

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**In the Matter of the Joint Petition for a Declaratory  
Ruling Concerning the Lease of 3 Cove Hollow Road,  
East Hampton, NY to South Fork Wind, LLC**

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**Case No. 22 - \_\_\_\_\_**

**JOINT PETITION OF NATIONAL GRID GENERATION LLC AND  
SOUTH FORK WIND, LLC FOR DECLARATORY RULING OR, IN THE  
ALTERNATIVE, APPROVAL OF LEASE PURSUANT TO SECTION 70  
OF THE PUBLIC SERVICE LAW**

**NATIONAL GRID GENERATION LLC**

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National Grid  
2 Hanson Place  
Brooklyn, New York 11217  
516-376-9232**

**SOUTH FORK WIND, LLC**

**By: Leonard H. Singer  
Couch White, LLP  
540 Broadway  
Albany, New York 12207  
518-426-4600**

Dated: March 4, 2022

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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Ruling Concerning the Lease of 3 Cove Hollow Road,  
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**VERIFIED JOINT PETITION**

**I. INTRODUCTION**

By this Petition, National Grid Generation LLC (“National Grid Generation” or the “Company”) and South Fork Wind, LLC (“South Fork Wind”), seek a declaratory ruling by the Public Service Commission (the “PSC” or “Commission”), pursuant to the State Administrative Procedure Act (“SAPA”) and the Commission’s regulations thereunder,<sup>1</sup> that as a lightly-regulated entity the grant of a lease of certain real property (“Property”) located at 3 Clove Hollow Rd, East Hampton, New York by National Grid Generation to South Fork Wind does not require the consent of the Commission under Section 70(1) of the New York State Public Service Law (“PSL”). Alternatively, if the Commission concludes that Section 70(1) applies to the granting of the subject lease, the Company asks that the transaction be approved by the Commission pursuant to PSL §70(1).

The lease will facilitate the interconnection of South Fork Wind’s approximately 130 MW offshore wind farm (“South Fork Wind Farm”) and associated export cable with the Long Island Power Authority’s East Hampton Substation, which is already located on the Property. The lease of the Property is in the public interest because, among other reasons, it will enable the development of New York’s first offshore wind project and support the State’s aggressive renewable energy goals codified in Climate Leadership and Community Protection Act

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<sup>1</sup> SAPA §204; 16 NYCRR§8.1 *et seq.*

(“CLCPA”).<sup>2</sup> Moreover, the Commission has previously determined that a similar lease of vacant land at the Property did not required further review under PSL §70.<sup>3</sup>

## **II. BACKGROUND**

National Grid Generation, a wholly-owned subsidiary of National Grid USA (“National Grid”), is the successor to Long Island Lighting Company (“LILCO”) with regard to certain electric generating assets on Long Island as a result of the 1998 merger transaction among KeySpan Corporation, LILCO, and the Long Island Power Authority (“LIPA”). National Grid Generation (formerly known as KeySpan Generation) was formed on May 7, 1998 as a limited liability corporation and, on May 28, 1998, acquired LILCO’s non-nuclear generation assets. National Grid Generation currently owns and operates 50 electric generation units with approximately 3,860 megawatts (“MW”) of electric generation capacity on Long Island. Its principal place of business is 175 East Old Country Road, Hicksville, New York 11801. The Company, together with its wholly-owned subsidiaries, National Grid-Glenwood Energy Center LLC and National Grid-Port Jefferson Energy Center LLC, sell capacity, energy conversion, and ancillary services to LIPA pursuant to long-term power purchase agreements.

National Grid Generation owns the Property proposed to be leased to South Fork Wind under the terms of a Lease Agreement, dated January 28, 2022 (“Lease Agreement”). A copy of the Lease Agreement is attached as Exhibit 1. The Property is a parcel of undeveloped land consisting of approximately three acres. National Grid Generation acquired the Property in 1998. The Property is part of the East Hampton Generating Site on which National Grid Generation operates four internal combustion generating units. The Property also contains

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<sup>2</sup> Chapter 106 of the Laws of 2019. The CLCPA calls for the development of 9,000 megawatts of offshore wind energy by 2035.

<sup>3</sup> Case 17-M-0422 - *Petition of National Grid Generation LLC for a Declaratory Ruling Concerning 3 Cove Hollow Road, East Hampton, NY, to East Hampton Energy Storage Center, LLC.*, “Declaratory Ruling on Lease Transaction” (Issued September 19, 2017)(“2017 Declaratory Ruling”).

LIPA's East Hampton Substation that will serve as the point of electrical connection for the export cable connecting the South Fork Wind Farm.

The Property is not needed by National Grid Generation for operating its generating facilities, is vacant, and is not subject to any leases, licenses, or other occupancy agreements. The Property has been held by the Company as surplus property for potential future use for the generating units at East Hampton. Because National Grid Generation has no current or foreseeable use for the Property, it proposes to lease the Property to South Fork Wind as discussed herein and in the Lease Agreement.

South Fork Wind is a Delaware limited liability company, having an address at 56 Exchange Terrace, Suite 300, Providence, Rhode Island 02903. South Fork Wind will own and operate the South Fork Wind Farm off the coast of Long Island. South Fork Wind is a 50/50 joint venture between Ørsted A/S and Eversource Energy.

On February 6, 2017, LIPA and South Fork Wind executed a power purchase agreement for the South Fork Wind Farm requiring delivery of energy to LIPA's East Hampton Substation located on the Property. In March 2021, the Commission granted South Fork Wind a Certificate of Environmental Compatibility and Public Need ("CECPN") for the New York portion of the South Fork Export Cable ("SFEC-NYS"). The SFEC-NYS includes a submarine segment running approximately 3.1 nautical miles from the New York State Territorial Waters boundary to a sea-to-shore transition vault located in the Town of East Hampton ("Town") on Long Island, Suffolk County, New York and an onshore terrestrial segment of approximately 4.1 miles from the sea-to-shore transition vault to an interconnection facility connecting at LIPA's East

Hampton Substation.<sup>4</sup> In the Article VII Order the Commission noted the proposed interconnection facilities would be located on land owned by National Grid Generation (the Property).<sup>5</sup> On January 31 2022, the Commission issued a Notice to Proceed with Construction for the SFEC\_NYS.

*Description of the Planned Transaction*

Under the terms of the Lease Agreement (Exhibit 1), National Grid Generation will lease to South Fork Wind approximately three acres of vacant land, as more fully described in Schedule A to Exhibit 1, for an initial term of 35 years, with the option to extend the Lease Agreement for two successive seven-year periods. South Fork Wind is permitted to use the Property in support of the South Fork Wind Project. The Lease Agreement allows South Fork Wind to install interconnection equipment and structures on the Property including, but not limited to transformers, overhead and underground electrical lines, telecommunication lines, splice boxes, and other interconnection facilities. South Fork Wind assumes the full responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance, and management of the Property and, at the end of the lease, the demolition and removal of all improvements (as directed by National Grid Generation). The Lease Agreement requires South Fork to accept the Property “as is.” South Fork Wind has agreed to indemnify and save harmless National Grid Generation from all liabilities, damages and claims arising out of South Fork Wind’s use of the Property.

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<sup>4</sup> Case 18-T-0604, *Application of Deepwater Wind South Fork, LLC for a Certificate of Environmental Compatibility and Public Need*, Order Adopting Joint Proposal (Issued March 18, 2021) (the “Article VII Order”)

<sup>5</sup> Article VII Order at 5. (“[the interconnection facility] is located adjacent to the existing East Hampton Substation and on the same parcel, which is owned by National Grid Generation, LLC... The [interconnection facility] will consist of an approximately 2.7-acre work area adjacent to the existing East Hampton Substation and a corridor for the 69 kV interconnection cable along the southern edge of the existing East Hampton Substation. The 2.7-acre work area consists of the [interconnection facility] surrounded by a maintenance road and an exterior perimeter wall.”).

PSL Section 70 Approval

Section 70 of the PSL generally prohibits a gas or electric corporation from transferring or leasing its works or system or any part of thereof without Commission approval. The Petitioner submits that because (i) National Grid Generation is lightly regulated,<sup>6</sup> (ii) the Property is vacant and not used for utility operations, and (iii) National Grid Generation has no current or foreseeable use for the Property, there is no public interest concern that requires Commission review of this grant of a lease, and respectfully requests that the Commission issue a declaratory ruling to that effect.

**III. DECLARATORY RULING – THE PROPOSED TRANSACTION DOES NOT WARRANT COMMISSION REVIEW UNDER PSL §70**

Pursuant to PSL §70, Commission approval is needed for a transfer or lease of the works or system of an electric corporation. However, the Commission’s review process has been adapted to accommodate entities that are subject to lightened regulation by virtue of their merchant operation in competitive wholesale markets. *See*, Case 16-E-0392, *Danskammer Energy, LLC*. “Declaratory Ruling on a Transfer Transaction” (Issued September 19, 2016), p. 4.<sup>7</sup> Instead, transfers under PSL §70 have been approved by the Commission based on a showing that a transaction will not present an opportunity to exercise either horizontal or vertical market power, or otherwise pose a potential harm to the interests of captive customers of fully-regulated utilities. *Danskammer*, at pp. 4-5. National Grid Generation is lightly regulated and,

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<sup>6</sup> *See* Case No. 98-M-0074, *Petition of Long Island Lighting Company for Approval to: (a) under Section 70 of the Public Service Law to transfer certain assets from LILCO to newly formed subsidiaries of a new holding company; (b) for the subsidiaries receiving the assets to assume certain liabilities associated with those transferred assets; and (c) under PSL Section 69 for the issuance of promissory notes by those same subsidiaries*, “Order Approving Asset Transfers, Assumption of Liabilities And Issuance of Promissory Notes,” pp. 6-7 (Issued May 1, 1998).

<sup>7</sup> *See*, Case 00-E-1643, *Dynegy Power Corporation, Dynegy Danskammer, LLC and Dynegy Roseton, LLC*, “Order Providing for Lightened Regulation” (Issued December 20, 2000); *Helios Power Capital, LLC, Danskammer Energy, LLC and Mercuria Energy America, Inc.*, “Order Approving Transfer and Making Other Findings” (Issued June 27, 2014).

therefore, the proposed lease of the Property should be viewed under the same lens, *i.e.*, whether there is an opportunity to exercise market power and whether there is harm to the interests of the customers of the regulated utilities.

In 2017, the Commission found that no further review under PSL §70 was warranted with respect to National Grid Generation’s proposed lease of vacant/surplus land at the Property to develop a 5 MW battery storage system under long-term contract to LIPA:

The Petition adequately demonstrates that National Grid Generation’s proposed lease [for a battery storage project] will not present an opportunity to exercise either horizontal or vertical market power . . . . In addition, the proposed lease would not pose a potential harm to the interests of captive ratepayers. Significantly, construction, operation, or maintenance of the battery storage facility will not interfere with the safe and reliable operation and maintenance of National Grid Generation’s generating facility used to serve LIPA’s customers. The lease is of a limited nature and scope, and the real property interests necessary for operation of the facility will be unchanged. National Grid would also retain sufficient land for any additional operational needs it may have in the future.<sup>8</sup>

For the same reasons presented in the *2017 Declaratory Ruling*, National Grid Generation submits that the proposed lease of vacant property to South Fork Wind does not require further Commission review pursuant to PSL §70.

**a. The Proposed Lease Does Not Raise Market Power Concerns**

In applying a “public interest” standard for its review under Section 70 as it pertains to a lightly-regulated electric corporation operating in wholesale electric markets, the Commission initially considers any affiliations that might afford opportunities for the exercise of market power.<sup>9</sup> The proposed land-only lease from National Grid Generation to South Fork Wind does not present any opportunities for the exercise of horizontal or vertical market power. First, the

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<sup>8</sup> *2017 Declaratory Ruling* at 5-6.

<sup>9</sup> *See*, Case 10-M-0186 et al., *Alliance Energy Renewables, LLC, et al.*, “Order Approving Transfers Upon Conditions and Making Other Findings” (Issued July 23, 2010), p. 17.

proposed lease will not convey any interest in electric generation assets. Next, South Fork Wind is not affiliated with National Grid and, therefore, the lease of the Property does not present any market power consideration vis-à-vis National Grid Generation or its affiliates.

**b. The Proposed Lease Will Not Harm the Interests of Utility Customers**

As explained above, the proposed lease of the Property will facilitate development of New York's first offshore wind farm that will generate enough wind energy to power 70,000 average homes and offset tons of carbon emissions each year. The Commission previously determined that the South Fork Wind Project and associated interconnection facilities will help New York State achieve its energy and environmental targets set forth in the CLCPA, which among other things requires the State to procure 9,000 MW of offshore wind energy by 2035.<sup>10</sup> Accordingly, the transfer does not otherwise pose the potential for harm to captive customers.

**IV. ALTERNATIVE RELIEF – THE COMMISSION SHOULD APPROVE OF THE PROPOSED TRANSACTION AS IN THE PUBLIC INTEREST**

To the extent the Commission views the proposed lease as requiring approval under PSL § 70, the transaction is in the public interest and should be approved on an expedited basis. In issuing the CECPN for the SFEC-NYS, the Commission determined that the SFEC-NYS is in the public interest and, as such, the proposed leasing of the Property is in the public interest. Again, the South Fork Wind Project and associated interconnection facilities will help LIPA and the State meet its renewable energy goals and the requirements of the CLCPA.

The lease will have no adverse effect on the electric generation services that National Grid Generation provides to LIPA. The Property is excess land that is not required for the continued ownership and operation of the Company's generating units. National Grid Generation has reserved sufficient land for any additional operational needs it may have in the

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<sup>10</sup> Case 18-T-0604, *Deepwater Wind* at 104.



future. Therefore, the South Fork Wind's interconnection facilities will not interfere with the safe and reliable operation and maintenance of National Grid Generation's East Hampton generating facility.

**V. REQUEST FOR EXPEDITED TREATMENT**

The Petition concerns the development of local energy resources needed meet load on the South Fork area of Long Island and meet New York clean energy goals. Because this is a time-sensitive matter, and the need to acquire the Property was previously considered by the Commission in Case 18-T-0604, National Grid Generation requests expedited treatment of this Petition.

**VI. MISCELLANEOUS**

Communications and correspondence concerning this petition should be sent to the following individuals:

NATIONAL GRID GENERATION LLC  
Philip A. DeCicco  
2 Hanson Place  
Brooklyn, NY 11217  
Phone: (516) 376-9232  
[philip.decicco2@nationalgrid.com](mailto:philip.decicco2@nationalgrid.com)

SOUTH FORK WIND, LLC  
Leonard H. Singer  
Couch White, LLP  
540 Broadway  
Albany, NY 12207  
Phone: (518) 426-4600  
[lsinger@couchwhite.com](mailto:lsinger@couchwhite.com)

Attached hereto is the following appendix: Exhibit 1 – Copy of the Lease Agreement (redacted).

In accordance with Section 17.2 of the Commission's regulations,<sup>11</sup> the Company states that to the best of its knowledge its certificate of incorporation is on file with the Commission.

## **VII. CONCLUSION**

Based on the foregoing, National Grid Generation seeks a declaratory ruling that no further review under PSL § 70 is needed for the lease of the Property because it is lightly regulated and this Verified Petition shows that there is no exercise of market power or harm to captive ratepayers.

In the alternative, to the extent the Commission views the proposed lease as requiring approval under PSL § 70, Petitioners submit that the public interest is served and that expedited approval is appropriate. As demonstrated above, the Lease Agreement does not raise any issues regarding captive customers, it does not raise any market power concerns in the competitive wholesale markets in New York or the adjoining regions, and is in the public interest. Additionally, the proposed lease of the Property facilitates the interconnection of offshore wind resources by LIPA in support of the CLCPA and New York's clean energy goals.

Respectfully submitted,

NATIONAL GRID GENERATION LLC

By:     /s/Philip DeCicco      
Philip A. DeCicco  
National Grid  
2 Hanson Place  
Brooklyn, New York 11217  
516-376-9232

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<sup>11</sup> 16 NYCRR §17.2.


SOUTH FORK WIND, LLC

By: /s/ Leonard H. Singer  
Leonard H. Singer  
Couch White, LLP  
Attorneys for South Fork Wind, LLC  
540 Broadway  
Albany, New York 12207  
518-426-4600

Dated: March 4, 2022

**VERIFICATION**

I, James P. Flannery, Vice President for National Grid Generation LLC, do hereby affirm that the contents of this document are true to the best of my knowledge.

Signed:   
Date: March 4, 2022

**VERIFICATION**

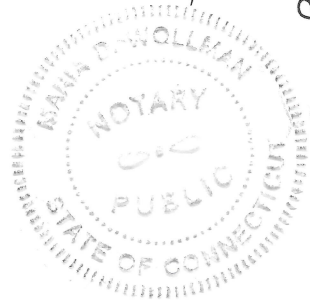
STATE OF CT )  
 ) ss.  
COUNTY OF Hartford )

I, Kenneth Bowes, being first duly sworn, attest that I am authorized to act in the capacity as both President and Secretary of South Fork Wind, LLC (“SFW”) and to sign this verification on behalf of SFW and I hereby verify, that the contents of this document are true to the best of my knowledge, information and belief.

Signed: *Kenneth Bowes*

Sworn to before me this 4<sup>th</sup> day  
of March, 2022

*Maria D. Wollman*  
commission expires 5/31/2024



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NATIONAL GRID GENERATION LLC

AND

SOUTH FORK WIND, LLC

**LEASE AGREEMENT**

Dated as of January 31, 2022

Premises:

3 Cove Hollow Road  
East Hampton, New York  
Section 185, Block 2, p/o Lot 2

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AGREEMENT OF LEASE (“Lease” or “Agreement”) made as of the day 31<sup>st</sup> of January, 2022, between **NATIONAL GRID GENERATION LLC**, a New York limited liability company, having an address at 175 Old Country Road, Hicksville, New York 11801 (“Landlord”) and **SOUTH FORK WIND, LLC**, a Delaware limited liability company, having an address at 56 Exchange Terrace, Suite 300, Providence, Rhode Island 02903 (“Tenant”). Each of Landlord and Tenant are sometimes referred to herein, individually as a “Party” and collectively, as the “Parties”.

## **ARTICLE 1** **PREMISES AND TERM OF LEASE**

Section 1.01 The Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises (hereinafter defined), subject to all existing liens, charges, encumbrances and matters of record and the terms and conditions hereinafter provided.

TO HAVE AND TO HOLD said Lease unto Tenant, its successors and assigns, for the Term (as hereinafter defined).

It is hereby mutually covenanted and agreed by and between the Parties hereto that this Lease is made upon the foregoing and upon the agreements, covenants and conditions herein set forth.

Section 1.02 Tenant acknowledges that the Land forms a part of the Generating Station Site. Subject to Landlord’s right to (i) assign this Lease in accordance with the terms and conditions hereof and (ii) grant right-of-way easements that do not materially interfere with Tenant’s use and enjoyment of the Premises, after the date of execution of this Lease and continuing until the expiration or earlier termination of the Term, Landlord shall not grant or permit the granting of any (a) other or additional leasehold interests, (b) other easements and/or (c) license interests, in or to the Premises to any other person or entity.

Section 1.03 Access. Effective as of the Lease Commencement Date, Landlord grants to Tenant, for a period coterminous with the Lease, a non-exclusive right-of-way easement to access the Premises through the Generating Station Site’s roadways.

## **ARTICLE 2** **DEFINITIONS**

Section 2.01 The terms defined in this Article shall, for all purposes of this Lease, have the meanings herein specified.

(a) “Additional Rent” shall have the meaning provided in Section 3.04.

(b) “Affiliate” shall mean, with respect to any Tenant, any other legal entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Tenant. For this purpose, “control” means the power to direct or cause the direction of the management and operation of such Tenant (or such other legal entity, as the case may be), through ownership or affiliation interest.

(c) “BOEM” shall mean the federal Bureau of Ocean Energy Management within the United States Department of the Interior or any successor agency.

(d) “BOEM Lease” shall mean that certain BOEM Lease OCS-A 0486, or any successor lease number as BOEM may assign from time to time.

(e) “CAM Charges” shall mean those common area maintenance charges incurred by Landlord to maintain and repair the common areas forming a part of the Generating Station Site.

(f) “Capital Improvement” shall have the meaning provided in Section 13.01.

(g) “Commercial Operation Date” shall mean the latter of the date upon which the Power Generating Facility is commercially operational and interconnected with the local utility at the Premises or the date upon which the Tenant’s power purchase contract commences with the local utility.

(h) “County” shall mean Suffolk County.

(i) “Date of Taking” shall have the meaning provided in Section 28.03.

(j) “DEC” shall mean the New York State Department of Environmental Conservation.

(k) “Default” shall mean any condition or event which constitutes or would, after notice or lapse of time, or both, constitute an Event of Default.

(l) “Environmental Laws” shall have the meaning provided in Section 44.09.

(m) “Environmental Requirements” shall mean those regulatory requirements, restrictions and limitations burdening the Premises, including the DEC and/or any other Federal, State or County agency or department.

(n) “Equipment” shall have the meaning provided in the interconnection agreement between LIPA and Tenant, including, but not limited to any machinery, transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities at any time hereafter erected, constructed, affixed or attached to or placed in or placed upon the Premises.

(o) “Event of Default” shall have the meaning provided in Section 26.01.

(p) “Expiration Date” shall be the date set forth in the definition of “Term” for the expiration of this Lease, unless this Lease is extended or earlier terminated in accordance with the terms hereof.

(q) “First Renewal Option Period” shall have the meaning provided in Section 40.01.

(r) “Fixed Net Rent” shall have the meaning provided in Section 3.01.

(s) “Generating Station Site” shall mean the site of the East Hampton Generating Station, which real estate is owned by Landlord and designated as Suffolk County Tax Map Section 185, Block 2, Lot 2, and on which the Premises forms a part thereof and which also houses, inter alia, the LIPA Substation.



(t) “Governmental Authority” shall mean laws and ordinances of any or all of the federal, state, city, county and borough governments and rules, regulations, orders and directives of any and all departments, subdivisions, bureaus, agencies or offices thereof, and of any other governmental, public or quasi-public authorities having jurisdiction over the Premises, and the direction of any public officer pursuant to law, whether now or hereafter in force.

(u) “Hazardous Materials” shall have the meaning provided in Section 44.08.

(v) “Impositions” shall have the meaning provided in Section 4.01.

(w) “Improvements” shall mean any and all and other improvements (including Capital Improvements) and structures hereafter erected on the Land, and the Equipment, including the Initial Construction.

(x) “Indemnitees” shall have the meaning provided in Section 19.01.

(y) “Initial Construction” shall have the meaning provided in Article 39.

(z) “Initial Expiration Date” shall mean the 35<sup>th</sup> anniversary of the Rent Commencement Date.

(aa) “Land” shall mean the parcel of vacant land containing approximately Three (3) acres and making up a part of the real property owned by Landlord designated as Suffolk County Tax Map Number: Section 185, Block 2, Lot 2, as shown more fully on Schedule A attached hereto and made a part hereof.

(bb) “Landlord” shall mean only the owner or owners at the time in question of the Land, so that in the event of any sale or sales or transfer or transfers of the Land, the seller or transferor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder, provided and it shall be deemed and construed without further agreement between the parties or their successors-in-interest or between the parties and the purchaser or transferee on any such sale or transfer that such purchaser or transferee has assumed and agreed in writing to carry out any and all agreements, covenants and obligations of Landlord hereunder accruing from and after the date of sale or transfer.

(cc) “Landlord Approvals” shall mean the receipt by Landlord of a (x) PSC Order and

(dd) “Lease Commencement Date” shall mean the date, following receipt of Landlord Approvals, that possession to the Premises is delivered to Tenant to commence any activities (including site planning, surveying, construction, etc.) related to the Initial Construction.

(ee) “Lease Year” shall mean (x) for the first Lease Year, the twelve (12) month period, commencing on the Rent Commencement Date and ending on the last day of the calendar month following the first (1st) anniversary of the Rent Commencement Date, inclusive of any partial month therein, and (y) for each Lease Year thereafter, each twelve (12) month period thereafter.

(ff) “LIPA” shall mean the Long Island Power Authority.

(gg) “LIPA Substation” shall mean the substation owned by LIPA that forms a part of the Generating Station Site.

(hh) “Mortgage” shall mean any fee mortgage encumbering the Generating Station Site.

(ii) “New Lease” shall have the meaning provided in Section 22.06.

(jj) “Penalty Rate” shall mean the greater of [REDACTED] over the rate of interest announced publicly by Citibank, N.A. in New York, New York, or its successor, from time to time, or if no such successor exists, a comparable bank selected by Landlord, as the “prime” or “base” rate of Citibank, N.A., or such successor or comparable bank, (but in neither case greater than the maximum legally collectible interest rate). Landlord and Tenant acknowledge that the prime rate of Citibank, N.A. may fluctuate during any period of accrual of interest at the Penalty Rate under this Lease and that, in such event, interest during such period may accrue at a fluctuating, rather than fixed, rate.

(kk) “Permitted Use” shall have the meaning provided in Section 11.01.

(ll) “Plans and Specifications” shall have the meaning provided for in Section 39.01 hereof.

(mm) “Power Generating Facility” shall mean an industrial offshore wind facility designed to generate and convert primary energy to electrical energy, which facility is connected to an electric network.

(nn) “PPA” shall mean the power purchase agreement executed between LIPA and Tenant.

(oo) “Premises” shall mean the Land and all Improvements erected thereon, as defined in this Section; together with all of Landlord’s right, title and interest in all easements, rights and other matters appurtenant to the Land and in and to any land lying in the bed of any roads adjacent to the Land.

(pp) “Prohibited Activities or Conditions” shall have the meaning provided in Section 44.03.

(qq) “PSC” shall mean the New York State Public Service Commission.

(rr) “PSC Approval” shall have the meaning provided in Section 36.01.

(ss) “PSC Order” shall mean the order issued by the PSC under Section 70 of the New York Public Service Law consenting to the execution and delivery of this Lease.

(tt) “Related Parties” shall have the meaning provided in Section 5.01.

(uu) “Renewal Option Periods” shall mean the First Renewal Option Period and the Second Renewal Option Period.

(vv) “Rent Commencement Date” shall mean the Commercial Operation Date.

(ww) “Rental” shall have the meaning provided in Section 3.04.

(xx) “Requirements” shall mean any and all present and future laws, rules, orders, ordinances, regulations, statutes and requirements of any Governmental Authority, including Environmental Requirements.

(yy) [REDACTED]

(zz) “Second Renewal Option Period” shall have the meaning provided in Section 40.01.

(aaa) “State” shall mean the State of New York.

(bbb) “Tenant” shall mean the Tenant herein named or any assignee or other successor-in-interest (immediate or remote) of the Tenant herein named, which at the time in question is the owner of the Tenant’s estate and interest granted by this Lease; but the foregoing provisions of this subsection shall not be construed to relieve the Tenant herein named and/or any assignee or other successor-in-interest (whether immediate or remote) of the Tenant herein named from the full and prompt payment, performance and observance of the covenants, obligations and conditions to be paid, performed and observed by Tenant under this Lease.

(ccc) “Tenant Mortgage” and “Tenant Mortgagee” shall have the meanings provided in Section 22.01.

(ddd) “Term” shall commence on the Rent Commencement Date and shall continue thereafter until the Initial Expiration Date, unless earlier terminated in accordance with the terms hereof and, to the extent applicable, shall include all Renewal Option Periods.

(eee) “Town” shall mean the Town of East Hampton.

(fff) “Unavoidable Delays” shall mean delays due to fire, casualty, any strike, lockout or other labor trouble, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, documented materially adverse changes in any Governmental Authority, or any other cause, whether similar or dissimilar, beyond Landlord’s or Tenant’s reasonable control, as the case may be. The delay in making any payment due to a party hereunder shall not, in any instance, be deemed to be an Unavoidable Delay.

(ggg) “Vacant Condition” shall have the meaning provided in Section 32.05.

### ARTICLE 3 RENT

Section 3.01 Commencing on the Rent Commencement Date, Tenant shall pay to Landlord, in currency which at the time of payment is legal tender for public and private debts in the United States of America the fixed net rental (the “Fixed Net Rent”) in the following amounts as follows:



Section 3.02:

(a) For purposes of determining the Fixed Net Rent under Section 3.01(b)(i) above, the “Fair Market Rental” of the Land shall be an amount to be agreed by the Parties no later than one hundred twenty (120) days prior to the expiration of the existing Term which shall be the then current market rate for similar energy-related leases affecting similar properties in Suffolk County, New York.

(b) If the Parties cannot agree to a Fair Market Rental (“FMV Determination”), then either Landlord or Tenant (hereinafter referred to as the “Initiating Party”) may give the other party (hereinafter called the “Responding Party”) a notice designating the name and address of an impartial MAI (Member of Appraisal Institute) certified appraiser to act on its behalf in the arbitration process hereinafter described (the “Review Notice”). If the Initiating Party gives a Review Notice, then within twenty (20) days after giving of such Review Notice, the Responding Party shall give notice to the Initiating Party specifying in such notice the name and address of the appraiser designated by the Responding Party to act on its behalf. In the event the Responding Party shall fail to give such notice of its appraiser within such twenty (20) day period, then the appointment of such appraiser shall be made in the same manner as hereinafter provided for the appointment of a third appraiser in a case where two appraisers are appointed hereunder, and the parties are unable to agree to such appointment. The two appraisers so chosen shall meet within thirty (30) days after the Responding Party appraiser is appointed and shall exchange sealed envelopes each containing such appraisers’ written FMV Determination of the Premises based on the criteria set forth in Section 3.02(a) above. The FMV Determination specified by Landlord’s appraiser shall be called the “Landlord’s Submitted Value” and the FMV Determination specified by Tenant’s appraiser shall be called the “Tenant’s Submitted Value”. Copies of such written determinations shall promptly be sent to both Landlord and Tenant. Any failure of either such appraiser to meet and exchange such determinations shall be acceptance of the other party’s appraiser’s FMV Determination, if, and only if, such failure persists for ten (10) business days after notice to whom such appraiser is acting. If the higher determination of the Fair Market Rental for the Premises is not more than [REDACTED] of the lower FMV Determination, then the Fair Market Rental for such space shall be deemed to be the average of the two determinations. If, however, the higher determination is more than [REDACTED] of the lower FMV Determination, then within ten (10) days of the date the appraisers submitted their respective FMV Determination, the two appraisers shall appoint a third appraiser (the “Third Appraiser”). In the event of their being unable to agree upon such appointment within ten (10) days after the exchange of the sealed envelopes, the Third Appraiser shall be selected by the parties themselves if they can agree thereon within a further period of ten (10) days. If the parties do not so agree, then either party, on behalf of both and on notice to the other, may request such an appointment by the American Arbitration Association (or any successor organization) in accordance with its rules then prevailing or if the American Arbitration Association (or any successor organization) shall fail to appoint said Third Appraiser within fifteen (15) days after such request is made, then either party may apply for such appointment, on notice to the other, to the President of the New York State Bar Association. Within ten (10) days after the appointment of such Third Appraiser, the Landlord’s appraiser shall submit Landlord’s Submitted Value to the Third Appraiser and the Tenant’s appraiser shall submit Tenant’s Submitted Value to the Third Appraiser. The Third Appraiser shall, within thirty (30) days after the end of such fifteen (15) day period, make his/her own FMV Determination using the criteria set forth above and send copies of his/her FMV Determination promptly to both Landlord and Tenant specifying whether

Landlord's Submitted Value or Tenant's Submitted Value was closer to the Third Appraiser's FMV Determination. Whichever of Landlord's Submitted Value or Tenant's Submitted Value shall be closer to the Third Appraiser's FMV Determination shall conclusively be deemed to be the Fair Market Rental of the Premises.

(c) Each appraiser shall be a disinterested person with at least ten (10) years' experience as a real estate broker or appraiser in Suffolk County and be familiar with commercial and industrial property in the vicinity of the Premises.

(d) None of the appraisers so selected shall have the power to add to, modify or change any such definitions or any other provisions of the Lease, and the jurisdiction of the appraisers is accordingly limited

Section 3.03 Fixed Net Rent shall be payable in advance in equal monthly installments on the first day of each month. If the Rent Commencement Date or the Expiration Date occurs other than on the first day of the calendar month, the Fixed Net Rent for the partial calendar month in which the Rent Commencement Date and/or Expiration Date occurs shall be prorated according to the number of days in the calendar month in which the Rent Commencement Date and/or the Expiration Date occurs.

Section 3.04 Effective on the Lease Commencement Date, Tenant shall also pay all (i) Impositions (hereinafter defined), (ii) all other additional rent and all other sums due and payable hereunder and (iii) its proportionate share equaling ████████ of the CAM Charges (collectively "Additional Rent"). Tenant shall reimburse Landlord upon demand for all costs and expenses, including reasonable counsel fees, paid or incurred by Landlord in curing any Event of Default or arising out of any indemnity given herein by Tenant to Landlord, together with interest at the Penalty Rate from the date paid by Landlord. The Fixed Net Rent and all Additional Rent, including Impositions and all other sums, costs, expenses, charges, payments and deposits which Tenant, pursuant to any provision of this Lease, assumes or agrees to pay and/or deposit, are collectively referred to as "Rental". All Rental (except for the Impositions, which shall be paid in accordance with the terms of Article 4 hereof) shall be paid to Landlord at its office, or such other place, or to Landlord's agent and at such other place, as Landlord shall designate, from time to time, by prior written notice to Tenant. At Landlord's option, all Fixed Net Rent shall be paid by wire transfer of Federal Funds to Landlord's account in accordance with instructions that Landlord shall from time to time deliver to Tenant. Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for under the terms of this Lease and applicable law in respect to the payment of Rental as Landlord possesses in respect to the payment of the Fixed Net Rent.

Section 3.05:

(a) **Notwithstanding any other provision in this Lease, this Lease is a triple net lease, and the Rental shall be paid without notice or demand, and without counterclaim, setoff, defense, suspension or deferment, of any kind, and without deduction, abatement or diminution of any kind.** Except as specifically provided in Articles 8, 9, 36 and 38, this Lease shall not terminate (except as may be expressly set forth herein), and Tenant shall not have any right to terminate or avoid this Lease or be entitled to the abatement (in whole or in part) of any Rental or rents hereunder or any reduction thereof, nor shall the obligations and liabilities of Tenant

hereunder be in any way affected for any reason, including without limitation: (i) any defect in, damage to, destruction of, or (subject to the terms of Article 28 hereof) condemnation of any part of the Premises; (ii) any restriction of or interference with any use of the Premises or action by any Governmental Authority or third parties; (iii) any matter affecting title to, or any eviction by Governmental Authority or third parties from the Premises; (iv) any proceeding relating to Landlord or action taken with respect to this Lease by any trustee or receiver of any successor to Landlord or by any court in any proceedings; (v) any failure by Landlord to perform or comply with this Lease or any other agreement or business dealings with Tenant; or (vi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing and whether or not Tenant shall have notice or knowledge of any of the foregoing. The obligations of Tenant hereunder shall be separate and independent covenants and agreements. Each payment made by Tenant to Landlord pursuant to this Lease shall be final and Tenant shall not seek to recover all or any part of such payment from Landlord for any reason whatsoever.

(b) Tenant shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Landlord or any assignee of Landlord or any action with respect to this Lease which may be taken by any trustee, receiver or liquidator or by any court. Tenant waives all rights to terminate or surrender this Lease, or to any abatement, reduction or deferment of Rental, except as otherwise expressly provided in this Lease.

(c) Notwithstanding anything to the contrary contained herein, Tenant's responsibilities (excluding the payment of Fixed Net Rent) shall be effective and otherwise commence on the Lease Commencement Date.

#### **ARTICLE 4** **TAXES**

##### **Section 4.01:**

(a) Effective on the Lease Commencement Date, Tenant covenants and agrees to pay, as hereinafter provided, all of the following items (collectively "Impositions"): all taxes reasonably determined by Landlord to be attributable to the Premises (including, without limitation, all ad valorem, real estate, sales and use, value added, single business, gross receipts, transaction, taxes on rent, privilege, or similar taxes), all assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term, and any other assessments of whatever name, nature, and kind, and whether or not now within the contemplation of the Parties, including any special assessments for or imposed by any business improvement district or by any special assessment district), water, sewer, or other rents and charges, excises, levies, fees (including, without limitation, license, permit, inspection, authorization, and similar fees), fines, penalties, and all other governmental charges and any interest or costs with respect thereto, charges for any easement or agreement maintained for the benefit of the Premises, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character, kind and nature whatsoever which at any time prior to or during the term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Landlord, the Premises, or the sidewalks or streets in front

of or adjoining the Premises, or any vault, passageway or space in, over or under such sidewalk or street, or any other appurtenances of the Premises, or any personal property, Equipment or other facility used in the operation thereof, or the rent or income received therefrom, or any use, possession or occupancy thereof, or this transaction or the Rental payable hereunder, or any document to which Tenant is a party creating or transferring an interest or estate in the Premises, together with any and all interest, penalties, and costs resulting from delayed payment of any of the foregoing attributable to an act or omission of Tenant. Tenant shall, during the Term, pay and discharge, as Additional Rent, all Impositions not later than thirty (30) days after Tenant receives written notice thereof, or thirty (30) days prior to the day any fine, penalty, interest or cost may be added thereto as imposed by law for the non-payment thereof, if such day is used to determine the due date of the respective item; provided, however, that if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments, provided such installment payments are not prohibited by the terms of any Mortgage and provided further that the amount of all installments of any such Impositions (other than installments of special improvement assessments), which are a lien or charge on the Premises during the Term and which are to become due and payable after the Expiration Date, shall (subject to the terms of any Mortgage which requires an amount equal to such Impositions to be deposited with the holder of such Mortgage) be deposited with Landlord for such payment on the date which shall be one (1) year immediately prior to the Expiration Date.

(b) The Parties agree that nothing herein contained shall require Tenant to pay municipal, state or federal income, inheritance, estate, succession, transfer or gift taxes of Landlord, or any corporate franchise taxes imposed upon Landlord or any successor of Landlord; provided, however, that if at any time during the Term the method of real estate taxation prevailing at the commencement of the Term shall be altered so that any new tax, assessment, levy (including, but not limited to, any municipal, state or federal levy), imposition or charge, or any part thereof, measured by or based in whole or in part upon the Premises or the Rental, shall be imposed upon Landlord, then all such taxes, assessments, levies, impositions or charges, or the part thereof to the extent that they are so measured or based, shall be deemed to be included within the term "Impositions" for the purposes hereof, to the extent that such Impositions would be payable if the Premises were the only property of Landlord subject to such Impositions, and Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions.

Section 4.02 Any Imposition, other than an Imposition which has been converted into installment payments as referred to in Section 4.01 hereof, relating to a fiscal period of the taxing authority, a part of which period is included within the Term and a part of which is included in a period of time after the expiration or termination of the Term, shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable during the term of this Lease) be apportioned between Landlord and Tenant as of the expiration or termination of the Term, so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time prior to the expiration or termination of the Term bears to such fiscal period, and Landlord shall pay the remainder thereof, provided, however, that Tenant shall not be entitled to receive any apportionment if there be an Event of Default hereunder.

Section 4.03 Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition, of nonpayment of such



Imposition, shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

**ARTICLE 5**  
**NO PERSONAL LIABILITY OF LANDLORD**

Section 5.01 Notwithstanding anything to the contrary in this Lease, in any action or proceeding brought to enforce any of the obligations of Landlord (which term when used only in this Article shall be deemed to include “Related Parties” of Landlord, as such term is defined below) hereunder, the judgment or decree shall be enforceable against Landlord only to the extent of the interest of Landlord in the Premises and any such judgment shall not be subject to the execution on, nor be a lien on, any assets of Landlord other than its interest in the Premises, it being specifically understood and agreed that Landlord shall have no other liability, personal or otherwise, hereunder. The term “Related Parties” shall mean and include: (i) Landlord and any officer, director, or shareholder of Landlord; (ii) any partner of Landlord; (iii) any legal representative, heir, estate, successor, or assignee of any of the foregoing; and (iv) any corporation (or any officer, director, or shareholder thereof), partnership (or any partner thereof), individual, or entity to which the interest of Landlord in the Premises or part thereof or interest therein shall have been transferred (or any legal representative, heir, estate, successor, or assignee of any thereof).

**ARTICLE 6**  
**INSURANCE**

Section 6.01 Commencing on the Lease Commencement Date and thereafter, at all times during the Term, Tenant at its own cost and expense shall maintain insurance policies that are meant to be primary and non-contributory (with no right of contribution by any other coverage available to the Landlord, the Landlord’s affiliates and their respective agents, employees, directors and other parties that the Landlord may identify). Such policies (excluding Workers’ Compensation and Employee’s Liability Insurance) shall include “National Grid Generation LLC, National Grid USA, its direct and indirect parents, subsidiaries, affiliates, successors and assigns” (collectively, “Landlord’s Insured Entities”) and the holder of any mortgage as their respective interests may appear, as Additional Insureds. Waiver of Subrogation endorsement is required in favor of Landlord’s Insured Entities for any loss or damage covered under all policies referenced herein, or for any required coverage that may be self-insured by Tenant:

(a) Maintain Property insurance, for its own benefit, on all of the Premises, including personal property and/ or property of others in its care, custody and control, under an “All Risk” policy or its equivalent (e.g., a “Special Causes of Loss” policy), with replacement cost valuation and an agreed value endorsement (hereinafter referred to as “All Risk”) in an amount equal to not less than one hundred percent (100%) of the full replacement cost of the Improvements (determined without regard to depreciation of the Improvements, but exclusive of foundations and footings). Tenant shall also carry or cause to be carried (X) coverage against damage due to water and sprinkler leakage, collapse, and flood (to the extent such coverage can be obtained at commercially reasonable rates in the State), which shall be written with limits of coverage of not less than the then replacement value per occurrence, and (Y) earthquake insurance in an amount equal to not less than ten percent (10%) of the replacement cost of the Improvements. Such policy shall be endorsed with (i) replacement coverage, (ii) an agreed amount endorsement (waiving

applicable co-insurance clause) in accordance with such determination or appraisal, and (iii) coverage for demolition costs and increased costs of construction due to changes in Requirements. During any period where Improvements are being undertaken, Tenant shall also maintain Builders Risk insurance (in accordance with the requirements of Section 39.04 below) with respect to the work in question. Tenant shall include the Insured Entities as Loss Payees with respect to their insurable interest as Landlord.

(b) Provide and keep in force insurance against liability for bodily injury and death and property damage all such insurance to be in such amounts as may from time to time be reasonably required by Landlord, with respect to the Premises and all operations related thereto, whether conducted on or off the Premises, and coverage shall include specifically the Premises and all parking areas, sidewalks adjoining or appurtenant to the Premises, in accordance with the following:

(i) Commercial General Liability (CGL) Insurance, at minimum limits of: [REDACTED]

The CGL Policy shall include coverage for contractual liability (with this Lease being included under the definition of “Insured Contract”), and products/completed operations coverages. Policy shall not contain a cross-liability or a separation of insureds exclusion. Should coverage for products/completed operations be written on a claims-made form, the retroactive date shall not precede the effective date of this Lease and coverage shall be maintained continuously for the duration of this Lease.

(ii) Automobile Liability, covering all owned, non-owned and hired vehicles used in connection with all operations related to the Lease with a minimum combined single limit of liability of [REDACTED] Additional Insured and Waiver of Subrogation required from this policy for the Insured Entities above.

(iii) Statutory Workers’ Compensation and Employer’s Liability Insurance, in the state in which work and/or operations will be performed under this Lease. The employer’s liability limit shall be [REDACTED]

[REDACTED] For work or services being performed on or close to water, policy shall include coverage for the US Longshoreman & Harbor Workers’ Compensation Act of 1927 and Jones Act of 1920.

(iv) Umbrella Liability or Excess Liability Insurance, providing broad “follow form” excess insurance with terms similar to the Commercial General Liability, Automobile Liability and Employer’s Liability coverages outlined within this Agreement, at minimum limits of:

[REDACTED]

Such insurance coverage shall include a drop-down provision in the event of exhaustion of underlying limits or aggregates.

(v) Contractor's Pollution Liability ("CPL") Insurance: Tenant and any and all subcontractor(s) shall maintain such policy to cover any sudden and gradual pollution incidents that may arise out of, under, or in connection with this Lease including any and all work and/or services to be performed by or on behalf of GC, including but not limited to: (a) bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; (b) property damage including physical injury or destruction of tangible property including resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not be physically injured or destroyed; and (c) defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensation damages. CPL Policy shall not contain any exclusions for asbestos, lead paint, silica or mold/fungus/legionella. This coverage shall carry a minimum limit of:

[REDACTED]

Should coverage(s) be written on a claims-made form, the retroactive date shall be no later than the effective date of this Lease and Tenant and/or its subcontractors shall maintain coverage continuously for the duration of this Lease and for at least five (5) years thereafter.

In the event the Tenant is unable to secure and/or maintain any or all of this pollution liability coverage, the Tenant agrees, to the fullest extent permitted by law, to defend, indemnify and hold the Landlord's Insured Entities harmless against any and all liability resulting from any coverage deficiency that is out of compliance with this insurance requirement.

(vi) Unmanned Aerial Systems/Vehicles (UAS/UAV)/Drone Insurance, (if equipment will be used in course of work), covering third-party liability for bodily injury and property damage arising out of the use of Unmanned Aerial Systems (UAS)/Vehicles (UAV) a/k/a drones, at minimum limits of [REDACTED] Such requirement can also be met outlining the same terms under an endorsed Aircraft Liability policy.

(c) If, by reason of any (i) government or regulatory imposition or requirement or (ii) materially changed circumstances or economic conditions, the insurance amounts referred to in this Lease become in Landlord's reasonable judgment inadequate, Tenant shall increase the amounts of such insurance promptly upon Landlord's reasonable request; provided that increase of such insurance is reasonably available in the market at reasonable rates. Tenant shall deliver to Landlord evidence of such increased coverage amounts, pursuant to a policy or ACORD insurance certificate no later than ten (10) days from the date of such demand.

(d) At the request of Landlord, Tenant shall provide and keep in force such other insurance in amounts as may from time to time be required by Landlord (and/or any government or regulatory department or agency) against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated, due regard being given to the type of the Improvements, its construction and its use and occupancy; provided that such increase of such insurance is reasonably available in the market at reasonable rates. Tenant shall deliver to Landlord evidence of such increased coverage amounts, pursuant to a policy or ACORD insurance certificate no later than ten (10) days from the date of such demand.

(e) Subcontractors. In the event that Tenant uses subcontractor(s) in connection with this Lease, the Tenant shall require all such subcontractor(s) to provide the same insurance coverages and protections as outlined within this Article 6 and as applicable to their portion of construction activities or services. The Tenant shall remain liable for the performance of each subcontractor, and such contract relationship shall not relieve the Tenant of its obligations under this Lease. In addition, each subcontractor shall be required to provide a waiver of subrogation and name Landlord's Insured Entities and Tenant as Additional Insureds where required. If requested, Tenant will provide Landlord with a certificate of insurance from its subcontractor evidencing such coverages.

(f) For the avoidance of any doubt, nothing contained in the insurance coverage requirements set forth above is to be construed in any manner as limiting the extent of the Tenant's responsibility for any payment of damages or its indemnification obligations under this Lease.

#### Section 6.02:

(a) All insurance provided by Tenant, as required by this Article, shall be carried in favor of Landlord, Tenant and the holder of any Mortgage as their respective interests may appear. The loss under policies insuring against damage to the Premises by fire or other casualty shall be payable to the Landlord and the holder of any Mortgage as their interests may appear. Rental insurance shall be carried in favor of Landlord and Tenant, as their respective interests appear, but the proceeds thereof shall be paid to Landlord, as Loss Payee listed under this policy, and shall be applied to the payment of Rental under this Lease until restoration of the Premises by Tenant, and, provided there is then no existing Event of Default, all proceeds in excess of the Rental then due shall be paid to Tenant. All proceeds paid to Landlord and applied to the payment of Rental in accordance with this Section 6.02 shall be deemed an automatic offset and reduction, *pari passu*, of the amount of Rental due by Tenant under this Lease.

(b) All insurance required by any provision of this Lease shall be issued by such responsible insurance companies licensed or authorized to do business in the State and having a rating of "A-" or better and a financial class of "VIIP" or better (or the then equivalent of such ratings) as rated by A.M. Best's Insurance Guide (or any successor publication of comparable standing). All policies referred to in this Lease shall be in such form reasonably acceptable to Landlord and shall be obtained by Tenant for periods of not less than one (1) year. Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss and Tenant shall execute and deliver to Landlord such proofs of loss and other instruments which may be required for the purpose of obtaining the recovery of any such insurance moneys.

(c) Tenant shall not obtain or carry separate insurance concurrent in form or contributing in the event of loss with that insurance required or permitted by this Lease to be furnished or which may be required or permitted to be furnished by Tenant, unless the Landlord and the holders of any Mortgages are included therein as insureds with loss payable as in this Lease provided. Tenant shall immediately notify Landlord of the carrying of any such separate insurance and shall cause the same to be delivered as in this Lease hereinbefore required.

(d) All premiums on policies referred to in this Lease shall be paid by Tenant. Where requested by Landlord, the originals of such policies or certificates evidencing such

policies, together with evidence of the payment of premiums thereon, shall be delivered to the Landlord (and such originals may be delivered by Landlord to the holder of a Mortgage). New or renewal policies or certificates replacing any policies expiring during the Term shall be delivered to Landlord no more than five (5) days after the date of renewal. Premiums on policies shall not be financed in any manner whereby the lender, on Default or otherwise, shall have the right or privilege of surrendering or cancelling the policies without at least thirty (30) days' prior written notice to Landlord. Failure to furnish the required certificate(s) of insurance and endorsements shall not relieve the Tenant from any obligations outlined under this Lease.

(e) All casualty insurance policies provided for herein shall provide that all adjustments for claims with the insurers in excess of [REDACTED] shall be with Landlord, Tenant and the holder of any Mortgage. Any adjustments for claims with the insurers involving sums of less than [REDACTED] may be made with Tenant except that, in the event there then exists an Event of Default on the part of Tenant, such adjustments for claims with the insurers shall be made with Landlord.

(f) Tenant shall not violate or permit to be violated any of the conditions or provisions of any such policy, and Tenant shall so perform and satisfy the requirements of the companies writing such policies such that at all times companies of good standing reasonably satisfactory to Landlord shall be willing to write and/or continue such insurance.

(g) Compliance – Tenant, its contractors and subcontractors shall comply with all governmental site-specific insurance requirements.

Section 6.03. Every policy of insurance referred to in this Lease and each certificate therefor issued by the insurer shall contain an agreement by the insurer that (a) no cancellation, non-renewal or reduction in the coverages afforded under said policies will be effective until at least thirty (30) days' prior written notice of such cancellation, non-renewal or reduction has been given to Landlord in accordance with Article 27 of this Lease, (b) that the interests of the Landlord shall not be invalidated by any act or negligence of Tenant or Landlord or any person or entity having an interest in the Premises, by occupancy or use of the Premises for purposes more hazardous than permitted by such policy, or by any foreclosure or other proceedings relating to the Premises. Tenant shall promptly advise Landlord of any policy cancellation, reduction, non-renewal, or amendment which adversely affects Landlord and (c) such insurer waives any and all right of subrogation against Landlord's Insured Entities with regards to each insurance policy required to be maintained by Tenant and/or Tenant's contractors under the provisions of this Article 6.

Section 6.04. To the extent such deductibles are reasonably available to Tenant at commercially reasonable premiums/terms, no insurance policy to be maintained by Tenant and/or Tenant's contractors hereunder shall provide for a deductible exceeding [REDACTED]

**ARTICLE 7**  
**USE OF CASUALTY INSURANCE PROCEEDS**

Section 7.01 Subject to Sections 8.01 and 9.01(b), if the Improvements shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall give to Landlord immediate notice thereof, and Tenant, at its own cost and expense and pursuant to Tenant's scope and schedule, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose, shall (i) if the Initial Construction had been performed or had been in the process of being performed prior to the casualty, promptly repair, alter, restore, replace or rebuild the same to ensure the safety, access, aesthetics, and legal compliance of the Premises, at least to the extent of the value of the Improvements prior to such occurrence and to as nearly as possible to the character of the Improvements existing immediately prior to such occurrence, and (ii) if the Initial Construction had not been performed prior to the casualty, perform such work to ensure the safety of the Premises; and Landlord shall in no event be called upon to repair, alter, replace, restore or rebuild such Improvements or any portion thereof, or to pay any of the costs or expenses thereof. If Tenant shall fail or neglect to restore, repair, replace or rebuild the Improvements, or the portion thereof so damaged or destroyed, with reasonable diligence in accordance with this Section 7.01, or having so commenced such restoration, repair, replacement or rebuilding shall fail to complete the same with reasonable diligence in accordance with this Section 7.01, or if prior to the completion of any such restoration, repair, replacement or rebuilding by Tenant, this Lease shall expire or be terminated by Landlord in accordance with this Lease, Landlord may complete the same at Tenant's expense. All work shall be done in accordance with the provisions of Articles 8 and 13 hereof.

**ARTICLE 8**  
**RESTORATION OF DAMAGE OR DESTRUCTION**

Section 8.01:

(a) If in the event of any loss, damage or destruction, the cost of restoration and repairs of which is less than [REDACTED] in the aggregate, Tenant agrees at least thirty (30) days before the commencement of any work necessary to repair, alter or renew the Premises, or any part thereof, to furnish to Landlord complete plans and specifications for the demolition, construction, repair, replacing, renewing or altering of the Improvements (subject in all instances to the requirements of Article 44 and the Environmental Requirements), prepared by a duly licensed architect and which plans and specifications shall meet with the approval thereof by any Governmental Authority then exercising jurisdiction with regard to such work, plans and specifications.

(b) If in the event of any loss, damage or destruction, the cost of restoration and repairs of which exceeds [REDACTED] in the aggregate, Tenant shall have the option to either (i) restore and repair the Premises in accordance with Article 7 and subsection (a) of this Section 8.01 above, or (ii) terminate this Lease pursuant to Section 9.01(b), which option Tenant shall exercise upon written notice to Landlord within thirty (30) days of such casualty and such termination shall be effective upon the date Tenant has delivered possession of the Premises in Vacant Condition, in which event neither Party shall have any additional or other

obligation or liability to the other Party arising from or relating to this Lease, including without limitation Tenant's obligation to pay Rental, except for such obligations or liabilities that survive the termination or expiration of this Lease according to the express provisions hereof. For the avoidance of any doubt, if Tenant elects to terminate this Lease, it shall deliver the Premises to Landlord in Vacant Condition.

(c) Notwithstanding anything to the contrary contained in this paragraph, in the event that all or a substantial part of the Improvements are rendered unusable in the last five (5) years of the term, then Tenant may elect to terminate this Lease, by a notice to Landlord given not later than sixty (60) days following such casualty, and Tenant shall assign to Landlord the entire amount of insurance proceeds payable by reason of such casualty with respect to the Improvements on the Premises. If Tenant makes such election, Tenant shall assign such insurance proceeds to Landlord, and the term shall expire on the sixtieth (60th) day after notice of such election and Tenant shall vacate the Premises and surrender the same to Landlord.

## **ARTICLE 9** **DAMAGE AND DESTRUCTION - NO EFFECT ON LEASE**

### **Section 9.01:**

(a) Subject to Sections 8.01(b) and 9.01(b), this Lease shall not terminate or be forfeited or be affected in any manner by reason of damage to or total, substantial or partial destruction of the Premises or any part or parts thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and Tenant, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises of any part thereof. Tenant expressly agrees that its obligations hereunder, including the payment of any and all Rental, shall continue as though said Premises had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind.

(b) Notwithstanding subsection (a) of this Section 9.01 or any other provision contained herein to the contrary, in the event the Premises are damaged or destroyed such that it would be impossible for Tenant to use the Premises for the Permitted Use, then either Party shall have the option to terminate this Lease upon prior written notice to the other Party, in which event neither Party shall have any additional or other obligation or liability to the other Party arising from or relating to this Lease, including without limitation Tenant's obligation to pay Rental, except for such obligations or liabilities that survive the termination or expiration of this Lease according to the express provisions hereof. Notwithstanding the foregoing, if the Lease is terminated, Tenant shall continue to pay Rental until such time Tenant has delivered the Premises in Vacant Condition.

## **ARTICLE 10** **ASSIGNMENT, SUBLETTING, ETC.**

**Section 10.01** Except as otherwise expressly set forth in this Lease, including without limitation in Article 22, neither this Lease nor the interest of Tenant in this Lease, nor the interest of Tenant in any sublease, license or concession relating to the Premises or in any rentals under any sublease, license or concession relating to the Premises shall be sold, assigned, or otherwise transferred, whether by operation of law or otherwise, nor shall Tenant sublet the Premises or any

part or parts thereof, nor shall any transaction or series of transactions be entered into (including, without limitation, any assignment, transfer, issuance or redemption of any ownership interest, or any merger, consolidation or dissolution), which, directly or indirectly, result in a change of control of Tenant or any person or entity which, directly or indirectly, controls Tenant, without the prior written consent of Landlord in each case, which consent Landlord shall not unreasonably withhold, condition or delay. For purposes of this paragraph, the term “control” shall mean the power to direct the management and policies of such entity. Notwithstanding the foregoing, Tenant has the right to (i) assign this Lease to an Affiliate of Tenant, without the consent of Landlord, but on prior written notice to Landlord, provided Tenant has documented that the Affiliate has a net worth (at the time of the assignment) equal to or greater than the Tenant’s net worth and (ii) mortgage, collaterally assign or otherwise encumber and grant security interests in all or any part of its interest in this Lease and the Improvements in accordance with Article 22.

Section 10.02 No assignment of this Lease or subletting of the Premises, unless made in compliance with all of the provisions of this Article and Article 47, shall have any validity. An assignment of this Lease or subletting of the Premises shall not relieve or release the assignor or sublandlord from any obligations of Tenant under this Lease and the assignor/sublandlord shall remain liable for the performance of all obligations of Tenant hereunder for the remainder of the term and renewal terms, if any.

Section 10.03 Any consent by Landlord under Section 10.01 herein shall apply only to the specific transaction thereby authorized and shall not relieve Tenant from the requirement of obtaining the prior written consent of Landlord to any further sale or assignment of this Lease or transfer of any equity interest or subletting of all or any portion of the Premises.

Section 10.04 Tenant shall and does hereby indemnify and agree to defend and hold Landlord free and harmless from and against any and all liabilities, claims, causes of action, suit or suits, expenses, penalties, costs and fees (including, without limitation, reasonable counsel fees) arising under or in connection with the terms, provisions and conditions of each and every sublease, license or concession agreement.

Section 10.05 The fact that a violation or breach of any of the terms, provisions or conditions of this Lease results from or is caused by an act or omission by any subtenant, licensee or concessionaire shall not relieve Tenant of Tenant’s obligation to cure the same. Tenant shall take all steps reasonably necessary to prevent any such violation or breach.

Section 10.06 If all or any part of the Premises be sublet or occupied by anyone other than Tenant, Landlord may, after an Event of Default by Tenant, collect sub-rent from any and all subtenants or occupants and apply the net amount collected to the net annual rent reserved herein, but no such collection shall be, or be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease or the acceptance by Landlord of any subtenant or occupant as Tenant, or a release of Tenant from performance by Tenant of its obligations under this Lease.

Section 10.07 To secure the prompt and full payment by Tenant of the Rental in this Lease reserved and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord subject to the conditions hereinafter set forth, all of Tenant’s right, title and interest in and to all subleases now or hereafter made and in and to all concession agreements now or hereafter



made affecting any part of the Premises, and hereby confers upon Landlord, its agents and representatives, a right of entry in and sufficient possession of the Premises to permit and insure the collection by Landlord of said rentals and other moneys, and further agrees that the exercise of said right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof and that should said right of entry and possession be denied Landlord, its agent or representative, Landlord may, in the exercise of said right, peaceably gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any person whomsoever, Tenant hereby agreeing in said contingency to hold Landlord safe and harmless from any claim of any character by any person arising out of or in connection with the entry by Landlord and taking possession of the Premises; provided, however, that such assignment shall become operative and effective only in the event that this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof, or in the event of repossession under dispossession warrant or other re-entry or repossession by Landlord under the provisions hereof, or in an Event of Default by Tenant hereunder, and then only as to such subleases and concession agreements that Landlord may elect to take over and assume.

**ARTICLE 11**  
**PERMITTED USE; NO UNLAWFUL OCCUPANCY**

Section 11.01 Subject to applicable law and the provisions of this Lease, Tenant shall use the Premises in support of the Power Generating Facility to be located in the territory subject to the BOEM Lease, and Tenant's use shall include, without limitation, the following rights (collectively, the "Permitted Use"):

(i) to place, install, construct, reconstruct, install, test, repair, replace, upgrade, remodel, adapt, modify, maintain, operate, use, inspect and patrol new Improvements, including without limitation, buildings and structures; Improvements required by permits, including stormwater management permits; supports, concrete pads and footings; overhead and underground electrical transmission for the transmission and distribution of high and low voltage electric energy; collection and communications lines; electric transformers; switching stations; substations; power quality equipment, including but not limited to energy storage equipment and related devices, fixtures, appurtenances, foundations; and telecommunications equipment, for the transmission of intelligence, by any means, whether now existing or hereafter devised. Such Improvements may include, subject to Landlord's consent, not to be unreasonably withheld, conditioned or delayed,

a. lines of buried cables or conduits or both or any combination of the same (any of which may be erected and/or constructed at the same or different times), together with all ducts, raceways, conductors, terminals, sustaining and protective fixtures, underground expansion stabilizers, manholes, hand holes, junction boxes, foundations, fittings, and all housings, connectors, switches and any other equipment, interconnection facilities or appurtenances reasonably required; and

b. lines of towers or poles or both or any combination of the same with wires and cables strung upon and from the same (any of which may be erected and/or constructed at the same or different times), together with all guy wires, foundations, anchors,

antennae, braces, fittings, buried ground wires and any other equipment or appurtenances reasonably required (collectively, the “Facilities”).

(ii) to facilitate pedestrian and vehicular access, ingress, and egress to and from the Facilities, public ways and certain real property and related appurtenances in the vicinity of the Generating Station Site, if any, as may be necessary for the convenient construction, reconstruction, installation, repair, replacement, upgrading, remodeling, adaptation, modification, maintenance, operation, use, inspection and patrolling of said Facilities over, under, through, across, and upon the Generating Station Site and the Premises, in the locations specifically identified and/or described at Schedule C annexed hereto and made a part hereof.

(iii) to clear and keep cleared by physical, chemical or other means (if such means are in accordance with all applicable federal, state, and local regulations), the Premises of trees, underbrush and above and below ground buildings, structures or objects (the first clearing may be for less than the full width and may be widened from time to time to the full width), to trim and/or remove other trees and vegetation immediately adjacent to the Premises, to remove, add to, modify or otherwise change the Facilities and each and every part thereof and all appurtenances thereto and the locations thereof within the Premises, to pass and repass on foot and with vehicles and equipment to and from the immediately adjoining lands and to pass and repass over the Generating Station Site to and from the Premises as reasonably required, and subject to Landlord’s prior consent, not to be unreasonably withheld, conditioned, or delayed, pave, excavate, remove soils from, fill, and/or change the grade of the Premises as is necessary or desirable by Tenant.

Section 11.02 Tenant shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any manufacturing purposes, any unlawful or illegal business, use or purpose, or for any business, use or purpose reasonably deemed by Landlord to be extra hazardous to human life or safety, or in such manner as to constitute a nuisance of any kind, or for any purpose or in any way in violation of the certificate of occupancy or of any Requirements. Tenant shall, immediately upon the discovery of any such unlawful, illegal, or extra hazardous use take all reasonably necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, occupant, or other persons guilty of such unlawful, illegal, or extra hazardous use.

Section 11.03 Tenant will not suffer any act to be done or any condition to exist on the Premises or any portion thereof that may be hazardous to human life or safety or which in law constitutes a nuisance, public or private, or which may make void or voidable any insurance then in force on the Premises.

Section 11.04 Tenant shall not suffer or permit the Premises or any portion thereof to be used by the public as such, without restriction or in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

Section 11.05 Landlord hereby agrees to execute, acknowledge, and deliver to Tenant such further instruments as may be necessary to secure to Tenant the rights intended to be granted herein. Landlord, for itself and its successors and assigns, shall not perform or permit to be

performed any act within the Generating Station Site or the Premises that are inconsistent with the rights hereby granted, and shall not excavate or fill or otherwise change or alter the present grade or ground level of the Premises without Tenant's prior written consent.

## **ARTICLE 12** **REPAIRS**

Section 12.01 Commencing on the Lease Commencement Date and thereafter through the Term, Tenant, at its sole cost and expense, shall take good care of the Premises, including, without limiting the generality of the foregoing, all Equipment, fixtures and articles of personal property therein or thereon and all sidewalks, fencing, grounds, areas, vaults, chutes, sidewalk hoists, railings, gutters, alleys and curbs in front of or adjacent to the Premises and will put, keep and maintain the same in good and safe order and condition and in strict compliance with Article 44 and all Environmental Requirements and Environmental Laws, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, and unforeseen and foreseen, necessary to keep the same in good and safe order and condition, howsoever the necessity or desirability therefor may occur, and whether or not necessitated by obsolescence or defects, latent or otherwise, but reasonable wear and tear excepted. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage, or injury to the Premises. When used in this Section 12.01, the term "repairs" shall include all reasonably necessary replacements, renewal, alterations and additions. All repairs made by the Tenant shall be made in a timely manner and shall be equal or better in quality and class to the original work.

Section 12.02 Tenant shall at its own cost and expense, keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances abutting interior roadways and driveways, the sidewalks, areas, chutes, sidewalk hoists, railings, gutters, alleys and curbs at or on the Premises.

Section 12.03 Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Premises. Landlord shall have no duty or obligation to make any alteration, change, Improvement, replacement or repair to, or to demolish, any Improvements now or hereafter erected or maintained on the Land. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises to the extent provided in this Lease.

## **ARTICLE 13** **CHANGES, ALTERATIONS AND ADDITIONS**

Section 13.01 Except as permitted in Article 39 hereof, Tenant shall not demolish, replace or materially alter the Improvements, or any part or parts thereof, or make any addition thereto or construct any additional building on the Premises, whether voluntarily or in connection with a repair or restoration required by this Lease (any such action being herein referred to as a "Capital Improvement"), unless and until (A) the Initial Construction has been completed and fully paid for and (B) Tenant shall comply with the following requirements and, if applicable, with the additional requirements set forth in Section 13.02 and Article 44:

(c) Tenant shall have procured and paid for, so far as the same may be required from time to time, all permits, certificates and authorizations required by any

Governmental Authority or any officer, department, office, bureau, agency or instrumentality thereof now existing or hereafter created and having jurisdiction over the Premises. Landlord shall not unreasonably refuse to join in the application for such permit or authorization and shall reasonably cooperate with Tenant, without charge except to the extent Landlord's participation required is more than de minimis, in which case Tenant agrees to pay to Landlord, within ten (10) days upon demand and as Additional Rent hereunder, a reasonable fee and Landlord's out-of-pocket costs paid or incurred in connection therewith. Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any such applications and Tenant hereby indemnifies and agrees to defend and hold Landlord harmless from and against any and all such out-of-pocket costs and expenses. Copies of all required permits and authorizations shall be delivered to Landlord prior to the commencement of work on any Capital Improvement.

(b) Any Capital Improvement shall, when completed, be of such a character as not to reduce the value of the Premises below its value immediately before such Capital Improvement.

(c) Any Capital Improvement shall be made promptly (Unavoidable Delays excepted) and in a good and workmanlike manner and in compliance with all applicable permits, certificates and authorizations and building and zoning laws and with all other Requirements.

(d) The cost of any Capital Improvement shall be paid so that the Premises shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to the Premises.

(e) No Capital Improvement shall be undertaken until Tenant shall have delivered to Landlord insurance policies or certificates therefor issued by responsible insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payments, for Worker's Compensation Insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Landlord, Tenant or the Premises, and, unless the liability insurance then in effect with respect to the Premises shall cover the risk, owner's protective liability insurance expressly covering the additional hazards resulting from the Capital Improvement and work thereon with limits not less than those, and otherwise subject to the same conditions and requirements, set forth in Article 6 with respect to the liability insurance required thereunder, if under the provisions of any fire, liability or other insurance policy or policies then covering said Premises or any part thereof any consent to such Capital Improvement by said insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant shall obtain such consents and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

Section 13.02 Tenant shall also comply with the following requirements:

(a) At least thirty (30) days prior to the commencement of any work in connection with the proposed Capital Improvement, Tenant shall notify Landlord in writing of the nature of the Capital Improvement and the estimated cost thereof.

(b) At least thirty (30) days before the commencement of any work in connection with the proposed Capital Improvement, Tenant shall furnish to Landlord the following:

(i) Complete plans and specifications for the proposed Capital Improvement satisfying the requirements of subparagraph (a) of Section 8.01 hereof; and

(ii) Insurance policies or certificates of insurance in accordance with the provisions of Section 39.04 hereof.

(c) Such Capital Improvement shall be carried out under the supervision of a duly licensed architect selected by Tenant.

(d) Tenant shall pay to Landlord the reasonable and documented fees and expenses of any architect or engineer selected by Landlord to review the plans and specifications and inspect the work on behalf of Landlord. Landlord shall provide Tenant with an invoice for said fees and expenses within sixty (60) days following Landlord's receipt of the plans and specifications.

Section 13.03 Except as provided in Article 28 to the contrary, all erections, alterations, Improvements or additions (including, without limitation, all Improvements and the Initial Construction) made upon the Premises by Tenant or any person or entity acting by, under or through Tenant, except furniture, business equipment or movable partitions or trade fixtures installed or placed by Tenant shall, at the option of Landlord, become the property of Landlord and shall remain and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Lease without compensation to Tenant. In lieu thereof, Landlord shall have the right to require that the Tenant remove all Improvements (including the Initial Construction) upon at least twelve (12) months' written notice prior to the expiration of the Term (including any renewals under Article 40 hereof).

**ARTICLE 14**  
**REQUIREMENTS OF PUBLIC AUTHORITIES AND OF**  
**INSURANCE UNDERWRITERS AND POLICIES**

Section 14.01 Tenant shall, at its own cost and expense, commencing on the Lease Commencement Date and thereafter during the Term, promptly comply with any and all Requirements irrespective of the nature of the work required to be done, extraordinary as well as ordinary, of federal, state, city, county, borough or other governmental, public or quasi-public authorities now existing or hereafter created, and of any and all of their departments and bureaus, and of any applicable fire rating bureau or other body exercising similar functions, affecting the Premises or any street, avenue and/or sidewalk in front thereof and/or any vault in or under the same, or requiring the removal of any encroachment, or affecting the maintenance, use or occupation of the Premises, whether or not the same involve or require any structural change or additions in or to the Premises, and irrespective of whether or not such changes or additions be required on account of any particular use to which the Premises, or any part thereof, may be put; and Tenant shall also comply with any and all provisions and requirements of any fire, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

Section 14.02 Tenant shall have the right to contest the validity of any such Requirement or the application thereof, or any Governmental Authority giving rise to any Imposition under this Lease, at Tenant's own expense. Any such proceeding instituted by Tenant shall be begun as soon as is reasonably possible after the issuance of any such contested matters and shall be prosecuted with reasonable dispatch. Tenant shall promptly comply with any such Requirements and compliance shall not be deferred if at any time in connection therewith: (a) the Premises, or any part thereof, shall in the reasonable judgment of Landlord be in danger of being forfeited or lost or (b) if Landlord shall be subjected to any actual or threatened criminal sanctions or penalties or personal liability, as Landlord shall reasonably determine. Landlord agrees that it will cooperate with Tenant in any such contest to such extent as the Tenant may reasonably request, it being understood, however, that the same shall not subject Landlord to any cost, expense or liability of any nature whatsoever and Tenant hereby indemnifies and agrees to defend and save Landlord free and harmless from and against any such costs, expenses or liability.

## **ARTICLE 15** **EQUIPMENT**

Section 15.01 Tenant shall keep all Equipment in good order and repair and shall replace the same when necessary with items of similar or improved quality and value.

## **ARTICLE 16** **DISCHARGE OF LIENS**

Section 16.01 Tenant shall not create or knowingly permit to be created any lien, encumbrance or charge upon the Premises or any part or parts thereof or the income therefrom, and Tenant shall not suffer any other matter or thing whereby the estate, rights and interest of Landlord in the Premises or any part thereof might be impaired unless specifically permitted by this Lease.

Section 16.02 If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record, whether by bond, payment, or any other manner available under applicable law. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord with all costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Penalty Rate from the respective dates of Landlord's making of the payment or incurring of the costs and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

Section 16.03 Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the

furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against the Premises or any part thereof. Notice is hereby given that Landlord shall not be liable for any work performed or to be performed at the Premises for Tenant or any subtenant, or for any materials furnished or to be furnished at the Premises for Tenant or any subtenant, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Premises.

Section 16.04 Tenant shall have no power to do any act or make any contract that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion or other estate of Landlord, or of any interest of Landlord in the Premises.

## **ARTICLE 17** **EXISTING CONDITION OF PREMISES**

Section 17.01 Tenant agrees (i) to accept the Premises in the existing condition and state of repair as of the date hereof and without recourse to Landlord, (ii) to take possession of same "as is" as of the date hereof, and (iii) that no representations, statements or warranties, express or implied, have been made by or on behalf of Landlord in respect thereof or in respect of the condition thereof or the present or future use or occupation that may be made thereof, the zoning or other Requirements, transferable development rights, encumbrances thereon, appurtenances, or title thereto (except as may be expressly set forth in this Lease or in a separate certificate or agreement executed simultaneously herewith). Without limiting the generality of the foregoing, Tenant has not relied on any representations or warranties other than as expressly set forth herein or in a separate certificate or agreement executed simultaneously herewith, in either case express or implied, as to (1) the current or future real estate tax liability, assessment or valuation of the Premises, (2) the potential qualification of the Premises for any and all benefits conferred by Federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated, (3) the compliance of the Premises, in its current or any future state, with applicable zoning ordinances and the ability to obtain a change in the zoning or a variance with respect to the Premises' non-compliance, if any, with said zoning ordinances, (4) the availability of any financing for the purchase, alteration or operation of the Premises from any source, (5) the current or future use of the Premises, including but not limited to the Premises' use for the purposes contemplated by this Lease, (6) the present and future condition and operating state of any and all Equipment on the Premises and the present or future structural and physical condition of any building, (7) the ownership or state of title of any personal property on the Premises, (8) the presence or absence of any Requirements and any violations thereof, (9) the compliance of the Premises or the leases affecting the Premises (or the rentals thereunder) with any rent control, rent stabilization or similar law or regulation, (10) the layout, leases, rents, income, expenses, operation, agreements, licenses, easements, instruments, documents or service contracts of or in any way affecting the Premises, (11) the presence or absence of any Hazardous Materials (as hereinafter defined), and (12) the compliance or non-compliance with any Environmental Laws (as hereinafter defined). Landlord shall in no event whatsoever be liable for any latent or patent defects in the Premises.

## **ARTICLE 18**

## **LANDLORD NOT LIABLE FOR INJURY OR DAMAGE**

Section 18.01 Landlord shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises and its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or any other person which may be caused by any fire, breakage, leakage or defect or by water, rain or snow that may leak into, issue or flow from any part of the Premises or by the use, misuse or abuse of any of the Improvements, including any environmental contamination in or about the Premises.

Section 18.02 Landlord shall not be liable for any failure of water supply, gas or electric current or any other utility or service, nor for any injury or damage to any property or person or to the Premises caused by or resulting from any such failure, nor for the interference with light or other incorporeal hereditaments by any person or caused by any public or quasi-public work.

## **ARTICLE 19** **INDEMNIFICATION OF LANDLORD**

Section 19.01 In addition to any other indemnities to Landlord specifically provided in this Lease, Tenant shall, to the fullest extent permitted by law, indemnify and save harmless Landlord (and any of their principals, partners, officers, directors, shareholders, employees, agents or servants) and any holder of a Mortgage (collectively, the “Indemnitees”) against and from all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys’ fees (collectively, “Costs”), which may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following occurring during the Term:

(a) any work or thing done in, on or about the Premises or any part thereof by or on behalf of Tenant or any subtenant, including, without limitation, the demolition of any existing Improvements and/or the construction of any Improvements or any Capital Improvement thereto;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof by or on behalf of Tenant or any subtenant or of any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto;

(c) any negligence or tortious acts on the part of Tenant or any subtenant or any of its or their agents, contractors, servants, employees, licensees or invitees;

(d) any accident, illness, injury (including death) or damage to any person or property occurring in, on or about the Premises or any part thereof or in, on or about any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto;

(e) any failure on the part of Tenant to keep, observe, perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease or any easements, sublease, license or concession agreements or other contracts and agreements affecting the Premises on its part to be kept, observed, performed or complied with;



(f) any liability which may be asserted against Landlord relating to the use or occupancy of the Premises or parts thereof;

(g) any liability which may be asserted against the Landlord in any manner connected or related to Article 44 and the Environmental Requirements;

(h) any liability which may be asserted against Landlord or any lien or claim which may be alleged to have arisen against or on or about the Premises under the laws of the State in which the Premises are located or of any other Governmental Authority; or

(i) any contest permitted pursuant to the provisions of Articles 4 or 14 hereof.

Section 19.02 The provisions of this Article and all other indemnity provisions elsewhere contained in this Lease and expressly designated as such shall survive the expiration or earlier termination of this Lease. All indemnity provisions provided for in this Lease shall be deemed to include, even if not so expressly stated, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in connection with the liability, damage, claim or charge to which the indemnity applies.

Section 19.03 The obligations of Tenant under this Article 19 shall not in any way be affected by the absence or presence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises; provided, however, that Landlord shall not have a right to demand or retain payment from Tenant for Costs, and Tenant shall not have an obligation to pay an Indemnitee for Costs, to the extent such Costs have already been paid or reimbursed by a third party, including but not limited to an insurance carrier. In the event Tenant pays Landlord for Costs that are subsequently paid or reimbursed to Landlord by a third party, including but not limited to an insurance carrier, Landlord shall promptly reimburse Tenant the amount of such Costs paid by Tenant.

## **ARTICLE 20** **LANDLORD'S RIGHT OF INSPECTION**

Section 20.01 Tenant shall permit Landlord, its agents and/or representatives, to enter the Premises upon at least 24 hours' prior notice to Tenant and during reasonable business hours for the purpose of (i) inspecting the same, provided that such inspections shall not materially disrupt or interfere with Tenant's business operations or use or enjoyment of the Premises, (ii) complying with PSC and DEC requirements, and (iii) making any necessary repairs thereto and performing any work therein that may be necessary by reason of an Event of Default by Tenant. Notwithstanding anything to the contrary contained in this Article 20, Landlord shall have the right to enter the Premises at any time in the event of an emergency, and in the event Tenant fails to reasonably make any necessary repairs to the Premises in the event of an emergency, Landlord shall have the right to make any such necessary repairs at Tenant's cost and expense. Landlord hereby agrees that any entry to the Premises in accordance with the terms and conditions of this Article 20 shall be subject to and in compliance with Tenant's reasonable health, safety and security protocols provided by Tenant to Landlord.

Section 20.02 Nothing in this Article or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work to the Premises; and performance thereof by Landlord shall not constitute a waiver of Tenant's Default in failing to perform the same.

Section 20.03 Landlord shall have the right to enter the Premises on business days during business hours upon at least 24 hours' prior notice to Tenant for the purpose of showing same to prospective purchasers or mortgagees thereof and, on business days during business hours upon at least 24 hours' prior notice to Tenant within twenty-four (24) months prior to the expiration of the Term, for the purpose of showing the same to prospective tenants, provided that such showings shall not materially disrupt or interfere with Tenant's business operations or use or enjoyment of the Premises.

Section 20.04 Landlord's inspection rights contained in this Article 20 shall be in addition to those inspection rights reserved unto the Landlord, the PSC and the DEC or any other County or State department or agency pursuant to any Environmental Requirement.

## **ARTICLE 21** **LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS**

Section 21.01 If Tenant shall at any time fail to pay any Imposition in accordance with the provisions hereof, or to take out, pay for, maintain or deliver any of the insurance policies (or certificates) required hereby, or shall fail to make any other payment or perform any other act on its part to be made or performed pursuant to this Lease after the giving of written notice by Landlord to Tenant and after the passage of a reasonable amount of time to cure, which amount of time may be set by Landlord in such notice and shall in no event be less than ten (10) days, and the expiration of the applicable grace or cure period, if any, except in the case of emergency, then Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation) to:

(a) pay any Imposition payable by Tenant pursuant to the provisions hereof, or

(b) take out, pay for and maintain any of the insurance policies required hereby, or

(c) make any other payment or perform any other act on Tenant's part to be made or performed pursuant to this Lease and may enter upon the Premises for the purpose and take all such action thereon as may be necessary therefor.

Section 21.02 All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Penalty Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense shall be paid by Tenant to Landlord on demand. Any payment or performance by Landlord pursuant to the foregoing provisions of this Article shall not be nor be deemed to be a waiver or release of the breach or Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings and/or take such other action as may be permissible hereunder in the event of breach or Default by Tenant that continues beyond the expiration of any cure or grace period. Landlord shall not be limited, in the proof of

any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid, but Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss and damages, costs and expenses of suit, including reasonable attorneys' fees, suffered or incurred by reason of damage to or destruction of the Premises.

## **ARTICLE 22** **LEASEHOLD MORTGAGE**

Section 22.01 Tenant may, upon written notice to Landlord, but without requiring Landlord's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Lease and the Improvements and any and all of its interests in or to any federal, state or local tax credits, incentives, or related benefits arising from or relating to the Permitted Use, the Premises, and/or this Lease. These various security interests in all or a part of this Lease and the Improvements are collectively referred to as a "Tenant Mortgage" and holder of such security interest, a "Tenant Mortgagee." Any Tenant Mortgagee shall use the Premises only for the Permitted Use. Whenever Tenant has granted a security interest under this Article 9, it will give Landlord notice of the Tenant Mortgage (including the name and address of the Tenant Mortgagee for notice purposes) to Landlord within thirty (30) days.

Section 22.02 As a condition precedent to the exercise of any of Landlord's rights or remedies related to any alleged Default or Event of Default by Tenant under this Lease, Landlord shall give written notice thereof to each Tenant Mortgagee at the same time it delivers notice of Default to Tenant, specifying in detail the alleged Default and, if applicable, the required remedy. Each Tenant Mortgagee or its designee shall have the right, but not the obligation, to cure any Default as Tenant, and/or the right, but not the obligation, to remove any Improvements or other property owned by Tenant or by such Tenant Mortgagee located on the Premises to the same extent as Tenant. The cure period for any Tenant Mortgagee shall be the later of (i) fifteen (15) days after the end of the Tenant cure period under Article 26; (ii) fifteen (15) days after such Tenant Mortgagee's receipt of the Default notice; or (iii) if applicable, the extended cure period provided for in Section 22.03. Failure by Landlord to give a Tenant Mortgagee notice of Default shall not diminish Landlord's rights against Tenant but shall preserve all rights of the Tenant Mortgagee or its designee to cure any Default and to remove any Improvements or other property of Tenant or of the Tenant Mortgagee located on the Premises to the fullest extent permitted by applicable law.

Section 22.03 If any Default by Tenant under this Lease cannot be cured without the Tenant Mortgagee obtaining possession of all or part of the Improvements, then any such Default shall be deemed remedied if a Tenant Mortgagee: (i) within sixty (60) days after receiving notice from Landlord as set forth in Section 22.02, acquires possession of all or part of the Improvements, or begins appropriate judicial or non-judicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Improvements, performs all other obligations as and when the same are due in accordance with this Lease. If a Tenant Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be stayed until the date on which Tenant Mortgagee receives written notice of the expiration of such prohibition. For the avoidance of any doubt, in the case of an Event of Default that can be cured by the mere payment of money,

the Tenant's Mortgagee shall have fifteen (15) days after the end of Tenant's cure period contained in Section 26.01(a), to cure such monetary Event of Default.

Section 22.04 Any Tenant Mortgagee whose interest in the Improvements is held solely for security purposes shall have no obligation or liability under this Lease unless and until the Tenant Mortgagee succeeds to absolute title to the Improvements and the rights of Tenant under this Lease. A Tenant Mortgagee shall be liable to perform obligations under this Lease only for and during the period it directly holds such absolute title.

Section 22.05 Each Tenant Mortgagee shall have the right, in its sole discretion: (i) to assign its Tenant Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Improvements by any lawful means; (iii) to take possession of and operate all or any portion of the Improvements and to perform all obligations to be performed by Tenant under this Lease, or to cause a receiver to be appointed to do so; (iv) to acquire all or any portion of the Improvements by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer all or any portion of the Tenant rights under this Lease to a third party in accordance with Article 10; and (v) to do any other or additional act, or refrain from acting, with respect to the Tenant Mortgagee to the fullest extent permitted by this Lease and applicable law. Any Tenant Mortgagee or other party who acquires Tenant's interest in all or a portion of the Improvements pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Tenant by this Lease.

Section 22.06 If the Improvements are foreclosed upon or there is an assignment in lieu of foreclosure, or if this Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Tenant or any Tenant Mortgagee or other purchaser at a foreclosure sale shall have arranged to the reasonable satisfaction of Landlord to cure any Defaults under this Lease, and for the payment of all Rental or other charges due and payable by Tenant as of the date of such event, then Landlord shall execute and deliver to Tenant or such Tenant Mortgagee or other purchaser at a foreclosure sale, or to a designee of one of these parties, as the case may be, a New Lease ("New Lease"), which (i) shall be for a term equal to the remainder of the Term of this Lease before giving effect to such rejection or termination; (ii) shall contain the same covenants, leases, terms, provisions and limitations as this Lease (except for any requirements that have been fulfilled by Tenant or any Tenant Mortgagee or other purchaser at a foreclosure sale prior to rejection or termination of this Lease); (iii) shall include that portion of the Improvements in which Tenant or such other Tenant Mortgagee or other purchaser at a foreclosure sale had an interest on the date of rejection or termination; and (iv) shall provide that the Tenant or such Tenant Mortgagee shall be responsible for the Landlord's legal fees incurred in preparing and finalizing such New Lease.

Section 22.07 Notwithstanding any provision of this Lease to the contrary, the Parties agree that so long as any Tenant Mortgage remains outstanding, this Lease shall not be materially modified or amended, and Landlord shall not accept a surrender, cancellation or release of all or any part of the Improvements from Tenant, prior to expiration of the Term, without the prior written consent of the Tenant Mortgagee. The provisions in this Article 22 are for the express benefit of and shall be enforceable by each Tenant Mortgagee as if it were a party named in this Lease.

**ARTICLE 23**  
**[RESERVED]**

**ARTICLE 24**  
**[RESERVED]**

**ARTICLE 25**  
**LATE CHARGES**

Section 25.01 In the event any payments required to be paid by Tenant to Landlord under this Lease shall become overdue for ten (10) days beyond the date on which they are due and payable pursuant to this Lease provided without the benefit of any grace or notice provision, then such sums so overdue shall be payable on demand with interest at the Penalty Rate (commencing on such due date and until so paid), as liquidated damages for Tenant's failure to make prompt payment. Furthermore, if any installment of Fixed Net Rent or Additional Rent due hereunder is not paid on or before the tenth (10th) day of the month during which such installment is due, Tenant shall pay Landlord, as Additional Rent, on or before the first day of the following month, six cents for each dollar so overdue in order to defray Landlord's administrative and other costs in connection with such late payment. In the event of nonpayment of any late charges Landlord shall have, in addition to all other rights and remedies, all of the rights and remedies provided for herein and by law in the case of nonpayment of the Fixed Net Rent. No failure by Landlord to insist upon the strict performance by Tenant of Tenant's obligations to pay late charges shall constitute a waiver by Landlord of its rights to enforce the provisions of this Section in any instance thereafter occurring. The provisions of this Article 25 shall not be construed in any way to extend the grace periods or notice periods provided for in this Lease.

**ARTICLE 26**  
**DEFAULTS, CONDITIONAL LIMITATIONS, REMEDIES, ETC.**

Section 26.01 Each of the following events shall be an "Event of Default" hereunder:

(a) Failure of Tenant to pay or deposit any installment of Rental or any part thereof or any other payment of money, costs or expenses herein agreed to be paid by Tenant, when due, and the continuance of such failure for a period of ten (10) days;

(b) Failure of Tenant to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and the continuance of such failure for a period of thirty (30) days after written notice by Landlord specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Default shall be deemed to exist so long as Tenant shall have commenced curing the same within such thirty (30) day period and shall diligently and continuously prosecute the same to completion);

(c) (i) the filing of an application by Tenant for a consent to the appointment of a receiver, trustee or liquidator of itself or of all of its assets; or (ii) the filing by Tenant of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing its inability to pay its debts as they become due; or (iii) the making by Tenant

of a general assignment for the benefit of creditors; or (iv) the filing by Tenant of an answer admitting the material allegations of or consenting to or defaulting in answering a petition filed against it in any bankruptcy proceeding;

(d) the entry of an order, judgment or decree by any court of competent jurisdiction adjudging Tenant a bankrupt or appointing a receiver, trustee or liquidator for Tenant or its assets, which entry, judgment or decree has not been overturned within sixty (60) days;

(e) if a levy under execution or attachment shall be made against Tenant or its property and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days of Tenant's receipt of written notice of same;

(f) if Tenant shall be liquidated or dissolved, or shall begin proceedings toward such liquidation or dissolution, or shall, in any manner, permit the divestiture of substantially all its assets;

(g) if Tenant shall vacate or abandon the Premises; or

(h) if this Lease or the estate of Tenant hereunder shall be transferred, assigned, subleased to, or shall pass to or devolve upon, any person or entity other than as specifically permitted by this Lease.

Section 26.02

Tenant shall then quit and surrender the Premises to Landlord. Tenant shall, however, remain liable as this Lease provides. The termination of this Lease hereunder shall in no way limit Tenant's liability under this Lease; except that all revenues derived from any reletting of the Premises (or any portion thereof) by Landlord shall, after deducting the reasonable expenses actually incurred by Landlord directly in connection with such reletting by Landlord, be applied against the amounts otherwise becoming due and owing by Tenant to Landlord under this Lease. It is a conditional limitation of this Lease that the Term shall terminate and expire as set forth in this paragraph. This paragraph is intended to establish a conditional limitation and not a condition subsequent.

Section 26.03 If any Event of Default shall occur, Landlord may without notice re-enter and repossess the Premises using such lawful force for that purpose as may be necessary, and Tenant shall nevertheless remain liable as hereinafter provided for the remainder of the Term. If Landlord shall so re-enter, Landlord may, at its option, repair and alter the Premises in such manner as to Landlord may seem necessary or advisable, and/or let or relet the Premises or any parts

thereof for the whole or any part of the remainder of the Term, or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent collected or received as a result of such reletting Landlord shall: first, pay to itself the cost and expense of retaking, repossessing, repairing and/or altering the Premises, and the cost and expense of removing all persons and property therefrom; second, pay to itself the cost and expense sustained in securing any new tenants, and if Landlord shall maintain and operate the Premises the cost and expense of operating and maintaining the Premises; and, third, pay to itself any balance remaining on account of the liability of Tenant to Landlord, which payment shall be credited to the benefit of Tenant for any remaining liability hereunder. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability hereunder. Landlord shall in no way be responsible or liable for any failure to relet the Premises or any part therefor, or for any failure to collect any rent due on any such reletting. Should any rent so collected by Landlord after the aforementioned payments be insufficient to fully pay to Landlord a sum equal to all such Rental and other payments and charges reserved herein, the deficiency shall be paid by Tenant on the rent days herein specified.

Section 26.04 All payments due by Tenant to Landlord in accordance with this Lease shall be and hereby are declared to constitute a valid lien upon the interest of Tenant in this Lease and in the Premises.

Section 26.05 Suit or suits for the recovery of such deficiency or damages, or for a sum equal to any installment or installments of Rental, Impositions and other charges hereunder, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired by limitation had there been no such Default by Tenant or termination.

Section 26.06 Nothing contained in this Article shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by a statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the damages referred to in any of the preceding subdivisions.

Section 26.07 No receipt of moneys by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental and any other sum or sums of money and other charges herein reserved and agreed to be paid by Tenant then due or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after termination of this Lease or the commencement of suit or summary proceedings, or after final order or judgment for the possession of said Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of said Premises if Tenant continues to be in possession thereof or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 26.08 Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, but nothing contained in this Lease waives or shall be interpreted to waive or affect Tenant's right to due service of process in accordance with applicable law in the event of any such legal proceedings. Tenant, for and on behalf of itself and all persons claiming through or under Tenant also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease, and Landlord and Tenant waive and will waive trial by jury in any action or proceeding brought by either of the Parties against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease are not restricted to their technical legal meaning.

Section 26.09 No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent by Landlord during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 26.10 In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

Section 26.11 Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by the Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 26.12 Tenant shall pay to the Landlord all costs and expenses, including reasonable attorneys' fees, paid or incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant shall also pay to Landlord all actual out-of-pocket costs and expenses, including reasonable attorneys' fees, paid or incurred by Landlord in enforcing any of the covenants and provisions of this Lease and paid or incurred in any action brought by Landlord against Tenant on account of the provisions hereof, provided that Landlord is the prevailing party in such action or proceeding, and all such costs, expenses, and attorneys' fees may be included in and form a part of any judgment entered in any



proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid, or obligations incurred by Landlord as aforesaid with interest (at the Penalty Rate) and costs shall be paid by Tenant to Landlord within ten (10) days of the rendition by Landlord to Tenant of any bill or statement therefor.

Section 26.13 In the event of a termination of this Lease by reason of an Event of Default by Tenant beyond any applicable notice, grace and cure periods, (a) all unexpired insurance premiums, all deposits theretofore made by Tenant with utility companies, all rights of Tenant under all insurance policies and all fuel in the Premises shall be deemed to be assigned to and transferred to Landlord, and (b) Tenant shall deliver to Landlord all leases of subtenants and all security deposits and advance rentals then held by Tenant with respect to any and all subleases.

Section 26.14:

(a) At any time after this Lease shall be terminated as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, as and for liquidated and agreed final damages for Tenant's Default, an amount equal to (i) any costs and expenses incurred by Landlord in connection with a reletting of the Premises or any part thereof and (ii) the difference between the Fixed Net Rent and all other charges payable by Tenant hereunder for the unexpired portion of the term demised and the then fair and reasonable rental value of the Premises for the same period. In the computation of such damages, the difference between any installment of Rental becoming due hereunder after the date of such termination and the fair and reasonable rental value of the Premises for the period for which such installment was payable shall be discounted from the Expiration Date to the date of termination at the rate of seven (7%) percent per annum. If the Premises or any part thereof be relet by the Landlord for the unexpired term of this Lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall, prima facie, be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(b) Nothing herein contained shall limit or prejudice the right of the Landlord to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

**ARTICLE 27**  
**NOTICES**

Section 27.01 Whenever it is provided herein that notice, demand, request or other communication shall or may be given to or served upon either of the Parties by the other, and whenever either of the Parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto, each such notice, demand, request or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served as follows:

(a) If by Landlord, by mailing the same to Tenant by registered or certified mail, postage prepaid, return receipt requested or by nationally recognized overnight delivery, addressed to Tenant at [REDACTED] or at such other address as Tenant may from time to time designate by notice given to Landlord by registered or certified mail.

(b) If by Tenant, by mailing the same to Landlord by registered or certified mail, postage prepaid, return receipt requested or by nationally recognized overnight delivery, addressed to Landlord [REDACTED] or at such other address as Landlord may from time to time designate by notice given to Tenant by registered or certified mail.

(c) Every notice, demand, request or other communication hereunder shall be deemed to have been given or served (i) upon the date same shall have been received or receipt thereof has been refused or rejected; or (ii) twenty-four (24) hours after the time that same shall have been sent by nationally recognized overnight delivery service to the addresses as aforesaid.

## **ARTICLE 28** **CONDEMNATION**

### Section 28.01:

(a) If at any time following the Lease Commencement Date and thereafter during the Term, all or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Landlord, Tenant and those authorized to exercise such right, this Lease shall terminate and expire on the date of such taking and the Rental shall be apportioned and paid to the date of such taking.

(b) The term “substantially all of the Premises” shall be deemed to mean such portion of the Premises as, when so taken, would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, zoning laws or building regulations then existing or prevailing, readily accommodate an altered or new building or buildings of a nature similar to the building or buildings existing upon the Land at the date of such taking and of floor area sufficient together with buildings not taken in the condemnation, to reasonably permit a fair and reasonable return, after payment of all operating expenses thereof, the Rental and after performance of all covenants, agreements, terms and provisions herein and by law provided or to be performed and paid by Tenant. If there be any dispute as to whether or not “substantially all of the Premises” have been taken, such dispute shall be submitted to and determined by arbitration as provided for in Article 24 herein.

(c) If all or substantially all of the Premises shall be taken or condemned as provided in this Article, then immediately upon such condemnation this Lease shall be and shall be deemed to be terminated and of no further force or effect, and all Parties shall be released from any and all further liabilities or obligations from one Party to the other Party, except as otherwise expressly set forth in this Lease.

(d) If all or substantially all of the Premises shall be taken or condemned as provided in this Article, Tenant shall be entitled to file a claim for the value of the Improvements. The Tenant shall have no claim for the value of the Land subject to the condemnation. The Parties agree to execute any and all documents that may be required in order to facilitate collection by Landlord and Tenant of any and all such awards in accordance with the foregoing apportionment.

Section 28.02 Intentionally deleted.

Section 28.03 For the purpose of this Article 28, the Premises or a part thereof, as the case may be, shall be deemed to have been taken or condemned on the date on which actual possession of the Premises or a part thereof, as the case may be, is acquired by any lawful power or authority or the date on which title vests therein, whichever is earlier (the "Date of Taking").

Section 28.04 Subject to Sections 8.01 and 9.01(b), if less than substantially all of the Premises be so taken or condemned, this Lease and the Term shall continue without abatement of the Rental or diminution of any of Tenant's obligations hereunder, and Tenant, at its own cost and expense, whether or not the award or awards, if any, shall be sufficient for the purpose, shall proceed diligently to repair and restore any remaining part of the Improvements on the Premises not so taken so that the latter shall be a complete, rentable, self-contained architectural unit in good condition and repair and reasonably comparable to the condition as it existed immediately prior to such condemnation. Subject to the provisions and limitations in this Article, Landlord agrees to make available so much of that portion of the awards actually received and held by Landlord, less all necessary and proper expenses paid or incurred by Landlord or the holder of any Mortgage in the condemnation proceedings, as may be necessary to pay the cost of repairing and restoring for use and occupancy the part of the Improvements not so taken. Such repairs and restoration shall be done in accordance with and subject to the provisions of Articles 7, 8 and 13. Payments to Tenant as aforesaid shall be disbursed in the manner set forth in Articles 7 and 8. If the portion of the award made available by Landlord, as aforesaid, is insufficient for the purpose of paying for the repair and restoration, Tenant shall nevertheless be required to repair and restore as aforesaid at its own cost and expense without any claim on the part of Tenant. Any balance of the award remaining after repair and restoration is completed and paid for shall be paid to Landlord.

Section 28.05 Subject to Sections 8.01 and 9.01(b), in case of any governmental action, not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, this Lease shall continue in full force and effect without reduction or abatement of Rental, and the award shall be retained by Landlord as its sole property.

**ARTICLE 29**  
**[RESERVED]**

**ARTICLE 30**  
**CERTIFICATES BY LANDLORD AND TENANT**

Section 30.01 Tenant agrees at any time and from time to time (as may be reasonable) upon not less than thirty (30) days' prior written notice by Landlord to execute, acknowledge and deliver to Landlord or to a designee of Landlord a statement in writing certifying, to the extent true, that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified and stating the modifications) and the dates to which the Rental has been paid in advance, if any, the amount of security (if any) and stating whether or not to the best knowledge of the signer of such certificate Landlord is in Default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such Default of which the signer may have knowledge. Such statement may be relied upon by a holder of a Mortgage, a prospective holder of a prospective Mortgage, prospective purchaser or purchaser of the Premises or any other person which may have an interest in the Premises or this Lease.

Section 30.02 Landlord agrees at any time and from time to time (as may be reasonable but not more than twice in any given calendar year), upon not less than thirty (30) days' prior written notice by Tenant to execute, acknowledge and deliver to Tenant a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications) and the dates to which the Rental has been paid in advance, if any, the amount of security, and stating whether or not to the best knowledge of the signer of such certificate Tenant is in Default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such Default of which the signer may have knowledge. Such statement may be relied upon by a holder of a Tenant Mortgage, a prospective holder of a prospective Tenant Mortgage, or any other person which may have an interest in the Premises, in Tenant, or this Lease.

**ARTICLE 31**  
**LANDLORD'S CONSENTS**

Section 31.01 It is understood and agreed that the granting of any consent by Landlord to Tenant to perform any act of Tenant requiring Landlord's consent under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent, shall not be deemed a waiver by Landlord of its rights to require such consent for any further similar act by Tenant, and Tenant hereby expressly covenants and warrants that as to all matters requiring Landlord's consent under the terms of this Lease, Tenant shall secure such consent for each and every happening of the event requiring such consent, and shall not claim any waiver on the part of Landlord of the requirement to secure such consent.

Section 31.02 If Tenant shall request Landlord's consent or approval and Landlord shall fail or refuse to give such consent or approval, Tenant shall not be entitled to any damages for any such failure or refusal by Landlord to grant its consent or approval, and Tenant's sole remedy to dispute Landlord's failure or refusal to grant its consent or approval shall be an action for specific performance or injunction and/or damages (provided that Tenant shall be entitled to damages if and only if a final unappealable judgment from a court of competent jurisdiction is obtained against Landlord holding that Landlord acted maliciously or in bad faith in failing or refusing to grant its

consent or approval), and such remedy shall be available only in those cases where Landlord has expressly agreed in writing not to unreasonably withhold, condition or delay its consent or approval or where as a matter of law Landlord may not unreasonably withhold, condition or delay its consent or approval.

## **ARTICLE 32** **SURRENDER AT END OF TERM**

Section 32.01 On the Expiration Date or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Premises pursuant to Article 27 hereof, Tenant shall well and truly surrender and deliver up to Landlord, subject to Section 13.03 hereof, the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances other than those, if any, existing at the date hereof or created by Landlord or subsequent owners of the Premises, without any payment or allowance whatever by Landlord.

Section 32.02 Subject to Section 13.03, title to the Improvements shall thereupon automatically vest in Landlord without the payment of any consideration therefor, and without the necessity for the execution and delivery by Tenant of any instrument transferring title. Notwithstanding the foregoing, Tenant covenants and agrees that upon the expiration or any termination of this Lease as aforesaid, Tenant shall upon Landlord's request execute, acknowledge and deliver to Landlord any instrument or document reasonably requested by Landlord to confirm title to the Improvements in Landlord, and in the event that Tenant shall fail or refuse to execute, acknowledge or deliver any such instrument or document requested as aforesaid, Landlord is thereby irrevocably appointed attorney-in-fact for Tenant to execute, acknowledge and deliver any such instrument or document in the name of Tenant. Delivery of such instrument by Tenant shall not in any way obligate Tenant to pay any real estate transfer taxes or other taxes, fees or charges that may be imposed as a result of Tenant's delivery of said instrument.

Section 32.03 On the Expiration Date or upon any earlier termination of the Lease, or upon re-entry by Landlord upon the Premises pursuant to Article 26 hereof, Tenant shall deliver to Landlord Tenant's executed counterparts of all subleases, occupancy, license and concession agreements, and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, the then existing certificates of occupancy for the Improvements and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in the Improvements together with a duly executed assignment thereof to Landlord, all financial reports, books and records and any and all other documents of every kind and nature whatsoever relating to the Premises. Nothing herein contained shall be or be deemed to be a consent by Landlord to any sublease, occupancy, license or concession agreement for a term to expire after one day preceding the Expiration Date.

Section 32.04 Tenant and any subtenant may remove its furniture, trade fixtures, movable partitions and business equipment on the Expiration Date or sooner termination of this Lease but Tenant shall repair all damage caused in such removal and shall reimburse Landlord for all costs, expenses and damages incurred by Landlord in repairing such damage consequent on Tenant's failure to make such repairs whether prior to or after the termination of this Lease.

Section 32.05 Notwithstanding anything to the contrary contained in this Article 32, in the event Landlord provides Tenant no less than twelve (12) months' written notice prior to the Expiration Date, Landlord shall have the right to require that the Tenant remove and safely and legally dispose of, at its sole expense, all Improvements (to the depth of the Improvements below the surface of the Land unless otherwise agreed) that were constructed and installed by Tenant during the Term of the Lease and surrender the Premises vacant and free of all Improvements and in generally the same condition as of the Lease Commencement Date (collectively, "Vacant Condition"), normal wear and tear excepted.

### **ARTICLE 33** **NO ORAL AGREEMENTS**

Section 33.01 This Lease contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the subject matter hereof. There are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between the Parties other than as expressly set forth in this Lease.

### **ARTICLE 34** **QUIET ENJOYMENT**

Section 34.01 Landlord covenants that, if and so long as Tenant shall faithfully perform the agreements, terms, covenants and conditions hereof, Tenant shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the duration of the Term without material molestation, interference, disruption or disturbance created or suffered by or from Landlord, any agent, employee, director, officer, or representative thereof, or any person or entity acting on behalf of or through Landlord, and free of any encumbrance, charge, lien, or claim created or suffered by Landlord, except those to which this Lease is subject and subordinate in accordance with the express terms and provisions hereof.

### **ARTICLE 35** **INVALIDITY OF CERTAIN PROVISIONS**

Section 35.01 If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

### **ARTICLE 36** **PSC APPROVAL**

Section 36.01 The leasing of the Premises shall be subject to the approval of the PSC (the "PSC Approval"). Tenant shall cooperate in all respects with Landlord in the filing of the Section 70 Petition with the PSC, which cooperation shall include the furnishing of all information, financial or otherwise, that the PSC may require as a condition for the PSC Approval, including the filing of a joint application. Any terms and/or conditions imposed by the PSC in connection

with any PSC Approval must be acceptable in all respects to Landlord. Landlord shall send to Tenant written notice of the PSC Approval upon its receipt thereof. If the PSC denies the Section 70 Petition, then this Lease shall automatically terminate or if the PSC approves the Section 70 Petition but on terms or conditions unacceptable to either of the Parties in the exercise of the Parties' reasonable discretion, then this Lease shall automatically terminate, and the Parties shall be fully and unconditionally released from all further obligations or liabilities hereunder. Landlord shall endeavor to (i) provide Tenant with copies of all public filings made with the PSC related to the PSC Approval and (ii) generally keep Tenant apprised of all pertinent developments with regards to the PSC Approval.

### ARTICLE 37

### ARTICLE 38

#### PPA

Section 38.01 Notwithstanding anything contained herein to the contrary, Tenant shall have the option, but not the obligation, to terminate this Lease upon prior written notice to Landlord of no less than six (6) months, in the event of the expiration or earlier termination of the PPA at any time during the Term, the Tenant shall surrender the Premises in accordance with Article 32 hereof (including requiring that the Premises be delivered in Vacant Condition). Thereafter, neither Party shall have any additional or other obligation or liability to the other Party arising from or relating to this Lease, including without limitation Tenant's obligation to pay Rental, except for such obligations or liabilities that survive the termination or expiration of this Lease according to the express provisions hereof.

### ARTICLE 39

#### INITIAL CONSTRUCTION

Section 39.01 In consideration of the granting of this Lease and as further security for the Rental payments due hereunder and the performance by Tenant of the terms, covenants and conditions contained herein, Tenant covenants and agrees to provide Landlord with detailed plans and specifications ("Plans and Specifications") satisfying the requirements of subparagraph 8.01(a) (and subject to Article 44 and the Environmental Requirements), in accordance with the succeeding Sections of this Article and the construction of the Improvements which Tenant then intends to make to the Premises pursuant to all applicable DEC and PSC approvals and requirements (hereinafter referred to as the "Initial Construction").

Section 39.02 The Initial Construction shall be as described on the attached Schedule B, annexed hereto and made a part hereof.

Section 39.03 Tenant shall not commence construction of the Initial Construction unless and until Tenant shall have delivered to Landlord:

(a) Copies of all necessary permits, certificates and authorizations required by any Governmental Authority in connection with the construction of the Initial Construction, together with evidence that such permits, certificates and authorizations have been paid for in full. Landlord shall not unreasonably refuse to join in the application for such permits, certificates or authorizations and shall reasonably cooperate with Tenant, without charge except to the extent Landlord's participation required is more than de minimis in which case Tenant agrees to pay to Landlord, upon demand and as Additional Rent hereunder, a reasonable fee and Landlord's actual out-of-pocket costs paid or incurred in connection therewith. Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any such applications, and Tenant hereby indemnifies and agrees to defend and hold Landlord harmless from and against any and all such costs and expenses;

(b) Plans and Specifications for the proposed Initial Construction. In connection with its approval of such Plans and Specifications, Landlord is authorized to retain architects of its choice, at the sole cost and expense of Tenant, to consult and assist Landlord in its analysis, review and approval of such Plans and Specifications in order to determine compliance with the terms of this Lease and of all applicable requirements of any Governmental Authority. In the event Landlord shall not approve such Plans and Specifications, Landlord shall so notify Tenant of such disapproval, together with a memorandum setting forth Landlord's suggested modifications, amendments and corrections. Tenant shall, within thirty (30) days after receipt of such notice, resubmit its Plans and Specifications to Landlord for approval. Upon approval by Landlord, Landlord and Tenant shall initial the Plans and Specifications reflecting such approval. Thereafter, Tenant may not materially change the Plans and Specifications without the prior written consent of Landlord, which consent shall not be unreasonably conditioned, withheld or delayed;

(c) A contract for the construction of the Initial Construction in accordance with the Plans and Specifications.

Section 39.04

(a) Tenant shall not undertake construction of the Initial Construction until Tenant delivers to Landlord insurance policies or certificates therefor issued by responsible insurers reasonably satisfactory to Tenant and Tenant's lenders and other creditors, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payments, for the following:

(i) Contractor's comprehensive general and automobile liability insurance in an amount not less than the amounts set forth in Section 6.01(b) hereof for bodily injury and property damage;

(ii) Protective insurance written under a comprehensive general liability policy or policies form, separate from the Contractor's Comprehensive general liability policy required by subparagraph (i) of this subsection 39.04, naming Landlord and Tenant, as their



respective interests may appear, in an amount not less than the amounts set forth in Section 6.01(b) hereof for bodily injury and property damage;

(iii) Worker's compensation and disability benefits insurance covering all persons or entities employed in connection with the construction of the Initial Construction and with respect to whom death or bodily injury claims could be asserted against Landlord;

(iv) Builder's risk insurance (fire, extended coverage, vandalism, malicious mischief, burglary and theft) written on a completed value (non-reporting) basis with limits as provided in Article 6 hereof, naming any general contractor engaged by Tenant, and also naming Landlord and Tenant, as their respective interests may appear. In addition, such insurance (x) shall contain a waiver or subrogation against subcontractors and an endorsement stating that "permission is granted to complete and occupy"; (y) if any off-site storage location is used, such insurance shall cover, for full insurable value, all materials and equipment on or about any such off-site storage location intended for use with respect to the Initial Construction; and

(v) Insurance against damage to property adjacent to the Land insuring against any damage to such property as a result of the Initial Construction, including without limitation, any excavation of the Land and the construction of the foundation for the Initial Construction.

(vi) Such other insurance in such amounts as may from time to time be reasonably required by Landlord, during the Initial Construction, against such other insurable hazards as are commonly insured against in connection with construction of Improvements similar to the Initial Construction on Premises similarly situated.

(b) If under the provisions of any fire, liability or other insurance policy or policies then covering said Premises or any part thereof any consent to the Initial Construction by said insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant shall obtain such consents and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

(c) The insurance provided for in this Section 39.04 may, if available, be affected by appropriate endorsement to the insurance policies to be maintained by Tenant pursuant to Section 6.01 hereof.

Section 39.05 Tenant covenants and agrees that:

(a) the construction of the Initial Construction shall be performed in a good and workmanlike manner in accordance with (i) the Plans and Specifications as approved by Landlord, (ii) all applicable permits, certificates and authorizations and building and zoning laws and with all other Requirements (including but not limited to the Environmental Requirements); and (iii) the terms, covenants and conditions of this Lease (including but not limited to Article 44); and

(b) throughout the course of such construction and at and after Final Completion of the Initial Construction (as hereinafter defined), Landlord's fee estate in the Premises will be free and clear of all liens and encumbrances arising out of or connected with such

construction. Upon completion of the Initial Construction, Tenant shall furnish to Landlord (i) a certificate from Tenant's architect certifying that the Initial Construction has been completed in accordance with the Plans and Specifications; (ii) copies of either the temporary certificates of occupancy or the permanent certificate of occupancy for the Initial Construction; (iii) a complete set of "as built" plans within six (6) months after Final Completion of the Initial Construction; (iv) a survey of the Land showing the Initial Construction as built thereon certified to Landlord by a duly licensed surveyor; and (v) evidence reasonably satisfactory to Landlord of proof of payment in full for the Initial Construction, including, without limitation, lien waivers in recordable form received from all architects, engineers, contractors, subcontractors, materialmen and laborers providing supplies and/or performing work in connection with the Initial Construction. "Final Completion of the Initial Construction" shall be deemed to have occurred on the date when all of the above have been fully satisfied and delivered to Landlord in accordance with the terms hereof.

Section 39.06 Subject to Section 13.03, title to the Improvements erected by Tenant on the Land shall be vested solely and exclusively in Tenant until the Expiration Date, whereupon title shall vest in Landlord, subject in any event to Section 13.03.

Section 39.07 Landlord's retention or approval of the Plans and Specifications or any other action taken with respect thereto by Landlord shall not constitute an opinion or representation by Landlord as to the sufficiency of said Plans and Specifications or impose any responsibility for the sufficiency thereof upon Landlord.

#### **ARTICLE 40** **RENEWAL**

Section 40.01 Provided this Lease is in full force and effect on such date and no Event of Default occurred and is otherwise continuing, Tenant shall have the right by written notice (the "First Renewal Notice") given to Landlord not later than twelve (12) months prior to the Initial Expiration Date to elect to extend the Term for a successive period of seven (7) years (the "First Renewal Option Period") commencing on the day next following the Initial Expiration Date. Provided this Lease is in full force and effect on such date, Tenant shall have the right by written notice given to Landlord not later than twelve (12) months prior to the expiration of the First Renewal Option Period to elect to extend the Term for another successive period of seven (7) years (the "Second Renewal Option Period"), commencing on the day next following the expiration of the First Renewal Option Period. In such event, the last day of the final Renewal Option Period shall be deemed the Expiration Date.

Section 40.02 For the avoidance of any doubt, in the event Tenant timely and lawfully exercises the Renewal Options Period, this Lease (including the period between the Lease Commencement Date and Rent Commencement Date) shall not exceed forty-nine (49) years in the aggregate.

Section 40.03 During the First Renewal Option Period and the Second Renewal Option Period, as applicable, Landlord and Tenant shall be bound by all of the terms, covenants and conditions of this Lease, except that the Fixed Net Rent shall be as set forth in Section 3.01 hereof and except as Landlord and Tenant may agree in writing from time to time.

Section 40.04 Tenant shall have no right to extend or renew this Lease beyond the expiration of the Second Renewal Option Period.

Section 40.05 Time shall be of the essence in Tenant's giving each of the Renewal Notice(s) and may not be extended or abbreviated for any reason.

**ARTICLE 41**  
**REPRESENTATIONS**

Section 41.01 Landlord and Tenant represent that they have the authority to execute this Lease and that the covenants and obligations shall be binding upon Landlord and Tenant and their successors and permitted assigns.

**ARTICLE 42**  
**[RESERVED]**

**ARTICLE 43**  
**INTRUSIVE ACTIVITIES, EXCAVATIONS AND SHORING**

Section 43.01 If any excavation shall be made or contemplated for building or other purposes upon property adjacent to the Premises, Tenant either:

(a) shall afford to the entity or person causing or authorized to cause such excavation the right to enter upon the Premises during reasonable business hours and upon at least 24 hours' prior written notice to Tenant for the purpose of doing such work as such entity or person shall consider to be necessary to preserve any of the walls or structures thereof from injury or damage and to support the same by property foundations, provided that such excavation shall not damage, injure, compromise, or impair the Premises or Improvements in any manner whatsoever or otherwise materially interfere with or disrupt Tenant's business operations on the Premises or Tenant's Permitted Use, and further provided that such entity or person is duly licensed and insured and further provided that such entity or person first provides to Tenant, upon request; or

(b) shall do or cause to be done all such work, at Tenant's expense, as may be necessary to preserve any of the walls or structures of the Premises from injury or damage and to support the same by proper foundations. Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement, or reduction of Rental.

**ARTICLE 44**  
**ENVIRONMENTAL ISSUES**

Section 44.01 Tenant represents and warrants that its use and occupancy of the Premises will be in full and complete compliance with the Environmental Requirements.

Section 44.02 Notwithstanding any other provision contained in this Lease, any excavation or intrusive work, including but not limited to the Initial Construction and Improvements, will be performed in compliance with all Environmental Requirements.

Accordingly, with respect to excavation or intrusive work (including the Initial Construction and any Improvements requiring excavation or intrusive work), Tenant shall:

(a) Provide at least sixty (60) days' written notice to Landlord of any proposed excavation or intrusive work. Such notice shall include construction plans, reports required by DEC, figures, and all relevant information related to the excavation or intrusive work.

(b) Prepare an Excavation Work Plan ("EWP") outlining the processes and procedures required during the excavation, including but not limited to methods for soil sampling, soil stockpiling, soil and groundwater disposal, decontamination of equipment and machinery, use of clean fill, dust, and potential vapor/odor management. Tenant shall meet all applicable requirements to the EWP. The EWP shall be submitted to Landlord at least sixty (60) days prior to the start of the excavation or intrusive work, and Landlord shall be provided with the opportunity to review and comment on the EWP. Tenant shall incorporate all of Landlord's comments to the EWP.

(c) Prepare a Health and Safety Plan ("HASP") fulfilling all regulatory requirements and guidance. Tenant shall meet all applicable requirements to the EWP. The HASP shall be submitted to Landlord at least sixty (60) days prior to the start of the excavation or intrusive work, and Landlord shall be provided with the opportunity to review and comment on the HASP. Tenant shall incorporate all of Landlord's comments to the HASP.

(d) Be responsible for the safe performance of all work, the structural integrity of excavations, and for structures that may be affected by excavations (such as building foundations and bridge footings), retain qualified and trained environmental contractors and personnel (such as and not limited to: OSHA requirements, medical surveillance programs, and DER-10), and ensure that such activities will not interfere with, or otherwise impair or compromise, the completed remediation activities and post remedial activities conducted at the Premises or the Premises' compliance with the Environmental Requirements. Tenant shall maintain and inspect the fence surrounding the Premises and keep in good working order.

(e) Comply with any other requirements of any Environmental Requirements and/or DEC environmental notice.

Section 44.03 Tenant covenants and agrees that, during the Term, Tenant shall not:

(a) cause or permit the presence, use, generation, manufacture, production, processing, installation, release, discharge, storage (including any underground storage tanks for petroleum or petroleum products), treatment, handling, or disposal of any Hazardous Materials (as defined below) (excluding the safe and lawful use and storage of Hazardous Materials customarily used in the operation and maintenance of comparable properties) on or under the Premises; or

(b) cause or permit the transportation to, from or across the Premises of any Hazardous Material (excluding the safe and lawful use and storage of Hazardous Materials customarily used in the operation and maintenance of comparable properties or for normal household purposes and the transport of any contaminated soil on the Premises in compliance with all Environmental Laws (as defined below) in connection with the Initial Construction); or

(c) cause or exacerbate any occurrence or condition on the Premises that is or may be in violation of Environmental Law, including but not limited to a spill, release, discharge, leak, or emission of a Hazardous Material.

(The matters described in (a), (b) and (c) above are referred to collectively below as “Prohibited Activities or Conditions.”)

(d) To the extent Tenant intends to use, store, transport, or generate Hazardous Materials customarily used in the operation and maintenance of comparable properties, Tenant shall provide Landlord with a schedule of such Hazardous Materials, including the approximate amount and intended use or purpose of such materials.

Section 44.04 Tenant shall take all reasonable and prudent steps (including but not limited to reasonable and prudent lease or sublease or occupant provisions) to prevent its employees, agents and contractors, and all tenants, subtenants and other occupants on the Premises, from causing or permitting or exacerbating any Prohibited Activities or Conditions. Tenant shall not lease, sublease or permit the occupancy or use of the Premises to any tenant, subtenant or occupant that, in the ordinary course of its business, would cause, permit or exacerbate any Prohibited Activities or Conditions, and all leases and subleases shall provide that tenants and subtenants shall not cause or permit or exacerbate any Prohibited Activities or Conditions. Tenant shall be responsible for any remedial obligations arising out of or otherwise created due to Hazardous Materials brought onto the Premises by Tenant. Subject to the qualifications set forth below, Tenant shall have no liability or obligation to remediate any subsurface conditions resulting from pre-existing Hazardous Materials at, in or under the overall Land, including groundwater, not caused by Tenant. Notwithstanding the foregoing, Tenant shall be solely responsible for safely removing and disposing of all pre-existing subsurface conditions unearthed or exacerbated by Tenant within that portion of the Premises where Tenant’s activities were performed (the “Trenched Area”). In addition thereto, if remedial obligations are required beyond the Trenched Area, Tenant shall be responsible for safely removing and disposing of all pre-existing subsurface conditions unearthed or exacerbated by Tenant subject to a limitation of liability of [REDACTED]. In connection therewith, Tenant shall strictly comply with all applicable Environmental Laws and any specific site management plan or other written procedures provided by Landlord related to managing and remediating all environmental issues at the site.

Section 44.05 Tenant shall promptly notify Landlord in writing of: (i) the occurrence of any Prohibited Activity or Condition on the Premises of which Tenant shall have actual knowledge; (ii) Tenant’s actual knowledge of the presence on or under any adjoining property of any Hazardous Materials which can reasonably be expected to have a material adverse impact on the Premises or the value of the Premises, discovery of any occurrence or condition on the Premises or any adjoining real property that could cause any restrictions on the ownership, occupancy, transferability or use of the Premises under Environmental Law, in which event Tenant shall cooperate with any inquiry from a Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activities or Conditions; (iii) receipt by Tenant of any claim, citation, notice of any pending or threatened suits, proceedings, orders, inquiries or opinions involving the Premises from any Governmental Authority which alleges the violation of any Environmental Law (“Governmental Actions”); and (iv) any claim made or threatened by any third party against Tenant, Landlord or the Premises relating to loss or

injury resulting from any Hazardous Materials at the Premises. Any such notice by Tenant shall not relieve Tenant of, or result in a waiver of, any obligation of Tenant under this Article 44.

Section 44.06 Tenant shall (i) pay, as Additional Rent, promptly after demand, the costs of any environmental audits, studies or investigations (including but not limited to advice of legal counsel), DEC compliance activities, environmental oversight, and/or remedial activities arising out of Tenant's activities which Landlord incurs with respect to the Premises and (ii) remove and/or remediate in compliance with all Environmental Laws and Environmental Requirements any Hazardous Materials on, about, beneath or arising from the Premises, following a determination in any environmental audit, study or investigation that there exist any Prohibited Activities or Conditions on or under the Premises or other conditions requiring response action. Any such costs and expenses incurred by Landlord (including but not limited to reasonable fees and expenses of attorneys, consultants, contractors, engineers, internal labor, laboratory, fines/violations, and DEC oversight), whether incurred in connection with judicial or administrative process or otherwise, which are due as provided above in this Section 44.06 and which Tenant does not dispute and fails to pay promptly shall become Additional Rent.

Section 44.07 Tenant shall indemnify, defend and hold harmless the Indemnitees from and against all proceedings (including but not limited to Governmental Actions), claims, damages, penalties, fines, violations, costs and expenses (including without limitation reasonable fees and expenses of attorneys and expert witnesses, investigatory fees, fines and violations from non-compliance, and cleanup and remediation expenses, whether or not incurred within the context of the judicial process), arising out of (i) Tenant's occupation and use of Premises (ii) any breach of any representation, warranty, or obligation of Tenant contained in this Article 44, (iii) the existence of any Prohibited Activities or Conditions on or under the Premises which shall have been caused or permitted or suffered by Tenant after the date hereof, and (iv) any failure of Tenant or its agents, contractors and sub-contractors to comply with the Environmental Requirements or Environmental Laws. This indemnity is in addition to any other indemnification obligation of Tenant contained herein.

Section 44.08 The term "Hazardous Material(s)," for purposes of this Article 44 shall mean any petroleum and petroleum products, flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, lead, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise, including, but not limited to, those materials defined as "hazardous substances," "extremely hazardous substances," "hazardous chemicals," "hazardous materials," "toxic substances," "solid waste," "toxic chemicals," "air pollutants," "toxic pollutants," "hazardous wastes," "extremely hazardous waste," or "restricted hazardous waste" or otherwise regulated under any Environmental Law in any manner whatsoever.

Section 44.09 The term "Environmental Law(s)," for the purposes of this Article 44 means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other binding governmental requirements now or hereafter enacted or in force, and any court judgments applicable to Tenant or to the Premises relating to the protection of human health and safety (including industrial hygiene) and the environment including, but not limited to, laws relating to the generation, manufacture, storage, handling, transportation, disposal, release,

emission or discharge of Hazardous Materials, laws relating to the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Premises, and laws relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Premises.

Section 44.10 The representations, warranties, covenants, agreements, indemnities and undertakings of Landlord and Tenant contained in this Article 44 shall be in addition to any and all other obligations and liabilities that Landlord and Tenant may have to each other under applicable law and elsewhere in this Lease. All other provisions of this Lease are subject to the provisions of this Article 44 and the Environmental Requirements.

Section 44.11 The representations, warranties, covenants, agreements, indemnities and undertakings of Tenant contained in this Article 44 shall continue and survive notwithstanding the assignment, termination, or cancellation of this Lease except with respect to any Prohibited Activities or Conditions or violation of any of the Environmental Laws which first commences and occurs after the assignment, termination or cancellation of this Lease.

Section 44.12 Tenant shall manage and conduct all of its activities on or relating to the Premises: (a) in compliance with applicable Environmental Laws, Environmental Requirements and all environmental provisions of this Lease; and (b) in cooperation with Landlord in the Landlord's efforts to comply with applicable Environmental Laws and Environmental Requirements. The Tenant shall take immediate steps to correct any non-compliance with Environmental Laws or the environmental provisions of this Lease. Tenant shall manage and, as appropriate, secure the Premises and its occupation or use of the Premises so as to prevent any violation of Environmental Laws or the Environmental Requirements by any person on the Premises.

## **ARTICLE 45** **MISCELLANEOUS**

Section 45.01 The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 45.02 The table of contents preceding this Lease (if any) is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 45.03 The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 45.04 This Lease cannot be changed or terminated orally, but only by an instrument in writing executed by the party against whom enforcement of any waiver, change, modification or discharge is sought. This Lease shall be governed by the laws of the State.

Section 45.05 The agreements, terms, covenants and conditions herein shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors and (except as otherwise provided herein) assigns.

Section 45.06 In no event shall Tenant be entitled to make, nor shall Tenant make any claim, and Tenant hereby waives, any claim for money damages, nor shall Tenant claim any money damages by way of setoff, counterclaim or defense, based upon any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed any consent or approval it is required to give herein, but Tenant's sole remedy shall be an action or proceeding to enforce any such provision, or for specific performance, injunction or declaratory judgment.

Section 45.07 If more than one party is named as or becomes Tenant hereunder, the Landlord may require the signatures of all such parties in connection with any notice to be given or action to be taken by Tenant hereunder. Each party named as Tenant shall be fully liable for all of the Tenant's obligations hereunder. Any notice by Landlord to any party named as Tenant shall be sufficient and shall have the same force and effect as though given to all parties named as Tenant.

Section 45.08: Counterparts and PDF. This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Lease will become effective when duly executed by each party hereto. PDF email signatures shall have the same binding effect as original signatures. No party hereto shall raise the use of a PDF email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a PDF email as a defense to the formation of a legal, valid and binding contractual obligation and each such party forever waives any such defense.

#### **ARTICLE 46** **BROKER**

Section 46.01 Tenant and Landlord each covenants, warrants and represents to the other that no broker was instrumental in bringing about or consummating this Lease and that Tenant and Landlord had no conversations or negotiations with any broker concerning the leasing of the Premises. Tenant and Landlord agree to indemnify and hold harmless the other against and from any costs, expenses and liabilities (including reasonable attorneys' fees and expenses) resulting from any breach of the covenant and warranty contained herein or its misrepresentation of the matters set forth herein.

#### **ARTICLE 47** **MEMORANDUM OF LEASE**

Section 47.01 On or after the Rent Commencement Date, Landlord and Tenant will, upon the written request of the other, join in the execution of a memorandum of lease in form and substance reasonably satisfactory to each of them and in proper form for recordation. Tenant shall pay all costs of recording same. Notwithstanding anything contained herein to the contrary, Landlord shall have no right to assign any of Landlord's rights or interests in this Lease to any



person or entity unless and until a memorandum of lease in form and substance reasonably satisfactory to each of the Parties is properly recorded.

**ARTICLE 48**  
**NO MERGER**

Section 48.01 There shall be no merger of Landlord's estate in the Premises with Tenant's estate therein by reason of the fact that the same individual, partnership, firm or corporation or other entity may acquire or own such estates directly or indirectly. No such merger shall occur until all individuals, partnerships, firms, corporations and other entities having any interest in such estates, including any holder of a Mortgage or Tenant Mortgage, join in a written instrument effecting such merger and duly record such instrument.

**ARTICLE 49**  
**EARLY ACCESS; CONSTRUCTION ACTIVITIES**

Section 49.01 Pursuant to the "Notice to Proceed with Construction", dated January 31, 2022,

[REDACTED]

[REDACTED]

[REDACTED]



*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

**NATIONAL GRID GENERATION LLC**

*D. P. [unclear]*  
[Redacted signature line]  
[Redacted text]  
[Redacted text]

**SOUTH FORK WIND, LLC**

By: \_\_\_\_\_  
[Redacted signature line]  
[Redacted text]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

**NATIONAL GRID GENERATION LLC**

A large black rectangular redaction box covering the signature and name of the representative for National Grid Generation LLC.

**SOUTH FORK WIND, LLC**

A large black rectangular redaction box covering the signature and name of the representative for South Fork Wind, LLC. A handwritten signature in blue ink is visible above the redaction.