeySpan-Ravenswood LLC, to construct the 250 MW combined cycle Unit 40 at Ravenswood. Condition VII.B of the Unit 40 Certificate requires TC Ravenswood to provide adequate security for the cost of decommissioning Unit 40 at the end of its useful life (the “Security Requirement”). The Unit 40 Certificate also delegates responsibility for administration of the Security Requirement to the Commission.

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<sup>3</sup> See Case 08-M-0436, *KeySpan-Ravenswood LLC, KeySpan Ravenswood Services Corporation and TransCanada Facility USA, Inc. – Joint Petition for Authority Under PSL § 70 and § 83 to Transfer Certain Generating and Related Assets and For Related Relief*, Order Approving Transfer and Making Other Findings (issued August 21, 2008).

By orders dated March 23, 2004<sup>4</sup> and June 21, 2004,<sup>5</sup> the Commission accepted a decommissioning fund of \$18.53 million as reasonable for Ravenswood Unit 40. In the September 2008 Order, the Commission accepted a compliance filing from TransCanada Facility pursuant to which TransCanada Facility proposed a form Letter of Credit in the amount of \$18.53 million, which was designed to work in conjunction with a pre-existing Standby Trust Agreement that was established in connection with the decommissioning obligations.<sup>6</sup> TransCanada Facility subsequently filed its Letter of Credit with the Secretary on October 28, 2008, which was approved by Counsel to the Commission on November 25, 2008 pursuant to procedures established in the September 2008 Order.

Helix Generation is an indirect subsidiary of, and wholly controlled by, New York-headquartered LS Power Development, LLC (“LSP Development”), a Delaware limited liability company. LSP Development develops, owns and operates independent power projects, among other things, in the United States. LSP Development has developed over 10,000 MW and acquired over 25,000 MW of competitive power generation in the United States, raising over \$30 billion in debt and equity financing. Without taking into account the Ravenswood acquisition, LSP Development currently owns 20 power generation projects located throughout the United States that operate on a variety of fuel types, including natural gas, dual-fuel gas and oil, hydroelectric, wind, and solar.

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<sup>4</sup> Case 99-F-1625, *supra*, Order Authorizing Commencement of Commercial Operation and Approving Compliance Filing Regarding Financial Assurance of the Availability of Decommissioning Costs (issued March 23, 2004).

<sup>5</sup> Case 99-F-1625, *supra*, Order Approving Compliance Filing Regarding Financial Assurance of the Availability of Decommissioning Costs on a Permanent Basis (issued June 21, 2004).

<sup>6</sup> September 2008 Order at 4-5.

On November 1, 2016, TransCanada Facility and Helix Generation entered into an agreement under which Helix Generation agreed to purchase all of the interests of TransCanada Facility in the Ravenswood Station, including all of the membership interests in TC Ravenswood.<sup>7</sup> That purchase agreement, in pertinent part, recognizes the need for Petitioners to obtain Commission approval to substitute Helix Generation or its affiliate for TransCanada as the guarantor under the Unit 40 Certificate's Security Requirement. Therefore, in accordance with Commission Rule 1002.2, Petitioners hereby submit this request for a minor change in the compliance filing approved by the Commission in the September 2008 Order.

### **DISCUSSION**

Commission Rule 1002.2(j) states that, “[a]fter a compliance filing is approved, an applicant may request a change in what was so approved as a result of a compliance filing by requesting either a major change or a minor change.” A minor change is defined as one “in which there is no discernable potential for increased adverse environmental impact and in which there will be no change in the specified terms, conditions, limitations, or modifications applicable to a prior approval....”<sup>8</sup>

Helix Generation submits its form Letter of Credit in the amount of \$18.53 million annexed to this Request as Attachment A, the form of which has been pre-approved by the issuing bank. In Attachment A, Helix Generation also provides a redline version of TransCanada's existing Letter of Credit to highlight Helix Generation's proposed edits to the Letter of Credit. Similar to TransCanada's Letter of Credit, the attached Letter of Credit is designed to work with the existing Standby Trust Agreement, which is annexed hereto as Attachment B. The Standby Trust

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<sup>7</sup> TC Ravenswood, TC Ravenswood Services Corp., and Helix Generation filed a petition with the Commission seeking approval of this transaction under PSL §§ 70 and 83 on January 13, 2017 (*see* Case 17-E-0016).

<sup>8</sup> 16 N.Y.C.R.R. § 1002.2(j) (2016).

Agreement will continue in existence in accordance with its terms notwithstanding the proposed purchase by Helix Generation of the membership interests of TC Ravenswood. Petitioners are not proposing any changes to the Standby Trust Agreement. This Letter of Credit will become effective upon the latter of: (i) the date of its acceptance by the Commission; and (ii) the date on which the transactions contemplated in the purchase agreement between TransCanada Facility and Helix Generation are consummated.

As illustrated in Attachment A, Helix Generation is proposing only minimal, non-substantive edits that do not modify any of the material terms, conditions, or limitations in the approved the Letter of Credit. Moreover, because this Request involves simply a substitution under the Commission-approved Security Requirement of the name of the applicant and the issuing bank (with the current and prospective banks having similar credit ratings), this Request has no discernable potential for increased adverse environmental impact and does not alter in any way the specified terms, conditions, limitations, or modifications applicable to the holder of the Unit 40 Certificate. Petitioners respectfully submit that these documents fully satisfy the requirements of a minor change under Rule 2002.2(j) as well as the Unit 40 Certificate.

Petitioners further request Commission confirmation that, following the date on which Helix Generation's Letter of Credit is delivered to and accepted by the Commission, TransCanada Facility shall be released from all of its obligations under the Security Requirement and the Commission will return the Letter of Credit posted by TransCanada to it.

### **COMMUNICATIONS**

Correspondence and communications with respect to this filing should be addressed to the following individuals:

On behalf of Helix Generation:

Leonard Singer, Esq.  
Couch White, LLP  
P.O. Box 22222  
540 Broadway  
Albany, New York 12201-2222  
Phone: 518-426-4600  
lsinger@couchwhite.com

John Staikos  
General Counsel  
Helix Generation, LLC  
One Tower Center, 21<sup>st</sup> Floor  
East Brunswick, NJ 08816  
(732) 249-6750  
jstaikos@lspower.com

On behalf of TransCanada Facility:

Brenda D. Colella, Esq.  
Barclay Damon, LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, NY 13202  
Phone: (315) 425-2722  
bcolella@barclaydamon.com

George M. Pond, Esq.  
Barclay Damon, LLP  
80 State Street  
Albany, NY 12207  
Phone: (518) 429-4232  
gpond@barclaydamon.com

James M. D'Andrea  
TransCanada USA Services Inc.  
110 Turnpike Road, Suite 300  
Westborough, MA 01581  
(508) 475-6088  
(508) 898-0433 (facsimile)  
jim\_dandrea@transcanada.com  
us\_regulatory\_law@transcanada.com

## CONCLUSION

For the above stated reasons, Petitioners TransCanada Facility USA, Inc. and Helix Generation, LLC respectfully request that the Commission:

- 1) accept the form of the attached Letter of Credit in the amount of \$18.53 million as being in full compliance with the security requirements of the Unit 40 Certificate and the September 2008 Order; and
- 2) retain the existing Standby Trust Agreement; and
- 3) on and after the date on which Helix Generation's Letter of Credit, in the form of the attached Letter of Credit, is delivered to, and accepted by the Commission, release TransCanada Facility from all obligations under the Security Requirement and return the Letter of Credit posted by TransCanada to it.

Respectfully submitted,

By: Leonard Singer

Brenda D. Colella, Esq.  
Barclay Damon, LLP  
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Syracuse, NY 13202  
Phone: (315) 425-2722  
bcolella@barclaydamon.com

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80 State Street  
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gpond@barclaydamon.com

*Counsel for TransCanada Facility  
USA, Inc.*

Leonard Singer, Esq.  
Couch White, LLP  
P.O. Box 22222  
540 Broadway  
Albany, New York 12201-2222  
Phone: 518-426-4600  
lsinger@couchwhite.com

*Counsel for Helix Generation, LLC*

Dated: February 13, 2017



**ATTACHMENT A**

**FORM OF LETTER OF CREDIT**

**Form of Letter of Credit**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Credit Suisse AG  
Eleven Madison Avenue, 9th Floor  
New York, New York 10010

Letter Of Credit No. [\_\_\_\_\_]  
Irrevocable Standby Letter Of Credit

Date and Place of Issue:  
[]  
New York, New York

Date and Place of Expiration:  
[]  
New York, New York  
Stated Expiration Date:  
[]  
(the "Stated Expiration Date")

Applicant:  
[Applicant]  
[Applicant Address]  
(the "Applicant")

Beneficiary:  
New York State Public Service  
Commission  
3 Empire State Plaza  
Albany, NY 12223  
Attention: Sorelle Brauth  
DPS-Office of Administration  
(the "Beneficiary")

Stated Amount: \$18,530,000.00  
Up to an aggregate of EIGHTEEN MILLION  
FIVE HUNDRED THIRTY THOUSAND  
00/100)

Credit Available With:  
Credit Suisse AG  
Eleven Madison Avenue, 9th Floor  
New York, New York 10010

Ladies and Gentlemen:

This Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (this “Letter of Credit”) is issued at the request of the Applicant regarding the Ravenswood Generating Station, Unit 40 (Case 99-F-1625) (the “Ravenswood Unit 40 Generating Facility”).

We irrevocably authorize you to draw on us for the account of the Applicant, in accordance with the terms and conditions hereinafter set forth, up to an aggregate of EIGHTEEN MILLION FIVE HUNDRED THIRTY THOUSAND AND 00/100 (US \$18,530,000.00) (as reduced in accordance with the terms hereof, the “Stated Amount”), available against presentation of a dated drawing request drawn on Credit Suisse AG Eleven Madison Avenue, New York, New York 10010 manually signed by the Chairman of the New York State Public Service Commission or a purportedly authorized designee of the Chairman of the New York State Public Service Commission appropriately completed in the form of Annex 1 hereto (a “Drawing Request”). This Letter of Credit is effective immediately.

All Drawing Requests and other communications with respect to this Letter of Credit shall be in writing, addressed to us at Credit Suisse AG Eleven Madison Avenue, New York, New York 10010, and Telephone No. [\_\_\_\_\_] , Attention: Standby Letter of Credit Department, referencing this Letter of Credit and presented to us by delivery in person or facsimile transmission at such address or facsimile number [Fax Number], provided that the original of any Drawing Request or other communication shall be sent to us at such address by overnight courier for receipt by us within two (2) Business Days of the date of any such facsimile transmission. Payment shall be effected by us upon earlier of presentation either by (i) delivery in person or (ii) receipt of the aforementioned facsimile transmission.

If a Drawing Request is presented in compliance with the terms of this Letter of Credit to us at the address or facsimile number set forth above by 10:00 a.m. New York time on any Business Day (as hereinafter defined), payment will be made not later than 3:00 p.m. New York time on the second Business Day following the Drawing Request and if such Drawing Request is so presented to us after 10:00 a.m. New York time on any Business Day, payment will be made on the third Business Day following the Drawing Request not later than 1:00 p.m. New York time. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as may be designated by the Beneficiary in the applicable Drawing Request.

As used in this Letter of Credit, “Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by law to remain closed in the State of New York.

This Letter of Credit shall expire upon the earlier to occur of (1) the surrender by you of this original Letter of Credit for cancellation, (2) our honoring of Drawing Requests presented hereunder that, in the aggregate, equal the Stated Amount (after giving effect to any reductions in the Stated Amount in accordance with the terms hereof), or (3) 5:00 p.m., New York time, on the Stated Expiration Date, after giving effect to any automatic extension thereof as described in the following paragraph.

Unless we send a notice of non-extension of letter of credit to you and the Applicant in the form of Annex 2, hereto (a “Notice of Non-Extension”) at least 60 days prior to the Stated Expiration Date hereof, the original Stated Expiration Date shown on the first page of this Letter of Credit shall automatically be extended for a period of one year from such date and shall thereafter be automatically extended for an additional one-year period on each expiration date thereof.

This Letter of Credit may not be transferred in whole or in part.

In the event that a Drawing Request fails to comply with the terms of this Letter of Credit, we shall provide you prompt notice of same stating the reasons therefore (and shall upon your instructions hold any non-conforming drawing request and other documents at your disposal or return any non-conforming drawing request and other documents to you at the address set forth above) by delivery in person or facsimile transmission (with originals thereof sent by overnight courier for receipt within two Business Days). Upon being notified that a Drawing Request does not comply with this Letter of Credit, you may attempt to correct such non-complying Drawing Request prior to the expiry date of the Letter of Credit in accordance with the terms of this Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, except only with respect to references to the drawing requests and notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for such Drawing Requests and notices.

Partial drawings under this Letter of Credit are allowed and each Drawing Request honored by us under this Letter of Credit shall reduce the current Stated Amount by the amount of the payment made by us in respect of such Drawing Request.

All banking charges, include any advising and negotiating bank charges are for the account of the Applicant.

This Letter of Credit shall not be amended except with the written concurrence of the Issuing Bank, the Beneficiary and the Applicant, except that the Issuing Bank and Applicant may increase the amount or extend the expiry date without the written concurrence of the Beneficiary.

We hereby agree with you that a Drawing Request drawn strictly in compliance with the terms of this Letter of Credit and amendments thereto shall meet with due honor upon presentation.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication Number 600 (the “Uniform Customs”). This Letter of Credit shall be deemed to be a contract made under the laws of the State of New York and shall, as to matters not governed by the Uniform Customs, be governed by and construed in accordance with the laws of such State.

We irrevocably agree with you that any legal action or proceeding with respect to this Letter of Credit shall be brought in the courts of the State of New York or of the United States of America. By Signing this Letter of Credit, we irrevocably submit to the jurisdiction of such courts solely for the purposes of this Letter of Credit. We hereby waive, to the fullest extent permitted by law, any objection we may now or hereafter have to the laying of venue in any such action or proceeding in any such court.

CREDIT SUISSE AG

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Authorized signature

[Letter of Beneficiary]

DRAWING REQUEST

[Date]

Credit Suisse AG  
Eleven Madison Avenue, 9th Floor  
New York, New York 10010  
Attn: Trade Finance Services Department

Attention: Standby Letter of Credit Department

Ladies and Gentlemen:

The undersigned hereby draws on Letter of Credit No. [\_\_\_\_\_], dated [\_\_\_\_\_, 20[\_\_\_] (the “Letter of Credit”), in amounts of \$\_\_\_\_\_. Capitalized terms used but not defined herein have the meanings given to such terms in the Letter of Credit.

In connection with this drawing, we hereby certify that *[insert one of the following*

--

a) [TC Ravenswood, LLC has failed or refused to restore the site after decommissioning of the Ravenswood Unit 40 Generating Facility and the amount drawn hereunder does not exceed the current Stated Amount.]

or

b) [We have received a Notice of Non-Extension from you stating that the Letter of Credit will expire on [\_\_\_\_\_, \_\_\_\_\_] the Applicant has not replaced the Letter of Credit before the 35<sup>th</sup> day prior to its expiration date and the amount drawn hereunder does not exceed the current Stated Amount.]

or

c) The Letter of Credit will expire on [\_\_\_\_\_, \_\_\_\_\_] the Applicant has not replaced the Letter of Credit before the 35<sup>th</sup> day prior to its expiration date and the amount drawn hereunder does not exceed the current Stated Amount.]

“You are directed to make payment of the requested drawing to the following account: \_\_\_\_\_, account number \_\_\_\_\_, ABA number \_\_\_\_\_, at \_\_\_\_\_

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IN WITNESS WHEREOF, the undersigned has executed and delivered this drawing request on this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

New York State Public Service Commission

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

Cc: TC Ravenswood, LLC  
c/o [Helix Generation, LLC]  
[address]

[Letterhead of Issuing Bank]

NOTICE OF NON-EXTENSION OF LETTER OF  
CREDIT

[Date]

New York State Public Service Commission  
3 Empire State Plaza  
Albany, NY 12223

Attention: Sorelle Brauth  
DPS-Office of Administration

TC Ravenswood, LLC  
c/o [Helix Generation, LLC]  
[address]

Ladies and Gentlemen:

Reference is made to Letter of Credit No. [\_\_\_\_\_] dated [\_\_\_\_\_] 20[\_\_\_] issued by us in favor of New York State Public Service Commission (the "Letter of Credit").

This constitutes our notice to you pursuant to the Letter of Credit that the Stated Expiration Date of the Letter of Credit will not be automatically extended and that, therefore, the Letter of Credit will expire on \_\_\_\_\_, \_\_\_\_\_ which is the current Stated Expiration Date.

Very truly yours,

CREDIT SUISSE AG

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

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



**Form of Letter of Credit**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Credit Suisse AG  
Eleven Madison Avenue, 9th Floor  
New York, New York 10010

Letter Of Credit No. [\_\_\_\_\_]  
Irrevocable Standby Letter Of Credit

Date and Place of Issue:

New York, New York

Date and Place of Expiration:

New York, New York

Stated Expiration Date:

(the "Stated Expiration Date")

Applicant:

[Applicant]  
[Applicant Address]  
(the "Applicant")

Beneficiary:

New York State Public Service  
Commission  
3 Empire State Plaza  
Albany, NY 12223  
Attention: Sorelle Brauth  
DPS-Office of Administration  
(the "Beneficiary")

Stated Amount: **\$18,530,000.00**

Up to an aggregate of EIGHTEEN MILLION  
FIVE HUNDRED THIRTY THOUSAND  
00/100)

Credit Available With:

**Credit Suisse AG**  
**Eleven Madison Avenue, 9th Floor**  
**New York, New York 10010**

Ladies and Gentlemen:

This Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (this “Letter of Credit”) is issued at the request of the Applicant regarding the Ravenswood Generating Station, Unit 40 (Case 99-F-1625) (the “Ravenswood Unit 40 Generating Facility”).

We irrevocably authorize you to draw on us for the account of the Applicant, in accordance with the terms and conditions hereinafter set forth, up to an aggregate of EIGHTEEN MILLION FIVE HUNDRED THIRTY THOUSAND AND 00/100 (US \$18,530,000.00) (as reduced in accordance with the terms hereof, the “Stated Amount”), available against presentation of a dated drawing request drawn on ~~[Name of Bank and Bank Address]~~Credit Suisse AG Eleven Madison Avenue, New York, New York 10010 manually signed by the Chairman of the New York State Public Service Commission or a purportedly authorized designee of the Chairman of the New York State Public Service Commission appropriately completed in the form of Annex 1 hereto (a “Drawing Request”). This Letter of Credit is effective immediately.

All Drawing Requests and other communications with respect to this Letter of Credit shall be in writing, addressed to us at Credit Suisse AG Eleven Madison Avenue, New York, New York 10010~~[Name of Bank and Bank Address]~~, and Telephone No. [\_\_\_\_\_] , Attention: Standby Letter of Credit Department, referencing this Letter of Credit and presented to us by delivery in person or facsimile transmission at such address or facsimile number [Fax Number], provided that the original of any Drawing Request or other communication shall be sent to us at such address by overnight courier for receipt by us within two (2) Business Days of the date of any such facsimile transmission. Payment shall be effected by us upon earlier of presentation either by (i) delivery in person or (ii) receipt of the aforementioned facsimile transmission.

If a Drawing Request is presented in compliance with the terms of this Letter of Credit to us at the address or facsimile number set forth above by 10:00 a.m. New York time on any Business Day (as hereinafter defined), payment will be made not later than 3:00 p.m. New York time on the second Business Day following the Drawing Request and if such Drawing Request is so presented to us after 10:00 a.m. New York time on any Business Day, payment will be made on the third Business Day following the Drawing Request not later than 1:00 p.m. New York time. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as may be designated by the Beneficiary in the applicable Drawing Request.

As used in this Letter of Credit, “Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by law to remain closed in the State of New York.

This Letter of Credit shall expire upon the earlier to occur of (1) the surrender by you of this original Letter of Credit for cancellation, (2) our honoring of Drawing Requests presented hereunder that, in the aggregate, equal the Stated Amount (after giving effect to any reductions in the Stated Amount in accordance with the terms hereof), or (3) ~~12:01 a.m.~~5:00 p.m., New York time, on the Stated Expiration Date, after giving effect to any automatic extension thereof as described in the following paragraph.

Unless we send a notice of non-extension of letter of credit to you and the Applicant in the form of Annex 2, hereto (a “Notice of Non-Extension”) at least 60 days prior to the Stated Expiration Date hereof, the original Stated Expiration Date shown on the first page of this Letter of Credit shall automatically be extended for a period of one year from such date and shall thereafter be automatically extended for an additional one-year period on each expiration date thereof.

This Letter of Credit may not be transferred in whole or in part.

In the event that a Drawing Request fails to comply with the terms of this Letter of Credit, we shall provide you prompt notice of same stating the reasons therefore (and shall upon your instructions hold any non-conforming drawing request and other documents at your disposal or return any non-conforming drawing request and other documents to you at the address set forth above) by delivery in person or facsimile transmission (with originals thereof sent by overnight courier for receipt within two Business Days). Upon being notified that a Drawing Request does not comply with this Letter of Credit, you may attempt to correct such non-complying Drawing Request prior to the expiry date of the Letter of Credit in accordance with the terms of this Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, except only with respect to references to the drawing requests and notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for such Drawing Requests and notices.

Partial drawings under this Letter of Credit are allowed and each Drawing Request honored by us under this Letter of Credit shall reduce the current Stated Amount by the amount of the payment made by us in respect of such Drawing Request.

All banking charges, include any advising and negotiating bank charges are for the account of the Applicant.

This Letter of Credit shall not be amended except with the written concurrence of the Issuing Bank, the Beneficiary and the Applicant, except that the Issuing Bank and Applicant may increase the amount or extend the expiry date without the written concurrence of the Beneficiary.

We hereby agree with you that a Drawing Request drawn strictly in compliance with the terms of this Letter of Credit and amendments thereto shall meet with due honor upon presentation.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication Number

600 (the “Uniform Customs”). This Letter of Credit shall be deemed to be a contract made under the laws of the State of New York and shall, as to matters not governed by the Uniform Customs, be governed by and construed in accordance with the laws of such State.

We irrevocably agree with you that any legal action or proceeding with respect to this Letter of Credit shall be brought in the courts of the State of New York or of the United States of America. By Signing this Letter of Credit, we irrevocably submit to the jurisdiction of such courts solely for the purposes of this Letter of Credit. We hereby waive, to the fullest extent permitted by law, any objection we may now or hereafter have to the laying of venue in any such action or proceeding in any such court.

~~[NAME OF BANK]~~CREDIT SUISSE AG

---

Authorized signature

[Letter of Beneficiary]

DRAWING REQUEST

[Date]

Credit Suisse AG  
Eleven Madison Avenue, 9th Floor  
New York, New York 10010  
Attn: Trade Finance Services Department  
~~[Name of Bank]~~  
~~[Bank Address]~~

Attention: Standby Letter of Credit Department

Ladies and Gentlemen:

The undersigned hereby draws on Letter of Credit No. [\_\_\_\_\_], dated [\_\_\_\_\_, 20[\_\_\_] (the “Letter of Credit”), in amounts of \$\_\_\_\_\_. Capitalized terms used but not defined herein have the meanings given to such terms in the Letter of Credit.

In connection with this drawing, we hereby certify that *[insert one of the following*

--

a) [TC Ravenswood, LLC has failed or refused to restore the site after decommissioning of the Ravenswood Unit 40 Generating Facility and the amount drawn hereunder does not exceed the current Stated Amount.]

or

b) [We have received a Notice of Non-Extension from you stating that the Letter of Credit will expire on [\_\_\_\_\_, \_\_\_\_], the Applicant has not replaced the Letter of Credit before the 35<sup>th</sup> day prior to its expiration date and the amount drawn hereunder does not exceed the current Stated Amount.]

or

c) The Letter of Credit will expire on [\_\_\_\_\_, \_\_\_\_], the Applicant has not replaced the Letter of Credit before the 35<sup>th</sup> day prior to its expiration date and the amount drawn hereunder does not exceed the current Stated Amount.]

“You are directed to make payment of the requested drawing to the following account: \_\_\_\_\_,  
account number \_\_\_\_\_, ABA number \_\_\_\_\_, at \_\_\_\_\_  
\_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has executed and delivered this drawing request on  
this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

New York State Public Service Commission

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

Cc: TC Ravenswood, LLC  
c/o [Helix Generation, LLC]  
[address]

[Letterhead of Issuing Bank]

NOTICE OF NON-EXTENSION OF LETTER OF  
CREDIT

[Date]

New York State Public Service Commission  
3 Empire State Plaza  
Albany, NY 12223

Attention: Sorelle Brauth  
DPS-Office of Administration

TC Ravenswood, LLC  
c/o [Helix Generation, LLC]  
[address]

Ladies and Gentlemen:

Reference is made to Letter of Credit No. [\_\_\_\_\_] dated [\_\_\_\_\_] 20[\_\_\_] issued by us in favor of New York State Public Service Commission (the "Letter of Credit").

This constitutes our notice to you pursuant to the Letter of Credit that the Stated Expiration Date of the Letter of Credit will not be automatically extended and that, therefore, the Letter of Credit will expire on \_\_\_\_\_, \_\_\_\_\_ which is the current Stated Expiration Date.

Very truly yours,

~~[BANK NAME]~~ CREDIT SUISSE AG

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

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

**ATTACHMENT B**

**STANDBY TRUST AGREEMENT**



## STANDBY TRUST AGREEMENT

THIS STANDBY TRUST AGREEMENT ("Agreement") entered into this 1<sup>st</sup> day of September 2005, by and between KeySpan-Ravenswood LLC, a New York limited liability company having a business address at One Metro Tech Center, Brooklyn, New York 11201 ("Grantor") and JPMorgan Chase Bank, N.A., a national banking association, having a place of business at 4 New York Plaza, NY, NY 10004 ("Trustee").

WHEREAS, the Grantor is required under Article X of the New York Public Service Law to have a certificate of environmental compatibility and public need in order to build, maintain or operate a major electric generating facility; and

WHEREAS, the Grantor has been granted a certificate of environmental compatibility and public need for the construction and operation of a 250 megawatt natural gas-fired combined cycle combustion turbine generating facility in Long Island City, Queens County, at a site located at Vernon Boulevard, Ravenswood (the "Facility"), as further described in the application in Case 99-F-1625 for said certificate; and

WHEREAS, the Grantor is required to provide financial assurance for site restoration after decommissioning of the Facility, pursuant to 16 NYCRR § 1001.7(b)(2)(ii) and as a condition of the certificate of environmental compatibility and public need; and

WHEREAS, the New York State Public Service Commission ("Commission"), having a business address at 3 Empire State Plaza, Albany, New York 12223, pursuant to § 168(2) of the New York Public Service Law shall monitor, enforce and administer compliance with any terms and conditions of the certificate of environmental compatibility and public need; and

WHEREAS, the Grantor has elected to establish a standby trust into which funds or the proceeds from a parent guarantee agreement, letter of credit or other source may be deposited to assure all or part of such financial responsibility for the Facility; and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. *Definitions.* As used in this Agreement:

(a) The term "Grantor" means the owner or operator of the Facility who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The Term "Commission" means the New York State Public Service Commission or its duly authorized designee.

(d) The Term "site restoration after decommissioning of the Facility" means the fulfillment of obligations established pursuant to 16 NYCRR 1001.7(b)(2)(ii), Condition 7 of the Certificate of Environmental Compatibility and Public Need for the Facility dated September 7, 2001 and Section 3.11 and Table 3.9 of the Facility's Article X Application, Case 99-F-1625, dated July 28, 2000, subject to the satisfaction of the Commission as shall be reasonably established or approved by the Commission.

Section 2. *Site Restoration.* This Agreement pertains to site restoration after decommissioning of the Facility, as established or approved by the Commission for which financial assurance is demonstrated in part by this Agreement.

Section 3. *Establishment of Fund.* The Grantor and the Trustee hereby establish a standby trust fund ("Fund") for the benefit of the Commission. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established to consist of funds, or the proceeds of a parent guarantee agreement, letter of credit or other source, deposited into the Fund as follows:

(a) ~~In the event construction of the Facility is completed pursuant to the terms and conditions of the certificate of environmental compatibility and public need such that the Grantor is allowed to commence commercial operation and an order that site restoration of the Facility site after decommissioning of the Facility be undertaken has been issued by the Commission or a court of competent jurisdiction and the Grantor has failed or refused to undertake or complete site restoration of the Facility site after decommissioning of the Facility to the reasonable satisfaction of the Commission,~~ a deposit by the Grantor into the Fund;

(b) In the event the Grantor has failed to fulfill its obligations described in "(a)" above, a deposit by the Grantor's parent guarantor, or letter of credit provider into the Fund; and

(c) In the event the Grantor has failed to fulfill its obligation to provide the Commission with a replacement parent guarantee agreement, letter of credit or any other replacement security in a form acceptable to the Commission at least thirty (30) days prior to the date of expiration or cancellation of any previously posted and accepted parent guarantee agreement, or letter of credit as security to ensure site restoration of the Facility site after decommissioning of the Facility, a deposit by the Grantor's parent guarantor or letter of credit provider into the Fund.

Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or

distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Commission.

Section 4. *Payment for Site Restoration.* The Trustee shall make payment from the Fund as the Commission shall direct, in writing with a copy to the Grantor, to provide for the payment of the costs of site restoration of the Facility site. The Trustee shall reimburse the Grantor or other persons as specified by the Commission from the Fund for expenditures for such site restoration activities in such amounts as the Commission shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Commission specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

(a) In the event fund transfer instructions are given (other than in writing at the time of the execution of the Agreement), whether in writing, by telecopier or otherwise the Trustee is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated on the call-back schedule attached hereto, and the Trustee may rely upon the confirmations of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by the Trustee. If the Trustee is unable to contact any of the authorized representatives identified in the Call-Back Schedule, the Trustee is hereby authorized to seek confirmation of such instructions by telephone call-back to any one or more of your executive officers, ("Executive Officers"), which for the Grantor shall include the titles of Treasurer, and which for the Commission shall include the title of Executive Deputy to the Chairman, as the Trustee may select. Upon request, such "Executive Officer" shall deliver to the Trustee a fully executed Incumbency Certificate, and the Trustee may rely upon the confirmation of anyone purporting to be any such officer. The Trustee and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the Commission or the Grantor to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank. The Trustee may consult with the Grantor, if available, to obtain non-binding advice on each instruction received from the Commission to verify only the accuracy of the Commission's instruction to ensure that the correct beneficiary, beneficiary's bank or intermediary bank and its account numbers and/or identifying numbers are used to receive payment, so long as the consultation process does not delay Trustee's performance of its obligations pursuant to this Agreement. The Trustee may apply any of escrowed funds for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated; provided, however, that the trustee, upon notification or discovery that a transfer was made to an incorrect account, within a reasonable period of time will use its best efforts to obtain the return of such funds and to transfer such funds to the correct account. The parties to this Agreement acknowledge that such security procedure is commercially reasonable.

Section 5. *Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of the initial deposit of cash or the proceeds of a parent guarantee agreement, letter of credit or other source and any other property subsequently transferred to the Trustee.

Section 6. *Trustee Management.* The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In the absence of any instructions, the Fund shall be invested in the Money Market Account with the JPMorgan Chase Bank. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the Facility, or any of their affiliates as defined in the Investment Company Act of 1940, 15 USCA 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. *Commingling and Investment.* The trustee may, upon the direction by the Grantor:

(a) transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USCA 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. *Express Powers of Trustee.* Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To accept additions to the Fund from sources other than the Grantor of the Trust; and

(f) To contest, compromise, or otherwise settle any claim in favor of the Fund or Trustee, or in favor of third persons and against the Fund or Trustee.

Section 9. *Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect to the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. *Annual Valuation.* The Trustee shall, based on the calendar year, within 45 days of the last day of the calendar year, furnish, to the Grantor and to the Commission, a statement confirming the value of the Trust. Any securities in the Fund shall be valued at

market value as of no more than 30 days after the last day of the Grantor's fiscal year. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and to the Commission shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. *Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel. The Trustee may execute any of its powers and perform any of its duties hereunder directly or through agents or attorneys, so long as the delegation process does not delay Trustee's performance of its obligations pursuant to this Agreement. The Trustee may consult with counsel, accountants and other skilled persons to be selected and retained by it, so long as the consultation process does not delay Trustee's performance of its obligations pursuant to this Agreement.

Section 12. *Trustee Compensation.* The Trustee shall be entitled to reasonable compensation for its services. Annual fees are \$3,500 without pro-ration for partial years. Annual fees are to be paid by the Grantor.

Section 13. *Successor Trustee.* The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instruction. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Commission, and the present Trustee by certified mail, return receipt requested, 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. *Instructions to the Trustee.* All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by a designee of the Grantor. The Trustee shall be fully protected in acting without inquiry, in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the Commission to the Trustee shall be in writing, signed by the Commission, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commission hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions

from the Grantor and/or the Commission except as provided for herein. In the event that Grantor and the Commission provide the Trustee with conflicting orders, requests or instructions, Trustee shall follow the order, request or instruction of the Commission and shall ignore the order, request or instruction of Grantor.

Section 15. *Amendment of Agreement.* Upon prior approval of the Commission, this Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or executed solely by the Trustee if the Grantor ceases to exist.

Section 16. *Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable regardless of when the first deposit, if any, is made into the Fund and shall continue until, upon prior approval of the Commission, it is terminated by an instrument in writing executed by the Grantor and the Trustee, or executed solely by the Trustee if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. *Immunity and Indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in the carrying out of any directions by the Grantor or the Commission issued in accordance with this Agreement. The Trustee and its directors, officers, agents and employees shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense. The Trustee shall not be liable for any action taken or omitted by it in good faith except to the extent that a final adjudication of a court of competent jurisdiction determines that the Trustee's negligence or willful misconduct was the primary cause of any loss to either of the Parties. In the event that the Trustee shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other parties hereto or by a final order or judgment of a court of competent jurisdiction, except that in the case of an expiring security the Trustee shall be obligated to draw down on the expiring security before it expires or obtain a renewal security so as to maintain the value of the security. The Trustee may interplead all of the assets held hereunder into a court of competent jurisdiction or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets or any action or nonaction based on such declaratory judgment. Anything in this agreement to the contrary notwithstanding, in no event shall the Trustee be liable for special, indirect or consequential damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action. The parties hereby grant the Trustee a lien, a right of set off and security interest to the account for the payment of any claim for compensation, expenses and amounts due

hereunder. The parties hereto acknowledge that the foregoing indemnities shall survive the resignation or the removal of the Trustee or the termination of this agreement. The Trustee shall be indemnified and saved harmless solely by Grantor, and not the Commission or from the Trust Fund, if Grantor is responsible for such action taken or omitted in good faith by the Trustee after receiving direction from Grantor and such directions are consistent with all other terms of this Agreement and do not violate this Agreement.

Section 18. *Choice of Law.* This Agreement shall be administered, construed and enforced according to the laws of the State of New York.

Section 19. *Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or legal efficacy of this Agreement.

Section 20. *Successor.* Any corporation into which the Trustee in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee in its individual capacity shall be a party, or any corporation to which substantially all the corporate trust business of the Trustee in its individual capacity may be transferred, shall be the Trustee under this Agreement without further act.

Section 21. *Force Majeure.* In the event that any party, or the Trustee is unable to perform its obligations under the terms of this Agreement because of acts of God, strikes, equipment or transmission failure or damage reasonably beyond its control, or other cause reasonably beyond its control, the Trustee shall not be liable for damages to the other parties for any damages resulting from such failure to perform otherwise from such causes. Performance under this Agreement shall resume when the Trustee is able to perform substantially.

Section 22. *Tax Matters.* Upon execution of this agreement, Grantor shall provide the Trustee with a fully executed W-8 or W-9 Internal Revenue Service form, which shall include its Tax Identification Number (TIN) as assigned by the Internal Revenue Service. All interest or other income earned under the Agreement shall be allocated and paid as provided herein and reported by the recipient to the Internal Revenue Service as having been so allocated and paid.

Section 23. *Compliance with Court Orders.* In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Trustee is hereby expressly authorized, in its sole discretion and so long as it gives notice of such writ, order, or decree to the Commission (in advance and in writing, if possible), to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing by written opinion of counsel is binding upon it and in the event that the Trustee obeys or complies with any such writ, order or



decree it shall not be liable to any of the parties hereto or to any other person, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

Section 24. *Notices.* All communications hereunder shall be in writing and shall be deemed to be duly given and received:

- (i) upon delivery if delivered personally or upon confirmed transmittal if by facsimile
- (ii) on the next Business Day (as hereinafter defined) if sent by overnight courier; or
- (iii) four (4) Business Days after mailing if mailed by prepaid registered mail, return receipt requested, to the appropriate notice address set forth below or at such other address as any party hereto may have furnished to the other parties in writing by registered mail, return receipt requested.

If to the Commission                      Three Empire State Plaza  
Albany, NY U.S.A., 12223-1350  
Attention: General Counsel  
Fax No.: 518.486.5710

Wiring instructions:

If to the Grantor                              One MetroTech Center  
-22<sup>nd</sup> Floor  
Brooklyn, NY USA 11201  
Attention: Cash Manager  
Fax No.: 718-403-6423

Wiring instructions:

If to the Trustee                                JPMorgan Chase Bank  
Worldwide Securities Services  
4 New York Plaza – 21<sup>st</sup> Floor  
NY, NY 10004  
Attention: Sandra Frierson  
Fax No.: 212.623.6168/6380

Notwithstanding the above, in the case of communications delivered to the Trustee pursuant to (ii) and (iii) of this Section 24, such communications shall be deemed to have been given on the date received by the Trustee. In the event that the Trustee, in its sole discretion, shall determine that an emergency exists, the Trustee may use such other means of communication as the Trustee deems appropriate; provided, however, that the trustee shall follow up the other means of communication with the communication meeting the requirements of this section. "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which the Trustee located at the notice address set forth above is authorized or required by law or executive order to remain closed.

Section 25. *Account Opening Information.* IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT: To help the government fight the

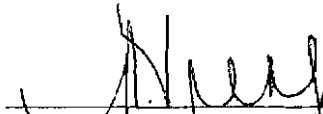
funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. When an account is opened, the Escrow Agent will ask for information that will allow it to identify relevant parties.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written.

**GRANTOR**

  
\_\_\_\_\_

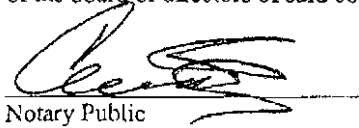
**TRUSTEE**

  
\_\_\_\_\_ **ROLA TSENG**  
ASSISTANT VICE PRESIDENT

**ACKNOWLEDGMENT OF GRANTOR**

STATE OF NEW YORK  
COUNTY OF KINGS SS.:

On this 1<sup>st</sup> day of September, 2008, before me personally came Michael J. Tavel, to me known, who being by me duly sworn, did depose and say that (s)he resides in Garden City, NY, that (s)he is the SVP & Treasurer of KeySpan-Ravenswood LLC, the corporation described in and which executed the within instrument: that (s)he knows the seal of said corporation, that the seal affixed to said instrument was such corporate seal, that it was so affixed by order of the board of directors of said corporation, and that (s)he signed his/her name thereto by like order.

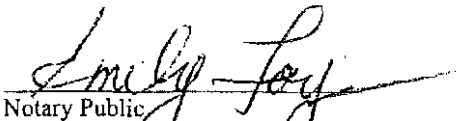
  
\_\_\_\_\_  
Notary Public

**CHRISTOPHER R. DORSEY**  
Notary Public, State of New York  
No. 01DC6118200  
Qualified in Nassau County  
Commission Expires December 13, 2008

**ACKNOWLEDGMENT OF TRUSTEE**

STATE OF New York  
COUNTY OF New York SS.:

On this 1 day of SEP., 2008, before me personally came Rola Tseeng, to me known, who being by me duly sworn, did depose and say that (s)he resides in Litton, NJ, that (s)he is the ANP of JPMorgan Chase Bank, the corporation described in and which executed the within instrument: that (s)he knows the seal of said corporation, that the seal affixed to said instrument was such corporate seal, that it was so affixed by order of the board of directors of said corporation, and that (s)he signed his/her name thereto by like order.

  
\_\_\_\_\_  
Notary Public

**EMILY FAYAN**  
Notary Public, State of New York  
No. 01FA4737006  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires Dec. 31, 2005

**Call-Back  
Schedule  
Telephone Number(s) for Call-backs and  
Person(s) Designated to Confirm Funds Transfer Instructions**

**If to the Commission: New York State Public Service Commission**

**TIN#: 22-3394878** \_\_\_\_\_

**Address: Three Empire State Plaza  
Albany, NY U.S.A., 12223-1350**

**Wire Instructions:**

<u>Name</u>	<u>Telephone Number</u>
1. Secretary to the Commission _____	518.474.6530 _____
2. Head of Central Operations _____	518.474.6506 _____
3. Director of Finance and Budget _____	518.474.2516 _____

**If to the Grantor:**

**TIN#: 11-3484082** \_\_\_\_\_

**Address: One MetroTech Center  
22 Floor  
Brooklyn, NY 11201**

**Wire Instructions:**

<u>Name</u>	<u>Telephone Number</u>
1. Cash Manager _____	718-403-2736 _____
2. Lead Analyst _____	718-403-3384 _____
3. Legal Counsel _____	718-403-3044 _____