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November 17, 2010

VIA E-MAIL

Hon. Jaclyn A. Brilling  
Secretary to the Commission  
State of New York Public Service  
Commission  
Empire State Plaza  
Agency Building Three  
Albany, New York 12223-1350

Re: **Case 10-S-0060 - In the Matter of Parkchester South Condominium, Inc.'s ("PETITIONER") Petition for a Ruling that PETITIONER is not Subject to Commission Regulation as a "Steam Corporation" with respect to its Operation of a Steam Plant and Delivery of Steam or, Alternatively, in the Event the Commission Determines that Petitioner is a Steam Corporation, for a Certificate that Authorizes PETITIONER to operate a Steam Plant and Deliver Steam to Other Adjacent Parties that, in connection with any such Certificate, for a Ruling that PETITIONER'S Provision of such Steam Service Shall be Subject to Lightened Regulation - MOTION FOR EXPEDITED PROCEEDING**

Dear Secretary Brilling:

Pursuant to permission granted by the State of New York Public Service Commission ("Commission") in its Declaratory Ruling Issued on Jurisdiction and Regulation and Order Establishing Further Proceedings in the above-captioned matter, issued and effective October 19, 2010, on behalf of Petitioner, Parkchester South Condominium, Inc. ("Petitioner"), attached hereto please find Petitioner's Motion for an Expedited Proceeding for issuance of a Certificate of Public Convenience and Necessity pursuant to 16 NYCRR §21.10.


Hon. Jaclyn A. Brillling  
November 17, 2010  
Page 2

Duane Morris

Pursuant to conversation with your office and due to the size of this document, the document is being provided in electronic form only at this time but we would be pleased to provide printed copies if the Commission prefers.

If you require any additional information regarding the attached, please do not hesitate to contact me.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Peter Funk". The signature is written in dark ink and is positioned above the printed name.

Peter V. K. Funk, Jr.

PVKF:ag  
Attachment

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

In the Matter of Parkchester South Condominium, Inc.'s ("PETITIONER")  
Petition for a Ruling that PETITIONER is not  
Subject to Commission Regulation as a "Steam  
Corporation" with respect to its Operation of a  
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Ruling that PETITIONER'S Provision of such  
Steam Service Shall Be Subject to Lightened  
Regulation.

Case 10-S-0060

**MOTION FOR EXPEDITED  
PROCEEDING**

**I. INTRODUCTORY STATEMENT**

In a petition filed on February 4, 2010, attached hereto as Exhibit A (the  
"Petition"), Parkchester South Condominium, Inc. ("Parkchester South") requested that it be  
determined by the State of New York Public Service Commission (the "Commission") that  
Parkchester South is not a steam corporation as defined in the Public Service Law ("PSL")  
§2(22) or, alternatively, that it be determined that Parkchester South is eligible for both the  
incidental regulation provided for in PSL §80(11) and the lightened regulation provided for in  
Commission precedents. Parkchester South also sought to obtain a Certificate of Public  
Convenience and Necessity ("CPCN") pursuant to PSL §81.

In a Declaratory Ruling Issued on Jurisdiction and Regulation and Order Establishing Further Proceedings issued and effective October 19, 2010, attached hereto as Exhibit B, (“Declaratory Ruling”), the Commission determined that Parkchester South was subject to Public Service Law jurisdiction and that Parkchester South is eligible for both incidental and lightened regulation of its steam operations. The Commission also determined that Parkchester South would need to obtain a CPCN prior to the commencement of lightened and incidental regulation and allowed Parkchester the opportunity to avail itself of the expedited hearing process set forth at 16 NYCRR §21.10 in the event it makes a motion within sixty (60) days from the date of the Declaratory Ruling. In accordance therewith, by this Motion for Expedited Proceeding (“Motion”), Parkchester South requests that the Commission expedite approval of its request in the Petition attached hereto for a CPCN based on the Petition and its accompanying Exhibits and any other information submitted by any party or by the Staff of the New York State Department of Public Service, but without oral testimony, as permitted by 16 NYCRR §21.10(a)(1).

## **II. THE PETITION QUALIFIES FOR EXPEDITED TREATMENT PURSUANT TO THE COMMISSION’S REGULATIONS**

The Petition qualifies for expedited treatment by the Commission. According to 16 NYCRR §21.10(a)(2), a Motion for Expedited Proceedings must be made any time before the Commission acts on a Petition and served, with a copy of the public notice required by 16 NYCRR §21.10(a)(3), on each person or municipality, if any, entitled to service. A notice of the Motion must be published, within fourteen days of the filing of the Motion, in a newspaper of general circulation.

Parkchester South is submitting its Motion prior to the Commission acting on its Petition for a CPCN and pursuant to specific permission to submit this Motion granted to

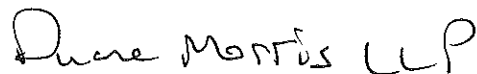
Parkchester South by the Commission in the Declaratory Ruling. No individual or municipality is entitled to receipt of service copies of this Motion. Attached hereto as Exhibit C is a copy of the Notice of the Motion ("Notice") that Parkchester South intends to publish in a newspaper of general circulation in the Borough of the Bronx in the City of New York as required by 16 NYCRR §21.10(a)(3). In accordance with that section, the Notice will be published within fourteen (14) days of filing of this Motion and Parkchester South will provide proof of publication to the Commission after the Notice publication occurs.

### III. CONCLUSION

Parkchester South has satisfied all necessary regulatory requirements to request an expedited proceeding and, therefore, requests that the Commission resolve the Petition for issuance of a CPCN through an expedited proceeding.

Dated: November 17, 2010

Respectfully submitted,



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*Of Counsel:*

Peter V.K. Funk, Jr., Esq.  
Phyllis J. Kessler, Esq.

## EXHIBIT A

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of Parkchester South Condominium, Inc.'s ("PETITIONER")  
Petition for a Ruling that PETITIONER is not Subject to Commission Regulation as a "Steam Corporation" with respect to its Operation of a Steam Plant and Delivery of Steam or, Alternatively, in the Event the Commission Determines that Petitioner is a Steam Corporation, for a Certificate that Authorizes PETITIONER to operate a Steam Plant and Deliver Steam to Other Adjacent Parties that, in connection with any such Certificate, for a Ruling that PETITIONER'S Provision of such Steam Service Shall Be Subject to Lightened Regulation.

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Case \_\_\_\_\_

Submitted On Behalf of Petitioner Parkchester South Condominium, Inc. By:

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Attorneys for Petitioner  
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Telephone: (212) 692-1075  
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*Of Counsel:*

Peter V.K. Funk, Jr., Esq.  
Phyllis J. Kessler, Esq.

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STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

In the Matter of Parkchester South Condominium, Inc.'s ("PETITIONER")  
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Ruling that PETITIONER'S Provision of such  
Steam Service Shall Be Subject to Lightened  
Regulation.

Case \_\_\_\_\_

**I. INTRODUCTORY STATEMENT**

Parkchester South Condominium, Inc. ("Parkchester South") and its steam customers, the Parkchester North Condominium ("Parkchester North") and the Parkchester Preservation Company ("PPC"), are located within the Parkchester housing development ("Development"). The Development was originally constructed in 1940 as a large housing development designed and operated as a single self-contained rental community of multi-family residential apartment buildings and related facilities located in the Bronx in New York City. The Development includes a district steam plant ("Steam Plant"). The Steam Plant is sized and staffed to provide steam services ("Steam Services") to the entire Development on a cost-effective basis.

In 1972, approximately one-third of the Development (Parkchester North) was converted to condominium ownership. Parkchester South was converted to condominium



ownership during 1986. Parkchester South and Parkchester North each act as agents for the owners of residential condominium units within their respective Development premises and the PPC owns and operates commercial parking garages and administrative premises situated within the Development.

As shown on the Parkchester Site Map, annexed hereto as Exhibit 3, the premises of Parkchester South are further divided into two sites and those of Parkchester North consist of a single site. The portion of the Parkchester South premises containing the Steam Plant is located on the northern perimeter of the Development proximate the premises of Parkchester North as described in more detail below. The PPC premises containing the administrative offices for the entire Development and the parking garages are located contiguously to the premises of Parkchester South that contain the Steam Plant. The other portion of the premises of Parkchester South within the Development containing residential buildings is located to the immediate south of Parkchester North's premises, as shown on the Parkchester Site Map.

The Steam Plant has provided Steam Services to the entire Development from the construction of the Development to the present. Parkchester North receives the Steam Services in its steam control rooms and thereafter distributes steam to its residents through its own internal steam pipes. Since 1972, Parkchester South's predecessor in interest and thereafter Parkchester South have provided Steam Service to Parkchester North and the administrative offices and commercial garages, now owned and operated by the PPC, pursuant to successive contracts. Parkchester South and Parkchester North have most recently entered into a Steam Cost Sharing Agreement annexed hereto as Exhibit 2 ("Steam Cost Sharing Agreement") wherein each party bears agreed-upon shares of costs and expenses relating to the Steam Services.

Pursuant to Section 21 of the Commission's Rules of Procedure, as may be applicable, as set forth in Title 16 of the New York Codes, Rules and Regulations ("NYCRR"), Petitioner, by its attorneys, hereby petitions the Commission for a ruling that, in light of the long history and physical characteristics of the Steam Plant and its operation and maintenance by Petitioner for the manufacture of steam and the providing of Steam Services to Parkchester North, such services do not constitute "steam corporation" services, as provided for in Section 2(22) of the New York Public Service Law ("PSL"). Alternatively, in the event that the Commission determines that Petitioner's provision of Steam Services constitutes "steam corporation" services as described in Section 2(22) of the PSL, Petitioner hereby respectfully petitions the Commission to issue an order granting a certificate of authority or other authorization for Petitioner to provide Steam Services to Parkchester North and further requests, pursuant to Section 80(11) of the PSL as well as Sections 8 and 58 of 16 NYCRR, a Commission order providing for lightened regulation of Petitioner's provision of Steam Services to Parkchester North.

In support of this Petition, Petitioner submits the following documents: (i) a copy of its Certificate of Incorporation (annexed hereto as Exhibit 1); (ii) a copy of the Steam Cost Sharing Agreement ("Steam Cost Sharing Agreement") together with an amendment thereto is annexed hereto as Exhibit 2; (iii) Utility Map No. 1, a detailed site map drawing showing the entire Development ("Parkchester Site Map") is annexed hereto as Exhibit 3; (iv) an extract of the Amended Parkchester Apts. Offering Plan regarding Parkchester North and the Steam Plant is annexed hereto as Exhibit 4; (v) Parkchester South's Air Permit is annexed hereto as Exhibit 5; and (vi) a Short Form Environmental Assessment Form is annexed hereto as Exhibit 6.

## **II. BACKGROUND INFORMATION**

Petitioner, Parkchester South Condominium, Inc., is a New York State not-for-profit corporation that acts as agent for the owners of condominium units ("Parkchester South Unit Owners"). It has a principal address of 2000 East Tremont Avenue, Bronx, New York 10462. Petitioner's primary function is to operate the residential condominium buildings and the surrounding common areas constituting Parkchester South. Its operation of the Steam Plant is subsumed within its primary function.

The Development originally consisted of 171 rental apartment buildings on 129 acres. It was built in 1938-40 and owned and operated by the Metropolitan Life Insurance Company ("Metropolitan Life").

The Steam Plant, as constructed, included boilers, fuel storage tanks, steam delivery pipes and various other items of plant and equipment to provide Steam Service to the entire Development.<sup>1</sup> The Steam Plant was designed and sized to efficiently provide Steam Services to the entire Development and the operation of the Steam Plant is ancillary to the main purpose of operating residential apartment buildings and grounds. The Development received other utility gas and electric service from Consolidated Edison Company of New York, Inc.

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<sup>1</sup> The Steam Plant, located at 2020 East Tremont Avenue, consists of a brick building measuring 150 feet by 45 feet and is four stories high. It contains four Foster-Wheeler boilers with dual fuel capacity (#6 oil and natural gas). Natural gas comes into the Steam Plant from the Consolidated Edison line on East Tremont Avenue. Fuel oil (#6) is delivered by truck to four large underground storage tanks (each with a capacity of 60,000 gallons, relined during 2005), then through pipes to the burners. There is a de-aerator to eliminate air from the return condensate. Various pumps deliver treated water to the boilers. Other pumps deliver fuel oil to the boilers. There are three air compressors and four large fans (two powered by electricity and two by steam) to provide air for combustion to the system and remove the exhaust. A 290-foot high stack at the rear of the Steam Plant building exhausts the various gaseous emissions. Steam meters on the four boilers and the auxiliary steam meter measure the net production of steam. As steam is generated, it is sent out through three large underground pipes in tunnels to the Parkchester North and Parkchester South heat control rooms and then to the several buildings in each cluster and also to the parking garages and administrative premises of the PPC.

("Consolidated Edison") but Consolidated Edison did not then, and does not now, provide steam services in the Bronx since Consolidated Edison does not have steam distribution facilities in the vicinity of the Development.<sup>2</sup>

Metropolitan Life sold the entire Development to Parkchester Apts. Co.

("Parkchester Apts."), a division of Helmsley Enterprises, in 1968. During 1972, Parkchester Apts. separated the North Quadrant of Parkchester (16 buildings) and offered the apartments therein for sale as condominiums, as described in the Amended Parkchester Apts. Offering Plan.<sup>3</sup> Said sixteen buildings on the northern portion of the Parkchester Apts. property became Parkchester North as shown on the Parkchester Site Map annexed hereto as Exhibit 3.

Parkchester North is an unincorporated association that operates the buildings and is agent for the unit owners of Parkchester North ("Parkchester North Unit Owners"). Parkchester South and Parkchester North share several other common facilities in addition to receiving Steam Services from a common source. In that regard, Parkchester North has a principal business address of 1970 East Tremont Avenue, Bronx, New York 10462.

Following the time that Parkchester North became a separate legal entity, Parkchester Apts. continued to operate the Steam Plant to serve the entire Development since the Steam Plant had been constructed and was staffed for that purpose and thereby could provide Steam Services to the entire Development with economies of scale.

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<sup>2</sup> Reference to Consolidated Edison PSC No. 3 General Information, I. Territory to which the Rate Schedule Applies: The Borough of Manhattan, City of New York Steam Tariff.

<sup>3</sup> See the cover page and pages 39-40 from Amended Parkchester Apts. Offering Plan to Convert the North Quadrant of Parkchester to Condominium Ownership, dated December 14, 1974 annexed hereto as Exhibit 4.

During 1972 Parkchester Apts. also entered into an agreement with Parkchester North<sup>4</sup> for the provision of Steam Service. The price of steam was set to correspond to Consolidated Edison's tariff price for steam to similarly situated customers within Consolidated Edison's steam service territory.

The buildings on the southern portion of the Parkchester Apts. property were converted to condominium ownership during 1986 together with the Steam Plant and are operated by Petitioner. As part of the condominium conversion process, the newly formed Parkchester South (Ppetitioner) took over Parkchester Apts. contract with Parkchester North to supply steam to Parkchester North. Although the apartment buildings were converted to condominium ownership, PPC, as successor since 1998 to Parkchester Apts., continues to own and operate the commercial parking garages and certain administrative premises located at 2000 East Tremont Avenue. Parkchester South also provides Steam Services to PPC for such parking garages and administrative premises.

### **III. STEAM COST SHARING AGREEMENT**

1. Steam Cost Sharing Agreement: In 2006, Petitioner and Parkchester North executed a new agreement, the Steam Cost Sharing Agreement, and in 2007, entered into an amendment thereto (both annexed as Exhibit 2 hereto).

2. Background of Cost and Expense Sharing Approach: Over time Petitioner and Parkchester North observed that indexing the price of Steam Service to Con Edison's steam tariff pursuant to the 1972 Agreement failed to provide a reasonable proxy of the actual cost of the Steam Services provided by Petitioner to Parkchester North. Petitioner and Parkchester North

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<sup>4</sup> Steam Plant Agreement between Parkchester Apts. and PNC, dated as of December 14, 1972 ("1972 Agreement") and assignment of the 1972 Agreement by Parkchester Apts. to Parkchester South on October 8, 1986.

ultimately agreed that a shared cost agreement would be better vehicle for allocating the costs and expenses of Steam Services respectively between Petitioner and Parkchester North, taking into account that Petitioner also provides *de minimis* amounts of Steam Service to the PPC in order to provide heating and hot water for the commercial parking garages and administrative premises. Petitioner and Parkchester North thereafter devoted considerable effort and time to developing and negotiating the Steam Cost Sharing Agreement and the amendment thereto, assisted by consultants and with the advice of attorneys.

3. Sharing of Costs and Expenses and No Profit to Petitioner: As provided for in the Steam Cost Sharing Agreement, Parkchester South is sharing the costs and expenses of providing Steam Services with Parkchester North, including costs for operating and maintaining the Steam Plant and related equipment. There is a detailed methodology set forth in the Steam Cost Sharing Agreement for dividing costs between the parties. Petitioner does not derive a profit from its provision of Steam Service to Parkchester North pursuant to the Steam Cost Sharing Agreement. There are extensive protections built into the agreement so that both sides are protected with respect to cost sharing, and there is a detailed procedure for the parties to follow in the event that a dispute over cost sharing should occur.

4. Delivery of Steam: Steam is delivered by Petitioner from the Steam Plant to Parkchester North's steam control rooms as more particularly described in the Steam Cost Sharing Agreement and shown on the Parkchester Site Map annexed hereto as Exhibit 3. Parkchester North is responsible for delivering steam received in its control rooms directly to the Parkchester North Unit Owners. Petitioner owns, maintains and operates steam piping within the Parkchester North's premises for the purpose of delivering Steam to Parkchester North's control rooms and metering the same. Parkchester South has real property rights in the lands under

which the Steam Services are delivered pursuant to an easement granted by Parkchester North to Parkchester South. Petitioner's provision of Steam Service is limited to Parkchester North, Parkchester South and to the garages and administrative premises of PPC.

5. Reliability and Parity of Steam Service: The Steam Cost Sharing Agreement provides that Petitioner will provide Steam Service to Parkchester North with the same reliability that it provides Steam Service to its own facilities and the Parkchester South Unit Owners including back up steam, if the supplying of back-up Steam is warranted and practicable, and also provides for improvements to the Steam Plant. In that regard, because Parkchester South must continue to provide Steam Services to the Parkchester South Unit Owners, it has a strong incentive to continue to maintain and operate the Steam Plant and related pipes in a safe and reliable manner.

6. Term of Steam Cost Sharing Agreement: The Steam Cost Sharing Agreement provides that Petitioner will supply and Parkchester North will purchase all of Parkchester North's steam requirements at Parkchester South's cost (the Steam Cost Sharing Charge, as such term is defined in the Agreement), for ten (10) years with subsequent five (5) year terms if no termination has occurred.

7. Redistribution: After receipt at Parkchester North's steam control rooms, the ownership of the steam transfers to Parkchester North. Parkchester North is responsible for the distribution of steam to the common areas of Parkchester North and to the Parkchester North Unit Owners.

### POINT 1

**THE COMMISSION SHOULD DETERMINE THAT, BASED UPON THE HISTORY AND CIRCUMSTANCES SET FORTH HEREIN, PETITIONER IS NOT A "STEAM CORPORATION" AS DEFINED BY PUBLIC SERVICE LAW §2(22).**

The Steam Plant has provided Steam Services to the entire Development for more than 68 years. By virtue of the cost and expense sharing in the Steam Cost Sharing Agreement, Parkchester South and Parkchester North are continuing both the functioning and the cost sharing associated with the Steam Plant that took place when the Development was a single legal entity. Despite the legal distinction between North and South Parkchester (and its predecessor, the Parkchester Apts), the Development has never been physically separated. This fact differentiates Parkchester South from other entities that sought exemption from designation as a steam (or other utility) corporation.

For example, in Saranac Power Partners, L.P. ("Saranac"), Case 96-S-0054, the Public Service Commission denied exemption of the facility from regulation as a steam corporation<sup>5</sup>. In that case, the petitioner, Saranac, proposed to construct an overhead steam line from its cogeneration facility to Tenneco Packaging, Inc.'s facility located on an adjacent parcel. In the instant case, there is an existing steam delivery system and Parkchester South and Parkchester North exist within a single Development and no further construction is necessary to provide service to Parkchester North. In fact, it is neither practical nor economic

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<sup>5</sup> Order Issuing Certificate of Public Convenience and Necessity (March 15, 1996).



to separate the Development for the purpose of providing steam, as there is, and has been for an extended period, only one unified steam system constructed to serve the entire Development.

In Case 98-S-1174, Griffiss Local Development Corporation, Order Issuing Certificate of Public Necessity and Providing for Lightened Regulation (Sept. 9, 1999) (hereinafter, the “Griffiss Steam Order”), Griffiss was denied exemption from regulation as a steam corporation because it sought to serve the Department of Defense (“DOD”), located on an adjacent parcel to serve non-tenant “others,” disqualifying it from an exemption under PSL §2(22).

A key point differentiating Parkchester South from other entities that sought but were denied exemption from utility designation is that Parkchester South does not sell steam to Parkchester North. Rather, the entire cost of steam production, including acquisition of assets and replacement steam, if needed, is shared equitably between the parties under the terms of the Steam Cost Sharing Agreement. By way of contrast, in the Saranac case, steam was being *sold* under contract to Tenneco. Similarly, Griffiss sought to sell steam to the DOD.

In Case 99-S-0413 – Fresh Meadows Development, LLC, Order Granting Certificate of Public Convenience and Necessity (Nov. 16, 1999) (hereinafter, the “Fresh Meadows Order”), petitioner was operating a central steam plant that provided steam to commercial and governmental customers within a commercial area that had previously been within the same complex as the petitioner therein. Although there are similarities between the Fresh Meadows case and the present case, there are also significant differences. Among these are

that the petitioner in the Fresh Meadows case did not dispute that it was subject to Commission regulation. This was due to the fact that, unlike in the present case, the petitioner in Fresh Meadows was engaged in the sale of steam to a number of commercial and public customers such as stores, offices, a theater, restaurants, a public library, police station and others that had all been within the original complex.

Parkchester South, however, is neither in the business of operating a commercial steam plant nor does it profit thereby. The Steam Cost Sharing Agreement, as a mutual cost sharing agreement, is not a "sale to others" as described in Pub Serv. L., §2(22). There is no *sale to others* that takes place under the Steam Cost Sharing Agreement, because that agreement provides strictly for the sharing of all costs of running the steam operations at the combined site. Since a mutually agreed cost sharing, such as the Steam Cost Sharing Agreement, cannot be "a sale to others," Petitioner is not subject to regulation and should not be deemed to be a "Steam Corporation" as described in Pub Serv. L., §2(22) ("Steam Corporation").

Petitioner's provision of Steam Services to Parkchester North occurs solely on private property. The southern perimeter of the Steam Plant site, owned by Parkchester South, is separated from a portion of the northern perimeter of the real property of Parkchester North only by private roads within the Development. Parkchester South's distribution lines first enter that portion of the premises of Parkchester North, which includes sixteen buildings, under said private roads within the Development and that service occurs on private property.

Petitioner acknowledges that two additional buildings that comprise the total Parkchester North premises are separated from the other sixteen Parkchester North buildings by a public road, Purdy Street. However, these two buildings are served by low pressure steam supplied by a Parkchester North steam control room which is located on the same side of Purdy Street as the Steam Plant. Therefore, none of Parkchester South's distribution lines cross public streets in the provision of steam services to Parkchester North. Further, Parkchester South possesses easement rights with respect to all of the property of Parkchester North upon which Parkchester South's steam distribution facilities are located.

## POINT 2

**IN THE EVENT THAT THE COMMISSION DETERMINES THAT PETITIONER IS A "STEAM CORPORATION" AND THAT THE PORTION OF THE STEAM PLANT AND THE STEAM FACILITIES USED TO PROVIDE STEAM SERVICE TO PPC AND PARKCHESTER NORTH ARE SUBJECT TO COMMISSION REGULATION, IT SHOULD GRANT A CERTIFICATE OF AUTHORITY FOR PETITIONER TO PROVIDE SUCH STEAM SERVICE**

If, notwithstanding the cost sharing nature of the provision of Steam Service, which is different in character than a sale and results in no profit to Petitioner and the other facts set forth herein, Petitioner is determined to be a steam corporation, Petitioner will be required to obtain a Commission Certificate of Public Convenience and Necessity to provide Steam Service. Pub. Serv. L., § 81 ("Certificate").

In such event, consistent with its rulings in prior cases, the Commission should grant a Certificate authorizing Petitioner to continue to provide Steam Service as described in this Petition.<sup>6</sup> Similar to the petitioners in the cited cases, Petitioner is seeking to provide utility service to Parkchester North (and *de minimis* service to PPC) located adjacent to Petitioner's Steam Plant on East Tremont Avenue in Bronx, New York. Moreover, all Steam Service will be distributed through a privately-owned, but fully safe and adequate, existing infrastructure.

The Steam Cost Sharing Agreement provides for cost sharing between the parties such that payments by Parkchester North to Parkchester South cover no more than its agreed upon share of allocated costs taking into account the very small amount of monies derived from

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<sup>6</sup> E.g., Case 01-E-0701 – Petition of General Motors Corporation, Order Granting a Certificate of Public Convenience and Necessity to Operate an Existing Substation (Aug. 3, 2001) (hereinafter, the "General Motors Order"); Griffiss Steam Order; Case 95-M-1133 – Grumman Aerospace Corporation, Order Granting Certificate of Public Convenience and Necessity (Aug. 9, 1996) (hereinafter, the "Grumman Order").

providing service to PPC. In that regard, monies derived from Petitioner's distribution of steam to Parkchester North are allocated to cover the costs to operate and maintain Petitioner's Steam Plant and other steam utility facilities as well as Petitioner's costs to provide Steam Services to Parkchester North.

The Commission's rulings in cases presenting similar issues establish that certification under PSL Section 81 may be granted if issuance of the Certificate is in the public interest, if the petitioner is able and willing to provide adequate service, if the petition establishes that its utility enterprise is financially viable, and if the petitioner establishes that the service to be rendered is safe and adequate. E.g., Case 01-E-0701, supra, General Motors Order, p. 4; Case 95-M-1133, supra, Grumman Order, pp. 6-7. In addition to these requirements, Section 21 of the Commission's regulations lists further conditions all of which have been met here.

As established in the following paragraphs, Petitioner complies with all of the applicable conditions and requirements identified by the Commission as prerequisites for granting a Certificate that authorizes the holder to provide utility service, and, accordingly, the Commission therefore should grant a Certificate authorizing Petitioner to provide Steam Services to Parkchester North.

**A. The Commission's Granting of the Petition is in the Public Interest**

The Commission's issuance of the Certificate as requested in this Petition is in the public interest. 16 NYCRR § 21.3(f); Case 95-M-1133, supra, Grumman Order, p. 4. As established herein, Petitioner's plans call for Petitioner's premises to be managed in a manner that resembles that of petitioners granted certification in analogous proceedings where the Commission found certificate issuance to be in the public interest. E.g. Case 98-S-1174, supra, Griffiss Steam Order; Case 95-M-1133, supra, Grumman Order.

The authorization sought herein will provide significant public benefits, including the avoided financial burden and environmental costs of duplicating construction and operation of critical steam utility facilities to serve Parkchester North. These and the other considerations set forth in this Petition support a Commission finding that issuance of the Certificate as requested herein is in the public interest.

**B. Petitioner is Willing and Able to Provide Adequate and Reliable Service**

Pursuant to its regulations, the Commission also must find that Petitioner is willing and able to provide adequate and reliable utility service to Parkchester North. 16 NYCRR § 21.3(f); Case 95-M-1133, supra, Grumman Order, p. 4. As described in this Petition, Petitioner operates steam generation facilities, as well as steam distribution facilities on its premises and the premises of Parkchester North. These facilities have supported steam operations safely and adequately for many years (Petitioner has supplied the buildings which now comprise

Parkchester North with Steam Service since 1940) and, therefore, are fully adequate to meet the needs of Petitioner and Parkchester North.

Moreover, Petitioner is willing to provide adequate utility service to Parkchester North as evidenced by the Steam Cost Sharing Agreement, pursuant to which Parkchester South has agreed to provide Steam Service to Parkchester North on the same terms as it provides Steam Service to itself. As this Petition establishes, Petitioner is seeking to serve its existing residents as well as Parkchester North's residents to reduce mutual costs and maintain reliable service to both parties.

**C. Petitioner is Able to Provide Safe and Adequate Service**

Petitioner is required to demonstrate that its utility service is and will continue to be safe and adequate. 16 NYCRR § 21.1(a); Case 95-M-1133, supra, Grumman Order, p. 4.

Petitioner's safety record speaks for itself. Petitioner has safely owned and operated its Steam Plant for many years. From the inception of steam utility operations, Petitioner has, and its predecessors have, to its knowledge, complied at all times with applicable federal, State and local codes and safety requirements and have operated for decades without serious mishap or facilities failure.

Moreover, because its own building operations and the need of its residents require a highly reliable steam utility distribution system, Petitioner has every incentive to continue to operate and maintain its utility distribution system so that safe and adequate utility service is available to itself and Parkchester North. C.f. Case 01-E-0701, supra, General Motors Order, p. 4.

**D. Petitioner's Utility Operations are Financially Viable**

Pursuant to the Commission's regulations, Petitioner also must demonstrate that its utility operations are financially viable. 16 NYCRR 21.3(f); Case 95-M-1133, supra, Grumman Order, p 4. Petitioner has been operating the Steam Plant for more than 20 years (of its longer history) on condominium association dues from its residents and monies from Parkchester North. This history supports a finding that Petitioner has the economic wherewithal to continue to operate and maintain its utility plant in a safe and adequate manner. C.f. Case 01-E-0701, supra, General Motors Order, p. 4.

**E. Compliance with Other Requirements**

Petitioner must establish that this Petition complies with the requirements of Section 81 of the PSL. 16 NYCRR § 21.1(a). Petitioner submits that this Petition and its supporting documents meet these requirements.

As applied to Petitioner, Section 81 of the PSL requires Petitioner to file a certified copy of its charter with the Commission. A certified copy of Petitioner's Certificate of Incorporation, which is Petitioner's charter, is annexed to this Petition at Exhibit 1.

As discussed above, Petitioner's predecessors in interest, Metropolitan Life and Parkchester Apts., were providing district Steam Service to themselves and were not required to seek, nor did they seek or obtain, a franchise from the City of New York when they commenced operations. Parkchester South is continuing to provide Steam Service to itself, PPC's parking



garages and administrative premises, located on the northern periphery of the Development, and an adjacent entity, Parkchester North, as it has for many years. Accordingly, the requirement set forth in 16 NYCRR §21.2(b) does not apply in these unique circumstances and, for that reason, no certified copy of a franchise granted by the City of New York exists or is attached hereto.

The Commission's regulations call for Petitioner to provide a description of the territory where it provides utility service, including the names of all cities, towns and villages. 16 NYCRR § 21.3(a). As described herein, Petitioner provides steam utility service only on the premises of the Development located in Bronx County, City of New York.

The Commission's regulations also require Petitioner to set forth the names of all corporations, including municipalities, that render like utility service in the territory where Petitioner proposes to provide utility service. 16 NYCRR § 21.2(a). Petitioner is unaware of any corporation, including municipalities that render public steam service in the territory where Petitioner proposes to continue to provide Steam Services. In that regard, Consolidated Edison does not supply steam service to the part of New York City in which Petitioner's and Parkchester North's premises are located.

Moreover, the provision of Steam Services within Petitioner's premises and those of Parkchester North and the PPC by an entity other than Petitioner is impractical and unnecessary. Petitioner's existing and highly reliable utility facilities are fully capable of providing utility service to Parkchester North and the PPC, therefore, there is no need for other utilities to construct unneeded and duplicative new plants to serve Parkchester South, Parkchester North (and PPC). There is no other viable source of steam for Petitioner or its customers nor has there been one since the construction of the Steam Plant.

The Commission's regulations also require Petitioner to discuss the adequacy of other utility providers' service to meet the reasonable needs of Parkchester North, the other utility providers, if any, ability and willingness to provide service, and the degree of competition desirable or required by the public interest. 16 NYCRR § 21.3(g). No other utility corporation provides public steam service to the territory in which Petitioner's or Parkchester North's facilities are located and no other utility has the ability to provide steam services in order to serve the facilities that are or that will be located there without constructing new facilities. Moreover, as the Commission recognized in the Grumman case, where adequate distribution infrastructure already has been constructed, it is not in the public interest for another utility to "compete" by installing duplicate utility distribution lines to actual or potential facilities that are or that will be located on Petitioner's or Parkchester North's premises. Case 95-M-1133, supra, Grumman Order, pp. 18, 23. Other utilities therefore need not, and should not, construct and operate duplicate utility distribution infrastructure serving Petitioner, Parkchester North and the PPC.

The Commission's regulations provide that Petitioner is to show the rates to be charged for the classes of utility service to be rendered. 16 NYCRR § 21.3(d). There are no "rates" charged to Parkchester North because the Steam Cost Sharing Agreement is based upon cost sharing. The Steam Cost Sharing Agreement is intended to govern the commercial relationship between Petitioner and Parkchester North during the term thereof.

Moreover, Parkchester North is an entity with sophisticated consultants, is represented by experienced legal counsel and possesses the knowledge and resources to obtain and enforce agreements that protect its rights and interests. And, in any event, Petitioner would be subject to formal as well as informal dispute resolution procedures if needed. E.g., 16 NYCRR Part 12.

The Commission's regulations also require Petitioner to describe the plant and system that are to be constructed. 16 NYCRR § 21.3(b). As noted, Petitioner currently operates and maintains an existing system for the purpose of providing Steam Service to PPC and Parkchester North. Petitioner proposes to continue to maintain its existing utility systems, and may make alterations to, or expand or upgrade its existing systems if and as required. Finally, although it does not plan to construct any new steam plant at this time, Petitioner may install meters or other equipment and facilities and may replace boilers if and as current and future system operations require. However, Petitioner does not plan any expansion of the system.

Section 21.2(d) of the Commission's regulations requires Petitioner to provide a certified copy of any federal permit, license or authority relative to the pending petition. 16 NYCRR § 21.2(2). No such permits, licenses or authorities are relevant or required for Petitioner's operations. Petitioner operates the Steam Plant, which has associated air emissions sources, pursuant to a permit. A certified copy of this permit issued to Petitioner is annexed to this Petition as Exhibit 5.

The State Environmental Quality Review Act requires the Commission to determine whether Petitioner's proposal to provide Steam Service as herein described will have a significant impact on the environment. See e.g., 6 NYCRR § 617.3. Petitioner's continued provision of utility service to itself and Parkchester North will not have a significant impact on the environment. Since Petitioner's provision of steam service to Parkchester North is what Petitioner has been doing for seventy years, the quality of emissions has been calculated for its various permits and, subject to upgrades and/or repair, will remain at present permitted levels. There should be no further environmental impact except reductions if upgrades take place. Utility service will be provided through existing steam distribution infrastructure, subject to

upgrade and repair. Except for such upgrades and repairs, Petitioner's provision of utility service will not require construction or alteration to the utility facilities already in place. C.f., 6 NYCRR § 617.5(b)(11).

Because the utility service contemplated herein will be provided through existing infrastructure, subject to upgrade or repair, and because little or no installation of new utility facilities will be necessary with the exception of necessary upgrades to equipment or repairs, comparison of the impacts that reasonably may result from Petitioner's provision of utility service as described in this Petition against the regulatory criteria should support a conclusion that Petitioner's provision of utility service will not have a significant impact on the environment. See 6 NYCRR § 617.7(c)(1). The Commission therefore should find that Petitioner's provision of utility service as described in this Petition will not have a significant impact on the environment.

Petitioner's petition for Commission authorization to provide the Steam Services described herein is an unlisted action, and the short Environmental Assessment Form therefore may be submitted. See 6 NYCRR § 617.6(a)(3). A completed short Environmental Assessment Form is annexed hereto as Exhibit 6.

### POINT 3

#### **IN THE EVENT THAT THE COMMISSION DETERMINES THAT PETITIONER IS A STEAM CORPORATION, THE COMMISSION SHOULD ISSUE AN ORDER THAT PROVIDES FOR LIGHTENED REGULATION OF PETITIONER'S PROVISION OF STEAM SERVICE**

The Public Service Law provides that where a person is engaged in carrying on any business other than owning, operating or managing a steam plant, which other business is not otherwise subject to the jurisdiction of the Commission, and which other business is conducted so that its operations are substantially separate and apart from the ownership, operations, management or control of the steam plant, the person's other business shall not be subject to the provisions of the Public Service Law described in Pub. Serv. L. § 80(11). See 16 NYCRR Part 58; also Case 01-E-0701, supra, Order Providing For Lightened Regulation, pp. 3-4 (Oct. 29, 2001); Case 02-W-1154, supra, Tech Park Order.

While the provision of heating and steam is an important part of the services provided by Parkchester South, operation and management of its Steam Plant to provide service to Parkchester North and PPC is a supplementary and distinct function that Petitioner conducts in support of its principal function of residential condominium apartment building operation and management and is substantially separate from that principal function and that the monies it collects from Parkchester North and PPC are subsidiary and incidental to its primary purpose. Petitioner has used certain employees dedicated to the Steam Plant for the purpose of operating its Steam Plant. The production of steam is done by members of Local 30 of the International

Union of Operating Engineers supervised by the Chief Engineer.<sup>7</sup> Moreover, in light of the Steam Cost Sharing Agreement, Parkchester North is only obligated to pay its proportional share of the costs. Full regulation would place an undue burden on residential owners due to the budgetary requirements and administrative costs involved. Petitioner's principal function as a residential condominium entity is not subject to the jurisdiction of the Commission. Therefore, consistent with the Commission's decisions in analogous cases, Petitioner respectfully requests that the Commission find that Petitioner's Steam Plant operations are substantially separate from and subsidiary and incidental to Petitioner's residential condominium operations and, therefore, rule that Petitioner's residential condominium operations are not subject to regulation under the Public Service Law. E.g., Case 99-S-0413, supra; Case 95-M-1133, supra, Grumman Order, p. 21; Case 01-E-0701, supra, Order Providing For Lightened Regulation, pp. 3-4; Case 02-W-1154, supra, Tech Park Order, p. 4.

Petitioner also respectfully petitions that the Commission order that Petitioner's steam utility operations be subject to lightened or incidental regulation, similar to that provided in the following cases. E.g., Case 99-S-0413, supra, Fresh Meadows Order, pp. 2-5; Case 99-E-0990, supra, Griffiss Electric Order, pp. 8-12; Case 01-E-0701, supra, Order Providing For Lightened Regulation, pp. 3-4 (Oct. 29, 2001); Case 98-S-1174, supra, Griffiss Steam Order, pp. 3-4; Case 02-W-1154, supra, Tech Park Order, p.4; see also 80(11) (incidental regulation of steam corporations).

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<sup>7</sup> The Steam Plant is run by six licensed stationary engineers for high pressure boilers (with an average of 10-30 years of experience), ten firemen, seven heat distribution workers and five day maintenance workers. All of these workers are under the close supervision of the Chief Engineer who has 20 years of experience with high pressure boilers. There has never been a serious failure in operations, and the Steam Plant is kept in excellent condition with a constant stream of capital improvements for updating the facility. The Steam Plant complies with all environmental regulations.

Section 58.4 of the Commission's regulations defines lightened regulation as including, subject to Commission findings regarding the public interest, an exemption from the requirement that Petitioner make full reports and keep accounts. 16 NYCRR § 58.4. Moreover, when service is provided to sophisticated entities pursuant to negotiated contracts and other protections are available, the Commission has exempted utility corporations from the filing of rate schedules and tariffs. E.g., Case 01-E-0701, supra, Order Providing For Lightened Regulation, p. 3; Case 02-W-1154, supra, Tech Park Order, p. 4.

The Commission's regulations provide that Petitioner is to list the names and addresses of the parties that it proposes to continue to serve, as well as provide a description of the type, amount and duration of utility service that is expected to be provided. 16 NYCRR § 58.2. Parkchester North and the PPC, are now, and will remain for the foreseeable future, the only two recipients of Steam Services from Petitioner. Parkchester North's address is stated above and PPC's parking garages and office space have the same address as Parkchester South. The other information described in the Commission's regulations required to support a petition for lightened regulation has been presented and discussed in Section I of this Petition. See 16 NYCRR § 58.2.

In addition, Petitioner notes that the Commission has in the past allowed "incidental" providers of steam to be exempt from the full obligations of Pub. Serv. L., § 80(11) and Chapter 4 of the NYCCR. The Commission has provided incidental provider status to energy facilities that serve "one or two non-affiliated customers."<sup>8</sup> Similar to the petitioner in

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<sup>8</sup> Case 92-M-0332, Petition of North Country Gas Pipeline Corporation and Saranac Energy Company, Inc. for a ruling that Saranac will not be subject to regulation under the Public Service Law as either an electric or steam corporation and that North Country will be exempted from regulation as a gas corporation, pursuant to § 66(13) of the Public Service Law, 1992 N.Y. PUC LEXIS 65 (1992) ("North Country").

North Country, Petitioner provides Steam Service to only two non-affiliated entities in the same Development, both of which are located on the original Parkchester Development premises. We note that, in Fresh Meadows, the petitioner therein provided services to more than two non-affiliated customers.<sup>9</sup>

Therefore, based on the facts and analysis presented in this Petition, Petitioner respectfully requests that, in the event the Commission determines that the Petitioner is a Steam Corporation, the Commission rule that Petitioner's Steam Services operations be subject to lightened regulation.

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<sup>9</sup> Case 99-S-0413, supra, Fresh Meadows Order, p. 3.



## CONCLUSION

WHEREFORE, based on the law and facts as set forth herein, the Petitioner respectfully requests that the Commission determine that Petitioner is not a "Steam Corporation" as provided for in the New York State Public Service Law or, alternatively, in the event that the Commission determines that Petitioner is a Steam Corporation, issue a Certificate that authorizes Petitioner to operate its Steam Plant and deliver steam to other adjacent parties, as described herein, and that, in connection with any such Certificate, for a ruling that Petitioner's provision of such Steam Service shall be subject to lightened regulation.

Dated: February 2, 2010

Respectfully submitted,



---

Duane Morris, LLP  
Attorneys for Petitioner  
1540 Broadway  
New York, New York 10036-4084  
Telephone: (212) 692-1075  
Telecopier: (212) 692-1020

*Of Counsel:*

Peter V.K. Funk, Jr., Esq.  
Phyllis J. Kessler, Esq.

Exhibit 1

Copy of the Certificate of Incorporation

Restated Certificate of Incorporation  
of  
BOARD OF MANAGERS OF  
THE PARKCHESTER SOUTH CONDOMINIUM, INC.

P-H

Under Section 805 of the Not-for-Profit Corporation Law

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FIRST: The name under which the corporation was formed  
is: BOARD OF MANAGERS OF THE PARKCHESTER SOUTH CONDOMINIUM, INC.

SECOND: The certificate of incorporation of the corporation was filed by the Department of State on July 19, 1983.

THIRD: The corporation was formed under the Not-for-Profit Corporation Law.

FOURTH: The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The corporation is a Type A corporation under Section 201 of the Not-for-Profit Corporation Law.

SIXTH: The post-office address of the corporation within the State of New York to which the Secretary of State shall mail a copy of any notice required by law is as follows: c/o Wien, Malkin & Bettex, Attn.: Mitchell J. Nelson, 60 East 42nd Street, New York, New York 10165.

SEVENTH: The amendment of the certificate of incorporation of the corporation effected by this restated certificate is to change the name of the corporation.

EIGHTH: To accomplish the foregoing amendment, Article FIRST of the certificate of incorporation of the corporation, relating to the corporate name, is hereby amended to read as set forth in the same numbered article of the certificate of incorporation of the corporation as hereinafter restated.

NINTH: The restatement of the certificate of incorporation of the corporation herein provided for was authorized by the written consent signed by the Sole Incorporator, there being no members of record and no subscribers for capital certificates whose subscriptions have been accepted.

TENTH: The text of the certificate of incorporation of the corporation as heretofore amended is hereby restated as further amended or changed herein to read as follows:

CERTIFICATE OF INCORPORATION OF  
THE PARKCHESTER SOUTH CONDOMINIUM, INC.

FIRST: The name of the corporation shall be THE PARKCHESTER SOUTH CONDOMINIUM, INC.

SECOND: The corporation is a corporation as defined in Section 102(a) (5) of the Not-for-Profit Corporation Law, and is not organized for pecuniary profit or financial gain, and no part of its assets, income or profit shall inure to the benefit of any member, officer, or director, except to the extent permissible under the Not-for-Profit Corporation Law.

THIRD: The purposes for which the corporation is to be formed are:

(a) To act as the Board of Managers of The Parkchester South Condominium (the "Condominium") when, as and if created by filing the declaration and by-laws in the Office of the Register of the City of New York, County of The Bronx pursuant to Article 9-B of the Real Property Law of the State of New York, and any amendments related thereto (collectively, the "Declaration"), in the operation, maintenance and preservation of the Condominium and its property.

(b) No part of the revenues of the corporation shall inure to the benefit of any member, director or officer of the corporation, or any private individual, firm or corporation, except that reasonable compensation may be paid for services rendered to or for the corporation effecting one or more of its purposes.

FOURTH: As a means of accomplishing the foregoing purposes, the corporation shall have the following powers:

(a) To perform all of the duties and obligations of the Board of Managers as may be set forth in the Declaration.

(b) In general, and subject to such limitations and conditions as are or may be prescribed by law, to exercise such powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes hereinabove set forth, or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the corporation.

FIFTH: The principal office of the corporation is to be located in the City of New York, County of The Bronx, State of New York.

SIXTH: The corporation is a Type A corporation under Section 201 of the Not-for-Profit Corporation Law.

SEVENTH: The territory in which the activities of the corporation will be principally conducted is the County of The Bronx, State of New York.

EIGHTH: The Secretary of State is designated as the agent of the corporation upon whom process against the corporation may be served. The Post Office address within the State of New York to which the Secretary of State shall mail a copy of any process against the corporation served upon him is: c/o Wien, Malkin & Bettex, Attn: Mitchell J. Nelson, 60 East 42nd Street, New York, New York 10165.

Signed on August 8, 1983.

*Franklin K. Wyman*

Franklin K. Wyman  
Wien, Malkin & Bettex  
60 East 42nd Street  
New York, New York 10165

Sole Incorporator, there being no members of record, no officers, no directors, no capital contributors not members, and no subscribers for capital certificates whose subscriptions have been accepted.

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS.:

Franklin K. Wyman, being duly sworn deposes and says that he is the person who signed the foregoing restated certificate of incorporation; that he signed said certificate in the capacity set opposite or beneath his signature thereon; and that he has read the said certificate and knows the contents thereof; and that the statements contained therein are true to his own knowledge.

Joy Aharon  
Joy Aharon

Subscribed and sworn to  
before me on August 8, 1983.

Joy Aharon  
Notary Public

JOY AHARON  
Notary Public, State of New York  
Exp. 03-3  
Commission Expires March 30, 1984

State of New York }  
Department of State }

44714

*I hereby certify that I have compared the annexed copy with the original document filed by the Department of State and that  
the same is a correct transcript of said original.*

*Witness my hand and seal of the Department of State on*

AUG 15 1983



Secretary of State

580607-034(12/82)

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
April 21, 2009.

*Paul LaPointe*

Paul LaPointe  
Special Deputy Secretary of State



P-H

CERTIFICATE OF INCORPORATION

OF

BOARD OF MANAGERS OF THE PARKCHESTER SOUTH CONDOMINIUM, INC.

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, being over the age of nineteen

(19) years, for the purpose of forming a Not-for-Profit Corporation under Section 402 of the Not-for-Profit Corporation Law, does hereby certify as follows:

FIRST: The name of the corporation shall be BOARD OF MANAGERS OF THE PARKCHESTER SOUTH CONDOMINIUM, INC.

SECOND: The corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law, and is not organized for pecuniary profit or financial gain, and no part of its assets, income or profit shall inure to the benefit of any member, officer, or director, except to the extent permissible under the Not-for-Profit Corporation Law.

THIRD: The purposes for which the corporation is to be formed are:

(a) To act as the Board of Managers of The Parkchester South Condominium (the "Condominium") when, as and if created by filing the declaration and by-laws in the Office of the Register of the City of New York, County of The Bronx pursuant to Article 9-B of the Real Property Law of the State of New York, and any amendments related thereto (collectively, the "Declaration"), in the operation, maintenance and preservation of the Condominium and its property.

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(b) No part of the revenues of the corporation shall inure to the benefit of any member, director, or officer of the corporation, or any private individual, firm or corporation, except that reasonable compensation may be paid for services rendered to or for the corporation effecting one or more of its purposes.

FOURTH: As a means of accomplishing the foregoing purposes, the corporation shall have the following powers:

(a) To perform all of the duties and obligations of the Board of Managers as may be set forth in the Declaration.

(b) In general, and subject to such limitations and conditions as are or may be prescribed by law, to exercise such powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes hereinabove set forth, or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the corporation.

FIFTH: The principal office of the corporation is to be located in the City of New York, County of The Bronx, State of New York.

SIXTH: The corporation is a Type A corporation under Section 201 of the Not-for-Profit Corporation Law.

SEVENTH: The territory in which the activities of the corporation will be principally conducted is the County of The Bronx, State of New York.


EIGHTH: The Attorney General of the State is designated as the agent of the corporation and shall process against the corporation

may be served. The Post Office address within the State of  
New York to which the Secretary of State shall mail a copy of  
any process against the corporation served upon him is: c/o

Wien, Malkin & Battex, Attn: Mitchell J. Nelson, 60 East 42nd  
Street, New York, New York 10165.

NINTH : The subscriber to this Certificate is  
of full age, a citizen of the United States, and a resident  
of the State of New York.

IN WITNESS WHEREOF, I have signed this Certificate  
this 13<sup>th</sup> day of July, 1983.

  
Franklin K. Wyman  
Wien, Malkin & Battex  
60 East 42nd Street  
New York, New York 10165

STATE OF NEW YORK )

COUNTY OF NEW YORK )

58-1

On this 13<sup>th</sup> day of July, 1983, before me personally came Franklin K. Wyman, to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation, and he thereupon duly acknowledged to me that he executed the same:

Joy Aharon  
Notary Public

JOY AHARON  
Notary Public, State of New York  
No. 03-4780010  
Qualified in Bronx County  
Commission Expires March 30, 1987

# NYS DEPARTMENT OF STATE

## CERTIFICATE OF INCORPORATION (NOT FOR PROFIT)

CORPORATION NAME

THE NEW YORK STATE BAR ASSOCIATION

DATE FILED

ORGANIZATION CODE

FILE NUMBER

CASE NUMBER

NUMBER AND KIND OF SHARES

LOCATION OF PRINCIPAL OFFICE

COMMENTS

ALL INFORMATION MUST BE SUBMITTED BY WHEN COMPLETED

ADDRESS FOR MAILING

REGISTERED AGENT

FEES AND OR TAX PAID AS FOLLOWS

00002000

AMOUNT OF FEE

AMOUNT OF MONEY ORDER

AMOUNT OF TAX

DOLLARS TO COUNTY

FILING

TAX

FILER NAME AND ADDRESS

CERTIFIED COPY

WALTER WALKER, ATTORNEY  
60 WALL STREET

0000020000

TOTAL PAYMENT

WALTER WALKER

NY 10005

RECEIVED

TORRISON

GAIL S. SHAFER - SECRETARY OF STATE

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STATE OF NEW YORK  
DEPARTMENT OF STATE

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BOARD OF MANAGERS OF THE HANSHES RER SOUTH CONDOMINIUM, INC.

UNITED STATES OF AMERICA

STATE OF NEW YORK

DEPARTMENT OF STATE

FILED JUL 19 1983

FILED JUL 19 1983

FILED JUL 19 1983

Handwritten notes and signatures, including "A. J. ...", "J. ...", and "M. ...".

Handwritten date "8/1/83" and other markings.

Handwritten date "JUL 21 1983" and other markings.

Exhibit 2

Copy of the Steam Cost Sharing Agreement with Amendement

Final

**Steam Cost Sharing Agreement**

**By and Between**

---

**Parkchester South Condominium, Inc.**

**And**

**The Parkchester North Condominium**



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## Steam Cost Sharing Agreement

By and Between

Parkchester South Condominium

and The Parkchester North Condominium

THIS STEAM COST SHARING AGREEMENT ("Agreement"), effective as of January 19<sup>th</sup>, 2006 (the "Effective Date"), is by and between Parkchester South Condominium, Inc. ("PSC"), a New York not-for-profit corporation, as agent for the unit owners of the Parkchester South Condominium, having a principal business address of 2000 East Tremont Avenue, Bronx, New York 10462, and The Parkchester North Condominium ("PNC"), an unincorporated association, as agent for the unit owners of the Parkchester North Condominium, having a principal business address of 1970 East Tremont Avenue, Bronx, New York 10462. PSC and PNC are referred to herein individually as a "Party" and, collectively, as the "Parties."

### WITNESSETH:

WHEREAS, PSC owns, operates and maintains certain boilers, pipes, fuel storage tanks and various other items of plant and equipment used by PSC in the production and delivery of steam, as defined herein, for use by PSC and PNC and the residents thereof and such other purposes as PSC may, from time to time determine;

WHEREAS, PSC currently provides Steam to PNC facilities pursuant to that Steam Plant Agreement between Parkchester Apartments Company and PNC, dated as of December 14, 1972, through assignment by the Parkchester Apartments Company to PSC on October 8, 1986 ("1972 Agreement");

WHEREAS, the 1972 Agreement was designed to provide for continued Steam service to PSC and PNC facilities that, prior to 1972, were commonly owned and supplied with Steam;

WHEREAS, PNC desires that PSC continue to deliver to PNC, Steam produced by PSC for use by PNC and the residents thereof subject to the terms and conditions of this Agreement;

WHEREAS, PSC desires to continue to produce Steam to be delivered to PNC subject to the terms and conditions of this Agreement;

WHEREAS, PSC and PNC mutually desire that PSC provide Steam service to itself and PNC on a "parity" basis such that PSC will provide Steam service to PNC pursuant to this Agreement based on each Party's respective proportionate Steam service usage and the Steam provided to PNC shall have the same characteristics as the Steam that PSC provides to itself; and

WHEREAS, PSC and PNC mutually desire to cooperate with one another and exchange information regarding their respective equipment and Steam service requirements.

NOW, THEREFORE, in consideration of the mutual obligations and agreements herein contained, which the Parties agree is adequate and sufficient consideration, the Parties hereto agree to be legally bound as follows:

## **1. DEFINITIONS AND INTERPRETATION**

1.1 Definitions In all interpretations of this Agreement, the following definitions shall apply to those terms appearing below:

“AAA” means the American Arbitration Association.

“Agreement” shall mean this Steam Cost Sharing Agreement, including all Exhibits hereto, as amended, supplemented and modified from time to time.

“Arbitration Rules” shall mean the Commercial Arbitration Rules of the AAA or the rules of such other arbitration organization or arbitrator mutually selected by the Parties.

“Authorization” shall mean any Permit and any other permit, license, consent, approval, certification, waiver, filing, clearance, entitlement, allowance, franchise, or other authorization.

“Authorized Representative” shall have the meaning described in Section 3.5.

“Backup Steam Meters” shall be PNC’s Steam Meters having the meaning set forth in Article 6.

“Bankruptcy Law” shall mean any Law or Code relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts.

“Billing Budget” shall have the meaning described in Subsection 5.1.1 and shall be substantially in the form of Exhibit 6.

“Billing Period” shall mean the applicable calendar month for which billing statements are rendered, except that the first Billing Period will be a partial month if the Effective Date does not coincide with the first day of a calendar month and the last Billing Period will be a partial month if the last day of the Term does not coincide with the last day of a calendar month.

“Boiler Steam Meters” shall be PSC’s Steam Meters as described in Exhibit 1.

“Capital Reserve Fund” shall have the meaning described in Section 5.10.

“Commercially Reasonable Efforts” shall mean, when used with reference to either Party, such prompt, substantial and persistent efforts of the Party, as are commercially reasonable under the circumstances, to carry out the intent of the Parties with respect to the transactions contemplated by this Agreement. Commercially Reasonable Efforts shall not require a Party to expend unlimited amounts of money or effort, but shall require a Party to make such reasonable expenditures as are consistent with performing such substantial and persistent efforts. Neither Party shall be required to take steps that would jeopardize the safety or health of either Party’s residents or any third party.

**"Control Room Steam Meters"** shall be PSC's Steam Meters as described in Exhibit 1.

**"Coordination Committee"** shall have the meaning described in Section 3.6.

**"Dispute"** shall have the meaning set forth in Section 12.1.

**"Dispute Resolution"** shall have the meaning described in Section 12.2.

**"Effective Date"** shall mean the date of this Agreement which shall be the date first set forth above.

**"Event of Default"** shall have the meaning set forth in Section 10.1.

**"Force Majeure"** shall have the meaning set forth in Section 9.1.

**"Governmental Authority"** shall mean the federal government of the United States, and any state, county, municipal or local government or regulatory or administrative department or body, political subdivision, commission, agency, instrumentality or ministry thereof, and court or judicial body, taxing authority, or other authority having legal jurisdiction over either Party or the facilities owned, operated or maintained by either Party in connection with the transactions contemplated by this Agreement.

**"Improvement"** shall have the meaning set forth in Section 3.2.

**"Late Payment Rate"** shall mean, for any period, the lesser of: (i) nine percent (9%) per annum applied as a daily percentage or (ii) the maximum rate of interest allowed by Law.

**"Law"** shall mean any applicable law, legislation, statute, act, rule, ordinance, decree, treaty, regulation, order, judgment, code, opinion, or other similar legal requirement; or any legally binding announcement, directive or published practice or interpretation thereof, enacted, issued or promulgated by any Governmental Authority including all amendments, modifications, extensions, replacements or reenactments thereof.

**"Operating Event"** shall have the meaning as set forth in Section 3.3.

**"Permit" or "Permits"** shall mean all authorizations, allowances, clearances, certifications, franchises, consents, entitlements, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, publications, notice to and declarations of or with any Governmental Authority and shall include those environmental and operating permits and licenses that are required for use and operation of the PSC Facilities or any part or component thereof.

**"Point(s) of Delivery"** shall mean the custody transfer point(s) at each Control Room Steam Meter in each PNC Control Room where title to the Steam passes from PSC to PNC.

**"PNC Control Room(s)"** shall have the meaning as set forth in Exhibit 3.

**"PNC Facilities"** shall mean PNC's facilities for the receipt of Steam located in the PNC Control Rooms and any Backup Steam Meters.

**"Prudent Operating Practice"** shall mean any of the practices, methods, standards and acts which are commonly used in the construction, operation and/or maintenance of comparable equipment or facilities and which, in the exercise of reasonable judgment in the light of the facts known at the time that a decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost in a prompt and expeditious manner, giving due consideration to matters of safety, reliability, licensing and regulatory considerations, environmental considerations and Law. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts employed by constructors, owners, operators and maintainers of facilities similar in size and operational characteristics to those facilities contemplated herein and operating in similar climatic conditions, including those involving the use of new concepts or technology and having due regard for applicable manufacturers' warranties. Notwithstanding the above, and by way of clarification, Prudent Operating Practice shall include: (i) the scheduling of all planned maintenance and capital investment projects during periods of low Steam demand; (ii) the repair of PSC Facilities during periods of moderate and high demands, if such repairs become necessary during such times; and (iii) making contractual arrangements reasonably necessary for PSC to meet its obligations hereunder.

**"psig"** shall mean pounds per square inch gage.

**"PSC Facilities"** shall mean the Steam Production Facilities, Steam Tunnels, Steam Pipes and PSC Steam Meters.

**"PSC Steam Meters"** shall mean the Boiler Steam Meters and Control Room Steam Meters.

**"Public Service Commission"** shall mean the New York State Public Service Commission.

**"Steam"** means water vapor produced by the Steam Production Facilities.

**"Steam Cost Sharing Charge"** shall mean the amount payable by PNC to PSC for PNC's share of the Steam produced by PSC, as set forth in Article 5 and Exhibit 4.

**"Steam Pipes"** shall mean the steam pipes transporting Steam from the Steam Production Facility to the PNC Control Rooms and other pipes, conduits, wires, vents, lines, ventilating shafts and other equipment as described in Exhibit 2.

**"Steam Meter"** shall mean each measuring device for Steam, which is discussed in Article 6, the location of each of which is shown in Exhibit 1 together with a description of the PSC Steam Meters.

**"Steam Tunnels"** shall mean all tunnels containing the Steam Pipes and other facilities running between the respective premises of PSC and PNC.

"Steam Production Facilities" shall mean the facilities described in Exhibit 2.

"Tax" shall mean any tax, charge, tariff, duty or fee of any kind charged, imposed or levied, directly or indirectly, by any Governmental Authority, including any utility tax, income tax, value added tax, sales tax, stamp tax, import duty, withholding tax, fees, excise tax, real or personal property tax, ad valorem tax, special levy or assessment, business or occupation tax, or environmental or energy tax.

"Term" shall mean the duration of this Agreement as determined under Article 7, including any extensions thereof.

1.2 Construction of Terms□As used in this Agreement, the terms "herein," "herewith," "hereof" and "hereunder" are references to this Agreement, taken as a whole, the term "includes" or "including" shall mean "including, without limitation," and references to an "Article", "Section", or "Exhibit" shall mean an Article, Section, or Exhibit of this Agreement, as the case may be, unless in any such case the context requires otherwise. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a Law includes any amendment or modification thereof. A reference to a person includes its successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine, and vice versa.

1.3 Documents Included□This Agreement consists of this document and the Exhibits that are listed in the Table of Contents and attached hereto, which Exhibits are specifically incorporated herein and made a part of this Agreement.

1.4 Conflicting Provisions□It is the intent of the Parties that the terms and conditions of this Agreement and the Exhibits be construed in a harmonious manner. In the event of a conflict between the terms of this Agreement and the Exhibits, this Agreement shall control. In the event of any conflict among the Exhibits, the Exhibit of the latest date mutually agreed upon by the Parties shall control.

## **2. FACILITIES AND EASEMENT**

2.1 PSC's Facilities□PSC shall have full operational and managerial control over the PSC Facilities including but not limited to, the use, operation, maintenance, repair, replacement and upgrade of all or any part thereof.

2.2 Easement□PNC has previously granted easements to PSC or to Parkchester Apartments Company. The easements granted to Parkchester Apartments Company previously have been assigned by Parkchester Apartments Company to PSC. In addition to said easements, PNC hereby grants to PSC, for the Term of this Agreement, an easement on, over, or through PNC's property such as is necessary for PSC to carry out the terms of this Agreement, and allow the necessary installation of Steam Pipes, Steam Tunnels, PSC Steam Meters, water lines, communication lines, and any other related equipment, as reasonably determined by PSC to be necessary to the construction, operation and or maintenance of the Steam Pipes through the foundation walls of the PNC facilities, Steam Tunnels and PSC Steam Meters and any related equipment to provide Steam service to PNC and PSC. PNC shall not operate, maintain, move,



remove, alter, change, or interfere with the operation or maintenance of PSC's facilities and equipment except that PNC shall be responsible for the installation, replacement and maintenance of Steam Pipes located within buildings owned by PNC beginning at the outside of the foundation walls thereof. If requested by PSC, PNC agrees to enter into a Memorandum of Easement with PSC in recordable form, as agreed between the Parties, for recording by PSC. Such Memorandum of Easement shall be in substantially the form set forth in Exhibit 5 hereof. The costs incurred by PSC in connection with preparing and recording the Memorandum of Easement shall be shared in accordance with Exhibit 4 irrespective of whether such costs are incurred before or after the Effective Date. The easement granted herein shall not be deemed in limitation of any and all easements previously granted by PNC to PSC or by its assignor, Parkchester Apartments Company. Termination of this easement shall not affect any rights granted by PNC with regard to Steam Pipes, Steam Tunnels, PSC Steam Meters, water lines, communication lines, and any other related equipment, set forth in the easement granted to Parkchester Apartments Company within that certain North Condominium Offering Plan dated as of December 14, 1972 and restated in the 9<sup>th</sup> Amendment to the North Condominium Offering Plan, dated as of July 21, 1989, transferring the rights set forth therein to PSC. The procedures set forth in Section 3.7 shall govern the ingress and egress by, and activities of, PSC personnel on the property of PNC pursuant to this Section 2.2.

### 3. OPERATION AND MAINTENANCE

#### 3.1 General Obligations

3.1.1 Both PNC and PSC shall perform each of their obligations under this Agreement in connection with their respective facilities in accordance with Prudent Operating Practices to provide for the day to day transfer of Steam from PSC to PNC, and receipt of Steam by PNC from PSC, throughout the Term. References in this Agreement to "facilities" shall mean, respectively, as to PSC, the PSC Facilities. As to PNC, such references to "facilities" shall mean the PNC Facilities.

3.1.2 Except as otherwise specifically provided herein, PSC shall use Commercially Reasonable Efforts to operate and maintain the PSC Facilities on a twenty-four (24) hours per day, seven (7) days per week basis and in a manner consistent with PSC's obligation to provide Steam to PNC on the same basis and to the same extent that PSC provides Steam to PSC, subject to adjustments for Operating Events, scheduled maintenance as described herein, the other terms and conditions of this Agreement and, as may be required by Law or by day-to-day operating agreements between the Parties. During periods of reduced or limited availability of Steam supply, deliveries of Steam to PNC shall continue at such reduced or limited level that reflects its normal and customary proportionate share of the total available output of the Steam Production Facilities (i.e., equivalent to its proportionate share immediately prior to the reduction in output). In that regard, it is the Parties' intent that both PNC and PSC's consuming facilities will share the output at the reduced or limited level in accordance with the normal and customary proportionate sharing of a normal level of Steam output.

3.1.3 Neither Party shall be required to operate or maintain its respective facilities in a manner that would endanger any person, or unreasonably reduce the useful life of either Party's facilities.

3.1.4 The Parties shall operate their respective facilities to comply with all Laws, and also within the design parameters and limits of the applicable materials, equipment and construction.

3.1.5 The Parties shall plan and perform inspections, maintenance, repairs and modifications of their respective facilities in a coordinated and cooperative manner so as to minimize disruption to either Party's operations.

3.1.6 Each Party shall monitor their respective facilities and, as applicable, deliveries, as a part of normal day-to-day operations including Steam flow and Steam characteristics. Each Party's respective monitoring system shall promptly signal its pertinent operations-maintenance personnel to address significant Operating Events as required hereunder. PNC shall provide PSC with reasonable, continuous access to data from the PNC energy management system ("EMS") that PNC uses as part of the computerized energy management system that PNC is implementing for the purposes of enabling PSC's early detection of PNC Steam needs and aiding PSC in the early detection of errors or malfunctions in the Control Room Steam Meters. Until PNC's EMS is completed and operational, PNC shall send a fax daily with readings from the Control Room Steam Meters to the PSC Chief Engineer. PSC shall fax or e-mail its daily Boiler Steam Meter readings to PNC's Maintenance Director each morning.

3.1.7 Prior to making any adjustments or improvements that would materially affect the operating status of any of the PNC Facilities that control the amount of Steam passing through any Point of Delivery, PNC shall advise PSC Steam Production personnel so as to minimize the likelihood that any such adjustments or improvements by PNC will result in harm to the PSC Facilities or adversely affect the operation of the PSC Facilities.

3.1.8 Notwithstanding Subsection 3.1.2, PSC shall not be required to operate, repair or maintain Steam Pipes located within PNC buildings except for the foundation walls thereof.

### 3.2 Modification of Steam Facilities□

3.2.1 Subject to the provisions of this Agreement, PSC shall have the right (but not the obligation), at any time and from time to time, and at its sole discretion, to install additions, improvements, upgrades or modifications to or replacements of all or part of the PSC Facilities in order, among other reasons, to meet its obligations hereunder, decrease the costs of operating and/or maintaining such PSC Facilities and/or to increase the safety, reliability and/or efficiency of such PSC Facilities (each an "Improvement"), and PNC shall cooperate with any such Improvements.

3.2.2 Notwithstanding the provisions of Subsection 3.2.1, the term "Improvement" shall not include any costs incurred by PSC for the specific purpose of

providing Steam service to any other entity which third party cost would not otherwise have been incurred by PSC in order to meet its obligations under this Agreement.

3.2.3 If the total cost to be incurred by PSC with respect to completing any such Improvement exceeds \$100,000 (adjusted annually in accordance with the Consumer Price Index), or the aggregate cost of all Improvements in a given year exceeds \$250,000, the actual cost of any such Improvement(s) shall be satisfied by withdrawal of funds by PSC from the Capital Reserve Fund established under this Agreement, provided, that routine operations and maintenance expenditures shall not be included as Improvements to be funded through the Capital Reserve Fund and, provided further, that to the extent the amount in said Fund is not sufficient to pay the cost of the Improvement, or to the extent that the cost of the Improvement does not meet the thresholds set forth in this Subsection 3.2.3, the remaining cost shall be subject to the terms and conditions of this Agreement respecting the Steam Cost Sharing Charge. In either such event, the remaining cost of the Improvement shall be included in the Billing Budget and Steam Cost Sharing Charge based on a reasonable amortization schedule for the asset in question.

3.2.4 To the extent the costs of any Improvements are financed by PSC, the cost of such Improvement shall be included in the Steam Cost Sharing Charge.

3.2.5 Costs for all Improvements recovered through the Steam Cost Sharing Charge, including the Billing Budget, shall be recovered on the basis of a reasonable depreciation schedule for the asset in question, as determined pursuant to Section B of Exhibit 4.

3.3 Operating Events The Parties agree to take the following actions upon the occurrence of an unscheduled or unanticipated event which: (i) has prevented or materially diminished, or may reasonably be expected to prevent or materially diminish, a Party's physical ability to deliver or accept delivery of Steam; or (ii) has or may reasonably be expected to negatively affect the safety or operation of any of the PSC Facilities, the PNC Facilities or any other facilities of PSC or PNC (to the extent materially related to the production, delivery, receipt or consumption of Steam) (an "Operating Event").

3.3.1 The Party that discovers that an Operating Event has occurred, or is about to occur, shall immediately provide oral notice, together with reasonable electronic and/or written confirmation, to the other Party of such Operating Event which notice shall include the scope and anticipated duration of the Operating Event, if such Party is in a position to provide such information.

3.3.2 The responsible Party(s) shall either remedy or mitigate the Operating Event in accordance with Prudent Operating Practice and Commercially Reasonable Efforts.

3.3.3 Upon cessation of the Operating Event, the responsible Party shall promptly provide oral notice, together with reasonable written confirmation, to the other

Party, and then the Parties shall promptly resume normal operations, including the flow of Steam.

3.3.4 The occurrence or existence of an Operating Event shall not affect any other obligation of either Party under this Agreement, except to the extent an Operating Event also constitutes Force Majeure.

3.4 Planned Outages PSC shall provide to PNC written notice of all planned capital construction or maintenance work that will result in a total or partial cessation of provision of Steam to PNC not less than thirty (30) days prior to the commencement of such construction or work. PSC shall promptly notify PNC of any changes to such scheduled capital construction or maintenance work. All planned capital construction or maintenance work by PSC shall be consistent with Prudent Operating Practice. PNC shall make reasonable efforts to undertake inspections, maintenance and repairs of its facilities concerning the receipt and use of Steam during such periods of total cessation (to the extent that the timing of such inspections, maintenance and repairs by PNC is consistent with Prudent Operating Practice).

3.5 Authorized Representatives Each Party shall appoint an individual as its Authorized Representative and at any time and in its sole discretion by written notice to the other Party also substitute or replace the individual designated as such Authorized Representative. The Authorized Representatives shall not have any authority to amend this Agreement. The Authorized Representatives shall receive all reports required hereunder and shall be reasonably available for consultations between the Parties. Each Party shall be entitled to rely upon any consent, approval or authorization provided by the other Party's Authorized Representative. The directions or approvals given by a Party's Authorized Representative, to the extent that the same are consistent with this Agreement, shall be binding upon such Party. Each Party may notify the other Party in writing of any alternate individual(s) who may act in the absence of such Authorized Representative. A Party may also designate in writing, other individual(s) who shall have full power and authority to act on behalf of such Party's Authorized Representative for designated areas of responsibility.

3.6 Coordination Committee Each Party shall have the right to be represented by not more than three (3) representatives on a Coordination Committee. The restriction in the preceding sentence shall not preclude either Party from inviting its legal counsel or technical consultants to be present at any meeting of the Coordination Committee. The Coordination Committee shall meet on a regular basis as may be agreed among the members of the Coordination Committee. The Coordination Committee is intended to be a means by which the Parties may communicate with one another concerning any matter related to the production, delivery and use of Steam, planned Improvements and the sharing of costs as contemplated by this Agreement. The Coordination Committee, however, shall have no authority to alter any determinations made by PSC with respect to PSC's operation and maintenance of the PSC Facilities nor shall the Coordination Committee have any authority to make any determinations with respect to the operation and maintenance of the PNC Facilities.

3.7 Right of Ingress and Egress by PSC PNC hereby grants PSC a license for reasonable ingress and egress over the property of PNC for the term of this Agreement to the

extent reasonably necessary in order to install, replace, examine, test, calibrate, or maintain PSC Facilities, read PSC Steam Meters, or otherwise perform its duties hereunder, except that:

3.7.1 such access shall not disrupt or otherwise interfere with the normal operations of PNC, and reasonable prior notice (not less than one day) shall be provided before exercising such license, except in the case of an emergency.

3.7.2 this license shall not be deemed to establish any easement or servitude over PNC's real property, and

3.7.3 PNC shall have the right to establish a reasonable and appropriate protocol to be used for ingress and egress (examples include notification, sign-in/sign-out, and adherence to appropriate policies and procedures).

3.7.4 PSC shall maintain appropriate insurance covering its employees or agents in connection with their presence on PNC property for the performance of PSC's rights and obligations under this Agreement, and shall name PNC as additional insured on such insurance with respect to the performance of this Agreement; and

3.7.5 Except in the event of an emergency, PNC shall have the right to require that such ingress or egress be scheduled at times that the appropriate PNC personnel, as determined by PNC, are present.

3.8 Right of Ingress and Egress by PNC PSC hereby grants PNC a license for ingress and egress over the property of PSC for the term of this Agreement to the extent reasonably necessary in order to examine PSC Facilities or otherwise perform its duties hereunder, except that:

3.8.1 such access shall not disrupt or otherwise interfere with the normal operations of PSC, and reasonable prior notice (not less than one day) shall be provided before exercising such license, except in the case of an emergency,

3.8.2 this license shall not be deemed to establish any easement or servitude over PSC's real property,

3.8.3 PSC shall have the right to establish a reasonable and appropriate protocol to be used for ingress and egress (examples include notification, sign-in/sign-out, and adherence to appropriate policies and procedures);

3.8.4 PNC shall maintain appropriate insurance covering its employees or agents in connection with their presence on PSC property for the performance of PNC's rights and obligations under this Agreement, and shall name PSC as additional insured on such insurance with respect to the performance of this Agreement; and

3.8.5 Except in the event of an emergency, PSC shall have the right to require such ingress and egress be scheduled at times that the appropriate PSC personnel, as determined by PSC, are present.

#### 4. STEAM SUPPLY

4.1 Steam Supply Obligation and Exclusivity On and after the Effective Date and for the duration of the Term, PSC shall use Commercially Reasonable Efforts to deliver to PNC, subject to and in accordance with the terms of this Agreement, including its obligations under Section 3.1.2, all Steam required by PNC for the purposes of heat and hot water consumed by PNC and its residents, staff, management and commercial tenants, provided that PSC's obligation to supply all of PNC's steam requirements, as provided for herein, shall generally be limited to the requirements of PNC's existing number of sites in their present structural configurations. Subject to the terms hereof, PNC shall not obtain or use Steam from any source of production or supply other than PSC during the Term. PSC shall deliver Steam to PNC on the same basis and to the same extent that it delivers Steam to PSC. PNC shall not provide Steam furnished by PSC hereunder to any third party (other than tenants, incidental suppliers or contractors working on PNC's premises) except as may be approved by PSC in writing in advance.

4.2 Steam Specifications PSC shall use Commercially Reasonable Efforts to deliver Steam to PNC at the Points of Delivery that meet the following specifications, unless otherwise agreed in writing by the Parties: Steam pressure at the Points of Delivery at all times shall be no greater than 100 psig nor less than 25 psig and the Control Room Steam Meters shall be calibrated at 75 psig. The Parties expect that such supply pressure on a day-to-day basis will be approximately 70 to 90 psig. In all circumstances, PSC will deliver Steam to PNC having the same specifications as the Steam that it delivers to PSC.

4.3 Backup Steam Service In the event that Steam service from the PSC Facilities is partially or wholly interrupted for a period of time sufficient to reasonably warrant that portable back-up Steam service is required for PNC and PSC consumers, and if the supplying of back-up Steam is practicable, PSC shall provide back-up Steam to PNC to the same extent that PSC provides back-up Steam to PSC. The Parties agree to coordinate with one another in any event that back-up Steam is required in order to mutually arrange for the most reasonable and cost effective manner of providing for such back-up Steam. PSC shall be obligated to use Commercially Reasonable Efforts to secure such supplemental or back-up Steam within a period of time reasonable in the circumstances and deliver such Steam pursuant to the terms of this Agreement. The costs reasonably incurred by PSC to secure supplemental or back-up Steam shall be offset by a withdrawal of funds by PSC from the Capital Reserve Fund and, if the Capital Reserve Fund shall be inadequate at the time to cover the entire amount of such costs, the remainder of such costs shall be shared according to the Steam Cost Sharing Charge provisions of Exhibit 4, provided, that in the event that, pursuant to the coordination process for securing back-up Steam, PNC agrees to waive its rights hereunder and provide for its own back-up Steam, there shall be no such cost sharing.

4.4 Other Sales of Steam PSC shall have the right to produce and sell Steam produced by the Steam Production Facilities to any other person on such terms and conditions as PSC and such person shall agree provided, that such right shall not negate or in any way diminish PSC's obligations under this Agreement to deliver Steam to PNC hereunder. Any costs incurred by PSC for the purpose of the production and/or delivery of Steam sold to any such other person shall, to the extent such costs are unrelated to providing steam to PSC and PNC, be

excluded from the determination of the Steam Cost Sharing Charge addressed in Exhibit 4 and PNC shall have no right, title or interest in any amounts received by PSC for any such sales including through the Steam Cost Sharing Charge.

4.5 Return of Condensate PNC shall return all condensate to the Steam Production Facilities but shall be entitled to no specific credit therefor in the determination of costs to be shared hereunder, it being the agreement of the Parties that PNC's benefit for returning condensate shall be sufficiently recognized in the overall determination of costs to be shared hereunder.

4.6 Passage of Title to Steam Title to and full responsibility, including risk of loss, for Steam delivered by PSC to PNC hereunder shall pass to PNC at each Point of Delivery.

4.7 Energy Conservation Measures Neither Party shall be restricted hereby from reducing its need for Steam from its normal and customary usage levels prior to the Effective Date through the use, implementation or installation of energy efficiency or conservation measures or any other action regardless of purpose (collectively, "ECMs"). Notwithstanding the foregoing, ECMs shall not include routine maintenance, replacement of equipment with like (or substantially similar) equipment, or adjusting temperature settings. Each Party acknowledges that its implementation or installation of ECMs has the potential to have consequences on the other Party's costs and to be important to the other Party's planning, budgeting and operating activities. The Parties, therefore, agree that a Party contemplating the implementation or installation of an ECM shall, as soon as practicable following that Party's contemplation of installing or implementing an ECM, notify the other Party that an ECM is being contemplated and assure that a representative of the notifying Party, through the operation of the Coordination Committee, provides the other Party with an explanation, description and other information regarding the ECM under contemplation as is consistent with good faith dealing and the cooperation of the Parties in carrying out the terms and conditions of this Agreement. In addition, the Parties agree to, on an informal basis, trade information about new technology or measures that might improve the operational efficiency of the system.

4.8 Projected Usage and Baseline PNC will provide to PSC an annual projection not later than each October 1st following the Effective Date of its expected Steam needs for each month during the succeeding calendar year taking into account all factors of which PNC is then aware in order to assist PSC in its preparation of the Billing Budget. PNC's projection shall be determined in good faith and shall be in sufficient detail to explain the underlying facts and assumptions and shall reflect the expected effects, if applicable, of any ECMs to be installed or implemented during that year. PSC acknowledges that the projection provided by PNC pursuant to this Section 4.8 shall not include increases or decreases due to events outside of PNC's control, such as weather, and PSC agrees that a good faith projection shall not be binding on PNC or serve as a minimum load requirement, nor shall it affect PSC's obligations to provide Steam to PNC pursuant to this Agreement.

4.9 Steam Flow Receipt Requirement PNC shall use Commercially Reasonable Efforts to operate and maintain its Steam receipt facilities so as to receive the entire quantity of Steam conforming to the requirements of Section 4.2 of this Agreement that is required by PNC and PSC is required to deliver to PNC hereunder.

## 5. BUDGET, BILLING AND PAYMENT

### 5.1 Budget

5.1.1 As of the Effective Date, PSC shall have prepared and provided to PNC, a budget of expected and estimated costs, including capital investments, for the calendar year 2006. Thereafter, not later than November 1st of each year during the Term following the Effective Date, PSC shall prepare and provide to PNC: (i) a budget of expected and estimated costs, including capital investments, for all months of the succeeding calendar year (the "Billing Budget"); and (ii) a projection of Improvements to be undertaken, along with the estimated costs thereof, and estimated associated amortization periods, in each of the succeeding five (5) years ("Capital Budget"). The Billing Budget presented each year to PNC shall be substantially in the form set forth on Exhibit 6 and costs included in the Billing Budget shall be limited to those direct and indirect costs expected to be incurred by PSC to produce and deliver Steam through the PSC Facilities to PNC and PSC for consumption by those Parties, as further clarified in Exhibit 4. The Capital Budget reflecting amortization schedules will be utilized to determine the level of contributions needed for the Capital Reserve Fund pursuant to Section 5.10 and, once established, the Capital Budget shall not be modified except in the case of exigent circumstances. The determination of each Billing Budget and Capital Budget shall reflect reasonable amortization periods and otherwise be within the sole determination of PSC, but shall be handled on an "open book" basis, such that PSC shall consult with PNC in the preparation of same, and PNC shall have the right to request reasonable documentation in support thereof as may exist. Discussion by the Parties of budgets and projections prepared by PSC, respecting the costs of operating and maintaining the PSC Facilities for periods later than those included in the Billing Budget, shall occur through the Coordination Committee.

5.2 Invoicing PSC shall invoice PNC each month for the Steam Cost Sharing Charge for the Billing Period preceding such month based on the Billing Budget and any adjustments to prior invoices based on implementation of the provisions of this Agreement pertaining to the true-up of prior invoices to account for differences between amounts included in the Billing Budget and actual costs of producing and delivering the Steam during the period in question in accordance with Exhibit 4. Such invoices shall include all information reasonably necessary to support the billing amounts, including but not limited to the following:

5.2.1 The metered quantity of Steam delivered to PNC;

5.2.2 The budgeted or estimated cost of production of the Steam by PSC for the billing period as included in the Billing Budget; and

5.2.3 Any adjustments to prior invoices based on implementation of the provisions of this Agreement pertaining to the true-up of prior invoices to account for differences between amounts included in the Billing Budget and actual costs of producing and delivering the Steam during the period in question in accordance with Exhibit 4.



5.3 Steam Cost Sharing Charge—PSC shall calculate the Steam Cost Sharing Charge for each Billing Period as set forth herein and in Exhibit 4.

5.4 Payment of Invoices—PNC shall pay each invoice issued by PSC for the Steam Cost Sharing Charge within thirty (30) days of the date of receipt of such invoice.

5.5 Disputed Amounts—If PNC challenges the correctness of any information or invoice submitted by PSC hereunder, PNC shall promptly submit to PSC a written notice detailing the specific items challenged. If the Parties are unable to reach agreement with respect to a challenged item within thirty (30) days of PNC's notice, such dispute shall be subject to the provisions set forth in Article 12. Notwithstanding the foregoing, if PNC challenges the correctness of any statement or invoice submitted by PSC hereunder or such matter is submitted for Dispute Resolution under Article 12, PNC shall nevertheless, within the time for payment specified hereunder, make payment directly to PSC for the undisputed amount of such statement or invoice and indicate the amount thereof being challenged or disputed but in no event, however, shall such payment by PNC be less than the amount included in such invoice based on the Billing Budget for the Billing Period. If the disputed amount is over \$25,000 or if disputed amounts accumulate to more than \$25,000, PNC shall then place the total disputed amount in escrow pending the ultimate determination of the Dispute(s). If the Parties ultimately agree upon an adjustment to the amount invoiced by PSC, or such an adjustment is required as a result of pursuing the provisions of Article 12, the amount agreed upon or required to be paid shall, as applicable, be paid by PNC to PSC, or be credited by PSC to PNC, within ten (10) days of such agreement or finding or credited to PNC on the next regularly scheduled invoice by PSC to be issued not less than ten (10) days after such agreement or finding. Notwithstanding the foregoing terms and conditions of this Section 5.5, each party agrees that it shall not withhold or delay payment or credit of any amount due to the other Party resulting from clerical or ministerial error or omission respecting the amount of such invoice, but rather, shall pay such invoice, or recognize such credit, in the corrected amount if reasonably determinable by the Party discovering the error or, if that Party cannot reasonably determine the correct amount of the invoice, it shall promptly bring the matter to the attention of the other Party so that the correct amount of the invoice may be determined. Following such determination, the Party required to make any such payment or provide any such credit shall promptly do so.

5.6 Taxes—Except as provided below, PSC shall be responsible for paying as may be required by Law, all federal, state and local excise, sales and use or similar Taxes imposed upon PSC as a direct consequence of the transactions contemplated hereby. PSC shall be permitted to charge back to PNC the full amount of any utility services, gross operating income, sales, excise, occupation, use or other similar tax that is or are imposed on PSC as a direct result of PSC's provision of Steam service under this Agreement. All Taxes charged back to PNC by PSC under this paragraph shall be stated separately on any bill or invoice rendered by PSC to PNC. The Parties shall cooperate with each other to minimize Tax liability.

5.7 Interest—Amounts not paid by PNC to PSC, and amounts not paid by PSC to PNC, when due under any provisions of this Agreement shall bear interest at the Late Payment Rate from the date such payment is due until and including the date of actual payment.

5.8 Final Billing□ In the event of the termination or expiration of this Agreement, PSC shall, within ninety (90) days of the date of termination or expiration, or as soon thereafter as practicable, provide a final billing statement to PNC and, subject to the provisions of Section 5.5, PNC shall pay PSC the amount thereof within 30 days of receipt of the date of such billing statement.

5.9 Audit Rights□ Upon reasonable advance written notice by PNC to PSC, PSC shall make available for review by or on behalf of PNC (at a mutually agreeable time and location) once during the second half of the first twelve (12) month period following the Effective Date, and thereafter not more frequently than once in any twelve (12) month period during the Term of this Agreement, those books and records of PSC and related source documents relied on by PSC in the determination of the Steam Cost Sharing Charge. Any notice given by PNC in connection with the exercise of PNC's rights pursuant to this Section 5.9 shall identify with specificity all persons and entities that PNC has authorized to participate in the review of such books, records and source documents of PSC. Each Party shall be responsible for its own costs incurred as a result of an audit by PNC, except that PNC shall be reimbursed in full for its audit costs if: (a) audit reveals that PNC was overbilled by ten (10%) percent or more in any audit period; and (b) for any audit subsequent to one where the provisions of Section 5.9(a) are triggered, if that subsequent audit reveals that PNC was overbilled by five percent (5%) or more in any audit period. The computation of such percentages shall not be based upon the following: (i) overbilled amounts (or amounts that PNC claims to have been overbilled) that have been corrected or otherwise resolved in a manner mutually satisfactory to the Parties prior to the commencement of any such audit or (ii) overbillings to the extent that the same are based upon incorrect information provided by PNC to PSC or omissions in information so provided. Billing disputes arising from such audits shall be handled pursuant to Article 12, Dispute Resolution and Arbitration.

5.10 Capital Reserve Funding□ The Parties agree to the establishment, accumulation and use, of a Capital Reserve Fund. The purpose of this Capital Reserve Fund shall be limited to paying or reimbursing PSC for, in full or in part, capital Improvements by PSC in PSC Facilities reasonably undertaken pursuant to Section 3.2 and costs incurred by PSC pursuant to Section 4.3, or any other purpose to which the Parties may from time to time agree in writing. The monthly funding to the Capital Reserve Fund shall be considered a cost subject to sharing by the Parties under the terms of this Agreement and shall be included in the Billing Budget. Such Reserve Fund shall be funded by the Parties at the rate of \$92,500 for each month of the Term that occurs during the calendar year 2007 and at monthly amounts thereafter as shall be reasonably determined by PSC from time to time based on the Capital Budget developed pursuant to Section 5.1(ii), and agreed to by PNC, which agreement shall not be withheld unreasonably. The funding of the Capital Reserve Fund shall be subject to the cap provision set forth in the succeeding sentence, and each Party shall be responsible for its proportionate share of the monthly funding amount. This monthly capital reserve funding shall be suspended; (a) each time the accumulated balance (net of any expenditures) in the Capital Reserve Fund exceeds \$1,750,000.00 (adjusted annually in accordance with the CPI) and following each such suspension, shall resume in order to replenish the Capital Reserve Fund, at any time that the Capital Reserve Fund becomes less than said amount; and (b) as to PNC, during any period that PSC fails to make its monthly contribution. Subject to the specific limitations on the use of the funds, and general principles of good faith, fair dealing and Law, PSC shall have sole dominion

and control over the Capital Reserve Funds and shall have the right to invest such funds exclusively in obligations of the United States government or interest bearing bank accounts or combination thereof provided, however, that PSC shall provide to PNC a copy of the monthly statement for the Capital Reserve Fund each month as it is received. Any income or earnings from such investment, net of all related taxes, fees and costs of any nature shall be credited to the Capital Reserve Fund and, together with any investment losses (net of tax effects), shall be recognized by the Parties in the determination of the Capital Reserve Fund balance for all purposes. PNC shall have no right or interest in any portion of the balance of the Capital Reserve Fund that might exist upon the expiration or termination of this Agreement or at any time prior thereto, and PNC hereby irrevocably waives any and all rights to the balance retained by PSC in accordance herewith and every part thereof then existing, unless the Agreement is terminated by PSC pursuant to Section 7.1, in which case PNC shall be entitled to full reimbursement of its unspent contributions to the Capital Reserve Fund at the time that PSC provides the notice required under Section 7.1. Notwithstanding the above, PNC's audit rights hereunder shall extend to the Capital Reserve Fund and any disputes arising from such audits shall be subject to the provisions of Article 12, Dispute Resolution and Arbitration.

## **6. MEASUREMENT OF STEAM**

### **6.1 Steam Meter Ownership and Maintenance.**

6.1.1 PSC shall own, operate and maintain the PSC Steam Meters in accordance with the terms and conditions hereof. PSC shall investigate promptly any reports by PNC that meter read results appear inaccurate and, where necessary, immediately repair or replace a defective Steam meter. In furtherance thereof, PNC shall provide PSC with a web-based output of the digital reads from the meters. PSC also shall inspect the steam traps located just upstream of the PSC Steam Meters on a monthly basis and, to the extent necessary, shall clean, repair or replace the steam traps in order to ensure a low water content in the Steam delivered to PNC.

6.1.2 PSC may access the PSC Steam Meters in the PNC Control Rooms, on the terms set forth herein, for inspection, testing, adjustment, maintenance or repair.

6.1.3 PNC may at anytime, after written notice to PSC, initiate the installation of one or more Backup Steam Meters to be located in the PNC Control Rooms, in which case, PNC shall be responsible for the cost of acquisition and proper installation, as well as the testing, calibration and maintenance of the Backup Steam Meters. Such installation shall be installed in a mutually agreeable manner and shall not interfere with the operation or maintenance of any Control Room Steam Meter.

6.2 Steam Meter Design and Characteristics It is the intent of the Parties that the Steam Meters be of such design and characteristics that these be of "utility grade." PNC hereby agrees that the PSC Steam Meters in use as of the Effective Date are wholly acceptable with respect to design and characteristics for the intended purposes of the transactions contemplated hereunder.

### **6.3 Steam Meter Testing and Calibration.**

6.3.1 PSC shall be responsible for testing and calibrating the instrumentation associated with the PSC Steam Meters not less frequently than annually. Upon request, PSC shall promptly provide copies of all testing and calibration results to PNC. PNC shall be responsible for testing and calibrating the instrumentation associated with any Backup Steam Meters that may be installed pursuant Section 6.1.3 not less frequently than annually. Upon request, PNC shall promptly provide copies of all testing and calibration results to PSC.

6.3.2 Either Party may request at any time, by providing notice to the other Party, to have additional testing of any Steam Meter conducted to ensure compliance with the accuracy requirements hereof. Upon the performance of such additional testing, the Party owning any Steam Meter found to be in need of adjustment, repair or replacement shall take action necessary to ensure compliance of its Steam Meter(s) with the accuracy standard hereof. If such additional testing of a Steam Meter by a Party, at the request of the other Party proves that the Steam Meter accuracy is within the limits allowed hereunder, then the cost of such additional testing shall be borne by the requesting Party. Otherwise, the cost of such additional testing shall be borne by the Party that owns the Steam Meter(s) that have been subject to such additional testing and in the case of such costs to be borne by PSC, such costs shall be includable in the determination of the Steam Cost Sharing Charge.

#### 6.4 Steam Meter Reading Adjustment.

6.4.1 PSC shall adjust the PSC Steam Meters' billing values as follows, if upon any calibration, such a Steam Meter in aggregate is found to be recording inaccurately by more than plus or minus two percent (2%) at normal Steam flow conditions. Adjustments to past payments by PNC which were determined based on inaccurate recordings of PSC Steam Meter shall be adjusted at the rate of such inaccuracy as necessary to correct to zero percent (0%) error for any period of inaccuracy that is definitely known and/or agreed upon. In the event such period of inaccuracy is not known and/or agreed upon by the Parties, then such adjustments shall be made halfway back to the preceding valid calibration, however, such adjustments when the period of inaccuracy is not known and not agreed upon by the Parties shall not extend beyond sixty (60) days prior to the date of discovery of the error. Under no circumstances shall an adjustment extend beyond one (1) year prior to the date that the error was determined. Such adjustments shall be applied to the next Billing Period invoice or, if in excess of the amount of such invoice, to subsequent invoices as necessary to complete the applicable adjustment.

6.4.2 If for any reason a PSC Steam Meter is out of service or repair so that the quantity of Steam volume or mass through such a PSC Steam Meter cannot be ascertained or computed from the readings thereof, the quantity of Steam so delivered during the period when such a PSC Steam Meter system is out of service or repair shall be determined on the basis of the first of the following methods which is feasible as listed in order, and as mutually agreed between the Parties hereto:

- (a) by using the cumulative volumes from a properly installed Backup Steam Meter, if applicable, adjusting for historical differences, if any between that Backup Steam Meter and the PSC Steam Meter.
- (b) by correcting the error mathematically if the amount of such error is ascertainable by calibration, test, or calculation.
- (c) by estimating the quantity from the amount of deliveries during, preceding, and/or following periods where the delivery conditions were similar and the PSC Steam Meter was recording accurately, or by any other method, which is mutually agreeable to the Parties.

6.5 Maintenance of Steam Meter Records All information generated by or from a Steam Meter, in whatever form, shall be the property of the Party that owns that Steam Meter and the owning Party shall keep a record of all monthly meter readings, test reports and repair reports. Said owning Party shall make such records available for inspection by the other Party upon reasonable notice during regular business hours. Said owning Party shall keep such materials on record for a minimum of six (6) years from the date of their preparation.

## 7. TERM AND TERMINATION

7.1 Term This Agreement shall be effective and legally binding commencing on the Effective Date and continuing for a period of not less than ten (10) years unless earlier terminated as otherwise provided for herein. This Agreement shall automatically renew for successive five (5) year extension periods commencing on the tenth anniversary of the Effective Date and upon the fifth anniversary of the effective date of any such extension unless: (i) PNC provides written notice to PSC of termination of this Agreement at the option of PNC no less than three (3) years in advance of the tenth anniversary of the Effective Date or no less than three (3) years in advance of the expiration date of any such five (5) year extension period or (ii) PSC provides written notice to PNC of termination of this Agreement no less than three (3) years in advance of the expiration date of any five (5) year extension period, provided, that PSC may exercise this option only if PSC will cease being a producer of Steam as of the end of such extension period and, provided further, that during any notice period under this Section 7.1 (ii) PNC shall not be required to share in paying for Improvements or making contributions to the Capital Reserve Fund required under Section 5.10 and/or Exhibit 4. During any notice period occurring under Section 7.1(i), PNC shall be required to make contributions to the Capital Reserve Fund but only to the extent that the funding requirements are for Improvements previously identified in the PSC Capital Budget prepared in accordance with Subsection 5.1.1(ii), and subject to the Terms of Section 5.10.

7.2 Survival The provisions of this Agreement that, by their terms are intended to extend beyond the expiration of the Term, shall continue in effect after such expiration of the Term.

8. REPRESENTATIONS, WARRANTIES AND COVENANTS. In addition to the representations, warranties and covenants specifically identified elsewhere in this Agreement, the Parties make the following representations, warranties and covenants:

8.1.1 PSC represents, warrants and covenants to PNC that it is a not-for-profit corporation duly organized and validly existing under the laws of the State of New York. PNC represents, warrants and covenants to PSC that it is an unincorporated association duly organized and validly existing under the laws of the State of New York.

8.1.2 Each Party represents, warrants and covenants to the other Party that it has all necessary authority and power under its organizational documents to enter into and perform its obligations and responsibilities under the Agreement, and its execution and performance of this Agreement has been duly authorized, including authorization or approval by its respective Board of Managers or Board of Directors, as applicable, pursuant to such organizational documents and it does not require any approval or consent pursuant to such organizational documents other than those that it has already obtained and entering into and performing this Agreement does not conflict with or constitute a default under its organizational documents or any agreement to which it is bound or any of its Assets are bound.

8.1.3 PNC represents, warrants and covenants to PSC that PNC shall furnish information that may be reasonably requested by PSC in order to support PSC's efforts to satisfy any regulatory obligations it may have.

8.1.4 PNC represents and acknowledges to PSC that PSC has provided to PNC evidence of insurance coverage maintained by PSC as of the Effective Date that is fully satisfactory to PNC with respect to PNC's rights and PSC's obligations hereunder.

## 9. FORCE MAJEURE

9.1 Force Majeure—Force Majeure shall mean an event or circumstance beyond the reasonable control of, and without the fault or negligence of, a Party, which causes such Party to be unable to perform its obligations hereunder; provided that, changes in the economic or financial circumstances of a Party shall not constitute Force Majeure. Force Majeure shall include: failure or interruption of the production, delivery or acceptance of Steam due to an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; terrorism, military or guerrilla action; economic sanction or embargo; civil strife, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; hurricane; flood; lightning; severe wind; drought; peril of the sea; unavailability or failure of equipment, supplies or products not due to an act or omission of the Party claiming Force Majeure.

9.2 Excused Performance—Each Party shall be excused from performance hereunder and shall not be considered to be in default or be liable in damages or otherwise with respect to any obligation hereunder, except PNC's obligation to pay money when due for Steam delivered by PSC, if and to the extent that such Party's failure of, or delay in, performance is due to a Force Majeure event; provided, that:

9.2.1 The Party seeking to be excused gives the other Party prompt oral notice, and then written notice describing the particulars of the Force Majeure event, including the expected duration and probable impact on the performance of such Party's obligations hereunder, and thereafter continues to furnish timely, regular reports with respect thereto

during the continuation of the Force Majeure, as soon as is reasonably practicable, but in no event later than ten (10) days after the occurrence of such event;

9.2.2 The suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure event;

9.2.3 The Party affected by the Force Majeure event uses Commercially Reasonable Efforts to:

- (a) mitigate the effects thereof on itself and on the other Party; and
- (b) to correct or cure the event or condition excusing performance.

9.2.4 When the Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect and shall promptly resume performance hereunder.

9.3 Burden of Proof—The burden of proof as to whether an event of Force Majeure has occurred shall be upon the Party claiming relief due to the Force Majeure.

9.4 Payment Obligations Not Excused—No payment obligation arising under this Agreement during or prior to the date of a Force Majeure event shall be excused by such event of Force Majeure.

## 10. DEFAULT

10.1 Event of Default—An Event of Default under this Agreement shall be deemed to exist with respect to a Party upon the occurrence of any one or more of the following events:

10.1.1 failure by a Party hereunder to make a payment, or provide a credit, of any amount when due to the other Party under this Agreement, which failure continues for a period of fourteen (14) days after receipt of written notice of such nonpayment or failure to provide a credit; or

10.1.2 failure by a Party hereunder to perform fully any other material obligation under this Agreement, including PSC's failure to provide Steam to PNC in accordance with the terms and conditions set forth herein, if such Party does not cure such failure within thirty (30) days of the date of receipt of a notice from the other Party demanding such cure (or within such longer period of time as is reasonably necessary to accomplish such cure, if it cannot be reasonably accomplished within such thirty (30) day period and such Party diligently commences such cure in such period and continues such cure to completion), provided, that during the cure period the obligations under Section 4.3 hereof shall remain in effect; or

10.1.3 if by order of a court of competent jurisdiction, a receiver or liquidator or trustee of a Party or of any of the property of a Party shall be appointed, and such receiver or liquidator or trustee shall not have been discharged within a period of sixty (60) days; or if by decree of such a court, a Party shall be adjudicated bankrupt or

insolvent or any substantial part of the property of such Party shall have been sequestered, and such decree shall have continued undischarged and unstayed for a period of sixty (60) days after the entry thereof; or if a petition to declare bankruptcy or to reorganize a Party pursuant to any of the provisions of the federal Bankruptcy Code, as it now exists or as it may hereafter be amended, or pursuant to any other similar state statute applicable to such Party, as now or hereafter in effect, shall be filed against such Party and shall not be dismissed within sixty (60) days after such filing; or

10.1.4 if a Party shall file a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or, without limitation of the generality of the foregoing, if a Party shall file a petition or answer or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of the federal Bankruptcy Code, as it now exists or as it may hereafter be amended, or pursuant to any other similar state statute applicable to such Party, as now or hereafter in effect, or an answer admitting the material allegations of a petition filed against it in such a proceeding; or if a Party shall make an assignment for the benefit of its creditors; or if a Party shall admit in writing its inability to pay its debts generally as they become due; or if a Party shall consent to the appointment of a receiver or receivers, or trustee or trustees, or liquidator or liquidators of it or of all or any part of its property; or

10.1.5 if any representation or warranty by a Party set forth herein shall have been false or misleading and the other Party is materially adversely affected by its reliance thereon unless such breach is cured within sixty (60) days of written notice.

10.2 Force Majeure—No Event of Default shall have occurred with respect to either Party to the extent such Party's failure to perform an obligation is caused by conditions or events of Force Majeure, provided that such Party has complied with its obligations regarding such Force Majeure contained herein.

10.3 Remedies for Default—Upon the occurrence and during the continuation of an Event of Default, the Party not in default shall have the right to:

10.3.1 except for an Event of Default under Section 10.1.1, which such Event shall be addressed under Section 10.3.2, terminate this Agreement in its entirety upon thirty (30) days written notice to the other Party ;

10.3.2 suspend the delivery of Steam by PSC to PNC if the Event of Default is a payment default as set forth in Section 10.1.1, and such payment default involves PNC's failure to pay the Steam Cost Sharing Charge to PSC as required hereunder provided, however, that PSC shall not suspend the delivery of Steam to PNC due to PNC's failure to pay the Steam Cost Sharing Charge to PSC with respect to any instance where such failure is in connection with a dispute with respect to the amount of the Steam Cost Sharing Charge which, at PNC's good faith initiation, is pending in accordance with the dispute resolution process addressed in Article 12 hereof provided further, however, that PSC shall have the right to suspend the delivery of Steam to PNC, upon ten (10) days written notice to PNC, in the event that PNC does not, within twenty (20) days of the



resolution of such dispute, whether by agreement between the Parties or by arbitration award, court decision or order in favor of PSC, make payment in full to PSC in accordance with such agreement by the Parties or arbitration award, court decision or order. Notwithstanding any provision herein to the contrary, with respect to terminations pursuant to the preceding sentence: (i) no such termination or suspension shall occur during the period beginning December 25th of each year and ending January 15th of the following year; and (ii) any such termination or suspension during the period beginning November 1st of each year and ending April 15th of the following year shall be on not less than an additional fifteen (15) days written notice to PNC issued subsequent to the award, decision or order in question.

10.3.3 pursue any and all other remedies as set forth herein available at law or in equity subject to the requirements of Article 12.

10.4 Remedies Not Exclusive Except as expressly provided otherwise herein, the rights and remedies herein provided in case of an Event of Default shall not be exclusive but shall, to the extent permitted by Law, be cumulative and in addition to all other rights and remedies existing at Law, in equity or otherwise, provided that, the foregoing shall not apply in the event any such rights or remedies are expressly waived herein. Except as otherwise provided herein, no delay or omission of a Party to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of such default or an acquiescence therein. Every right and remedy given by this Agreement or by Law (and not expressly waived or altered herein) to a Party may be exercised from time to time, and as often as may be deemed expedient, by such Party.

10.5 No Consequential Damages The Parties agree that it is their intent that notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other Party for claims for incidental, special, indirect, punitive or consequential damages of any nature connected with or resulting from performance or non-performance of this Agreement, including claims in the nature of lost revenue, income or profits, losses, damages or liabilities irrespective of whether such claims are based upon negligence, strict liability, contract, operation of law or otherwise; provided that, it is specifically intended by the Parties that, subject to the duty to mitigate, direct damages incurred as a breach of this Agreement, including payments, costs and expenses required or provided for hereunder, including specified damages, are not to be construed as consequential damages or otherwise restricted hereunder.

10.6 Intent The Parties intend that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and remedy provisions expressed throughout this Agreement shall apply even in the event of the fault, negligence, strict liability or breach of contract of the Party released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision. The Parties also intend and agree that such provisions shall continue in full force and effect notwithstanding the termination or suspension of this Agreement.

## 11. INDEMNIFICATION AND LIMITATION OF LIABILITY

### 11.1 Indemnification Provisions

11.1.1 PSC Indemnification: PSC shall indemnify and hold harmless PNC, its directors, officers, managers, agents, servants, employees, unit owners and residents, from and against all claims, demands, causes of action, liabilities, costs, damages, fees, losses and expenses (including reasonable attorneys' and expert witness fees) to the extent attributable to the gross negligence or willful misconduct of PSC, its directors, officers, managers, agents, servants or employees in connection with its performance of this Agreement and the further distribution of Steam by PSC to any and all unit owners of PSC, third parties, or to the common benefit of PSC owners. PSC's obligations to indemnify and hold harmless pursuant hereto shall survive the expiration or termination of this Agreement. PSC's obligation to make payment to PNC with respect to PSC's indemnification and hold harmless obligations pursuant hereto shall be separate from and in addition to payment obligations of PSC, if any, that might arise pursuant to any other terms or conditions of this Agreement.

11.1.2 PNC Indemnification: PNC shall indemnify and hold harmless PSC, its directors, officers, managers, agents, servants, employees, unit owners and residents from and against all claims, demands, causes of action, liabilities, costs, damages, fees, losses and expenses (including reasonable attorneys' and expert witness fees) to the extent attributable to the gross negligence or willful misconduct of PNC, its directors, officers, managers, agents, servants or employees in connection with its performance of this Agreement and the further distribution of Steam by PNC to any and all unit owners of PNC or to the common benefit of PNC owners. PNC's obligations to indemnify and hold harmless pursuant hereto shall survive the expiration or termination of this Agreement. PNC's obligation to make payment to PSC with respect to PNC's indemnification and hold harmless obligations pursuant hereto shall be separate from and in addition to any other payment obligations of PNC that might arise pursuant to any other terms or conditions of this Agreement.

## 11.2 Limitation of Liability of Unit Owners and Management

11.2.1 PSC Units and Management. Notwithstanding anything contained herein to the contrary, the liability of any owner of a unit in PSC arising out of this Agreement shall be limited to such portion of such liability as his or her interest in the common elements of PSC bears to the total ownership interest in the applicable common elements of PSC. Notwithstanding anything contained herein to the contrary, the members of the Board of Directors of PSC and their successors shall have no liability arising out of this Agreement except such liability as they may have as owners of units of PSC.

11.2.2 PNC Units and Management. Notwithstanding anything contained herein to the contrary, the liability of any owner of a residential unit in PNC arising out of this Agreement shall be limited to such portion of such liability as his or her interest in the common elements of PNC bears to the total ownership interest in the applicable common elements of PNC. Notwithstanding anything contained herein to the contrary, the members of the Board of Managers of PNC and their successors shall have no liability arising out of this Agreement except such liability as they may have as owners of units of PNC.

## 12. DISPUTE RESOLUTION AND ARBITRATION

12.1 General Provisions Every dispute of any kind or nature between the Parties arising out of or in connection with this Agreement in which the amount in controversy is equal to or less than \$500,000.00 (each a "Dispute") shall be resolved in accordance with this Article 12, to the extent permitted by Law. For disputes where the amount in controversy is over \$500,000.00, either Party may pursue a judicial process upon written notice to the other Party. In the event neither Party elects to pursue a judicial process, the Parties shall follow the provisions of this Article 12.

### 12.2 Dispute Resolution

12.2.1 Notice: Upon the occurrence of a Dispute, either Party may deliver a written notice of the Dispute to the other Party. Any such notice shall be provided within twenty (20) days of the occurrence and describe the Dispute in sufficient detail to reasonably identify the relevant issues and facts.

12.2.2 First Stage Dispute Resolution: Unless the Parties otherwise agree, each Dispute shall first be promptly referred for "First Stage Dispute Resolution" to one or more persons possessing an understanding of the Dispute in the respective middle managements of each of the Parties. These persons shall communicate, exchange relevant documents and conduct at least one (1) meeting in a good faith effort to resolve the Dispute.

12.2.3 Second Stage Dispute Resolution: In the event that the First Stage Dispute Resolution does not result in a resolution within twenty (20) days, the Parties shall conduct a Second Stage Dispute Resolution wherein their respective Presidents and Boards of Managers shall each designate Board Members to meet together at least once in a good faith effort to resolve the Dispute.

12.3 Mediation If a Dispute is not resolved within sixty (60) days of the delivery of a written notice of Dispute as provided for in Section 12.2.1, the Parties agree first to try in good faith to settle the Dispute by non-binding mediation administered by the AAA under its "Commercial Mediation Procedures" or administered by such other mediator who may be acceptable to both Parties, for a period of not more than seventy (70) days before resorting to Arbitration in accordance with Section 12.4, with the understanding that all third party costs and expenses of any such mediation shall be borne equally by the Parties and that each Party shall bear all of the costs and expenses it incurs in connection with any such mediation.

### 12.4 Arbitration

12.4.1 Any Dispute that has not been resolved by mediation, as provided for in Section 12.3 above may be submitted by either Party to binding arbitration pursuant to the procedures set forth in this Article 12 and pursuant to the Arbitration Rules. If and to the extent that the provisions of this Article are inconsistent with the Arbitration Rules, the provisions of this Article shall control in any arbitration proceeding to the extent permitted by Law.

12.4.2 Either Party may make demand for arbitration in writing to the other Party, setting forth the nature of the Dispute, the amount involved, if any, and the remedies sought. The demand for arbitration shall be made within a reasonable time after the expiration of the seventy (70) day period set forth in Section 12.3 and in no event shall it be made when institution of legal or equitable proceedings based on such Dispute would be barred by any applicable statute of limitations.

12.4.3 Within ten (10) days after any demand for arbitration under Section 12.4.2 or as soon thereafter as possible, the Parties shall agree on a single arbitrator, or, in the absence of such agreement, a single arbitrator shall be appointed pursuant to the Arbitration Rules provided that any such arbitrator shall be experienced generally with the subject matter(s) of the Dispute, shall have prior experience conducting arbitrations under the Arbitration Rules, and shall not have had an affiliation with either Party or a major investor in either Party or have any financial interest in the Dispute.

12.4.4 Prior to accepting appointment, the arbitrator shall acknowledge the time limits set forth in this Article 12 and shall agree to endeavor to resolve the Dispute promptly and without undue delay in accordance with the time limits set forth herein but consistent with obtaining a fair and just resolution of such Dispute. Unless the right to hold oral hearings has been waived by each Party, the arbitration hearing shall be held in New York, New York, or such other place as may be mutually agreed upon by the Parties, and shall commence not later than one hundred (100) days after the date of the original demand under Section 12.4.2. The decision of the arbitrator shall be in writing, stating specifically the reasons of fact and law on which the decision is based, shall be final and binding on the Parties, and, except as provided in the succeeding sentence, shall be made not later than thirty (30) days after the date of closing of the hearing, or if oral hearings have been waived, after the date of transmitting the final statements and proof to the arbitrator. The Parties acknowledge and agree that the time limits set forth in this Section 12.4.4 are of vital importance but that any such time limits are subject to extension should the arbitrator determine, in his or her sole discretion, that fairness and justice require an extension of any such time limit or if the Parties mutually agree.

12.4.5 In the event the arbitrator finds a breach of the terms and conditions of this Agreement to have occurred and be continuing, the arbitrator shall have express authority to order the payment of damages to compensate the non-breaching Party for any loss. Any payment of damages ordered by the arbitrator shall bear interest at the Late Payment Rate, which interest shall accrue daily, from the date as of which such damages are calculated to the date on which the Party entitled thereto receives payment thereof in full. The award of the arbitrator shall be final, except as otherwise provided by Law. Judgment upon such award may be entered on behalf of the prevailing Party in any court having jurisdiction thereof, and application may be made by such Party to any such court for judicial acceptance of such award and an order of enforcement.

12.4.6 Except as otherwise determined by the arbitrator in the exercise of the arbitrator's discretion, the fees and expenses of the arbitrator shall be borne in full by the Party against whose interest the arbitrator shall have fully or predominantly decided and

each Party shall bear its own other costs and expenses including the fees and disbursements of its legal counsel and technical consultants.

12.4.7 The arbitrator shall have no authority, power or right to alter, change, amend, modify, waive, add to or delete from any of the provisions of this Agreement, and any award rendered by the arbitrator shall be consistent with the terms and conditions of this Agreement.

12.4.8 The Parties agree to exclude any right of application or appeal to the courts of any jurisdiction in connection with the arbitration proceedings, the subject matter of the arbitration proceedings or the decision of the arbitrator, except for the purpose of enforcement, as set forth herein, and except for obtaining provisional remedies as set forth herein, and each Party acknowledges and agrees that any award by the arbitrator shall be the sole and exclusive remedy for the subject matter of the Dispute.

12.4.9 Notwithstanding any provisions herein to the contrary, an aggrieved Party may seek to obtain provisional remedies including but not limited to injunctive relief, writ of attachment or writ of sequestration from a court of competent jurisdiction following the notice to the other Party pursuant to 12.4.2.

12.4.10 All aspects of any arbitration hereunder shall be treated as confidential if reasonably requested by either of the parties. Neither the Parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements.

12.4.11 All Disputes involving materially-related facts or issues shall be consolidated into one arbitration proceeding.

12.5 Continued Performance During the conduct of Dispute resolution procedures pursuant to this Article, the Parties shall continue to perform their respective obligations under this Agreement, and neither Party shall exercise any other remedies hereunder arising by virtue of the matters in Dispute.

12.6 Effect of Termination No termination of this Agreement following an Event of Default shall relieve the defaulting Party of its liability and obligations hereunder, and the non-defaulting Party may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligations under this Agreement, and the rights given hereunder shall be in addition to all other remedies available to the Parties, either, at law, in equity, or otherwise, for the breach of this Agreement.

### 13. ASSIGNMENT

13.1 Restricted Assignment This Agreement may not be assigned by either Party, in whole or in part, and any assignment in violation hereof shall be null and void without:

13.1.1 the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, and

13.1.2 the written agreement of the assignee whereby such assignee expressly assumes all assignor's liabilities and agrees to perform each and every obligation of assignor pursuant to this Agreement.

13.2 Unrestricted Assignment□Notwithstanding Section 13.1, either Party, without the consent of the other Party, shall have the right to collaterally assign, mortgage, pledge or encumber all or any part of its interest in this Agreement to any financing party, lender or lender's agent.

#### 14. MISCELLANEOUS

14.1 Compliance With Law□Each of the Parties hereto shall comply with all Laws in the performance of its obligations pursuant to this Agreement, including without limitation obtaining Permits necessary for such performance.

14.2 Severability□If any term or condition of this Agreement shall be determined to be invalid or unenforceable, the Parties shall negotiate in good faith to make such equitable adjustments to this Agreement as may be appropriate so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner but the remainder of this Agreement shall continue in full force and effect.

14.3 Entire Agreement□This Agreement sets forth the full and complete understanding of the Parties as of the Effective Date, and supersedes any and all negotiations, other agreements and representations made or dated prior thereto.

14.4 Successors and Assigns□Except to the extent otherwise indicated herein, all the rights, benefits, duties, liabilities and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective successors and permitted assigns.

14.5 Amendment□No amendment or modification of the terms of this Agreement shall be binding on either PSC or PNC unless such amendment is reduced to writing and signed by both Parties.

14.6 No Partnership□Nothing in this Agreement shall be construed to create a partnership, joint venture or association, or establish a principal and agent relationship or any other relationship of a similar nature, between the Parties.

14.7 Counterparts□This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14.8 Information□Each Party shall make available to the other such other information as may be reasonably required to carry out the terms of this Agreement.

14.9 Additional Documents and Actions□Each Party agrees to execute and deliver to the other Party such additional documents, and to take such additional actions and provide such cooperation, as may be reasonably required to consummate the transactions contemplated by, and to effectuate the intent of, this Agreement.

14.10 Delay and Waiver—No delay or omission to exercise any right, power or remedy accruing upon the occurrence of any Event of Default under this Agreement shall impair any such right, power or remedy of such Party, nor shall it be construed to be a waiver of any such breach or Default, or an acquiescence therein. Any waiver, consent or approval of any kind on the part of a Party of any Event of Default of any provision of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.

14.11 Survival of Obligations—Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including without limitation, warranties, remedies, and promises of indemnity.

14.12 Costs—Except as otherwise expressly set forth in this Agreement, whether or not the transactions contemplated by this Agreement shall be consummated, each Party shall pay its own costs and expenses incidental to the negotiation and preparation of this Agreement.

14.13 Third Parties—This Agreement is for the sole benefit of the Parties hereto, and nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any person not a party to this Agreement. Except as specifically provided herein, no person shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder.

14.14 Benefit of Counsel—This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party; the Parties have agreed to the wording of this Agreement; and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part thereof.

14.15 Good Faith—The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement: where the Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed; and wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

14.16 Governing Law—This Agreement, including any arbitration pursuant hereto, shall be governed by and construed and interpreted in accordance with the laws of the State of New York without reference to the conflicts of laws principles thereof.

## 15. NOTICES

Any notice, demand, request, consent, approval, confirmation, communication, or statement which is required or permitted under this Agreement, shall be in writing, unless otherwise provided, and shall be given or delivered to the Party at the address set forth below. Such delivery may be by personal courier, electronic mail, fax (with electronic confirmation of receipt), telegram, overnight delivery service (with signed receipt), or United States Postage by registered or certified mail. A notice provided by electronic mail or fax with corresponding

electronic confirmation of successful receipt shall be deemed to be received. Notices shall be effective upon receipt or upon refusal of delivery.

Parkchester South Condominium  
Attn: President  
2000 East Tremont Avenue  
Bronx, New York 10462  
Tel: 718-823-7000  
Fax: 718-320-6010

The Parkchester North Condominium  
Attn: President  
1970 East Tremont Ave.  
Bronx, New York 10462  
Tel: 718-931-2455  
Fax: 718-597-4758

Parkchester South Condominium  
Attn: General Manager  
2000 East Tremont Avenue  
Bronx, New York 10462  
Tel: 718-320-6005  
Fax: 718-319-8068

The Parkchester North Condominium  
Attn: General Manager  
1970 East Tremont Avenue  
Bronx, New York 10462  
Tel: 718-931-2455  
Fax: 718-597-4758

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& Herz, LLP  
270 Madison Avenue  
New York, New York 10016  
Tel: 212-545-4620  
Fax: 212-686-0114

## 16. REGULATORY MATTERS

16.1 Public Service Commission. The Parties acknowledge that PSC will apply to the Public Service Commission seeking an exemption from regulation as a "Steam Utility" or make such other application regarding PSC's regulation as a "Steam Utility" as may be appropriate.

16.2 Cooperation. PSC and PNC agree to consult with one another and cooperate with regard to any and all such applications and with regard to actions that may be respectively required of the Parties in order to comply with any opinion and order(s) and/or regulation by the Public Service Commission regarding the transactions contemplated by this Agreement.

16.3 Utility Status. The Parties agree to be bound by any final opinion and order(s) of, and regulation by, the Public Service Commission relating to the performance by the Parties of this Agreement. Further, the Parties shall administer this Agreement in a manner consistent with any such final opinion and order(s). Notwithstanding the foregoing provisions of this Section 16.3, PSC or PNC or both Parties may seek re-hearing of any such opinion and order(s) before the Public Service Commission and/or seek relief pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York.



IN WITNESS WHEREOF, the Parties have caused the signatures of their authorized officers to be affixed as of the day and year first above written.

PARKCHESTER SOUTH  
CONDOMINIUM, INC.

By: Board of Directors

By: Margaret M. Walsh

Title: President

Attest: \_\_\_\_\_

THE PARKCHESTER NORTH  
CONDOMINIUM

By: Board of Managers

By: William H. Brown

Title: President

Attest: \_\_\_\_\_

STATE OF NEW YORK )

) SS:

COUNTY OF Brook )

On the 12<sup>th</sup> day of January, 2006, before me, the undersigned, personally appeared Harry Brown, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Jeffrey Reich  
Notary

JEFFREY REICH  
Notary Public State of New York  
No 02RE6028122  
Qualified in New York County  
Commission Expires May 23 20 07

STATE OF NEW YORK       )  
                                      ) SS:  
COUNTY OF BRONX       )

On the 19<sup>th</sup> day of January, 2006, before me, the undersigned, personally appeared Margaret M. Walsh, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Barbara E. Martin  
Notary

BARBARA E. MARTIN  
Notary Public, State of New York  
No. 03-4895077  
Qualified in Bronx County  
Commission Expires May 18, 2007

<u>EXHIBITS</u>	<u>DESCRIPTION</u>
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Exhibit 1	Location and Description of PSC Steam Meters
Exhibit 2	Description of Steam Production Facilities
Exhibit 3	Location and Description of PNC Control Rooms
Exhibit 4	Steam Cost Sharing Charge Calculation
Exhibit 5	Form of Memorandum of Easement
Exhibit 6	Form of Annual Billing Budget

## **EXHIBIT 1 LOCATION AND DESCRIPTION OF PSC STEAM METERS**

### **Steam Production Facility Meters**

A single Steam Meter is located on each of the four (4) boilers within the PSC heating plant in order to measure the steam produced by the Steam Production Facility ("Boiler Steam Meters"). The sum of the readings of these meters shall determine the monthly steam produced by the PSC Power Plant.

### **PNC Control Room Steam Meters**

A single PSC Steam Meter will be located in each of the eight (8) PNC Control Rooms ("Control Room Steam Meters"). The PSC Control Room Steam Meters are currently identified as Meter Location Numbers N1; N4; N6; N7; N10; N12; N13; and, N15.

The steam meters identified above are located in eight Steam Distribution Centers at 1 Metropolitan Oval; 1938 East Tremont Avenue; 2120 East Tremont Avenue; 1725 Purdy Street; 1503 Metropolitan Oval; 1541 Metropolitan Oval; 1595 Metropolitan Avenue; and, 1641 Metropolitan Avenue. These Control Room Steam Meters shall be measured and summed to determine the monthly steam consumed by PNC.

In the billing usage summaries provided in the past that have been attached to each bill provided by PSC (that reflects the combined individual usage summaries), these billing meters have been set forth individually and identified as eight meter summaries identified as N1; N4; N6; N7; N10; N12; N13; and, N15.

Backup Steam Meters: Backup Steam Meters, if any, shall be located as to measure the same steam flow as the meters indicated above, without interfering with the measuring capabilities of the PSC Billing meters. The selection, sizing, type, purchase and installation of these meters, should PNC choose to install them, shall be coordinated with PSC.

The Steam Meters shall be of such design and characteristics that they will be of "utility grade."

The PSC Steam Meters currently installed and in use for both the Control Rooms and the Production Facility metering are considered to meet the "Utility Grade" requirement.

## EXHIBIT 2. DESCRIPTION OF STEAM PRODUCTION FACILITIES AND STEAM PIPES

### Description of Steam Production Facility

The Parkchester South Condominium Steam Production Facility (also in this Exhibit "Steam Plant" is located at 2020 East Tremont Avenue in the Bronx; it was built 1939-40.

The Steam Plant consists of a brick building, 150 feet by 45 feet and 4 stories high.

It contains four Foster-Wheeler boilers with dual fuel capacity (#6 oil, which is used during the months of November-March) and natural gas for the rest of the year for heating (October, April, May). The hot water is supplied by steam all year.

Natural gas comes in to the Steam Plant from the Con Ed line on East Tremont Avenue. Fuel Oil (#6) is delivered by truck to four large underground storage tanks (capacity 60,000 gallons each) in the area under the old Auto Center building, then through pipes to the burners. (These tanks are now undergoing complete relining.)

Various pumps deliver treated water to the boilers and still others the fuel oil to the boilers.

There are also 3 air compressors and 4 large fans (2 powered by electricity and 2 by steam) to provide air for combustion to the system and take away the exhaust.

A 290-foot high stack at the rear of the Steam Plant building exhausts the various gaseous emissions.

A computerized monitoring system is centralized in the Steam Plant building, enabling engineers to monitor the system.

PSC Steam Meters on the 4 boilers measure the production of Steam.

### Description of Steam Pipes

As Steam is generated, it is sent out through three large underground pipes in tunnels under the ball field, across the city streets to the PSC and PNC heat control rooms and then to the several buildings in each cluster.

### **EXHIBIT 3 LOCATION AND DESCRIPTION OF PNC CONTROL ROOMS**

The Parkchester North Control Rooms comprise a group of eight (8) Steam Distribution Centers located in various parts of the PNC facility.

Each Steam Distribution Center provides heat and DHW to a cluster of PNC buildings.

The inlet side of each meter within every Steam Distribution center is connected to the high pressure steam distribution piping from Parkchester South and is then sent from the Control Rooms to the various clusters of buildings being supplied by each Control Room.

Within each Control Center high pressure steam from the PSC production facility distribution piping enters the branch piping and flows initially through a steam trap to remove entrained moisture, then to the meters, next through one or more pressure reducing stations and finally to the building steam heating system and DHW heater/storage tanks. Condensed steam from the heating system and DHW production equipment is collected and pumped back to the PSC Plant.

A computerized Energy Management System with a centralized control and monitoring capability is installed in each of the Steam Distribution Centers.

The steam meters and equipment identified above are located in eight Steam Distribution Centers at 1 Metropolitan Oval; 1938 East Tremont Avenue; 2120 East Tremont Avenue; 1725 Purdy Street; 1503 Metropolitan Avenue; 1541 Metropolitan Avenue; 1595 Metropolitan Avenue; and; 1641 Metropolitan Avenue.

## EXHIBIT 4 STEAM COST SHARING CHARGE CALCULATION

### A. General Description of Steam Cost Sharing Charges

For each Billing Period, a Steam Cost Sharing Charge, or "SCSC," shall be developed for the purpose of achieving a sharing between PNC and PSC of the monthly costs reasonably incurred by PSC in connection with PSC's production of Steam and delivery of Steam to PNC. The SCSC shall be equal to the total costs reasonably incurred by PSC in connection with PSC's production of Steam and delivery of Steam to PNC for the Billing Period multiplied by PNC's proportionate share thereof. PNC's proportionate share shall be the percentage that PNC's metered use of Steam for that Billing Period is of the total Steam produced by Steam Production Facilities during that Billing Period ("PNC Share"). For purposes of the preceding sentences, the total Steam produced by the Steam Production Facilities shall be the sum of the measured production of the PSC boilers, as metered for each Billing Period.

The SCSC for any Billing Period shall initially be based on the Billing Budget developed pursuant to Section 5.1, and PNC's Share, as defined above, shall be billed to PNC pursuant to Section 5.2. At the end of each successive three (3) month period, commencing with the Effective Date, PSC shall determine its actual costs of Steam production for the Billing Period(s) within such three (3) month period, including any costs incurred to provide supplemental or back-up Steam pursuant to Section 4.3 of the Agreement, and PSC shall charge or credit PNC in the next monthly bill, in the amount necessary to adjust such prior billings to PNC so as to reflect PNC's Share of PSC's actual costs relating to the total Steam produced by the Steam Production Facilities and the delivery of Steam to PNC during the three (3) month period. The purpose of such adjustment is to true-up billings during the preceding three (3) month period which were based upon the Billing Budget to actual costs incurred during said period, it being the Parties intent that each Party will be responsible for paying its proportionate share of the actual costs of producing and delivering Steam hereunder.

The Billing Budget and the SCSC shall exclude any costs incurred by PSC that are solely related to any undertaking by PSC to sell or deliver Steam to a third party and shall not be reduced by any amounts received by PSC related to any such third-party deliveries or sales by PSC. Capital Costs for Improvements included in the Billing Budget may be offset by contributions to the Capital Reserve Fund, as provided for in Section 3.2 and, to the extent included in the SCSC, shall be recovered based on a reasonable amortization schedule for the asset in question, as determined pursuant to Section B of this Exhibit 4.

The Parties agree that the following categories of costs, expected to be reasonably incurred by PSC in connection with its fulfillment of its obligations under this Agreement or arising therefrom, shall be subject to sharing by the Parties as described above provided, that the list below is without limitation to the extent that PSC reasonably incurs other costs that are demonstrated to be reasonably related to the provision of service to PNC:

- Operating and maintenance labor, materials and supplies including contract labor
- Facility construction labor, material and supplies including contract labor
- Environmental compliance including remediation

-Required taxes (except those fully chargeable to or directly paid by PNC pursuant to Section 5.6), fees and permits

-Insurance of all types

-Boiler fuel costs along with costs of transportation, acquisition, storage and cost management

-Regulatory compliance

-Professional and consulting fees and disbursements

-Administrative costs and expenses

-Amortization and depreciation of facility investment

#### B. Depreciation and Amortization

The Parties agree that there are no pending Improvements as of the Effective Date and that for calendar year 2006 the Billing Budget, and the SCSC, include no charges for Improvements.

The investment by PSC in any future Improvements will be paid for pursuant to the terms of Section 3.2. To the extent that the cost of any future Improvements, or portions thereof, are recovered through the Steam Cost Sharing Charge, including the Billing Budget, on the basis of the depreciation or amortization schedule that PSC shall reasonably determine consistent with accepted accounting practices and industry custom. The amortization schedule shall be set forth in the Capital Budget.

#### C. Allowance for Overhead Loading

In addition to PNC's monthly obligation to pay PSC for PNC's share of costs, PNC shall also pay to PSC each month an amount equal to five percent (5%) of PNC's share of costs subject to sharing pursuant hereto. Such additional amount shall be deemed to represent a reasonable approximation of indirect costs incurred by PSC for the benefit of PNC related to PSC's ownership, operation and maintenance of the PSC Facilities and any and all other facilities of PSC used or useful in connection with PSC's fulfillment of its obligations hereunder and all other costs incurred by PSC in connection with PSC's fulfillment of PSC's obligations under this Agreement or arising therefrom that are not readily identifiable or would require an undue burden to develop and administer methods of allocation or estimation to otherwise include them in the costs to be shared by the Parties pursuant to this Agreement. Such additional charge payable by PNC pursuant to this paragraph shall be subject to proportional adjustment in accordance with the reconciliation process described in Paragraph A of this Exhibit 4.



## EXHIBIT 5 - FORM OF MEMORANDUM OF EASEMENT

### MEMORANDUM OF EASEMENT

This memorandum of easement reflects an easement granted by The Parkchester North Condominium, an unincorporated association, as agent for the owners of The Parkchester North Condominium ("Grantor"), having a principal address of 1970 East Tremont Avenue, Bronx, New York 10462 to Parkchester South Condominium, Inc., a New York not-for-profit corporation, as agent for the unit owners of the Parkchester South Condominium ("Grantee"), having a principal address of 2000 East Tremont Avenue, Bronx, New York 10462.

Such easement was granted by Grantor to Grantee by that certain "Steam Cost Sharing Agreement By and Between Parkchester South Condominium and The Parkchester North Condominium" effective as of January 17, 1986 (the "Agreement").

Such easement is for a term equal to the term of the Agreement. The term of the Agreement is a period of not less than ten (10) years, commencing on the effective date of the Agreement, subject to automatic successive five (5) year extension periods commencing on the tenth anniversary of said commencement date and upon the fifth anniversary of any such extension unless terminated earlier by Grantor or Grantee pursuant to the terms of the Agreement.

Such easement of Grantee is on, over, under and through Grantor's property as may be necessary in Grantee's reasonable judgment for Grantee to carry out the terms of the Agreement and Grantee has the right to install, operate and maintain, in a manner consistent with the terms of the Agreement, existing and new steam pipes, steam tunnels, steam meters, water lines, communication lines and any other equipment as reasonably determined by Grantee to be necessary to carry out the terms of the Agreement so as to provide steam to the Grantor at Grantor's steam control rooms at each of the following eight (8) locations as more particularly shown of Attachment A hereto "Map of Parkchester Steam Distribution System:"

- 1) 1 Metropolitan Oval, Bronx, New York;
- 2) 1938 East Tremont Avenue, Bronx, New York;
- 3) 2120 East Tremont Avenue, Bronx, New York;
- 4) 1725 Purdy Street, Bronx, New York;
- 5) 1503 Metropolitan Avenue, Bronx, New York;
- 6) 1541 Metropolitan Avenue, Bronx, New York;
- 7) 1595 Metropolitan Avenue, Bronx, New York; and,
- 8) 1641 Metropolitan Avenue, Bronx, New York.

Such easement on, over, under and through Grantor's property extends to the inside of the foundation walls of Grantor's buildings located at each of the addresses identified above except that such easement shall also include Grantee's metering equipment located within Grantor's steam control rooms at said locations.

Such easement is non-exclusive but Grantor shall not operate, maintain, move, alter, change or interfere with the installation, operation or maintenance of Grantee's facilities.

Termination of said easement shall not affect any rights granted by Grantor with regard to existing and new steam pipes, steam tunnels, steam meters, water lines, communication lines and any other related equipment in the easement granted to Parkchester Apartments Company as set forth in that certain North Condominium Offering Plan dated as of December 14, 1972 and restated in the 9<sup>th</sup> Amendment to the North Condominium Offering Plan dated as of July 21, 1989 transferring the rights set forth therein to Grantee.

IN WITNESS WHEREOF, Grantor and Grantee have signed this instrument this 19<sup>th</sup> day of January, 2006.

PARKCHESTER SOUTH  
CONDOMINIUM, INC.

By: Board of Directors

By: Margaret M. Walsh

Title: President

THE PARKCHESTER NORTH  
CONDOMINIUM.

By: Board of Managers

By: [Signature]

Title: President

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF Bronx )

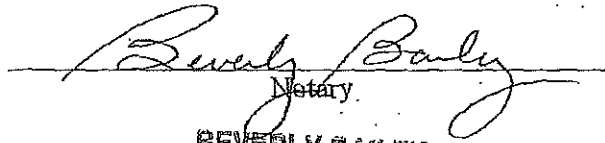
On the 19<sup>th</sup> day of January, 2006, before me, the undersigned, personally appeared Margaret M. Walsh, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Barbara E. Martin  
Notary

BARBARA E. MARTIN  
Notary Public, State of New York  
No. 03-4895077  
Qualified in Bronx County  
Commission Expires May 18, 2007

STATE OF NEW YORK     )  
                                      ) SS:  
COUNTY OF Bronx     )

On the 19<sup>th</sup> day of January 2006, before me, the undersigned, personally appeared Harry L. Brown, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

  
Notary

**BEVERLY BAILEY**  
Notary Public, State of New York  
No.01BA6056666  
Qualified In Kings County  
Commission Expires March 26, 2007

**ATTACHMENT A TO EXHIBIT 5**

**MAP OF PARKCHESTER STEAM DISTRIBUTION SYSTEM**

**[MAP ATTACHED]**

## EXHIBIT 6 - FORM OF ANNUAL BILLING BUDGET

Form of Annual Billing Budget	January	February	March	April	May	June	July	August	September	October
<b><u>DIRECT COSTS</u></b>										
Fuel for Steam Plant										
Energy Management Commission										
Electricity for Steam Plant										
Water & Sewer for Steam Plant										
Heating Plant Supplies										
Heating Plant Repairs										
Insurance - Boiler & Machinery										
Insurance - Additional Pollution										
Insurance - Liability										
Payroll & Fringes										
Total Direct Costs	-	-	-	-	-	-	-	-	-	-
Capital Projects Cost										
Emergency Repairs										
Capital Projects										
Total Capital Project Costs	-	-	-	-	-	-	-	-	-	-
Steam Plant Overhead (5.0% of Direct Costs)	-	-	-	-	-	-	-	-	-	-
<b><u>TOTAL COST OF STEAM PLANT</u></b>	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-
<b>TOTAL:</b>	-	-	-	-	-	-	-	-	-	-

AMENDMENT TO  
STEAM COST SHARING AGREEMENT

THIS AMENDMENT TO STEAM COST SHARING AGREEMENT (this "Amendment"), dated April 30, 2007 is by and between Parkchester South Condominium, Inc. ("PSC"), a not-for-profit corporation duly organized and validly existing under the laws of the State of New York with a principal place of business at 2000 East Tremont Avenue, Bronx, New York 10462 and The Parkchester North Condominium ("PNC"), an unincorporated association with a principal place of business at 1970 East Tremont Avenue, Bronx, New York 10462. PSC and PNC are sometimes referred to in this Amendment, collectively, as the "parties." Capitalized terms not defined in this Amendment shall have the same meanings given to such terms in the Steam Cost Sharing Agreement, as hereinafter defined.

WITNESSETH

WHEREAS, the parties entered into that certain Steam Cost Sharing Agreement, dated January 19, 2006 (the "Steam Cost Sharing Agreement"), for the purpose of PSC's producing and delivering steam service to PNC;

WHEREAS, the parties desire to change certain of the formulas for sharing the cost of producing steam, as set forth in the Steam Cost Sharing Agreement, and to agree on a settlement for previously disputed invoices under the Steam Cost Sharing Agreement; and

WHEREAS, the parties have agreed to restate and/or modify the Steam Cost Sharing Agreement to reflect their mutual understandings and to set forth a settlement for previously disputed invoices under the Steam Cost Sharing Agreement.

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

1. Preamble and Recitals. The preamble and the recitals set forth at the beginning of this Amendment are incorporated by reference hereby as if fully set forth herein.
2. Continuation. The provisions of the Steam Cost Sharing Agreement, except as modified by this Amendment, shall continue in full force and effect.
3. Amendment of Agreement. The Steam Cost Sharing Agreement shall be, and the same hereby is, amended as follows:

A. Exhibit 1 of the Steam Cost Sharing Agreement shall be amended to clarify the description of PSC's steam production plant to provide for steam used to operate PSC's steam production plant. Exhibit 1 of the Steam Cost Sharing Agreement is hereby deleted in its entirety and restated as set forth on Appendix 1, annexed hereto and made a part hereof.

B. Exhibit 2 of the Steam Cost Sharing Agreement shall be amended to clarify the description of PSC's steam production plant to provide for a deareator and a metered auxiliary steam line. Exhibit 2 of the Steam Cost Sharing Agreement is hereby deleted in its entirety and restated as set forth on Appendix 2, annexed hereto and made a part hereof.

C. Exhibit 4 of the Steam Cost Sharing Agreement shall be amended to: (i) clarify that total steam produced is the metered amount of steam produced by PSC's boilers minus the metered amount of steam used to operate PSC's steam production plant; and (ii) to change the allowance for overhead loading from five percent (5%) to four percent (4%). Exhibit 4 of the Steam Cost Sharing Agreement is hereby deleted in its entirety and restated as set forth on Appendix 3, annexed hereto and made a part hereof.

4. Settlement. The parties hereby agree to settle all previously disputed invoices issued under the Steam Cost Sharing Agreement prior to August 1, 2006. In return for payment by PNC to PSC of the sum of Two Hundred Sixty Six Thousand Two Hundred Fifty Three Dollars and Five Cents (\$266,253.05). This amount is based on the following calculation: the sum of \$84,539.80, which sum represents one half the difference between the amount originally billed to Parkchester North Condominium and paid by PNC between January 19, 2006 and July 31, 2006 and the total amount that would have been due if billings were done by the Direct Cost method as memorialized within and the sum of \$181,713.25, which sum reflects the difference between what PNC was originally billed and paid and the amended billings issued by PSC for the period August 1, 2006 through December 31, 2006. PSC hereby releases PNC (and its past, present and future agents, officers, members, managers and employees and their successors, assigns, insurers, attorneys and representatives, as the case may be) with respect to all of and from any and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands, in law or equity, arising out of or in connection with billings issued under the Steam Cost Sharing Agreement for the period January 1, 2006 through December 31, 2006. PNC hereby releases PSC (and its past, present and future agents, officers, members, managers, and employees and their successors, assigns, insurers, attorneys, and representatives, as the case may be) with respect to all of and from any and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands, in law or equity, arising out of or in connection with billings issued under the Steam Cost Sharing Agreement for the period January 1, 2006 through December 31, 2006. The full amount due PSC by PNC under this Paragraph 4 shall be paid to PSC by PNC on or before May 1, 2007.

5. Miscellaneous.

A. Conflicts. In the event that any of the provisions of this Amendment conflict with any provisions of the Steam Cost Sharing Agreement, the parties agree that the provisions of this Amendment shall control.

B. Binding Nature. This Amendment shall be binding upon, and inure to the

benefit of, the parties and their respective successors and assigns.

C. Sections and Other Headings. The section and other headings contained in this Amendment are for convenience of reference only and shall not be deemed to modify or affect the interpretation of this Amendment.

D. Modification. Neither this Amendment nor any provision of the Steam Cost Sharing Agreement shall be modified, changed, discharged, or terminated except by an instrument in writing signed by both parties.

E. Applicable Law. This Amendment shall be governed by, construed and interpreted according to the laws of the State of New York, without giving effect to any conflict of law or choice of law rule or principle. Any action or proceeding arising out of this Amendment shall be commenced exclusively in courts located in Bronx County, State of New York, and the parties hereby consent to the jurisdiction of any court located therein.

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

**PARKCHESTER SOUTH CONDOMINIUM, INC.**

By: Margaret M. Walsh  
Name: Margaret M. Walsh  
Title: President

**THE PARKCHESTER NORTH CONDOMINIUM**

By: Harry Brown  
Name: Harry Brown  
Title: President



## APPENDIX 1

### APPENDIX 1 TO AMENDMENT TO STEAM COST SHARING AGREEMENT

#### EXHIBIT 1 LOCATION AND DESCRIPTION OF PSC STEAM METERS

##### Steam Production Facility Meters

Each of the four (4) steam boilers in PSC's Steam Production Facility has a meter located at the boiler to measure steam production in that boiler. A fifth meter measures steam withdrawn from the header to run auxiliary equipment located within the PSC Steam Production Facility.

The sum of the readings of these four meters on the steam boilers ("Total Steam Production"), minus the reading on the Auxiliary Steam Meter, shall be used to determine the amount of steam produced each month for distribution throughout the two condominiums.

##### PNC Control Room Steam Meters

A single PSC Steam Meter is and will be located in each of the eight (8) PNC Control Rooms ("Control Room Steam Meters"). The PSC Control Room Steam Meters are currently identified as Meter Location Numbers N1; N4; N6; N7; N10; N12; N13; and, N15.

Over  
C (M)  
The steam meters identified above are located in eight Steam Distribution Centers at 1 Metropolitan Avenue; 1938 East Tremont Avenue; 2120 East Tremont Avenue; 1725 Purdy Street; 1503 Metropolitan Avenue; 1541 Metropolitan Avenue; 1595 Metropolitan Avenue; and, 1641 Metropolitan Avenue. These meters shall be measured and summed to determine the monthly steam consumed by PNC ("PSC Billing Meters").

In the billing usage summaries provided in the past that have been attached to each bill provided by PSC (that reflects the combined individual usage summaries), these billing meters have been set forth individually and identified as eight meter summaries identified as N1; N4; N6; N7; N10; N12; N13; and, N15.

Backup Steam Meters: Backup Steam Meters, if any, shall be located as to measure the same steam flow as the meters indicated above, without interfering with the measuring capabilities of the PSC Billing meters. The selection, sizing, type, purchase and installation of these meters, should PNC choose to install them, shall be coordinated with PSC.

The Steam Meters shall be of such design and characteristics that they will be of "utility grade."

The PSC Steam Meters currently installed and in use for both the Control Rooms and the Production Facility metering are considered to meet the "Utility Grade" requirement.

## APPENDIX 2

### APPENDIX 2 TO AMENDMENT TO STEAM COST SHARING AGREEMENT

#### EXHIBIT 2. DESCRIPTION OF STEAM PRODUCTION FACILITIES AND STEAM PIPES

##### Description of Steam Production Facility

The Parkchester South Condominium Steam Production Facility (also in this Exhibit "Steam Plant" is located at 2020 East Tremont Avenue in the Bronx; it was built 1939-40.

The Steam Plant consists of a brick building, 150 feet by 45 feet and 4 stories high.

It contains four Foster-Wheeler boilers with dual fuel capacity (#6 oil, and natural gas). ~~It contains four Foster-Wheeler boilers with dual fuel capacity using #6 oil and or natural gas.~~ The hot water is supplied by steam all year.

Natural gas comes in to the Steam Plant from the Con Ed line on East Tremont Avenue. Fuel Oil (#6) is delivered by truck to four large underground storage tanks (capacity 60,000 gallons each) in the area under the old Auto Center building, then through pipes to the burners. (These tanks are now undergoing complete relining.)

A deaerator to eliminate air from the return condensate.

Various pumps deliver treated water to the boilers and still others the fuel oil to the boilers. There are also 3 air compressors and 4 large fans (2 powered by electricity and 2 by steam) to provide air for combustion to the system and take away the exhaust. A 290-foot high stack at the rear of the Steam Plant building exhausts the various gaseous emissions.

PSC Steam Meters on the 4 boilers and the Auxiliary Steam Meter measure the net production of Steam.

##### Description of Steam Pipes

As Steam is generated, it is sent out through three large underground pipes in tunnels under the ball field, across the city streets to the PSC and PNC heat control rooms and then to the several buildings in each cluster.

### APPENDIX 3

#### APPENDIX 4 TO AMENDMENT TO STEAM COST SHARING AGREEMENT

##### EXHIBIT 4 STEAM COST SHARING CHARGE CALCULATION

###### A. General Description of Steam Cost Sharing Charges

For each Billing Period, a Steam Cost Sharing Charge, or "SCSC," shall be developed for the purpose of achieving a sharing between PNC and PSC of the monthly costs reasonably incurred by PSC in connection with PSC's production of Steam and delivery of Steam to PNC. The SCSC shall be equal to the total costs reasonably incurred by PSC in connection with PSC's production of Steam and delivery of Steam to PNC for the Billing Period multiplied by PNC's proportionate share thereof. PNC's proportionate share shall be the percentage that PNC's metered use of Steam for that Billing Period is of the total Steam produced by Steam Production Facilities during that Billing Period ("PNC Share"). For purposes of the preceding sentences, the total Steam produced by the Steam Production Facilities shall be the sum of the measured production of the PSC boilers, as metered for each Billing Period.

Effective as of August 1, 2006, PNC's proportionate share shall be revised to the percentage that PNC's metered usage of steam for that Billing Period is to net Total Steam Production by the Steam Production Facilities during the Billing Period. The net Total Steam Production by the Steam Production Facilities shall be the sum of the metered production of the four PSC boilers ("Total Steam Production") minus the metered amount of steam used within the Steam Plant for auxiliary equipment, as measured by the Auxiliary Steam Meter.

The SCSC for any Billing Period shall initially be based on the Billing Budget developed pursuant to Section 5.1, and PNC's Share, as defined above, shall be billed to PNC pursuant to Section 5.2. At the end of each successive three (3) month period, commencing with the Effective Date, PSC shall determine its actual costs of Steam production for the Billing Period(s) within such three (3) month period, including any costs incurred to provide supplemental or back-up Steam pursuant to Section 4.3 of the Agreement, and PSC shall charge or credit PNC in the next monthly bill, in the amount necessary to adjust such prior billings to PNC so as to reflect PNC's Share of PSC's actual costs relating to the total Steam produced by the Steam Production Facilities and the delivery of Steam to PNC during the three (3) month period. The purpose of such adjustment is to true-up billings during the preceding three (3) month period which were based upon the Billing Budget to actual costs incurred during said period, it being the Parties intent that each Party will be responsible for paying its proportionate share of the actual costs of producing and delivering Steam hereunder.

The Billing Budget and the SCSC shall exclude any costs incurred by PSC that are solely related to any undertaking by PSC to sell or deliver Steam to a third party and shall not be reduced by any amounts received by PSC related to any such third-party deliveries or sales by PSC. Capital Costs for Improvements included in the Billing Budget may be offset by contributions to the Capital Reserve Fund, as provided for in Section 3.2 and, to the extent included in the SCSC, shall be recovered based on a reasonable amortization schedule for the asset in question, as

determined pursuant to Section B of this Exhibit 4.

The Parties agree that the following categories of costs, expected to be reasonably incurred by PSC in connection with its fulfillment of its obligations under this Agreement or arising therefrom, shall be subject to sharing by the Parties as described above provided, that the list below is without limitation to the extent that PSC reasonably incurs other costs that are demonstrated to be reasonably related to the provision of service to PNC:

- Operating and maintenance labor, materials and supplies including contract labor
- Facility construction labor, material and supplies including contract labor
- Environmental compliance including remediation
- Required taxes (except those fully chargeable to or directly paid by PNC pursuant to Section 5.6), fees and permits
- Insurance of all types
- Boiler fuel costs along with costs of transportation, acquisition, storage and cost management
- Regulatory compliance
- Professional and consulting fees and disbursements
- Administrative costs and expenses
- Amortization and depreciation of facility investment

**B. Depreciation and Amortization**

The Parties agree that there are no pending Improvements as of the Effective Date and that for calendar year 2006 the Billing Budget, and the SCSC, include no charges for Improvements.

The investment by PSC in any future Improvements will be paid for pursuant to the terms of Section 3.2. To the extent that the cost of any future Improvements, or portions thereof, are recovered through the Steam Cost Sharing Charge, including the Billing Budget, on the basis of the depreciation or amortization schedule that PSC shall reasonably determine consistent with accepted accounting practices and industry custom. The amortization schedule shall be set forth in the Capital Budget.

**C. Allowance for Overhead Loading**

In addition to PNC's monthly obligation to pay PSC for PNC's share of costs, PNC shall also pay to PSC each month an amount equal to four percent (4%) of PNC's share of costs subject to sharing pursuant hereto, effective as of January 1, 2007. Such additional amount shall be

deemed to represent a reasonable approximation of indirect costs incurred by PSC for the benefit of PNC related to PSC's ownership, operation and maintenance of the PSC Facilities and any and all other facilities of PSC used or useful in connection with PSC's fulfillment of its obligations hereunder and all other costs incurred by PSC in connection with PSC's fulfillment of PSC's obligations under this Agreement or arising therefrom that are not readily identifiable or would require an undue burden to develop and administer methods of allocation or estimation to otherwise include them in the costs to be shared by the Parties pursuant to this Agreement. Such additional charge payable by PNC pursuant to this paragraph shall be subject to proportional adjustment in accordance with the reconciliation process described in Paragraph A of this Exhibit 4.

J:\DATA\Client3 11400-11824\11652\Amendment to Steam Cost Sharing Agreement (4-27-07 additional revisions).doc

Exhibit 3

Detailed Site Map

Exhibit 4

Extract from Parkchester Apartments Offering Plan

THIS PLAN HAS BEEN AMENDED.  
SEE INSERTION ON INSIDE COVER.

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OFFERING PLAN

A PLAN TO CONVERT TO CONDOMINIUM OWNERSHIP

THE NORTH QUADRANT OF PARKCHESTER

(16 buildings)

---

Total Purchase Price of 3,985 Units ..... \$55,944,400

---

Name and Address of Sponsor:

PARKCHESTER APTS. Co.  
53rd Floor  
60 East 42nd Street  
New York, New York 10017

Name and Address of Selling Agent:

BROWN, HARRIS, STEVENS, INC.  
14 East 47th Street  
New York, New York 10017

The date of first offering of this Plan is December 14, 1972.

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THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
DOES NOT PASS ON THE MERITS OF THIS OFFERING.

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## MANAGEMENT AGREEMENT AND OTHER CONTRACTUAL AGREEMENTS

A summary of all contracts, appointments, agreements and binding obligations made or to be made by the Sponsor that will be binding upon the Condominium is as follows:

### 1. *Management Agreement*

Brown, Harris, Stevens, Inc. will act as managing agent of the Property for a period of three years from the date of the first closing of title to an apartment unit. For its services, Brown, Harris, Stevens, Inc. will receive (a) annual compensation at the rate of \$100,000\* payable in monthly installments; and (b) customary charges in connection with employees' withholding and social security and other special services at the rates recommended by The Real Estate Board of New York, Inc. The management agreement will not be assignable by Brown, Harris, Stevens, Inc. and also will not be cancellable by the latter unless the Condominium fails or refuses to comply with or abide by any rules, order, determination, ordinance or law of any federal, state or municipal authority or to perform its obligations under the management agreement. The agreement will be cancellable by the Board of Managers at any time after 50% in number and in common interest of the apartment units have been sold or after the second year of its term, whichever event shall be the later, on not less than 60 days' written notice.

The services to be rendered to the Condominium by Brown, Harris, Stevens, Inc. will include (a) billing and collecting common charges and expenses; (b) hiring and discharging employees; (c) supervising repairs to the common elements; (d) purchasing supplies for the Buildings; (e) maintaining the Condominium books and attending meetings of the Board of Managers and unit owners; (f) maintaining payroll records and filing withholding tax statements for employees; (g) furnishing monthly reports of receipts and disbursements to the President and Treasurer of the Condominium.

Brown, Harris, Stevens, Inc. will not prepare the Condominium's annual certified financial statement; such statement will be prepared by an independent certified public accountant employed by the Board of Managers at the expense of the unit owners. This expense is provided for in the Selling Agent's estimate of common expenses for 1973.

All officers and employees of the Condominium and Brown, Harris, Stevens, Inc. will be bonded at all times from and after the first closing of title to an apartment unit during the term of the management agreement under a fidelity bond in favor of the Condominium in the amount of \$100,000 for each loss. The cost of the bond will be borne by Brown, Harris, Stevens, Inc.

### 2. *Steam Agreement*

The owner of the steam plant will furnish steam to the Condominium commencing on the date of the first closing of title to an apartment unit at the rates permitted from time to time by the New York State Public Service Commission for utility companies supplying similar service. This service may be discontinued by the

\*At the date of presentation of this Plan, The Real Estate Board of New York, Inc. has not adopted a recommended rate for management fees for a condominium. The figure of \$100,000 is approximately .015% of the estimated common charges, real estate taxes and mortgage payments, and is lower than the rate recommended for a cooperative with comparable gross income.

owner of the steam plant but only if the Condominium is furnished steam from another source at rates no greater than those permitted from time to time by the New York State Public Service Commission.

The owner of the steam plant will have an easement for the use of all pipes, wires, conduits and lines serving the Condominium and the other quadrants of Parkchester. The cost of repairing, maintaining and replacing the pipes, wires, conduits and lines located within the foundation walls of the Buildings will be payable by the Board of Managers as part of the common expenses and will be included in the common charges payable to the Board of Managers by the unit owners.

### 3. *Agreement for Use of Recreation Area*

On the date of the first closing of title to an apartment unit the Sponsor will enter into an agreement with the Board of Managers on behalf of all unit owners, providing for the use of the recreation area in the North Quadrant (which will not be owned by the Condominium) by all unit owners, members of their immediate families and guests, in common with the tenants of the other quadrants of Parkchester, subject to such rules and regulations as may be adopted from time to time by a management committee consisting of 9 members, 6 of whom will be appointed from time to time by the owner of the other quadrants of Parkchester and the remaining three by the Condominium's Board of Managers. Title to the recreation area will remain in the Sponsor.

The Condominium will be required to pay to the Sponsor 32.95% of all real estate taxes and expenses of operation of the recreation area, including, but without being limited to, the cost of all insurance premiums, utilities, repairs to and replacements of recreational facilities and equipment. The Condominium's share of the real estate taxes and operating expenses, which is estimated by the Selling Agent to be \$18,500 for 1973, (see Schedule A at page 4), will be included in the common charges payable by the unit owners, and no other charge will be made to the unit owners for use of the recreation area. The operating expenses will be determined annually by the management committee. There will be no profit to the Sponsor from the operation of the recreation area.

In the event of a sale of the other quadrants by the Sponsor this agreement will be binding upon the purchaser or purchasers.

The map at page 337 of Part II shows the location and perimeter boundaries of the recreation area. See page 3 in Part IV for a description of the facilities of the recreation area.

### 4. *Leases and Tenancies of Commercial Space*

The leases and tenancies of commercial space in effect on the date of presentation of this Plan are listed on pages 26-27.

### 5. *Laundry Machines*

Parkton Services, Inc. operates launderettes in stores located at the following addresses in the North Quadrant:

Exhibit 5

Parkchester South's Air Permit

New York State Department of Environmental Conservation  
Facility DEC ID: 2600500139



**PERMIT**  
**Under the Environmental Conservation Law (ECL)**

**IDENTIFICATION INFORMATION**

Permit Type: Air Title V Facility  
Permit ID: 2-6005-00139/00002  
Effective Date: 08/17/2006 Expiration Date: 08/16/2011

Permit Issued To: PARKCHESTER SOUTH CONDOMINIUM  
2000 EAST TREMONT AVENUE  
BRONX, NY 10462-5703

Contact: FRED D STOLLE  
PARKCHESTER SOUTH CONDOMINIUM  
2000 EAST TREMONT AVE  
BRONX, NY 10462-5703  
(718) 320-6059

Facility: PARKCHESTER SOUTH CONDOMINIUM  
2020 EAST TREMONT AVE  
BRONX, NY 10462

Contact: MICHAEL NACLERIO  
PARKCHESTER SOUTH CONDOMINIUM  
2000 EAST TREMONT AVE  
BRONX, NY 10462  
(718) 320-6005

Description:

**PERMIT DESCRIPTION**  
**Parkchester South Condominium**  
**DEC ID # 2-6005-00139/00002**

Parkchester South Condominium, located at 2020 E. Tremont Avenue in Bronx, New York, provides heat and hot water to an apartment complex consisting of one hundred and seventy-two (172) buildings and twelve thousand two hundred and seventy-one (12,271) apartments using four (4) dual fuel (natural gas & # 6 fuel oil) boilers that discharge through one common stack. This facility has been in existence since 1939. The facility is applying for a Title V permit renewal. The Industrial Classification Code (SIC) for this facility is 6513 - Apartment Building Operators.

Parkchester South Condominium operates four (4) boilers (Emission Unit U-00001) which supply steam for the space heating of the building. The steam is produced by four (4) Foster Wheeler type D boilers (Emission Sources 00001, 00002, 00003 & 00004) operating on dual fuel, natural gas and # 6 fuel oil. As of July 29, 1996, natural gas being the primary fuel and # 6 oil is used as a secondary fuel. But, upon the issuance of this Title V renewal, the facility is proposing to use more fuel oil # 6 than the last five (5) years. In order for the facility to get this proposal approved, the facility had to cap out of

Renewal 1/FINAL

New York State Department of Environmental Conservation  
Facility DEC ID: 2600500139



40CFR 52-A.21, Prevention of Significant Deterioration in terms of sulfur dioxide by limiting the # 6 fuel oil usage at this source to 5.5 million gallons for any twelve (12) consecutive months and hence is limiting the emission of sulfur dioxide to 130 tons per year ( for any twelve consecutive months). Fuel consumption records shall be maintained on a daily, monthly, and every twelve (12) consecutive months basis. The four (4) boilers were constructed in 1939. These four (4) boilers have a heat input of 104 MM BTU/hr each. The four (4) boilers are collectively identified as Emission Unit U-00001. When the four (4) Foster Wheeler boilers operate on natural gas, this is defined as Process 001. And when the four (4) Foster Wheeler boilers operate on # 6 fuel oil, this is defined as Process 002. Emissions from the four (4) boilers are exhausted through one common stack which is identified as Emission Point 00001. In order for the facility to meet the NOx-RACT compliance plan for the four (4) Foster Wheeler boilers, the facility converted the four (4) boilers from oil to oil & gas. The NOx limit for large gas/oil boilers is 0.30 lb/MM BTU. These modifications/conversions were done by Con Edison in 1996. Boiler 001 (Emission Source 00001) was converted from oil to oil & gas on July 29, 1996 and the start-up date was September 20, 1996. Boiler 002 (Emission Source 00002) was converted from oil to oil & gas on April 15, 1996 and the start-up date was June 7, 1996. Boiler 003 (Emission Source 00003) was converted from oil to oil & gas on June 10, 1996 and the start-up date was August 2, 1996. Finally, boiler 004 (Emission Source 00004) was converted from oil to oil & gas on September 16, 1996 and the start-up date was November 8, 1996.

The facility operates other sources which are considered exempt from permitting in accordance with 6NYCRR 201-3.2(c), including four (4) fuel oil storage tanks (<300,000 bbls).

The Title V permit contains a complete listing of the applicable federal, state and compliance monitoring requirements for the facility, its emission units and emission points.

Parkchester South Condominium is capping out of the requirements of 40CFR 52-A.21, Prevention of Significant Deterioration by limiting the fuel usage (# 6 oil) for the facility to 4.5 million gallons for any twelve (12) consecutive months. And hence, the facility is capping out of 40 CFR 52-A.21, Prevention of Significant Deterioration in terms of sulfur dioxide by limiting the yearly emissions to under 100 tons (95 tons for any twelve consecutive months). Fuel consumption records shall be maintained on a daily, monthly, and every twelve (12) consecutive months basis. The facility is subject to the provisions of Title V for sulfur dioxide and is subject to 6NYCRR 225-1, fuel composition, sampling, analysis and use - sulfur limitations, which restricts the sulfur content of the residual oil utilized throughout the facility to 0.30% by weight or less. The emission point is also subject to the particulate and smoke emission and corrective action requirements of 6NYCRR 227-1, Stationary Combustion Installations. It is also subject to 6NYCRR 227-2.4(b), Reasonably Available Control Technology (RACT) for oxides of nitrogen emission limit for large gas/oil boilers of 0.30 pounds per million BTU per hour. Parkchester South Condominium must comply with the requirements of 6NYCRR 227-2.6(c), stack testing requirements - testing, monitoring and reporting requirements for large boilers. Parkchester South Condominium has the compliance option of fuel switching according to 6NYCRR 227-2.5. Finally, Parkchester South Condominium has to comply with the requirements of 6NYCRR 617.7, determining significance, in order to prevent the recurrence of boiler contamination incidents such as the one that happened in August of 1999 in boilers 1, 2 & 3, the facility personnel shall do inspection (on a quarterly basis), replacement & disposal of all coalescent filters installed on boilers and gas feed line in the meter room for evidence of gas condensate build-up. Part 231-2, New Source Review in non-attainment areas and ozone transport region is non-applicable to this facility because this facility has been in existence since 1939 and there are no new emission sources at this facility.

New York State Department of Environmental Conservation  
Facility DEC ID: 2600500139



By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, the General Conditions specified and any Special Conditions included as part of this permit.

Permit Administrator: JOHN F CRYAN  
DIVISION OF ENVIRONMENTAL PERMITS  
ONE HUNTERS POINT PLAZA, 47-40 21ST STREET  
LONG ISLAND CITY, NY 11101-5407

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Renewal 1/FINAL



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Facility DEC ID: 2600500139



Notification of Other State Permittee Obligations

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

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## **LIST OF CONDITIONS**

### **DEC GENERAL CONDITIONS**

#### **General Provisions**

Facility Inspection by the Department

Relationship of this Permit to Other Department Orders and Determinations

Applications for Permit Renewals and Modifications

Permit Modifications, Suspensions and Revocations by the Department

#### **Facility Level**

Submission of Applications for Permit Modification or Renewal-REGION 2

HEADQUARTERS

### **DEC SPECIAL CONDITIONS**

Inspection, replacement & disposal of all coalescent filters installed on

boilers and main gas feed line in the meter room for condensate build-up.



**DEC GENERAL CONDITIONS**

**\*\*\*\* General Provisions \*\*\*\***

For the purpose of your Title V permit, the following section contains state-only enforceable terms and conditions

**GENERAL CONDITIONS - Apply to ALL Authorized Permits.**

**Condition 1: Facility Inspection by the Department**  
**Applicable State Requirement: ECL 19-0305**

**Item 1.1:**

The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

**Item 1.2:**

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

**Item 1.3:**

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

**Condition 2: Relationship of this Permit to Other Department Orders and Determinations**  
**Applicable State Requirement: ECL 3-0301.2(m)**

**Item 2.1:**

Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

**Condition 3: Applications for Permit Renewals and Modifications**  
**Applicable State Requirement: NYCRR 621.13**

**Item 3.1:**

The permittee must submit a separate written application to the Department for renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing.

**Item 3.2:**

The permittee must submit a renewal application at least 180 days before expiration of permits for Title V Facility Permits, or at least 30 days before expiration of permits for State Facility Permits.

**Item 3.3:**

**New York State Department of Environmental Conservation**  
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Permits are transferrable with the approval of the department unless specifically prohibited by the statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

**Condition 4: Permit Modifications, Suspensions and Revocations by the Department**  
**Applicable State Requirement: 6NYCRR 621.14**

**Item 4.1:**

The Department reserves the right to modify, suspend, or revoke this permit in accordance with 6NYCRR Part 621. The grounds for modification, suspension or revocation include:

- a) materially false or inaccurate statements in the permit application or supporting papers;
- b) failure by the permittee to comply with any terms or conditions of the permit;
- c) exceeding the scope of the project as described in the permit application;
- d) newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e) noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

**\*\*\*\* Facility Level \*\*\*\***

**Condition 5: Submission of Applications for Permit Modification or Renewal-REGION 2 HEADQUARTERS**  
**Applicable State Requirement: 6NYCRR 621.5(a)**

**Item 5.1:**

Submission of applications for permit modification or renewal are to be submitted to:  
NYSDEC Regional Permit Administrator  
Region 2 Headquarters  
Division of Environmental Permits  
1 Hunters Point Plaza, 4740 21st Street  
Long Island City, NY 11101-5407  
(718) 482-4997

New York State Department of Environmental Conservation  
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#### DEC SPECIAL CONDITIONS

**Condition 6:** Inspection, replacement & disposal of all coalescent filters installed on boilers and main gas feed line in the meter room for condensate build-up.  
Applicable State Requirement: 6NYCRR 617.7

**Item 6.1:**

To prevent the re-occurrence of boiler contamination incidents such as the one that happened in August of 1999 in Boilers 001, 002 & 003 (Emission sources 00001, 00002 & 00003, respectively), the facility personnel shall do the following:

1. Inspect, on a quarterly basis, all coalescent filters that have been installed on individual boiler gas-feed lines and on the main gas feed line in the meter room, for evidence of gas condensate build-up.
2. Replace any coalescent filters that have been rendered ineffective due to build-up of condensate.
3. Dispose all wastes (contaminated filters, condensates, sediment and flush solvents) generated in accordance with applicable regulations.
4. For hazardous waste determination, facility personnel must test the condensate for the presence of Benzene and PCBs, and the hazardous characteristics (ignitability, at a minimum).
5. Shall submit a report of the results of each quarterly inspection to the Department, Division of Hazardous Materials (Att: Sam Arakhan) and the Division of Air Resources (Attn: Diana Menasha).

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Permit Under the Environmental Conservation Law (ECL)

**ARTICLE 19: AIR POLLUTION CONTROL - TITLE V PERMIT**

**IDENTIFICATION INFORMATION**

Permit Issued To: PARKCHESTER SOUTH CONDOMINIUM  
2000 EAST TREMONT AVENUE  
BRONX, NY 10462-5703

Facility:            PARKCHESTER SOUTH CONDOMINIUM  
2020 EAST TREMONT AVE  
BRONX, NY 10462

Authorized Activity By Standard Industrial Classification Code:  
6513 - APARTMENT BUILDING OPERATORS

Permit Effective Date: 08/17/2006

Permit Expiration Date: 08/16/2011



**LIST OF CONDITIONS**

**FEDERALLY ENFORCEABLE CONDITIONS**

**Facility Level**

- 1 6NYCRR 200.6: Acceptable Ambient Air Quality
  - 2 6NYCRR 201-6.5(a)(7): Fees
  - 3 6NYCRR 201-6.5(c): Recordkeeping and reporting of compliance monitoring
  - 4 6NYCRR 201-6.5(c)(2): Monitoring, Related Recordkeeping, and Reporting Requirements.
  - 5 6NYCRR 201-6.5(c)(3)(ii): Compliance Certification
  - 6 6NYCRR 201-6.5(e): Compliance Certification
  - 7 6NYCRR 202-2.1: Compliance Certification
  - 8 6NYCRR 202-2.5: Recordkeeping requirements
  - 9 6NYCRR 215: Open Fires Prohibited at Industrial and Commercial Sites
  - 10 6NYCRR 200.7: Maintenance of Equipment
  - 11 6NYCRR 201-1.7: Recycling and Salvage
  - 12 6NYCRR 201-1.8: Prohibition of Reintroduction of Collected Contaminants to the air
  - 13 6NYCRR 201-3.2(a): Exempt Sources - Proof of Eligibility
  - 14 6NYCRR 201-3.3(a): Trivial Sources - Proof of Eligibility
  - 15 6NYCRR 201-6.5(a)(4): Standard Requirement - Provide Information
  - 16 6NYCRR 201-6.5(a)(8): General Condition - Right to Inspect
  - 17 6NYCRR 201-6.5(d)(5): Standard Requirements - Progress Reports
  - 18 6NYCRR 201-6.5(f)(6): Off Permit Changes
  - 19 6NYCRR 202-1.1: Required Emissions Tests
  - 20 6NYCRR 211.3: Visible Emissions Limited
  - 21 40CFR 68: Accidental release provisions.
  - 22 40CFR 82, Subpart F: Recycling and Emissions Reduction
  - 23 6NYCRR 201-6: Emission Unit Definition
  - 24 6NYCRR 201-6.5(g): Non Applicable requirements
  - 25 6NYCRR 201-7: Facility Permissible Emissions
  - 26 6NYCRR 225-1.8: Compliance Certification
  - 27 6NYCRR 225.1(a)(3): Compliance Certification
  - 28 6NYCRR 227-2.5(a): Compliance Certification
- Emission Unit Level**
- 29 6NYCRR 201-6: Emission Point Definition By Emission Unit
  - 30 6NYCRR 201-6: Process Definition By Emission Unit

**EU=U-00001,EP=00001**

- 31 6NYCRR 227-1.3: Compliance Certification
- 32 6NYCRR 227-2.4(b): Compliance Certification
- 33 6NYCRR 227-2.6(c): Compliance Certification

**EU=U-00001,EP=00001,Proc=002**

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- \*34 6NYCRR 201-7: Capping Monitoring Condition
- \*35 6NYCRR 201-7: Capping Monitoring Condition
- 36 6NYCRR 227.2(b)(1): Compliance Certification

**STATE ONLY ENFORCEABLE CONDITIONS**

**Facility Level**

- 37 ECL 19-0301: Contaminant List
- 38 6NYCRR 201-1.4: Unavoidable noncompliance and violations
- 39 6NYCRR 211.2: Air pollution prohibited

**Emission Unit Level**

**EU=U-00001,EP=00001**

- 40 6NYCRR 227-1.4(a): Compliance Demonstration

NOTE: \* preceding the condition number indicates capping.





**FEDERALLY ENFORCEABLE CONDITIONS**  
\*\*\*\* Facility Level \*\*\*\*

**NOTIFICATION OF GENERAL PERMITTEE OBLIGATIONS**  
The items listed below are not subject to the annual compliance certification requirements under Title V. Permittees may also have other obligations under regulations of general applicability.

**Item A: Emergency Defense - 6NYCRR Part 201-1.5**

An emergency constitutes an affirmative defense to an action brought for noncompliance with emissions limitations or permit conditions for all facilities in New York State.

(a) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and that the facility owner and/or operator can identify the cause(s) of the emergency;

(2) The equipment at the permitted facility causing the emergency was at the time being properly operated;

(3) During the period of the emergency the facility owner and/or operator took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(4) The facility owner and/or operator notified the Department within two working days after the event occurred. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(b) In any enforcement proceeding, the facility owner and/or operator seeking to establish the occurrence of an emergency has the burden of proof.

(c) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

**Item B: Public Access to Recordkeeping for Title V Facilities - 6NYCRR Part 201-1.10(b)**

The Department will make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to

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Section 503(e) of the Act, except for information entitled to confidential treatment pursuant to 6NYCRR Part 616 - Public Access to records and Section 114(c) of the Act.

- Item C: Timely Application for the Renewal of Title V Permits - 6 NYCRR Part 201-6.3(a)(4)**  
Owners and/or operators of facilities having an issued Title V permit shall submit a complete application at least 180 days, but not more than eighteen months, prior to the date of permit expiration for permit renewal purposes.
- Item D: Certification by a Responsible Official - 6 NYCRR Part 201-6.3(d)(12)**  
Any application, form, report or compliance certification required to be submitted pursuant to the federally enforceable portions of this permit shall contain a certification of truth, accuracy and completeness by a responsible official. This certification shall state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
- Item E: Requirement to Comply With All Conditions - 6 NYCRR Part 201-6.5(a)(2)**  
The permittee must comply with all conditions of the Title V facility permit. Any permit non-compliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
- Item F: Permit Revocation, Modification, Reopening, Reissuance or Termination, and Associated Information Submission Requirements - 6 NYCRR Part 201-6.5(a)(3)**  
This permit may be modified, revoked, reopened and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- Item G: Cessation or Reduction of Permitted Activity Not a Defense - 6NYCRR Part 201-6.5(a)(5)**  
It shall not be a defense for a permittee in an enforcement action to claim that a cessation or reduction in the permitted activity would have been necessary in

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order to maintain compliance with the conditions of this permit.

**Item H: Property Rights - 6 NYCRR Part 201-6.5(a)(6)**

This permit does not convey any property rights of any sort or any exclusive privilege.

**Item I: Severability - 6 NYCRR Part 201-6.5(a)(9)**

If any provisions, parts or conditions of this permit are found to be invalid or are the subject of a challenge, the remainder of this permit shall continue to be valid.

**Item J: Permit Shield - 6 NYCRR Part 201-6.5(g)**

All permittees granted a Title V facility permit shall be covered under the protection of a permit shield, except as provided under 6 NYCRR Subpart 201-6. Compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that such applicable requirements are included and are specifically identified in the permit, or the Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the major stationary source, and the permit includes the determination or a concise summary thereof. Nothing herein shall preclude the Department from revising or revoking the permit pursuant to 6 NYCRR Part 621 or from exercising its summary abatement authority. Nothing in this permit shall alter or affect the following:

- i. The ability of the Department to seek to bring suit on behalf of the State of New York, or the Administrator to seek to bring suit on behalf of the United States, to immediately restrain any person causing or contributing to pollution presenting an imminent and substantial endangerment to public health, welfare or the environment to stop the emission of air pollutants causing or contributing to such pollution;
- ii. The liability of a permittee of the Title V facility for any violation of applicable requirements prior to or at the time of permit issuance;
- iii. The applicable requirements of Title IV of the



Act;

iv. The ability of the Department or the Administrator to obtain information from the permittee concerning the ability to enter, inspect and monitor the facility.

**Item K: Reopening for Cause - 6 NYCRR Part 201-6.5(i)**

This Title V permit shall be reopened and revised under any of the following circumstances:

i. If additional applicable requirements under the Act become applicable where this permit's remaining term is three or more years, a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which this permit is due to expire, unless the original permit or any of its terms and conditions has been extended by the Department pursuant to the provisions of Part 201-6.7 and Part 621.

ii. The Department or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

iii. The Department or the Administrator determines that the Title V permit must be revised or reopened to assure compliance with applicable requirements.

iv. If the permitted facility is an "affected source" subject to the requirements of Title IV of the Act, and additional requirements (including excess emissions requirements) become applicable. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

Proceedings to reopen and issue Title V facility permits shall follow the same procedures as apply to initial permit issuance but shall affect only those parts of the permit for which cause to reopen exists.

Reopenings shall not be initiated before a notice of such intent is provided to the facility by the Department at least thirty days in advance of the date that the permit



is to be reopened, except that the Department may provide a shorter time period in the case of an emergency.

**Item L:**

**Permit Exclusion - ECL 19-0305**

The issuance of this permit by the Department and the receipt thereof by the Applicant does not and shall not be construed as barring, diminishing, adjudicating or in any way affecting any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against the Applicant for violations based on facts and circumstances alleged to have occurred or existed prior to the effective date of this permit, including, but not limited to, any enforcement action authorized pursuant to the provisions of applicable federal law, the Environmental Conservation Law of the State of New York (ECL) and Chapter III of the Official Compilation of the Codes, Rules and Regulations of the State of New York (NYCRR). The issuance of this permit also shall not in any way affect pending or future enforcement actions under the Clean Air Act brought by the United States or any person.

**Item M:**

**Federally Enforceable Requirements - 40 CFR 70.6(b)**

All terms and conditions in this permit required by the Act or any applicable requirement, including any provisions designed to limit a facility's potential to emit, are enforceable by the Administrator and citizens under the Act. The Department has, in this permit, specifically designated any terms and conditions that are not required under the Act or under any of its applicable requirements as being enforceable under only state regulations.

**MANDATORY FEDERALLY ENFORCEABLE PERMIT CONDITIONS SUBJECT  
TO ANNUAL CERTIFICATIONS AT ALL TIMES**

The following federally enforceable permit conditions are mandatory for all Title V permits and are subject to annual compliance certification requirements at all times.

**Condition 1: Acceptable Ambient Air Quality**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable Federal Requirement: 6NYCRR 200.6**

**Item 1.1:**

Notwithstanding the provisions of 6 NYCRR Chapter III, Subchapter A, no person shall allow or permit

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any air contamination source to emit air contaminants in quantities which alone or in combination with emissions from other air contamination sources would contravene any applicable ambient air quality standard and/or cause air pollution. In such cases where contravention occurs or may occur, the Commissioner shall specify the degree and/or method of emission control required.

**Condition 2: Fees**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable Federal Requirement: 6NYCRR 201-6.5(a)(7)**

**Item 2.1:**

The owner and/or operator of a stationary source shall pay fees to the Department consistent with the fee schedule authorized by ECL 72-0302.

**Condition 3: Recordkeeping and reporting of compliance monitoring**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable Federal Requirement: 6NYCRR 201-6.5(c)**

**Item 3.1:**

The following information must be included in any required compliance monitoring records and reports:

- (i) The date, place, and time of sampling or measurements;
- (ii) The date(s) analyses were performed;
- (iii) The company or entity that performed the analyses;
- (iv) The analytical techniques or methods used including quality assurance and quality control procedures if required;
- (v) The results of such analyses including quality assurance data where required; and
- (vi) The operating conditions as existing at the time of sampling or measurement.

Any deviation from permit requirements must be clearly identified in all records and reports. Reports must be certified by a responsible official, consistent with Section 201-6.3 of this Part 201.

**Condition 4: Monitoring, Related Recordkeeping, and Reporting Requirements.**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable Federal Requirement: 6NYCRR 201-6.5(c)(2)**

**Item 4.1:**

Compliance monitoring and recordkeeping shall be conducted according to the terms and conditions contained in this permit and shall follow all quality assurance requirements found in applicable



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regulations. Records of all monitoring data and support information must be retained for a period of at least 5 years from the date of the monitoring, sampling, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

**Condition 5: Compliance Certification**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 201-6.5(c)(3)(ii)

**Item 5.1:**

The Compliance Certification activity will be performed for the Facility.

**Item 5.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: RECORD KEEPING/MAINTENANCE PROCEDURES

Monitoring Description:

To meet the requirements of this facility permit with respect to reporting, the permittee must:

Submit reports of any required monitoring at a minimum frequency of every 6 months, based on a calendar year reporting schedule. These reports shall be submitted to the Department within 30 days after the end of a reporting period. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by the responsible official for this facility.

Notify the Department and report permit deviations and incidences of noncompliance stating the probable cause of such deviations, and any corrective actions or preventive measures taken. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted to the permitting authority based on the following schedule:

(1) For emissions of a hazardous air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made within 24 hours of the occurrence.



(2) For emissions of any regulated air pollutant, excluding those listed in paragraph (1) of this section, that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours.

(3) For all other deviations from permit requirements, the report shall be contained in the 6 month monitoring report required above.

(4) This permit may contain a more stringent reporting requirement than required by paragraphs (1), (2) or (3) above. If more stringent reporting requirements have been placed in this permit or exist in applicable requirements that apply to this facility, the more stringent reporting requirement shall apply.

If above paragraphs (1) or (2) are met, the source must notify the permitting authority by telephone during normal business hours at the Regional Office of jurisdiction for this permit, attention Regional Air Pollution Control Engineer (RAPCE) according to the timetable listed in paragraphs (1) and (2) of this section. For deviations and incidences that must be reported outside of normal business hours, on weekends, or holidays, the DEC Spill Hotline phone number at 1-800-457-7362 shall be used. A written notice, certified by a responsible official consistent with 6 NYCRR Part 201-6.3(d)(12), must be submitted within 10 working days of an occurrence for deviations reported under (1) and (2). All deviations reported under paragraphs (1) and (2) of this section must also be identified in the 6 month monitoring report required above.

The provisions of 6 NYCRR 201-1.4 shall apply if the permittee seeks to have a violation excused unless otherwise limited by regulation. In order to have a violation of a federal regulation (such as a new source performance standard or national emissions standard for hazardous air pollutants) excused, the specific federal regulation must provide for an affirmative defense during start-up, shutdowns, malfunctions or upsets. Notwithstanding any recordkeeping and reporting requirements in 6 NYCRR 201-1.4, reports of any deviations shall not be on a less frequent basis than the reporting periods described in paragraphs (1) and (4) above.





In the case of any condition contained in this permit with a reporting requirement of "Upon request by regulatory agency" the permittee shall include in the semiannual report, a statement for each such condition that the monitoring or recordkeeping was performed as required or requested and a listing of all instances of deviations from these requirements.

In the case of any emission testing performed during the previous six month reporting period, either due to a request by the Department, EPA, or a regulatory requirement, the permittee shall include in the semiannual report a summary of the testing results and shall indicate whether or not the Department or EPA has approved the results.

All semiannual reports shall be submitted to the Administrator (or his or her representative) as well as two copies to the Department (one copy to the regional air pollution control engineer (RAPCE) in the regional office and one copy to the Bureau of Quality Assurance (BQA) in the DEC central office). Mailing addresses for the above referenced persons are contained in the monitoring condition for 6 NYCRR Part 201-6.5(e), contained elsewhere in this permit.

Reporting Requirements: SEMI-ANNUALLY (CALENDAR)  
Reports due 30 days after the reporting period.  
The initial report is due 1/30/2007.  
Subsequent reports are due every 6 calendar month(s).

**Condition 6: Compliance Certification**  
**Effective between the dates of 08/17/2006 and 08/16/2011**

**Applicable Federal Requirement: 6NYCRR 201-6.5(e)**

**Item 6.1:**  
The Compliance Certification activity will be performed for the Facility.

**Item 6.2:**  
Compliance Certification shall include the following monitoring:

Monitoring Type: RECORD KEEPING/MAINTENANCE PROCEDURES  
Monitoring Description:  
Requirements for compliance certifications with terms and conditions contained in this facility permit include the



following:

- i. Compliance certifications shall contain:
  - the identification of each term or condition of the permit that is the basis of the certification;
  - the compliance status;
  - whether compliance was continuous or intermittent;
  - the method(s) used for determining the compliance status of the facility, currently and over the reporting period consistent with the monitoring and related recordkeeping and reporting requirements of this permit;
  - such other facts as the Department may require to determine the compliance status of the facility as specified in any special permit terms or conditions; and
  - such additional requirements as may be specified elsewhere in this permit related to compliance certification.
- ii. The responsible official must include in the annual certification report all terms and conditions contained in this permit which are identified as being subject to certification, including emission limitations, standards, or work practices. That is, the provisions labeled herein as "Compliance Certification" are not the only provisions of this permit for which an annual certification is required.
- iii. Compliance certifications shall be submitted annually. Certification reports are due 30 days after the anniversary date of four consecutive calendar quarters. The first report is due 30 days after the calendar quarter that occurs just prior to the permit anniversary date, unless another quarter has been acceptable by the Department.
- iv. All compliance certifications shall be submitted to the Administrator (or his or her representative) as well as two copies to the Department (one copy to the regional air pollution control engineer (RAPCE) in the regional office and one copy to the Bureau of Quality Assurance (BQA) in the DEC central office). Please send annual compliance certifications to Chief of the Stationary Source Compliance Section, the Region 2 EPA representative for the Administrator, at the following address:

USEPA Region 2

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Air Compliance Branch  
290 Broadway  
New York, NY 10007-1866

The address for the RAPCE is as follows:

Hunters Point Plaza  
47-40 21st Street  
Long Island City, NY 11101-5407

The address for the BQA is as follows:

NYSDEC  
Bureau of Quality Assurance  
625 Broadway  
Albany, NY 12233-3258

Monitoring Frequency: ANNUALLY  
Reporting Requirements: ANNUALLY (CALENDAR)  
Reports due 30 days after the reporting period.  
The initial report is due 7/30/2007.  
Subsequent reports are due on the same day each year

**Condition 7: Compliance Certification**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 202-2.1

**Item 7.1:**  
The Compliance Certification activity will be performed for the Facility.

**Item 7.2:**  
Compliance Certification shall include the following monitoring:

Monitoring Type: RECORD KEEPING/MAINTENANCE PROCEDURES

Monitoring Description:

Emission statements shall be submitted on or before April 15th each year for emissions of the previous calendar year. Statements are to be mailed to: New York State Department of Environmental Conservation, Division of Air Resources, Bureau of Air Quality Planning, 625 Broadway, Albany NY 12233-3251

Monitoring Frequency: ANNUALLY  
Reporting Requirements: ANNUALLY (CALENDAR)  
Reports due by April 15th for previous calendar year

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**Condition 8: Recordkeeping requirements**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 202-2.5

**Item 8.1:**

(a) The following records shall be maintained for at least five years:

- (1) a copy of each emission statement submitted to the department; and
- (2) records indicating how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used.

(b) These records shall be made available at the facility to the representatives of the department upon request during normal business hours.

**Condition 9: Open Fires Prohibited at Industrial and Commercial Sites**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 215

**Item 9.1:**

No person shall burn, cause, suffer, allow or permit the burning in an open fire of garbage, refuse, rubbish for salvage, or rubbish generated by industrial or commercial activities.

**MANDATORY FEDERALLY ENFORCEABLE PERMIT CONDITIONS SUBJECT  
TO ANNUAL CERTIFICATIONS ONLY IF APPLICABLE**

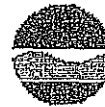
The following federally enforceable permit conditions are mandatory for all Title V permits and are subject to annual compliance certification requirements only if effectuated during the reporting period. [NOTE: The corresponding annual compliance certification for those conditions not effectuated during the reporting period shall be specified as "not applicable".]

**Condition 10: Maintenance of Equipment**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 200.7

**Item 10.1:**

Any person who owns or operates an air contamination source which is equipped with an emission control device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures, inclusive of manufacturer's specifications, required to operate such device effectively.



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**Condition 11:    Recycling and Salvage**  
**Effective between the dates of 08/17/2006 and 08/16/2011**

**Applicable Federal Requirement: 6NYCRR 201-1.7**

**Item 11.1:**

Where practical, any person who owns or operates an air contamination source shall recycle or salvage air contaminants collected in an air cleaning device according to the requirements of the ECL.

**Condition 12:    Prohibition of Reintroduction of Collected Contaminants to the air**  
**Effective between the dates of 08/17/2006 and 08/16/2011**

**Applicable Federal Requirement: 6NYCRR 201-1.8**

**Item 12.1:**

No person shall remove, handle or cause to be handled, collected air contaminants from an air cleaning device for recycling, salvage or disposal in a manner that would reintroduce them to the outdoor atmosphere.

**Condition 13:    Exempt Sources - Proof of Eligibility**  
**Effective between the dates of 08/17/2006 and 08/16/2011**

**Applicable Federal Requirement: 6NYCRR 201-3.2(a)**

**Item 13.1:**

The owner and/or operator of an emission source or unit that is eligible to be exempt may be required to certify that it operates within the specific criteria described in this Subpart. The owner or operator of any such emission source must maintain all required records on-site for a period of five years and make them available to representatives of the department upon request. Department representatives must be granted access to any facility which contains emission sources or units subject to this Subpart, during normal operating hours, for the purpose of determining compliance with this and any other State and Federal air pollution control requirements, regulations, or law.

**Condition 14:    Trivial Sources - Proof of Eligibility**  
**Effective between the dates of 08/17/2006 and 08/16/2011**

**Applicable Federal Requirement: 6NYCRR 201-3.3(a)**

**Item 14.1:**

The owner and/or operator of an emission source or unit that is listed as being trivial in this Part may be required to certify that it operates within the specific criteria described in this Subpart. The owner or operator of any such emission source must maintain all required records on-site for a period of five years and make them available to representatives of the department upon request. Department representatives must be granted access to any facility which contains emission sources or units subject to this Subpart, during normal operating hours, for the purpose of determining compliance with this and any other State and Federal air pollution control requirements, regulations, or law.

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**Condition 15: Standard Requirement - Provide Information**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 201-6.5(a)(4)

**Item 15.1:**

The owner and/or operator shall furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the administrator along with a claim of confidentiality, if the administrator initiated the request for information or otherwise has need of it.

**Condition 16: General Condition - Right to Inspect**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 201-6.5(a)(8)

**Item 16.1:**

The department or an authorized representative shall be allowed upon presentation of credentials and other documents as may be required by law to:

(i) enter upon the permittee's premises where a facility subject to the permitting requirements of this Subpart is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) inspect at reasonable times any emission sources, equipment (including monitoring and air pollution control equipment), practices, and operations regulated or required under the permit; and

(iv) sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

**Condition 17: Standard Requirements - Progress Reports**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 201-6.5(d)(5)

**Item 17.1:**

Progress reports consistent with an applicable schedule of compliance are to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the department. Such progress reports shall contain the following:

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(i) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

**Condition 18: Off Permit Changes**

Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 201-6.5(b)(6)

**Item 18.1:**

No permit revision will be required for operating changes that contravene an express permit term, provided that such changes would not violate applicable requirements as defined under this Part or contravene federally enforceable monitoring (including test methods), recordkeeping, reporting, or compliance certification permit terms and conditions. Such changes may be made without requiring a permit revision, if the changes are not modifications under any provision of title I of the act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions) provided that the facility provides the administrator and the department with written notification as required below in advance of the proposed changes within a minimum of seven days. The facility owner or operator, and the department shall attach each such notice to their copy of the relevant permit.

(i) For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(ii) The permit shield described in section 6 NYCRR 201-6.6 shall not apply to any change made pursuant to this paragraph.

**Condition 19: Required Emissions Tests**

Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 202-1.1

**Item 19.1:**

For the purpose of ascertaining compliance or non-compliance with any air pollution control code, rule or regulation, the commissioner may require the person who owns such air contamination source to submit an acceptable report of measured emissions within a stated time. Such person shall bear the cost of measurement and preparing the report of measured emissions. Failure of such person to submit a report acceptable to the commissioner within the time stated shall be sufficient reason for the commissioner to suspend or deny a certificate to operate.

**Condition 20: Visible Emissions Limited**

Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 211.3

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**Item 20.1:**

Except as permitted by a specific part of this Subchapter and for open fires for which a restricted burning permit has been issued, no person shall cause or allow any air contamination source to emit any material having an opacity equal to or greater than 20 percent (six minute average) except for one continuous six-minute period per hour of not more than 57 percent opacity.

**Condition 21: Accidental release provisions.**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable Federal Requirement: 40CFR 68**

**Item 21.1:**

If a chemical is listed in Tables 1,2,3 or 4 of 40 CFR §68.130 is present in a process in quantities greater than the threshold quantity listed in Tables 1,2,3 or 4, the following requirements will apply:

- a) The owner or operator shall comply with the provisions of 40 CFR Part 68 and;
- b) The owner or operator shall submit at the time of permit issuance (if not previously submitted) one of the following, if such quantities are present:
  - 1) A compliance schedule for meeting the requirements of 40 CFR Part 68 by the date provided in 40 CFR §68.10(a) or,
  - 2) A certification statement that the source is in compliance with all requirements of 40 CFR Part 68, including the registration and submission of the Risk Management Plan. Information should be submitted to:

Risk Management Plan Reporting Center  
C/O CSC  
8400 Corporate Dr  
Carrollton, Md. 20785

**Condition 22: Recycling and Emissions Reduction**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable Federal Requirement: 40CFR 82, Subpart F**

**Item 22.1:**

The permittee shall comply with all applicable provisions of 40 CFR Part 82.

**The following conditions are subject to annual compliance certification requirements for Title V permits only.**



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**Condition 23: Emission Unit Definition**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 201-6

**Item 23.1:**

The facility is authorized to perform regulated processes under this permit for:

Emission Unit: U-00001

Emission Unit Description:

Emission Unit U-00001 is comprised of four Foster Wheeler boilers, Boilers 001, 002, 003 and 004 (Emission Sources 00001, 00002, 00003 & 00004, respectively). Each boiler is rated at 104 MM Btu/hr and all four boilers discharge through a common stack, identified as Emission Point 00001. The four boilers burn both natural gas (Process 001) and # 6 fuel oil (Process 002).

Boilers 001, 002, 003 and 004 (Emission Sources 00001, 00002, 00003 & 00004) fire both natural gas & # 6 fuel oil. The NOx RACT rule limit for large gas/oil boilers is 0.30 lb/MM Btu. In order for the facility to meet the NOx-RACT compliance plan for the four Foster Wheeler boilers, the facility converted the four boilers from oil to oil & gas. These modifications/conversions were done by Con Edison in 1996. Boiler 001 was converted from oil to oil & gas on July 29, 1996 and the start-up date was September 20, 1996. Boiler 002 was converted from oil to oil & gas on April 15, 1996 and the start-up date was June 7, 1996. Boiler 003 was converted from oil to oil & gas on June 10, 1996 and the start-up date was August 2, 1996. Finally, Boiler 004 was converted from oil to oil & gas on September 16, 1996 and the start-up date was November 8, 1996.

Building(s): BPLANT

**Condition 24: Non-Applicable requirements**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 201-6.5(g)

**Item 24.1:**

This section contains a summary of those requirements that have been specifically identified as being not applicable to this facility and/or emission units, emission points, processes and/or emission sources within this facility. The summary also includes a justification for classifying any such requirements as non-applicable.

40CFR 52-A.21

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Reason: Parkchester South Condominium was issued a minor modification (Mod 2) on 1/27/2006. The modification (Mod 2) will allow Parkchester South Condominium to burn 5.5 million gallons of # 6 fuel oil instead of the previous cap of 4.5 million gallons of # 6 fuel oil in its boilers. The boilers are dual fuel, the other fuel is natural gas. This modification did not meet the strict definition of a major modification, since the project does not result in a significant net emissions increase nor a significant emissions increase of any regulated PSD pollutant.

The period, 10/1/2003 to 9/30/2005, serves as the baseline and the average of the two years is calculated. Baseline actual emissions are taken from the actual fuel use data. The net emissions increase for the project is then calculated as the difference between the projected actual emissions and baseline actual emissions. This calculation is shown below in the NET EMISSIONS INCREASE. As per 40 CFR 52.21(b)(23)(i), significant means, in reference to net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon Monoxide: 100 TPY  
 Nitrogen Oxides: 40 TPY  
 Sulfur Dioxide: 40 TPY  
 Particulate Matter: 25 TPY  
 PM-10: 15 TPY

As per 40 CFR 52.21(b)(3)(i), NET EMISSION INCREASE with respect to any regulated PSD pollutant emitted by a major stationary source, is calculated below. No applicable changes have occurred at the facility during the contemporaneous period, therefore no contemporaneous changes need to be considered in the calculation of this project's net emission increase.

NET EMISSION INCREASE:

Pollutant	Total Actual	Total Baseline	Net Increase
De Minimis			
Emissions	Emissions	Emission	
Emission Limit			

TPY TPY TPY

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TPY

Particulates 25	40.2	30.0	10.2
Sulfur Dioxide 33.5 40	129.5	96.0	
Oxides of Nitrogen 40	172.3	171.6	0.7
Carbon Monoxide 100	28.2	33.1	-4.9
Lead 0.6	0.004	0.003	0.001
VOC 40	4.1	3.8	0.3

Since the calculated net emissions increase for any regulated PSD pollutant, as shown above, emitted by a major stationary source, is less than the defined significant net emissions, it is concluded that this project does not result in a significant net emissions increase (above the baseline) for any criteria pollutant. For sulfur dioxide, the net emission increase is 33.5 TPY, which is less than the 40 TPY de minimis emission level limit. Therefore, this project does fall under PSD regulations and is not subject to PSD requirements.

When the Title V (Mod 2) was issued on 1/27/2006, the facility was allowed to use up to 5.5 million gallons of #6 fuel oil per year and hence is capping out of 40 CFR 52-A.21, Prevention of Significant Deterioration by limiting the emission of Sulfur Dioxide to 130 tons per year for any twelve consecutive months.

**Condition 25: Facility Permissible Emissions**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable Federal Requirement: 6NYCRR 201-7**

**Item 25.1:**

The sum of emissions from the emission units specified in this permit shall not equal or exceed the

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following  
Potential To Emit (PTE) rate for each regulated contaminant:

CAS No: 007446-09-5 PTE: 260,000 pounds per year  
Name: SULFUR DIOXIDE

**Condition 26: Compliance Certification**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable Federal Requirement: 6NYCRR 225-1.8**

**Item 26.1:**  
The Compliance Certification activity will be performed for the Facility.

**Item 26.2:**  
Compliance Certification shall include the following monitoring:

Monitoring Type: RECORD KEEPING/MAINTENANCE PROCEDURES  
Monitoring Description:

An owner or operator of a facility which purchases and fires coal and/or fuel oil shall compile and retain records of the following information:

a. fuel analyses and data on the quantities of all residual and distillate oil and coal received, burned or sold;

b. the names of all purchasers of all residual and distillate oil and coal sold;

c. any results of stack sampling, stack monitoring and other procedures used to ensure compliance with the provisions of 6 NYCRR Part 225-1.

Fuel analyses must contain, as a minimum, data on the sulfur content, specific gravity and heating value of any residual oil, distillate oil or coal received, burned or sold. Ash content shall also be included in the fuel analyses for any residual oil or coal received, burned or sold.

These records shall be retained for a minimum period of three years. If the facility is subject to Title V requirements the minimum record retention period shall be five years. The records shall be made available for inspection by department staff during normal business hours. In addition, copies of such records shall be furnished to department staff upon request. All required sampling, compositing and analysis of fuel samples must be done in accordance with methods acceptable to the

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department.

Monitoring Frequency: AS REQUIRED - SEE PERMIT MONITORING  
DESCRIPTION

Reporting Requirements: SEMI-ANNUALLY (CALENDAR)

Reports due 30 days after the reporting period.

The initial report is due 1/30/2007.

Subsequent reports are due every 6 calendar month(s).

**Condition 27: Compliance Certification**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 225.1(a)(3)

**Item 27.1:**

The Compliance Certification activity will be performed for the Facility.

**Item 27.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: WORK PRACTICE INVOLVING SPECIFIC  
OPERATIONS

Monitoring Description:

No person shall sell, offer for sale, purchase or use any residual oil which has sulfur content greater than 0.30 percent by weight. A log of the sulfur content in oil per delivery must be maintained on site for a minimum of five years after the date of the last entry.

Work Practice Type: PARAMETER OF PROCESS MATERIAL

Process Material: NUMBER 6 OIL

Parameter Monitored: SULFUR CONTENT

Upper Permit Limit: 0.30 percent by weight

Monitoring Frequency: PER DELIVERY

Averaging Method: MAXIMUM - NOT TO BE EXCEEDED AT ANY  
TIME (INSTANTANEOUS/DISCRETE OR GRAB)

Reporting Requirements: SEMI-ANNUALLY (CALENDAR)

Reports due 30 days after the reporting period.

The initial report is due 1/30/2007.

Subsequent reports are due every 6 calendar month(s).

**Condition 28: Compliance Certification**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 227-2.5(a)

**Item 28.1:**

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The Compliance Certification activity will be performed for the Facility.

Regulated Contaminant(s):  
CAS No: 0NY210-00-0 OXIDES OF NITROGEN

**Item 28.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: RECORD KEEPING/MAINTENANCE PROCEDURES

Monitoring Description:

Fuel Switching Option: The owner/operator of a combustion installation covered under this subpart may commit to burning a cleaner fuel, such as natural gas, during the ozone season from May 1 to September 15. Fuel switching may result in quantifiable annual NOx emissions equal to or less than the NOx emissions expected if the combustion installations complied with the emission limits in section 227-2.4 of this subpart.

Monitoring Frequency: DAILY

Reporting Requirements: AS REQUIRED - SEE MONITORING DESCRIPTION

\*\*\*\* Emission Unit Level \*\*\*\*

**Condition 29: Emission Point Definition By Emission Unit**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 201-6

**Item 29.1:**

The following emission points are included in this permit for the cited Emission Unit:

Emission Unit: U-00001

Emission Point: 00001

Height (ft.): 266 Diameter (in.): 120  
NYTMN (km.): 4521.823 NYTME (km.): 596.033 Building: BPLANT

**Condition 30: Process Definition By Emission Unit**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 201-6

**Item 30.1:**

This permit authorizes the following regulated processes for the cited Emission Unit:

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Emission Unit: U-00001

Process: 001

Source Classification Code: 1-03-006-02

Process Description:

Process 001 is the firing of natural gas in Boilers 001, 002, 003 & 004 (Emission Sources 00001, 00002, 00003 & 00004, respectively) in Emission Unit U-00001. These four Foster Wheeler boilers burn both # 6 fuel oil and natural gas, and each boiler is rated at 104 MM Btu/hr. All four boilers discharge through a common stack, identified as Emission Point 00001.

With the issuance of this Title V modification (Mod 1), the facility is requesting to use up to 5.5 million gallons of # 6 fuel oil per year and hence is capping out of 40 CFR 52-A.21, Prevention of Significant Deterioration by limiting the emission of Sulfur Dioxide to 130 tons per year for any twelve consecutive months. Since the differential between 130 tpy and 95 tpy is 35 tpy, mis below the 40 tpy de minimus, this facility is not subject to this facility.

Emission Source/Control: 00001 - Combustion  
Design Capacity: 104 million Btu per hour

Emission Source/Control: 00002 - Combustion  
Design Capacity: 104 million Btu per hour

Emission Source/Control: 00003 - Combustion  
Design Capacity: 104 million Btu per hour

Emission Source/Control: 00004 - Combustion  
Design Capacity: 104 million Btu per hour

Item 30.2:

This permit authorizes the following regulated processes for the cited Emission Unit:

Emission Unit: U-00001

Process: 002

Source Classification Code: 1-03-004-01

Process Description:

Process 002 is the firing of # 6 fuel oil in Boilers 001, 002, 003 & 004 (Emission Sources 00001, 00002, 00003 & 00004, respectively) in Emission Unit U-00001. These four Foster Wheeler boilers burn both # 6 fuel oil and natural gas, and each boiler is rated at 104 MM Btu/hr. All four boilers discharge through a common stack, identified as Emission Point 00001.

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With the issuance of this Title V modification (Mod 1), the facility is requesting to use up to 5.5 million gallons of # 6 fuel oil per year and hence is capping out of 40 CFR 52-A.21, Prevention of Significant Deterioration by limiting the emission of Sulfur Dioxide to 130 tons per year for any twelve consecutive months. Since the differential between 130 tpy and 95 tpy is 35 tpy, mis below the 40 tpy de minimus, this facility is not subject to this facility.

Emission Source/Control: 00001 - Combustion  
Design Capacity: 104 million Btu per hour

Emission Source/Control: 00002 - Combustion  
Design Capacity: 104 million Btu per hour

Emission Source/Control: 00003 - Combustion  
Design Capacity: 104 million Btu per hour

Emission Source/Control: 00004 - Combustion  
Design Capacity: 104 million Btu per hour

**Condition 31: Compliance Certification**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable Federal Requirement: 6NYCRR 227-1.3**

**Item 31.1:**  
The Compliance Certification activity will be performed for:

Emission Unit: U-00001 Emission Point: 00001

**Item 31.2:**  
Compliance Certification shall include the following monitoring:

Monitoring Type: CONTINUOUS EMISSION MONITORING (CEM)  
Monitoring Description:

Stack opacity shall not exceed 20 percent (six minute average), except for one six-minute period per hour of not more than 27 percent opacity. Compliance with this standard may be determined by EPA Reference Method 9, Continuous Opacity Monitoring System (COMS) data, and/or any other credible evidence. The owner shall install, operate in accordance with manufacturer's instructions, and properly maintain, a COMS in the stack satisfying the criteria in Appendix B of 40 CFR part 60.



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The owner shall submit an accurate excess emissions and monitoring system performance report to the Department for each calendar year quarter. All reports shall be certified by a responsible corporate official as true, accurate and complete and post marked by the 60th day following the end of each calendar year quarter. The quarterly excess emissions report shall be submitted in a form acceptable to the Department and shall include the following minimum information:

(1) The magnitude, date and time of each six minute block average during which the average opacity of emissions exceeds 20 percent, except for one six minute block average per hour not to exceed 27 percent;

(2) For each period of excess emissions, specific identification of the cause and corrective action taken;

(3) Identification of all periods of COMS down time, including the date, time and duration of each inoperable period, and the cause and corrective action for each COMS down time period;

(4) The total time in which the COMS are required to record data during the reporting period;

(5) The total number of exceedences expressed as a percentage of the total time which the COMS are required to record data.

Manufacturer Name/Model Number: Continuous Opacity Monitoring System (COMS)  
Parameter Monitored: OPACITY  
Upper Permit Limit: 20 percent  
Reference Test Method: 40 CFR 60 APP B RM 9  
Monitoring Frequency: CONTINUOUS  
Averaging Method: 6-MINUTE AVERAGE (METHOD 9)  
Reporting Requirements: QUARTERLY (CALENDAR)  
Reports due 60 days after the reporting period.  
The initial report is due 11/29/2006.  
Subsequent reports are due every 3 calendar month(s).

**Condition 32: Compliance Certification**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable Federal Requirement: 6NYCRR 227-2.4(b)**

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**Item 32.1:**

The Compliance Certification activity will be performed for:

Emission Unit: U-00001 Emission Point: 00001

Regulated Contaminant(s):

CAS No: 0NY210-00-0 OXIDES OF NITROGEN

**Item 32.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: MONITORING OF PROCESS OR CONTROL  
DEVICE PARAMETERS AS SURROGATE

Monitoring Description:

Effective May 31, 1995, any owner or operator of a large boiler must comply with the listed NOx RACT emission limit. The NOx limit for large gas/oil boilers is 0.30 lb NOx/MMBTU. Compliance with these emission limits shall be determined with a one hour average in accordance with the provisions of section 227-2.6(a)(3) of this subpart unless the owner/operator opts to utilize Continuous Emission Monitoring Systems (CEMS) under the provisions of section 227-2.6(a)(2) of this subpart. If CEMS are utilized, the requirements of section 227-2.6(b) of this subpart apply, including the use of a 24 hour averaging period.

Manufacturer Name/Model Number: FOSTER WHEELER TYPE D

Parameter Monitored: OXIDES OF NITROGEN

Upper Permit Limit: 0.30 pounds per million Btus

Reference Test Method: METHOD 7, 7E, 19

Monitoring Frequency: AS REQUIRED - SEE PERMIT MONITORING  
DESCRIPTION

Averaging Method: 1-HOUR AVERAGE

Reporting Requirements: SEMI-ANNUALLY (CALENDAR)

Reports due 30 days after the reporting period.

The initial report is due 1/30/2007.

Subsequent reports are due every 6 calendar month(s).

**Condition 33: Compliance Certification**

Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 227-2.6(c)

**Item 33.1:**

The Compliance Certification activity will be performed for:

Air Pollution Control Permit Conditions

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Emission Unit: U-00001 Emission Point: 00001

Regulated Contaminant(s):  
CAS No: 0NY210-00-0 OXIDES OF NITROGEN

**Item 33.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: INTERMITTENT EMISSION TESTING

Monitoring Description:

The following unit shall perform testing to verify NOx emissions to demonstrate compliance with this part.

The owner/operator of large boilers shall measure NOx emissions by performing stack tests described in subdivision (c) of this section.

The NOx RACT for large Gas/Oil Boilers is a limit of 0.30 pounds per million BTU per hour.

Stack test requirements: The owner/operator of those facilities required to stack test under subdivision (a) of 6NYCRR 227-2.6 shall:

1. Submit a compliance test protocol to the department for approval at least 90 days prior to emission testing. The conditions of the testing and the locations of the sampling devices must be acceptable to the department; and
2. Utilize procedures set forth in 40 CFR Part 60, Appendix A or any other method acceptable to the department and EPA for determining compliance with the appropriate NOx limit in section 227-2.4 of this Subpart, and shall follow the procedures set forth in Part 202 of this Title.
  - i. For large and mid-size boilers, utilize Method 7, 7E, or 19 from 40 CFR Part 60, Appendix A or another reference method approved by the department.

Manufacturer Name/Model Number: FOSTER WHEELER TYPE D

Parameter Monitored: OXIDES OF NITROGEN

Upper Permit Limit: 0.30 pounds per million Btus

Reference Test Method: METHOD 7, 7E, 19

Monitoring Frequency: ONCE DURING THE TERM OF THE PERMIT

New York State Department of Environmental Conservation  
Permit ID: 2-6005-00139/00002 Facility DEC ID: 2600500139



Averaging Method: AVERAGING METHOD AS PER REFERENCE TEST  
METHOD INDICATED

Reporting Requirements: ONCE / BATCH OR MONITORING OCCURRENCE

**Condition 34: Capping Monitoring Condition**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 201-7.

**Item 34.1:**

Under the authority of 6 NYCRR Part 201-7, this condition contains an emission cap for the purpose of limiting emissions from the facility, emission unit or process to avoid being subject to the following applicable requirement(s) that the facility, emission unit or process would otherwise be subject to:

40CFR 52-A.21

**Item 34.2:**

Operation of this facility shall take place in accordance with the approved criteria, emission limits, terms, conditions and standards in this permit.

**Item 34.3:**

The owner or operator of the permitted facility must maintain all required records on-site for a period of five years and make them available to representatives of the Department upon request. Department representatives must be granted access to any facility regulated by this Subpart, during normal operating hours, for the purpose of determining compliance with this and any other state and federal air pollution control requirements, regulations or law.

**Item 34.4:**

On an annual basis, unless otherwise specified below, beginning one year after the granting of an emissions cap, the responsible official shall provide a certification to the Department that the facility has operated all emission units within the limits imposed by the emission cap. This certification shall include a brief summary of the emissions subject to the cap for that time period and a comparison to the threshold levels that would require compliance with an applicable requirement.

**Item 34.5:**

The emission of pollutants that exceed the applicability thresholds for an applicable requirement, for which the facility has obtained an emissions cap, constitutes a violation of Part 201 and of the Act.

**Item 34.6:**

The Compliance Certification activity will be performed for:

Emission Unit: U-00001 Emission Point: 00001  
Process: 002

Regulated Contaminant(s):  
CAS No: 007446-09-5 SULFUR DIOXIDE

New York State Department of Environmental Conservation  
Permit ID: 2-6005-00139/00002 Facility DEC ID: 2600500139



Item 34.7:

Compliance Certification shall include the following monitoring:

Capping: Yes

Monitoring Type: WORK PRACTICE INVOLVING SPECIFIC OPERATIONS

Monitoring Description:

To cap out of 40 CFR 52-A.21, Prevention of Significant Deterioration for Sulfur Dioxide and limit the SO<sub>2</sub> emissions to 130 tons per year, # 6 fuel oil usage at this source shall not exceed 5.5 million gallons for any 12 consecutive months.

Fuel consumption records will be maintained at the facility on a daily, monthly, and every 12 consecutive months basis to prove compliance.

The heat value of # 6 fuel oil is 148,000 MM Btu/gallon, and the heat value of natural gas is 1,025 MM Btu/cu ft. The sulfur content limit in # 6 fuel oil is 0.30 % by weight. The emission rate of sulfur dioxide (SO<sub>2</sub>) in # 6 fuel oil is 47.1 lb/1,000 gallons, therefore;

$5,500,000 \text{ gallons/yr} \times 47.1 \text{ lb/1,000 gallons} \times 2,000 \text{ lb/1 ton} = 129.5 \text{ tons/yr of SO}_2$

The SO<sub>2</sub> net emission increase < 40 TPY, which is the de minimis emission limit for SO<sub>2</sub>. Therefore, this modification is not PSD applicable.

Work Practice Type: PROCESS MATERIAL THRUPUT

Process Material: NUMBER 6 OIL

Manufacturer Name/Model Number: FOSTER WHEELER TYPE D

Upper Permit Limit: 5500 thousand gallons per year

Reference Test Method: PT 60 APP B & F

Monitoring Frequency: MONTHLY

Averaging Method: ANNUAL MINIMUM ROLLED MONTHLY

Reporting Requirements: QUARTERLY (CALENDAR)

Reports due 30 days after the reporting period.

The initial report is due 10/30/2006.

Subsequent reports are due every 3 calendar month(s).

Condition 35: Capping Monitoring Condition  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable Federal Requirement: 6NYCRR 201-7

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**Item 35.1:**

Under the authority of 6 NYCRR Part 201-7, this condition contains an emission cap for the purpose of limiting emissions from the facility, emission unit or process to avoid being subject to the following applicable requirement(s) that the facility, emission unit or process would otherwise be subject to:

40CFR 52-A.21

**Item 35.2:**

Operation of this facility shall take place in accordance with the approved criteria, emission limits, terms, conditions and standards in this permit.

**Item 35.3:**

The owner or operator of the permitted facility must maintain all required records on-site for a period of five years and make them available to representatives of the Department upon request. Department representatives must be granted access to any facility regulated by this Subpart, during normal operating hours, for the purpose of determining compliance with this and any other state and federal air pollution control requirements, regulations or law.

**Item 35.4:**

On an annual basis, unless otherwise specified below, beginning one year after the granting of an emissions cap, the responsible official shall provide a certification to the Department that the facility has operated all emission units within the limits imposed by the emission cap. This certification shall include a brief summary of the emissions subject to the cap for that time period and a comparison to the threshold levels that would require compliance with an applicable requirement.

**Item 35.5:**

The emission of pollutants that exceed the applicability thresholds for an applicable requirement, for which the facility has obtained an emissions cap, constitutes a violation of Part 201 and of the Act.

**Item 35.6:**

The Compliance Certification activity will be performed for:

Emission Unit: U-00001 Emission Point: 00001  
Process: 002

Regulated Contaminant(s):  
CAS No: 007446-09-5 SULFUR DIOXIDE

**Item 35.7:**

Compliance Certification shall include the following monitoring:

Capping: Yes

Monitoring Type: MONITORING OF PROCESS OR CONTROL  
DEVICE PARAMETERS AS SURROGATE

Monitoring Description:

To cap out of 40 CFR 52-A.21, Prevention of Significant  
Deterioration for Sulfur Dioxide and limit the SO<sub>2</sub>

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Permit ID: 2-6005-00139/00002 Facility DEC ID: 2600500139



emissions to 130 tons per year, # 6 fuel oil usage at this source shall not exceed 5.5 million gallons for any 12 consecutive months to meet this limit.

Fuel consumption records will be maintained at the facility on a daily, monthly, and every 12 consecutive months basis to prove compliance.

The heat value of # 6 fuel oil is 148,000 MM Btu/gallon, and the heat value of natural gas is 1,025 MM Btu/cu ft. The sulfur content limit in # 6 fuel oil is 0.30 % by weight. The emission rate of sulfur dioxide (SO<sub>2</sub>) in # 6 fuel oil is 47.1 lb/1,000 gallons, therefore;

$5,500,000 \text{ gallons/yr} \times 47.1 \text{ lb/1,000 gallons} \times 2,000 \text{ lb/1 ton} = 129.5 \text{ tons/yr of SO}_2$

The SO<sub>2</sub> net emission increase < 40 TPY, which is the de minimis emission limit for SO<sub>2</sub>. Therefore, this modification is not PSD applicable.

Process Material: NUMBER 6 OIL  
Manufacturer Name/Model Number: FOSTER WHEELER TYPE D  
Parameter Monitored: SULFUR DIOXIDE  
Upper Permit Limit: 130 tons per year  
Monitoring Frequency: MONTHLY  
Averaging Method: ANNUAL MAXIMUM ROLLED MONTHLY  
Reporting Requirements: QUARTERLY (CALENDAR)  
Reports due 30 days after the reporting period.  
The initial report is due 10/30/2006.  
Subsequent reports are due every 3 calendar month(s).

**Condition 36: Compliance Certification**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable Federal Requirement: 6NYCRR 227.2(b)(1)**

**Item 36.1:**

The Compliance Certification activity will be performed for:

Emission Unit: U-00001 Emission Point: 00001  
Process: 002

Regulated Contaminant(s):  
CAS No: 00000-00-0 PARTICULATES

**Item 36.2:**

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Compliance Certification shall include the following monitoring:

Monitoring Type: INTERMITTENT EMISSION TESTING

Monitoring Description:

Particulate emission limit for stationary combustion installation firing oil. The owner or operator shall complete the following once per term of this permit:

- 1) Submit to the Department an acceptable protocol for the testing of particulate emission limit cited in this condition.
- 2) Perform a stack test, based upon the approved test protocol, to determine compliance with the particulate emission limit cited in this condition.
- 3) All records shall be maintained at the facility for a minimum of five years.

Parameter Monitored: PARTICULATES

Upper Permit Limit: 0.10 pounds per million Btus

Reference Test Method: Method 5

Monitoring Frequency: ONCE DURING THE TERM OF THE PERMIT

Averaging Method: AVERAGING METHOD AS PER REFERENCE TEST  
METHOD INDICATED

Reporting Requirements: SEMI-ANNUALLY (CALENDAR)

Reports due 30 days after the reporting period.

The initial report is due 1/30/2007.

Subsequent reports are due every 6 calendar month(s).





**STATE ONLY ENFORCEABLE CONDITIONS**  
\*\*\*\* Facility Level \*\*\*\*

**NOTIFICATION OF GENERAL PERMITTEE OBLIGATIONS**

This section contains terms and conditions which are not federally enforceable. Permittees may also have other obligations under regulations of general applicability

**Item A: General Provisions for State Enforceable Permit Terms and Condition - 6 NYCRR Part 201-5**

Any person who owns and/or operates stationary sources shall operate and maintain all emission units and any required emission control devices in compliance with all applicable Parts of this Chapter and existing laws, and shall operate the facility in accordance with all criteria, emission limits, terms, conditions, and standards in this permit. Failure of such person to properly operate and maintain the effectiveness of such emission units and emission control devices may be sufficient reason for the Department to revoke or deny a permit.

The owner or operator of the permitted facility must maintain all required records on-site for a period of five years and make them available to representatives of the Department upon request. Department representatives must be granted access to any facility regulated by this Subpart, during normal operating hours, for the purpose of determining compliance with this and any other state and federal air pollution control requirements, regulations or law.

**STATE ONLY APPLICABLE REQUIREMENTS**

The following conditions are state applicable requirements and are not subject to compliance certification requirements unless otherwise noted or required under 6 NYCRR Part 201.

**Condition 37: Contaminant List**  
Effective between the dates of 08/17/2006 and 08/16/2011

Applicable State Requirement: ECL 19-0301

**Item 37.1:**  
Emissions of the following contaminants are subject to contaminant specific requirements in this

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permit(emission limits, control requirements or compliance monitoring conditions).

CAS No: 0NY210-00-0  
Name: OXIDES OF NITROGEN

CAS No: 0NY075-00-0  
Name: PARTICULATES

CAS No: 007446-09-5  
Name: SULFUR DIOXIDE

**Condition 38: Unavoidable noncompliance and violations**  
**Effective between the dates of 08/17/2006 and 08/16/2011**

**Applicable State Requirement: 6NYCRR 201-1.4**

**Item 38.1:**

At the discretion of the commissioner a violation of any applicable emission standard for necessary scheduled equipment maintenance, start-up/shutdown conditions and malfunctions or upsets may be excused if such violations are unavoidable. The following actions and recordkeeping and reporting requirements must be adhered to in such circumstances.

(a) The facility owner and/or operator shall compile and maintain records of all equipment maintenance or start-up/shutdown activities when they can be expected to result in an exceedance of any applicable emission standard, and shall submit a report of such activities to the commissioner's representative when requested to do so in writing or when so required by a condition of a permit issued for the corresponding air contamination source except where conditions elsewhere in this permit which contain more stringent reporting and notification provisions for an applicable requirement, in which case they supercede those stated here. Such reports shall describe why the violation was unavoidable and shall include the time, frequency and duration of the maintenance and/or start-up/shutdown activities and the identification of air contaminants, and the estimated emission rates. If a facility owner and/or operator is subject to continuous stack monitoring and quarterly reporting requirements, he need not submit reports for equipment maintenance or start-up/shutdown for the facility to the commissioner's representative.

(b) In the event that emissions of air contaminants in excess of any emission standard in 6 NYCRR Chapter III Subchapter A occur due to a malfunction, the facility owner and/or operator shall report such malfunction by telephone to the commissioner's representative as soon as possible during normal working hours, but in any event not later than two working days after becoming aware that the malfunction occurred. Within 30 days thereafter, when requested in writing by the commissioner's representative, the facility owner and/or operator shall submit a written report to the commissioner's representative describing the malfunction, the corrective action taken, identification of air contaminants, and an estimate of the emission rates. These reporting requirements are superceded by conditions elsewhere in this permit which contain reporting and notification provisions for applicable requirements more stringent than those above.

(c) The Department may also require the owner and/or operator to include in reports described under (a) and (b) above an estimate of the maximum ground level concentration of each air contaminant

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emitted and the effect of such emissions depending on the deviation of the malfunction and the air contaminants emitted.

(d) In the event of maintenance, start-up/shutdown or malfunction conditions which result in emissions exceeding any applicable emission standard, the facility owner and/or operator shall take appropriate action to prevent emissions which will result in contravention of any applicable ambient air quality standard. Reasonably available control technology, as determined by the commissioner, shall be applied during any maintenance, start-up/shutdown or malfunction condition subject to this paragraph.

(e) In order to have a violation of a federal regulation (such as a new source performance standard or national emissions standard for hazardous air pollutants) excused, the specific federal regulation must provide for an affirmative defense during start-up, shutdowns, malfunctions or upsets.

**Condition 39: Air pollution prohibited**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable State Requirement: 6NYCRR 211.2**

**Item 39.1:**

No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others.

\*\*\*\* Emission Unit Level \*\*\*\*

**Condition 40: Compliance Demonstration**  
Effective between the dates of 08/17/2006 and 08/16/2011

**Applicable State Requirement: 6NYCRR 227-1.4(a)**

**Item 40.1:**

The Compliance Demonstration activity will be performed for:

Emission Unit: U-00001 Emission Point: 00001

**Item 40.2:**

Compliance Demonstration shall include the following monitoring:

Monitoring Type: MONITORING OF PROCESS OR CONTROL  
DEVICE PARAMETERS AS SURROGATE

Monitoring Description:

Any person who owns a stationary combustion installation

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(excluding gas turbines), with a total maximum heat input capacity exceeding 250 million Btu per hour shall install, operate in accordance with manufacturer's instructions, and properly maintain, accurate instruments satisfying the criteria in appendix B of title 40, part 60 of the Code of Federal Regulations, or approved by the commissioner on an individual case basis, for continuously monitoring and recording opacity, and when sulfur dioxide continuous monitoring is required by Part 225 of this Title, for continuously monitoring and recording either the percent oxygen or carbon dioxide in the flue gases from such installations at all times that the combustion installation is in service. Where gas is the only fuel burned, monitoring and recording of opacity is not required.

Parameter Monitored: OPACITY  
Upper Permit Limit: 20 percent  
Reference Test Method: Appendix B, 40 CFR 60  
Monitoring Frequency: CONTINUOUS  
Averaging Method: 6 MINUTE AVERAGE  
Reporting Requirements: QUARTERLY (CALENDAR)  
Reports due 30 days after the reporting period.  
The initial report is due 10/30/2006.  
Subsequent reports are due every 3 calendar month(s).

Exhibit 6

Short Environmental Assessment Form

617.20  
**Appendix C**  
**State Environmental Quality Review**  
**SHORT ENVIRONMENTAL ASSESSMENT FORM**  
**For UNLISTED ACTIONS Only**

**PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)**

<b>1. APPLICANT/SPONSOR</b> Parkchester South Condominium, Inc.	<b>2. PROJECT NAME</b> Steam Cost Sharing Agreement
<b>3. PROJECT LOCATION:</b> Municipality <u>New York City</u> County <u>Bronx</u>	
<b>4. PRECISE LOCATION</b> (Street address and road intersections, prominent landmarks, etc., or provide map) 2000 East Tremont Avenue, Bronx, New York, 10462 (see Exhibit 3 to the Petition, the Parkchester Site Map.)	
<b>5. PROPOSED ACTION IS:</b> <input type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
<b>6. DESCRIBE PROJECT BRIEFLY:</b> Existing steam plant and distribution system built as part of a residential apartment building complex in 1940.	
<b>7. AMOUNT OF LAND AFFECTED:</b> Initially <u>129</u> acres    Ultimately <u>129</u> acres	
<b>8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If No, describe briefly	
<b>9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT?</b> <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: Residential with administrative offices and parking garages (commercial) that mostly provide parking to the Parkchester apartment complex.	
<b>10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals:	
<b>11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals: Permit from the New York State, Department of Environmental Conservation, under Title 5, attached as exhibit 5.	
<b>12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>Parkchester South Condominium, Inc.</u> Date: <u>7/17/09</u> Signature: <u>Margaret M. Walsh, Pres.</u>	

**If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment**

**PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)**

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF. <input type="checkbox"/> Yes <input type="checkbox"/> No	
B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency. <input type="checkbox"/> Yes <input type="checkbox"/> No	
C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible) C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:  C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:  C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:  C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:  C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:  C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:  C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:  D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain briefly:  E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain briefly:	

**PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)**

**INSTRUCTIONS:** For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

- ☐ Check this box if you have identified one or more potentially large or significant adverse impacts which **MAY** occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.
- ☐ Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action **WILL NOT** result in any significant adverse environmental impacts **AND** provide, on attachments as necessary, the reasons supporting this determination

\_\_\_\_\_  
Name of Lead Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name of Responsible Officer in Lead Agency

\_\_\_\_\_  
Title of Responsible Officer

\_\_\_\_\_  
Signature of Responsible Officer in Lead Agency

\_\_\_\_\_  
Signature of Preparer (if different from responsible officer)

Reset

## **EXHIBIT B**



STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on October 14, 2010

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
Robert E. Curry, Jr.  
James L. Larocca

CASE 10-S-0060 - Petition of Parkchester South Condominium, Inc.  
for a Ruling that it is not Subject to Steam  
Corporation Regulation, or, in the Alternative,  
for a Certificate of Public Convenience and  
Necessity Authorizing the Provision of Steam  
Service Subject to Lightened Regulation.

DECLARATORY RULING ON JURISDICTION AND REGULATION  
AND ORDER ESTABLISHING FURTHER PROCEDURES

(Issued and Effective October 19, 2010)

BY THE COMMISSION:

BACKGROUND

In a petition filed on February 4, 2010, Parkchester South Condominium, Inc. (Parkchester South) asks that it be determined that it is not a steam corporation as defined in Public Service Law (PSL) §2(22), because its arrangements for providing steam to Parkchester North Condominium, Inc. (Parkchester North) and the Parkchester Preservation Company (PPC) are a cooperative joint venture outside the scope of PSL regulation. In the event that it is nonetheless decided that it is a steam corporation, Parkchester South asks that it be determined that it is eligible for both the incidental regulation provided for in PSL §80(11) and the lightened

regulation detailed in precedents adhering to the operators of other competitive providers of steam service. Parkchester South also maintains that it is qualified to obtain a Certificate of Public Convenience and Necessity (CPCN) under PSL §81.

Responses to the request for issuance of a declaratory ruling were due within the 21-day period described under the Rules of Procedure, 16 NYCRR §8.2(c), which expired on February 25, 2010. No comments were received.<sup>1</sup>

#### THE PETITION

Parkchester South begins by describing itself and Parkchester North as a large housing development originally designed and constructed, concluding in 1940, as a single complex of multi-family residential apartment buildings. Upon occupation, the buildings in the complex were supplied with steam from a single district steam production plant. In 1972, however, the apartment buildings in the northern portion of the complex were converted to condominiums, and the real estate parcel on which those buildings were located was subdivided from the rest of the complex. Ownership of that parcel was transferred to Parkchester North. While Parkchester South was itself subsequently converted to condominiums in 1986, ownership of the two parcels remains separate. In 1998, PPC was formed to own and operate an administrative building and two parking garages serving the entire complex, but located nearby to the steam production plant on Parkchester South property.

Parkchester South explains that it delivers steam from its production plant through steam pipes running over

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<sup>1</sup> Notice of the petition was also published in the State Register in conformance with the State Administrative Procedure Act (SAPA); compliance with SAPA will be addressed at the time that a regulatory regime is adopted for Parkchester South.

Parkchester North property to a control room and center, which the latter owns and operates. From there, Parkchester North distributes the steam to the apartment buildings sited on the real estate parcel it owns. Moreover, Parkchester South also supplies steam to PPC's administrative building and parking garages. According to Parkchester South, none of its steam lines crosses what it defines as a public highway, albeit the Parkchester complex is transected by streets open to public use but owned by it and Parkchester North.<sup>2</sup>

Parkchester South states that it has entered into a steam cost sharing agreement with Parkchester North detailing the apportionment between the two of all the costs of operating the steam service, including the costs of maintaining the steam plant. In the event a disagreement over the sharing should arise, dispute resolution procedures are built into the agreement. Parkchester South emphasizes that it therefore provides steam service to Parkchester North at cost, and does not earn a profit on the service.

Because the steam is provided under this mutual cost sharing agreement, Parkchester South maintains that there is no "sale to others" that would bring the steam service within the scope of §2(22). Parkchester South also argues that the steam service to Parkchester North is provided entirely over private property, further supporting its contention that the steam service it provides is outside the scope of §2(22).

Parkchester South maintains its arrangement with Parkchester North is unlike other instances where jurisdiction has been asserted over steam service. It argues the Griffiss Order and other similar precedents are inapplicable because, in

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<sup>2</sup> Parkchester South notes that Parkchester North, after receiving steam at its control room, distributes that steam across one public street to several apartment buildings that nonetheless have always been included within the complex.

those proceedings,<sup>3</sup> steam was sold, while, here, in contrast, costs are merely shared. Parkchester South also distinguishes the circumstances at issue in the Fresh Meadows Order.<sup>4</sup> There, non-jurisdictional steam service initially provided within a single complex became jurisdictional when the ownership of real estate underlying the complex was split among various owners. Subdividing that parcel, Parkchester South observes, created a class of several retail customers, in contrast to its provision of steam at wholesale only to Parkchester North exclusively over what Parkchester South describes as private property.

If it is regulated, Parkchester South maintains that it is eligible to obtain a CPCN. Its steam production plant, Parkchester South explains, is properly and diligently maintained in compliance with all federal, New York, and local requirements, and is operated by highly capable and fully trained personnel. Parkchester South stresses that it has provided safe and reliable steam service continuously since 1940 without serious mishap or service failure. Parkchester South also believes it is the only steam provider capable of serving Parkchester North and that furnishing the service to it through the construction of new steam plant would be unnecessarily duplicative.

In the event that it is decided it is a steam corporation, Parkchester South argues that its steam operations should be subject to incidental and lightened regulation, under PSL §80(11) and the Griffiss Order, respectively. Parkchester South claims that it is entitled to incidental regulation

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<sup>3</sup> Case 98-S-1174, Griffiss Local Development Corporation, Order Issuing Certificate of Public Convenience and Necessity and Providing For Lightened Regulation (issued September 9, 1999).

<sup>4</sup> Case 99-S-0413, Fresh Meadows Development Corporation LLC, Order Granting Certificate of Public Convenience and Necessity (issued November 16, 1999).

because it only serves Parkchester North and the PPC buildings. Similar to the circumstances that justified lightened regulation in the Griffiss Order, Parkchester South elaborates, the only customer it serves, Parkchester North, is a sophisticated company fully capable of enforcing its rights under the detailed cost sharing agreement the two negotiated. It points out that, in the Fresh Meadows Order and the Griffiss Order, more extensive operations were deemed incidental under §80(11) or eligible for lightened regulation.

#### DISCUSSION AND CONCLUSION

Parkchester South's claim that it is not a steam corporation under PSL §2(22) is unsustainable. In pertinent part, that statute provides, at §2(22)(a), that an entity owning and operating steam plant, as Parkchester South clearly does, is exempt from steam corporation regulation "where steam is made or produced and distributed by the maker, on or through private property solely for the maker's own use or the use of the maker's tenant and not for sale to others." Parkchester South's steam operations do not fall within the ambit of that exception, and it is therefore subject to PSL regulation. As Parkchester South maintains, however, it is eligible for incidental and lightened regulation of those steam operations. Before the details of such a regulatory regime can be established in a final form, Parkchester South must first obtain a CPCN, in conformance with the procedures discussed below.

#### Steam Corporation Jurisdiction

Parkchester South clearly operates steam plant as defined in PSL §2(21) and so is a steam corporation pursuant to PSL §2(22) unless it qualifies for the PSL §2(22)(a) exemption. Parkchester South, however, does not provide steam service "solely" on its property only to its "tenants." Instead, it extends its steam pipes onto the separate property of

Parkchester North, which is not a tenant of Parkchester South. As discussed in the New York Medical College Order,<sup>5</sup> the provision of steam service to such an adjacent property has long been deemed to render the provider a steam corporation.

The payments Parkchester North makes to Parkchester South in exchange for steam service renders the service a sale for the purposes of §2(22)(a), even if the agreement between the two is based on the sharing of costs without profit to Parkchester South. A similar cost-sharing arrangement was found insufficient to justify an exemption from regulation in the New York Medical College Order. Moreover, describing an arrangement as a cooperative or joint venture does not remove the arrangement from the scope of the PSL, when the cooperative or joint venture furnishes utility service to a separate property that is not the property of the cooperative or joint venture.<sup>6</sup> Since utility service to a separate property is a service provided to "others," not a service to the cooperative or joint venture itself, it does not qualify for the PSL exemption. Nor is exemption based on the number of customers served; service to a single customer is sufficient to establish jurisdiction.<sup>7</sup>

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<sup>5</sup> Case 29705, New York Medical College, Order Issuing Certificate of Public Convenience and Necessity and Authorizing Exemption From Provisions of the Public Service Law and the New York Code of Rules and Regulations (issued June 30, 1988); Case 28523, New York Medical College, Letter Ruling (issued July 20, 1983).

<sup>6</sup> See Case 29004, Wy-Catt Pipeline Company, Opinion No. 86-5 (issued March 6, 1986); Case 29001, Whiting Roll-Up Door Manufacturing Corporation, Order Concerning Jurisdiction (issued November 29, 1985).

<sup>7</sup> Case 02-M-1443, Sithe/Independence Power Partners, L.P., Order Providing For Lightened and Incidental Regulation and Granting a Certificate of Public Convenience and Necessity (issued January 23, 2003) (Sithe Steam Order).

Therefore, the steam service provided to Parkchester North by Parkchester South renders the latter a steam corporation.

In contrast, again as discussed in the New York Medical College Order, Parkchester South's service to PPC is not subject to PSL jurisdiction.<sup>8</sup> Parkchester South provides the service on property it owns, and PPC is therefore its tenant, whatever ownership arrangements pertain to the administrative building and garages erected on the Parkchester South property. As a result, the service to PPC is exempt from PSL regulation under PSL §2(22)(a).

#### Steam Service Regulation

As Parkchester South claims, it is eligible for both incidental and lightened regulation of its jurisdictional steam operations. Its operations resemble arrangements accorded incidental and lightened regulatory treatment in the G-P Order and other such precedents.<sup>9</sup>

Parkchester South satisfies the criteria for obtaining incidental regulation under PSL §80(11). That statute provides that a steam corporation primarily engaged in the business that is separate and apart from operating the steam plant may be exempted from full reports and from the keeping of accounts. Parkchester South has demonstrated that the revenues it will realize from its cost sharing steam arrangement are incidental to revenues from its primary business of managing residential properties, and that its steam business is subsidiary to that

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<sup>8</sup> Under these circumstances, Parkchester North's piping of steam underneath a public street, when the property it owns on both sides of the street would constitute a single parcel but for the street, will not be deemed to render it a steam corporation.

<sup>9</sup> Case 09-S-0315, Georgia-Pacific Consumer Operations LLC, Order Granting a Certificate of Public Convenience and Necessity and Providing For Lightened and Incidental Regulation (issued June 19, 2009).

primary business.<sup>10</sup> Accordingly, Parkchester South may be exempted from keeping accounts, records, books, from the filing of annual reports, and from the filing of rate schedules and tariffs for steam service. This exemption from regulation would be similar to that granted in the G-P Order.

Parkchester South's steam operations may be lightly regulated as well. As discussed in the G-P Order, detailed regulatory oversight of the steam agreement Parkchester South entered into with Parkchester North is unnecessary. Parkchester North is a sophisticated business entity capable of protecting its interests, and the cost sharing arrangement between the two demonstrates that Parkchester South is seeking to offer as low a price as possible in order to retain its steam customer. Moreover, as discussed in the Fresh Meadows Order, and contrary to Parkchester South's suggestion that it is the only entity that could supply steam at the Parkchester complex, customers like Parkchester North can generally construct their own steam production facility if that alternative is cost-effective.<sup>11</sup> This form of competition is sufficient to justify the adoption of a lightened regulatory regime for Parkchester South, similar to the lightened regulation applied in the Griffiss Order, the Sithe Steam Order, and the G-P Order.

As to safety, this steam system has long operated at its existing site under existing federal, New York, and local requirements without significant accident or incident. Nonetheless, Parkchester South is reminded that it is subject to the steam safety jurisdiction provided for in PSL §§80(1) and

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<sup>10</sup> See 16 NYCRR Part 58.

<sup>11</sup> Parkchester South need not show that it is the only entity capable of providing steam service to Parkchester North in order to obtain a CPCN; it need only show that it is capable of providing the service safely and adequately and that competition would not be harmful.



(2). As a result, Department of Public Service Staff may inspect Parkchester South's facilities and it is expected to maintain its safety procedures in writing for their review.<sup>12</sup>

Further Procedures

Lightened and incidental regulation cannot commence until Parkchester South obtains a CPCN authorizing the service it provides to Parkchester North. While Parkchester South has provided information adequate for us to reach a decision on the granting of a CPCN, that information has not been subjected to review at a hearing, as required under PSL §81.<sup>13</sup>

Parkchester South may avail itself of the expedited hearing process set forth at 16 NYCRR §21.10 by making a motion in compliance with the procedural requirements detailed there. Parkchester South shall be allowed 60 days from the date of this Order to make the requisite motion, and an additional 30 days to provide the proofs necessary, under that regulation, to support the motion. If it fails to make the motion, or provide the proofs, it will be required to attend a hearing scheduled in front of an Administrative Law Judge.

The Commission finds, declares and orders:

1. Parkchester South Condominiums, Inc. is subject to Public Service Law jurisdiction because it owns and operates a steam corporation as defined in Public Service Law §2(22).

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<sup>12</sup> Additional safety requirements could be imposed if necessary. See Case 00-M-2231, Indeck-Olean, L.P., Order Providing For Lightened Regulation and Granting a Certificate of Public Convenience and Necessity to Produce and Deliver Steam (issued May 2, 2001).

<sup>13</sup> As discussed in the G-P Order, pp. 8-9, Parkchester South's failure to seek certification when jurisdiction first adhered exposed it to unnecessary risks, and granting certification retroactively is at our discretion. Other entities are reminded that failure to timely obtain certification can result in the imposition of penalties under the PSL.

2. Parkchester South Condominiums, Inc. is eligible to comply with the Public Service Law by conducting its steam operations under requirements to be developed in conformance with the discussion in the body of this Declaratory Ruling and Order.

3. Parkchester South Condominiums, Inc. may make the motion described in the body of this Declaratory Ruling and Order within 60 days of the date of this Declaratory Ruling and Order, and provide the requisite proofs within 30 days of the filing of the motion. If it does not do so, an Administrative Law Judge will be appointed to conduct a hearing in this proceeding.

4. The deadlines provided for in this Declaratory Ruling and Order may be extended as the Secretary may require.

5. This proceeding is continued.

By the Commission,

*Jaclyn A. Brillling*

Digitally Signed by Secretary  
New York Public Service Commission

JACLYN A. BRILLING  
Secretary

## EXHIBIT C

**NOTICE OF APPLICATION ON BEHALF OF PARKCHESTER SOUTH  
CONDOMINIUM, INC.**

Parkchester South Condominium, Inc. ("Parkchester South") has filed an application ("Application") with the State of New York Public Service Commission ("Commission") for a Certificate of Public Convenience and Necessity to provide steam service.

Parkchester South has requested that the hearing required by the Public Service Law be held before the Commission on the basis of the Application and such exhibits, and any other information as may have been filed by any party or the staff of the Commission. Oral testimony will not be taken.

Any person opposed to the granting of the Certificate of Public Convenience and Necessity, within 10 days of the publication of this notice, should notify in writing the Secretary of the Public Service Commission at Agency Building 3, Empire State Plaza, Albany, NY 12223, of the reasons for the opposition.