**Philip A. DeCicco**
Vice President and Deputy General Counsel
Legal Department

July 14, 2017

**VIA ELECTRONIC DELIVERY**
Honorable Kathleen H. Burgess, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

**Re: Case 17-M-XXXX - Petition of National Grid Generation LLC for Declaratory Ruling or, in the Alternative, Approval of Lease Pursuant to Section 70 of the Public Service Law**

Dear Secretary Burgess:

Pursuant to Section 70 of the Public Service Law, National Grid Generation LLC ("Company") submits for filing the attached petition for declaratory ruling, or in the alternative, approval of the lease of certain real property, located at 3 Cove Hollow Road, East Hampton, New York, to East Hampton Energy Storage Center, LLC. Also attached are (i) a redacted copy of the lease agreement and (ii) a map depicting the property.

An unredacted version of the lease agreement will be submitted to the Records Access Officer with a request for trade secret protection.

Please contact the undersigned with any questions regarding this matter.

Respectfully submitted,

*/s/ Philip A. DeCicco*
Philip A. DeCicco

CC: David Drexler, Esq. (via email)
Claudia and Felipe Diaz (via overnight mail)
Long Island Power Authority (via email)

One Metrotech Center, Brooklyn, NY 11201
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**STATE OF NEW YORK**
**PUBLIC SERVICE COMMISSION**

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**In the Matter of the Petition of National Grid Generation LLC**

**Case No. 17 - _____**

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# PETITION OF NATIONAL GRID GENERATION LLC FOR DECLARATORY RULING OR, IN THE ALTERNATIVE, APPROVAL OF LEASE PURSUANT TO SECTION 70 OF THE PUBLIC SERVICE LAW


NATIONAL GRID GENERATION LLC

By: Philip A. Decicco
National Grid
One MetroTech Center
Brooklyn, New York 11201
929-324-4543


Dated: July 14, 2017

**STATE OF NEW YORK**
**PUBLIC SERVICE COMMISSION**

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**In the Matter of the Petition of National Grid Generation LLC** **Case No. 17 - _____**

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**VERIFIED PETITION**

## I. INTRODUCTION

By this Petition, National Grid Generation LLC ("National Grid Generation" or the "Company") seeks 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,[1] that as a lightly-regulated entity the grant of a lease of certain real property ("Property") located at 3 Cove Hollow Road, East Hampton, New York by National Grid Generation to East Hampton Energy Storage Center, LLC ("EHESC") does not require Commission review under Section 70(1) of the New York State Public Service Law ("PSL"). Alternatively, if the Commission concludes that Section 70(1) review applies to the granting of the subject lease, the Company asks that the transaction be approved by the Commission pursuant to PSL §70(1).

## II. BACKGROUND

National Grid Generation is a wholly-owned subsidiary of KeySpan Corporation ("KeySpan"), 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, LILCO, and the Long Island Power Authority ("LIPA"). KeySpan is a wholly-owned subsidiary of National Grid USA. National Grid Generation (formerly known as KeySpan

[1] SAPA §204; 16 NYCRR§8.1 *et seq.*

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 EHESC under the terms of a Lease Agreement, dated April 13, 2017 ("Lease Agreement"). A copy of the Lease Agreement is attached as Exhibit 1. The Property is a parcel of undeveloped land consisting of approximately 36,111 square feet. EHESC proposes to construct a new 5 MW/40 MWh enclosed battery energy storage system ("BESS") on the Property, as well as any necessary buildings and other facilities during the lease term.

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 a LIPA substation that will serve as the point of electrical connection of the BESS to LIPA's electrical distribution system for the charging and discharging of electrical energy.

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 EHESC as discussed herein and in the Lease Agreement.

EHESC is a Delaware limited liability company, having an address at 700 Universe Boulevard, Juno Beach, Florida 33408. EHESC was formed to own and operate the BESS. EHESC is a subsidiary of LI Energy Storage System LLC. LI Energy Storage System LLC is a 50/50 joint venture owned by National Grid Generation Ventures LLC, a wholly owned subsidiary of National Grid Generation, and Long Island Energy Storage Holdings, LLC, a subsidiary of NextEra Energy, Inc. The BESS project was recently selected by LIPA as part of its Request For Proposal ("RFP") to address local resource requirements on the South Fork of Long Island.

**a. Description of the Planned Transaction**

Under the terms of the Lease Agreement (Exhibit 1), National Grid Generation will lease to EHESC the Property, consisting of approximately 36,111 square feet of vacant land, as more fully described in Schedule A to Exhibit 1, for an initial term of 20 years, renewable for up to an additional 20 years at the Annual Fixed Net Rent set forth in Article 3 of the Lease Agreement.

The Lease Agreement limits EHESC to using the Property to own, manage, operate, and maintain the BESS, and for no other purpose without National Grid Generation's consent. The BESS is designed to deliver stored electric energy to LIPA's East Hampton substation, based upon dispatch determinations from LIPA. EHESC assumes the full and sole 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 thereof of all improvements. The Lease Agreement requires EHESC to accept the Property "as is." EHESC has agreed to indemnify and save harmless National Grid Generation from all losses,

liabilities, damages and claims, arising out of or in any way connected with EHESC's (or its contractors, agents, employees or invitees) use of the Property including, without limitation, the environmental and structural condition of the BESS.

The leasing of the Property is subject to, and conditioned upon, LIPA electing not to exercise its contractual right (under the terms of the 1998 LILCO/LIPA/KeySpan merger agreement) of first refusal to purchase or lease land at National Grid's generating sites before such property can be sold to a third party. LIPA had sixty days from receipt of National Grid Generation's notice of the lease to exercise the right of first refusal with respect to this particular transaction, which was served on April 20, 2017. Because LIPA did not exercise its right of first refusal with regard to the Property, National Grid Generation can proceed with the proposed transaction under the terms of its contractual arrangements with LIPA.

**b. Procedural Background**

On April 19, 2017, in Case 17-M-0352,[2] National Grid Generation filed a *Notice Pursuant to Section 70(1) of the Public Service Law Regarding the Lease of Certain Property Located at 3 Cove Hollow Road East Hampton, NY to East Hampton Energy Storage Center, LLC* advising the Commission of the Company's intent to enter into the lease unless the Commission determined, within ninety days of the Notice, that the public interest required Commission review and written consent.[3] On July 11, 2017, the Company withdrew its Notice

[2] Case 17-M-0352, *Petition of National Grid Generation LLC for Approval of a Transfer or Lease of Property with an Original Cost of Less Than $100,000, Located at 3 Cove Hollow Road, East Hampton, New York to East Hampton Energy Storage Center, LLC,* "Notice Pursuant to Section 70(1) of the Public Service Law Regarding the Lease of Certain Property Located at 3 Cove Hollow Road East Hampton, NY to East Hampton Energy Storage Center, LLC," (dated April 19, 2017).

[3] On June 12, 2017, an adjacent property owner, Claudia Diaz, filed the only comments in Case 17-M-0352 stating that the lease should be subject to Commission approval. Specifically, Ms. Diaz raised objections that (1) the net book value of $2,432 included in the Company's Notice was incorrect because the value of the entire East Hampton Generating Site was assessed at $87.858 million; and (2) National Grid is not the owner of land (pointing to an application to the Town of East Hampton Planning Board for a site permit with "Snyder Homestead LLC" as owner). The Company notes that the net book value of $2,432 represents the portion of the original cost of the East

in Case 17-M-0352, for the sole purpose of filing in its place this request for a declaratory ruling by the Commission that a review under PSL §70 is not required in these circumstances for the reasons described below.

**c. 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,[4] (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.*

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Hampton Generating Site subject to the lease, consistent with Section 70(1) of the Public Service Law, which provides that "any transfer or lease of property with an original cost of less than $100,000 proposed by a gas or electric corporation having annual gross revenues in excess of two hundred million dollars shall be effective without the Commission's written consent." Contrary to Ms. Diaz's assertion, the current assessed value of the property is not determinative of whether Section 70(1) applies. With regards to Ms. Diaz's second point, National Grid Generation is the owner of the Property and as such its annual gross revenues, and not those of EHESC formed to operate the BESS, are relevant to Section 70(1). The Town Planning Board erroneously listed Snyder Homestead LLC as owner on the site permit application.

[4] *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).

"Declaratory Ruling on a Transfer Transaction" (Issued September 19, 2016), p. 4.[5] 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, as demonstrated herein, there will be no opportunity for BESS to exercise market power and there will be no harm to the interests of the customers of the regulated utilities.

**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.[6] The proposed land-only lease from National Grid Generation to EHESC does not present any opportunities for the exercise of horizontal or vertical market power. First, the proposed lease will not convey any interest in electric generation assets. Next, the BESS project is not large enough to present market power concerns. The additional energy from the 5 MW facility is significantly less than one percent of the approximately 3,800MW electric generation capacity of National Grid Generation's generating units. Long Island Energy Storage Holdings, LLC is a subsidiary of NextEra Energy Resources LLC,[7] which owns two 55 MW peaking plants in Far Rockaway, again significantly larger than the proposed 5 MW BESS facility on the

[5] *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).
[6] *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.
[7] NextEra Energy, Inc. conducts its operations through two wholly owned subsidiaries, Florida Power & Light Company, an electric utility serving the east and lower west coasts of Florida, and NextEra Energy Resources, LLC.

Property. And, finally, LIPA, and not BESS will determine when BESS will be dispatched to deliver its stored energy. For these reasons, there are no market power concerns.

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

As explained above, the proposed lease facilitates development of additional energy storage to meet peak load in a highly constrained area of Long Island. The resulting BESS project would be under a long term 20-year Power Purchase Agreement with LIPA, and not otherwise impact the New York Independent System Operator, Inc. ("NYISO") or New York competitive markets. Accordingly, the transaction will not result in an exercise of horizontal market power that could affect the operations of NYISO markets or harm ratepayers. 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. The proposed lease of the Property facilitates the development of local energy resources to meet load in the South Fork area of Long Island. LIPA issued a Request for Proposals ("2015 SF RFP") to acquire sufficient local resources to meet expected peak load requirements on the South Fork. LIPA has selected the proposal for the BESS to provide additional local power production resources and transmission support to LIPA's East Hampton substation. As such, the proposed leasing of the Property is in the public interest. Indeed, the proposed leasing will facilitate the delivery and long term reliability of electric services to LIPA's customers, including the local community. National Grid Generation must secure and effectuate the lease immediately to assure LIPA of the construction and readiness for operation of the BESS system by the 2018 operational date under LIPA's 2015 SF RFP.

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 future. Therefore, the EHESC 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 to meet load on the South Fork area of Long Island, and construction of the BESS facility must begin immediately to ensure a 2018 operation date. Because this is a time-sensitive matter that was previously brought to the attention of the Commission and DPS Staff by the prior Notice filing, National Grid requests expedited treatment of this Petition.

## VI. MISCELLANEOUS

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

NATIONAL GRID GENERATION LLC
Philip A. DeCicco
One MetroTech Center
Brooklyn, NY 11201
Phone: (929) 324-4543
philip.decicco2@nationalgrid.com

Attached hereto is the following appendix:

Exhibit 1 – Copy of the Lease Agreement

Exhibit 2 – Map Depicting the Property

In accordance with Section 17.2 of the Commission's regulations,[8] the Company states that to the best of its knowledge its certificate of incorporation is on file with the Commission.

**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, National Grid Generation submits 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 acquisition of local resources by LIPA to meet expected peak load in the South Fork area of Long Island.

Respectfully submitted,

NATIONAL GRID GENERATION LLC

By: /s/ Philip De Cicco
Philip A. DeCicco

National Grid
One MetroTech Center
Brooklyn, New York 11201
929-324-4543

Dated: July 14, 2017

[8] 16 NYCRR §17.2.

**VERIFICATION**

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

Signed: __/s/ *James P. Flannery*__ _____

Date: _____July 14, 2017_____

# Exhibit 1

EXECUTION COPY

NATIONAL GRID GENERATION LLC

AND

EAST HAMPTON ENERGY STORAGE CENTER, LLC

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# LEASE AGREEMENT

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Dated as of April 13, 2017

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

**TABLE OF CONTENTS**


ARTICLE 1 PREMISES AND TERM OF LEASE ..... 1
ARTICLE 2 DEFINITIONS ..... 1
ARTICLE 3 RENT ..... 5
ARTICLE 4 TAXES ..... 8
ARTICLE 5 NO PERSONAL LIABILITY OF LANDLORD ..... 9
ARTICLE 6 INSURANCE ..... 9
ARTICLE 7 USE OF CASUALTY INSURANCE PROCEEDS ..... 11
ARTICLE 8 RESTORATION OF DAMAGE OR DESTRUCTION ..... 12
ARTICLE 9 [RESERVED] ..... 12
ARTICLE 10 ASSIGNMENT, SUBLETTING, ETC ..... 12
ARTICLE 11 PERMITTED USE; NO UNLAWFUL OCCUPANCY ..... 14
ARTICLE 12 REPAIRS ..... 14
ARTICLE 13 CHANGES, ALTERATIONS AND ADDITIONS ..... 15
ARTICLE 14 REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES ..... 17
ARTICLE 15 EOUIPMENT ..... 17
ARTICLE 16 DISCHARGE OF LIENS ..... 17
ARTICLE 17 EXISTING CONDITION OF PREMISES ..... 18
ARTICLE 18 LANDLORD NOT LIABLE FOR INJURY OR DAMAGE ..... 19
ARTICLE 19 INDEMNIFICATION OF LANDLORD ..... 19
ARTICLE 20 LANDLORD'S RIGHT OF INSPECTION ..... 21
ARTICLE 21 LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS ..... 21
ARTICLE 22 LEASEHOLD MORTGAGE ..... 22
ARTICLE 23 [RESERVED] ..... 24
ARTICLE 24 [RESERVED] ..... 24
ARTICLE 25 LATE CHARGES ..... 24
ARTICLE 26 DEFAULTS, CONDITIONAL LIMITATIONS, REMEDIES, ETC. ..... 24
ARTICLE 27 NOTICES ..... 29
ARTICLE 28 CONDEMNATION ..... 29
ARTICLE 29 [RESERVED] ..... 30

ARTICLE 30 CERTIFICATES BY LANDLORD AND TENANT ..... 30
ARTICLE 31 LANDLORD'S CONSENTS ..... 31
ARTICLE 32 SURRENDER AT END OF TERM ..... 31
ARTICLE 33 NO ORAL AGREEMENTS ..... 32
ARTICLE 34 QUIET ENJOYMENT ..... 33
ARTICLE 35 INVALIDITY OF CERTAIN PROVISIONS ..... 33
ARTICLE 36 PSC APPROVAL ..... 33
ARTICLE 37 [redacted] ..... 33
ARTICLE 38 [RESERVED] ..... 34
ARTICLE 39 INITIAL CONSTRUCTION ..... 34
ARTICLE 40 RENEWAL ..... 36
ARTICLE 41 REPRESENTATIONS ..... 37
ARTICLE 42 [RESERVED] ..... 37
ARTICLE 43 EXCAVATIONS AND SHORING ..... 37
ARTICLE 44 ENVIRONMENTAL HAZARDS PROVISION ..... 37
ARTICLE 45 MISCELLANEOUS ..... 41
ARTICLE 46 BROKER ..... 42
ARTICLE 47 MEMORANDUM OF LEASE ..... 42
ARTICLE 48 NO MERGER ..... 42

AGREEMENT OF LEASE made as of the 13th day of April, 2017 ("Lease Commencement Date") 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 **EAST HAMPTON ENERGY STORAGE CENTER, LLC**, a Delaware limited liability company, having an address at 700 Universal Boulevard, Juno Beach, Florida 33408 ("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 a term or period (the "Initial Period") which is to commence on the Lease Commencement Date (hereinafter defined) and shall end on the last day of the month in which the twentieth (20th) anniversary of the Rent Commencement Date occurs (hereinafter defined) unless such Term (hereinafter defined) shall be extended or sooner terminated as hereinafter provided ("Expiration Date").

It is hereby mutually covenanted and agreed by and between the Parties 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.

Section 1.03. Provided the Tenant is not in default under any term of this Lease, Tenant, at its option, shall have the right to terminate this Lease at any time during the Term of this Lease. Termination shall be effective one (1) year after written notice of such termination to Landlord. The Parties shall be relieved of all further duties and obligations under this Lease, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Tenant pursuant to Section 32.05; and (iii) any other obligations and liabilities that are expressly stated in this Lease to survive such termination.

## ARTICLE 2
## DEFINITIONS

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

(a) "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.

(b) "BESS" shall mean the new 5 MW/40 MWh battery energy enclosed storage facility and system to be constructed and primarily housed in a building (forming part of the Improvements) by Tenant to be located on the Premises forming a part of the Initial Construction.

(c) "Capacity" shall mean the capability to generate or deliver electric power measured in MW.

(d) "Commercial Operation Date" shall mean the date that the BESS is in operating condition pursuant to the terms of the PPA.

(e) "Common Area I" shall mean that portion of the Generating Station Site's interior roadways and driveways shared by Landlord, Tenant and LIPA as shown on the site plan attached hereto as Exhibit A.

(f) "Common Area II" shall mean that portion of the Generating Station Site's interior roadways, driveways and fire hydrants shared by Landlord, Tenant and LIPA as shown on the attached Exhibit A.

(g) "Common Areas" shall mean that portion of the Generating Station Site's interior roadways, driveways and fire hydrants shared by Landlord, Tenant and LIPA, consisting of Common Area I and Common Area II as shown on the attached Exhibit A and described in the legal description attached hereto as Schedule B.

(h) "Contract Capacity" shall mean five (5) MW output with a maximum duration of eight (8) continuous hours.

(i) "County" shall mean Suffolk County.

(j) "Credit Requirements" shall mean, with respect to any Person, that such Person has at least two of the following Credit Ratings: (a)"Baa2" or higher from Moody's; (b) "BBB" or higher from S&P; and (c) "BBB" or higher from Fitch.

(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) "DEC" shall mean the New York State Department of Environmental Conservation.

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

(n) "Equipment" shall mean and include, but shall not be limited to,

rechargeable batteries (of a type that can be given a new charge by passing an electric current through it designed for the storage of electrical power), foundations, HVAC system, fire detection and suppression systems, electrical invertors, breakers and disconnects, switchgear, metering, supervisory control and data systems, machinery, electrical overhead and underground 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 Land or the Improvements installed in support of the BESS, and any and all alterations, renewals and replacements thereof, additions thereto and substitutes therefor.

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

(p) [redacted]

(q) "Generating Station Site" shall mean the East Hampton Generating Station owned by Landlord on which the Premises forms a part hereof and which also houses, inter alia, the LIPA Substation.

(r) "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.

(s) "Impositions" shall have the meaning provided in Section 4.01.

(t) "Improvements" shall mean the (i) BESS and any and all buildings and other improvements (including capital improvements) and structures hereafter erected on the Land, and the Equipment, including the Initial Construction and (ii) asphalt roadbed constructed on Common Area I.

(u) "Initial Construction" shall have the meaning provided in Article 39.

(v) "Land" shall mean the parcel of vacant land containing approximately 26,993 square feet, described in the legal description attached hereto as Schedule A, and shown more fully as the "Premises" on Schedule B attached hereto.

(w) "Landlord" shall mean the Landlord herein named or other owner(s) 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 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 to carry out any and all agreements, covenants and obligations of Landlord hereunder accruing from and after the date of sale or transfer.

(x) "Lease Commencement Date" shall mean the date of this Lease, subject, however, to obtaining the (i) PSC Order and (ii) [redacted].

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

(z) "LIPA" shall mean the Long Island Power Authority.

(aa) "LIPA Substation" shall mean the substation that forms a part of the Generating Station Site that will serve as the point of electrical connection of the BESS to LIPA's electrical distribution system for the charging and discharging of electrical energy in accordance with the PPA and NYISO requirements.

(bb) "Mortgage" shall mean any fee mortgage encumbering the Generating Station Site.

(cc) "MW" shall mean one megawatt alternating current (1,000 kilowatts) of capacity.

(dd) "NYISO" shall mean the New York Independent System Operator.

(ee) "Penalty Rate" shall mean ten (10%) percent.

(ff) "Permissible Purchaser" shall mean any Person that (i) unconditionally assumes Seller's obligations under the Lease, (ii) meets or exceeds the Credit Requirements or has tangible net assets of not less than Two Million ($2,000,000) Dollars per MW of Contract Capacity, and (iii) has, directly or indirectly, owned and/or operated a minimum of three (3) energy storage projects having a similar Capacity for a period of no less than three (3) years.

(gg) "Person" any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.

(hh) "Plans and Specifications" shall have the meaning provided for in Section 39.01 hereof.

(ii) "PPA" shall mean the power purchase agreement executed (or to be executed) between LIPA and Tenant and any subsequent modifications, renewals or replacements thereof.

(jj) "Premises" shall mean the Land, all Improvements (including the BESS), as defined in this Section and Common Area I; 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.

(kk) "Project" shall mean the construction, ownership, operation and maintenance of the BESS.

(ll) "PSC" shall mean the New York State Public Service Commission.

(mm) "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.

(nn) "Rent Commencement Date" shall mean the Commercial Operation Date.

(oo) "Rental" shall have the meaning provided in Section 3.04.

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

(qq) [redacted]

(rr) "State" shall mean the State of New York.

(ss) "SEQRA" shall mean the State's Environmental Quality Review Act.

(tt) "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. The Tenant herein named is a joint venture of NextEra Energy Resources, LLC and National Grid Generation LLC ("GENCO").

(uu) "Term" shall commence on Lease Commencement Date when access to the Premises is granted to Tenant to perform the Initial Construction and continue thereafter to include the Initial Period and to the extent applicable, the Renewal Option Period (hereinafter defined in Article 40.01).

(vv) "Town" shall mean the Town of East Hampton.

## 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, for the following periods (each, a "Lease Year"):

(a) Initial Period

| Lease Year | Annual Fixed Net Rent |
|---|---|
| First (1st) Lease Year | [redacted] |

| | |
|---|---|
| Second (2nd) Lease Year | [redacted] |
| Third (3rd) Lease Year | [redacted] |
| Fourth (4th) Lease Year | [redacted] |
| Fifth (5th) Lease Year | [redacted] |
| Sixth (6th) Lease Year | [redacted] |
| Seventh (7th) Lease Year | [redacted] |
| Eighth (8th) Lease Year | [redacted] |
| Ninth (9th) Lease Year | [redacted] |
| Tenth (10th) Lease Year | [redacted] |
| Eleventh (11th) Lease Year | [redacted] |
| Twelfth (12th) Lease Year | [redacted] |
| Thirteenth (13th) Lease Year | [redacted] |
| Fourteenth (14th) Lease Year | [redacted] |
| Fifteenth (15th) Lease Year | [redacted] |
| Sixteenth (16th) Lease Year | [redacted] |
| Seventeenth (17th) Lease Year | [redacted] |
| Eighteenth (18th) Lease Year | [redacted] |
| Nineteenth (19th) Lease Year | [redacted] |
| Twentieth (20th) Lease Year | [redacted] |

(b) Renewal Option Period

(i) For the period commencing on the first day of the twenty-first (21st) Lease Year and continuing through the last day of the twenty-first (21st) Lease Year, Fixed Net Rent shall be payable at an annual rate equal to [redacted]. For the period commencing on the first day of the twenty-second (22nd) Lease Year and continuing through the last day of the thirtieth (30th) Lease Year, Fixed Net Rent shall increase, on a compounding basis, by [redacted] each Lease Year above the prior Lease Year.

(ii) For the period commencing on the first day of the thirty-first (31st) Lease Year and continuing through the last day of the thirty-first (31st) Lease Year, Fixed Net Rent shall be payable at an annual rate equal to the greater of (x) [redacted] or (y) [redacted] Thereafter, commencing on the thirty-second (32nd) Lease Year and each Lease Year thereafter, up to the Fortieth (40th) Lease Year, the Fixed Net Rent shall increase, on a compounding basis, by [redacted] each Lease Year above the prior Lease Year.

Section 3.02 (a) For purposes of determining the Fixed Net Rent under Section 3.01(b)(i) above, [redacted]

(b) If the Parties cannot agree to a Fair Market Rental ("FMV Determination"), the parties shall select and appoint an impartial MAI (Member of Appraisal Institute) certified appraiser (the "Appraiser"). The Appraiser shall select either the Tenant's FMV Determination or the Landlord's FMV Determination that more accurately reflects the valuation as of the appraisal date and shall notify the Parties of such selection in writing. The Appraiser shall be commissioned to arrive at the FMV Determination as follows: The FMV Determination made by the Appraiser shall be conclusive and binding upon both Landlord and Tenant. The fees and expenses of any such appraisal process shall be borne by the parties equally and its attorneys and experts as well as any expenses of presenting its own proof.

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

(d) The Appraiser shall not 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 annual installments on the first day of each Lease Year, commencing on the Rent Commencement Date.

Section 3.04 Effective on the Lease Commencement Date, Tenant shall also pay all (i) Impositions (hereinafter defined) and (ii) all other additional rent and all other sums due and payable hereunder (collectively, "Additional Rent"). Tenant shall reimburse Landlord within thirty (30) days after receipt of a written demand for all reasonable and documented costs and expenses, including reasonable counsel fees, paid or incurred by Landlord in curing any 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 notice to Tenant. At Landlord's option, all Fixed Net Rent shall be paid by electronic 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 of this Lease, 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.** 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.

## ARTICLE 4
## TAXES

Section 4.01 (a) Effective on the Lease Commencement Date, Tenant covenants and agrees, as hereinafter provided, to pay any reasonably documented increases in real estate taxes assessed due to the (i) construction and operation of the BESS on the Premises and (ii) increases in the valuation of the Land (collectively "Impositions"). Tenant shall, during the Term of this Lease, pay and discharge, as Additional Rent, all Impositions not later than thirty (30) days prior to the due date 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 of this Lease 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 of this Lease the method of real estate taxation prevailing at the commencement of the Term hereof 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 of this Lease and a part of which is included in a period of time after the expiration or termination of the Term of this Lease, 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 of this Lease, 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 of this Lease 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 a 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 or any partner of any partner of Landlord or any shareholder, officer, or director of any corporate 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 Prior to commencement of construction of the asphalt roadbed forming a part of Common Area I (as described in Section 39 herein) or any Improvements on the Premises, Tenant, at its own cost and expense, shall maintain, at a minimum:

(a) Insurance on all of the Premises, including personal property, 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). If not included within the All Risk coverage above, Tenant shall also carry or cause to be carried (X) coverage against damage due to water and sprinkler leakage and 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 clause (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.

(b) Commercial general liability insurance against liability for bodily injury and death and property damage, all such insurance to be in such amounts equal to [redacted]. Such commercial general liability insurance shall be written on an occurrence basis with respect to the Premises and all operations related thereto, whether conducted on or off the Premises, and coverage shall include specifically the Premises, Common Areas and parking areas, streets, alleys and sidewalks adjoining or appurtenant to the Premises.

(c) workers' compensation insurance for statutory obligations imposed by applicable laws;

(d) employers liability insurance with a limit of [redacted]

(e) automobile liability, covering all owned, non-owned and hired vehicles used in connection with lease operations with a minimum combined single limit of liability of [redacted] and

(f) pollution liability, covering any sudden and accidental pollution liability which may arise out of, under, or in connection with this Lease, including all Work and Services to be performed by or on behalf of Tenant, or that arise out of the Tenant's use of any owned, non-owned or hired vehicles, with a minimum limit of liability of [redacted];

(g) excess or umbrella liability insurance which shall apply to commercial general liability; employers liability and automobile liability insurance, required in (b), (d) and (e) above, with a limit [redacted];

If, by reason of changed circumstances or economic conditions, the insurance amounts referred to in this Lease become in Landlord's reasonable judgment inadequate with respect to industry standards, increase the amounts of such insurance promptly upon Landlord's reasonable request.

At the request of Landlord, provide and keep in force such other insurance in such amounts as may from time to time be required by any Governmental Authority.

Section 6.02 (i) All insurance provided by Tenant, as required by this Article, shall be carried for the benefit of Landlord, Tenant and the holder of any Mortgage as their respective interests may appear, and shall name Landlord and the holder of any Mortgage as additional insureds (except for the workers' compensation insurance). The loss under policies insuring against damage to the Premises by fire or other casualty shall be payable to Tenant.

(ii) 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 "VII' 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. The insurance requirements addressed herein may be satisfied with any combination of primary and excess insurance.

(iii) All premiums on policies referred to in this Lease shall be paid by Tenant. The copies of such certificates of insurance evidencing such policies shall be delivered to the Landlord immediately upon receipt from the insurance company or companies (and such originals may be delivered by Landlord to the holder of a Mortgage). New or renewal certificates replacing any certificates expiring during the Term hereof shall be delivered to Landlord at least thirty (30) days before the date of expiration. 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.

Section 6.03 Every policy of insurance referred to in this Lease shall contain an agreement by the insurer that no cancellation or non-renewal of the coverages afforded under said policies will be effective until at least thirty (30) days' prior written notice of such cancellation or non-renewal has been given to Landlord in accordance with Article 27 of this Lease.

Section 6.04 Landlord shall, at all times during the Term, maintain in effect a policy or policies of insurance consistent with the requirements set forth in Section 6.01 covering the Common Areas. Any insurance provided for in this Section may be affected by a policy or policies of blanket insurance covering additional items or locations.

## ARTICLE 7
## USE OF CASUALTY INSURANCE PROCEEDS

Section 7.01 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, 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 and rebuild the same, 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. In lieu of restoring or rebuilding the Improvements, Tenant shall have the option, upon twelve (12) months prior written notice to Landlord, to terminate the Lease, provided Tenant removes all the Improvements located within the Premises (within the aforesaid twelve (12) month period) and delivers the Premises to Landlord in the materially same condition existing as of the Lease Commencement Date. The asphalt roadbed shall not be removed by Tenant.

## ARTICLE 8
## RESTORATION OF DAMAGE OR DESTRUCTION

Section 8.01 If in the event of any loss, damage or destruction, the cost of restoration and repairs of which exceeds [redacted] Dollars 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 licensed professional and which plans and specifications shall meet with the reasonable approval of the Landlord, together with the approval thereof by any Governmental Authority then exercising jurisdiction with regard to such work, plans and specifications, which plans and specifications shall be and become the sole and absolute property of Landlord in the event that for any reason this Lease shall be terminated. The Landlord shall grant its consent, provided the restoration plans and specifications are substantially similar to the Improvements which were initially constructed on the Premises.

## ARTICLE 9
## [RESERVED]

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

Section 10.01 Except as otherwise provided herein, neither this Lease nor the interest of Tenant in this Lease, nor the interest of Tenant in any sublease, license or concession or in any rentals under any sublease, license or concession 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, without the prior written consent of Landlord in each case, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Landlord agrees to grant its consent to such requested assignment or subletting to an Affiliate of Tenant. Landlord further agrees to grant its consent, provided Tenant submits information to Landlord's reasonable satisfaction evidencing that the assignee, transferee or sublessee is a Permissible Purchaser of the Project.

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, shall have any validity. Any subletting of the Premises shall not relieve or release the sublandlord from any obligations of Tenant under this Lease and the sublandlord shall remain liable for the performance of all obligations of Tenant hereunder for the remainder of the Term.

Section 10.03 Any written notice provided by Tenant to Landlord under Section 10.01 herein shall apply only to the specific transaction and shall not relieve Tenant from the requirement of providing prior written notice to Landlord of any further sale or assignment of this Lease or transfer of stock 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 necessary steps 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 a 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, use all requisite force to 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 hereof shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof, or in the event of repossession under dispossess warrant or other re-entry or repossession by Landlord under the provisions hereof, or in the event of a 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 to own, manage, operate and maintain the BESS, and for no other purpose. Tenant shall not use the Premises for any other purpose without Landlord's prior written consent. Notwithstanding Common Area 1 forms a part of the Premises, upon completion of Tenant's Initial Construction on Common Area I (as described in Section 39 herein), Landlord, Tenant and any third party leasing any portion of the Generating Station Site from Landlord (including any agents, contractors, servants, employees, licensees or invitees of the foregoing), shall have unrestricted access to the Common Areas for ingress to and egress from Cove Hollow Road.

Section 11.02 The BESS is designed to deliver stored electric energy to the LIPA Substation.

Section 11.03 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 deemed by Landlord to be disreputable or extra hazardous, 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, disreputable or extra hazardous use take all 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, disreputable or extra hazardous use.

Section 11.04 Tenant will not suffer any act to be done or any condition to exist on the Premises or any portion thereof which may be hazardous or which may in law constitute a nuisance, public or private, or which may make void or voidable any insurance then in force on the Premises.

Section 11.05 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.

## ARTICLE 12
## REPAIRS

Section 12.01 Throughout the term of this Lease, 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, access roads (which forms a part of the Premises), areas, vaults, chutes, sidewalk hoists, railings, gutters, alleys and curbs which are part of 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. Notwithstanding the foregoing, Landlord acknowledges that Tenant intends to seek vacant possession of the Premises in order to perform the Initial Construction and in connection therewith, provided same is performed in compliance with Requirements, Tenant may remove Equipment from vacant portions of the Improvements and close off part of the Improvements without same being deemed a breach of this Section 12.01. When used in this Section 12.01, the term "repairs" shall include all 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 (i) the sidewalks, areas, chutes, sidewalk hoists, access roads, railings, gutters, alleys and curbs which are part of the Premises and (ii) repair and restore any Common Areas that are damaged by Tenant's acts or failures to act.

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 and the end of the Term, the demolition and removal thereof of all Improvements.

## ARTICLE 13
## CHANGES, ALTERATIONS AND ADDITIONS

Section 13.01 Except as permitted in Article 39 hereof, Tenant shall not demolish, replace or 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:

(a) Tenant shall have procured, 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 thirty

(30) days after a written demand and as Additional Rent hereunder, a reasonable fee and Landlord's 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. 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 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.

(c) Intentionally deleted.

(d) No Capital Improvement shall be undertaken until Tenant shall have delivered to Landlord insurance certificates therefor issued by responsible insurers, evidencing Employer's Liability and/or 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 In the event that (i) the estimated cost of any Capital Improvement shall exceed [redacted], or (ii) any Capital Improvement would involve work of a structural nature, then in addition to complying with the requirements of the preceding Section 13.01, 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.

(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) Certificates of insurance in accordance with the provisions of Section 39.03 hereof.

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

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

Section 14.01 Tenant shall, at its own cost and expense, during the Term of this Lease, 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 which is part of the Premises 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 he 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 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 to final adjudication 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 utility and value.

## ARTICLE 16
## DISCHARGE OF LIENS

Section 16.01 Tenant shall not create or 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. 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 which 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 residential or commercial purposes, (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 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 unless caused solely and directly by the willful misconduct or gross negligence of Landlord.

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 quasipublic work unless caused by the willful misconduct or gross negligence of Landlord.

## ARTICLE 19
## INDEMNIFICATION OF LANDLORD

Section 19.01 In addition to any other indemnities to Landlord specifically provided in this Lease, Tenant shall 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 architects' and attorneys' fees, 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 of this Lease:

(a) any work or thing done in, on or about the Premises or any part thereof on the part of Tenant or its contractors, agents, employees or invitees (collectively, Tenant's Agents"), including, without limitation, the Initial Construction, 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 or of any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto (including the Common Areas) on the part of Tenant or Tenant's Agents;

(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 (including any Monetary Default, Material Event of Default and/or Non-Monetary Event of Default) 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;

(g) 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

(h) any contest permitted pursuant to the provisions of Articles 4 and 14 hereof.

Section 19.02 Landlord shall indemnify and save Tenant harmless against and from any third party tort liability claim, including reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against Tenant by such third parties for damages to person or property directly sustained by reason of any work or thing done adjacent to the Premises by Landlord . For the avoidance of any doubt, Landlord's indemnity shall not cover any losses or claims sustained by Tenant and/or Tenant's customers for any interruption or delay on the part of Tenant in rendering any contractual services. The provisions of this Article and all other indemnity provisions elsewhere contained in this Lease 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 architects' fees and 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 Landlord and 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 or property owned by Landlord adjacent to the Premises.

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

Section 20.01 Tenant shall permit Landlord, its agents and/or representatives, to enter the Premises upon reasonable notice to Tenant for the purpose of (i) inspecting the same and (ii) complying with requirements of all Governmental Authority. 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 to make any immediate and necessary repairs to address or otherwise avert such emergency condition at Tenant's cost and expense.

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; 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 after at least twenty-four (24) hours' notice to Tenant for the purpose of showing same to prospective purchasers or mortgagees thereof.

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 (as applicable) or any other Town, County or State department or agency pursuant or 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 certificates provided for herein, or shall fail to make any other payment or perform any other act on its part to be made or performed after the giving of notice if required hereunder and the expiration of the applicable grace 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 provided for herein that Tenant is obligated to carry, or

(c) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided, 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 within thirty (30) days after receipt of a written invoice from Landlord. 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. 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. 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 uses permitted under this Lease. 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 precondition to exercising any rights or remedies related to any alleged default by Tenant under this Lease, Landlord shall give written notice of the default to each Tenant Mortgagee at the same time it delivers notice of default to Tenant, specifying in detail the alleged event of default and 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 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 the Tenant Mortgagee located on the Landlord's Property.

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 thirty (30) 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 nonjudicial 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 the terms of 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 thirty (30) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

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; and (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. 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 Rent 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) which 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 of this Lease, without the prior written consent of the Tenant Mortgagee holding such Tenant Mortgage. This provision is 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 payment of any sums required to be paid by Tenant to Landlord under this Lease shall become overdue for ten (10) days after written notice from Landlord to Tenant that they are due and payable, then 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. Landlord shall not be required to provide written notice of such late payment more than three (3) times during the Term of the Lease. 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 thirty (30) days after Tenant's receipt of a written notice from Landlord that Rent is past due (hereinafter referred to as a "Monetary Event of Default");

(b) Failure of Tenant to observe or perform or otherwise comply with the terms and conditions set forth in Sections [redacted],

[redacted], which has caused, or with the passage of time would cause or result in, a material adverse effect on the Premises or Landlord's rights and liabilities under the Lease (hereinafter referred to as a "Material Event of Default") and the continuance of such failure for a period of sixty (60) 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 sixty (60) day period, in which case no default shall be deemed to exist so long as Tenant shall have commenced curing the same within such sixty (60) day period and shall diligently, expeditiously and continuously prosecute the same to completion no later than one hundred twenty (120) days from Tenant's receipt of such written notice).

(c) Failure of Tenant to observe or perform any other one or more of the other terms, conditions, covenants or agreements of this Lease, not otherwise specified in Section 26.01(b) above, and the continuance of such failure for a period of sixty (60) 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 sixty (60) day period, in which case no default shall be deemed to exist so long as Tenant shall have commenced curing the same within such sixty (60) day period and shall diligently and continuously prosecute the same to completion);

(d) (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;

(e) 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;

(f) if a levy under execution or attachment shall be made against Tenant or its or their 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;

(g) 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; or

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

(i) if this Lease or the estate of Tenant hereunder shall be transferred to or assigned to or subleased to or shall pass to or devolve upon, any person or party, except in a

manner herein permitted.

Section 26.02 If a Monetary Event of Default and/or Material Event of Default shall occur and continue beyond the applicable notice and cure period, Landlord, at any time thereafter, may at its option give written notice to Tenant stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, and upon the date specified in such notice, this Lease and the Term hereby demised and all rights of the Tenant under this Lease shall expire and terminate as if that date were the date herein definitely fixed for the termination of the Term of this Lease, and Tenant shall quit and surrender the Premises, but Tenant shall remain liable as hereinafter provided. The breach by Tenant of any provision hereof which is not a Monetary Event of Default or Material Event of Default is a "Non-Monetary Event of Default". A Non-Monetary Event of Default may only result in a cause of action by Landlord under applicable law or otherwise permitted under the Lease and Landlord hereby waives all other rights it may have, in law or in equity, to terminate this Lease prior to the expiration of the term of the Lease due to a Non-Monetary Event of Default.

Section 26.03 If any Monetary Event of Default and/or Material Event of Default shall occur, Landlord may without notice re-enter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor, and Tenant shall nevertheless remain liable as hereinafter provided for the remainder of the term hereof. 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 hereof or for a longer period, in Landlord's name 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. 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 he paid by Tenant on the rent days herein specified.

Section 26.04 The Rental payable hereunder and each and every installment thereof, and all costs, reasonable attorneys' fees and other expenses which may be incurred by Landlord in enforcing the provisions of this Lease or on account of any delinquency of Tenant in carrying out the provisions of this Lease, shall be and they 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 hereof would have expired by limitation had there been no such default by Tenant or termination.

Section 26.06 Nothing in this Article contained 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 of this Lease 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 the service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for the possession of the 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 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, and 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, proceeding or counterclaim brought by either of the parties hereto 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 said 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 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 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, 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 thirty (30) 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 a default or breach by Tenant hereunder, 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) all Rental that is past due. 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 or the Land, 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 c/o National Grid, [redacted], with a copy to National Grid, [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 Express Mail or nationally recognized overnight delivery service to the addresses as aforesaid.

## ARTICLE 28
## CONDEMNATION

Section 28.01 (a) If at any time during the Term of this Lease, all or part 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 and the Premises shall be surrendered to Landlord in accordance with the requirements of Article 32 below.

(b) If all or substantially all of the Premises shall be taken or condemned as provided in this Article, Tenant will be permitted to file a claim for the value of the Improvements.

Section 28.02 In the event of taking of all or part of the Premises, the entire award (or settlement in lieu thereof) shall be payable to Landlord, except as otherwise provided herein.

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 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.

Section 28.05 In any and all proceedings pursuant to which the Premises or any part thereof, or the temporary use of the whole or any part thereof, shall be so taken or condemned, Landlord and Tenant agree to execute any and all documents that may be required to facilitate collection of the award in such proceeding.

## 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 but not more often than twice in any given calendar year) upon not less than thirty (30) days' prior notice by Landlord to execute, acknowledge and deliver to Landlord or to a designee of Landlord a statement in writing certifying 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 party 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 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.

## 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 the 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 and 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 its consent or approval or where as a matter of law Landlord may not unreasonably withhold 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 remove all of the Improvements (including the BESS) to a depth of five (5) feet below the surface of the ground and surrender and deliver up to Landlord, the Land, in the same vacant condition as of the Lease Commencement Date, free and clear of all lettings, occupancies and environmental contamination, 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 Title to the Premises 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 Land, 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 that may be imposed as a result of Tenant's delivery of said instrument. For the avoidance of any doubt, the Tenant shall be required to surrender the Land to the Landlord with all of the Improvements removed therefrom.

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. 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 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 Tenant agrees to remove and safely and legally dispose of, at its sole expense, all Improvements (including the BESS) that were constructed and installed by Tenant on the Land 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. The asphalt roadbed constructed on and forming a part of Common Area I shall not be removed.

Section 32.06 If the Improvements are not fully removed by Tenant and the Premises otherwise surrendered to Landlord at the end of the Term in the condition required hereunder, the Lease shall be extended on a month-to-month basis to allow Tenant to comply with the requirements of this Article 32. In such an instance, Tenant shall remit a per diem occupancy payment to Landlord until the date the Premises are delivered to the Landlord in the condition called for hereunder as follows:

| | Period | Per Diem Payment |
|---|---|---|
| (i) | First, Second and Third Months | [redacted] |
| (ii) | Fourth, Fifth and Sixth Months | [redacted] |
| (iii) | Seventh Month and all times thereafter | [redacted] |

## 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 Land and there are no promises, agreements, conditions, understandings, inducements, warranties or

representations, oral or written, expressed or implied, between them other than as herein set forth.

## 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 Land for the term hereby granted without molestation or disturbance by or from Landlord and free of any encumbrance created or suffered by Landlord, except those to which this Lease is subject and subordinate.

## 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. 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. Tenant agrees to take leasehold title to the Premises subject to any terms, conditions, or limitation imposed by the PSC Approval.

## ARTICLE 37
[redacted]

Section 37.02 [redacted]

Section 37.03 [redacted]

ARTICLE 38
[RESERVED]

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 (and subject to Article 44 and the Environmental Requirements), in accordance with the succeeding Sections of this Article and the construction of the BESS and other Improvements which Tenant then intends to make to the Premises, as well as the construction of an asphalt roadbed on Common Area I, as shown on the attached Schedule B, pursuant to all DEC (as applicable) and PSC approvals and requirements, including SEQR (hereinafter referred to as the "Initial Construction").

Section 39.02 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 (including the SEQR). 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, within thirty (30) days after a written demand and as Additional Rent hereunder, a reasonable fee and Landlord's 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 licensed professionals of its choice, at the sole cost and expense of Landlord, 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. Notwithstanding the foregoing, Landlord agrees to consent to the Initial Construction, provided GENCO, as a joint venture of Tenant, has approved the Plans and Specifications. Thereafter, Tenant may not materially change the Plans and Specifications without the prior written notice to Landlord;

Section 39.03 (a) Tenant shall not undertake construction of the Initial Construction until Tenant delivers to Landlord certificates of insurance satisfying the requirements set forth in Article 6, for the following:

(i) Commercial general liability insurance, automobile liability

insurance, excess/umbrella liability insurance and contractors pollution liability insurance in an amount not less than the amounts set forth in Section 6.01 hereof for bodily injury and property damage;

(ii) Worker's compensation, employers liability 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;

(iii) Tenant shall remain liable for damage to property adjacent to the Land and the Common Areas, as a result of the Initial Construction, including without limitation, any excavation of the Land and/or Common Areas and the construction of the foundation for the Initial Construction and Tenant shall be responsible for any loss or damage to equipment and materials due to theft, burglary or any other causes for equipment or materials stored on-site or off-site during the Initial Construction, unless solely and directly caused by the willful misconduct or gross negligence of Landlord.

(iv) Such other insurance in such amounts as may from time to time be reasonably required by a Governmental Authority 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 Common Area I 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 39.03 may, if available, be affected by appropriate endorsement to the insurance policies to be maintained by Tenant pursuant to Section 6.01 hereof.

Section 39.04 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 and Common Area I 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 licensed professional 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 and Common Area I showing the Initial Construction as built thereon certified to Landlord by a surveyor reasonably acceptable to Landlord; and (v) evidence reasonably satisfactory, to Landlord of proof of payment in full for 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 39.05 Title to the Improvements erected by Tenant on the Land shall be vested solely and exclusively in Tenant until the termination of this Lease, whereupon title shall vest in Landlord. Title to Common Area I (including the asphalt roadbed located on Common Area I) shall at all times remain solely and exclusively vested in Landlord.

Section 39.06 Landlord's retention or approval of the Plans 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, Tenant shall have the right by written notice (the "Renewal Notice") given to Landlord not later than eighteen (18) months prior to the initial Expiration Date to elect to extend the term of this Lease, up to an additional twenty (20) year period (the "Renewal Option Period") commencing on the day following the initial Expiration Date. In such event, the last day of the Renewal Option Period shall be the Expiration Date.

Section 40.02 For the avoidance of any doubt, in the event Tenant timely and lawfully exercises the Renewal Option Period, the Term of the Lease shall not exceed (i) forty (40) years from the Rent Commencement Date or (ii) forty eight (48) years from the Lease Commencement Date.

Section 40.03 During the Renewal Option Period, 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.

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

Section 40.05 Time shall be of the essence in Tenant's giving each of the Renewal Notice 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.

## 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 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. All such work shall be done in consultation with Tenant, or

(b) shall do or cause to be done all such work, at Landlord'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 fifteen (15) days' written notice to Landlord of any proposed excavation or intrusive work. Such notice shall include construction plans, reports that are required or otherwise imposed by DEC and SEQR, 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 thirty (30) 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 consider all of Landlord's reasonable comments to the EWP in good faith and incorporate any such comment in the EWP in its reasonable discretion.

(c) Prepare a Health and Safety Plan ("HASP") fulfilling all regulatory requirements and guidance. Tenant shall meet all applicable requirements to the SEQR including the EWP. The HASP shall be submitted to Landlord thirty (30) 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 consider all of Landlord's reasonable comments to the HASP in good faith and incorporate any such comment in the HASP in its reasonable discretion.

(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 having jurisdiction over the Premises.

Section 44.03 Tenant covenants and agrees that, during the Term of this Lease, 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 construction of the Initial Improvements); or

(c) cause or exacerbate any occurrence or condition on the Premises that is or may be in violation of Hazardous Materials 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, 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, permit or exacerbate any Prohibited Activities or Conditions.

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 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 that could cause any restrictions on the ownership, occupancy, transferability or use of the Premises under Hazardous Materials Law and 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 Hazardous Materials Law ("Governmental Actions"); (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, within thirty (30) days after demand, the costs of any environmental audits, studies or investigations (including but not limited to advice of legal counsel), any required 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 out of Tenant's acts or failures to act, 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 required DEC oversight, whether incurred in connection with judicial or administrative process or otherwise which are due as provided above in this Section 44.08 and which Tenant fails to pay within thirty (30) days after receipt of a written invoice

shall become immediately due and payable and 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/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 occupation and use of the 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, 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 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 the 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 45.07 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 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 except the 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 Lease 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.

## 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, join in a written instrument effecting such merger and duly record such instrument.

[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

By: _____
James P. Flannery
Vice President
Power Plant Operations

EAST HAMPTON ENERGY STORAGE CENTER, LLC

By: _____
Gregory Schneck
Vice President

SCHEDULE A

LAND

Description of
Land Lease Area over Lands of National Grid
East Hampton Generating Station
Suffolk County Tax Map District: 300 Section: 185 Block: 2 Lot: 2
Situated in
East Hampton, County of Suffolk, State of New York

Land Lease Description

Beginning at the northwesterly corner of the area described herein, said point being distant southwesterly the following courses from a railroad monument at the intersection of the southerly line of the Long Island Railroad right-of-way with the westerly side of Cove Hollow Road:

Thence, along the westerly side of Cove Hollow Road, South 36° 02' 55" West a distance of 61.43 feet to a point;

Running thence in a westerly direction the following eight (8) courses:

1. South 72° 03' 08" West a distance of 52.62 feet to a point;
2. South 73° 28' 08" West a distance of 57.79 feet to a point;
3. South 75° 46' 16" West a distance of 61.02 feet to a point;
4. South 78° 11' 43" West a distance of 46.25 feet to a point;
5. South 75° 46' 54" West a distance of 213.20 feet to a point;
6. South 75° 21' 54" West a distance of 325.00 feet to a point;
7. South 78° 35' 53" West a distance of 94.13 feet to a point;
8. South 76° 33' 38" West a distance of 157.14 feet to a point;

Thence, in a southerly direction, South 13° 39' 19" East a distance of 131.82 feet to a point;

Thence, in a westerly direction, South 75° 47' 55" West a distance of 45.55 feet to the point of beginning and the northwesterly corner of the area described herein;

Thence, in an easterly direction, North 75° 47' 55" East a distance of 165.00 feet to a point;

Thence, in a southerly direction, South 14° 12' 05" East a distance of 163.59 feet to a point;

Thence in a westerly direction, South 75° 47' 55" West a distance of 165.00 feet to a point;

Thence in a northerly direction, North 14° 12' 05" West a distance of 163.59 feet to the point or place of beginning.

Containing within said bounds 26,993 Sq. Ft. &/or 0.61967 Acres more or less.

SCHEDULE B

COMMON AREAS

Description of
Common Area I over Lands of
National Grid East Hampton
Generating Station
Suffolk County Tax Map District: 300 Section: 185
Block: 2 Lot: 2 Situated in
East Hampton, County of Suffolk, State of New York

Common Area I Description

Beginning at the northeasterly corner of the area described herein, said point being distant southwesterly the following courses from a railroad monument at the intersection of the southerly line of the Long Island Railroad right-of-way with the westerly side of Cove Hollow Road:

Thence, along the westerly side of Cove Hollow Road, South 36° 02' 55" West a distance of 36.99 feet to a point;

Running thence in a westerly direction the following five (5) courses:

1. South 72° 10' 46" West a distance of 72.03 feet to a point;
2. South 75° 45' 14" West a distance of 163.82 feet to a point;
3. South 75° 07' 49" West a distance of 213.62 feet to a point;
4. South 76° 04' 44" West a distance of 325.70 feet to a point;
5. South 81° 45' 14" West a distance of 93.74 feet to the point of beginning and the northeasterly corner of the area described herein;

Thence, in a southerly direction, South 13° 35' 51" East a distance of 21.59 feet to a point;

Thence, in a westerly direction, South 76° 33' 38" West a distance of 157.14 feet to a point;

Thence in a southerly direction, South 13° 39' 19" East a distance of 131.82 feet to a point;

Thence in a westerly direction, South 75° 47' 55" West a distance of 45.55 feet to a point;

Running thence in a northerly direction the following four (4) courses:

1. North 16° 19' 20" West a distance of 46.98 feet to a point;
2. North 13° 49' 30" West a distance of 21.55 feet to a point;
3. North 14° 51' 29" East a distance of 15.43 feet to a point;

4. North 03° 57' 25" West a distance of 23.93 feet to a non-tangent point of curvature;

Thence along the arc of a curve to the right, with a radius of 45.00 feet, a delta angle of 90° 00' 00", a chord bearing of North 30° 34' 05" East, a chord length of 63.64 feet and an arc length of 70.69 feet to a point of tangency;

Thence in an easterly direction North 75° 34' 05" East a distance of 149.20 feet to the point or place of beginning.

Containing within said bounds 9,118 Sq. Ft. &/or 0.20932 Acres more or less.

SCHEDULE B, Cont'd

Description of
Common Area II over Lands of National Grid
East Hampton Generating Station
Suffolk County Tax Map District: 300 Section: 185 Block: 2 Lot: 2
Situated in
East Hampton, County of Suffolk, State of New York

Common Area II Description

Beginning at the northeasterly corner of the area described herein, said point being distant 36.99 feet southwesterly from a railroad monument at the intersection of the southerly line of the Long Island Railroad right-of-way with the westerly side of Cove Hollow Road;

Thence, along the westerly side of Cove Hollow Road, South 36° 02' 55" West a distance of 24.44 feet to a point;

Running thence in a westerly direction the following seven (7) courses:

1. South 72° 03' 08" West a distance of 52.62 feet to a point;
2. South 73° 28' 08" West a distance of 57.79 feet to a point;
3. South 75° 46' 16" West a distance of 61.02 feet to a point;
4. South 78° 11' 43" West a distance of 46.25 feet to a point;
5. South 75° 46' 54" West a distance of 213.20 feet to a point;
6. South 75° 21' 54" West a distance of 325.00 feet to a point;
7. South 78° 35' 53" West a distance of 94.13 feet to a point;

Thence, in a northerly direction, North 13° 35' 51" West a distance of 21.59 feet to a point;

Running thence in an easterly direction the following five (5) courses:

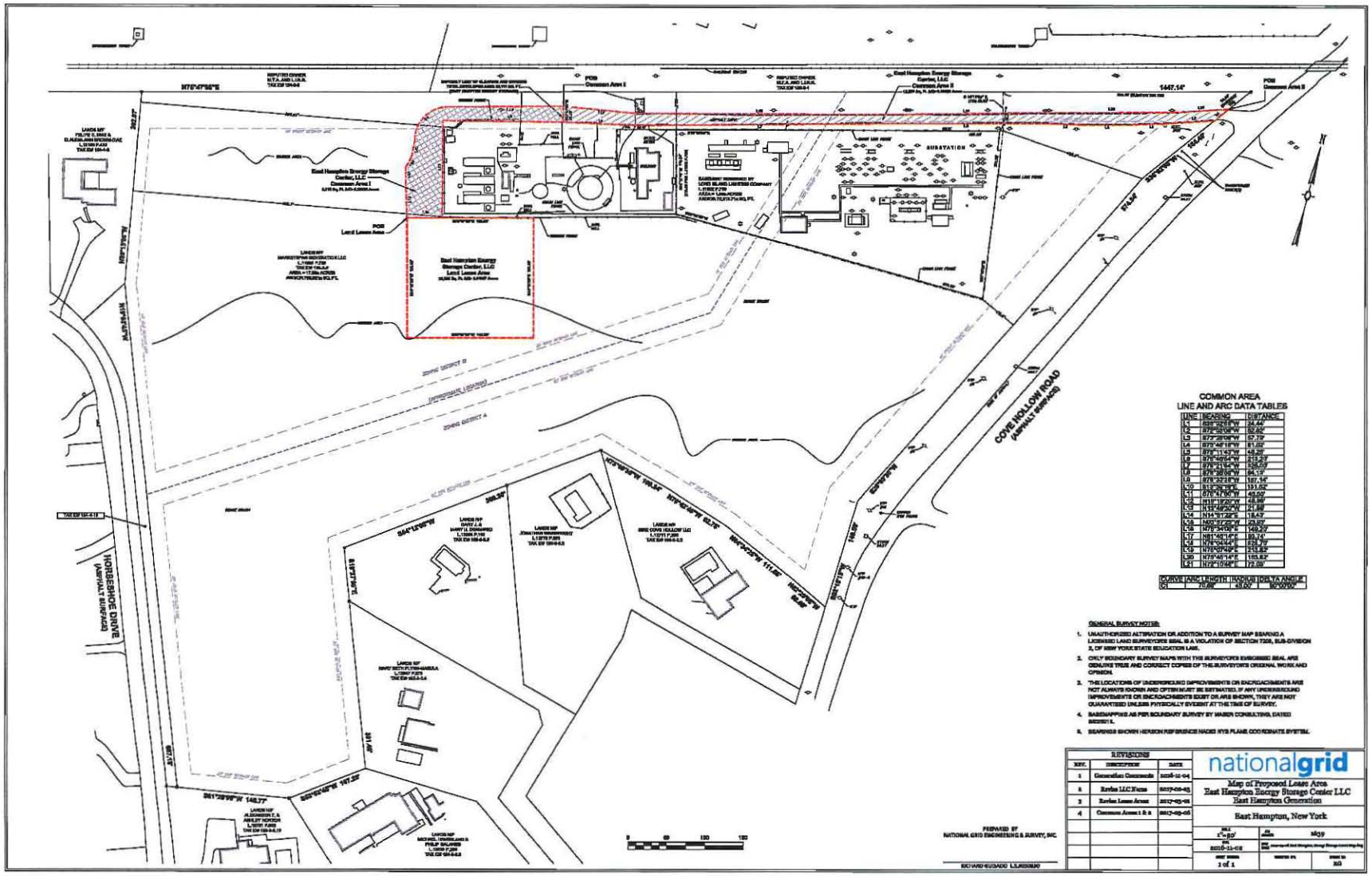
1. North 81° 45' 14" East a distance of 93.74 feet to a point;
2. North 76° 04' 44" East a distance of 325.70 feet to a point;
3. North 75° 07' 49" East a distance of 213.62 feet to a point;
4. North 75° 45' 14" East a distance of 163.82 feet to a point;
5. North 72° 10' 46" East a distance of 72.03 feet to the point or place of beginning.

Containing within said bounds 12,936 Sq. Ft. &/or 0.29696 Acres more or less.

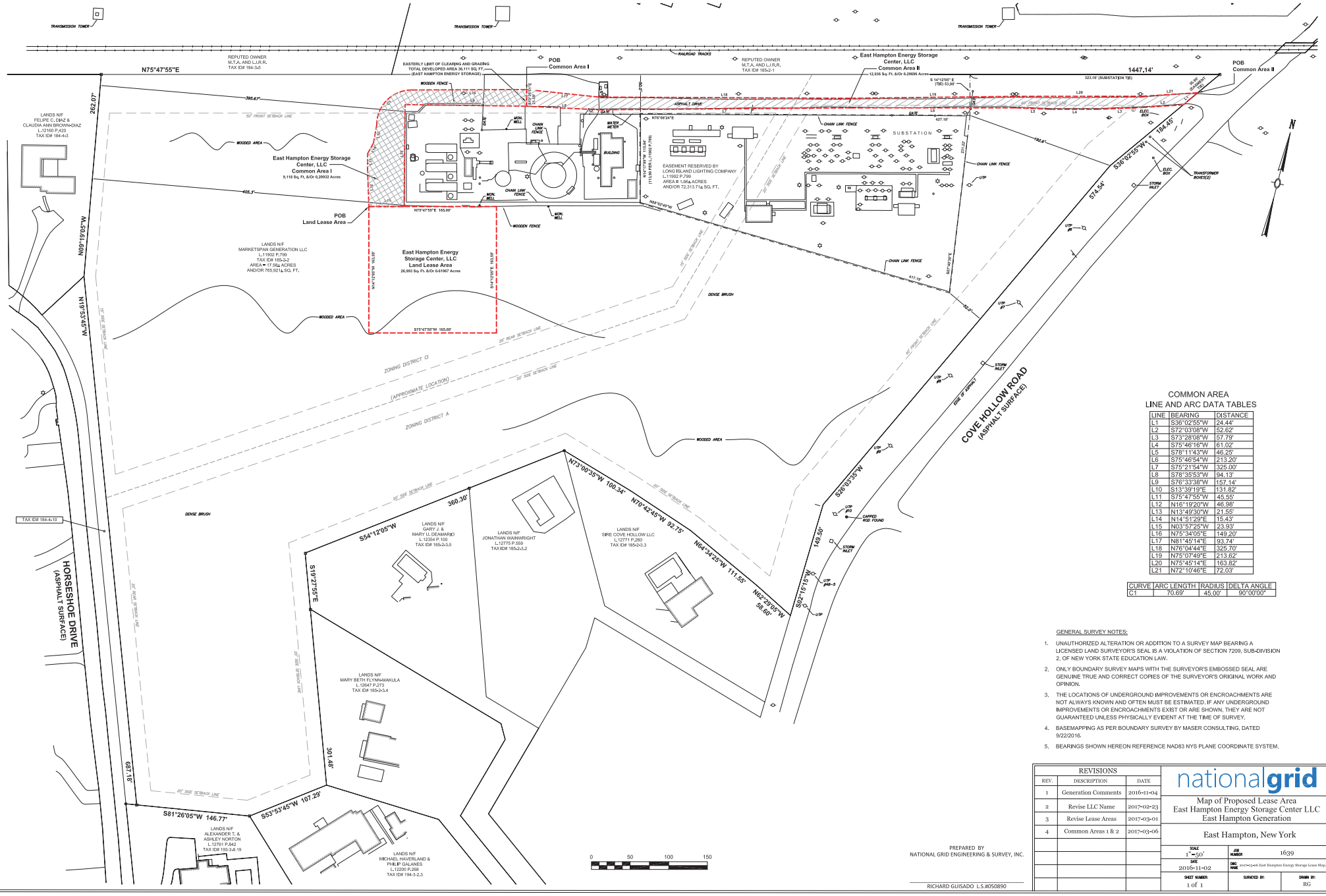
Bearings described herein are derivative of NAD 83 NYS Plane Coordinate System, Long Island Zone.

# EXHIBIT A

## SITE PLAN



# Exhibit 2




## COMMON AREA
## LINE AND ARC DATA TABLES

| LINE | BEARING | DISTANCE |
|---|---|---|
| L1 | S36°02'55"W | 24.44' |
| L2 | S72°03'08"W | 52.62' |
| L3 | S73°28'08"W | 57.79' |
| L4 | S75°46'16"W | 61.02' |
| L5 | S78°11'43"W | 46.25' |
| L6 | S75°46'54"W | 213.20' |
| L7 | S75°21'54"W | 325.00' |
| L8 | S78°35'53"W | 94.13' |
| L9 | S76°33'38"W | 157.14' |
| L10 | S13°39'19"E | 131.82' |
| L11 | S75°47'55"W | 45.55' |
| L12 | N16°19'20"W | 46.98' |
| L13 | N13°49'30"W | 21.55' |
| L14 | N14°51'29"E | 15.43' |
| L15 | N03°57'25"W | 23.93' |
| L16 | N75°34'05"E | 149.20' |
| L17 | N81°45'14"E | 93.74' |
| L18 | N76°04'44"E | 325.70' |
| L19 | N75°07'49"E | 213.62' |
| L20 | N75°45'14"E | 163.82' |
| L21 | N72°10'46"E | 72.03' |

| CURVE | ARC LENGTH | RADIUS | DELTA ANGLE |
|---|---|---|---|
| C1 | 70.69' | 45.00' | 90°00'00" |

GENERAL SURVEY NOTES:

1. UNAUTHORIZED ALTERATION OR ADDITION TO A SURVEY MAP BEARING A LICENSED LAND SURVEYOR'S SEAL IS A VIOLATION OF SECTION 7209, SUB-DIVISION 2, OF NEW YORK STATE EDUCATION LAW.
2. ONLY BOUNDARY SURVEY MAPS WITH THE SURVEYOR'S EMBOSSED SEAL ARE GENUINE TRUE AND CORRECT COPIES OF THE SURVEYOR'S ORIGINAL WORK AND OPINION.
3. THE LOCATIONS OF UNDERGROUND IMPROVEMENTS OR ENCROACHMENTS ARE NOT ALWAYS KNOWN AND OFTEN MUST BE ESTIMATED. IF ANY UNDERGROUND IMPROVEMENTS OR ENCROACHMENTS EXIST OR ARE SHOWN, THEY ARE NOT GUARANTEED UNLESS PHYSICALLY EVIDENT AT THE TIME OF SURVEY.
4. BASEMAPPING AS PER BOUNDARY SURVEY BY MASER CONSULTING, DATED 9/22/2016.
5. BEARINGS SHOWN HEREON REFERENCE NAD83 NYS PLANE COORDINATE SYSTEM.

PREPARED BY
NATIONAL GRID ENGINEERING & SURVEY, INC.

RICHARD GUISADO L.S.#050890

| REVISIONS | | |
|---|---|---|
| REV. | DESCRIPTION | DATE |
| 1 | Generation Comments | 2016-11-04 |
| 2 | Revise LLC Name | 2017-02-23 |
| 3 | Revise Lease Areas | 2017-03-01 |
| 4 | Common Areas 1 & 2 | 2017-03-06 |

nationalgrid

Map of Proposed Lease Area
East Hampton Energy Storage Center LLC
East Hampton Generation

East Hampton, New York

| SCALE | JOB NUMBER |
|---|---|
| 1" = 50' | 1639 |
| DATE: 2016-11-02 | DWG NAME: 2017-03-06 East Hampton Energy Storage Lease Map.dwg |
| SHEET NUMBER: 1 of 1 | SURVEYED BY: |
| | DRAWN BY: RG |