PENDING PETITION MEMO

Date: 6/10/2002

TO : Office of Electricity and the Environment

FROM: CENTRAL OPERATIONS

UTILITY: CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

SUBJECT: 02-M-0741

Petition of Consolidated Edison Company of New York, Inc. for Approval of the Transfer of approximately 21.3 acres of land located in its Astoria Complex, Borough of Queens, New York City, to Luyster Creek LLC.

conEdison
a conEdison, inc. company

**Candida L. Canizio**
Assistant General Counsel
Real Estate

June 7, 2002

By Overnight Mail

Hon. Janet H. Deixler
Secretary
New York State Department
Of Public Service
Three Empire State Plaza
Albany, New York 12223

Re: Transfer of Property by Consolidated Edison Company of New York, Inc. to Luyster Creek LLC – Section 70 Petition

Dear Secretary Deixler:

Consolidated Edison Company of New York Inc.("Con Edison" or the "Company") submits for filing seven redacted copies of a joint petition for authority under Section 70 of the Public Service Law to transfer approximately 21.3 acres of land located within the Company's Astoria Complex to Luyster Creek LLC. The Company has redacted from that petition certain information relating to price of the property. In a separate submission to the Commission's Record Access Officer, the Company is providing the redacted information with a request for trade secret status for that information.

Please date stamp one copy of the petition to acknowledge receipt and return it in the enclosed envelope. OCK w Cen

If you require anything further in connection with this filing, please contact me at the above address or by phone at (212) 460-3188.

Very truly yours,

Candida Canizio

Enclosure

Cc: Steven Blow, Esq.

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PUBLIC SERVICE
COMMISSION
SECY-FILES-ALBANY
2002 JUN 10 PM 12:35

conEdison
a conEdison, inc. company

**Candida L. Canizio**
Assistant General Counsel
Real Estate

June 7, 2002

***BY OVERNIGHT MAIL***

Steven Blow, Esq.
Records Access Officer
Office of the General Counsel
Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

**Re: Transfer of Property by Consolidated Edison Company of New York, Inc. to Luyster Creek LLC - Section 70 Petition**
***Request for Trade Secret Status***

Dear Mr. Blow:

By Joint Petition to the Commission, dated yesterday, Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") is requesting authority under Section 70 of the Public Service Law for the transfer of approximately 21.3 acres of land located within Con Edison Astoria complex. Con Edison herein requests trade secret status for all information contained with the Petition that relates to pricing and market data. All reference to the price to be paid for the property and related information from which price could be deduced, has been redacted from the Petition. Enclosed with this letter are two copies of the unredacted Petition, and one copy of the redacted Petition.

Con Edison submits that the pricing information for which it has requested trade secret status meets the requirements for trade secret status set forth in the Commission's rules. 16 NYCRR §6-1. Con Edison is negotiating the sale of other acreage at the Astoria complex, and disclosure of pricing and the market data regarding the sale to Luyster Creek LLC could "cause substantial injury to the competitive position" of the

Company with respect to the sale prices that it is currently negotiating.

Con Edison requests this trade secret protect until such time that the Luyster Creek transaction closes and the deed is filed in the public record. Please contact me if you need any additional information.

Very truly yours,

Candace Cary

C: Ms. Janet Deixler (w/o enclosure)
Enclosures

Redacted

BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

| | | |
|---|---|---|
| Verified Petition Of Consolidated Edison Company For Authority Under Section 70 Of the Public Service Law To Transfer Certain Real Property Located In Queens County To Luyster Creek LLC and for Related Relief | : | Case No. _____ |

# VERIFIED PETITION OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND LUYSTER CREEK LLC FOR AUTHORITY UNDER SECTION 70 OF THE PUBLIC SERVICE LAW TO TRANSFER CERTAIN REAL PROPERTY LOCATED IN QUEENS COUNTY TO LUYSTER CREEK LLC AND FOR RELATED RELIEF

June 6, 2002

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| Verified Petition Of Consolidated Edison Company Of New York, Inc. and Luyster Creek LLC For Authority Under Section 70 Of the Public Service Law To Transfer Certain Real Property Located In Queens County To Luyster Creek LLC and For Related Relief | : | Case No. _____ |

# VERIFIED PETITION OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND LUYSTER CREEK LLC FOR AUTHORITY UNDER SECTION 70 OF THE PUBLIC SERVICE LAW TO TRANSFER CERTAIN REAL PROPERTY LOCATED IN QUEENS COUNTY TO LUYSTER CREEK LLC AND FOR RELATED RELIEF

## I. OVERVIEW

1. Pursuant to Section 70 of the Public Service Law, Consolidated Edison Company of New York, Inc. ("Con Edison or the Company") and Luyster Creek LLC ("LCL") hereby request authorization from the Public Service Commission (the "Commission") to transfer to LCL a portion of Con Edison's real property located within Con Edison's Astoria Complex in Queens County, New York. The parcel, which is commonly referred to as the Eastern Parcel, consists of approximately 21.3 acres of vacant land at the Astoria Complex and is designated on the Tax Map of the City of New York as a portion of Tax Lot 1, in Block 850 (the "Property"). The Property is to be transferred pursuant to a Sale and Purchase Agreement between the Petitioners, dated as of December 20, 2001 (the "Agreement"). As demonstrated herein, the proposed transfer is in the public interest and it will foster economic development in Queens and should be approved by the Commission.

2. Con Edison and LCL request authorization for the transfer of the Property to LCL for a purchase price of approximately [redacted] per acre under the terms and conditions set forth in the Agreement.

3. In addition, Con Edison requests approval of the proposed accounting and rate treatment for the sale and transfer of the Property, including the proposed allocation of the expected net gain, as set forth below.

4. Finally, Con Edison and LCL respectfully request that the Commission act expeditiously on this Verified Petition so that they may commence actions to satisfy the conditions required for an expeditious closing that, as stated in the Agreement, can not begin to occur until after the Commission approves the transfer.

5. Also enclosed is a copy of the Agreement (Exhibit A), a Negative Declaration issued by the New York City Economic Development Corporation (Exhibit B), the information required to be presented under Parts 18 and 31 of the Commission's Rules and Regulations[1] (Exhibit C), a calculation of Con Edison's estimated net after-tax gain on the sale of the Property, as of December 31, 2002, a proposed allocation of such gain (Exhibit D), and a letter of support from the Queens Borough President (Exhibit E).

## II. DESCRIPTION OF THE PARTIES

### A. Con Edison

6. Con Edison is an electric, gas and steam corporation organized under the laws of the State of New York, including the Transportation Corporations Law, and has its principal place of business at 4 Irving Place, New York, New York 10003. Con Edison supplies electric service for all of New York City (except part of Queens) and in most of Westchester County; gas service in Manhattan, the Bronx, and parts of Queens and Westchester Counties; and steam service in parts of Manhattan.

[1] 16 NYCRR Parts 18 and 31.

B. LCL

7. LCL is a limited liability company organized and existing under the laws of the State of New York and has its principal place of business at 29-10 Hunters Point Avenue, Long Island City, New York 11101.

## III. BACKGROUND

8. In 1997, Con Edison received an inquiry from the Queens Borough President's Office concerning whether Con Edison had any property available for sale that might meet LCL's needs for a suitable site within the City of New York for its envelope factory. Con Edison identified the Property as a potential site for LCL and, after determining that the Property could be devoted to non-utility uses, met with LCL at the offices of the Borough President to discuss the possibility of a sale of the Property by Con Edison at a purchase price of [redacted] per acre, the then appraised value for the Property.

9. Following these initial meetings, Con Edison and LCL continued to address numerous issues respecting the Property, including particularly resolution of numerous environmental, zoning and access issues identified during this process.

## IV. THE AGREEMENT

10. Under the terms of the Agreement, Con Edison will sell the Property, consisting of 21.295 acres (which includes 0.614acres of land under water described below) for a total sales price of [redacted]. Under the terms of the Agreement, the closing of the transaction is contingent upon Commission approval of this Verified Petition.

11. LCL has deposited [redacted] with Commonwealth Land Title Insurance Company ("Commonwealth") as a down payment that Commonwealth will hold in escrow in an interest bearing account until the closing of title. The Agreement does not contain a mortgage or financing contingency.

12. The Agreement provides that LCL will purchase the Property "as-is" and will assume most existing environmental risks associated with the Property, with the exception of certain limited environmental work that Con Edison has committed to perform at the site in connection with its New York State Department of Environmental Conservation ("DEC") permit for Con Edison's storage facility located north of, and on property adjacent to, the Property and certain potential third party claims. The Agreement provides for the parties to agree upon a work plan to be approved by the DEC with respect to the limited environmental work that Con Edison is committed to perform. In addition to the compensation described above, to protect the parties against environmental risks, LCL is obligated to pay for an environmental insurance policy protecting it and Con Edison from certain known and unknown environmental costs and liabilities that may emanate from Con Edison's ownership of the Property. LCL's obligations to secure such an environmental insurance policy are capped at $700,000 and either of the parties may terminate the Agreement if, after using best efforts, the parties cannot bind environmental insurance coverage in a form and in an amount that is reasonably satisfactory to them.

13. The Agreement also provides that certain deed restrictions will be placed on the Property prohibiting the future use of the Property for residential, retail and certain industrial uses. In addition, the deed to LCL will reserve an easement for a transmission right of way, 85 feet in width along the northerly boundary of the Property, for the benefit of Con Edison, its successors and assigns. The reservation of this easement will not result in a diminution in the purchase price.

14. The Agreement also provides that, following Commission approval of this Verified Petition, LCL will have the right to examine the Property. This examination involves the conduct of certain costly geo-technical boring activities and limited environmental testing to be performed only after the environmental insurance policy to be obtained by LCL is in effect. Following the geo-technical borings and limited environmental testing, the Agreement permits LCL to terminate the Agreement within certain time periods if such borings and tests reveal certain unacceptable conditions, subject to forfeiture of specified amounts of the down payment.

15. As a result of preliminary title searches conducted for the sale, it was discovered that approximately 3.6 acres of the Property are owned by New York State. The Agreement provides for Con Edison to make an application to the State to acquire title to this acreage prior to the closing. Con Edison's obligation in this regard is subject to the Company being able to obtain the acreage at a price consistent with the per-acre valuation on which the rest of the transaction is predicated.

16. Con Edison is also required to seek a release or waiver from the City of New York for a small portion of the Property, consisting of approximately 10,500 feet, that the City has the right to purchase pursuant to the terms of a 1904 grant from New York State to one of Con Edison's predecessors. Con Edison's financial obligation to acquire such release is capped at $50,000.

## V. PROPOSED ACCOUNTING AND RATE TREATMENT

17. Con Edison's calculation of the estimated net after-tax effects of the sale, as of December 31, 2002, is shown on Exhibit D. As shown on page 1 of Exhibit D, to develop the estimated net after-tax effect of the sale, the estimated net book cost of the assets, amounting to $222,592 as of December 31, 2002 (the derivation of which is shown in more detail on Appendix B to Exhibit C), was subtracted from the purchase price. Selling costs of $250,000, covering outside legal, appraisal, survey costs and a maximum of $50,000 that will be required for the Company to obtain the above-described release from the City of New York, were also subtracted from the gross proceeds. In addition, the Company expects to incur approximately $175,000 for removal and/or relocation of equipment from the Property. Such costs, which will be deducted from the gross proceeds, relate primarily to the removal of overhead 138Kv pole lines and related facilities and the relocation of a 20,000 gallon dielectric storage tank and pumping station, storage containers, cable reels, and other miscellaneous items of personal property.

18. As explained above, the sale includes 3.6 acres of unpatented lands to which Con Edison does not have title and for which it will make an application to the State to acquire such title prior to the closing. Of the unpatented lands, approximately 3.2 acres are upland and 0.4 is land underwater. For purposes of calculating the estimated net after-tax effects of the sale, it was assumed that the cost of acquiring the 3.2 acres of upland from the State will be [redacted] acre

the rate to be paid by LCL for the Property. Accordingly, [redacted] was subtracted from the gross proceeds for the acquisition of the upland property. In addition, [redacted] was subtracted for the estimated cost to acquire the 0.4 acre of land underwater ([redacted]) for which LCL has no cost responsibility under the Agreement. LCL also has no cost responsibility for the 0.2 acres of land underwater owned by Con Edison and which is included in the sale.

19. The calculation of the estimated net proceeds also reflects costs of $160,000 to recover the Company's miscellaneous expenses that will be incurred before the sale is finalized.

20. As shown on Exhibit D, page 1, Con Edison estimates that the statutory New York State and New York City transfer taxes applicable to this transaction will amount to [redacted], and that New York State and New York City gross receipts taxes on the sale will amount to [redacted] In addition, Con Edison estimates that related New York State Income Tax on the sale will amount to [redacted], and Federal income tax payable in connection with the sale is estimated to be [redacted]

21. As further shown on Exhibit D, page 1, the above-described calculations result in an estimated net after-tax gain on the sale of the Property, as of December 31, 2002, of approximately [redacted] Following the closing, the Company will update its calculation, including the reflection of actual proceeds recovered and costs incurred in connection with the sale, and provide such update to Staff.

22. In line with established accounting protocols respecting such property dispositions, Con Edison proposes to defer the net after-tax gain on the sale of the Property, plus interest at the Commission-approved customer-provided capital rate, for the future benefit of Con Edison's electric and gas customers. As shown at the bottom of Exhibit D, page 1, Con Edison proposes that the net after-tax gain from the sale be allocated to customers based upon the pre-sale usage of the Property. The Property is classified on Con Edison's books as common utility plant. Accordingly, the net gain will be allocated 83% to electric and 17% to gas.

23. Preliminary accounting entries necessary to implement the sale and ratemaking treatment are enumerated on Exhibit D, page 2.

## VI. THE SALE OF THE PROPERTY IS IN THE PUBLIC INTEREST

24. Con Edison determined the sale of the Property to be at fair market value determined by appraisal at the time the Parties committed to pursue the transaction. Although the Parties agreed on the purchase price early in their negotiations, the Parties deferred execution of the Agreement until the numerous environmental, zoning and access issues were resolved rather than executing an agreement subject to the resolution of those issues. Moreover, a re-appraisal of the Property in May 2000 concluded that the initial value attributed to the Property was still valid.

25. The sale of the Property is in the public interest. It will foster economic development in the Company's service area and will result in increased employment and related economic activity in the Borough of Queens.

26. The sale of the Property will not have any substantial adverse impact on the environment, Con Edison's system, or service to customers. An environmental assessment form has not been filed because the sale of the Property by Con Edison to LCL recently has been the subject of an environmental assessment by the New York City Industrial Development Corporation ("NYCIDA"), as the lead agency of a coordinated environmental review for the project in which the Public Service Commission participated as an involved agency. NYCIDA issued a Negative Declaration on July 10, 2001, a copy of which is attached as Exhibit B. LCL has not developed any plans for the Property, except to the extent considered by NYCIDA and the involved agencies.

27. The Property is being sold subject to Deed Restrictions. Pursuant to Secion 21(b) of the Agreement, the Property is available only for uses currently permitted in an M-3 Class Zoning District under the New York City Zoning Resolution, as amended, but only to the extent as set forth in such Zoning Resolution as it is deemed modified in accordance with the provisions of Exhibit C-1 to the Agreement. Pursuant to Section 21(a) of the Agreement, LCL has acknowledged that the Property is being sold subject to the Deed Restrictions for development by LCL of an envelope manufacturing facility, related sales office facilities, storage and other commercial development to the extent not violative of the Deed Restrictions.

the Commission approve the proposed accounting and rate treatment for the transfer of the Property, including the allocation of the expected net gain as set forth in this Verified Petition, and grant such other and further relief to which Con Edison may be entitled.

Respectfully submitted,

LUYSTER CREEK LLC

By: _____
Nathan F. Moser
Manager

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: _____
John D. McMahon
Senior Vice President and
General Counsel

Dated: ~~May~~ June 6, 2002

## VERIFICATION

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

John D. McMahon, being duly sworn, deposes and says that he is the Senior Vice President and General Counsel of Consolidated Edison Company of New York, Inc., that he has read the foregoing Verified Petition and knows the contents thereof as to Con Edison; and that the contents set forth therein as to Con Edison are true to the best of his knowledge, information and belief.

John D. McMahon

Sworn to before me this
6th day of ~~May~~ June 2002

AUDREY LILLOO FRASER
Notary Public, State of New York
No. 41-4993984
Qualified in Queens County
Commission Expires March 30, 2006

**VERIFICATION**

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

Nathan F. Moser, being duly sworn, deposes and says that he is the Manager of Luyster Creek LLC, ("LCL") that he has read the foregoing Verified Petition and knows the contents thereof as to LCL and that the contents set forth therein as to LCL are true to the best of his knowledge, information and belief.

Nathan Moser

KATHLEEN KASYAN
Notary Public State of New York
No. 01KA5056852
Qualified in Kings County
Commission Expires March 11, 2006

Sworn to before me this
31st day of May 2002

# PURCHASE AGREEMENT

# BETWEEN

# CONSOLIDATED EDISON COMPANY

# OF NEW YORK, INC., SELLER

# AND

# LUYSTER CREEK LLC, PURCHASER

**Dated: December 20, 2001**

# PURCHASE AGREEMENT

**THIS PURCHASE AGREEMENT** (this **"Agreement"**), is made as of December 20, 2001 (the **"Effective Date"**) between Consolidated Edison Company of New York, Inc., a New York corporation (**"Seller"**), having its principal place of business at 4 Irving Place, New York, New York 10003, and Luyster Creek LLC, a New York limited liability company (**"Purchaser"**), having its principal place of business at 29-10 Hunters Point Avenue, Long Island City, New York 11101.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto hereby agree as follows:

1. Sale of Premises. Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, subject to the terms of this Agreement, that certain plot, piece or parcel of land, with the buildings and improvements, if any, thereon erected, situate, lying and being in the Borough of Queens, City and State of New York, more particularly described on ***Schedule A*** attached hereto and made a part hereof and being a portion of Tax Lot 1 in Block 850, (the **"Premises"**, subject to Section 14(b)(ix)), together with all the rights and appurtenances pertaining to such Premises, including all right, title and interest of Seller in and to adjacent public streets, if any, and which Premises is shown on that certain survey (the **"Survey"**), and is identified as Parcel A (subject to Section 14(b)(ix)) and Parcel C (containing .633 acres) on said Survey prepared by GEOD Corp. (the **"Surveyor"**) dated October 31, 2000 and last revised as of September 11, 2000 and attached hereto as ***Schedule B***. Seller shall contribute up to $5,500 for the preparation of the Survey. At Closing, Purchaser will either receive a credit from Seller equal to the difference between $5,500 and the amount Seller has previously paid to the Surveyor for the Survey or reimburse Seller for any amounts paid by Seller to the Surveyor in excess of $5,500. Purchaser shall assume all other costs of the Survey and pay same to the Surveyor, which obligation will survive the Closing. This sale excludes all the property contained in Tax Lot 1 of Block 850 which is not included within Parcels A and C of the Survey (the **"Excluded Property"**).

2. Purchase Price. The purchase price for the Premises (the **"Purchase Price"**) is [redacted] which Purchase Price shall be payable as follows:

(a) Ten (10%) of the Purchase Price (the **"Down Payment"**) on the signing of this Agreement, payable to the Title Company by check or wire transfer of immediately-available funds, the receipt of which is hereby acknowledged and the Title Company is to hold the Down Payment in escrow in accordance with the terms and conditions of the Escrow Agreement attached hereto as ***Schedule K*** and made a part hereof. For purposes of this Agreement, at such time Purchaser shall have paid the "Purchaser's Insurance Deposit" (as defined in Section 26(c)), the Purchaser's Insurance Deposit shall be included in and become part of the "Down Payment" except as otherwise provided herein;

(b) The balance of the Purchase Price in cash, by wire transfer of immediately-available funds or good certified check to the order of Seller on the Closing Date (as defined in Section 10).

(c) The Purchase Price has been calculated at [redacted] per acre of land which is not designated "land under water" on the Survey and the Purchase Price may fluctuate as set forth in Section 14(b)(ix) or 14(a)(xiv); the acreage of "land not under water", subject to Section 14(b)(ix), is 20.048 for Parcel A and .633 for Parcel C on the Survey.

3. Title Examination and Survey. Purchaser and Seller each acknowledges that it has reviewed the title report prepared by Commonwealth Title Insurance Company, (Number NY980131 dated February 25, 2000 and amendments thereafter dated, respectively, May 25, 2000, August 9, 2000 and September 25, 2000 (collectively, the **"Title Report"**) and the Survey. Purchaser shall obtain from Commonwealth Title Insurance Company (the **"Title Company"**), a pro forma ALTA title insurance commitment annexed hereto as ***Schedule G*** and made a part hereof (the **"Title Commitment"**) covering the Premises, showing all matters affecting title to the Premises and binding the Title Company to issue at Closing (defined in Section 10 herein) an owner's policy of title insurance in the full amount of the Purchase Price (the **"Title Policy"**) pursuant to Section 3 hereof. Purchaser shall instruct the Title Company to deliver to Purchaser, Seller and the Surveyor copies of the Title Commitment, copies of all instruments referenced in any schedules thereto and any tax and departmental searches attached thereto.

3.1 Conveyance of Title. The Premises are sold and are to be conveyed subject only to the following matters (collectively, the **"Permitted Exceptions"**):

(a) Zoning regulations and ordinances of the City of New York.

(b) Consents by Seller or any former owner of the Premises for the erection of any structure or structures on, under or above any legally built and currently opened street or streets on which the Premises may abut.

(c) Covenants, conditions, agreements, restrictions and easements of record provided they (1) do not contain forfeiture or reversion provisions, (2) do not prevent the construction or use of a facility and ancillary uses thereto which are permitted and consistent with the Deed Restrictions provided for in Section 21(b) of this Agreement (collectively, the **"Planned Improvements"**), and (3) are not presently violated, unless in the case of items (1) and (2) above, affirmative insurance for the same is obtained from the Title Company, provided there is no material, additional cost for the affirmative insurance.

(d) Assessments payable after the Closing Date.

(e) The state of facts shown on the Survey, provided that any new facts shown on any update of the Survey do not render title uninsurable by the Title Company and provided that such new facts do not give Purchaser a right under this Agreement or the other provisions of this Section 3.1 to not close.

(f) The exceptions contained in Schedule B of the Title Commitment to the extent attached hereto as ***Schedule G***.

(g) Docketed judgments and *lis pendens* described in the Title Report or disclosed in accordance with Section 3.2 against Seller which are liens against the Premises,

including but not limited to Parking Violation Bureau and Environmental Control Board liens, provided the Title Company affirmatively insures Purchaser against the enforcement or collection of such judgments and liens out of the Premises and agrees to delete them from any policy Purchaser obtains on behalf of Purchaser's lender. Purchaser acknowledges that, if acceptable to the Title Company, the foregoing affirmative insurance may be obtained by Seller's delivery to the Title Company and Purchaser of a letter(s) of indemnity acceptable to the Title Company in form and substance annexed hereto as ***Schedule D*** (including the aggregate amount of such judgments disclosed in the Title Report) in which Seller agrees to save Title Company harmless from any legal proceedings taken by judgment creditors and further agrees to prevent such judgments from being collected out of, or enforced against, the Premises. Seller will deliver such letter of indemnity substantially in the form of ***Schedule D*** at Closing.

(h) Lease between Seller, as Lessor, and the FAA, as Lessee, dated January 29, 1998, as amended by the amendments, all attached hereto as ***Schedule E*** (collectively, the **"FAA Lease"**) including all height restrictions of buildings constructed near the leased site, as more particularly described in the FAA Lease. Notwithstanding the forgoing, Seller shall have the right, without consent of Purchaser, to extend the FAA Lease for an additional period ending September 30, 2002, if Seller has not already done so.

(i) The Deed Restrictions provided for in Section 21(b) of this Agreement;

(j) Astoria Zoning Lot Development Agreement between Seller and Astoria Gas Turbine Power LLC dated as of June 25, 1999 and recorded in Reel 5320 page 761 in the Office of the City Register, County of Queens, on July 23, 1999 (the **"ZLDA"**);

(k) Astoria Declaration of Subdivision Easements dated June 16, 1999 (the **"June Declaration"**) and recorded in Reel 5320 page 625 in the Office of the City Register, County of Queens, on July 23, 1999;

(l) Amended and Restated Astoria Declaration of Easements made by Consolidated Edison Company of New York, Inc., dated as of 6/25/1999 and recorded 7/23/1999 in Reel 5320, Page 681.

(m) Declaration of Easements (as defined in Section 18 of this Agreement and annexed hereto as ***Exhibit A***).

(n) Other matters provided for in this Agreement which are conditions to Closing but which are accepted in writing by Purchaser, to the extent same are encumbrances on the Premises.

3.2 Pre-Closing "Gap" Title Defects. Purchaser, upon learning of additional title objections from the Title Company not included within the Title Commitment or not listed in Section 3.1 of this Agreement (**"Additional Title Defects"**) and not caused by Purchaser or any person or entity acting on behalf of Purchaser, may notify Seller in writing of any objections to title arising out of the Additional Title Defects first raised by the Title Company during the period between the effective date of Purchaser's Title Commitment (which shall be within two (2) business days prior to the date of Purchaser's execution and delivery of this Agreement), and

the Closing Date.[1] With respect to any objections to title set forth in any such notice, Seller shall notify Purchaser in writing whether it intends to cure such objections, and if it so elects, Seller shall have until the Closing Date to remove, satisfy or cure such objections which may be accomplished by Seller's indemnification to the Title Company if the Title Company so agrees, and shall be entitled to a reasonable adjournment of Closing to do so, not to exceed sixty (60) days. If Seller elects not to cure (by indemnifying the Title Company as aforesaid or otherwise) such objections, Purchaser shall have the option to accept title subject to such matters without abatement of the Purchase Price or to terminate this Agreement and receive the return of the Down Payment and from Seller receive Purchaser's out-of-pocket costs for the preparation of the Survey and any updates of the Survey, if any, and title fees; provided that the title fees shall be limited to the costs of cancellation, and search that Purchaser ordered not to exceed $10,000.00. The maximum amount Seller shall be required to expend to cure all such matters is $25,000.00, but as to items of a nature referred to in Section 3.1(g), Seller will provide the indemnification referred to in Section 3.1(g) if necessary for Purchaser to secure its Title Policy at Closing. If Seller elects to attempt to cure any such matters, the date for the Closing shall be automatically extended by a reasonable additional time to effect such a cure, but in no event shall the extension exceed sixty (60) days after the Closing Date set forth in Section 10 hereof, unless mutually agreed upon by the parties in writing. Notwithstanding the foregoing, at or prior to the Closing, Seller shall be obligated to cause any mortgages encumbering the Premises to be discharged or at Purchaser's request, to use best efforts to cause the holder of any mortgages encumbering the Premises to be assigned to Purchaser's designee or lender.

3.3 Seller's Covenants. The parties hereto acknowledge that in connection with Seller's obligations under this Agreement to remove personal property from the Premises on or prior to Closing, there were certain items located on the Premises which were undesignated on the Survey. Those items have been designated as shown on ***Exhibit E*** annexed hereto and made a part hereof and are listed below (numbers below corresponding with numbers on ***Exhibit E***), together with an indication of whether or not Seller will be removing same from the Premises on or prior to Closing.

(1) CFS, concrete block structures around storage of salt/sand *[Stays]*

(2) UGT, Dielectric storage tanks and pumping station *[Seller to relocate]*

(3) CFS, Concrete pad to item (1) *[Stays]*

(4) UGT, Dielectric tanker *[Seller to relocate]*

(5) ECB/UGT, Storage container *[Seller to relocate]*

(6) UGT/Stores, cable reels *[Seller to relocate]*

(7)(8)(9) and (11) 16 Containers *[Seller to relocate]*

[1] Purchaser to run title update before signing the Agreement.

(10) Ownership Containers *[Seller to relocate]*

(12) UGT, Compressed gas storage shed, cable reels in front (empty) *[Shed Stays; Reel to be relocated by Seller]*

(13) Series of concrete pads *[Stays]*

4. Apportionments. On the Closing Date, all water, taxes, sewer rents, if any, and any relevant and appropriate apportionment required under any of the Permitted Exceptions (i.e. assessments and lease payments) with respect to the Premises shall be apportioned by Seller and Purchaser on the basis of the tax year of Closing or other applicable period. As the Premises are a portion of a larger tax lot (namely, Block 850, Lot 1) and may not, as of the Closing Date, be officially, separately assessed for real estate tax purposes, taxes, water and sewer rents shall be apportioned by the parties based on the assessed value of the land (but not the improvements) for Block 850, Lot 1 with Purchaser paying its *pro rata* share of the amount of such land taxes (but not water and sewer rents as the Premises are vacant land) based on the proportion that the land area of the Premises bears to the land area of Tax Lot 1. Seller through Closing, shall pay for all taxes attributable to improvements located on the Premises and on the Excluded Property. All apportionments and other provisions of this Section 4 shall survive Closing for two (2) years.[2]

5. Deed. The deed (the **"Deed"**) to be delivered by Seller to Purchaser at Closing shall be a bargain and sale deed with covenant against grantor's acts in proper statutory short form for recording and shall be duly executed and acknowledged by Seller so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances, except for the Permitted Exceptions, and shall contain the covenant required by subdivision 5 of Section 13 of the Lien Law. The Deed shall also include certain restrictions which shall run with the land as detailed in Section 21(b) of this Agreement. Seller shall deliver to Purchaser at Closing (as hereinafter defined) a certificate by the Secretary or Assistant Secretary of Seller certifying the resolution of the Board of Trustees of Seller generally authorizing the sale of the Premises and the execution and delivery of this Agreement and all other documents to be executed and delivered pursuant to this Agreement and in accordance with Section 909 of the Business Corporations Law.

6. [3]State Transfer Tax. At the Closing, Seller shall pay the amount of the documentary stamps to be affixed to the Deed in accordance with Article 31 of the Tax Law, and shall pay any other tax payable by reason of the delivery of the Deed. Such payment shall be made by granting to Purchaser a credit to the Purchase Price in the amount of such payment, and Purchaser shall cause a check for said tax to be delivered to the Title Company at the Closing. At Closing, Seller shall also deliver to Purchaser a "TP-584" combined transfer tax return duly signed and sworn to by Seller, and Purchaser also agrees to sign and swear to the return.

7. [4]City Transfer Tax. At the Closing, Seller shall pay the amount of the Real Property Transfer Tax imposed by Title II of Chapter 46 of the Administrative Code of the City

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[2] Post Closing Note.
[3] Credit to Purchaser
[4] Credit to Purchaser

of New York. Such payment shall be made by granting to Purchaser a credit to the Purchase Price in the amount of such payment, and Purchaser shall cause a check for said tax to be delivered to the Title Company at the Closing. At Closing, Seller shall also deliver to Purchaser the "NYC-RPT" return required by said statute and the regulations issued pursuant to the authority thereof, duly signed and sworn to by Seller; Purchaser agrees to sign and swear to the return.

8. Lien for Certain Payments. All sums paid to Seller or held in escrow (whether or not released to Seller) on account of this Agreement, and the reasonable expenses paid for the examination of the title to the Premises made in connection therewith and Purchaser's out-of-pocket costs for the preparation of the Survey or updates of the Survey are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this Agreement.

9. Seller's Option to Credit Purchase Price for Unpaid Taxes Etc. The amount of any unpaid taxes, assessments, water charges and sewer rents which Seller is obligated to pay and discharge, with the interest and penalties thereon to a date not less than two business days after the Closing, may at the option of Seller be allowed to Purchaser out of the balance of the Purchase Price, provided official bills therefor with interest and penalties thereon figured to said date are furnished by Seller at the Closing. If at the Closing there may be any other liens or encumbrances which Seller is obligated to pay and discharge, Seller may use any portion of the balance of the Purchase Price to satisfy the same, provided Seller shall simultaneously either deliver to Purchaser at the Closing, instruments in recordable form and sufficient to satisfy such liens and encumbrances of record together with the cost of recording or filing said instrument; or, provided that Seller has made arrangements with the Title Company in advance of Closing and, Seller will deposit with said Company sufficient monies, acceptable to and required by the Title Company to insure obtaining the recording of such satisfactions and the issuance of title insurance to Purchaser either free of any such liens and encumbrances, or with insurance against enforcement of same out of the Premises, provided the Title Company will omit such liens or encumbrances from any lender's Policy. Purchaser, if request is made within a reasonable time prior to the Closing, agrees to provide at Closing separate certified checks as requested, aggregating the amount of the balance of the Purchase Price, to facilitate the satisfaction of any such liens or encumbrances. The existence of any such taxes or other liens and encumbrances shall not be deemed objections to title if Seller shall comply with the foregoing requirements.

10. Closing. The Deed shall be delivered upon the satisfaction of all of the Conditions Precedent to Closing set forth in Section 14 of this Agreement and the receipt of the balance of the Purchase Price by Seller at the offices of Seller or counsel to Purchaser's lender in New York City (the "**Closing**") on or about 10:00 o'clock on or about forty-five (45) days from the date on which all the conditions set forth in Section 14 hereof have been satisfied or waived but not less than ninety (90) days from the later to occur of (a) the date the condition set forth in Section 14(b)(ix) has been satisfied, and (b) the "Insurance Effective Date" (as defined in Section 26(c)) (the **"Closing Date"**). If such date shall be a Saturday, Sunday or legal holiday, then the Closing Date shall be the first business day to occur thereafter.

(a) At Closing, Seller shall deliver to Purchaser (or to the Title Company as directed by Purchaser) the following:

(i) The Deed.

(ii) *Intentionally Omitted.*

(iii) Board of Trustees' resolution and Secretary or Assistant Secretary Certificate referred to above in Section 5 of this Agreement.

(iv) [5]Executed and notarized originals of the Declaration of Easements described in Section 18 hereof; and an agreement between Seller and Purchaser that the Declaration of Easements will be superior to all liens other than tax liens on the respective servient estates, and it shall be a condition to Closing that the Title Company will (A) so insure Purchaser under the Title Policy, and (B) insure that Purchaser's rights under the Declaration of Easement are insured.

(v) a **"FIRPTA"** affidavit executed by Seller, wherein Seller represents and warrants to Purchaser that Seller is a **"United States person"**, as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the **"Code"**). Seller shall deliver to Purchaser, at the Closing or at such earlier date as may be required by the Secretary of the Treasury under Section 1445 of the Code, an affidavit of Seller or duly authorized officer of Seller, sworn to under penalties of perjury, setting forth Seller's U.S. tax identification number and stating that Seller is a "United States person." If required pursuant to regulations promulgated under Section 1445 of the Code, Purchaser may furnish a copy of the affidavit delivered by Seller to the Secretary of the Treasury or any other agency designated for receipt of such affidavit. If Seller does not comply with the provisions of the Code, then Purchaser may retain the portion of the Purchase Price set forth in Section 1445 of the Code and in accordance with the Code, transmit the same to the Internal Revenue Service. The provisions of this Section dealing with the Code shall survive the Closing.

(vi) An assignment and assumption agreement (the **"FAA Assignment"**) assigning the FAA Lease to Purchaser in form and substance annexed hereto as ***Schedule F*** and an estoppel letter substantially in form and substance annexed hereto as ***Schedule F-1***. Seller and Purchaser will use reasonable commercial efforts to secure from the FAA for Closing, the Estoppel Letter in the form of ***Schedule F-1*** failing which, Seller shall at Closing, in addition to the FAA Assignment, execute and deliver to Purchaser, and Purchaser will accept from Seller, the said Estoppel Letter (modified to be from Seller).

(vii) Executed and notarized State and City transfer tax returns in connection with the Deed.

(viii) True and correct copies of the FAA Lease.

(ix) The Premises, free and clear of possession and occupancy by persons other than Purchaser, but subject, nevertheless, to the Permitted Exceptions, and free of

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[5] To be in the Title Policy.

personal property of Seller (other than pursuant to Section 3.3) and reasonably free of any refuse, rubbish and garbage.

(x) *Intentionally Omitted.*

(xi) A title affidavit required by the Title Company in form and substance annexed hereto as ***Schedule I*** which title affidavit will include, but not be limited to, a representation by Seller that the gravel and other roads shown on the Survey which are within the Premises, do not benefit anybody other than Seller, who waives and relinquishes all rights thereto except as set forth in the Declaration of Easements.

(xii) Drawings and specifications or a narration of same as to the underground utilities referred to in the Declaration of Easements to the extent readily available and to the extent Seller can reasonably locate said drawings, specifications or the facts necessary for such narration.

(xiii) The Agreement from all parties to the ZLDA as set forth in Section 14(a)(x) of this Agreement.

(b) At Closing, Purchaser shall deliver to Seller the following:

(i) Executed and notarized originals of the Declaration of Easements described in Section 18 hereof.

(ii) Consents of the member(s) of Purchaser, authorizing the Purchaser to purchase the Premises and to execute and deliver all other documents to be executed and delivered pursuant to this Agreement which consents will be provided within ten (10) days of the Effective Date.

(iii) Executed and notarized State and City transfer tax returns in connection with the Deed.

(iv) Balance of Purchase Price.

(v) Tentative Tax Lot Approval as required by Section 19 of this Agreement.

(vi) A certified copy of the Articles of Organization of Purchaser, together with any modifications or amendments thereto, and a certificate of good standing of Purchaser in the state of its formation as of the Closing Date.

(vii) The FAA Assignment. Seller and Purchaser will use reasonable commercial efforts to secure the FAA Assignment.

(c) Seller and Purchaser agree to deliver any other documents required to effectuate the transactions contemplated by this Agreement.

(d) Perpetuities Savings Clause. Notwithstanding any provision of this Agreement to the contrary, if the Closing Date has not occurred by the end of the 21st year after the last to die of the existing minor children of all current United States Congressmen and Senators, then this Agreement shall *ipso facto* terminate.

11. Merger into Deed. Notwithstanding anything to the contrary herein, the provisions of this Agreement shall be merged in the Deed upon delivery to, and acceptance by, Purchaser of the Deed at Closing and such delivery and acceptance shall be deemed full performance and discharge of every representation, warranty and covenant of Seller and Purchaser under this Agreement except with respect to those obligations which this Agreement specifically states shall survive the Closing.

12. No Oral Amendments: Successors and Assigns. This Agreement may not be changed or terminated orally. The provisions of this Agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

13. Notices. All notices, bills, statements, reports, requests, permissions, schedules and or other communications relative to this Agreement and the Premises (**"Notices"**) shall be in writing and addressed until further notice:

to Seller at:

Consolidated Edison Company of New York, Inc.
Attn: Director, Real Estate
4 Irving Place - Room 206-S
New York, New York 10003-3502
Tel No. (212) 460-4069
Fax No. (212) 529-0582

with a copy to:

Consolidated Edison Company of New York, Inc.
Attn: Law Department, General Counsel
4 Irving Place - Room 1800
New York, New York 10003-3502
Tel No. (212) 460-3188
Fax No. (212) 260-8627

and to Purchaser at:

Luyster Creek LLC
Attn: Nathan F. Moser
29-10 Hunters Point Avenue
Long Island City, New York 11101
Tel No. (718) 784-0505
Fax No. (718) 706-7663

with a copy to:

Moser & Moser LLP
Attn: Joel H. Moser, Esq.
63 Wall Street
New York, New York 10005
Tel No. (212) 344-4200
Fax No. (212) 635-5470

and with a copy to:

Baer Marks & Upham LLP
805 Third Avenue
New York, New York 10022
Attn: Kenneth S. Brown, Esq.
Tel No: (212) 702-5875
Fax No: (212) 702-5941

Notices shall be deemed sufficiently given or rendered if delivered personally or sent by facsimile, overnight mail or certified mail, return receipt requested. In the event a Notice is mailed via certified mail, it shall be deemed received 48 hours after posting at an official depository of the U.S. Postal Service. A courtesy copy of all Notices shall be telecopied to Purchaser's attorney or to Seller's Law Department, as the case may be as noted above. ***In the event that Notice shall be given by facsimile, such facsimile Notice shall be confirmed and followed up with an overnight mailing of the Notice previously given by facsimile.***

14. Conditions Precedent. The obligation of each party to proceed to Closing is subject to the satisfaction of each of the conditions set forth below (collectively, the **"Conditions Precedent"**) unless the party benefiting from such Condition Precedent elects in its sole judgment to waive the fulfillment of any such Conditions Precedent in writing at or prior to Closing. Purchaser shall be deemed the party benefiting from "Purchaser's Conditions to Closing" (defined in Section 14(a) of this Agreement), and Seller shall be deemed the party benefiting from "Seller's Conditions to Closing" (defined in Section 14(b) of this Agreement).

(a) Purchaser's Conditions to Closing. Purchaser's obligation to proceed to Closing is subject to and contingent on the satisfaction of the following Conditions Precedent (**"Purchaser's Conditions to Closing"**) or the waiver of the same by Purchaser in writing:

(i) The Title Company shall have committed to issue a title insurance policy at ordinary rates insuring Purchaser's fee simple title to the Premises subject only to (A) the Permitted Exceptions, (B) the standard printed exceptions to the extent set forth on ***Schedule C*** annexed hereto and made a part hereof [except the standard "survey" exception will be omitted and the reading from the Survey substituted therefore; the standard "gap" exception will be omitted; and the "tenants in possession" exception will be omitted by virtue of Seller's title affidavit]; and (C) any exceptions caused by Purchaser.

(ii) All representations and warranties by Seller contained in this Agreement shall be true and correct as of the Effective Date with the same effect as though such representations and warranties were made at and as of the Closing Date.

(iii) Seller shall have performed and satisfied all provisions and covenants required by this Agreement to be performed by Seller prior to or at the Closing.

(iv) *Intentionally Omitted.*

(v) Occurrence of Tentative Tax Lot Subdivision or other relevant conditions as contemplated or as required by Sections 10(b)(v), 14(b)(vii) and 19 of this Agreement.

(vi) Delivery of Declaration of Easements and documents contemplated under Section 18 below.

(vii) Seller, Purchaser and the DEC having agreed to the "Site Work Plan" (as defined below in Section 14(b)(iv) of this Agreement).

(viii) Subject to the limitations on use set forth on the "Deed Restrictions" (as defined below in Section 21(b) and ***Exhibit C-1*** of this Agreement which, for avoidance of doubt, excludes, among other things, residential and retail development on the Premises), and as otherwise contemplated by this Agreement, there shall be no limitations as to the use or related development of the Premises pursuant to the consents referred to below in Sections 14(b)(i), (iv) and (x) hereof or other conditions which materially affect the use or related development of the Premises.

(ix) Fulfillment of the conditions set forth in (A) Section 14(b)(i);(B) Section 14(b)(iv) and (C) Section 14(b)(ix) of this Agreement.

(x) [6]Agreement from all parties to the ZLDA that the measurement condition of Section 2.3 of the ZLDA imposed upon the first party to develop a parcel, will be waived by the parties to the ZLDA, if the first party is Purchaser, provided and for so long as Purchaser agrees not to develop on the Premises in excess of 1,012,813 square feet of floor area (as defined in the Zoning Resolution). Seller agrees that promptly upon execution of this Agreement to diligently pursue securing the consent of all other parties to the ZLDA to the First Amendment to the ZLDA in the substance and form annexed hereto as ***Exhibit I*** annexed hereto and made a part hereof.

(xi) *Intentionally Omitted.*

(xii) The cost of the EIS called for under Section 14(b)(i) does not exceed $200,000, unless one or more party hereto agrees to pay the excess in accordance with §14(b)(i).

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[6] Con Ed to provide list of those who are needed to sign the ZLDA Amendment.

(xiii) The Public Service Commission approving of and the New York City Fire Department consenting to the transfer of the Premises with no restrictions (or with restrictions, if any, reasonably acceptable to Purchaser; provided any restrictions which are consistent with the Deed Restrictions shall be deemed reasonable) on the use of the Premises by virtue of the liquid petroleum tank and related facilities on the Excluded Property. Seller will promptly take all actions to secure such approvals and consents. If Seller engages an expediter or consultant in connection with same, Purchaser will be entitled to meet with such person to develop an understanding of the relevant considerations and rules upon which a determination might be made by the PSC and/or the Fire Department. Notwithstanding anything to the contrary in the Agreement, the conditions set forth in this Section 14(a)(xiii) shall be deemed satisfied if the Public Service Commission has approved and the New York City Fire Department has consented without restriction for at least the uses set forth in that certain letter (the **"LNG Letter"**) prepared by the Seller and Purchaser annexed hereto as ***Schedule J***.

(xiv) [7]Since the Title Company can not give affirmative insurance in the Title Commitment stating that the Letters Patent dated May 12, 1904 and recorded in the Office of Secretary of State at Book No. 54, Page 28 is in full force and effect as of the date hereof and as of the Closing, then within twelve (12) months from the Effective Date, Seller shall have applied and received from The City of New York a written confirmation that The City of New York has waived its right to acquire the interest in the Premises granted under said Letters Patent as set forth and as shown on page 2 to ***Schedule M*** attached hereto and made a part hereof. Seller agrees that upon the Effective Date, it shall commence promptly to take all necessary actions and pursue diligently to secure such waiver, provided the cost to be paid to the City of New York, if any, need not be paid by Purchaser but Seller shall pay for same to the extent that the aggregate payable by Seller to the City of New York under this Section 14(a)(xiv), does not exceed, in the aggregate, $50,000 (which includes third party survey costs in connection therewith). Otherwise Seller shall have the option, but not the obligation to pay such additional amount(s), failing which, Purchaser may on reasonable prior notice of Seller's refusal to pay, agree to pay (with such sum to be paid by Purchaser at the Closing), but without obligation to elect to pay. If Purchaser elects not to pay such additional amount(s), then provided the area of the portion of the Premises in question is not more than as shown on page 2 to Schedule M, the parties shall close nonetheless, with a Purchase Price reduction for the area so covered in Schedule M based on [redacted] per acre.

(xv) *Intentionally Omitted.*

(xvi) Seller's fulfillment of the following obligation which Seller hereby agrees to perform: Seller, at its own cost and expense, to remove the overhead 138kv pole lines and related facilities as shown on the Survey and to fill any holes as a result of such removal with compacted soil in accordance with Purchaser's reasonable specifications and deliver to the Title Company all documents reasonably requested by the Title Company to remove such easement from title and to omit such easement from the Title Policy.

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[7] Purchaser to do on Effective Date.

(b) Seller's Conditions to Closing. Seller's obligation to proceed to Closing is subject to and contingent on the satisfaction of the following Conditions Precedent (the "**Seller's Conditions to Closing**") or the waiver of the same by Seller in writing.

(i) The Public Service Commission approving of the sale of the Premises by Seller to Purchaser as required pursuant to Section 70 of the Public Service Law, which approval must be in form satisfactory to Seller in Seller's sole discretion; Seller agrees to diligently pursue such approval. If a requirement of the Public Service Commission is that an Environmental Impact Statement (an "**EIS**") is required, then Purchaser agrees to pay for same provided that the cost and expense with respect thereto does not exceed $200,000.00. Any EIS so prepared shall be consistent with the Deed Restrictions enumerated herein. If the estimated amount is in excess of $200,000.00, then unless one or both of the parties agrees to pay the excess, neither party shall have any obligation with respect to any such Environmental Impact Statement. If neither party agrees to pay such excess, either party may cancel this Agreement and upon refunding the Down Payment to Purchaser this Agreement shall be deemed terminated and neither party shall have any further rights against the other, except those which are stated to survive termination of this Agreement.

(ii) Seller's Board of Trustees approving this Agreement and the transactions hereunder. Seller shall promptly submit this Agreement to Seller's Board of Trustees for approval of the sale of the Premises to Purchaser and deliver a copy of the approval to Purchaser when received.

(iii) All representations and warranties by Purchaser contained in this Agreement shall be true and correct as of the Effective Date with the same effect as though such representations and warranties were made at and as of the Closing Date and Purchaser shall have performed and satisfied all provisions and covenants required by this Agreement to be performed by Purchaser prior to or at the Closing.

(iv) Purchaser and Seller agreeing to investigation and remediation work plans to be prepared by Seller in connection with its corrective action program obligations under the DEC permit for Seller's PCB storage facility located on the Excluded Property, consistent with the uses permitted under the Deed Restrictions set forth in Section 21(b) of this Agreement and to be approved by the DEC and/or any other government agency having jurisdiction over the Premises concerning the conditions shown on the Environmental Disclosure Documents defined in Section 21(a). In connection with such plans, the Purchaser will agree to the location of monitoring or product recovery wells, if any, along or adjacent to the common border between the Excluded Property and the Premises provided that such wells do not unreasonably interfere with the development or operation of the Premises as contemplated by the Purchaser and provided further that such wells shall be located in or along existing roadways or roadways created by Purchaser in its development or in areas left grassy by Purchaser and not intended to be developed or in the Walkway Area (defined in Section 23(iv) below). The implementation and completion of the investigation and remediation work plans so approved by Seller, Purchaser and the DEC, including the installation of any monitoring or product recovery wells or containment devices and treatment systems and the performance of any long-term monitoring and operations and maintenance operations required under such approved work plans

and any investigation or remediation required subsequently in connection therewith (other than work incorporated into such work plan and which is either (A) requested by Purchaser and is not otherwise required of Seller hereunder, or (B) work which this Agreement specifically requires Purchaser to perform, or (C) remediation required by virtue of Purchaser's testing under Section 27(d)) (collectively, the **"Site Work Plan"**) will be at Seller's sole cost and expense and access to the Premises by Seller and Seller's consultant and contractors therefor will be in accordance with an access easement, the provisions of which shall be included in the Declaration of Easements. Seller shall promptly secure a final proposal of Site Work Plan for Purchaser's review a final proposal of the Site Work Plan consistent with the uses permitted under the Deed Restrictions set forth in Section 21(b) of this Agreement and shall provide Purchaser with a copy of the Site Work Plan and all reports and other filings that Seller is required to make with the DEC or the terms of the Site Work Plan or any administrative order on consent or agreement that Seller may enter into with DEC with respect to the same (collectively **"Site Work Plan Filing"**). The provisions of this Section 14(b)(iv) will survive Closing.

(v) Purchaser having executed and delivered the Declaration of Easements described below in Section 18 hereof.

(vi) [8]Purchaser having filed with all relevant governmental agencies an application for Tax Lot Subdivision as required by Section 19, hereof.

(vii) Tentative Tax Lot Approval as defined by Section 19 hereof shall have occurred to the extent which would be required as a condition to a loan closing by a reasonable institutional mortgagee making a mortgage loan on the Premises (but nothing in this Section 14(b)(vii) shall imply that there is any financing contingency in favor of Purchaser under this Agreement), and if no actual tax lot split has so occurred by Closing, Seller will execute an affidavit acceptable to the Title Company sufficient to allow the Title Company to omit from the Title Policy and future title policies, the title exception for "taxes not yet due and payable" which pertain to the Excluded Property and Seller will deliver to Purchaser, and Purchaser to Seller, at Closing a recordable agreement whereby Seller agrees to pay all real estate taxes and water and sewer charges on the Excluded Property as if the Premises were separately assessed and agrees to continue to cooperate with Purchaser to split the Premises into a separate tax lot; and wherein Purchaser agrees to diligently pursue the tax lot split. The provisions of this Section 14(b)(vii) will survive Closing.

(viii) *Intentionally Omitted.*

(ix) Within twelve (12) months from the date of execution and delivery of this Agreement, Seller shall have secured the fee title or an easement, as referred to below, to that certain unpatented portion of the Premises (the **"Unpatented Portion"**) to the satisfaction of the Title Company and Purchaser. The Unpatented Portion consists of approximately (A) 3.53 acres of land not under water as shown in ***"yellow"*** on the Survey, and (B) .522 acres of land under water as shown in ***"blue"*** on the Survey. Purchaser shall promptly[9] advise Seller within

[8] Purchaser to do at Contract signing.

[9] Calendar 30 days from the Effective Date.

thirty (30) days from the Effective Date whether Purchaser wishes to acquire title to the entire Unpatented Portion or just the 3.53 acres not under water. Seller agrees that upon the execution of this Agreement, it shall commence promptly to take all necessary actions and prosecute diligently to secure the fee title to the 3.53 acres not under water, and, if so required by Purchaser, fee title to or an easement for the .522 acres of land under water, and will keep the Title Company and Purchaser thoroughly informed of its progress. Notwithstanding anything to the contrary in the Agreement, the conditions set forth in this Section 14(b)(ix) shall be deemed fulfilled, if and only if Purchaser, in its reasonable discretion, is fully satisfied with the type of title so secured by Seller, and the documented costs for securing such title ("**Acquisition Costs**"). Upon Purchaser's satisfaction of the fulfillment of the conditions set forth in this Section 14(b)(ix) and subject to the terms and conditions in this Agreement, the Purchase Price shall be adjusted to reflect that as to the Unpatented Portion, Purchaser will pay to Seller the higher of (i) [redacted] per acre for the portion thereof shown on the Survey as not land under water (which amount is already reflected in the Purchase Price) or (ii) Seller's Acquisition Costs for securing title to the Unpatented Portion (including any land under water) which has been reviewed and approved by Purchaser. Seller's Acquisition Costs shall include the purchase price for the Unpatented Portion of the land as well as any reasonable costs incurred by Seller to acquire such title including, but not limited to, reasonable attorneys' fees, architect and engineering fees, surveyor and appraisers etc., but only to the extent of out-of-pocket costs paid to unaffiliated, outside third parties. On Purchaser's request from time to time, Seller will inform Purchaser of Seller's progress with respect to the foregoing.

(x) The Public Service Commission approving as referred to in Section 14(b)(i) the transfer of the Premises to the extent required by law, and the New York City Fire Department issuing its consent to the transfer of the Premises and the proposed development thereof because of the proximity of Seller's LNG tank to the Premises. Seller agrees to promptly commence to secure and to use reasonable efforts to obtain such approval and consent. On Purchaser's request from time to time, Seller will inform Purchaser of Seller's progress with respect to the foregoing.

(xi) Purchaser having executed and delivered a written unqualified, absolute waiver from Purchaser with respect to any right Purchaser may have as the owner of the Premises to any easement of necessity or otherwise for ingress and egress (other than those easements referred to in ***Exhibit A*** hereto) to and from the Premises via the Excluded Property and said waiver's effectiveness shall be confirmed by the Title Company by issuing a letter confirming its effectiveness, or in another manner reasonably acceptable to Seller.

14.1 *Intentionally Omitted.*

14.2 Satisfaction of Conditions Precedent. If the Conditions Precedent described in Sections 14(a)(v); 14(a)(ix) (A) and (C); 14(a)(xiii); 14(a)(xiv); 14(b)(i); 14(b)(vii); ; 14(b)(ix); and 14(b)(x) have not been satisfied or waived (to the extent that the condition in question is not a condition, the failure to fulfill which could result in Seller's being legally unable to close hereunder) by the applicable party within twelve (12) months from the Effective Date, Seller (unless either Seller's default hereunder is the cause of such condition not being fulfilled or Seller has failed to use reasonable commercial efforts to fulfill the Condition Precedent in

question) shall have the right to give Purchaser a "Condition Notice" (defined below) within 30 days of the end of such twelve (12) month period. With respect to the rights to terminate granted by this paragraph, said rights shall not apply to the failure of the conditions under sections 14(a)(v) and 14(b)(vii), and Purchaser shall have only the right to extend but not the right to terminate pursuant to this Section. Within thirty (30) days of its receipt of the Condition Notice, Purchaser, by notice to Seller shall have the option to either terminate this Agreement and receive back the Down Payment or waive the Conditions Precedent in question and avoid such termination. If Purchaser does not terminate, Purchaser will be deemed to have agreed to an increase (but not decrease) of the Purchase Price to the "Fair Market Value" (as hereinafter defined) of the Premises if the Fair Market Value is greater than the Purchase Price originally provided for in this Agreement. If this Agreement is not so terminated by Purchaser, this Agreement will extend for an additional twelve (12) months. If the aforesaid Conditions Precedent have not been satisfied by the end of the second twelve (12) month period, Seller (unless either Seller's default hereunder is the cause of such condition not being fulfilled or Seller has failed to use reasonable commercial efforts to fulfill the Condition Precedent in question) shall have the option, upon thirty (30) days prior written notice to Purchaser (during which period Purchaser may waive the Conditions Precedent in question and avoid such termination) to terminate this Agreement.

In any event, if the condition set forth in Section 14(b)(i) has not been fulfilled and if with respect thereto, Seller is otherwise in compliance with this Agreement, and if Seller receives written notification from the Public Service Commission which is either a denial of Seller's application for approval of the transactions set forth in this Agreement, or an approval of same but conditioned on the fulfillment of items not satisfactory to Seller in its sole discretion (as provided for in Section 14(b)(i)) then, except as provided in this paragraph (which begins with "In any event"), Seller shall have the right to terminate this Agreement for failure of such condition. Notwithstanding the provisions of the immediately preceding sentence, Seller will give notice to Purchaser of such denial or conditional acceptance by the Public Service Commission (together with a full copy thereof) and in such notice, if the Public Service Commission's communication is a conditional approval, will set forth the details of Seller's determination as to why the conditions set forth by the Public Service Commission are not satisfactory to Seller. If the conditions can be resolved by the payment of money, either directly or indirectly, or are those which can be accomplished by Purchaser in a manner which is in good faith acceptable to Seller in Seller's sole judgment, then Purchaser, at Purchaser's option, shall have the opportunity to agree to pay for and/or fulfill same, and Seller, in connection therewith, shall cooperate with Purchaser to promptly determine the reasonable cost estimates of such payment and compliance. If Purchaser agrees to be responsible for such payments and performance, then Purchaser shall so agree in writing as a modification to this Agreement with Seller, and promptly thereafter, Seller will reapply to the Public Service Commission, if required by the Public Service Commission, indicating that it agrees to the conditions in question; in such case, the termination rights of Seller set forth in this paragraph (which begins with "In any event") shall be deemed waived by Seller, but will reinstate, in accordance with this paragraph (which begins with "In any event"), until the Public Service Commission either approves the transactions contemplated herein as contemplated in Section 14.(b)(i), or until this Agreement terminates in accordance with this paragraph (which begins with "In any event").

For purposes of this Agreement: **"Condition Notice"** means a notice by Seller to Purchaser which is given pursuant to this Section 14.2 and which (W) indicates it is a Condition Notice, pursuant to this Section 14.2; (X) lists the Conditions Precedent which have not been fulfilled as of the first anniversary of the Effective Date; (Y) indicates to Purchaser that none of such failures of conditions are as a result of Seller's default or failure to use reasonable commercial efforts; and (Z) indicates to Purchaser that since closing has not occurred on or before the first anniversary of the Effective Date because of the failure to occur of stated the Conditions Precedent set forth in Section 14.2, the Purchase Price will increase but not decrease, in accordance with "Fair Market Value" defined below.

"**Fair Market Value**" means the fair market value of the Premises as of the first anniversary of the Effective Date, determined by the following procedure, but assuming the existence of all limitations set forth in this Agreement concerning the Premises, including, but not limited to the use restrictions imposed by the Deed Restrictions, the Declaration of Easements, and a New High Voltage Easement Area of 85 feet in depth (north to south) as shown on the Survey. Within ten (10) business days after a cooling off period of twenty (20) days during which Seller and Purchaser shall attempt in good faith to mutually agree to the Fair Market Value, which cooling off period will begin on Purchaser's receipt of the Condition Notice, Purchaser and Seller shall each retain an MAI Appraiser and obtain at their own cost and expense a certified appraisal with respect to the value of the Premises. Each appraiser shall have thirty (30) days from the end of the cooling off period to determine the Fair Market Value of the Premises and provide copies of their appraisals to both Purchaser and Seller. The Fair Market Value shall be the average of these two appraisals, provided that the higher valuation is not more than one hundred and ten percent (110%) of the lower valuation. In the event the valuations are more than ten percent (10%) apart, then the appraisers within 5 days after exchange of the appraisals shall jointly select a third appraiser whose valuation shall be substituted for the average of the two appraisals above, provided it falls between the two valuations selected by the other appraisers. The third appraiser shall have thirty (30) days from his or her selection to determine the Fair Market Value of the Premises. If the third appraiser selects a valuation that does not fall between the valuations determined by the other two appraisers, then the valuation of the appraiser that is closest to the valuation selected by the third appraiser shall be substituted for the average of the two appraisals. The applicable appraisers shall send notice (the **"Fair Market Value Certification"**) to Purchaser and Seller with copies of the final appraisals certifying the Fair Market Value, as determined based on the procedures set forth above. The Fair Market Value Certification shall be delivered to Purchaser and Seller no later than ninety (90) days from the date of the Condition Notice. The expenses of the third appraiser shall be divided equally between Purchaser and Seller.

15. As Is. It is understood and agreed that this Agreement is entered into after full investigation, neither party relying upon any statement or representation not embodied in this Agreement (including the Schedules and Exhibits hereto). Except as is expressly set forth in this Agreement, Seller makes absolutely no warranty or representation with respect to the quality, kind or condition of the Premises, or of any fixtures or personalty thereon, and, subject to the provisions of this Agreement which may expressly provide otherwise, Purchaser agrees to accept same in their existing condition and location and (except as otherwise provided in this Agreement) hereby releases Seller from any and all liability in connection therewith. Purchaser

represents to Seller that Purchaser has examined and thoroughly investigated the Premises to the full satisfaction of Purchaser, and, subject to the provisions of this Agreement, agrees to take title "as is", and in its present condition and subject to reasonable use, wear, tear, and natural deterioration, between the Effective Date and the Closing. Except as is expressly set forth in this Agreement, Purchaser hereby waives any and all claims, foreseen and unforeseen, against Seller relating to the subject matter of the sale transaction contemplated in this Agreement. Neither Seller nor any of its agents, officers, employees or representatives has been authorized to make any statements, warranties, or representations as to the physical nature or condition of the Premises, the uses to which the Premises may be put, or any other matter or thing affecting or relating to the Premises, except as expressly set forth in this Agreement. Purchaser further represents that in signing and delivering this Agreement, or performing its obligations hereunder, it is not relying upon any statement or information except as expressly set forth in this Agreement. Seller is hereby released from any and all claims or liability for the accuracy of any statement or information that is not expressly set forth in this Agreement.

16. Broker. Purchaser and Seller each represent that no broker was retained in connection with this transaction. Purchaser and Seller each shall indemnify, defend, protect and hold the other harmless from and against any and all claims, losses, liabilities, costs and expenses (including, without limitation, reasonable counsel fees) arising out of the breach on their respective parts of any representation or agreement contained in this Section 16. This provision shall survive Closing, or, if Closing does not occur, the termination of this Agreement. It has been alleged by Sanford Zuckerbrot, principal of Shalom & Zuckerbrot (**"Sanford"**), that it introduced Purchaser to Seller. While Purchaser and Seller dispute Sanford's allegation, in the event that Purchaser or Seller are sued by Sanford, it is agreed that the parties will mutually defend any action with counsel of their choice. If Sanford is successful in its claim for a commission as bringing about this transaction, it is agreed by Purchaser and Seller that the parties will each contribute fifty per cent of the amount mutually agreed to be paid to Sanford or the amount of all final judgment determined by a court of competent jurisdiction to be due Sanford as its commission. This provision shall specifically survive Closing or if such Closing does not occur, the termination of this Agreement.

17. Risk of Loss. Seller and Purchaser agree that the provisions of Section 5-1311 of the General Obligations Law shall apply to the transfer of the Premises contemplated by this Agreement.

18. Reservation of Easements by Seller: Grant of Easements to Purchaser. At Closing, Seller and Purchaser shall execute and deliver to the other a **"Declaration of Easements"** in substantially the form of ***Exhibit A*** to this Agreement reserving certain easements and rights to Seller and granting certain easements and rights unto Purchaser, which Declaration of Easements shall be recorded with the City Register in the County of Queens promptly after the recording of the Deed. Each party shall execute such tax returns or other documents as may be necessary to record the Declaration of Easements.

19. [10]Tax Lot Subdivision.

(a) Purchaser at its sole cost and expense (except for the expenses Seller hereinafter agrees to pay), shall make all filings with all governmental agencies and/or departments necessary to obtain an approval from the New York City Department of Finance (or other applicable governmental authority) for one or more tentative new tax lot(s) comprised solely of the Premises (the **"Tentative Tax Lot Approval"**) and Purchaser agrees to simultaneously provide Seller with copies of all such filings. Seller shall cooperate with Purchaser in completing the subdivision application and in filing related documents with governmental agencies including, but not limited to allowing Purchaser, Purchaser's designees, agents and consultants such access to the Premises and/or the Excluded Property as may be reasonably necessary in connection with same. Provided Seller so cooperates with Purchaser and so long as Purchaser makes such filings on or before 180 days from the Insurance Effective Date and use reasonable efforts to diligently pursue such filings, the failure of Purchaser to obtain Tentative Tax Lot Approval on or prior to Closing shall not constitute a default by Purchaser under this Agreement. After Public Service Commission approval is obtained as provided in 14(b)(i) and the Tentative Tax Lot Approval is obtained, Purchaser and Seller will file an "Application for Finalization" of the tentative tax lot and take all steps necessary to finalize the contemplated tax lot subdivision.[11]

(b) As part of Purchaser's responsibilities in connection with the Tentative Tax Lot Approval, Purchaser shall at its sole cost and expense prepare the necessary drawings or survey of the Premises and the floor area (as defined by the Zoning Resolution). FAR calculation as to the Premises which will be satisfactory to Seller in its reasonable discretion. If, during the process of the Tentative Tax Lot Approval the Seller or any other party with an interest in the tax lot subdivision referred to, engages counsel or a consultant of its choosing, Seller or the other party shall be responsible for the cost and expenses of their respective counsel or consultant. Except as set forth in this Section 19, all costs and expenses in connection with the Tentative Tax Lot Approval shall be Purchaser's sole cost and expense.

(c) The provisions of this Section 19 shall survive Closing.

20. Confidentiality. The terms of this Agreement including the Purchase Price and findings of the environmental assessment for the Premises, including the results of the testing provided for below in Section 21 hereof, shall be confidential and no information, materials, publicity or press release shall be issued by either party prior to Closing without the express written consent of Purchaser and Seller except (i) to their attorneys, consultants and employees, and other potential third parties in connection with the development, sale or leasing of the Premises, including brokers for financing and any lenders or (ii) as may be required by applicable law or with respect to such environmental assessment as may be necessary on the part of Seller to obtain DEC approval of the Site Work Plan. The confidentiality requirements

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[10] To do. Purchaser is waiting for the written confirmation to confirm alternate measurement provision has been agreed to by the City.

[11] Tax Lot - 6 months to file.

contained in this Section shall specifically survive the Closing or termination of this Agreement. The confidentiality requirements contained in this Section do not apply to things already in the public domain.

21. Environmental.

*(a) Introduction.*

(i) Purchaser acknowledges that the Premises are being sold subject to the "Deed Restrictions" (defined below in Section 21(b) of this Agreement) for the development of the Premises by Purchaser for Purchaser's use as an envelope manufacturing facility, related sales offices facilities and for storage and other commercial development to the extent not violative of the Deed Restrictions. Purchaser further acknowledges receipt of the results of the site investigation and prior site investigation information to the extent set forth on ***Exhibits B, B-1 and B-2*** annexed hereto (the **"Environmental Disclosure Documents"**). Purchaser agrees that in connection with any development of the Premises which involves the excavation or disturbance of soils, reasonable precautions will be taken to the extent of disclosing to construction workers and other person involved in such activities potential exposures associated with the environmental state of the Premises as known by Purchaser as of the date that such disclosure is required to be made by Purchaser, including, original building construction and any future expansion or construction plans. Purchaser's obligations hereunder will be deemed fulfilled by making available for inspection to contractors in privity of contract with Purchaser (provided Purchaser, in its contracts with such contractors, shall require said contractors so notify of any of their subcontractors of the availability of the Environmental Disclosure Documents and additional materials specified below for their inspection) prior to such time as such contractors commence their work on the Premises (the **"Required Disclosure"**)[12] all Environmental Disclosure Documents and the following materials if in Purchaser's possession or control at such time: (1) the results of any testing conducted by Purchaser pursuant to Section 27 of this Agreement which show Hazardous Substances; (2) the approved Site Work Plan to the extent delivered to Purchaser and designated by Seller's notice to Purchaser, as "Required Disclosure"; and (3) all Site Work Plan Filings to the extent delivered to Purchaser and designated by Seller's notice to Purchaser, as "Required Disclosure".[13] All buildings to be constructed on the Premises by Purchaser or its successors shall be slab on grade with spread footings or pile construction (i.e., piles, pile caps, grade beams with structural slab(s) or some combination thereof) but there shall be no restriction as to Purchaser's right to level and remove the land fill mound that is currently on the Premises as shown on the Survey (the **"Building Restriction"**)[14].

(ii) Subject to Sections 14(b)(iv)(A), (B), and (C), Seller, at its cost and expense, will comply with the requirements of the Site Work Plan and any administrative

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[12] Add to all contracts for development.

[13] Post Closing Obligation.

[14] Need to circle the location of the land fill mound by hand on the Survey.

order, consent decree or agreement that Seller, the DEC and other applicable governmental agencies may enter into with respect to the implementation of the Site Work Plan.

(iii) Purchaser represents that it accepts the Premises in its "AS IS" environmental condition, subject, however, to the terms and provisions of this Agreement.

(b) *Deed and Restrictions.* At the Closing of title, Seller shall deliver to Purchaser the Deed containing restrictions (the **"Deed Restriction"**) declaring that the Premises are available only for uses currently permitted in an M-3 Class Zoning District under the New York City Zoning Resolution, as amended, but only to the extent set forth in the provisions of said Zoning Resolution as the Zoning Resolution is deemed modified in accordance with the provisions annexed hereto as ***Exhibit C-1***. In the event that the Zoning Resolution changes in the future, the restrictions contained in Exhibit C-1 shall still control, and under no circumstances shall the Premises be used for food service or for retail establishments except food services will be permitted if ancillary to another use of the Premises, such as employee cafeteria, vending machines and snack bar, which are permitted. The Deed Restrictions shall include the obligations for the Required Disclosure, the Building Restriction and contain the provisions set forth on ***Exhibit C and Exhibit C-1*** hereto. If required by the DEC as a condition of its approval of the Site Work Plan, or if required under any administrative order or consent decree or agreement that Seller may enter into with DEC with respect to the implementation of the Site Work Plan, the Deed Restriction shall also include provisions (1) prohibiting use of the groundwater at the Premises without adequate treatment unless DEC or its successor expressly approves the same; and (2) prohibiting changes in the uses of the Premises from those allowed under Section 21(a) and 21(b) of this Agreement without the consent of the DEC or its successor in interest. The Deed Restrictions shall also provide for limiting Purchaser's motorized vehicular traffic from entrances directly located on the Premises from 20th Avenue, to 400 vehicles perday, excluding any vehicles of Seller, its employees, tenants, agents, contractors or invitees and any vehicles that come onto the Premises pursuant to any rights or other pursuant to any access right granted herein to Seller, its employees, tenants, agents, contractors or invitees, to the easement for the New High Voltage Easement Area (as defined in "Declaration of Easement") (the **"Vehicle Limit"**). The Deed Restrictions set forth in (1) and (2) will be deemed covenants running with the land and shall be enforceable by Seller, its successors and assigns as owners of the Excluded Property, any governmental agencies having environmental jurisdiction over the Premises, including but not limited to, the DEC (the **"Benefited Parties"**). The Vehicle Limit included within the Deed Restriction will be a covenant running with the land but only for so long as the Excluded Property (or portions thereof) are used by Seller or its successors or assigns in connection with its (or a similar) energy production, transmission or distribution business, and in connection with the Vehicle Limit included within the Deed Restriction, the only Benefited Parties shall be Seller and its successors and assigns using such First Entranceway, and not any governmental entity. If, however, Seller or its successor, opens another permanent entranceway from the Excluded Property to 20th Avenue, from time to time, then Seller or its successor and Purchaser or its successor shall reevaluate the need for the Vehicle Limit including increasing (but not decreasing) the 400 motorized vehicle number, based on the lesser volume of traffic if any, then using the First Entranceway. If the parties cannot agree on increasing the Vehicle Limit, then either party may notice the other that it elects to resolve the reevaluation through expedited arbitration in New York City, in accordance with the then rules of the American

Arbitration Association. The finding of the arbitrators will be binding on the parties and may be enforced by court order. The parties will share the costs of the arbitration, but shall pay for their own counsel fees, experts and witnesses (the foregoing arbitration provision and related terms are referred to as **"Arbitration"**). The Benefited Parties in question shall have the specific right to enforce the Deed Restrictions not previously removed, through any proceedings, at law or in equity, against any person or persons violating or threatening to violate such Deed Restrictions including but not limited to Purchaser and its successors and/or assigns, and to recover any damages suffered by the Benefited Parties from any such violation, provided that the Vehicle Limit may initially only be enforced by the equitable remedy of injunction which Seller agrees to pursue to completion. If Seller is unable to secure injunctive remedies, it shall have its other rights with respect thereto in law and equity. The term **"First Entranceway"** means Seller's existing entranceway onto the Excluded Property from 20th Avenue (which entranceway is an extension of 31st Street), as such entranceway may be modified from time to time. The provisions of this Section 21(b) shall merge in the Deed, when recorded, and shall not survive Closing except as set forth in the Deed.

(c) *Release.*

(i) Purchaser hereby releases Seller, its affiliates and their respective directors, officers, trustees, officers, employees and agents (collectively **"Released Party"**) from and against any and all losses asserted against or suffered by Purchaser relating to, resulting from or arising out of any liability, obligation or responsibility under or related to former, current or future Environmental Laws or the common law, whether such liability or obligation or responsibility is known or unknown, contingent or accrued, arising as a result of or in connection with (A) any violation or alleged violation of an Environmental Law, prior to, on or after the transfer of title to the Premises by Seller to Purchaser with respect to the ownership or use of the Premises or the operation of any facilities located thereon; (B) compliance with applicable Environmental Laws after the transfer of title to the Premises by Seller to Purchaser; (C) loss of life, injury to persons or property or damage to natural resources (whether or not such loss, injury or damage arose or was made manifest before Seller transferred title to the Premises to Purchaser or arises or becomes manifest after Seller transfers title to Purchaser), cleanup obligations caused (or allegedly caused) by the presence of or Release of Hazardous Substances at, on, in, under, adjacent to or migrating from the Premises prior to, on, or after the date that Seller transfers title to Purchaser, including Hazardous Substances contained in the soil, surface water, sediments, groundwater, landfill cells or in other environmental media at or adjacent to the Premises; (D) loss of life, injury to persons or property or damage to natural resources caused (or allegedly caused) by the off-site disposal of, storage of, transportation of, discharge of, Release of, recycling of Hazardous Substances or the arrangement of any such activities on or after the date that title to the Premises is transferred by Seller to Purchaser; (E) the investigation or remediation (whether or not such investigation or remediation commenced before the date that title to the Premises is transferred by Seller to Purchaser or commences after title is transferred) of Hazardous Substances that are present, or have been Released prior to, on or after title is transferred to Purchaser at, on, in, under, adjacent to or migrating from the Premises, including Hazardous Substances contained in building materials at the Premises, or in the soil, surface water, sediments, groundwater, landfill cells, or in the other environmental media at or adjacent to the Premises; and (F) the investigation or remediation of Hazardous Substances that are

disposed, stored, transported, discharged, Released, recycled, or the arrangement of such activities, on or after the date that title to the Premises is transferred to Purchaser, in connection with the ownership of the Premises.

(ii) The release provided for in Section 21(c)(i) above does not apply to:

(A) any covenant or representation by Seller under this Agreement which survives Closing;

(B) any Hazardous Substance that is Released on the Premises directly or indirectly from the Excluded Property, to the extent the Release (or portion thereof) occurred after the Effective Date of this Agreement by Seller or its successors or assigns (other than Purchaser and its successors and assigns) or Seller's employees, agents or contractors on (1) any of the servient estates located on the Premises, or (2) any other portion of the Premises. Purchaser agrees that it will give notice to Seller of any such event as soon as practicable after Purchaser has actual knowledge of same and permit Seller to remediate any such Hazardous Substances and in connection therewith Seller agrees to minimize interference with the development of and business conducted on the Premises and to carry such insurance, in favor of Seller and Purchaser, as is commercially reasonable under the circumstances which may be by virtue of such insurance if carried by Seller's contractors, and to indemnify and hold harmless Purchaser against third party claims (including reasonable legal fees incurred in connection therewith) resulting from personal injury or property damage or in connection with liens from or in connection with Seller's required remediation and repair and Seller will pay for any damage to the Premises caused by such exercise by Seller;

(C) claims by any governmental entity or agency for response actions required under any Environmental Laws for property other than the Premises, contaminated by Hazardous Substances which migrated onto such other property prior to the Effective Date of this Agreement, except if and to the extent caused by Purchaser (including its successors and assigns) or its employees, contractors or agents;

(D) claims asserted by third parties (other than governmental agencies) against Purchaser, its successors and assigns for injury to, or death of, persons or damage to property arising from the Release or portion thereof (to the extent the Release or portion thereof occurred prior to Closing), or presence of any Hazardous Substances on the Premises or migrating from the Premises if the damage or the exposure occurred prior to Closing or if the damage or exposure occurred pursuant to a Release referred to in Section 21(c)(ii)(B), except in either of such events, if and to the extent caused by Purchaser (including its successors and assigns) or its employees, contractors or agents;

(E) *Intentionally Omitted*;

(F) claims asserted by third parties against Purchaser, its successors and assigns arising from or in connection with the arranging for transportation or off-site disposal, prior to the Closing, of Hazardous Substances from the Premises except and to the

extent caused by Purchaser (including its successors and assigns) or its employees, contractors or agents.

In connection with the third parties claims set forth in this Sections 21(c)(ii)(D) and (F), Purchaser, its successors and assigns shall be entitled to bring actions against Seller, its successors and assigns, for contribution with respect to such third parties claims. In connection with governmental claims set forth in Section 21(c)(ii)(C), Purchaser, its successors and assigns, shall be entitled to bring actions against Seller, its successors and assigns, for contribution with respect to such governmental claims. If a claim or obligation is outside of the release provided for in Section 21(c)(i) by virtue of any of Sections 21(c)(ii)(A), (B), (C), (D) or (F), then such exception from the release shall not be obviated by a reading or interpretation of any other Subsection of this Section 21(c)(ii).

(d) *"Hazardous Substances" and Other Definitions.*

(i) For purposes of this Section 21 **"Hazardous Substances"** shall mean (A) any petrochemical or petroleum products, crude oil or any fraction thereof, ash, radioactive materials, radon gas, asbestos in any form, urea formaldehyde foam insulation or equipment that contains polychlorinated biphenyls; (B) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," hazardous materials," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants" or "pollutants" or words or similar meaning and regulatory effect" contained in any Environmental Law or (C) any other chemical, material or substance which is prohibited, limited or regulated by any Environmental Law.

(ii) For purposes of this Section, **"Environmental Laws"** means all federal, state and local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives or orders relating to pollution or protection of the environment, natural resources or human health and safety, including laws relating to Releases or threatened Releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, arrangement for disposal, transport or handling of hazardous substances or hazardous waste.

(iii) For purposes of this Section 21, **"Release"** means release, spill, leak, discharge, dispose of, pump, pour, emit, empty, inject, leach, radiate, or dump or allow to escape into or through the environment.

(e) *Hazardous Release from Excluded Property.* Except for Hazardous Substances originally Released by Purchaser or its employees, contractors or other agents, successors or assigns, Con Edison and its successors and assigns covenant not to sue Purchaser and its successors and assigns for the costs of investigating or implementing remediation work for any contamination caused on the Excluded Property by the migration of Hazardous Substances from the Premises.

(f) *Intentionally Omitted.*

(g) *Intentionally Omitted.*

(h) *Mortgagees.* In connection with any rights of Purchaser pursuant to this Section 21 of this Agreement and any other rights which survive Closing, Seller agrees that same may be collaterally assigned from time to time to any mortgagee of the Premises and the provisions of Section 6 of ***Exhibit C*** hereof (Deed Restrictions) shall apply thereto.

(i) *Survival.* Except as otherwise provided, the provisions of this Section 21 shall specifically survive the Closing.

22. Representations, Warranties and Covenants of Seller. Seller makes the following representations, warranties and covenants for the benefit of Purchaser as of the date hereof and as of Closing:

(a) This Agreement and all other documents executed and delivered or to be executed and delivered by Seller to Purchaser in connection herewith (i) have been or will be duly authorized, executed and delivered by Seller, (ii) are or will be legal, valid and binding obligations of Seller upon its obtaining the approval of the sale of the Premises to Purchaser from Seller's Board of Trustees and the PSC; and (iii) are or will be enforceable in accordance with their respective terms subject to general principles of equity and the applicability of bankruptcy and similar laws affecting creditors' rights generally.

(b) The execution of this Agreement and all documents executed and delivered by Seller in connection with this Agreement and the full and complete performance by Seller of all of its obligations under this Agreement and such documents will not violate or result in a breach of or constitute (with or without the giving of notice or the passage of time or both) a default under, or trigger the acceleration of, any agreement, bond, indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Seller is a party or by which Seller is bound, or any charter, articles, bylaws or partnership agreements of Seller or any law, etc.

(c) Seller covenants that Seller, at the request of Purchaser, will cooperate with Purchaser and support Purchaser's application for curb cuts to 20th Avenue from the Premises and for modification of the timing of traffic light at the intersection of 20th Avenue and 31st Street, if necessary, so long as (i) said light timing changes do not unreasonably interfere with the existing access to the Excluded Property and (ii) Seller's cooperation shall not obligate Seller to sign the curb cut application for the Premises. The provision of this Section 22(c) shall survive Closing and the provisions of Section 22(c)(i) above will be included in the Deed Restrictions.

(d) The FAA Lease attached hereto as ***Schedule E*** is a true and complete copy and has not been amended and is in full force and effect on and as of the date hereof[15]. Except as permitted under Section 3.1(h), from the Effective Date to the Closing Date, Seller shall not make or agree to any modification or further extension to the FAA Lease without the prior written consent of Purchaser; provided, however, Purchaser waives any right to terminate this

[15] Con Ed to provide the latest extension letter which shall be included as part of ***Schedule E***.

Agreement if by virtue of Seller's not being able to modify the FAA Lease, the FAA commences a condemnation proceeding to effect the requested change.

(e) Seller covenants that Seller, at the reasonable request of Purchaser, will cooperate with Purchaser and support Purchaser's application for a road from 19th Avenue to the Premises. The provision of this Section 22(e) shall survive Closing.

23. Representations, Warranties and Covenants of Purchaser. Purchaser makes the following representations, warranties and covenants for the benefit of Seller as of the date hereof and as of Closing:

(i) This Agreement and all other documents executed and delivered or to be executed and delivered by Purchaser to Seller in connection herewith (A) have been or will be duly authorized, executed and delivered by Purchaser, (B) are or will be legal, valid and binding obligations of Purchaser and (C) are or will be enforceable in accordance with their respective terms subject to general principles of equity and the applicability of bankruptcy and similar laws affecting creditors' rights generally.

(ii) The execution of this Agreement and all documents executed and delivered by Purchaser in connection with this Agreement and the full and complete performance by Purchaser of all of its obligations under this Agreement and such documents will not violate or result in a breach of or constitute (with or without the giving of notice or the passage of time or both) a default under, or trigger the acceleration of, any agreement, bond, indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Purchaser is a party or by which Purchaser is bound, or any charter, articles, bylaws or partnership agreements of Purchaser.

(iii) [16]Purchaser represents and warrants that it shall erect an eight foot high chain linked fence on the Premises to separate the Premises from the Excluded Property within ninety (90) days after the Closing of title at Purchaser's sole cost and expense (except as and to the extent Seller agrees to pay for certain fence and gating costs pursuant to this Agreement and/or the Declaration of Easements); provided that Purchaser shall not be required to replace any existing fence and may keep the existing fence and add supplemental fence. Seller agrees not to remove any existing fence which Purchaser decides to utilize. Purchaser will make such modifications to the existing fence as is necessary to provide access to fire hydrants, fire hose cabinets and Walkway Area shown on the survey on the Premises and marked for **"Seller Access"** on the Survey, for so long as such fire hydrants remain on the Premises and the Declaration of Easements shall provide for Seller's access thereto.[17] The fence (the **"Fence"**) will not interfere with the "water line" and underground facilities as shown on the Survey adjacent to the border of the Premises and will run as follows: beginning from the existing guardhouse to Avenue K (with the Fence being placed approximately 3 feet to the east side of the road), continuing from Avenue K to the northwest corner of the Premises (with the Fence being placed approximately 5 feet to the east side of the road), turning east along the boundary

[16] Post Closing obligation.

[17] Con Ed to identify onto Survey.

line between the Premises and the Excluded Property (with the Fence being placed approximately 5 feet south of the boundary line), unless restricted by law. The parties agree that the placement of the Fence (i.e., its location) shall also comply with Seller's Underground Utility Engineering Codes and Standards when erected. However, Seller, not Purchaser, will pay for and design and construct the Service Entrance (as defined in "Declaration of Easement") as provided in the Declaration of Easements. Seller, at its sole cost and expense, shall be permitted to post (and if it does so, shall maintain in good repair) signs for directions on the Fence in a *de minimus* manner which is consistent with Purchaser's development of the Premises. This provision shall be within the Declaration of Easements.

(iv) [18]Purchaser acknowledges that Seller has requested a five (5) or three (3) foot buffer zone (the **"Walkway Area"**) along the Fence onto the Premises as shown on the Survey for the purpose of serving as a pedestrian walkway. Purchaser agrees, to grant to Seller an easement and right of way over the Walkway Area for sole purpose of passage by pedestrians along the adjacent roadway, and the easement granted pursuant to this Section 23 (iv) shall be incorporated to the Declaration of Easements. See (v) below.

24. Default and Remedies. In the event Seller shall default in any of its obligations under this Agreement , Purchaser shall deliver written notice thereof specifying such default and Seller shall thereafter have thirty (30) business days to cure such default and, failing such cure, Purchaser shall have the right as its sole and exclusive remedies, to either (a) terminate this Agreement and receive the Down Payment from Seller or Title Company, as applicable, Survey, and reasonable title costs made by Purchaser or (b) seek any equitable remedies available to Purchaser to compel Seller to specifically perform its obligations. In the event Purchaser shall default in any of its obligations under this Agreement, Seller shall deliver written notice thereof specifying such default and Purchaser shall thereafter have thirty (30) business days to cure such default and, failing such cure, Seller shall have the right to terminate this Agreement and retain the Down Payment as liquidated damages for Purchaser's default, or in the alternative, Seller may seek any other remedy available to Seller either at law or in equity. In the event any of the following Seller's Conditions to Closing have not been fulfilled and by virtue thereof this Agreement terminates, then the Down Payment shall be paid to Seller as liquidated damages: Sections 14(b)(iii), 14(b)(v), 14(b)(vi), and 14(b)(xi). As to any other conditions which are not fulfilled, and provided the Closing does not occur by virtue thereof, and provided the failure of the condition is not a default covered by the first or second sentences of this Section 24, the Down Payment will be returned to Purchaser unless otherwise required by this Agreement. The provisions herein contained for liquidated damages are *bona fide* provisions for such and are not a penalty. The parties understand that by reason of Seller binding itself to the sale of the Premises and by reason of the withdrawal of the Premises from sale at a time when other parties would be interested in acquiring it, Seller will have sustained damages which will not be capable of determination with mathematical precision and, therefore, as aforesaid, this provision for liquidated damages has been incorporated in this Agreement as a provision beneficial to both parties.



[18] Place on survey and cover sheet.

(v) Purchaser acknowledges that Seller, on behalf of itself, its successors and assigns, has requested the reservation of an 85 foot easement as shown on the Survey for electrical transmission purposes. Purchaser agrees that such reservation of easement together with rights of access for servicing and maintaining the transmission equipment located within the easement area shall be included within the Declaration of Easements.

25. No Consequential Damages. Except for third party claims which have consequential damage aspects and which are covered either (a) by indemnification and hold harmless obligations under this Agreement, or (b) by the provisions of Section 21(c)(ii) of this Agreement, but notwithstanding anything else to the contrary contained in this Agreement, neither Seller nor Purchaser shall be liable to the other for any indirect or consequential damages resulting from a breach of this Agreement. The provisions of this Section shall survive Closing.

26. Environmental Insurance Policy. (a) During the period commencing the Effective Date and ending thirty days from the date that Purchaser receives from Seller both (x) the approval from the Public Service Commission as set forth in Section 14(b)(i) and (y) Seller's written confirmation accepting such approval (the "**Insurance Policy Finalization Period**"), Purchaser and Seller agree to use best efforts and cooperate with each other to bind environmental insurance coverage in a form and in an amount that is reasonably acceptable to both parties from AIG Environmental or an acceptable affiliate thereof (**"AIG"**) issued as a Pollution Legal Liability/Cost Cap policy ("Environmental Insurance Policy") which will name Purchaser as insured and Seller as a named insured thereunder ( the "**Environmental Insurance Binding")** The policy limits satisfactory to Purchaser will be those sufficient for an institutional mortgagee to lend a commercially reasonable loan on the Premises , provided however, that nothing in this Section 26(a) will imply that there is any financing contingency in favor of Purchaser under this Agreement. Notwithstanding anything herein to the contrary, the Insurance Policy Finalization Period shall not be less than ninety (90) days from the Effective Date.

(b) In the event that the parties are unable to achieve the Environmental Insurance Binding as set forth in Section 26(a) above by the end of the Insurance Policy Finalization Period, this Agreement shall terminate on notice by either party to the other given at any time before the date of the Environmental Insurance Binding, and if so terminated, the Title Company, as the Escrow Agent, shall be authorized and is hereby directed to return the Down Payment together with the accrued interest to Purchaser, and this Agreement shall be of no further force and effect except for previsions stated herein to survive termination.

(c) In the event this Agreement is not terminated pursuant to Section 26(b), Purchaser shall deliver to AIG the premium due for the Environmental Insurance Binding, the amount which is the lesser of (i) Seven Hundred Thousand Dollars ($700,000) and (ii) the actual premium payable for the Environmental Insurance Policy (the "Purchaser's Insurance Deposit"), and Seller shall simultaneously deliver the portion of the premium that is in excess of $700,000, if any. For purposes of this Agreement, the **"Insurance Effective Date"** shall be the date of the Environmental Insurance Binding.

27. [19]Inspection Period. (a) Purchaser and Purchaser's designees, agents and contractors who maintain insurance as provided for herein shall have the right after the Insurance Effective Date (the **"Inspection Period"**) to (i) perform tests or studies and obtain results of such tests or studies as to the feasibility of constructing the Planned Improvements on the Premises; (ii) perform limited environmental testing for PCB's, chlorobenzene and related

[19] Insurance conditions to testing.

compounds (collectively, the **"Special Compounds"**) in accordance with the "Protocol" (as hereinafter defined) in the area (the **"Special Testing Area"**) physically defined by the concrete pad on the northeastern portion of the Premises where transformer filling operations were formerly conducted by Seller, plus a 20 foot buffer zone around said concrete pad, within the time period set forth in Section 27(b), (iii) perform electromagnetic testing for underground storage tank in the areas identified on the location map annexed hereto as ***Exhibit B-2*** and made a part hereof, and (iv) to enter on the Premises for the purposes enumerated herein, including but not limited to, the making and conducting of inspections, reports, typographic and other surveys, test borings, surface and subsurface soil tests, but excluding any types of environmental testing other than those set forth in subsections (ii) and (iii) above, and no such entry shall constitute a taking of possession by Purchaser. Purchaser, by virtue of such inspections, shall not be responsible for the maintenance of the Premises or any building or improvement located thereon. All such entries shall be at Purchaser's sole risk and expense. Purchaser's exercise of rights of inspection during the Inspection Period shall not constitute a waiver by Purchaser of the breach of any of the representations or warranties of Seller, if any, which might be or have been disclosed by such inspection. Purchaser agrees that, prior to any work on the Premises, Purchaser shall cause the workmen conducting same to procure the indicated insurance and to deliver to Seller certificates of insurance concerning liability for injury to or death or persons, property damage and workmen's compensation coverage in the following amounts: liability: for injury to or death of persons, $5,000,000 with related property damage coverage of $1,000,000; and workmen's compensation in statutory amounts. Purchaser agrees after such inspections from time to time, to return the Premises to its original condition or as close as reasonably possible after making the tests and inspections permitted to in this Section. Purchaser shall provide Seller with five (5) days advance notification before entering the Premises to perform the studies or tests.[20] Seller will have the right to be present during all of Purchaser's inspections under this Section 27 and shall be provided by Purchaser with split samples and the results of any such testing and any reports conducted or obtained by or for Purchaser. For purposes of this Section 27, **"Protocol"** shall mean (1) performing the testing described in Section 27(a)(ii) by drilling only in the Special Testing Area and only down to the water interface, (2) drillings on a grid of not less than 18 feet between drillings, and (3) after testing, filling in the drill holes in the cement surface with grout material and filling in the other drill holes with dirt. Purchaser agrees that any testings conducted pursuant to this Section 27 shall be in compliance with the procedures set forth in the Health and Safety Requirements annexed hereto as ***Exhibit H*** and made a part hereof.

(b) (i) Purchaser shall have sixty (60) days from the Insurance Effective Date, (the **"First Termination Period"**), to terminate this Agreement for any reason related to (A) the soil conditions and costs related to developing improvements to the Premises other than with respect to Hazardous Substances, or (B) the discovery of underground tanks in numbers materially more than that disclosed or referred to in the ***Exhibit B-2***. It is agreed that the First Termination Period shall be extended by the number of the days that the testing is delayed by snow or other inclement weather conditions.

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[20] Five day's notice requirement.

(ii) Purchaser shall have fifty-five (55) days from the first business day after the end of the First Termination Period (the "**Second Termination Period**") to terminate this Agreement for any reason related to the Special Compounds testing, subject to Section 27(d) below. It is agreed that the Second Termination Period shall be extended by the number of the days that the testing is delayed by snow or other inclement weather conditions.

(c) In the event that the tests or studies set forth in Section 27(b)(i) above reveal that the Premises cannot support the Planned Improvements or that the numbers of the underground tanks are materially more than that disclosed or referred to in the ***Exhibit B-2*** referenced documentation, and Purchaser within the First Termination Period provides written notice to Seller that it is terminating this Agreement, Seller shall return to Purchaser (A) if the termination is not associated with an "Environmental Testing Event" (defined below), the Down Payment minus the portion of the Purchaser's Insurance Deposit which is earned by AIG and non-refundable at the time of the termination, (the "Earned Portion"), or if Seller elects to continue the Environmental Insurance Policy for its own benefit, the Down Payment minus what would have been the Earned Portion had the policy subject to the Environmental Insurance Binding been cancelled, or (B) if termination is associated with an Environmental Testing Event, the Down Payment minus Purchaser's Insurance Deposit, and this Agreement shall be of no further force and effect except for provisions stated herein to survive termination. In the event Seller is not notified of Purchaser's election to terminate this Agreement for the reasons set forth in Section 27(b)(i) within the First Termination Period, the termination rights set forth in this Section shall be deemed waived by the Purchaser and this Agreement shall continue in full force and effect. The term "Environmental Testing Event" means Purchaser, or its contractors, during its Section 27(b)(i) testing, having found either (A) materially more underground tanks than are referred to in the Environmental Disclosure Documents, or (B) Hazardous Substances in excess of the legal limit which would require disclosure thereof to the DEC.

(d) In the event that the tests or studies set forth in Section 27(b)(ii) above reveal the existence of the Special Compounds in concentrations exceeding the currently permissible amounts for non-residential uses under Environmental Laws, Purchaser shall have the right, by notice to Seller given on or before the end of the Second Termination Period, to terminate this Agreement, and in such event, this Agreement shall terminate and Purchaser agrees, to direct Escrowee to deliver the Down Payment to Seller as liquidated damages. In the event Seller is not notified of Purchaser's election to terminate this Agreement for the reasons set forth in Section 27(b)(ii) within the First Termination Period, the termination rights set forth in this Section shall be deemed waived by the Purchaser and this Agreement shall continue in full force and effect.

(e) Seller will cooperate with Purchaser, at Purchaser's sole cost and expense, in Purchaser's attempt to have Seller's environmental consultant(s) provide Purchaser with a letter(s) (the "**Will Serve Letter**") indicating that without cost to Seller or Purchaser, said consultant will provide letters to Purchaser, its successors and assigns, lenders, tenants and other designees (collectively, "**Designees**") that said consultant(s) agree that the Environmental Disclosure Documents listed on ***Exhibit B*** prepared by said consultant(s) will be deemed prepared by said consultant(s) for the Designee in question as if such Designee commissioned same and is in privity of contract with such consultant(s) (Purchaser hereby acknowledges the receipt of the Will Serve Letter).

(f) Purchaser agrees to indemnify and hold Seller harmless from and against all claims, liabilities, damages and expenses (including reasonable attorney's fees) incurred in connection with or arising out of Purchaser's exercise of its inspection and testing rights during the Inspection Period. The provisions of this Section 27(f) will survive the Closing or termination of this Agreement.

28. Binding Agreement. This Agreement shall not be binding upon the parties until fully executed.

29. 1099 Compliance. The parties hereto hereby designate Moser & Moser LLP as the **"real estate reporting person"**, within the meaning of Section 6045(e) of the Internal Revenue Code, and the regulations promulgated thereunder (**"Section 6045(e)"**), for the transaction contemplated by this Agreement. At or prior to the Closing, the parties hereto shall execute and deliver, and shall cause their respective agents and attorneys to execute and deliver, all such documents and instruments as may be necessary or appropriate to effectuate the foregoing designation. Purchaser and Seller shall furnish any and all information, including, without limitation, their respective taxpayer identification numbers, that may be necessary or appropriate in order to enable the "real estate reporting person," within the meaning of Section 6045(e) to comply with the reporting requirements of Section 6045(e). The obligations of Purchaser and Seller under this Section shall survive the Closing.

30. Bulkhead Claim. Seller agrees that with regard to the portion of the bulkhead and the land under water, all as shown on the Survey, if on or after the date hereof and on or before Closing, Seller receives a written claim or demand by any third party including by governmental authority, and the Army Corp. of Engineers (except to the extent Purchaser is responsible for the creation of such liability), Seller will indemnify and hold Purchaser harmless in connection with any such claims including reasonable counsel fees provided if Seller has not been otherwise notified, Seller is provided with a copy of or notice of such claim with a reasonable period of time after such claim is made. The provisions of this Section 30 shall survive the Closing.

31. *Intentionally Omitted.*

32. *Intentionally Omitted.*

33. Successors and Assigns. This Agreement shall bind and inure to the benefit of Seller, Purchaser and their respective permitted successors and assigns.

34. Cribbing and Dredging Obligations. Seller acknowledges that there are dredging and cribbing obligations set forth in an agreement pertaining to the filling of Berrians Creek recorded in Liber 1332 page 388 in the City Register's Office of Queens County, and as shown on the Title Report (the **"Dredging/Cribbing Obligation"**). In the event any claim or request is made as to the Dredging/Cribbing Obligation with respect to Luyster Creek under said agreement, (i) Seller shall, at Seller's sole cost and expense, perform all of such obligations whether accruing prior to or after the Closing as to the areas where Seller is the upland owner, (ii) Purchaser shall, at Purchaser's sole cost and expense, perform such obligations occurring after closing as to the areas where Purchaser is the upland owner, and (iii) Seller and Purchaser shall indemnify and hold harmless each other from and against all liabilities, claims, damages or

expenses, including reasonable attorney's fees, incurred by the other in connection with each other's respective obligations. The provisions of this Section 34 shall be incorporated into the Declaration of Easements.

35. *Intentionally Omitted.*

36. Landscaping. In connection with the initial development of the Premises by Purchaser, Purchaser will use good faith efforts to add landscaping to the portion of the development adjacent to 20th Avenue along the frontage of the Premises near 20th Avenue which is not, from time to time, serving as access from the Premises to 20th Avenue. Such landscaping may be low bushes. This provision will survive Closing.

37. Resale Restriction.

(a) Purchaser has agreed as part of the consideration to Seller under this Agreement that Purchaser will pay to Seller fifty percent (50%) of all Net Sales Proceeds (defined below) received by Purchaser from the "Resale" (as defined below) of the Premises or any portion thereof that occurs at any time within three (3) years from the Effective Date.[21]

(b) Payment of Net Sales Proceeds will occur only out of the Net Sale Proceeds collected from time to time by Purchaser, net of Purchaser's collection costs, if any, and as to a Deemed Sale, net of the other reasonable costs, if any, of administering the Deemed Sale transaction from time to time by Purchaser. For purposes of this Section:

(i) **"Resale"** means a transfer by deed, or a "Deemed Sale" (defined below);

(ii) **"Deemed Sale"** means a "Conditional Sale" (defined below) or the execution and delivery by all relevant parties of a lease of some or all of the Premises which either under the Internal Revenue Code of 1986, as amended (the **"Code"**), or under generally accepted accounting practices in the United States of America, consistently applied, (**"GAAP"**), would be required by the transferor to be treated as a sale. A Deemed Sale will not be deemed to have occurred until the conditions precedent to the "purchaser's" (*i.e.*, tenant's or buyer's) initial obligation to be legally bound for the full "purchase price" (*i.e.*, rent or other payments) have occurred or are duly waived by the "purchaser", whether or not the "purchase price" is payable over time;

(iii) **"Conditional Sale"** means a transfer which is to occur pursuant to a written agreement of sale, where there is a fixed purchase price, which price is paid over time or upon the end of the term of the agreement where the purchaser, upon the execution thereof, is granted possession of the portion of the Premises to be transferred, and where the agreement in question is treated under Section 250(2) of the Tax Law of the State of New York (the **"Mortgage Tax Law"**) as a mortgage for mortgage tax purposes (*to wit:* that the "seller" cannot

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[21] Post Closing Calendar.

enforce the payment of the purchase price and reclaim possession of the property unless the seller pays the mortgage tax so required);

(iv) **"Net Sales Proceeds"** shall mean the sale proceeds received by Purchaser from the Resale after deducting all the costs and expenses (including attorneys fees and brokers commissions) incurred by Purchaser in connection with (A) the negotiation of and diligence incurred with respect to, this Agreement, including but not limited to the Environmental Insurance Policy, test borings and environmental impact statement, (B) closing of the title in accordance with this Agreement and the loan closing in connection therewith, (C) the negotiation and the closing of the resale, including deed stamps and other transfer taxes and fees, (D) the improvements on the Premises if any, paid for by Purchaser before the resale and pursuant to the resale, if any, and (E) leasing or carrying the Premises prior to the resale. "Net Sales Proceeds" as to a Deemed Sale will include the amounts which under the Code or GAAP, would be deemed sales proceeds subject to income or capital gains tax and which, as to a Conditional Sale, would be subject to the Mortgage Tax Law.

(c) Notwithstanding anything to the contrary, the provisions of this Section 37 shall not apply to or after a transfer of the Premises by foreclosure of a mortgagee or an in lieu transfer or by condemnation or transfer in lieu thereof or by virtue of a sale after a foreclosure or deed in lieu thereof.

(d) The provisions of this Section 37 shall survive the Closing.

38. Construction; Index; Descriptive Headings. In the preparation of this Agreement indistinguishable contributions were made by representatives of each of the parties and each of the parties waives any and all rights, either at law or in equity, to have any provision interpreted in favor of one over another based on a claim that representatives of one or another were the principal draftsmen thereof. The Index to this Agreement and the descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not in any way effect the meaning or construction of any provision of this Agreement.

[THE REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, Seller and Purchaser have duly executed this Agreement as of the date first above written.

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

By: _____
Name: Robert P. Stelben
Title: Vice President and Treasurer

**LUYSTER CREEK LLC**

By: _____
Name: Nathan F. Moser
Title: Manager

cc
FYI.

conEdison
a conEdison, inc. company

Law Department

April 9, 2002

Ms. Jeannette C. Luoh
Brown Raysman Millstein Felder & Steiner LLP
805 Third Avenue
New York, NY 10022

Agreement Made as of 12/20/21
Between Con Edison and Luyster Creek LCC

Dear Jeannette:

Enclosed is a completely signed and initialed counterpart of the amendment dated March 5, 2002, to the Agreement dated as of December 20, 2001. If you require a copy of the survey to be attached, kindly phone me.

Regards,

James P. Manning

Encl:

Luyster Creek

conEdison, inc.

**Robert P. Stelben**
Vice President and Treasurer

March 5, 2002

Luyster Creek LLC
Attn: Nathan F. Moser
29-10 Hunters Point Ave.
Long Island City, NY 11101

Agreement Made as of 12/20/01,
between Con Edison and Luyster Creek LLC

Dear Sir:

Upon your signing and returning to me the enclosed counterpart of this letter, the aforementioned Agreement will be deemed amended as follows:

(i) On line 10, in Section 1, the year of the Survey is changed to read 2001. In the next line (line 11), the words "and last revised as of September 11, 2000 and" are deleted.

(ii) In Section 14 (b)(ix), wherever the figures 3.52 acres and .522 acres appear, they are changed to read 3.201 acres and 0.399 acres, respectively.

(iii) The survey attached hereto shall replace the survey presently attached to the Agreement as the New Schedule B to the Agreement.

All capitalized terms used herein have the meanings ascribed to them in the Agreement, described in the caption of this letter, and except as herein-above amended, the terms of the Agreement remain unchanged. The effective date of this amendment is set forth below.

If the foregoing correctly reflects our agreement, kindly sign and return the enclosed counterpart of this letter to me at your earliest convenience.

Very truly yours,

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

cc By: _____
Robert P. Stelben
Vice President and Treasurer

AGREED TO and ACCEPTED
this 29th day of March 2002.

LUYSTER CREEK LLC

By: _____
Nathan F. Moser, Manager

# ESCROW AGREEMENT

**THIS AGREEMENT** made and entered into as of the 20th day of December, 2001, by and among CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation ("Seller"); LUYSTER CREEK LLC, a New York limited liability company ("Purchaser"); and COMMONWEALTH LAND TITLE INSURANCE COMPANY ("Escrow Agent").

W I T N E S S E T H:

**WHEREAS**, Seller and Purchaser entered into that certain Purchase Agreement (the "Purchase Agreement"), made as of even date herewith, with respect to that certain property located and more particularly described in Schedule "A" to the Purchase Agreement and made a part hereof; and

**WHEREAS**, Purchaser and Seller desire that Escrow Agent hold the Down Payment as required under the Purchase Agreement, in escrow pursuant to the terms hereof.

**NOW, THEREFORE**, in consideration of the premises and of good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties covenant and agree as follows:

Capitalized terms used herein but not defined herewith shall have the meanings ascribed in the Purchase Agreement.

Purchaser and Seller hereby appoint Commonwealth Land Title Insurance Company as Escrow Agent hereunder.

Purchaser has delivered to and deposited with Escrow Agent the amount of [redacted], which shall constitute the Down Payment as set forth n Section 2(a) of the Purchase Agreement. The Escrow Agent agrees to immediately deposit said funds in an interest bearing account and to hold and disburse said funds, and any interest earned thereto, as hereafter provided.

Upon written notification from Purchaser and Seller that the contemplated sale is to be consummated, Escrow Agent shall deliver the Down Payment and any accrued interest to Seller to be applied to the Purchase Price on the Closing Date. The Purchaser's Federal Taxpayer Identification Number is 13-4089488.

Upon written notification from Purchaser and Seller that the contemplated sale shall not take place, Escrow Agent shall deliver the Down Payment and any accrued interest to Purchaser or Seller in accordance with the Purchase Agreement.

The parties acknowledge that in relation to the escrow, Escrow Agent is acting solely at their request and for their convenience, that Escrow Agent shall not be deemed to be the agent of either of the parties, and that Escrow Agent shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith or willful disregard of this *Agreement* or involving gross negligence. Seller and Buyer shall, jointly and severely, indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to acts or omissions taken or suffered by Escrow Agent in bad faith, willful disregard of this Agreement or involving gross negligence on the part of Escrow Agent.

In any event of a dispute between any of the parties hereto, Escrow Agent shall tender unto the registry or custody of any court of competent jurisdiction sitting in New York County in the State of New York, all money in its hands held under the terms of this Agreement, together with such legal pleading as is appropriate and thereupon be discharged.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed and its seal to be affixed hereto as of the day and year first above written.

**SELLER:**

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
a New York corporation

By: _____
Name:
Title:

**PURCHASER:**

LUYSTER CREEK LLC
a New York limited liability company

By: _____
Name: Nathan Mosier
Title: Manager

**ESCROW AGENT:**

COMMONWEALTH LAND TITLE INSURANCE COMPANY

By: _____
Name: DONALD C. ENDS
Title: SR. VICE-PRESIDENT

# Schedules

SCHEDULE A - ITEM 4

SPECIMEN

**NATIONAL PAPER PARCEL A:**

All that certain land in the County of Queens, City and State of New York, bounded and described as follows:

COMMENCING at the intersection of the northerly line of 20th Avenue, also known as Winthrop Avenue, with the center line of 33rd Street, if extended;

THENCE north 76 degrees, 08 minutes, 37 seconds west, 19.35 feet to the point of BEGINNING;

And from said point of BEGINNING:

RUNNING THENCE north 76 degrees, 08 minutes, 37 seconds west, along the north line of 20th Avenue, a distance of 331.00 feet to a point;

THENCE north 13 degrees, 51 minutes, 23 seconds east, at right angles to 20th Avenue, a distance of 436.04 feet to a point;

THENCE south 76 degrees, 08 minutes, 37 seconds east, parallel with 20th Avenue, a distance of 6.73 feet to a point;

THENCE north 13 degrees, 51 minutes, 23 seconds east, a distance of 165.30 feet to a point;

THENCE north 76 degrees, 08 minutes, 37 seconds west, a distance of 45.00 feet to a point;

THENCE north 13 degrees, 51 minutes, 23 seconds east, a distance of 69.48 feet to a point of curvature;

THENCE along a curve to the left having a radius of 200.00 feet, and a central angle of 52 degrees, 17 minutes, 08 seconds, 182.51 feet to a point;

THENCE north 38 degrees, 25 minutes, 45 seconds west, a distance of 111.81 feet to a point of curvature;

THENCE along a curve to the right having a radius of 150.00 feet, and a central angle of 52 degrees, 17 minutes, 08 seconds, 136.88 feet to a point;

THENCE north 13 degrees, 51 minutes, 23 seconds east, a distance of 878.31 feet to a point;

THENCE north 46 degrees, 40 minutes, 10 seconds east, a distance of 12.34 feet to a point of curvature;

THENCE along a curve to the right having a radius of 180.00 feet, and a central angle of 28 degrees, 29 minutes, 29 seconds, 89.51 feet to a point;

SPECIMEN

SCHEDULE A - ITEM 4 - continued

SPECIME

THENCE north 75 degrees, 09 minutes, 39 seconds east, a distance of 46.76 feet to a point;

THENCE south 76 degrees, 16 minutes, 39 seconds east, a distance of 314.50 feet to a point;

THENCE south 47 degrees, 32 minutes, 22 seconds west, a distance of 83.79 feet to a point;

THENCE south 31 degrees, 13 minutes, 39 seconds east, 292.86 feet to the Pierhead and Bulkhead line approved by the Secretary of War, March 19, 1921;

THENCE south 60 degrees, 32 minutes, 29 seconds west, along said Pierhead and Bulkhead line, a distance of 82.58 feet to a point;

THENCE south 00 degrees, 41 minutes, 02 seconds west, along said Pierhead and Bulkhead line, a distance of 246.49;

THENCE south 13 degrees, 51 minutes, 23 seconds west, along said Pierhead and Bulkhead line, a distance of 235.93 feet to a point;

THENCE south 6 degrees, 28 minutes, 34 seconds east, continuing along said Pierhead and Bulkhead line, a distance of 191.56 feet to a point;

THENCE south 26 degrees, 16 minutes, 51 seconds east continuing along said Pierhead and Bulkhead line and partially along the most northeasterly side of a grant to Consolidated Edison Company of New York Inc. by Letters Patent dated 5/2/1960 and filed in Book 750 of Patents at Page 326, a distance of 228.18 feet to a point;

THENCE south 76 degrees, 08 minutes, 37 seconds east, 20.35 feet along the aforementioned grant to a point within the Pierhead and Bulkhead line of Luyster Creek;

THENCE south 13 degrees, 51 minutes, 23 seconds west, 116.65 feet along the easterly side of the aforementioned grant to a point;

THENCE north 76 degrees, 08 minutes, 37 seconds west parallel with 20th Avenue, a distance of 322.75 feet to a point;

THENCE south 13 degrees, 51 minutes, 23 seconds west at right angles to 20th Avenue, a distance of 655.94 feet to a point;

THENCE south 76 degrees, 08 minutes, 37 seconds east parallel with 20th Avenue, a distance of 98.30 feet to a point;

THENCE south 13 degrees, 51 minutes, 23 seconds west at right angles to 20th Avenue, a distance of 52.56 feet to the northerly side of 20th Avenue, the point of BEGINNING.

Policy/Title No. NY980131

## SCHEDULE A - ITEM 4 - continued

SPECIMEN

**NATIONAL PAPER PARCEL C:**

All that certain land in the County of Queens, City and State of New York, bounded and described as follows:

COMMENCING at the intersection of the northerly line of 20th Avenue, also known as Winthrop Avenue, with the center line of 33rd Street, if extended;

THENCE the following four courses and distances:

1. north 76 degrees, 08 minutes, 37 seconds west along the northerly line of 20th Avenue, 19.35 feet to the point or place of beginning of Parcel A;

2. north 13 degrees, 51 minutes, 23 seconds east, 52.56;

3. north 76 degrees, 08 minutes, 37 seconds west, 98.30;

4. north 13 degrees, 51 minutes, 23 seconds east, at right angles to 20th Avenue, a distance of 570.54 feet to the point or place of BEGINNING.

AND from said point of BEGINNING:

RUNNING THENCE north 13 degrees, 51 minutes, 23 seconds east, 85.40 feet;

THENCE south 76 degrees, 08 minutes, 37 seconds east, 322.75 feet;

THENCE south 13 degrees, 51 minutes, 23 seconds west, 85.40 feet;

THENCE north 76 degrees, 08 minutes, 37 seconds west, 322.75 feet to the point or place of BEGINNING.

## *SCHEDULE C*

***Additional Permitted Exceptions from Title Commitment and List of Standard Exceptions (§14(a)(i))***

ISSUED BY
COMMONWEALTH LAND TITLE INSURANCE COMPANY

# OWNER'S POLICY OF TITLE INSURANCE

**Commonwealth**
A LANDAMERICA COMPANY

SPECIMEN

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Pennsylvania corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Policy to become valid when countersigned by an authorized officer or agent of the Company.

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Attest: Wm. Chadwick Perkins
Secretary

By: Janet A. Alpert
President

## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the affect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:

   (a) created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy; or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

   (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or

   (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:

      (i) to timely record the instrument of transfer; or

      (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

# CONDITIONS AND STIPULATIC

## 1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right , title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a) (iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

## 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

## 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

## 5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company , the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine , inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

## 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a)To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

Conditions and Stipulations Continued Inside Cover



CONTROL NO. 206-293628

SPECIMEN

# CONDITIONS AND STIPULATIONS

(Continued)

## 7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

SPECIMEN

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

## 8. APPORTIONMENT.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

## 9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

## 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

## 11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

## 12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

## 13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

## 14. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request

## 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

## 16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

## 17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to: Consumer Affairs Department, P.O. Box 27567, Richmond, Virginia 23261-7567.

**Commonwealth**

COMMONWEALTH LAND TITLE INSURANCE COMPANY

File/Policy No. NY980131

STANDARD NEW YORK ENDORSEMENT
(OWNER'S POLICY)

SPECIMEN

1. The following is added to the insuring provisions on the face page of this policy:

"5. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy."

2. The following is added to Paragraph 7 of the Conditions and Stipulations of this policy:

"(d) If the recording date of the instruments creating the insured interest is later than the policy date, such policy shall also cover intervening liens or incumbrances, except real estate taxes, assessments, water charges and sewer rents."

Nothing herein contained shall be construed as extending or changing the effective date of the policy unless otherwise expressly stated.

SPECIMEN

IN WITNESS WHEREOF the Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the __ day of _____.

Countersigned

COMMONWEALTH LAND TITLE INSURANCE COMPANY

By: Janet A. Alpert
President

Attest: W. Chadwick Purina
Secretary

By _____
Authorized Officer or Agent

Policy/Title No. NY980131

# SCHEDULE B
## Exceptions from Coverage

SPECIMEN

**This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of the following (except as to indicated special coverages and affirmative insurance):**

1. ~~a. Variations between curbs, fences, walls and the record lines of title~~

b. Planter is up to 5.4 feet east of part of the westerly record line.

c. Fence is up to 2.0 feet west of part of the westerly record line.

d. Curb is up to 1.3 feet west of part of the westerly record line.

e. Curb is up to 1.4 feet east of part of the westerly record line.

f. Fence posts are up to 1 foot more or less southeast of the northwesterly record line.

g. Fence is up to 3.8 feet west of part of the easterly record line. Owner is out of possession, Title to said strip is not insured.

**Note: Upon receipt of an affidavit of Bowery Bay Realty, LLC, acceptable to this Company, disclaiming any rights to the out of possession area, the statement "Owner is out of Possession, Title to said strip is not insured" will be removed.**

h. New York Telephone line in the southerly part of premises. ~~Policy excepts Rights of the Telephone Company to use and maintain same~~ pursuant to indenture set forth in 2d. (Affects Parcel A)

i. 2 inch water line in the southerly part of premises, 6 inch and 8 inch Water Lines in the northwesterly part of premises and 4 inch Water Line in the northerly part of premises.

j. Two 27 kv feeder cables and 4 kv overhead line in the northerly part of premises, 138 kv pole line in the westerly part of premises and secondary overhead line in the northerly part of premises.

k. Thirty (30) inch Storm Sewer in the southwesterly part of premises.

**With respect to the Easements recited in ~~A~~ (h), ~~B~~ (i) and ~~C~~ (j) above, policy insures that the sole holder of these Easements rights is The Consolidated Edison Company of New York, Inc. ~~Pursuant to that certain Easement Agreement set forth in Exception 2w below~~.**

l. Proposed 85 foot Easement in the northerly part of premises to be reserved in the Deed made by The Consolidated Edison Company of New York to the insured herein.

**Note:** Although this survey shows 19th Avenue prolonged (Riker Avenue) running through the premises herein, no exceptions pertaining thereto will be raised.

As shown on Survey made by Geod dated 10/31/2001.

## SCHEDULE B - continued

SPECIMEN

2. Covenants, conditions, easements, agreements of records, etc., as follows:

a. Terms, Covenants, Conditions and Reservations set forth in the Letters Patent to The Astoria Light Heat and Power Company, dated 12/12/1899, recorded 12/28/1899 in Liber 1227 Cp 423 (Affects Parcel A), but this policy insures that for so long as the patented lands are used for purposes of "Commerce", the State of New York may not enforce any right contained therein which would result in a reversion or forfeiture of title to the said patented lands insured hereunder.

For the purpose of this Exception and Exceptions 2b and 2c below, the term "Commerce" shall be construed to include any commercial, industrial or retail use, as well as the uses of the premises employed by The Consolidated Edison Company of New York, Inc. immediately prior to the date of this policy.

b. Terms, Covenants, Conditions and Reservations set forth in the Letters Patent to The Astoria Light, Heat and Power Company, dated 5/12/1904, recorded in the Office of the Secretary of State at Book No. 54, page 28 (Affects Parcel A), as located on the survey set forth in Exception 1 herein. But this policy insures that for so long as the patented lands are used for purposes of "Commerce", the State of New York may not enforce any right contained therein which would result in a reversion or forfeiture of title to the said patented lands insured hereunder.

Notwithstanding the above affirmative insurance, nothing herein shall be construed as affording affirmative coverage against the right of acquisition set forth in the said patent in favor of the City of New York, nor as affording affirmative coverage against the Right of Re-Entry exercisable by the State of New York in the event that the insured violates the covenants and conditions pertaining to the City of New York's said right of acquisition. (Affects Parcel A, as located on the survey set forth in Exception 1 herein.

c. Terms, Covenants and Conditions of an Agreement Pertaining to the filling in of Berrians Creek made by and between The Astoria Light, Heat and Power Company, Astoria Veneer Mills, Oakes Manufacturing Company and Steinway and Sons, dated 11/27/1903 and recorded 5/25/1904 in Liber 1332 Cp 388. (Affects Parcel A only).

d. Easement for the telephone ducts with associated encasements, conduits, sleeves, pipes, manholes, supporting structures and appurtenances over the southerly portion of premises held by The New York Power Authority as set forth in Section II (10) on Page 9 of the Indenture made between Consolidated Edison Company of New York, Inc. and the Power Authority of the State of New York (the predecessor to The New York Power Authority) dated as of 12/13/1974 and recorded on 12/18/1974 in Reel 806 Page 598, as amended by that certain Correction Deed made between the same parties dated 8/12/1999 and recorded on 9/17/1999 in Reel 5376 Page 1558. As said easement is located on the survey set forth in Exception 1 herein.

Note: Policy insures that there are no other Easements in the said Indenture which burden the insured premises.

Policy/Title No. NY980131

## SCHEDULE B - continued

SPECIMEN

e. Terms, Covenants, Conditions, Provisions, and Agreements of the unrecorded F.A.A. Lease, dated 1/29/1998 made by Consolidated Edison Company of New York, Inc., as landlord to United States of America, as tenant. (Affects Parcel A only).

f. Astoria Zoning Lot Development Agreement made by and between Consolidated Edison Company of New York, Inc. and Astoria Gas Turbine Power LLC dated as of 6/25/1999 and recorded 7/23/1999 in Reel 5320 Page 804. (Affects Parcels A and C).

g. Declaration of Easements made between Consolidated Edison Company of New York, Inc. and Luyster Creek LLC, dated _____ and to be recorded.

3. Rights of the public generally to and over those lands lying below the present high water mark of Luyster Creek or Berrians Creek, as said present high water mark is delineated on that certain survey made by Geod dated 3/1/2000. (Affects Parcel A)

4. Rights of the Federal Government to enter upon and take possession without compensation of land now or formerly lying below the high water mark of the Luyster Creek or Berrians Creek, but this policy insures that the possession, use and enjoyment of the insured in the said lands which are filled in as of the date hereof and which lie inshore of the Pierhead and Bulkhead Line of March 19, 1921 as shown on that certain survey made by Geod dated 3/1/2000 ("the Affirmatively Insured lands") will not be disturbed, and that if any of the Affirmatively Insured lands are taken by the United States of America compensation will be paid therefor as if subject to a condemnation. (Affects Parcels A and C)

5. Rights of the People of the State of New York and/or the People of the City of New York in that area of the premises now or formerly under the water of Luyster Creek or Berrians Creek and for which the State of New York has not granted letters patent. (Affects part of Parcel A, as located on the survey set forth in Exception 1 herein.

6. Policy insures that no portion of the premises described in Schedule A lies within a mapped street on the Final City Plan.

***SCHEDULE D***

***Indemnity Agreement with Title Company***

**Title Policy No. NY 980131**

**ASTORIA INDEMNITY**

This Undertaking and/or Indemnification Agreement is given by Consolidated Edison Company of New York, Inc., (hereinafter referred to as "**Indemnitor**") to Commonwealth Land Title Insurance Company (hereinafter referred to as "**Company**").

**WHEREAS,** Company is being requested by the Indemnitor to issue its policy of title insurance insuring an interest in or title to certain real property located in Queens County, City and State of New York described in ***Schedule A*** of the above title/policy number ("**Premises**").

**WHEREAS,** Company has raised Exception(s) to title as listed on ***Schedule B*** annexed hereto (hereinafter referred to as "Exceptions").

**WHEREAS,** Company has been requested to issue its policy to provide insurance protecting the insured under its policy.

**WHEREAS,** Company is unwilling to issue the above policy of title insurance unless indemnified by Indemnitor and the Indemnitor recognizes that Company in the normal course of its business would not issue its policy(s) free and clear or give affirmative coverage against the collection of said Exception out of the Premises unless Indemnitor indemnifies the Company as hereinafter agreed.

**WHEREAS,** Company may hereafter in the ordinary course of its business also issue other title insurance policies, title certificates or title reports, in respect to the Premises which will afford the same or similar protection.

**NOW THEREFORE,** Indemnitor, its heirs, administrators, executors, receives, trustees, successors and assigns or any of them, in consideration of the issuance of the policy of

title insurance without showing the Exceptions or which gives affirmative coverage against the collection of the Exceptions out of the Premises does hereby agree as follows:

1. Indemnitor agrees to indemnify, protect, defend and save Company, its successors and assigns, harmless and free from all loss, cost, damage, charge liability or expense, including court costs and reasonable attorney's fees and expenses of every kind, which it may incur, sustain, suffer or be put to under the policy or policies of title insurance or otherwise on account of the omission or deletion of, or the aforesaid affirmative insurance in connection with the Exceptions.

2. Indemnitor shall have the right to reasonably approve any and all counsel who may be used by Company to defend or prosecute any action brought for or by any party or terminate such Exceptions or as a result of Company issuing its policy(s) of title insurance, removing said Exceptions or insuring against the collection of said Exceptions out of the Premises or any part thereof.

3. Whenever it is so required, the singular number includes the plural and where there is more than one then the obligations of this agreement shall be binding on all such persons jointly and severally.

4. The term "policy" shall be deemed to include a policy of title insurance, binder or commitment whether the policy listed at the top of this affidavit or one issued in the future.

5. This instrument shall be liberally construed in the interest of and for the protection of Company. If any provisions in this Agreement is held to be void or unenforceable under the laws of the State of New York, or any place covering the construction or enforcement thereof, this instrument shall not be void or vitiated thereby, but shall be construed to be in force with the same effect as though such provisions where omitted.

6. This Agreement shall be binding upon Indemnitors and each of them, their heirs, administrators, executors, receivers, trustees, successors and assigns, including without limitation, any other title insurer involved in new insurance or reinsurance or reinsuring in any manner, any liabilities of Company under any policy(s) of title insurance or endorsement(s) issued in reliance hereon.

7. Correspondence regarding this Agreement will be sent to the Company at:

655 Third Avenue
New York, New York 10017
ATTENTION: Mr. Donald C. Ende

**And to Indemnitor at:** Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
ATTENTION: General Counsel

By certified or registered mail, return receipt requested and a copy by regular mail.

**IN WITNESS WHEREOF,** the parties have hereunto set forth their hands and signatures this ____ day of _____, 200_.

**COMMONWEALTH LAND TITLE INSURANCE COMPANY**

**By:** _____
**Name:**
**Title:**

**INDEMNITOR(S):**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**By:** _____
**Name:**
**Title:**

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
EASTERN REGION, FEDERAL BUILDING
JFK INTERNATIONAL AIRPORT
JAMAICA, NEW YORK 11430

**LEASE**
Lease No. DTFA05-97-L-15159
LaGuardia, NY LLWAS Site#8

**Between**

**CONSOLIDATED EDISON COMPANY**

AND

**THE UNITED STATES OF AMERICA**

THIS LEASE, made and entered into this 29th day of JANUARY, in the year one thousand nine hundred and ninety-~~seven~~ eight, by and between Consolidated Edison Company of New York, Inc., whose address is: 4 Irving Place, New York, New York 10003, Attn: Real Estate Dept., their successors and assigns, hereinafter referred to as the Lessor or Con Edison; and the United States of America, hereinafter referred to as the Government:

WITNESSETH: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

1. TERM.

For the term beginning February 1, 1998 and ending September 30, 1998, the Lessor hereby leases to the Government the following described property, for the purpose of installing and operating a Low Level Wind Shear Alerting System (LLWAS) heretofore approved by the Lessor, hereinafter called the premises, as shown on:

Exhibit A (Property Description) and Exhibit B (Drawing No. AEA-D-33904 Sheet 8 of 14) attached hereto and made a part hereof.

(a) Together with a right-of-way in common with others over existing roads designated by Lessor and/or new roads approved by the Lessor, for ingress to and egress from the premises; a right-of-way designated by the Lessor, for establishing and maintaining a pole line or pole lines for extending electric power, and telecommunications facilities to the premises; all rights-of-way to be over the said lands and adjoining lands of the Lessor, and unless herein described by metes and bounds, to be by routes reasonably determined to be the most convenient to the Government and to the Lessor all as shown on Exhibit "C" consisting of Drawing No. AEA-D-33904 Sheets 8, 9, 10, 11, 12 and 14 of 14.

(b) And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of the Government facilities as detailed in the FAA's Request for Offer, dated November 3, 1997, herein incorporated by reference.

(c) And the right to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, as shown on Exhibits "B" and "C" as approved by the Lessor in writing, which alterations, fixtures, additions, structures or signs so placed in or upon, or attached to the said premises shall be and remain the property of the Government, and may be removed upon the date of expiration or termination of this lease, or within ninety (90) days thereafter, by or on behalf of the Government, or its grantees, or purchasers of said alterations, fixtures, additions, structures, or signs. Said ninety (90) day period is part of the one hundred eighty day (180) Holdover period as defined in Paragraph Nine (9) and the Lessor shall be compensated for the payment of rent for this period in accordance with Paragraph 9 herein. If said alterations, fixtures, additions, structures or signs are not removed within ninety (90) days, they shall become the property of Lessor which may dispose of them in any way it sees fit. The Lessor shall be reimbursed for the disposal in accordance with Paragraph Five (5).

(d) The Government shall pave all new access roads to the premises, as well as any parking areas on the premises.

2. RENEWAL.

This lease may, at the option of the Government, and upon written consent of Lessor, be renewed from year to year and upon the terms and conditions herein specified. The Government shall request Lessor's written consent to renew on or before the 30th day of September of each year. The Government's option shall be deemed exercised and the lease renewed each year upon Lessor's written consent for one (1) year unless the Government gives the Lessor thirty (30) days written notice that it will not exercise its option before this lease or any renewal thereof expires; PROVIDED, that no renewal thereof shall extend the period of occupancy of the premises beyond the 30th day of September 2017. AND PROVIDED FURTHER, that adequate appropriations are available from year to year for the payment of rentals.

3. CONSIDERATION.

The Government shall pay the Lessor rental for the premises in the amount of five hundred dollars per month ($500.00) for the term set forth in Article 1 above; and six thousand dollars ($6,000.00) per annum for the first annual renewal exercised by the Government thereafter. The rental payment shall be adjusted each Government fiscal year and every year thereafter as specified in the attached Schedule B. Payments shall be made in arrears at the end of each month without the submission of invoices or vouchers.

4. TERMINATION.

Notwithstanding anything contained herein, either party may terminate this lease, for any reason, in whole or in part, at any time by giving at least thirty (30) days notice in writing to the other party. Said notice shall be sent by certified or registered mail in accordance with Paragraph 17. Notwithstanding anything contained herein, the Government shall have holdover rights in accordance with Paragraph 9 herein.

5. RESTORATION.

The Government shall surrender possession of the premises upon the date of expiration or termination of this lease. If the Lessor provides written notice, at least thirty (30) days before the date of expiration or termination, to request restoration of the premises, the Government at its option shall within ninety (90) days (said 90 day period is part of the 180 day holdover period in Paragraph 9) after such expiration or termination, or within such additional time as may be mutually agreed upon in writing, either:

(a) Restore the premises to at least as good a condition as that existing at the time of the Government's initial entry upon the premises under this lease or the preceding Right of Entry, ordinary wear and tear, damage by natural elements and by circumstances over which the Government has no control, excepted) or,

(b) Make an equitable adjustment for the cost of such restoration of the premises or the diminution of the value of the premises if unrestored, whichever is less. Should a mutually acceptable settlement be made hereunder, the parties shall enter into a written supplemental agreement hereto effecting such agreement. Failure to agree to any such equitable adjustment shall be a dispute concerning a question of fact within the meaning of the Contract Disputes Act of 1978 (Public Law 95-563)

6. INTERFERENCE WITH THE GOVERNMENT'S OPERATIONS.

a. Six months prior to construction, the Lessor shall notify the Government of any plans that may require construction of any structure on any Con Edison owned property, at the Con Edison Astoria Complex, that would be wider than 75 feet and within 1,000 feet of the LLWAS High Mast pole facilities and that would protrude a horizontal surface (48 feet Mean Sea Level-MSL), whose elevation is approximately 50 feet below the top of the LLWAS pole.

b. Similarly the Lessor shall notify the Government of any plans that would require the construction of overhead high voltage power lines, on any Con Edison owned property at the Con Edison Astoria Complex, that would be within 80 feet of the LLWAS high mast pole.

c. In the event that the Lessor shall enter into a contract of sale for any or all of Con Edison property at the Astoria Complex within 1,000 feet of the LLWAS pole, the Lessor shall inform the Government of this intended transfer of title within thirty (30) days of the date of receipt of a fully executed contract of sale.

7. HAZARDOUS SUBSTANCE CONTAMINATION

a. For the purposes of this Lease, the term Hazardous Substance shall mean any product, substance, chemical, waste or electromagnetic emissions that is, has been, or shall hereafter be listed or defined as hazardous, toxic, or dangerous under Environmental Laws. "Hazardous Substance" includes without limitation petroleum products and polychlorobiatedplphengl ("PCB's"). The term Environmental Laws shall mean all the federal, state, local, environmental, health and safety, transportation laws, rules, orders, ordinances, regulations, codes and zoning provisions including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1471 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. 300f through 300h.

b. The Government agrees to remediate, at its sole cost, all Hazardous Substance and oil contamination on the leased premises that is found to have occurred as a direct result of any acts or omissions of the FAA, its contractors, agents or employees during the construction, installation, operation, and/or maintenance of the Government's facilities. The Lessor also agrees to save and hold the Government harmless for any and all costs, liabilities and/or claims by third parties that arise out of Hazardous Substance and oil contamination found on the leased premises not directly attributable to any acts or omissions of the Government, its contractors, agents or employees during the construction, installation, operation and/or maintenance of the Government's facilities. Continued on Schedule A attached hereto and made a part hereof. (10/96)

8. QUIET ENJOYMENT

The Lessor warrants that it has good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims. (10/96)

9. HOLDOVER

If after the expiration or termination of the lease, the Government shall retain possession of the premises, the lease shall continue in force and effect at the option of the Lessor on a day to day basis subject to the rent, terms, and conditions in effect upon such expiration, not to exceed 180 days. Rent shall be paid monthly, in arrears on a prorated basis, at the rate paid on the date of such expiration or termination. This period shall continue until the Government shall have signed a new lease with the Lessor, acquired the property in fee or vacated the leased premises, not to exceed the 180 days specified herein. (10/96)

10. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit. (10/96)

11. COVENANT AGAINST CONTINGENT FEES

The Lessor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee. (10/96)

12. ANTI-KICKBACK

The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor. (10/96)

13. PROTEST AND DISPUTES

All contract disputes arising under or related to this contract or protests concerning awards of contracts shall be resolved under this clause, and through the Federal Aviation Administration (FAA) Dispute Resolution System. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. The decision of the FAA shall be considered a final agency decision only after a contractor or offeror has exhausted their administrative remedies for resolving a contract dispute under the FAA Dispute Resolution System. Protests must be filed with the Office of Dispute Resolution within 5 calendar days of the date that the protester was aware, or should reasonably have been aware, of the agency action or inaction which forms the basis of the protest. Unless otherwise stated in this contract dispute by the contractor against the government shall be submitted to the Contracting Officer within 1 year after the accrual of the contract dispute. Information relating to submitting a protest or dispute will be provided by the Contracting Officer, upon request. (10/96)

14. ASSIGNMENT OF CLAIMS

Pursuant to the Assignment of Claims Act, as amended, 31 USC 3727, 41 USC 15, the Lessor may assign its rights to be paid under this lease. (10/96)

15. EXAMINATION OF RECORDS

The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative from either shall, until 3 years after final payment under this contract have access to and the right to examine any of the Lessor's directly pertinent books, documents, paper, or other records involving transactions related to this contract. (10/96)

16. LESSOR'S SUCCESSORS The terms and provisions of this lease and the conditions herein bind the Lessor and the Lessor's successors, and assigns. Notwithstanding anything contained herein, the Lessor may assign this lease.

17. NOTICES.

All notices shall be in writing and sent by United States Certified or Registered mail, return receipt requested, and shall be addressed as follows (or to such other address as either party may designate from time to time by notice to the other):

TO LESSOR: Mr. Edward Savoca, Facilities Manager
Con Edison Company of New York
T&S Facilities Maintenance
31-01 20th Avenue, Bldg. 136
Astoria, New York 11105
Telephone - (718) 204-4429
Fax - (718) 726-7499

COPY TO: Department Manager
Real Estate Department
Con Edison Company
4 Irving Place, Rm. 2115 S
New York, New York 10003
Telephone - (212) 460-4279
Fax - (212) 529-0582

TO GOVERNMENT: Ms. Toni Lopes, Contracting Officer
DOT-FAA
Eastern Region, Federal Building
JFK International Airport
Jamaica, NY 11430
Telephone - (718) 553-3068
Fax - (718) 995-5684

General correspondence may be forwarded to the above address via first class mail.

18. WARRANTY OF TITLE.

The Lessor hereby warrants that it has acquired and possesses an adequate real estate interest in the property described herein and that it is authorized to grant to the Government the rights and interests set forth herein. The Lessor makes no warranty or representation whatsoever that the premises are suitable for the Government.

19. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT

a. The Government agrees, in consideration of the warranties herein expressed, that this lease is subject and subordinate to any and all recorded deeds of trust, mortgages, and other security instruments now or hereafter imposed upon the premises. It is mutually agreed that this subordination shall be self operative and that no further instrument shall be required to effect said subordination.

b. In the event of any sale of the premises, or any portion thereof, or any such transfer of ownership, by foreclosure of the lien of any such security instrument, or deed provided in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, successor, assigns, or transferee. The succeeding owner will be deemed to have assumed all rights and obligations of the Lessor under this lease, establishing direct privity of estate and contract between the Government and said purchasers/transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government.

20. The Rider consisting of four pages is attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date above written.

Lessor:

By _____
(Signature)

UNITED STATES OF AMERICA

By Tori Lopez
Contracting Officer

Tax Identification Number 13-5009340

**Rider to Lease No DTFA05-97-L-15159**
**Between CONSOLIDATED EDSION**
**COMPANY OF NEW YORK, INC.**
**and UNITED STATES OF AMERICA**

A. Con Edison Support Personnel and Payment. a) If at any time, Con Edison should deem inspectors or other Con Edison representatives or supervisors desirable or necessary to protect its operations or premises, or its employees, patrons or licensees during the term of this Lease, Con Edison shall have the right to place such inspectors, or other Con Edison representatives or supervisors on or near the premises. The instructions from Con Edison representatives on the job site must be strictly and promptly obeyed by the Government. A failure to follow instructions from Con Edison representatives on the site will lead to withdrawal of the Lease, thus closing the premises to the Government, its contractors and employees. Prior to closing the premises to the Government, Con Edison will exert best efforts to contact Toni Lopes at 718-553-3068 in an attempt to resolve any dispute.

b) During the construction and installation phase of this Lease, the Government shall reimburse Con Edison for the cost of any inspectors or other Con Edison supervisors or personnel placed on or near the premises. The cost for such inspectors or other Con Edison representatives or supervisors shall include, but not be necessarily limited to wages, applicable fringe benefits, payroll taxes and overhead rates and shall be calculated in accordance with currently applicable rules in effect pursuant to the collective bargaining agreements with the respective crafts at the time the work is performed. The full cost and expense of any inspectors and personnel shall be a one time charge, and shall be billed by Con Edison upon completion of the construction and installation phase of the Lease. The Government shall pay the full cost within sixty (60) days of receipt of invoice. Based on the information provided to Lessor, Lessor estimates this one-time charge to be approximately $3,000. Any questions regarding invoicing or payment under this Lease should be addressed to Con Edison, Attention: Louis Camevale, Consolidated Edison Company of New York, Inc., Real Estate Department, 4 Irving Place, Room 2115-S, New York, New York 10003.

c) In the event that after the initial construction and installation additional construction is to be performed at the premises by the Government, the Government shall reimburse Con Edison for the cost of any supervisors or personnel placed on or near the premises to supervise this additional work.

B. Con Edison Operations. a) All activities of the Government shall be carried on in such a manner so as not to interfere with the safe operation or use of any Con Edison facilities.

b) An FAA Resident Engineer who shall have the authority to supervise and instruct the Government's employees and contractors at the premises, including, but not limited to stopping work at the premises shall be present at the premises at all times when any construction or excavation work is to be performed or is being performed at the premises. The FAA Resident Engineer shall also have the authority to resolve on behalf of the Government any conflicts with Con Edison regarding any Con Edison rules or instructions.

C. **Maintenance and Snow Removal.** a) Government, at its sole expense, hereby undertakes and assumes full responsibility at all times for the maintenance and repair of the premises and the neat and orderly appearance of the premises. Government shall keep premises free of snow, ice, accumulations of water, weeds, trash and litter at all times.

b) Government, at its sole expense, hereby undertakes and assumes full responsibility at all times for the maintenance and repair of the new access roads to the premises and the neat and orderly appearance of the new access roads, except, that Con Edison shall keep the access roads free from snow, at the Government's expense. Con Edison estimates this cost to be approximately $75.00 to $100.00 per snow removal. The Government shall reimburse Con Edison for the full cost of such snow removal. Con Edison shall bill the Government accordingly, and the Government shall pay such costs within sixty (60) days of receipt of invoice. Government shall save and hold Con Edison harmless and indemnify Con Edison for any and all costs, liabilities and/or claims that may arise from any act or omission by Con Edison, its employees, agents and contractors with respect to the removal of snow on the existing road or the new access roads.

D. **Con Edison Rules.** All work shall be performed in accordance with Con Edison's General Instructions Governing Work on System Electrical Equipment, as revised January 1995, a copy of which has been delivered to the Government and the Government hereby acknowledges receipt of same.

E. **Right of Entry.** Con Edison reserves the right to enter upon the premises at any time during the Government's occupancy or possession for any purpose and without any liability whatsoever. Con Edison shall give the Government at least twenty-four (24) hours prior notice of such entry, except in the event of any emergency, in which case Con Edison agrees to provide the Government with whatever notice may be practicable under the circumstances. In the exercise of this right, Con Edison agrees to use its best efforts to avoid substantial interference with the Government's occupancy of the premises.

F. **Accidents or Injuries.** Government shall promptly report to Con Edison's construction representative verbally and in writing all accidents whatsoever arising out of or in connection with the lease or construction,

installation and maintenance of the LLWAS, whether on or adjacent to the premises, which results in death, injury or property damage; giving details and statements of witnesses. Government shall immediately report the accident or injury directly to Con Edison on a Con Edison accident report form.

G. **Environmental**. (a) All Work by Government shall be performed in accordance with all federal, state and local laws, rules and regulations, including but not limited to OSHA requirements.

(b) There shall be no eating, drinking, or smoking on the Property, without the express written consent of Con Edison. Safety hats, and safety glasses with attached molded side shields, and appropriate personal protective equipment (PPE) to avoid any skin and eye contact with soil shall be worn whenever necessary, as determined by Government.

(c) If any of the methods of construction and/or procedures proposed by Government involve excavation activities on the premises, any excavated soil requiring disposal shall be tested and properly characterized (testing shall include, but not limited to PCBs or TCLP for metals) as required by Con Edison. All such samples shall be analyzed by a NYSDOH approved laboratory. An analytical report on the testing and characterization shall be submitted immediately to:

Barry Cohen
Environmental Health & Safety Department
Con Edison
Astoria Bldg 136
20th Avenue and 21st Street
Long Island City, NY 11201
Phone # 718-204-4236
Fax # 718-932-2687

(d) Any excavated soil shall be placed into or stored in a DOT approved container. Final disposition of excavated soil, soil transportation and disposal procedures shall be subject to the prior written consent of Con Edison's Environmental Health and Safety Department.

(e) The Government shall obtain Con Edison's prior written approval before using or storing any hazardous materials on the premises. The Government will provide for Con Edison's review and approval its Material Data Safety Sheets (MSDS) and use and storage plans for any hazardous materials to be stored or used on the premises. Storage of characterized excavated soils are not subject to this provision.

(f) The Government will be deemed the generator of record for any wastes generated by the Government on the premises. If the FAA is issued an EPA ID Number for any waste material, it will be provided to Con Edison. The Government will immediately notify Con Edison when any hazardous waste is generated and will identify the type of wastes, including but not limited to the applicable NYSDEC hazardous waste code. The Government will also submit for Con Edison's review and approval its plans for storage of such hazardous wastes pending off site disposal.

(g) (i) The Government shall within one (1) hour of incident or discovery of incident report to Con Edison's representative, the Off-Shift Duty Supervisor at 718 204-4100, verbally and in writing all accidents and releases of oil or hazardous materials whatsoever whether on or adjacent to the premises that the Government knows of or reasonably believes may have occurred.

(ii) The Government shall timely report all spills resulting from any act or omission of the Government, its contractors, agents or employees, except those below reporting thresholds, to the appropriate federal, state, and local agencies having jurisdiction over said release. If the Government does not report the release or refuses to report the release to the appropriate agency, then Con Edison, at its option, may report the release to the appropriate agency. Any such reports by Con Edison shall identify the Government as the responsible party of the release.

H. **Miscellaneous.** (a) Government shall arrange, obtain and maintain at its sole cost and expense telecommunication service, electrical service and separate electrical metering for the LLWAS.

(b) This lease agreement is subject to approval by the New York State Public Service Commission in accordance with Section 70 of the State Public Service Law.

(c) The LLWAS site shall be fenced to Con Edison's satisfaction and have a lock to which Con Edison shall have a key.

(d) All Government employees or Government contractors accessing the premises site shall carry and produce upon request photo identification.

(e) The Government shall have twenty-four (24) hour access to the premises.

# SCHEDULE A ATTACHMENT

(2 pages)

**Continuation of Paragraph 7**
**Substances Contamination of Lease No. DTFA0S-97-L-15159**

(1) The Government shall indemnify and save harmless Consolidated Edison, the Owner, for and against all fines, penalties or other claims for compensatory money damages or injury or loss of property or, personal injury or death, including without limiting the foregoing those arising out of the investigation, excavation, remediation, handling, transportation and/or disposal of any hazardous materials, including, but not limited to, any hazardous waste, caused by, generated by or associated with any work performed or activities undertaken by the Government, its contractors, agents or assigns at Owner's land. The foregoing indemnity shall not extend to claims based upon acts or omissions of the Government's employees for which the FAA would not be liable under the Federal Tort Claims Act of 1945 (28 USC 2671 et seq.) as now or hereafter amended. The Owner shall furnish the Government with reasonable notice of any claims made against the Owner.

(2) The Government agrees to remediate at its sole cost and expense, to the extent it is obligated pursuant to the Federal Facilities Compliance Act of 1992, 42 U.S.C. 6901 et seq. as now or hereafter amended or any successor or similar statute pursuant to which the Government is or has been made subject to governmental environmental laws, regulations, rules, ordinances, resolutions, requirements or directives, any and all hazardous substances discovered as a result of the investigation and/or excavation of Owner's land.

(3) The Government agrees to include in any contract it may enter into in connection with the exercise of the privileges granted by this Right of Entry the following provision:

"The contractor shall indemnify, and save harmless Consolidated Edison, its trustees, officers, agents and employees from and against injuries (including death) suffered by it or any of them and damage to or loss of its or their property and all claims of third parties for injuries to persons (including death) or for damage to or loss of property, that may arise out of or in connection with the performance of the work covered by this contract. This obligation is for the benefit of the Owner, its trustees, officers, agents and employees, each of which shall have a direct right of action thereon." Further, the Government shall require its duly authorized agents and contractors performing work pursuant to the provisions of this Right of Entry to procure and maintain (1) bodily injury liability and property damage liability insurance in their respective names and to name

Consolidated Edison Company of New York, Inc., as a named insured in not less than the following limits:

| | |
|---|---|
| Bodily Injury | $3,000,000 each occurrence<br>$3,000,000 aggregate |
| Property Damage | $3,000,000 each occurrence<br>$3,000,000 aggregate; and |

(4) Comprehensive (also called Commercial) General Liability Insurance, with limits of $5,000,000 per occurrence for bodily injury or death and $1,000,000 per occurrence for property damage, or a combined single limit of $5,000,000 per occurrence. The insurance should include Consolidated Edison Company of New York, Inc. as an additional insured.

The minimum insurance amounts are subject to revision on a case by case basis by the Owner. Nothing in this Right of Entry contained shall require the obtaining by the Government of such insurance in connection with the performance of work by employees of the Government.

(5) The Government acknowledges and shall be responsible for (1) informing its contractors, agents, and assigns that while working at the Con Edison property there is the potential of exposure to hazardous materials and/or hazardous waste; and

(6) The Government acknowledges and shall be responsible for verifying that its contractors, agents, and assigns shall have proper knowledge and training to handle hazardous materials and hazardous waste."

165181

SCHEDULE "B"

| TERM | ANNUAL PAYMENT | MONTHLY PAYMENT |
|---|---|---|
| - 9/30/98 | $ 6,000.00 | $500.00 |
| 10/1/98 - 9/30/99 | $ 6,240.00 | $520.00 |
| 10/1/99 - 9/30/00 | $ 6,489.60 | $540.80 |
| 10/1/00 - 9/30/01 | $ 6,749.18 | $562.43 |
| 10/1/01 - 9/30/02 | $ 7,019.15 | $584.93 |
| 10/1/02 - 9/30/03 | $ 7,299.91 | $608.32 |
| 10/1/03 - 9/30/04 | $ 7,591.91 | $632.66 |
| 10/1/04 - 9/30/05 | $ 7,895.59 | $657.97 |
| 10/1/05 - 9/30/06 | $ 8,211.41 | $684.28 |
| 10/1/06 - 9/30/07 | $ 8,539.87 | $711.65 |
| 10/1/07 - 9/30/08 | $ 8,881.46 | $740.12 |
| 10/1/08 - 9/30/09 | $ 9,236.72 | $769.72 |
| 10/1/09 - 9/30/10 | $ 9,606.19 | $800.51 |
| 10/1/10 - 9/30/11 | $ 9,990.44 | $832.53 |
| 10/1/11 - 9/30/12 | $10,390.05 | $865.83 |
| 10/1/12 - 9/30/13 | $10,805.66 | $900.47 |
| 10/1/13 - 9/30/14 | $11,237.88 | $936.49 |
| 10/1/14 - 9/30/15 | $11,687.40 | $973.95 |
| 10/1/15 - 9/30/16 | $12,154.90 | $1,012.90 |
| 10/1/16 - 9/30/17 | $12,641.10 | $1,053.42 |

PROPERTY LEGAL DESCRIPTION
(:\....\LGALLWAS\LEGAL8C.DOC 12-04-1997)
Low Level Windshear Alert System-Network Expansion (LLWAS-3-NE)
Site #8
(Con Edison, Astoria Plant)

The tract or parcel of land owned by Con Edison, located in the City of New York, Queens County of the State of New York, as shown on FAA Drawing No. AEA-D-33904, sheet 8 of 14, bounded and described as follows:

LLWAS PLOT:

Beginning at a point said point being a PK nail, having Astoria Grid Coordinates of
N 1999.59
E 3424.68
proceed S 48° 01' 12.05" E a distance of 228.71 feet to a stake, said point being the point of beginning of the FAA leased LLWAS plot.
thence proceed on a N 00° 00' 00.000" W grid bearing, a distance of 20.00' to point,
thence proceed on a N 90° 00' 00.000" W grid bearing, a distance of 20.00' to point,
thence proceed on a S 00° 00' 00.000" E grid bearing, a distance of 20.00' to point,
thence proceed on a S 90° 00' 00.000" E grid bearing, a distance of 20.00' to point,
said point being the point of beginning of the FAA leased plot, containing 0.010 acres more or less.

ACCESS RIGHT OF WAY:

Beginning at a point, said point being the point of beginning of the FAA leased LLWAS plot, and also corresponding to the point of beginning of the FAA Right of Way for Access, proceed on a N 00° 00' 00.000" W grid bearing, a distance of 20.00' to point,
thence proceed on a N 90° 00' 00.000" W grid bearing, a distance of 20.00' to point,
thence proceed on a N 00° 00' 00.000" W grid bearing, a distance of 20.00' to point,
thence proceed on a S 90° 00' 00.000" E grid bearing, a distance of 20.00' to point,
thence proceed on a N 00° 00' 00.000" W grid bearing, a distance of 101.00' to point,
thence proceed on a S 90° 00' 00.000" E grid bearing, a distance of 20.00' to point,
thence proceed on a S 00° 00' 00.000" E grid bearing, a distance of 141.00' to point,
thence proceed on a N 90° 00' 00.000" W grid bearing, a distance of 20.00' to the point of beginning of the FAA Right of Way for Access, said plot containing 0.083 acres, more or less.

UTILITY RIGHT OF WAY

Beginning at a point, said point being the point of beginning of the FAA leased LLWAS plot, and also corresponding to the point of beginning of a 10.00' wide FAA Utility Right of Way, proceed on a S 38° 01' 26.300" grid bearing, a distance of 152.70' to a point, said point being an existing low voltage power pole, and the end of FAA Utility Right of Way, said plot containing 0.071 acres, more or less.

Note: All coordinates are based on the Astoria Grid Coordinate system. All bearings described are based on the Astoria Grid North.

U.S. Department
of Transportation
Federal Aviation
Administration

Eastern Region
Airway Facilities Division

Federal Building #111
JFK International Airport
Jamaica, New York 11430

JUL 6 2001

Mr. John Morrill
Acting Director, Real Estate
ConEdison
4 Irving Place, Rm. 206s
New York, NY 10003

Dear Mr. Morrill:

Low Level WindShear Alerting System (LLWAS) Astoria, Queens, New York; Your Letter Dated June 6, 2001

Our office has coordinated with Mr. Doug Jabbour of your office. In our conversation with him he provided information to us concerning the construction of a one-story, 25-foot high building with its associated power lines at an elevation of 60 feet.

Since these heights are below the elevation of our LLWAS facility we have no objection to the construction planned.

If you need further information, please contact Donald Bristol of our Engineering Support Section at (718) 977-6611.

Sincerely,

for Barry Boshnack
Manager Airway Facilities
Division

John D. Mo
Senior Real Estate Representative
Telephone (212) 460-4918
Fax: (212) 529-0582

Con Edison
Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N.Y. 10003

Mario Ascrizzi
Contracting Officer
U.S. Department of Transportation
Federal Aviation Administration
Fitzgerald Federal Building 111
J.F.K. International Airport
Jamaica, New York 11430

Re: FAA Lease Agreement No. DTFA05-97-L-15159
20th Avenue and 31st Drive
Astoria, New York

Dear Mr. Ascrizzi

I am in receipt of your letter dated March 21st, 2001 requesting the renewal of the subject lease for an additional year through September 30, 2001. Con Edison consents to such an extension at the rent of $6,749.16 annually as required by the lease and under all of the same terms and conditions as set forth in the original lease dated January 29th, 1998.

Very truly yours,

John Morrill
Acting Director, Real Estate

Cc: Douglas A. Jabbour

# FAX

TO: JEANNETTE LUOH

FROM: DOUG JABBOUR

RE: FAA TOWER

U.S. Department
of Transportation
Federal Aviation
Administration

Eastern Region
Airway Facilities Division

Federal Building #111
JFK International Airport
Jamaica, New York 11430

JUL 6 2001

Mr. John Morrill
Acting Director, Real Estate
ConEdison
4 Irving Place, Rm. 206s
New York, NY 10003

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Low Level WindShear Alerting System (LLWAS) Astoria, Queens, New York; Your Letter Dated June 6, 2001

Our office has coordinated with Mr. Doug Jabbour of your office. In our conversation with him he provided information to us concerning the construction of a one-story, 25-foot high building with its associated power lines at an elevation of 60 feet.

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If you need further information, please contact Donald Bristol of our Engineering Support Section at (718) 977-6611.

Sincerely,

for Barry Boshnack
Manager Airway Facilities
Division

AUG-08-2001 13:25 REAL ESTATE 1 212 529 0582 P.02

John D. Mo
Senior Real Estate Representative
Telephone (212) 460-4918
Fax: (212) 529-0582

Con Edison
Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N.Y. 10003

Mario Ascrizzi
Contracting Officer
U.S. Department of Transportation
Federal Aviation Administration
Fitzgerald Federal Building 111
J.F.K. International Airport
Jamaica, New York 11430

Re: FAA Lease Agreement No. DTFA05-97-L-15159
20th Avenue and 31st Drive
Astoria, New York

Dear Mr. Ascrizzi

I am in receipt of your letter dated March 21st, 2001 requesting the renewal of the subject lease for an additional year through September 30, 2001. Con Edison consents to such an extension at the rent of $6,749.16 annually as required by the lease and under all of the same terms and conditions as set forth in the original lease dated January 29th, 1998.

Very truly yours,

John Morrill
Acting Director, Real Estate

Cc: Douglas A. Jabbour

# FAX

TO: JEANNETTE LUOH

FROM: DOUG JABBOUR

RE: FAA TOWER

U.S. Department
of Transportation
Federal Aviation
Administration

Eastern Region
Airway Facilities Division

Federal Building #111
JFK International Airport
Jamaica, New York 11430

JUL 6 2001

Mr. John Morrill
Acting Director, Real Estate
ConEdison
4 Irving Place, Rm. 206s
New York, NY 10003

Dear Mr. Morrill:

Low Level WindShear Alerting System (LLWAS) Astoria, Queens, New York; Your Letter Dated June 6, 2001

Our office has coordinated with Mr. Doug Jabbour of your office. In our conversation with him he provided information to us concerning the construction of a one-story, 25-foot high building with its associated power lines at an elevation of 60 feet.

Since these heights are below the elevation of our LLWAS facility we have no objection to the construction planned.

If you need further information, please contact Donald Bristol of our Engineering Support Section at (718) 977-6611.

Sincerely,

for

Barry Boshnack
Manager Airway Facilities
Division

AUG-08-2001 13:25 REAL ESTATE 1 212 529 0582 P.02

John D. Mo
Senior Real Estate Representative
Telephone (212) 460-4918
Fax: (212) 529-0582

Con Edison
Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N.Y. 10003

Mario Ascrizzi
Contracting Officer
U.S. Department of Transportation
Federal Aviation Administration
Fitzgerald Federal Building 111
J.F.K. International Airport
Jamaica, New York 11430

Re: FAA Lease Agreement No. DTFA05-97-L-15159
20th Avenue and 31st Drive
Astoria, New York

Dear Mr. Ascrizzi

I am in receipt of your letter dated March 21st, 2001 requesting the renewal of the subject lease for an additional year through September 30, 2001. Con Edison consents to such an extension at the rent of $6,749.16 annually as required by the lease and under all of the same terms and conditions as set forth in the original lease dated January 29th, 1998.

Very truly yours,

John Morrill
Acting Director, Real Estate

Cc: Douglas A. Jabbour

# FAX

TO: JEANNETTE LUOH

FROM: DOUG JABBOUR

RE: FAA TOWER

Robert B. Flo
Director, Real Estate
Telephone (212) 460-4069
Fax (212) 529-0582

Con Edison

Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N.Y. 10003

November 1, 1999

Toni Lopes
Contracting Officer
U.S. Department of Transportation
Federal Aviation Administration
Fitzgerald Federal Building 111
J.F.K. International Airport
Jamaica, New York 11430

Re: FAA Lease Agreement No. DTFA05-97-L-15159
20th Avenue and 31st Drive
Astoria, New York

Dear Ms. Lopes:

I am in receipt of your letter dated October 20, 1999 addressed to Mr. Louis Carnevale requesting the renewal of the subject lease for an additional year through September 30, 2000. Con Edison consents to such an extension at the rent of $6,489.60 annually as required by the lease and under all of the same terms and conditions as set forth in the original lease dated January 29th, 1998.

Very truly yours,

Robert B. Flock

c: Louis Carnevale
bc: Matricia Moore

U.S. Department
of Transportation
**Federal Aviation
Administration**

Logistics Division

Federal Aviation Admin.
Fitzgerald Federal Bldg. 111
J.F. Kennedy Int'l Airport
Jamaica, NY 11430

OCT 2 0 1999

Mr. Lou Carnevale
Real Estate Representative
Real Estate Department
Consolidated Edison
4 Irving Place, Rm. 206 South
New York, New York 10003

Dear Mr. Carnevale:

This letter references FAA Lease Agreement No. DTFA05-97-L-15159 which covers the installation and operation of a Low Level Windshear Alerting System (LLWAS) on the property of Consolidated Edison located at Steinway Street and 20th Avenue, Astoria, New York. The Government desires to renew subject Lease for an additional year through September 30, 2000 and this office is requesting Con Ed's written consent to renew as required by Article 2 of said Lease. Please provide a response at your earliest convenience. I may be contacted at (718) 553-3068 with any comments.

Your cooperation is greatly appreciated.

Sincerely,

Toni Lopes
Contracting Officer

U.S. Department
of Transportation
Federal Aviation
Administration

Logistics Division

Federal Aviation Admin.
Fitzgerald Federal Bldg. 111
J.F.K. International Airport
Jamaica, New York 11430

OCT 0 7 1998

Mr. Lou Carnevale
Real Estate Representative
Real Estate Department
Consolidated Edison
4 Irving Place, Rm. 2115 S
New York, New York 10003

Dear Mr. Carnevale:

This letter references FAA Lease Agreement No. DTFA05-97-L-15159 which covers the installation and operation of a Low Level Windshear Alerting System (LLWAS) on the property of Consolidated Edison located at Steinway Street and 20th Avenue, Astoria, New York. The Government desires to renew subject Lease for an additional year through September 30, 1999 and this office is requesting Con Ed's written consent to renew as required by Article 2 of said Lease. Please provide a response at your earliest convenience. I may be contacted at (718) 553-3068 with any comments.

Your cooperation is appreciated.

Sincerely,

Toni Lopes

Toni Lopes
Contracting Officer

*SCHEDULE F*

**ASSIGNMENT, ASSUMPTION AND ESTOPPEL AGREEMENT OF THE FAA LEASES**

**THIS ASSIGNMENT, ASSUMPTION AND ESTOPPEL AGREEMENT** (the "Assignment") dated this ____ day of _____, 200_ between **CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,** as Assignor ("Assignor"), having an address at 4 Irving Place, New York, New York 10003, and **LUYSTER CREEK LLC,** as Assignee ("Assignee"), having an address at 29-10 Hunter's Point Avenue, Long Island, New York, 11101.

**WHEREAS,** Assignor, as Seller and Assignee, as Purchaser, entered into a Purchase Agreement dated _____ __, 2000 (the "Purchase Agreement") for the sale and purchase of the Premises (as defined in the Purchase Agreement). A portion of the Premises is covered by that certain lease dated January 29, 1998 between Assignor and Federal Aviation Administration of the Department of Transportation of the United States of America (the "FAA") (the "FAA Lease"). The term of the FAA Lease currently ends on September 30, 200_;

**WHEREAS,** the FAA Lease also covers a portion of the Excluded Property (as defined in the Purchase Agreement); and

**WHEREAS,** as set forth in the Purchase Agreement, Assignor and Assignee have agreed that Assignor will assign all of its right, title and interest in and to, and Assignee will assume all of the obligations in, to and under, the FAA Lease.

**NOW THEREFORE,** in consideration of $10.00 and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by Assignor, the

parties agree as follows:

1. Assignor hereby assigns to Assignee, without recourse, all of Assignor's right, title and interest in and to the FAA Lease.

2. Assignee hereby accepts the foregoing assignment and assumes the obligations of the Assignor under the FAA Lease.

3. Assignor hereby agrees to indemnify and hold Assignee harmless from any and all claims (collectively, "Claims") and losses, costs, damages and expenses incurred in connection with such Claims (including, without limitation, reasonable attorneys' fees and disbursements) (a) by reason of the FAA Lease to the extent that the Claims in question or the facts underlying same first arose on or prior to the date of this Assignment and/or (b) in connection with the FAA Lease to the extent same pertain to the Excluded Property.

4. Assignee hereby agrees to indemnify and hold Assignor harmless from any and all Claims and losses, costs, damages and expenses incurred in connection with such Claims (including, without limitation, reasonable attorneys' fees and disbursements) by reason of the FAA Lease to the extent that the Claims in question or the facts underlying same first arose after the date this Assignment, but not to the extent that the Claim in question relates to the Excluded Property.

**IN WITNESS WHEREOF,** Assignee and Assignor have signed this Assignment as of the day and date set forth above.

**ASSIGNOR:**
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: _____
Name:
Title:

**ASSIGNEE:**
LUYSTER CREEK LLC

By: _____
Name:
Title:

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

On the _____ day of _____ in the year 200_ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument .

_____
Notary Public

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

On the _____ day of _____ in the year 200_ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument .

_____
Notary Public

*SCHEDULE F-1*

**FORM OF ESTOPPEL CERTIFICATE**

**[To be signed by Assignor or the FAA pursuant to Section 10(a)(vi) of the Purchase Agreement]**

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
Eastern Region, Federal Building
JFK International Airport
Jamaica, New York 11430MPEHMPSN

As of _____ __, 200_ ("**Effective Date**")

LUYSTER CREEK LLC
29-10 Hunters Point Avenue
Long Island City, NY 11101

Gentlemen:

The undersigned, THE UNITED STATES OF AMERICA ("**Government**") is the tenant under that certain Lease dated as of January 29, 1998 and identified as Lease No. DTFA05-97-L-15159, LaGuardia, NY LLWAS Site #8 by and between Government and CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., as landlord ("**Original Landlord**"), as such Lease may be modified, amended, renewed, extended and/or restated (the "**Lease**"). The Lease covers certain Premises as defined and more particularly described in the Lease (the "**Premises**"). Any capitalized terms used herein which are not defined herein shall have the meanings set forth in the Lease and, unless otherwise specified, all Article and Section references herein shall be deemed to refer to the Lease.

1. Government has received notice from Original Landlord and Luyster Creek LLC, a New York limited liability company ("**Successor Landlord**") that Original Landlord has entered into that certain Purchase Agreement dated _____ __, 2001 (the "**Agreement**") to transfer and assign all of its right, title and interest in and to a certain portion of the Premises to Successor Landlord in accordance with terms and conditions set forth in the Agreement. For purposes of this Certificate, as of the Effective Date the portion of the Premises being so transferred to Successor Landlord shall be referred to as the "**Luyster Premises**" and the remaining portion of the Premises shall be referred to as the "**Con Ed Premises**".

2. The Lease (a true, complete and correct copy of which is attached hereto as ***Exhibit A***) is in full force and effect and has not been amended or modified, except as set forth in the extension letters attached hereto as ***Exhibit A-1***.

3. The Lease terminates on September 30, 200_.

4. To the best of Government's knowledge, (i) Government has no claim against Original Landlord, there exist no defenses or offsets to enforcement of the Lease by Original Landlord, and (ii) there is no default nor any event which with the giving of notice, the passage of time or both would constitute a default by Original Landlord under the Lease known to Government and Government has made no claim nor given any notice to the contrary which has not been resolved. Government has not advanced any funds for or on behalf of Original Landlord for which Government has a right to deduct from or offset against future rent payments. Government has performed all of its obligations under the Lease and Government has not received any notice to the contrary.

5. To the best of Government's knowledge, Government is in full compliance with all Federal, State and local laws, ordinances, rules and regulations affecting Government's construction and use of the Premises and all of Government's initial construction and installation has been completed and Government will not commence any additional construction. [This paragraph is to be deleted if this Estoppel Certificate were to be signed by the Original Landlord].

6. Government has not received any restoration notice from Original Landlord under Section 5(a) of the Lease and has not entered into any supplemental agreement for equitable adjustments under Section 5(b) of the Lease.

7. Government agrees that the proposed use and development by Successor Landlord on the Luyster Premises for development of buildings structures up to fifty (50) feet height [shall not be deemed a hindrance to the establishment and maintenance of the Government's facilities under Section 1(b) of the Lease and Government has waived and hereby waives its right to object to any such buildings structures. Government agrees that Landlord has the absolute right to build improvements on the Demised Premises subject only to the notice requirements set forth in the Lease.] or [permitted under the Lease] (if this Estoppel Certificate were to be signed by the Original Landlord).

8. Government and Original Landlord have not sent any termination notice to the other and the termination right set forth in Section 4 of the Lease remains in full force and effect and has not been waived or modified in any way and either the Government or the Original Landlord may terminate the Lease on thirty (30) days notice pursuant to Section 4 of the Lease

9. Government acknowledges that there is no security deposit in connection with the Lease being held by Original Landlord and that the current monthly rent is $_____ per month which has been paid through _____, 200_.

10. Government has received notice from Original Landlord and acknowledges that effective from the date hereof the monthly rent shall be made payable to "Luyster Creek LLC" at 29-10 Hunters Point Avenue, Long Island City, NY 11101.

11. Government acknowledges that all notices relative to the Lease, including, but not limited to, renewal requests, shall be in writing sent by United States Certified or Registered mail, return receipt requested, and addressed to Successor Landlord as follows until further notice:

To Successor Landlord: Luyster Creek LLC
29-10 Hunters Point Avenue
Long Island City, New York 11101
Attn: Nathan F. Moser

With a copy to: Moser & Moser LLP
63 Wall Street
New York, NY 10005
Attn: Joel H. Moser, Esq.

Baer Marks & Upham LLP
805 Third Avenue
New York, New York 10022
Attn: Kenneth S. Brown, Esq.

12. Tenant acknowledges that this Tenant's Estoppel Certificate will be relied upon by Original Landlord and Successor Landlord and their respective successors and assigns, and further, that lenders and any successor lender of which Tenant has received written notice are intended beneficiaries hereof and shall be entitled to rely hereon in connection with making loans to Successor Landlord, which shall be secured by, *inter alia*, a fee mortgage.

**GOVERNMENT:**

**UNITED STATES OF AMERICA**

By:_____
Name: Toni Lopes
Title: Contracting Officer

APPROVING NOTICE, RENT PAYMENT AND
LEASE MODIFICATION PROVISIONS OF
PARAGRAPHS 10 AND 11

**CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.**

By:_____
Name:
Title:

## *SCHEDULE G*

## *Pro-forma ALTA Title Insurance Commitment (§3)*

ISSUED BY
COMMONWEALTH LAND TITLE INSURANCE COMPANY

OWNER'S POLICY OF TITLE INSURANCE

**Commonwealth**
A LANDAMERICA COMPANY

SPECIMEN

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Pennsylvania corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Policy to become valid when countersigned by an authorized officer or agent of the Company.

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Attest: Chadwick Perrine
Secretary

By: Janet A. Alpert
President

## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the affect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:

   (a) created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy; or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

   (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or

   (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:

      (i) to timely record the instrument of transfer; or

      (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

# CONDITIONS AND STIPULATIC

## 1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a) (iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

## 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required, provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

## 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

## 5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

## 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

Conditions and Stipulations Continued Inside Cover



CONTROL NO. 206-293628

SPECIMEN

Commonwealth

COMMONWEALTH LAND TITLE INSURANCE COMPANY

# SCHEDULE A

**Amount of Insurance:** [redacted]

**Policy/Title No.** NY980131

**Date of Policy:** _____

SPECIMEN

1. **Name of Insured:** Luyster Creek LLC

2. **The estate or interest in the land which is covered by this policy is:**

   Fee Simple

3. **Title to the estate or interest in the land is vested in the Insured by means of:**

   Deed from Consolidated Edison Company of New York, Inc. to Luyster Creek LLC, dated _____ and to be recorded and Declaration of Easements made between Consolidated Edison Company of New York, Inc. to Luyster Creek LLC, dated _____ and to be recorded.

4. **The land referred to in this policy is described on the annexed schedule.**

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COMMONWEALTH LAND TITLE INSURANCE COMPANY

Countersigned: _____

Authorized Officer or Agent

**Valid Only if Schedule B and Cover Are Attached**

SCHEDULE A - ITEM 4 SPECIMEN

NATIONAL PAPER PARCEL A:

All that certain land in the County of Queens, City and State of New York, bounded and described as follows:

COMMENCING at the intersection of the northerly line of 20th Avenue, also known as Winthrop Avenue, with the center line of 33rd Street, if extended;

THENCE north 76 degrees, 08 minutes, 37 seconds west, 19.35 feet to the point of BEGINNING;

And from said point of BEGINNING:

RUNNING THENCE north 76 degrees, 08 minutes, 37 seconds west, along the north line of 20th Avenue, a distance of 331.00 feet to a point;

THENCE north 13 degrees, 51 minutes, 23 seconds east, at right angles to 20th Avenue, a distance of 436.04 feet to a point;

THENCE south 76 degrees, 08 minutes, 37 seconds east, parallel with 20th Avenue, a distance of 6.73 feet to a point;

THENCE north 13 degrees, 51 minutes, 23 seconds east, a distance of 165.30 feet to a point;

THENCE north 76 degrees, 08 minutes, 37 seconds west, a distance of 45.00 feet to a point;

THENCE north 13 degrees, 51 minutes, 23 seconds east, a distance of 69.48 feet to a point of curvature;

THENCE along a curve to the left having a radius of 200.00 feet, and a central angle of 52 degrees, 17 minutes, 08 seconds, 182.51 feet to a point;

THENCE north 38 degrees, 25 minutes, 45 seconds west, a distance of 111.81 feet to a point of curvature;

THENCE along a curve to the right having a radius of 150.00 feet, and a central angle of 52 degrees, 17 minutes, 08 seconds, 136.88 feet to a point;

THENCE north 13 degrees, 51 minutes, 23 seconds east, a distance of 878.31 feet to a point;

THENCE north 46 degrees, 40 minutes, 10 seconds east, a distance of 12.34 feet to a point of curvature;

THENCE along a curve to the right having a radius of 180.00 feet, and a central angle of 28 degrees, 29 minutes, 29 seconds, 89.51 feet to a point;

SPECIMEN

SCHEDULE A - ITEM 4 - continued

SPECIME

THENCE north 75 degrees, 09 minutes, 39 seconds east, a distance of 46.76 feet to a point;

THENCE south 76 degrees, 16 minutes, 39 seconds east, a distance of 314.50 feet to a point;

THENCE south 47 degrees, 32 minutes, 22 seconds west, a distance of 83.79 feet to a point;

THENCE south 31 degrees, 13 minutes, 39 seconds east, 292.86 feet to the Pierhead and Bulkhead line approved by the Secretary of War, March 19, 1921;

THENCE south 60 degrees, 32 minutes, 29 seconds west, along said Pierhead and Bulkhead line, a distance of 82.58 feet to a point;

THENCE south 00 degrees, 41 minutes, 02 seconds west, along said Pierhead and Bulkhead line, a distance of 246.49;

THENCE south 13 degrees, 51 minutes, 23 seconds west, along said Pierhead and Bulkhead line, a distance of 235.93 feet to a point;

THENCE south 6 degrees, 28 minutes, 34 seconds east, continuing along said Pierhead and Bulkhead line, a distance of 191.56 feet to a point;

THENCE south 26 degrees, 16 minutes, 51 seconds east continuing along said Pierhead and Bulkhead line and partially along the most northeasterly side of a grant to Consolidated Edison Company of New York Inc. by Letters Patent dated 5/2/1960 and filed in Book 750 of Patents at Page 326, a distance of 228.18 feet to a point;

THENCE south 76 degrees, 08 minutes, 37 seconds east, 20.35 feet along the aforementioned grant to a point within the Pierhead and Bulkhead line of Luyster Creek;

THENCE south 13 degrees, 51 minutes, 23 seconds west, 116.65 feet along the easterly side of the aforementioned grant to a point;

THENCE north 76 degrees, 08 minutes, 37 seconds west parallel with 20th Avenue, a distance of 322.75 feet to a point;

THENCE south 13 degrees, 51 minutes, 23 seconds west at right angles to 20th Avenue, a distance of 655.94 feet to a point;

THENCE south 76 degrees, 08 minutes, 37 seconds east parallel with 20th Avenue, a distance of 98.30 feet to a point;

THENCE south 13 degrees, 51 minutes, 23 seconds west at right angles to 20th Avenue, a distance of 52.56 feet to the northerly side of 20th Avenue, the point of BEGINNING.

## SCHEDULE A - ITEM 4 - continued

SPECIMEN

**NATIONAL PAPER PARCEL C:**

All that certain land in the County of Queens, City and State of New York, bounded and described as follows:

COMMENCING at the intersection of the northerly line of 20th Avenue, also known as Winthrop Avenue, with the center line of 33rd Street, if extended;

THENCE the following four courses and distances:

1. north 76 degrees, 08 minutes, 37 seconds west along the northerly line of 20th Avenue, 19.35 feet to the point or place of beginning of Parcel A;

2. north 13 degrees, 51 minutes, 23 seconds east, 52.56;

3. north 76 degrees, 08 minutes, 37 seconds west, 98.30;

4. north 13 degrees, 51 minutes, 23 seconds east, at right angles to 20th Avenue, a distance of 570.54 feet to the point or place of BEGINNING.

AND from said point of BEGINNING:

RUNNING THENCE north 13 degrees, 51 minutes, 23 seconds east, 85.40 feet;

THENCE south 76 degrees, 08 minutes, 37 seconds east, 322.75 feet;

THENCE south 13 degrees, 51 minutes, 23 seconds west, 85.40 feet;

THENCE north 76 degrees, 08 minutes, 37 seconds west, 322.75 feet to the point or place of BEGINNING.

## SCHEDULE A - ITEM 4 - continued

SPECIMEN

NATIONAL PAPER PARCELS A AND C (BLANKET DESCRIPTION):

All that certain land in the County of Queens, City and State of New York, bounded and described as follows:

COMMENCING at the intersection of the northerly line of 20th Avenue, also known as Winthrop Avenue, with the center line of 33rd Street, if extended;

THENCE north 76 degrees, 08 minutes, 37 seconds west, 19.35 feet to the point of BEGINNING;

And from said point of BEGINNING:

RUNNING THENCE north 76 degrees, 08 minutes, 37 seconds west, along the north line of 20th Avenue, a distance of 331.00 feet to a point;

THENCE north 13 degrees, 51 minutes, 23 seconds east, at right angles to 20th Avenue, a distance of 436.04 feet to a point;

THENCE south 76 degrees, 08 minutes, 37 seconds east, parallel with 20th Avenue, a distance of 6.73 feet to a point;

THENCE north 13 degrees, 51 minutes, 23 seconds east, a distance of 165.30 feet to a point;

THENCE north 76 degrees 08 minutes 37 seconds west, a distance of 45.00 feet to a point;

THENCE north 13 degrees, 51 minutes, 23 seconds east, a distance of 69.48 feet to a point of curvature;

THENCE along a curve to the left having a radius of 200.00 feet, and a central angle of 52 degrees, 17 minutes, 08 seconds, 182.51 feet to a point;

THENCE north 38 degrees, 25 minutes, 45 seconds west, a distance of 111.81 feet to a point of curvature;

THENCE along a curve to the right having a radius of 150.00 feet, and a central angle of 52 degrees, 17 minutes, 08 seconds, 136.88 feet to a point;

~~THENCE north 13 degrees, 51 minutes, 23 seconds east, a distance of 878.31 feet to a point;~~

THENCE north 46 degrees, 40 minutes, 10 seconds east, a distance of 12.34 feet to a point of curvature;

THENCE along a curve to the right having a radius of 180.00 feet, and a central angle of 28 degrees, 29 minutes, 29 seconds, 89.51 feet to a point;

THENCE north 75 degrees, 09 minutes, 39 seconds east, a distance of 46.76 feet to a point;

THENCE south 76 degrees, 16 minutes, 39 seconds east, a distance of 314.50 feet to a point;

## SCHEDULE A - ITEM 4 - continued

SPECIMEN

THENCE south 47 degrees 32 minutes 22 seconds west, a distance of 83.79 feet to a point;

THENCE south 31 degrees, 13 minutes, 39 seconds east, 292.86 feet to the Pierhead and Bulkhead line approved by the Secretary of War, March 19, 1921;

THENCE south 60 degrees, 32 minutes, 29 seconds west, along said Pierhead and Bulkhead line, a distance of 82.58 feet to a point;

THENCE south 00 degrees, 41 minutes, 02 seconds west along said Pierhead and Bulkhead line, a distance of 246.49 feet to a point;

THENCE south 13 degrees, 51 minutes, 23 seconds west, along said Pierhead and Bulkhead line, a distance of 235.93 feet to a point;

THENCE south 6 degrees, 28 minutes, 34 seconds east, continuing along said Pierhead and Bulkhead line, a distance of 191.56 feet to a point;

THENCE south 26 degrees, 16 minutes, 51 seconds east continuing along said Pierhead and Bulkhead line and partially along the most northeasterly side of a grant to Consolidated Edison Company of New York Inc. by Letters Patent dated 5/2/1960 and filed in Book 75 of Patents of Page 326, a distance of 228.18 feet to a point;

THENCE south 76 degrees, 08 minutes, 37 seconds east, 20.35 feet along the aforementioned grant to a point within the Pierhead and Bulkhead line of Luyster Creek;

THENCE south 13 degrees, 51 minutes, 23 seconds west, 116.65 feet along the easterly side of the aforementioned grant to a point;

THENCE north 76 degrees, 08 minutes, 37 seconds west parallel with 20th Avenue, a distance of 322.75 feet to a point;

THENCE south 13 degrees, 51 minutes, 23 seconds west at right angles to 20th Avenue, a distance of 570.54 feet to a point;

THENCE south 76 degrees, 08 minutes, 37 seconds east parallel with 20th Avenue, a distance of 98.30 feet to a point;

THENCE south 13 degrees, 51 minutes, 23 seconds west at right angles to 20th Avenue, a distance of 52.56 feet to the northerly side of 20th Avenue, the point of BEGINNING.

SPECIMEN

## SCHEDULE A-1

### SCHEDULE OF INSURED EASEMENTS

Together with the Easements set forth in the Declaration of Easements made between Consolidated Edison Company of New York Inc. and Luyster Creek LLC, dated _____ and to be recorded.

SPECIMEN

## SCHEDUE A-2

### SCHEDULE OF CONTIGUITY INSURANCE

1. Policy insures that the "Easement for Ingress and Egress" as described in the Declaration of Easements made between Consolidated Edison Company of New York Inc. and Luyster Creek LLC dated _____ and to be recorded and as shown on the survey made by Geod dated 3/1/2000 is contiguous along part of the westerly record line of Parcel A herein.

2. Policy insures that the premises east of Parcel C and part of Parcel A herein, designated on the survey made by Geod dated 3/1/2000 as "property owned by others" is contiguous to the easterly record line of Parcel C and part of the easterly record line of Parcel A herein.

3. Policy insures that Parcel A herein is contiguous along part of the easterly record line thereof with Parcel B as shown on a survey made by Geod dated 3/1/2000.

4. Policy insures that Parcel C herein is contiguous along the southerly record line thereof with Parcel B as shown on a survey made by Geod dated 3/1/2000.

## SCHEDULE B
## Exceptions from Coverage

SPECIMEN

**This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of the following (except as to indicated special coverages and affirmative insurance):**

1. a. Variations between curbs, fences, walls and the record lines of title.

   b. Planter is up to 5.4 feet east of part of the westerly record line.

   c. Fence is up to 2.0 feet west of part of the westerly record line.

   d. Curb is up to 1.3 feet west of part of the westerly record line.

   e. Curb is up to 1.4 feet east of part of the westerly record line.

   f. Fence posts are up to 1 foot more or less southeast of the northwesterly record line.

   g. Fence is up to 3.8 feet west of part of the easterly record line. Owner is out of possession, Title to said strip is not insured.

   **Note: Upon receipt of an affidavit of Bowery Bay Realty, LLC, acceptable to this Company, disclaiming any rights to the out of possession area, the statement "Owner is out of Possession, Title to said strip is not insured" will be removed.**

   h. New York Telephone line in the southerly part of premises; ~~Policy excepts Rights of the Telephone Company to use and maintain same~~. (Affects Parcel A) pursuant to indenture set forth in 2d

   i. 2 inch water line in the southerly part of premises, 6 inch and 8 inch Water Lines in the northwesterly part of premises and 4 inch Water Line in the northerly part of premises.

   j. Two 27 kv feeder cables and 4 kv overhead line in the northerly part of premises, 138 kv pole line in the westerly part of premises and secondary overhead line in the northerly part of premises.

   k. Thirty (30) inch Storm Sewer in the southwesterly part of premises.

   **With respect to the Easements recited in ~~a, e~~ (h) (i) and ~~g~~ (j) above, policy insures that the sole holder of these Easements rights is The Consolidated Edison Company of New York, Inc. ~~Pursuant to that certain Easement Agreement set forth in Exception 2w below~~.**

   l. Proposed 85 foot Easement in the northerly part of premises to be reserved in the Deed made by The Consolidated Edison Company of New York to the insured herein.

**Note:** Although this survey shows 19th Avenue prolonged (Riker Avenue) running through the premises herein, no exceptions pertaining thereto will be raised.

As shown on Survey made by Geod dated 10/31/2001.

## SCHEDULE B - continued

SPECIMEN

2. Covenants, conditions, easements, agreements of records, etc., as follows:

a. Terms, Covenants, Conditions and Reservations set forth in the Letters Patent to The Astoria Light Heat and Power Company, dated 12/12/1899, recorded 12/28/1899 in Liber 1227 Cp 423 (Affects Parcel A), but this policy insures that for so long as the patented lands are used for purposes of "Commerce", the State of New York may not enforce any right contained therein which would result in a reversion or forfeiture of title to the said patented lands insured hereunder.

For the purpose of this Exception and Exceptions 2b and 2c below, the term "Commerce" shall be construed to include any commercial, industrial or retail use, as well as the uses of the premises employed by The Consolidated Edison Company of New York, Inc. immediately prior to the date of this policy.

b. Terms, Covenants, Conditions and Reservations set forth in the Letters Patent to The Astoria Light, Heat and Power Company, dated 5/12/1904, recorded in the Office of the Secretary of State at Book No. 54, page 28 (Affects Parcel A), as located on the survey set forth in Exception 1 herein. But this policy insures that for so long as the patented lands are used for purposes of "Commerce", the State of New York may not enforce any right contained therein which would result in a reversion or forfeiture of title to the said patented lands insured hereunder.

Notwithstanding the above affirmative insurance, nothing herein shall be construed as affording affirmative coverage against the right of acquisition set forth in the said patent in favor of the City of New York, nor as affording affirmative coverage against the Right of Re-Entry exercisable by the State of New York in the event that the insured violates the covenants and conditions pertaining to the City of New York's said right of acquisition. (Affects Parcel A, as located on the survey set forth in Exception 1 herein.

c. Terms, Covenants and Conditions of an Agreement Pertaining to the filling in of Berrians Creek made by and between The Astoria Light, Heat and Power Company, Astoria Veneer Mills, Oakes Manufacturing Company and Steinway and Sons, dated 11/27/1903 and recorded 5/25/1904 in Liber 1332 Cp 388. (Affects Parcel A only).

d. Easement for the telephone ducts with associated encasements, conduits, sleeves, pipes, manholes, supporting structures and appurtenances over the southerly portion of premises held by The New York Power Authority as set forth in Section II (10) on Page 9 of the Indenture made between Consolidated Edison Company of New York, Inc. and the Power Authority of the State of New York (the predecessor to The New York Power Authority) dated as of 12/13/1974 and recorded on 12/18/1974 in Reel 806 Page 598, as amended by that certain Correction Deed made between the same parties dated 8/12/1999 and recorded on 9/17/1999 in Reel 5376 Page 1558. As said easement is located on the survey set forth in Exception 1 herein.

Note: Policy insures that there are no other Easements in the said Indenture which burden the insured premises.

## SCHEDULE B - continued

SPECIMEN

e. Terms, Covenants, Conditions, Provisions, and Agreements of the unrecorded F.A.A. Lease, dated 1/29/1998 made by Consolidated Edison Company of New York, Inc., as landlord to United States of America, as tenant. (Affects Parcel A only).

f. Astoria Zoning Lot Development Agreement made by and between Consolidated Edison Company of New York, Inc. and Astoria Gas Turbine Power LLC dated as of 6/25/1999 and recorded 7/23/1999 in Reel 5320 Page 804. (Affects Parcels A and C).

g. Declaration of Easements made between Consolidated Edison Company of New York, Inc. and Luyster Creek LLC, dated _____ and to be recorded.

3. Rights of the public generally to and over those lands lying below the present high water mark of Luyster Creek or Berrians Creek, as said present high water mark is delineated on that certain survey made by Geod dated 3/1/2000. (Affects Parcel A)

4. Rights of the Federal Government to enter upon and take possession without compensation of land now or formerly lying below the high water mark of the Luyster Creek or Berrians Creek, but this policy insures that the possession, use and enjoyment of the insured in the said lands which are filled in as of the date hereof and which lie inshore of the Pierhead and Bulkhead Line of March 19, 1921 as shown on that certain survey made by Geod dated 3/1/2000 ("the Affirmatively Insured lands") will not be disturbed, and that if any of the Affirmatively Insured lands are taken by the United States of America compensation will be paid therefor as if subject to a condemnation. (Affects Parcels A and C)

5. Rights of the People of the State of New York and/or the People of the City of New York in that area of the premises now or formerly under the water of Luyster Creek or Berrians Creek and for which the State of New York has not granted letters patent. (Affects part of Parcel A, as located on the survey set forth in Exception 1 herein.

6. Policy insures that no portion of the premises described in Schedule A lies within a mapped street on the Final City Plan.

**Commonwealth**

COMMONWEALTH LAND TITLE INSURANCE COMPANY

File/Policy No. NY980131

## STANDARD NEW YORK ENDORSEMENT (OWNER'S POLICY)

SPECIMEN

1. The following is added to the insuring provisions on the face page of this policy:

   "5. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy."

2. The following is added to Paragraph 7 of the Conditions and Stipulations of this policy:

   "(d) If the recording date of the instruments creating the insured interest is later than the policy date, such policy shall also cover intervening liens or incumbrances, except real estate taxes, assessments, water charges and sewer rents."

Nothing herein contained shall be construed as extending or changing the effective date of the policy unless otherwise expressly stated.

SPECIMEN

IN WITNESS WHEREOF the Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the __ day of _____.

Countersigned

COMMONWEALTH LAND TITLE INSURANCE COMPANY

By: Janet A. Alpert
President

Attest: L. Chadwick Perine
Secretary

By _____
Authorized Officer or Agent

# CONDITIONS AND STIPULATIONS

(Continued)

## 7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A: or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

SPECIMEN

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

## 8. APPORTIONMENT.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

## 9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

## 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

## 11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

## 12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

## 13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

## 14. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

## 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

## 16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

## 17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to: Consumer Affairs Department, P.O. Box 27567, Richmond, Virginia 23261-7567.

## *SCHEDULE H*

***Not Used***

## *SCHEDULE I*

### *Title Affidavit*

*Title Policy No. NY 980131*

**ASTORIA**
**TITLE AFFIDAVIT**

State of New York )

County of New York )

_____, being duly sworn, deposes and says:

1. That I am a _____ of Consolidated Edison Company of New York, Inc. ("Con Edison"), the owner of the premises described in Schedule A of Commonwealth Land Title Insurance Company's ("Commonwealth") Title Report No. NY980131 (the "Premises").

2. That I am familiar with Exception 5(k) in Schedule B of the said Title Report, which Exception relates to a certain Cesspool Permit recorded in Liber 6921 Cp 177 (the "Permit").

2(a). That to my knowledge, the cesspool which is the subject of the Permit lies wholly outside of the Premises and, further, the said cesspool does not service any facilities lying within the Premises.

3. That there are no tenants in the Premises other than the Federal Aviation Administration, which is the lessee under an unrecorded lease dated 1/29/1998.

4. That there are no street vaults abutting the Premises.

5. That there has been no work done upon the Premises by the City of New York, nor any demand for any such work by the City of New York, that may result in charges assessed by the Department of Health.

6. That there are no unpaid fees or charges levied by the City of New York Department of Buildings for inspections, reinspections, examinations, services or permits relating to the Premises.

7. The Premises are not improved by a multiple dwelling.

8. That all New York State Franchise Taxes, Gross Receipts Taxes and Excise Taxes imposed upon Con Edison under Articles 9 and 9(A) of the Tax Law and which are currently due, have been paid in full. And that all New York City General Corporation Taxes, Gross Receipts Taxes and Excise Taxes, imposed upon Con Edison under the New York City Administrative Code and which are currently due, have been paid in full.

9. That I make this Affidavit with the knowledge that Commonwealth will rely upon it in issuing policies insuring title to the Premises.

10. As used herein, reference to the knowledge of the undersigned shall mean the actual knowledge after due inquiry within the Company from records and personnel reasonably deemed by the undersigned to have bearing on the facts set forth in this Affidavit.

By: _____

Sworn to before me this
___ day of_____, 200_

_____
Notary Public

Sch. J.

Luyster Creek LLC
29-10 Hunters Point Avenue
Long Island City, NY 11101

June 4, 2001

Mr. Michael Buffa
Consolidated Edison Company of
New York, Inc.
Astoria LNG Facility
20th Avenue and 31st Street
Astoria, New York 11105

Dear Mr. Buffa:

The June 20, 2000 letter from Chief Barbara, Chief of the Fire Prevention of the New York City Fire Department addressed the proposed construction of an envelope factory employing upwards of four hundred people next to the Con Edison LNG Facility in Astoria, New York. In that letter, Chief Barbara indicated that "due to the potential hazard that such...(a) paper factory may impose on adjacent exposures, it is our opinion that a risk analysis should be conducted to determine what risk or interactive effects, if any, such facilities may have on each other." In addition to the proposed envelope factory, the proposed purchasers of the property may develop portions of the parcel for any use permitted on ***Schedule A*** annexed hereto. This letter also addresses those possible uses (collectively, "Other Uses"). In order to evaluate those possible interactive effects, you have requested certain information for your consideration. In response to your request, please be advised of the following:

1. What manufacturing processes are contemplated by the envelope manufacturer or other users of this site?

   **The envelope manufacturer will take large rolls of paper and cut and fold the paper into envelopes for sale to distributors. Any of the Other Uses on this site will not engage in manufacturing processes.**

2. What materials will be handled at this site?

   **The conversion of paper rolls into envelopes will not involve use of foams or coating systems. The only plastics used in the creation of envelopes will be a minimal amount of plastics for windows in some styles of envelopes. The only adhesive, sealant or glue (collectively "Resins") used in the creation of envelopes will be a FDA resin. Inks used will be water based. Any of the Other Uses on this site will be limited storage and sale of dry goods and possibly ancillary food preparations and sales including open flame cooking (but only with legally required fire control safety measures in place). Any resin sales or storage will be in containers sealed by the manufacturer except for small amounts of cleaning actually used for daily cleaning purposes.**

3. What types of materials will be used at this site?

**The envelope manufacturer will use large rolls of paper for cutting and folding into envelopes for sale to distributors. A warehouse facility may store paints, cleaning fluids and other Resins as noted above, but same would be sold or warehoused strictly within a non-combustible sprinklered building.**

4. What chemicals will be used at the facility?

**The user does not anticipate utilizing any chemicals at this facility in its conversion of paper rolls into envelopes. None of the Other Uses would use chemicals, other than normal cleaning solutions as noted above.**

5. What will be the construction classification of the proposed building?

**All proposed buildings will be non-combustible and fully sprinklered. It is anticipated that the proposed building which will be steel frame and concrete walls, will have not less than a two hour fire-rating, i.e., New York City Construction Class I-C.**

6. What outside storage of flammables or combustibles is proposed? If there will be outside storage, what fire protection will be provided?

**There will be no outside storage of flammables or combustibles.**

7. How many workers and customers will be in the envelope factory and other establishments at any peak hour?

**There will be no more than 200 workers in the factory in any one hour, while it is anticipated that the Other Use establishments (in the aggregate) would have no more than 110 employees during a peak hour. The factory will not be open to general retail trade, so the number of customers in the factory at any one time will be extremely limited. The Other use establishments (in the aggregate) could have up to 500 customers at any one time.**

I trust that this information is sufficient for you to prepare your report to the Fire Department.

Sincerely yours,

LUYSTER CREEK LLC

By: _____

Nathan F. Moser, Manager

## *SCHEDULE K*

### *Down Payment Escrow Agreement*

### ESCROW AGREEMENT

**THIS AGREEMENT** made and entered into as of the ____ day of _____, 200_, by and among CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation ("Seller"); LUYSTER CREEK LLC, a New York limited liability company ("Purchaser"); and COMMONWEALTH LAND TITLE INSURANCE COMPANY ("Escrow Agent").

W I T N E S S E T H:

**WHEREAS**, Seller and Purchaser entered into that certain Purchase Agreement (the "Purchase Agreement"), made as of even date herewith, with respect to that certain property located and more particularly described in Schedule "A" to the Purchase Agreement and made a part hereof; and

**WHEREAS**, Purchaser and Seller desire that Escrow Agent hold the Down Payment as required under the Purchase Agreement, in escrow pursuant to the terms hereof.

**NOW, THEREFORE**, in consideration of the premises and of good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties covenant and agree as follows:

Capitalized terms used herein but not defined herewith shall have the meanings ascribed in the Purchase Agreement.

Purchaser and Seller hereby appoint Commonwealth Land Title Insurance Company as Escrow Agent hereunder.

Purchaser has delivered to and deposited with Escrow Agent the amount of _____ DOLLARS ($_____), which shall constitute the Down Payment as set forth n Section 2(a) of the Purchase Agreement. The Escrow Agent agrees to immediately deposit said funds in an interest bearing account and to hold and disburse said funds, and any interest earned thereto, as hereafter provided.

Upon written notification from Purchaser and Seller that the contemplated sale is to be consummated, Escrow Agent shall deliver the Down Payment and any accrued interest to Seller to be applied to the Purchase Price on the Closing Date. The Purchaser's Federal Taxpayer Identification Number is _____.

Upon written notification from Purchaser and Seller that the contemplated sale shall not take place, Escrow Agent shall deliver the Down Payment and any accrued interest to Purchaser or Seller in accordance with the Purchase Agreement.

The parties acknowledge that in relation to the escrow, Escrow Agent is acting solely at their request and for their convenience, that Escrow Agent shall not be deemed to be the agent of either of the parties, and that Escrow Agent shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith or willful disregard of this *Agreement* or involving gross negligence. Seller and Buyer shall, jointly and severely, indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to acts or omissions taken or suffered by Escrow Agent in bad faith, willful disregard of this Agreement or involving gross negligence on the part of Escrow Agent.

In any event of a dispute between any of the parties hereto, Escrow Agent shall tender unto the registry or custody of any court of competent jurisdiction sitting in New York County in the State of New York, all money in its hands held under the terms of this Agreement, together with such legal pleading as is appropriate and thereupon be discharged.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed and its seal to be affixed hereto as of the day and year first above written.

**SELLER**:

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
a New York corporation

By: _____
Name:
Title:

**PURCHASER**:

LUYSTER CREEK LLC
a New York limited liability company

By: _____
Name:
Title:

**ESCROW AGENT**:

COMMONWEALTH LAND TITLE INSURANCE COMPANY

By: _____
Name:
Title:

## ***SCHEDULE L***

***Not Used***

Schedule M
Part 1

NY971423

LETTERS PATENT AT Book No. 54 Page 28

The People of the State of New York, by the Grace of God Free and Independent, TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, that pursuant to a resolution of the Commissioners of our Land office, dated December 18, 1903 and April 28, 1904 and for the purpose of granting and conveying a restricted beneficial enjoyment in and to the lands under water and between high and low water mark hereinafter described, to The Astoria Light, Heat and Power Company the owner of the adjacent uplands and for no other object or purpose whatsoever, and with the reservations and upon the conditions hereinafter expressed, we have given and granted, and by these presents, do give and grant unto The Astoria Light, Heat and Power Company, its successors and assigns the land under water and between high and low water mark, described as follows, to wit:

All that certain piece or parcel of land under waters of the East River or Luyster Creek in front of and adjacent to upland of the grantee herein, in the Borough of Queens, in the County of Queens in the City of New York and State of New York, described as follows

Beginning at a point in the Pier and Bulkhead Line established by the War Department, 1891, on the westerly side of Luyster Creek, and in the easterly line of the lands under water granted to The Astoria Light, Heat and Power Company, December 12, 1899, which point is distant seven hundred and eighty feet northerly from the northerly line of Riker avenue produced, measured on a line at right angles thereto, and distant six hundred feet westerly from the westerly line of Blackwell Street, measured on a line at right angles thereto, thence northerly and westerly along said Pier and Bulkhead line as the same bends and along the said granted lands two thousand five hundred and fifty feet to the lands under water adjacent to Lawrence Point granted to Edward J. Woolsey, October 6, 1873, and now owned by the grantee herein; thence north twenty degrees east and along said granted lands six hundred and ten feet to the Pier and Bulkhead line, established by the War Department in 1903, for the easterly shore of the East River at Lawrence Point; thence along said line of 1903, south sixty seven degrees fifty nine minutes east seven hundred and forty feet to its point of intersection with the lands under water adjacent to Berrian Island, granted to Edward J. Woolsey, October 6, 1873, now owned by the grantee herein; thence south twenty one degrees thirty minutes west and along said granted lands three hundred and ten feet to the Pier and Bulkhead line of Berrian Island established 1891, which line is also the westerly boundary line of lands under water adjacent to Berrian Island granted to The Astoria Light, Heat and Power Company December 12, 1899; thence in a southerly direction and along said Pier and Bulkhead line of 1891, as the same bends and along said granted lands five hundred and ten feet to the lands under water granted to Edward J. Woolsey aforesaid, now owned by the grantee herein, thence along the said granted lands the following courses and distances:

South twenty-one degrees thirty minutes west one hundred and sixty feet; south thirty-eight degrees thirty minutes east two hundred and fifteen feet; north forty-five

degrees east one hundred and twenty nine feet to the Pier and Bulkhead line as established by the War Department, 1891, for the northeasterly side of Berrian creek, which line is also the southerly and westerly boundary of the lands under water adjacent to Berrian Island granted to The Astoria Light, Heat and Power Company December 12, 1899; thence southerly and easterly along said Pier and Bulkhead line of 1891, as same bends and along said granted lands one thousand eight hundred feet to lands under water granted to Edward J. Woolsey, aforesaid, and now owned by the grantee herein; thence south nine degrees thirty minutes west and along said granted lands fifteen feet to the Pier and Bulkhead line established 1903; thence north seventy-six degrees eleven minutes west and along said Pier and Bulkhead line of 1903, three hundred and fifty feet to the point or place of beginning, containing twenty-one acres and fifty two hundredths of an acre.

These letters patent are issued however subject to such right, title and interest as the City of New York has under the provisions of its charter lands under water in front of projected streets, if any such there be, and such right, title and interest, if any are excepted from this grant and reserved to said city.

This grant is made and accepted upon the express covenant, terms and conditions that the City of New York may at any time hereafter acquire the interest in the premises herein described, which the patentee may have acquired under or by virtue of this patent upon paying to the patentee, its successors or assigns the amount paid by said patentee to the State for said interest in said premises, together with the expenses necessarily incurred by the patentee for the acquiring of such patent which are hereby fixed at the sum of $350, and also the value of the improvements on said premises and all damages, if any there be, to the improvements on the contiguous property of the patentee, or may acquire the interest acquired under this patent to a part or portion of said premises upon paying to the patentee, its successors or assigns the proportionate share of the amount paid by such patentee to the State for such interest in such part or portion and a proportionate part of said expenses, together with the value of the improvements on the portion thereof acquired at the time The City of New York shall acquire title to such interest and also all damages, if any there be, to the improvements upon the contiguous property of the patentee not acquired by The City of New York, as shall be occasioned by the division of the herein described premises; and that the patentee, it successors or assigns, shall not demand, claim or be entitled to receive any further, other or greater compensation for any interest it may have acquired under or by virtue of this patent in or to said premises or in or to the part or parcel thereof so taken by the City of New York.

And it is further covenanted and agreed in case of a violation or breach of the foregoing covenants, terms and conditions in any manner on the part of the said grantee , its successors or assigns, then the estate hereby granted shall terminate and these letters patent shall become null and void, and the People of the State of New York may re-enter into and become possessed of said premises hereby granted and every part and parcel thereof. These letters patent are issued for the following purposes: To enclose said land under water by a substantial wall, and to fill in the same wall with solid filling and to erect thereon docks for landing and unloading of such boats as the depth of the water will permit and also to erect such other buildings and structures as may be necessary for the

grantee's business of landing such other supplies and manufacturing gas therefrom on its property in that vicinity.

Excepting and reserving to all and every the said people . the full and free right liberty and privilege of entering upon and using all and every part of the above-described premises in as ample a manner as they might have done had this power and authority not been given, always excepting such parts thereof as are actually occupied and covered by structures, docks or buildings of a substantial character, and such parts of said premises as have been actually filled in and reclaimed from low or marsh land; provided that unless the improvements above named are completed within five years from the date of these presents this grant shall cease and determine and become null and void.

In testimony Whereof, We have caused these our Letters to be made Patent and the Great Seal of our said State to be hereunto affixed.

Benjamin B. Odell, Jr., Governor or our said State at our City of Albany, the twelfth day of May in the year of our Lord one thousand nine hundred and four.

## ***SCHEDULE N***

***Not Used***

## ***SCHEDULE O***

***Not Used***

# Exhibits

## ***EXHIBIT A***

### ***Declaration of Easement Part 1***

Part 1: Con Ed Standard Form.

[Draft-2/23/00]

# DECLARATION OF EASEMENTS AGREEMENT

**By and Between**

**CONSOLIDATED EDISON COMPANY OF NEW YORK. INC.**

**and**

**Dated as of**

**Address:**

**Record and Return to:**

Consolidated Edison Company of New York, Inc.
4 Irving Place, Room 1810S
New York, New York 10003
Attn: Candida L. Canizio, Esq.

## TABLE OF CONTENTS

Exclusive

This DECLARATION OF EASEMENTS AGREEMENT (including the Exhibits and Schedule is herein called. this "Agreement") dated as of _____ by and between CONSOLIDATED EDISON COMPANY OF NEW YORK. INC., a New York corporation ("Seller") having an office at 4 Irving Place, New York New York 10003 and _____ having an office at _____ ("Buyer") and collectively with Seller, the "Parties").

**WITNESSETH:**

WHEREAS, the Parties have entered into a ~~Sale and~~ Purchase Agreement dated as of _____ (the "~~Sale~~ Agreement") for the sale to Buyer of the property described therein owned by Seller (the "Buyer Parcel");

WHEREAS, Seller intends to continue to [description of activity to be provided] (the "Use")

WHEREAS, pursuant to the Sale Agreement, Seller and Buyer have agreed that Seller may retain ownership to certain designated equipment, fixtures, assets and facilities on Buyer Parcel (the "Seller's Facilities");

WHEREAS, Buyer Parcel is more particularly described on Exhibit A attached hereto and on the Plan (herein defined) attached to Exhibit A;

WHEREAS, following the consummation of the purchase and sale transaction contemplated by the Sale Agreement, Seller will retain ownership of Seller's Facilities in, on, under, adjoining or affecting Buyer Parcel and the improvements (if any) thereon;

WHEREAS, the Parties desire to describe certain easements reserved by Seller to permit Seller to retain ownership and access to Seller's Facilities that, following consummation of the purchase and sale transaction contemplated by the Sale Agreement, will be located in, on, under, adjoining or affecting Buyer Parcel.

NOW, THEREFORE, in order to carry out the transactions contemplated by the Sale Agreement and this Agreement. and in consideration of the mutual representations, covenants and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE I

## Definitions

SECTION 1.01. Generally. All capitalized terms used herein shall have the meanings ascribed to them in the Sale Agreement unless otherwise defined in this Agreement.

SECTION 1.02. Definitions. As used in this Agreement. the following terms shall have the following meanings:

"Agreement" shall have the meaning set forth on page 1.

"Buyer" shall have the meaning set forth on page 1.

"Buyer Parcel" shall have the meaning set forth on page 1.

"Casualty" shall have the meaning set forth in Section 5:01.

"Curing Party" shall have the meaning set forth in Section 4.02.

"Defaulting Party" shall have the meaning set forth in Section 4.02.

To be redefined to cover both Buyer & Seller ("Buyer & Seller")

"Easement" means any right, interest or easement reserved to Seller with respect to Buyer Parcel under this Agreement.

"Easement Area" means the area on. above or below the surface of the ground within which are located Seller's Facilities for which an Easement is reserved hereunder. For those Easement Areas specifically described on the Plan, the Easement Area shall consist of the space described on Exhibit A (provided. however, that any conflict between the description on Exhibit A and the actual location of the Easement Area shall be resolved in favor of the actual location of the Easement Area) and for those Easement Areas not described on Exhibit A. the Easement Area shall consist of (i) the space actually occupied by a particular Seller's Facility and (ii) the additional space immediately adjacent on either side of such Facility that is reasonably necessary for access to the Seller's Facility for purposes of exercising the Easements.

To be tailored for each Easement, if needed

"Easement for Ingress and Egress" shall have the meaning set forth in Section 2.01.

"Entry Rights" means rights of Seller as necessary or desirable to exercise its rights (including Self-Help Rights) under this Agreement, to maintain, repair, replace, substitute or construct Seller's Facilities or to erect additional Seller's Facilities on Buyer Parcel which may be located adjacent to, above, under or

Buyer & Seller

within an Easement Area; provided that such rights shall be exercised in accordance with Section 4.07.

Buyer & Seller → "Facility" means the Seller's Facilities, and "Facilities" means the Seller's Facilities.

[a] "Mortgagee" means the holder. from time to time. of a mortgage on all or any portion of ~~the Buyer~~ Parcel.,

"Parties" shall have the meaning set forth on page 1

"Permittee" means the Seller and those claiming by, through or under it and its respective officers, directors, trustees, employees, agents, contractors, subcontractors. customers, visitors, invitees and licensees.

N/A → "Plan" means that certain map attached to Exhibit A prepared by _____ and dated _____

"Reimbursement Rights" means. the rights of a Curing Party which has exercised its Self-Help Rights (as defined below'). to collect from the Defaulting Party the reasonable costs and expenses actually expended by the Curing Party in exercising its Self-Help Rights, including reasonable attorneys' fees.

"Sale Agreement" shall have the meaning set forth on page X.

"Self-Help. Rights" shall have the meaning set forth in Section 4.02.

"Seller" shall have the meaning set forth on page X.

→ "Seller's Facilities" means those facilities reserved by and for Seller in a certain deed between Buyer and Seller attached hereto as Exhibit B which facilities are located in or on an Easement Area and further described on Schedule 2.01(a).

Buyer & Seller

"Taking" shall have the meaning set forth in Section 5.03.

ARTICLE II ← NOTE: Add Buyer's Easement

**Reserved Easements**

SECTION 2.01. Seller's Easements. Buyer acknowledges that, as a result of the Closing pursuant to the Sale Agreement, Seller has reserved ownership to the Facilities described on Exhibit B to the Deed and reserved the following rights and Easements:

(a) Easement for Seller's Facilities. Seller has the exclusive right and Easement over Buyer Parcel for the purposes described in Schedule 2.01(a) attached hereto. The Easements reserved in the Deed and described herein include the right to take such other actions as may be reasonably necessary for the full exercise of the Easement rights specified in Schedule 2.01(a).

(b) Easement for Access. The right and Easement to use, and to permit its Permittees to use, in common with Buyer all walkways, parking areas, driveways and accessways now or hereafter located on the Buyer Parcel, in accordance with the terms hereof (including any requirements set forth therein requiring Seller to obtain a Buyer escort prior to gaining access to Buyer Parcel), for pedestrian and vehicular access, ingress and egress to and from the Easement Areas and the Seller's Facilities, including the passage of motor vehicles of every kind and nature into, out of, on, over and across such portions of the Buyer Parcel for access to and from the Easement Areas and the Seller's Facilities, to the extent required for the exercise of the Easements reserved to Seller under Section 2.01(a) above.

(c) Reservation Of Rights. Without in any way limiting the rights of Buyer as the fee owner of the Buyer Parcel, there are hereby reserved to Buyer all rights in and to the Easement Areas located on the Buyer Parcel. to the extent such rights are not inconsistent with and do not materially interfere with the use of the Easement Areas by Seller and the exercise by Seller of the Easements herein set forth. Buyer shall have the right to change the location of Easement Areas in accordance with the provisions of Section 4.09.

SECTION 2.02. Condition of Easement Areas. The rights and Easements herein described are subject to any existing state of facts affecting the respective Easement Areas, and the Buyer makes no representation, covenant or warranty as to the condition of any such Easement Area.

## ARTICLE III

## Term of Easements; Abandonment

SECTION 3.01. Term. Unless expressly set forth herein, all Easements described herein shall be perpetual; provided, however. that all rights with respect to a particular Easement Area shall expire and terminate upon the expiration of sixty days following the total, or substantially total. removal. demolition. or destruction of the Facility with respect to which such Easement Area was established, unless (a) prior to the expiration of such sixty-day period, Seller notifies the owner of the servient estate that the Seller intends to restore or reconstruct such Facility and (b)such restoration and reconstruction is

expeditiously commenced and prosecuted to completion. In the event of such restoration or reconstruction, the Parties agree to record in the Office of the City Register, ~~Bronx~~ County, a continuance or extension of this Agreement with respect to any Easement which would otherwise have been subject to termination pursuant to this Section 3.01, in order to confirm of record the continuance of such Easement.

SECTION 3.02. Abandonment. The cessation of use or operation of a Facility shall not be deemed an abandonment thereof resulting in a termination of such Easement. unless Seller, upon receipt of a notice from the owner of the servient estate. fails. within a period of sixty days following the receipt of such notice. to affirm. by notice to the owner of the servient estate, its intention to continue use and operation of the Facility. Seller shall not be required to provide such notice of affirmation more often than once in every twelve month period with respect to any of Seller's Facilities.

## ARTICLE IV

## Use, Repair and Maintenance of Easements

SECTION 4.01. Maintenance Obligation. Buyer shall, at its sole cost and expense. with respect to each Easement Area located on or within Buyer Parcel (i) maintain the surface and subsurface of the improved portions of the Easement Area in good repair and condition. (ii) keep the Easement Area reasonably free of obstructions (including, without limitation, snow and ice) and adequately illuminated and (iii) maintain the security of the Easement Area. As used in this Section 4.01, the term 'maintain" shall include repair and/or replacement, to the extent applicable.

SECTION 4:02. Failure to Maintain. If a Party (the "Defaulting Party") fails to perform any obligation set forth herein. the other Party (the "Curing Party") shall have the right to perform the actions which the Defaulting Party failed to perform in accordance with this Agreement (the "Self-Help Rights") and shall be entitled to Entry Rights and Reimbursement Rights with respect thereto. Notwithstanding the foregoing. Self-Help Rights may only be exercised after failure of the Defaulting Party to perform any actions required to be performed pursuant to this Agreement (i) if no emergency exists. within thirty days after notice from the Curing Party, or if such failure is not curable within said period. within such longer period as is reasonably necessary to cure such failure. provided the Defaulting Party begins to cure such failure within such thirty-day period and thereafter diligently prosecutes the same to completion; and (ii) in any emergency situation, immediately upon written or (notwithstanding any other provisions of this Agreement) verbal notice, if prior notice is practicable, or. if such notice is not practicable. then without giving prior notice to the Defaulting

Party, provided that the Curing Party shall. in such circumstances, give the Defaulting Party notice thereof as soon thereafter as practicable. All work to be performed by the Curing Party so acting under the provisions of this Agreement shall be performed in accordance with Section 4.07.

SECTION 4.03. Use of Easement Area During Construction or Maintenance. During the performance of any construction or maintenance work by Buyer on Buyer Parcel, Seller shall have the right at its own risk, to use any affected Easement Areas for the purposes contemplated herein; provided, however, that each Party shall cooperate to keep such Easement Area reasonably free of obstructions. and the Parties shall implement such other safety and similar measures as may be required by an applicable legal requirements imposed by any federal, state or municipal government, agency or commission having jurisdiction over the construction, property or the work (the "Applicable Legal Requirements").

SECTION 4.04. General Use Conditions. Seller shall not use an Easement Area in such a manner so as to reduce. injure, overload, deface, harm or impair the applicable Easement Area. Any damage caused by Seller or its Permittees in violation of this provision shall be promptly repaired by Seller, or whose Permittees caused, such damage.

SECTION 4.05. Compliance with Law. Seller shall use the Easement Areas in accordance with Applicable Legal Requirements.

SECTION 4.06. Notification of Proposed Activity. Whenever a proposed activity of a Party is reasonably expected to have an adverse impact on the use of an Easement Area by the other Party, the Party proposing such activity shall notify the other Party of such proposed activity reasonably in advance. so that the other Party may implement reasonable measures designed to mitigate the impact thereof. This notification requirement shall apply in all cases, including emergencies, provided that in the case of emergency, the notice given shall be such notice as is reasonably practicable under the circumstances.

SECTION 4.07. Performance of Work. All work to be performed under this Agreement by Seller in or affecting the Easement Areas on Buyer Parcel (i) shall not impair the structural integrity of any improvement situated on Buyer Parcel; (ii) shall not be undertaken until the Seller shall have procured and paid for all required Permits; (iii) shall be performed in accordance with Applicable Legal Requirements: (iv) shall be performed by contractors fully insured, licensed (to the extent required by Applicable Legal Requirements) and competent to do the work being undertaken and (v)shall be diligently prosecuted to completion. During any construction or reconstruction work, the construction site shall be kept in an orderly, clean and safe condition. The Seller shall pay when due all claims for labor performed for Seller or material furnished to Seller and shall not permit any mechanics' or materialmen's lien to attach, and if any such liens do attach,

the Seller shall immediately notify the other Party and bond such liens in accordance with any applicable statutory provision.

Notwithstanding anything in this Section 4.07 or any other section to the contrary, under no circumstances will Seller be found in breach of this Section 4.07 or any other section as a result of future construction or a change to the manner of use of Buyer Parcel.

SECTION 4.08. Notice of Entry. Whenever Seller shall intend to enter upon an Easement Area to perform any work, the Seller shall give twenty-four hours advance verbal notice thereof to the other Party. Notwithstanding the foregoing. in the case of an emergency, Seller may enter upon an Easement Area.

not mutual, only Buyer can relocate

SECTION 4.09. Relocation of Easement Areas. Buyer may. upon not less than ninety (90) days' notice to the Seller. elect to change the location of all or any portion of the Easement Areas. provided that any such relocation shall not deprive Seller of the practical realization of the benefits of such Easement nor interfere with Seller's electrical transmission or distribution operations. The aforesaid notice shall specify the effective date of such relocation. Any such relocation must be approved in writing by Seller. Any such relocation shall occur at the sole cost and expense of the owner of the Buyer Parcel. Further. Buyer shall be responsible for any consequential or indirect costs incurred by Seller as a result of Buyer's relocation of the Easement Area (including. but not limited to, engineers' and attorneys' fees). Any relocated Easement shall be subject to all of the terms, covenants and conditions of this Agreement. Upon the relocation of any Easement Area pursuant to the terms of this Section 4.09. Seller shall execute and deliver to the Buyer such documents in recordable form as Buyer shall require to evidence the release and/or relocation thereof.

## ARTICLE V

## Casualty: Condemnation

Buyer & Seller

SECTION 5.01 Restoration Work. Should Seller elect to repair or restore Facilities damaged or destroyed by fire or other casualty ("Casualty"), Seller shall commence the repair or restoration as expeditiously as is practicable in the circumstances and not later than 90 Business Days after receipt of insurance proceeds, provided that the failure to receive such insurance proceeds shall in no event excuse a Seller electing to restore Facilities from its obligation expeditiously to commence the repair or replacement of such Facilities. All repair or restoration shall be diligently prosecuted to completion in accordance with the standards of work and other requirements set forth in Section 4.07.

Buyer & Seller

SECTION 5.02 Failure to Restore. If Seller elects not to repair or restore a Facility following a Casualty. Seller shall notify the other Party of such election, whereupon. if the damage to the Facility is total or substantially total. the Easement with respect to such Facility shall cease and terminate. Seller may. in its sole discretion. elect to remove the Facility or abandon it in place.

Buyer & Seller except Con Ed can not condemn Buyer Parcel for easement

SECTION 5.03. Condemnation. In the event that a Parcel or a portion thereof containing an Easement Area shall be taken by any Governmental Authority in the exercise of the power of eminent domain (each, a "Taking" with the term "Taken" construed accordingly), each affected Easement granted hereunder shall terminate. to the extent affected by such Taking, as of the date the Buyer is divested of title. unless the instrument of Taking expressly provides otherwise, and the award attributable to such Taking shall, if not separately awarded to the Parties with respect to their separate interests in the Parcel by the condemning authority, be equitably allocated between the Parties, as their respective interests may appear. The control of the condemnation proceeding shall always be vested in Buyer. Nothing herein shall preclude the Party affected from pursuing any claims against the condemning authority with respect to any Facilities taken or the costs of relocation. and all awards with respect to such Facilities or costs shall be the exclusive property of such Party.

## ARTICLE VI

## Miscellaneous Provisions

SECTION 6.01 Effectiveness. This Agreement shall only become effective upon the consummation of the Closing and. prior to such time. shall have no force or effect If the Sale Agreement is terminated for any reason prior to the Closing, then this Agreement shall also automatically terminate and be of no further force or effect.

SECTION 6.02. Force Majeure. (a) Notwithstanding anything in this Agreement to the contrary, neither Party shall have any liability or be otherwise responsible to the other for its failure to carry out its obligations, with the exception of any obligation to pay money, under this Agreement if and only to the extent that it becomes impossible for either Party to so perform as a result of any Force Majeure Event.

(b) If a Party shall rely on the occurrence of a Force Majeure Event as a basis for being excused from performance of its obligations under this Agreement, then the Party relying on such occurrence shall (i) provide prompt written notice of such Force Majeure Event to the other Party giving an estimate of its expected duration and the probable impact on the performance of its obligations hereunder, (ii) exercise its reasonable best efforts to continue to

perform its obligations under this Agreement, (iii) expeditiously take reasonable action to correct or cure the Force Majeure Event (provided that settlement of strikes or any other labor disturbance will be completely within the sole discretion of the Party affected by such strike or labor dispute), (iv) exercise its reasonable best efforts to mitigate or limit damages to the other Party and (v) provide prompt notice to the other Party of the cessation of the Force Majeure Event.

Neither party shall have the right to terminate this Agreement, except in the case of abandonment but both parties shall have the lien right in the event of a default.

SECTION 6.03. Default and Remedies. In the event that a Party defaults, breaches or otherwise fails to perform any obligation of such Party under this Agreement. the other Party shall have the right to exercise its Self-Help Rights (and shall be entitled to correlative Reimbursement Rights in connection therewith) without any requirement to pursue or exhaust any other remedies available to such Party under the Sale Agreement. The Seller shall have the right. following notice to the other Party. to take such action as it may deem necessary or advisable, including payment of any delinquent Taxes. to prevent a foreclosure for nonpayment of Taxes or other action by a Governmental Authority that might affect its Easement or rights hereunder and any such action shall be deemed an exercise of Self-Help Rights (and accordingly, give rise to correlative Reimbursement Rights).

Buyer & Seller

SECTION 6.04. Mortgagees' Status. This Agreement shall be superior to any mortgages or other instruments evidencing security for indebtedness granted by Buyer from time to time with respect to Buyer Parcel. Accordingly, Buyer agrees to obtain and deliver to Seller such documents and instruments, in recordable form, as may be reasonably necessary or requested by Seller from time to time to evidence and confirm the subordination of any such mortgages or other security instruments to the provisions of this Agreement.

Buyer & Seller

SECTION 6.05. Estoppel Certificate. Seller agrees, within ten (10) days after written request by the other, to execute, acknowledge and deliver to and in favor of any present or proposed lender, Mortgagee, ground lessor, purchaser, tenant or the like of all or any part of Buyer's Parcel, an estoppel certificate, in a form reasonably satisfactory to such lender, Mortgagee, ground lessor, purchaser, tenant or the like. stating. among other things: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been modified or amended and, if so, identifying and describing any such modification or amendment; (iii) whether there are any sums then due and owing under this Agreement from either Party to the other, and if so. specifying the amount thereof and reason therefor: and (iv) whether the Seller knows of any default (or event which, with the passage of time, the giving of notice. or both. would constitute a default) on the part of the other Party, or has any outstanding claim against the other Party arising under this Agreement and, if so. specifying the nature of such default or claim.

Buyer & Seller

SECTION 6.06. No Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of either Buyer's Parcel

or Seller's Facilities or Easement Area to the general public or for any public use or purpose whatsoever, or be deemed to create any rights or benefits in favor of any municipality, public authority or official thereof, it being the intention of the Parties that this Agreement be for the exclusive benefit of the owner or owners, from time to time, of the Parcels. or any part thereof, and those claiming under them.

Buyer & Seller

SECTION 6.07. Covenants Running With Land. The benefits and burdens, rights and obligations, Easements and restrictions created by this Agreement shall be appurtenant to and run with and burden and be binding upon Buyer's Parcel, and shall inure to the benefit of and be binding upon Seller and Buyer and those claiming by, through, or under them. The covenants, agreements, terms, provisions and conditions of this Agreement shall bind and benefit the successors in interest (as owners of the Seller's Facilities and Buyer Parcel, respectively, whether by sale, foreclosure or otherwise) of the Parties with the same effect as if mentioned in each instance when a Party is named or referred to, it being understood and agreed that upon any transfer of ownership (whether by sale. foreclosure or otherwise) of all or any part of the Seller's Facilities and the Buyer Parcel, as the case may be, each such successor in interest shall, thereupon and thereafter assume, and perform and observe. any and all of the obligations of its predecessors in interest under this Agreement. Notwithstanding the foregoing, (a) each Party shall use reasonable efforts to cause any such successor in interest to execute an agreement in recordable form pursuant to which such successor in interest shall assume any and all obligations of its predecessors in interest under this Agreement: provided, however, that the failure to obtain any such agreement shall not detract from the provisions of the previous sentence, and (b) no such predecessor in interest shall be released from its liabilities and obligations under this Agreement (whether arising before or after any' such transfer of ownership) without the prior written consent of all of the other Parties.

SECTION 6.08. Assignment: No Third Party Beneficiaries. (a) This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns ~~but neither this Agreement nor any of the rights. interests or obligations hereunder~~ shall be assigned by either Party, including by operation of law, without ~~the~~ prior written consent of the other Party. except (i) in the case of ~~Seller~~ and its permitted successors and assigns, (A) to an Affiliate of Seller or a third party in connection with the transfer of any part of ~~Seller's~~ electrical transmission or electrical distribution systems and (B) to ~~a~~ lending institution or trustee in connection with a pledge or granting ~~of a~~ security interest in all or any part of the Seller's electrical transmission or electrical distribution systems. and this Agreement and (ii) in the case of Buyer and its permitted successors or assigns. (A) to an Affiliate ~~of~~ Buyer or a third party in connection with the transfer and conveyance ~~of~~ the Buyer Parcel to such Affiliate or third party and (B) to a ~~lending institution or trustee in connection with a pledge or granting of a security~~

NO restriction this Agreement runs with land, the parties shall have the right to collaterally assign to lender

~~interest in the Buyer Parcel, and this Agreement~~; provided, however. that no assignment or transfer of rights or obligations by either Party or their respective permitted successors and assigns shall release any of the foregoing from the full liabilities and the full financial responsibility provided for under this Agreement. unless and until the transferee or assignee shall agree in writing to assume such obligations and duties and the other Party has consented in writing to such release and assumption, subject to Section 5 of Exhibit C to the Purchase Agreement (i.e., selling owner shall be freed entirely from & after the date of transfer, except for accrued liabilities).

(b) Nothing in this Agreement is intended to confer upon any other person except the Parties any rights or remedies hereunder or shall create any third party beneficiary rights in any person.

SECTION 6.09. Notices. Unless otherwise specified herein, all notices and other communications hereunder shall be in writing and shall be deemed given (as of the time of delivery or. in the case of a telecopied communication. of confirmation) if delivered personally, telecopied (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

(a) if to Seller, to:

Consolidated Edison Company of New York. Inc.
4 Irving Place. Room 1810S
New York. NY 10003
Telecopy No.: (212) 677-0601
Attention: General Counsel

(b) if to Buyer. to:

with a copy to:

SECTION 6.10. Extension: Waiver. Either Party may (i)extend the time for the performance of any of the obligations or other acts of the other Party or (ii)waive compliance by the other Party with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of a Party to this Agreement to assert

any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

SECTION 6.11. Amendment and Modification. This Agreement may be amended, modified or supplemented only by an instrument in writing signed on behalf of each of the Parties.

SECTION 6.12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might other wise govern under applicable principles of conflicts of law).

SECTION 6.13. Counterparts. This Agreement may be executed in two or more counterparts. each of which will be deemed an original. but all of which together shall constitute one and the same instrument.

SECTION 6.14. Interpretation. When a reference is made in this Agreement to an Article, Section. Schedule or Exhibit. such reference shall be to an Article or Section of' or Schedule or Exhibit to. this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement. they shall be deemed to be followed by the words "without limitation". The words "hereof". "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument, statute, regulation, rule or order defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument, statute, regulation, rule or order as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes, regulations, rules or orders) by succession of comparable successor statutes, regulations, rules or orders and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns.

SECTION.6. 15. Jurisdiction and Enforcement.

(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) the Supreme Court of the State of New York, New York County and (ii) the United States District Court for the Southern District of New York, for the

purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the Southern District of New York or, if such suit, action or proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York. New York County. Each of the Parties further agrees that service of process, summons, notice or document by hand delivery or U.S. registered mail at the address specified for such Party herein (or such other address specified by such Party from time to time pursuant to the terms hereof) shall be effective service of process for any action, suit or proceeding brought against such Party in any such court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (i) the Supreme Court of the State of New York, New York County. or (ii) the United States District Court for the Southern District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action. suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

SECTION 6.16. Entire Agreement. This Agreement and the Sale Agreement, including the Exhibits. Schedules, documents, certificates and instruments referred to herein or therein embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein or therein. This Agreement and the Sale Agreement supersede all prior agreements and understandings between the Parties with respect to the transaction contemplated by this Agreement.

SECTION 6.17. Severability. If any term or other provision of this Agreement is invalid. illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

SECTION 6.18. Conflicts. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Sale Agreement. the terms of the Sale Agreement shall prevail.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By:_____
Name:
Title:

By:_____
Name:
Title:

NOTES:

(1) Add:

Exhibit C = Purchase Agreement

(2) Add in provisions similar to those in Sections 1, 4, 5, 6, 7, 8, 9, and 10 of Exhibit C to the Purchase Agreement.

(3) Add "Indemnity provisions" from the owner of the dominating estate to the owner of the servient estate from any and all losses, costs, expenses, damages, liabilities, obligations, claims, demands, cause of actions and suits in connection with each easement.

(indemnify and hold harmless)

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

On the _____ day of _____, 2000 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF _____)
) SS.:
COUNTY OF _____)

On the _____ day of _____ 2000 before me, the undersigned, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

200984

Exhibit A

Legal Description of Buyer Parcel

Exhibit B
Form of Deed

Schedule 2.01(a)

Exclusive Easements for Seller Facilities

Footnote to Section 2.01(b):

Definition of Easement for Access: "Use of a party's easement here is limited to its intended use to be described per the Purchase Agreement. Here, for example, access is only to install and maintain the Seller Facilities. In general, construction on Buyer Parcel, except in emergencies, should be limited to non holiday periods, and should always be done in a manner which reasonably avoids interrupting business being conducted. As to Seller's Easements, Buyer and it agents, tenants etc must be able to park on and use the easement areas for roads. All current underground easements must remain underground. No new above ground Seller Facilities are permitted.

## *EXHIBIT A*

### *Declaration of Easements Part 2*

Part 2: Modifications to Standard Form.

(A) Actual document to be prepared and reasonably agreed to after this Agreement is signed and before Closing.

(B) The Declaration of Easements will contain provisions to the following effect subject to the provisions of (A) above:

(a) Seller's rights/easements to maintain the following as shown on the Survey: existing underground and overhead electric lines near the northern boundary lines; underground water lines; fire hydrants; underground sewer and telecommunication lines as set forth in section14(a)(xvi);

(b) the provisions of Sections 23(iii) and (iv) and Section 34 of this Agreement;

(c) a reservation of Purchaser's right, at Purchaser's sole cost and expense (i) to relocate the existing and future easement facilities from time to time (other than the "New High Voltage Easement Area" defined below) on the Premises, and (ii) to build roads and/or pave over easement areas from time to time;

(d) DEC's and Seller's well inspection and well maintenance easement as referred to in Section 14(b)(iv) of this Agreement and Seller's obligations under the Site Work Plan;

(e) assurance that Purchaser can park and store building materials, heavy construction equipment, including vehicles within the New High Voltage Easement Area (subject to the [25'] restriction referred to below);

(f) that any environmental remediation legally required by virtue of Seller's use of, or exercise of rights under, the Declaration of Easements are Seller's responsibility;

(g) that Seller shall indemnify and hold harmless Purchaser for and in connection with any environmental materials discovered as a result of Seller's work or maintenance in its easement areas including related remediation of such materials located outside of the easement area in question;

(h) Seller's agreement to comply with the Site Work Plan;

(i) Purchaser's right to have the access to install, maintain and repair the Fence as set forth in Section 23(iii);

(j) intentionally deleted;(k) the New High Voltage Easement Area provisions. The following provisions concerning the "New High Voltage Easement Area" (defined below):

(1) "NHVEA" Defined. "New High Voltage Easement Area" means the smaller of (i) the 85 foot wide area so designated on the Survey (annexed as ***Schedule B*** hereto), or (ii) a less wide area (north to south) (with the same northerly boundary) as may be legally required, but only wide enough (north to south) to service from a "Service Entrance" on the northerly end of the Premises (such entrance to be maintained and the gates built and equipped, by Seller), as may be needed to actually house the "Wires" (defined below) in an "Overhead Format" (defined below).

(2) Service Entrance Road Access. Seller agrees to provide and maintain on the Excluded Property, access to the Service Entrance, and maintain and repair the Service Entrance gating and curbing and roadway area used primarily by Seller in connection with the New High Voltage Easement Area.

(3) *Intentionally Deleted.*

(4) Use Limitations. The use by Seller or the owner of the Other Property of the New High Voltage Easement Area will be limited to housing the Wires in an Overhead Format in accordance with this Declaration.

(5) Wires Defined. "Wires" means the electrical current conduit material

(6) Other Property Defined. "Other Property" means the property formerly known as "Castle Oil Property" as shown on the Survey.

(7) Overhead Format Defined. "Overhead Format" means

(A) Pole or Tower height/width/material

(B) Wires carried at least 60 feet above ground in accordance with Attachment 1.

(C) No noise other than incidental transmission noise

(D) Kept clean/safe/fencing around/gates around

(8) As soon as practical but prior to the commencement of construction, Seller shall provide or caused to provide Purchaser:

(A) Construction Commencement date on site.

(B) Duration of Construction and estimated date of completion.

(9) Upon the completion of the construction, Seller will provide Purchaser with a survey certified to Purchaser, its lenders and Title Company and to Seller, prepared at Seller's cost, detailing the NHVEA, the site of the poles, Towers and fencing and road and Service Entrance with appropriate legal descriptions which will be updated by Seller at its costs to reflect actual field conditions when construction is complete.

(10) Construction Commencement Conditions. As a condition to commencement of construction and during construction Seller will maintain or cause to be maintained and provide or cause to be provided to Purchaser with reasonable evidence of;

(A) Workers Compensation Insurance in statutory amounts.

(B) Liability Insurance, in commercially reasonable amounts.

(C) Such other insurance as Seller normally carries during construction projects.

(D) Certificates of Insurance in Purchaser's and its lender's favor evidencing to the extent applicable, that such coverage is in place and that Purchaser and its lender are additional insureds thereunder.

(11) Filing of Record: Actual NHVEA. When construction and the Survey are complete, Seller and Purchaser will agree to and will record an amendment to the Declaration of Easements memorializing the actual NHVEA.

(12) Additional Indemnity Requirements. The Seller's indemnity and hold harmless in favor of Purchaser in the Declaration of Easements will include all claims and liabilities resulting from Seller's construction and planning, if applicable, including related, reasonable counsel fees of Purchaser.

(13) Miscellaneous Construction Requirements. Once Seller commences construction or repairs and maintenance under the Declaration of Easements, it will diligently prosecute same to completion and will do so in a manner which will minimize interference with Purchaser's and its tenant's and the like business and operations and construction on the premises. All staging and construction activities for the NHVEA will be undertaken from the Service Entrance unless not reasonably practicable. Seller will provide reasonable prior notice of this eventually and a narrative of its proposed activities with respect to same.

(14) FAA Compliance. In connection with Seller's construction or maintenance activities, Seller will be required to comply with the provisions of the FAA lease (including giving notice) and all costs and expenses of such compliance will be at Seller's expense. Copies of all related correspondence will be promptly provided to Purchaser.

(C) The Declaration of Easements shall run with the land and benefit Seller and Purchaser and their respective permitted assigns and successors and will provide that the parties will use reasonable commercial efforts when exercising rights, not to unreasonable interfere with the business being conducted on the servient estate of the other.

(D) [Add Provisions similar to those in Sections 1, 4, 5, 6, 7, 8, 9 and 10 of ***Exhibit C*** hereto.]

(E) The Text in this Declaration of Easements Part 2 is intended to included all of the easements reserved in the contract of sale between Purchaser and Seller and to the

extent any omissions, errors, ambiguities or incomplete descriptions of easements are included in this document, the parties agree to correct such discrepancies prior to Closing.

f tachment 1

**Canizio, Candida L.**

**From:** Singh, Leonard
**Sent:** Monday, May 21, 2001 8:36 AM
**To:** Villalba, Carlos
**Cc:** Chan, Peter K.; Anderson, Bob; Guzowski, Stephen J.
**Subject:** RE: SCS_proposed route design Height of conductors

Carlos,

The following would be our clearance requirements:

A minimum of 60' from the lowest point of the sag in the bottom conductor would be required for us to travel under while moving large transformers in the Astoria yard.

A minimum of 100' would be required if the lowest point of the sag in the bottom conductor is in a location where we would have to utilize a crane to pick a load.

Thanks

Len

-----Original Message-----
From: Villalba, Carlos
Sent: Friday, May 18, 2001 9:18 AM
To: Singh, Leonard
Cc: Chan, Peter K.; Anderson, Bob
Subject: FW: SCS_proposed route design

Mr. Singh,

Good Morning. I work in energy management handling the interconnection of the new generating companies to our electric system. SCS energy is one of the generating companies that will be connecting to our system through a 138 kV Overhead and underground transmission line. There will be a section that will cross 31 St road and I am asking the new developers to maintain a clearance distance from the ground level to the lowest conductor of 60' to allow the transportation of equipment.

Please let me know if this is the clearance that Transportation needs or specified Transportation requirements.

The last transmission line install in Astoria (kinkel line) maintains a clearance of 60' to all its extend.

Thank you for your time.

Carlos E. Villalba

[mailto:vil  oac@coned.com]
Consolidated Edison of New York, Inc.
Energy Management
Electric Resource Planning
212-460-3896 / 732-901-4521

-----Original Message-----
From: Bill May [mailto:bmay@scsenergyllc.com]
Sent: Friday, May 18, 2001 10:55 AM
To: richard.bucci@wgint.com; Villalba Carlos
Cc: Peter K. Chan; Kathleen Hathaway
Subject: RE: SCS_proposed route design

Obviously we want to design in the appropriate clearance for any transportation activity. Normal and overdimentsional road clearances are normally driven by published design standards. I have never come across a 60 foot requirement even in steel mills. Rich what would a large trimed out tranformers on a trailer plus safty clearance from the line normally add up to.At 06:34 PM 5/17/01 -0400, Richard M Bucci wrote:
>Carlos:
>
>Actually the 35' distance shown on our tower outline sketch was to meet the
>clearance required by the Nat'l Elect. Safety Code (NESC) over the roof of
>the locomotive shed. The NESC requires about 15ft above the roof, and we
>eyeballed from photos for now that the roof is about 20 ft. high.
>
>To meet a 60 ft. requirement would add about 25 ft. to the current tower
>height, resulting in a tower about 110 ft. high.
>
>Are the tranformers transported on the North-South portion of the road
>(which we are crossing) in addition to the East-West portion (which we do
>not cross)? On the same issue, we would need to know if they cross over the
>proposed underground line route on their way to/from the road (as this would
>require special reinforcement of the underground duct bank). If possible
>please mark up the transformer transportation route on a copy of the real
>estate map and fax it to me, so there is no misunderstanding.
>
>Regards,
>Rich
>
>
>> -----Original Message-----
>> From: Villalba, Carlos
>> Sent: Thursday, May 17, 2001 8:16 AM
>> To: Richard. Bucci (E-mail)
>> Cc: Chan, Peter K.
>> Subject: SCS_proposed route design
>>
>>

## EXHIBIT B

***Environmental Disclosure Documents (Seller's Consultants)***

(a) Storm Sewer System Investigation, Astoria facility, prepared by Malcolm Pirnie and dated January 1999;

(b) Revised Draft Data Summary and SWMU/AOC/Spills Evaluation Report Volume 1, Sections 1-10, prepared by ENSR and dated June 1998;

(c) Phase I Environmental Site Assessment prepared by Foster Wheeler Environmental Corporation and dated September 14, 1998;

(d) Description of Current Conditions Report, prepared by ENSR and dated June 1994;

(e) Description of Current Conditions Report; prepared by ENSR and dated July 1994;

(f) Data Summary Report, Eastern Parcel Remediation Feasibility Investigation ("RFI") prepared by ENSR revised November 1999; and

(g) Sanborn maps of the Site dated 1898, 1915, 1936, 1948, 1950, 1981 and 1992-1996.

(h) Draft Phase I Environmental Assessment report prepared by Foster Wheeler Environmental Corporation, dated June 29, 1998;

(i) Draft Eastern Parcel RFI Preliminary Report Addendum dated March 16, 1999;

(j) Draft Data Summary Report for the Eastern Parcel Remediation Feasibility Investigation ("RFI"), Astoria facility, prepared by ENSR and dated March, 1999;

(k) Draft Eastern Parcel RFI Report Addendum Number 2 dated March 18, 1999;

(l) Con Edison Letter of Transmittal dated May 22, 2000 to Scott E. Furman;

(m) Con Edison Letter dated February 2, 1999 to NYSDEC, Eastern Parcel RFI Workplan (submittal letter);

(n) Eastern Parcel RFI Workplan, prepared by ENSR and dated February 1999;

(o) NYSDEC email dated February 16, 1999, Eastern Parcel RFI Workplan (comments/approval);

(p) Con Edison letter dated March 10, 1999 to NYSDEC, Luyster Creek Arial Photos;

(q) Aerial Photograph, Luyster Creek Parcel, 5/16/66;

(r) Aerial Photograph, Luyster Creek Parcel, 4/17/77;

(s) Aerial Photograph, Luyster Creek Parcel, 12/8/97;

(t) Con Edison letter dated November 24, 1999 to NYSDEC, Eastern Parcel RFI Data Summary Report (submittal letter);

(u) NYSDEC letter dated January 11, 2000, Eastern Parcel RFI Data Summary Report (comments/approval); and

(v) Site Plan (untitled, undated) of a site located between Luyster Creek (bottom), Con Edison (top), and 20th Avenue (left side).

***EXHIBIT B-1***

***(AKRF Reports)***

(a) AKRF, Inc. letter dated December 1, 1998; and

(b) AKRF, Inc. letter dated May 18, 1999.

## *EXHIBIT B-2*

## UNDERGROUND STORAGE TANKS DISCLOSURE DOCUMENTS

Cover letter dated November 3, 2000 from Candida L. Canizio to Ken Brown attaching the following information concerning the buried tanks:

(a) Map of Consolidated Edison Company of New York, Inc. Astoria Plant & Astoria Station dated May 1961 (Tentative Map);

(b) Letter dated May 8, 1986 to the New York State Department of Environmental Conservation Bulk Storage Section, Division of Water with attached EPA Form 7530 "Notification of Underground Storage Tanks" and New York form of "Notification of Underground Storage Tanks";

(c) Map of Former Pre-Cast Site, All Tanks, (No tanks to be registered);

(d) Consolidated Edison Company of New York, Inc. Insurance Map Symbols, Revised March 1967;

(e) Memorandum regarding "Retired Below Grade 5000 Gallon Fuel Tank Luyster Creek Astoria" from Erwin Salnick, Operating Supervisor Facilities Maintenance to Leon Paretsky, Manager, Wtr. Progs., Environmental Affairs, dated June 20, 1988, confirming that tank was cleaned and filled with sand, with attached Storage Tank EPA Registration Summary (page 2 of 4);

(f) Undated document identifying tanks at the Astoria site that warrant attention with attached tables titled "Tanks to be Investigated, Astoria Central Transportation" (1/29/87) and "Tanks to be Investigated, Astoria Site- Former Precast Concrete Area" (1/29/87);

(g) Action Tanks Status Report dated 4/11/88; and

(h) Table 1, Storage Tank Inventory, Real Estate Department Facilities.

## *EXHIBIT C*

## (DEED RESTRICTIONS)

1. ***Run With the Land; Benefited Parties.*** This portion of this Deed (the "Deed Restrictions") shall bind and inure to the benefit of the Benefited Parties, Grantee **and Grantor**, their respective successors and assigns and shall and is intended to run with the land. **"Benefited Parties"** means Consolidated Edison Company of New York, Inc., it successors and assigns as owners of the Excluded Property, and DEC and New York State Department of Health ("DOH"), solely with respect to the provisions of any restrictive covenants that DEC may require as a condition of the approve of the Site Work Plan.

1A. Restrictions. This portion of the Deed declaring that the Premises are available only for uses currently permitted in an M-3 Class Zoning District under the New York City Zoning Resolution, as amended, but only to the extent set forth in the provisions of said Zoning Resolution as the Zoning Resolution is deemed modified in accordance with the provisions of Exhibit A (" Uses"). IN the event that the Zoning Resolution changes in the future, the restrictions contained herein and in Exhibit A, attached hereto shall still control, and under no circumstances shall the Premises be used for food service or for retail establishments except food services will be permitted if ancillary to another use of the Premises, such as employee cafeteria, vending machines and snack bar.

2. Grantee shall be required to make available for inspection to its contractors in privity with it (provided Grantee, in its contracts with such contractors shall require said contractors to so notify their subcontractors of the availability of the environmental disclosure documents described below.) prior to such time as such contractors commence their work on the Premises. Environmental disclosure documents shall mean those documents described on Exhibit B, B-1 and B-2 attached hereto, and the following materials if any, if in the Grantee's possession or control: 1) the results of any testing conducted by Grantee which show hazardous substances as defined on Exhibit C attached hereto; 2) the approved site work plan to the extent delivered to Grantee by Grantor; 3) all site work plan filings to the extent delivered to Grantee by Grantor. Site Work Plan and Site Work Plan Filings are defined on Exhibit C attached hereto.

3. All buildings to be constructed on the Premises by Grantee or its successors or assigns shall be slab on grade with spread footings or pile constructions (ie. piles, pile caps, grade beams with structural slabs or some combination thereof) but there shall be no restriction as to Grantee's right to level and remove the land fill mound shown on a Survey by Geod dated October 31, 2001.

4. Restrictions shall also include provisions 1) prohibiting use of the groundwater a the Premises without adequate treatment unless DEC or its successor expressly approves the

same; and 2) prohibiting changes in the uses of the Premises from those allowed herein without the consent of the DEC or its successors.

5. Grantee's use of the Premises with respect to motorized vehicles accessing the Premises from 20th Avenue to the Premises will be limited to no more than 400 vehicles per day excluding those of Grantor it employees, tenants, agents, contractors or invitees and any vehicles that may come onto the Premise pursuant to any rights or other access right granted by Grantee to Seller, its employees, tenants, agents contractors or invitees to utilize any easement areas on the Premises. The Vehicle Limit included within this Deed Restrictions will be a covenant running with the land but only for so long as the Excluded Property belonging to the Seller or its Successors or assigns is used by the Seller or its successors or assigns in connection with the Vehicle Limit included herein and the only Benefited Parties shall be the Seller and its successors and assigns, and not a governmental entity. If however, Seller or its successor, opens another permanent entranceway on the Excluded Property to 20th Avenue, from time to time, then Seller or its successor and Purchaser or its successor shall re-evaluate the need for the Vehicle Limit including increasing (but not decreasing) the 400 motorized vehicle number, based on the lesser volume of traffic if any, then using the First Entranceway. If the parties cannot agree on increasing the Vehicle Limit, then either party may notice the other that it elects to resolve the reevaluation through expedited arbitration in New York City, in accordance with the then rules of the American Arbitration Association. The finding of the arbitrators will be binding on the parties and may be enforced by court order. The parties will share the costs of the arbitration, but shall pay for their own counsel fees, experts and witnesses . The Benefited Parties in questions shall have the specific right to enforce these Deed Restrictions not previously removed, through any proceedings, at law or in equity, against any person or persons violating or threatening to violate these Deed Restrictions including but not limited to Grantee and its successors and/or assigns, and to recover any damages suffered by the Benefited Parties from any such violation, provided that the Vehicle Limit may initially only be enforced by the equitable remedy of injunction which Seller agrees to pursue to completion. If Grantee is unable to secure injunctive remedies, it shall have its other rights with respect thereto in law or in equity. The term "First Entranceway" means Seller's existing entranceway onto its Excluded Property from 20th Avenue (which entranceway is an extension of 31st Street), as such entranceway may be modified from time to time.

2. ***Representatives.***

(a) Benefited Parties shall only have the right to act through "Representatives". **"Representatives"** means only:

(i) The DEC, and DOH, solely with respect to the provisions of any restrictive covenants that DEC may require as a condition of the approval of the Site Work Plan in the event that approval of the Site Work Plan is conditioned upon the

implementation of administrative, engineering or institutional controls or restrictions on the use of the Premises.

(ii) The then owner of the fee interest in the Excluded Property; (the legal description of which is annexed hereto as Exhibit ) and

(iii) The then owner of the fee interest of the Premises.

(b) **PROVIDED** if the Excluded Property Representative is not Consolidated Edison Company of New York, Inc., then it shall be a person (directly or through a chain of owners of the fee) who is the then current holder of the Excluded Property Representative Position (i.e., the right to act as the Excluded Property Representative) and if the Premises Representative is not Grantee, it shall be a person (directly or through a chain of owners of the fee) who is the then current owner of the Premises Representative Position (i.e., the right to act as the Premises Representative). Only one fee owner at any time may hold the Excluded Property Representative Position and only one fee owner at any one time may hold the Premises Representative Position and except as set forth in (c) below, such interests and rights may only be passed by deed recorded in the New York County Register's Office.

(c) Unless the recorded deed or other document recorded in connection with a sale of a portion of the Premises or Excluded Property provides to the contrary (and in such event, the terms of such deed or other document shall prevail), then the party obtaining or retaining the largest portion of the Premises or Excluded Property, as applicable, shall be and hereby is designated as the Representative for all owners of the Premises or Excluded Property as applicable, and the other parties hereto including Benefited Parties may rely on all notices and actions taken by such Representative as if it were the sole owner of the parcel in question.

(d) The term "Site Work Plan" means the actual "Site Work Plan" as of the closing (which may include .implementation and completion of the investigation and remediation work plans so approved by Grantor, Grantee and the DEC, including the installation of any monitoring or product recovery wells or containment devices and treatment systems and the performance of any long-term monitoring and operations and maintenance operations required under such approved work plans and any investigation or remediation required subsequently in connection therewith (other than work incorporated into such work plan and which is either (A) requested by Grantee and is not otherwise required of Seller hereunder, or (B) work which Agreement between Grantor and Grantee ('the Agreement") specifically requires Grantee to perform, or (C) remediation required by virtue of Grantee's testing under the Agreement.)

3. ***Termination.*** This Declaration of Restrictions shall not be terminable except:

(a) By unanimous vote of the Representatives; and

(b) If the Excluded Property is used for a use as to which the Premises cannot be used by virtue of this Declaration of Restrictions;

4. ***Disputes.***

(a) All disputes hereunder shall be brought only by a Representative and shall be, as to jurisdiction, exclusively the subject of binding arbitration by a three (3) arbitrator panel pursuant to the then rules of the American Arbitration Association and shall be held only in the Borough of Manhattan.

(b) If a Representative does not have a regular place of business in the State of New York, all Representatives (and all fee owners of the Premises and the Excluded Property) shall be deemed to have received service of arbitration, related notices and other notices if same are given either on the Secretary of State of the State of New York or by service as would be appropriate in the Supreme Court of the New York State, First Judicial District.

(c) Service or notice on or to a Representative shall bind an owner or owners represented by the Representative in question. Acts by Representatives shall bind the related owners. Failure to comply with a demand for compliance with this Declaration of Restrictions shall result in an arbitrable dispute.

(d) The Arbitrators may determine that the losing party(ies) shall pay legal fees to the prevailing party.

(e) Any arbitration judgment or final finding pursuant to this Declaration of Restrictions may be recorded in the Records of the Register of the County of New York.

5. ***Transfer of Interest.*** The terms **"Grantee"** and **"Grantor"** are limited as follows: in the event of any sale of the Premises or Excluded Property, said selling owner shall be and hereby is entirely freed and relieved of all of its covenants, obligations and liability hereunder from and after the date of the transfer, except for accrued liabilities. This section shall be applicable to each owner(s) of the Premises or Excluded Property, from time to time, and shall not be limited to the first owner of the premises in question.

6. ***Mortgagee's Rights and Subordination.***

(a) If Grantee or Grantor shall notify the other that such party's portion of the Premises or Excluded Property, as applicable, is encumbered by a mortgage and in such notice set forth the name and address of the mortgagee thereof, then notwithstanding anything to

the contrary, no notice intended for the party with the mortgaged interest shall be deemed properly given unless a copy thereof is simultaneously sent to such mortgagee. If any mortgagee shall perform any obligation that its mortgagor is required to perform hereunder, such performance by mortgagee, shall be deemed performance on behalf of its mortgagor and shall be accepted hereunder as if performed by the party hereto who is the mortgagor in question, but shall not grant any rights against such mortgagee.

(b) Any mortgage or deed of trust affecting any portion of the Premises or the Excluded Property shall at all times be subject and subordinate to the terms of this Declaration of Restrictions and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title subject to all of the terms and provisions of this Declaration of Restrictions applicable to the property in question.

(c) Mortgagees shall have the right to a collateral assignment of a person's rights under this Declaration of Restrictions.

7. ***Additional Remedies, Waivers, Etc.*** Except as otherwise specifically set forth in this Declaration of Restrictions to the contrary, with respect to the rights and remedies of the Benefited Parties, Grantee and Grantor: (a) the rights and remedies of each such person set forth herein shall be in addition to any other right and remedy now and hereafter provided by law or in equity, except as restricted in this Deed. All such rights and remedies shall be cumulative and not exclusive of each other, except as restricted in this Deed. Each such person may exercise such rights and remedies at such times, in such order, to such extent, and as often as each such person deems advisable without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another, (b) a single or partial exercise of a right or remedy shall not preclude (i) a further exercise thereof, or (ii) the exercise of another right or remedy, from time to time, except as restricted in this Deed, (c) no delay or omission by any such party in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to a default, (d) no waiver of a default shall extend to or affect any other default or impair any right or remedy with respect thereto, (e) no action or inaction by any such party shall constitute a waiver of a default, and (f) no waiver of a default shall be effective, unless it is in writing.

8. ***Estoppel Certificate.*** At any time within twenty (20) days after request by a party hereto (including the Benefited Parties) the other(s), including Benefited Parties shall execute, acknowledge and deliver to the requesting party, any mortgagee, any purchaser, or any other person specified by the requesting party, an estoppel certificate in any form reasonably requested by the requesting party. Failure of the party so requested to timely respond to the request shall be deemed a certification that the facts set forth in the submission are true, correct and complete.

9. ***Communications.***

(a) No notice, request, consent, approval, waiver or other communication under this Deed shall be effective unless, but any such communication shall be effective and shall be deemed to have been given when the same is received or refused if, the same is in writing and is mailed by registered or certified mail, return receipt requested, postage prepaid, or sent by a generally recognized overnight carrier with receipted delivery, such as, but not limited to, Federal Express, addressed:

(i) If to the Grantor, to the address designated as the Grantor's Notice Address in Section (9)(b), or such other address as Grantor designates by giving notice thereof to the Grantee and the other Benefited Parties, with a copy thereof under separate cover to the address designated in Section (9)(b) as the Grantor's Notice Copy Address.

(ii) If to Grantee, to the address designated as Grantee's Notice Address in Section (9)(b) below, or such other address as Grantee shall designate by giving notice thereof to the Grantee and the other Benefited Parties with a copy thereof under separate cover to the address designated as Grantee's Notice Copy Address in Section 9(b) below, with a copy thereof under separate cover to the address designated in Section 9(b) below as Grantee's Mortgagee Notice Copy Address, or to such other person or party as Grantee shall designate by giving notice thereof to the other parties hereto.

(b) ***Notice Addresses***

(i) **Grantor's Notice Address:**

_____

_____

_____

ATTENTION: _____

(ii) **Grantor's Notice Copy Address:**

_____

_____

_____

ATTENTION: _____

(iii) **Grantee's Notice Address:**

_____

_____

_____

ATTENTION:

(iv) **Grantee's Notice Copy Address:**

_____

_____

ATTENTION: Kenneth S. Brown, Esq.

(v) **Grantee's Mortgagee Notice Copy Address:**
[NOT AVAILABLE AT THIS TIME]

(vi)[22] **[DEC's Notice Address]**

10. ***Limitations of Liability.***

(a) In case Grantee or Grantor shall be a joint venture, partnership, limited liability company, tenancy-in-common association or other form of joint ownership, the personal assets of such members of any such joint venture, partnership, limited liability company, tenancy-in-common, association or other form of joint ownership shall not be subject to any liability with respect to any provision of these Deed Restrictions or any obligation or liability arising therefrom or in connection therewith and only the asset of Grantee or Grantor shall be subject to such liability. Notwithstanding the forgoing or any other provision of this Agreement to the contrary, as a condition to the commencement of construction at the Premises which is material in nature or which would require a penetration of the ground, Grantee shall be required to post an unconditional $1,000,000.00 letter of credit or $1,000,000.00 in cash with Grantor provided Grantor is Con Edison and if not, in escrow with an escrow agent which is a bank or with a national title insurance company selected by Grantor, or with another escrow agent mutually agreeable to Grantee and Grantor, and which shall stand as collateral against any damages which Grantor incurs by virtue of a violation of the applicable Restrictions of this Deed. Any disagreement as to actual damages will be resolved by arbitration in NYC under the rules of the American Arbitration Association and shall be binding on the parties. The letter of credit and/or any funds left over after the construction is completed shall be returned to Grantee. The escrow agreement, if needed, shall be reasonably acceptable to Grantee, Grantor and the Escrow Agent.

(b) Each of Grantor, Grantee and the Benefited Parties agree that as to the other parties, that no person shall have any right to sue for or collect, and no such person ever have any liability or responsibility whatsoever for, any punitive damages whether proximately or remotely related to any default of the other under this Declaration of Restrictions and all such persons hereby waive any and all such rights.

11. ***Further Assurances.*** The parties hereto and all Benefited Parties agree to take such actions as may be reasonably necessary to carry out the intent of this Declaration of Restrictions.

---

[22] Only add if applicable.

***12.Miscellaneous.*** Nothing in this Deed Restrictions is intended to imply that the parties are not subject to the requirements of all applicable laws.

13. The Text in these Deed Restrictions is intended to be the language from the Agreement and any error or incompletion will be corrected prior to the Closing.

Signature Lines to be Added.

Vehicles, children's, including bicycles, scooters, wagons, baby carriages, or similar vehicles

Venetian blinds, window shades, or awnings, with no limitation on production or on floor area per establishment

Wax products

Wood products, including furniture, boxes, crates, baskets, pencils, cooperage works, or similar products

C. Miscellaneous uses

Docks for vessels not otherwise listed, including permitted barges, other than docks for gambling vessels **

Public transit, railroad or electric utility substations, open or enclosed, with no limitation as to size

Railroads, including rights-of-way, freight terminals, yards or appurtenances, or facilities or services used or required in railroad operations, but not including passenger stations

Truck weighing stations, open or enclosed

Trucking terminals or motor freight stations with no limitation on lot area per establishment

**42-15**
**Use Group 18**
M3

Use Group 18 consists primarily of industrial uses which: (1) either involve considerable danger of fire, explosion or other hazards to public health or safety, or cannot be designed without appreciable expense to conform to high performance standards with respect to the emission of objectionable influences; and (2) normally generate a great deal of traffic, both pedestrian and freight.

A. Manufacturing establishments

Asphalt or asphalt products

Brick, tile, or clay

Cement

Charcoal, lampblack, or fuel briquettes

Chemicals, including acetylene, aniline dyes, ammonia, calcide, caustic soda, cellulose, chlorine, carbon black or bone black, creosote, exterminating agents, hydrogen or oxygen, industrial alcohol, perfumes, plastic materials, or synthetic resins, rayon yarn, or hydrochloric, picric, or sulphuric acids or derivatives **

Coal, coke, or tar products **

Excelsior or packing materials

Fertilizers

Foundries, ferrous or non-ferrous

Gelatin, glue, or size **

Glass or large glass products, including structural or plate glass or similar products

Graphite, or graphite products

Gypsum

Hair, felt, or feathers, bulk processing, washing, curing, or dyeing

Insecticides, fungicides, disinfectants, or related industrial or household chemical compounds **

Leather or fur tanning, curing, finishing, or dyeing
Linoleum or oil cloth

Machinery, heavy, including electrical, construction, mining, or agricultural, including repairs

Matches

Metal or metal ores, reduction, refining, smelting, or Alloying Metal alloys or foil, miscellaneous, including solder, pewter, brass, bronze, or tin, lead or gold foil, or similar products

Metal or metal products, treatment or processing, including enameling, japanning, lacquering, galvanizing, or similar processes

Metal casting or foundry products, heavy, including ornamental iron work, or similar products

Monument works, with no limitation on processing

Paint, varnishes, or turpentine

Plastic, raw

Porcelain products, including bathroom or kitchen equipment,or similar products

Railroad equipment, including railroad cars or locomotives
Rubber, natural or synthetic, including tires, tubes, or similar products

Ship or boat building or repair yards, for ships or boats 200 feet in length or over

Soaps or detergents, including fat rendering **

Steel, structural products, including bars, girders, rails, wire rope, or similar products

Solvent extracting

Stone processing or stone products, including abrasives, asbestos, stone screenings, stone cutting, stone work, sand or lime products, or similar processes or products

Textile bleaching

Wood or bone distillation

Wood or lumber processing including sawmills or planing mills, excelsior, plywood, or veneer, wood-preserving treatment, or similar products or processes
Wood pulp or fiber, reduction or processing, including paper mill operations

Wool scouring or pulling

B. Storage or miscellaneous uses, open or enclosed
Coal or gas storage

Electric power or steam generating plants

Manure, peat, or topsoil storage

Petroleum or petroleum products, storage or handling ** Refrigerating plants ** and ***

Scrap metal, junk, paper or rags storage, sorting, or baling, provided that any yard in which such use is conducted is completely enclosed on all sides by a solid opaque fence or wall (including solid opaque entrance and exit gates) of suitable uniform material and color, at least eight feet in height and constructed in accordance with rules and regulations to be promulgated by the Commissioner of Buildings.

**C. *Accessory Uses***

42-276
**Regulations applying to Class IV materials or products**
Class IV materials or products shall not be manufactured in any Manufacturing District and may be utilized in manufacturing processes or other production in any Manufacturing District only when authorized by a special permit granted by the Board of Standards and Appeals in accordance with the provisions of Article VII, Chapter 3. No storage of Class IV materials or products is permitted in any Manufacturing District except such accessory storage as may be authorized by such special permit for the

utilization of such materials or products in manufacturing processes or other production.

**42-277**
**Regulations applying to oxygen manufacture, storage, or utilization**
Oxygen, gaseous or liquid, shall not be manufactured in any Manufacturing District except when authorized by a special permit granted by the Board of Standards and Appeals in accordance with the provisions of Article VII, Chapter 3. Oxygen, gaseous or liquid, may be stored or utilized in all Manufacturing Districts in accordance with the provisions set forth in the Administrative Code and subject to the following limitations:
(a) In M1 Districts
In M1 Districts, the total quantity of such oxygen stored shall not exceed 150,000 cubic feet at standard temperature and pressure.
(b) In M2 Districts
In M2 Districts, the total quantity of such oxygen stored shall not exceed 500,000 cubic feet at standard temperature and pressure.
(c) In M3 Districts
In M3 Districts, the total quantity of such oxygen stored is unlimited.
12/15/61

**42-28**
**Performance Standards Regulating Humidity, Heat, or Glare**
12/15/61

**42-281**
**Regulation applying to M1 Districts**
In M1 Districts, any activity producing excessive humidity in the form of steam or moist air, or producing intense heat or glare, shall be carried out in such a manner as not to be perceptible at or beyond any lot line.
12/15/61

**42-282**
**Regulation applying to M2 Districts**
In M2 Districts, any activity producing excessive humidity in the form of steam or moist air, or producing intense heat or glare, shall be carried out within an enclosure and in such a manner as not to be perceptible at or beyond any lot line.

12/15/61

**42-283**
**Regulation applying to M3 Districts**
When an M3 District adjoins any other district, any activity producing excessive humidity in the form of steam or moist air, or producing intense heat or glare, shall be carried out in such a manner as not to be perceptible at or beyond the district boundary.
12/15/61
**42-30**

**USES PERMITTED BY SPECIAL PERMIT**
2/8/90

**42-31**
**By the Board of Standards and Appeals**
In the districts indicated, the following #uses# are permitted by special permit of the Board of Standards and Appeals, in accordance with standards set forth in Article VII, Chapter 3.

M2 M3
Amusement Arcades [PRC-E]

M1 M2 M3
Physical culture or health establishments, including gymnasiums not permitted under Use Group 9 ** and massage establishments **

Radio or television towers, non-accessory

Sand, gravel, or clay pits

2/26/98

**42-32**
**By the City Planning Commission**

In the districts indicated, the following uses are permitted by special permit of the City Planning Commission, in accordance with standards set forth in Article VII, Chapter 4.

M1 M2 M3

Arenas, auditoriums, or stadiums with a capacity in excess of 2,500 seats [PRC-D]

Bus stations with less than 10 berths

Bus stations with 10 or more berths *

M1 M2 M3

Drive-in theaters, with a maximum capacity of 500 automobiles *

M1 M2 M3
Heliports

M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
Public parking garages with capacity for more than 150 spaces (+) *

M1-4 M1-5 M1-6 M2-3 M2-4 M3-2
Public parking garages with any capacity (++) *

M1 M2 M3

Public parking lots with capacity for more than 150 spaces (++) *

Railroad passenger stations

Seaplane bases

M1 M2 M3
Trade expositions with rated capacity of more than 2,500 persons [PRC-D]

(+) In M1-1, M1-5A, M1-5B Districts and M1 Districts with a suffix "D", indoor interactive entertainment facilities with eating and drinking are not permitted.
(++) In Community Districts 1, 2, 3, 4, 5, 6, 7 and 8 in the Borough of Manhattan and a portion of Community Districts 1 and 2 in the Borough of Queens, these uses are subject to the provisions of Article 1, Chapter 3.

*** only if there is access from 19th avenue to the Premises**

** only if it is part of the operational/functional requirements of the envelope factory, or with other permitted uses.

*** except those manufacturing refrigeration solvents which are Hazardous Substances and are used to operate refrigeration equipment used to chill non goods on the Premises, but not excluding non food related refrigerated cold storage. Uses for commercial or retail food refrigeration are prohibited.

**** only if it is not sale to the public.

***** with restriction as written

***EXHIBIT D***

***Not Used***

***EXHIBIT E***

**UNDESIGNATED MARKS ON THE SURVEY**

***EXHIBIT F***

***Not Used***

***EXHIBIT G***

***Not Used***

## *EXHIBIT H*

## HEALTH AND SAFETY REQUIREMENTS

. Similar health and safety requirements that Seller imposes on other third parties.

## *EXHIBIT I*

## THE FIRST AMENDMENT TO THE ZLDA

# FIRST AMENDMENT OF ASTORIA ZONING LOT DEVELOPMENT AGREEMENT

**By and Between**

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

ASTORIA GAS TURBINE POWERS, LLC

ORION POWER, LLC

**And**

LUYSTER CREEK, LLC

The land affected by the within instrument lies in Block 850, Lot 1 on the Tax Map of the City of New York, County of Queens.

Address:

18-01 20th Avenue
Queens, New York

a/k/a 31-01 20th Avenue
Queens, New York

Record and Return to:

# FIRST AMENDMENT OF ASTORIA ZONING LOT DEVELOPMENT AGREEMENT

AGREEMENT dated as of _____, 2000, by and between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation having an office at 4 Irving Place, New York, New York ("Con Edison"), ASTORIA GAS TURBINE POWER LLC, a Delaware limited liability company having an office at c/o NRG Energy, Inc., 1221 Nicollet Mall, Suite 700, Minneapolis, Minnesota ("Astoria Gas"), ORION POWER LLC, a _____ limited liability company having an office at _____ ("Orion") and LUYSTER CREEK LLC, a New York limited liability corporation with an address c/o Joel Moser, Moser & Moser, _____ ("Luyster ") ("Con Edison," "Astoria Gas," "Orion," and "Luyster ") collectively referred to as the "Parties").

## WITNESSETH:

WHEREAS, Con Edison owns certain real property together with any buildings and improvements located thereon in the City of New York, located in the Borough of Queens, County of Queens, designated as Block 850, Part of Lot 1 in the Tax Map of the City of New York and known as the "Con Edison Parcel A," and more particularly described in Schedule I annexed hereto and made a part hereof; and

WHEREAS, Orion owns certain real property together with any buildings and improvements located thereon in the City of New York, located in the Borough of Queens, County of Queens, designated as Block 850, Part of Lot 1 in the Tax Map of the City of New York and known as the "Astoria Tank Farm Parcel D," and more particularly described in Schedule II annexed hereto and made a part hereof; and

WHEREAS, Luyster owns certain property in the City of New York, located in the Borough of Queens, County of Queens, designated as Block 850, P/o Lot 1 in the Tax Map of the City of New York and known as Subdivision Parcels A and C and more particularly described in Schedule III annexed hereto and made a part hereof; and

WHEREAS, Astoria Gas owns certain property in the City of New York, located in the Borough of Queens, County of Queens, designated as Block 850, P/o Lot 1 in the Tax Map of the City of New York and known as the "Astoria Gas Turbines Parcel C" and more particularly described in Schedule IV annexed hereto and made a part hereof; and

WHEREAS, Luyster intends to construct certain buildings upon Subdivision Parcels A and C; and

WHEREAS, Paragraph 2.3 of the Zoning Lot Development Agreement ("ZLDA") provides that "the first Owner who shall file with any Permitting Agency a permit for work that would result in increased Floor Area on such Owner's Lot shall commission a floor area survey of the entire Zoning Lot;" and

WHEREAS, the Parties to the ZLDA and this Amendment agree that the intent and purpose of Paragraph 2.3 of the ZLDA was to ensure that each owner of an portion of the Zoning Lot did not utilize floor area in excess of that attributable to its parcel; and

WHEREAS, the New York City Zoning Resolution (the "Zoning Resolution") provides that the Floor Area Ratio for the entire Zoning Lot is 2.0; and

WHEREAS, a survey of the entire Zoning Lot by GEOD Corp. dated June 9, 1999 (the "Survey") reflects that there are no structures or buildings on Parcels A and C and that the lot area of Parcels A and C is 1,012,813 square feet; and

WHEREAS, the Survey further reflects that the lot area of the Con Edison Parcel is 9,757,400 square feet, that the lot area of the Astoria Gas Turbines Parcel C is 685,504 square feet and that the lot area of the Orion parcel is 545,066 square feet; and

WHEREAS, the Parties agree that inasmuch as each of the Parties' parcels contains far less floor area than permitted by the Zoning Resolution and that the cost of doing the Floor Area Survey is substantial, requiring the Floor Area Survey to be conducted upon a one party's increasing the floor area on its parcel would create a burden out of proportion to the benefits to the Parties; and

WHEREAS, the Parties wish to modify Paragraph 2.3 of the ZLDA.

NOW THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

1. Except as specifically herein provided, the provisions of the ZLDA shall remain in full force and effect.

2. Section 2.3 of the ZLDA is hereby deleted in its entirety and in lieu thereof the following is substituted:

"Section 2.3. Floor Area Survey.

(A) The first Owner who shall file with any Permitting Agency a permit for work that would result in Floor Area on such Owner's Lot (for the purposes of this Section 2.3, the "Commissioning Party") above the amount of floor area for that parcel set forth in Section 2.3(B) herein, shall commission a floor area survey of the entire Zoning Lot (the "Floor Area Survey"). Such survey shall be performed by an appropriately licensed professional satisfactory to all the Owners and the cost of such survey shall be borne by the Commissioning Party. The Commissioning Party shall submit the Floor Area Survey to the other Owners for their review and approval, which review shall be completed within thirty (30) days of each such Owner's receipt of such Survey and which approval shall not be unreasonably conditioned or withheld. Any disagreements regarding the Survey shall be resolved in the best professional judgment of the licensed professional performing the work. If the Commissioning Party does not receive comments during such thirty (30) day period, the Floor Area Survey shall be deemed approved.

(B) The parties agree that a Floor Area Survey shall not be required so long as the respective parties do not cause the Floor Area on their respective parcels to exceed the following levels:

(1) Parcels A and C: 1,012,813 square feet of floor area.

(2) Con Edison Parcel: 9,757,000 square feet of floor area.

(3) Astoria Gas Turbines Parcel: 685,504 square feet of floor area.

(4) Orion Power Parcel: 545,066 square feet of floor area.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By:_____
Name:
Title:

ASTORIA GAS TURBINE POWER LLC

By:_____
Name:
Title:

LUYSTER CREEK, LLC
By:_____

Name:
Title:

ORION POWER, LLC

By:_____
Name:
Title:

SCHEDULE I
Legal Description of [Astoria Generating Station ] Con Edison Parcel A

SCHEDULE II

Legal Description of Astoria Tank Farm Parcel D

SCHEDULE III

Legal Description of Subdivision Parcels A and C

SCHEDULE IV

Legal Description of Astoria Gas Turbines Parcel C

RESOLUTION OF THE NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING NATIONAL ENVELOPE CORPORATION TO ACQUIRE, CONSTRUCT AND EQUIP A COMMERCIAL FACILITY AS A PARTICIPANT IN AN INDUSTRIAL INCENTIVE PROGRAM (STRAIGHT-LEASE) TRANSACTION, CONSISTING OF THE ACQUISITION OF AN APPROXIMATELY 900,000 SQUARE FOOT PARCEL OF LAND, THE CONSTRUCTION OF AN APPROXIMATELY 250,000 SQUARE FOOT BUILDING THEREON AND THE ACQUISITION OF EQUIPMENT FOR USE THEREIN, ALL FOR USE IN THE MANUFACTURING AND WHOLESALE SALE AND DISTRIBUTION OF ENVELOPES AND RELATED PAPER PRODUCTS; FOR SALE TO THE AGENCY AND LEASE TO LUYSTER CREEK LLC FOR SUBSEQUENT SUBLEASE TO NATIONAL ENVELOPE CORPORATION AND TO TAKE OTHER PRELIMINARY ACTION

WHEREAS, the New York City Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, civic, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, National Envelope Corporation (the "Applicant") has entered into negotiations with officials of the Agency for the acquisition, construction and equipping of a commercial facility consisting of the acquisition of an approximately 900,000 square foot parcel of land, located at 20th Avenue and 31st Street, Astoria, New York, the construction of an approximately 250,000 square foot building thereon and the acquisition of equipment for use therein, all for use in the manufacturing and wholesale sale and distribution of envelopes and related paper products, for sale to the Agency and lease to Luyster Creek LLC (the "Company") for subsequent sublease to the Applicant (the "Project"); and

WHEREAS, the Applicant has submitted a Project Application (the "Application") to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Applicant and the Project, including the following: that the Applicant employs 361 persons full time within The City of New York (the "City"); that the Applicant intends to hire approximately 102 new employees over the next three years; that in order to have room to expand and accommodate its projected growth, the Applicant desires to acquire the land located at 20th Avenue and 31st Street, Astoria, New York; that due to high real estate taxes and real property prices in the City, the Applicant cannot undertake the project without the Agency's financial assistance; that the Applicant

must obtain Agency financial assistance in the form of a straight-lease transaction to enable the Applicant to proceed with the Project and thereby expand its operations in the City; and that, based upon the financial assistance to be provided through the Agency, the Applicant desires to remain and proceed with the Project and expand its operations in the City; and

WHEREAS, based upon the Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of an Industrial Incentive Program (Straight-Lease) transaction among the Agency, the Applicant and the Company are necessary to induce the Applicant to expand its operations within the City; and

WHEREAS, the Project should not be delayed while the details of the straight-lease transaction are being determined; and

WHEREAS, the Applicant intends to apply its own equity and to seek third-party financing from outside lenders for the costs of the Project; and

WHEREAS, in order to provide financial assistance to the Applicant and the Company for the acquisition, construction and equipping of the Project, the Agency intends to grant the Applicant and the Company financial assistance through an Industrial Incentive Program (Straight-Lease) transaction in the form of real property tax abatements and exemptions, sales tax exemptions and mortgage recording tax exemptions, all pursuant to the Act;

NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction and equipping of the Project and the provision of Agency financial assistance to the Applicant and the Company pursuant to the Act in the form of an Industrial Incentive Program (Straight-Lease) transaction will promote, is authorized by and will be in furtherance of the policy of the State of New York as set forth in the Act and hereby authorizes the Applicant and the Company to proceed with the Project. The Agency further determines that

(a) the Project shall not result in the removal of any facility or plant of the Applicant or the Company or any other occupant or user of the Project from outside of the City (but within the State of New York) to within the City or in the abandonment of one or more facilities or plants of the Applicant or the Company or any other occupant or user of the Project located within the State of New York (but outside of the City);

(b) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to

prevent the establishment of an industrial or manufacturing plant within the State of New York; and

(c) not more than one-third of the total Project cost is in respect of facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities within the meaning of Section 862 of the New York General Municipal Law.

Section 2. To accomplish the purposes of the Act and to provide financial assistance to the Applicant and the Company for the acquisition, construction and equipping of the Project, an Industrial Incentive Program (Straight-Lease) transaction is hereby authorized subject to the provisions of this Resolution.

Section 3. The officers of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Applicant and the Company to assist in the Project.

Section 4. The Agency hereby authorizes the Applicant and the Company to proceed with the Project as herein authorized. The Applicant and the Company are authorized to proceed with the Project on behalf of the Agency as set forth in this Resolution; provided, however, that it is acknowledged and agreed by the Applicant and the Company that (i) nominal title to or other interest of the Agency in the Project shall be in the Agency for purposes of granting financial assistance, and (ii) the Applicant and the Company are hereby constituted the agents for the Agency solely for the purpose of effecting the Project, and the Agency shall have no personal liability for any such action taken by the Applicant and/or the Company for such purpose.

Section 5. The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution.

Section 6. Any expenses incurred by the Agency with respect to the Project shall be paid by the Applicant. By acceptance hereof, the Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project.

Section 7. This Resolution is subject to the approval of a private investigative report with respect to the Applicant and the Company. The provisions of this Resolution shall continue to be effective until one year from the date hereof whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section

6 hereof) unless (i) prior to the expiration of such year (x) the Agency shall by subsequent resolution extend the effective period of this Resolution, or (y) the Agency shall adopt a resolution authorizing the appropriate documents to effectuate the Project as herein authorized or (ii) the Applicant shall be continuing to take affirmative steps to secure financing for the Project.

Section 8. The Agency hereby determines, based upon information furnished to the Agency by the Applicant and such other information as the Agency has deemed necessary to make this determination, that the Project, a Type I project, pursuant to the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation Law and the implementing regulations, will not have a significant effect on the environment and that a Draft Environmental Impact Statement will not be prepared. The reasons supporting this determination are as follows:

1. To insure that the Project will not result in a significant traffic impact, if finally determined by the Department of Transportation of The City of New York to be necessary, the Project will include the following traffic improvements:

   - At the intersection of 20th Avenue and 37th Street during the AM peak period (8-10 AM) subtract one second of green time from the north-south phase of the traffic signal and add it to the east-west phase.

   - Prohibit parking on the northbound Steinway Street approach to Ditmars Boulevard during the AM and PM (4-6 PM) peak periods.

   - Installation of a traffic signal at the intersection of 20th Avenue and 21st Street.

2. The Project will not result in significant air quality or noise impacts.

3. The Project would not result in the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character.

4. The Project will not result in a significant adverse hazard to human health or the environment. Analysis of soil samples from the site revealed the presence of construction and demolition debris, low levels of volatile organic compounds and and semi-volatile organic compounds on a portion of the site. To insure that the Project will not result in the creation of a hazard to human health or the environment, a construction period health and safety plan has been prepared and will be implemented.

5. No other significant effects upon the environment that would require the preparation of an Environmental Impact Statement are foreseeable.

Section 9. In connection with the Project, the Agency intends to grant the Applicant and the Company real property tax abatements and exemptions, sales tax exemptions and mortgage recording tax exemptions.

Section 10. This Resolution shall take effect immediately.

ADOPTED: July 10, 2001

Accepted: July 11, 2001 NATIONAL ENVELOPE CORPORATION

By: _____
Name:
Title:

## 16 NYCRR Parts 31 and 18

The requirements of a petition pursuant to PSL Section 70 are set forth in Parts 31 and 18 of the Commission's regulations (16 NYCRR Parts 31 and 18). In accordance with the provisions of Parts 31 and 18, Petitioners state as follows:

Section 31.1(a) - - Financial Condition.

This section requires that the petition provide the facts called for in subdivisions (f) - (i) and (p) of Section 18.1 applicable to the property to be transferred.[2] The information required by this section for Con Edison is set forth in Appendix A, attached hereto.

Section 31.1 (b) - - General Description of the Facilities to be Transferred.

As described briefly in Section I of this Petition, the real property to be transferred is 21.3 acres of uniproved land located at the Con Edison Astoria Complex. A complete description of the Property is set forth in the Agreement between Con Edison and LCL, a copy of which is attached to this Verified Petition as Exhibit A.

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These subdivisions of Section 18.1 require the Petitioners: (i) to identify the case number and date of any order authorizing any bonds, notes, or other evidences of indebtedness (Section 18.1 (f)); (ii) to give a brief description of each mortgage upon the property to be transferred (Section 18.1 (g)); (iii) to provide information for each bond issued (Section 18.1 (h)); (iv) to submit a separate statement for each affiliated interest as defined by the PSL (Section 18.1 (i)); and (v) to provide a detailed income statement and balance sheets for the latest fiscal year, and latest available income statement and balance sheets for 12 months (Section 18.1 (p)).

Section 31.1 (c) - - List of Franchises, Consents and Rights to be Transferred.

Con Edison's franchised retail operations will not be transferred, merged or consolidated as part of the proposed transaction

Section 31.1 (d) - - Local Approvals.

Upon information and belief, the City of New York must provide Con Edison with a waiver with respect to the City's rights to purchase approximately 10,500 square feet of the Property pursuant to a 1904 grant. No other City agency approvals will be required for LCL to purchase the Property.

Section 31.1 (e)- - A Copy of the Proposed Agreement to be Approved.

A copy of the Agreement is attached to this Joint Petition.

Section 31.1 (f) and (g) - - Original Cost of the Property to be Transferred

See Appendix B attached hereto.

Section 31.1 (h)- - Accumulated Depreciation Reserve of the Property to be Transferred.

See Appendix B attached hereto.

See also Exhibit D, page 1.

Section 31.1 (i) - - Cost of the Property to be Transferred.

See Appendix B attached hereto.

See also Exhibit D, page 1.

Section 31.1 (j)- - Depreciation Reserves of Property to be Transferred.

See Appendix B attached hereto.

See also Exhibit D, page 1.

Section 31.1 (k)- - Statement of Contributions.

There are no contributions toward construction since no facilities are to be transferred.

Section 31.1 (l) - - Statement of Operating Revenues, Expenses and Taxes Relating to the Property to be Transferred.

Operating revenues relating to the Property primarily consist of a pre-tax rate of return for Con Edison of $24,975 and property taxes of $319,054, for a total of $344,029. As the Property is land, there are minimal operating and maintenance expenses involved. The balance sheet of Con Edison is set forth in Appendix A to this exhibit.

# APPENDIX A

## MORTGAGES

There are no mortgages upon the property to be transferred.

## STATEMENT OF AFFILIATED INTERESTS

There are no advances from affiliated interests or other indebtedness to affiliates.

## Consolidated Edison Company of New York, Inc.

# CONSOLIDATED INCOME STATEMENT

| *For the Year Ended December 31* | *2001* | *2000* | *1999* |
|---|---|---|---|
| | | *(Thousands of Dollars)* | |
| OPERATING REVENUES (NOTE A) | | | |
| Electric | $6,350,360 | $6,467,074 | $5,672,348 |
| Gas | 1,268,095 | 1,081,534 | 943,641 |
| Steam | 503,736 | 452,135 | 340,026 |
| TOTAL OPERATING REVENUES | 8,122,191 | 8,000,743 | 6,956,015 |
| OPERATING EXPENSES | | | |
| Purchased power | 2,818,936 | 2,988,096 | 1,669,227 |
| Fuel | 350,619 | 322,064 | 430,174 |
| Gas purchased for resale | 665,964 | 490,565 | 351,785 |
| Other operations | 868,092 | 947,545 | 1,047,748 |
| Maintenance | 404,158 | 430,870 | 423,322 |
| Depreciation and amortization (Note A) | 465,164 | 535,179 | 504,018 |
| Taxes, other than income taxes | 1,067,370 | 1,048,509 | 1,134,079 |
| Income taxes (Notes A and J) | 435,364 | 285,847 | 394,147 |
| TOTAL OPERATING EXPENSES | 7,075,667 | 7,048,675 | 5,954,500 |
| OPERATING INCOME | 1,046,524 | 952,068 | 1,001,515 |
| OTHER INCOME (DEDUCTIONS) | | | |
| Investment income (Note A) | 4,230 | 2,294 | 8,647 |
| Allowance for equity funds used during construction (Note A) | 1,294 | 1,086 | 3,805 |
| Other income less miscellaneous deductions | (12,036) | 1,446 | (9,344) |
| Income taxes (Notes A and J) | 8,196 | (4,079) | 28,066 |
| TOTAL OTHER INCOME (DEDUCTIONS) | 1,684 | 747 | 31,174 |
| INCOME BEFORE INTEREST CHARGES | 1,048,208 | 952,815 | 1,032,689 |
| Interest on long-term debt | 359,787 | 331,426 | 305,261 |
| Other interest | 32,323 | 43,224 | 17,363 |
| Allowance for borrowed funds used during construction (Note A) | (6,963) | (5,550) | (1,778) |
| NET INTEREST CHARGES | 385,147 | 369,100 | 320,846 |
| NET INCOME | 663,061 | 583,715 | 711,843 |
| PREFERRED STOCK DIVIDEND REQUIREMENTS | 13,593 | 13,593 | 13,593 |
| NET INCOME FOR COMMON STOCK | $ 649,468 | $ 570,122 | $ 698,250 |

The accompanying notes are an integral part of these financial statements.

## Consolidated Edison Company of New York, Inc.

# CONSOLIDATED BALANCE SHEET

| | As at December 31, 2001 | December 31, 2000 |
|---|---|---|
| | (Thousands of Dollars) | |
| CAPITALIZATION AND LIABILITIES | | |
| CAPITALIZATION (SEE STATEMENT OF CAPITALIZATION) | | |
| Common shareholder's equity | $ 4,665,805 | $ 4,479,584 |
| Preferred stock subject to mandatory redemption (Note B) | 37,050 | 37,050 |
| Other preferred stock (Note B) | 212,563 | 212,563 |
| Long-term debt | 5,011,752 | 4,915,108 |
| TOTAL CAPITALIZATION | 9,927,170 | 9,644,305 |
| NONCURRENT LIABILITIES | | |
| Obligations under capital leases | 41,088 | 31,432 |
| Accumulated provision for injuries and damages | 163,632 | 148,047 |
| Pension and benefits reserve | 101,759 | 105,124 |
| Other noncurrent liabilities | 12,187 | 14,822 |
| TOTAL NONCURRENT LIABILITIES | 318,666 | 299,425 |
| CURRENT LIABILITIES | | |
| Long-term debt due within one year (Note B) | 300,000 | 300,000 |
| Notes payable | - | 139,969 |
| Accounts payable | 598,137 | 879,602 |
| Customer deposits | 204,873 | 195,762 |
| Accrued taxes | 141,259 | 49,509 |
| Accrued interest | 73,311 | 78,230 |
| Accrued wages | 71,177 | 70,951 |
| Other current liabilities | 270,109 | 237,634 |
| TOTAL CURRENT LIABILITIES | 1,658,866 | 1,951,657 |
| DEFERRED CREDITS AND REGULATORY LIABILITIES | | |
| Accumulated deferred federal income tax (Note J) | 2,022,638 | 2,134,973 |
| Accumulated deferred investment tax credits (Note A) | 111,925 | 124,532 |
| Regulatory liabilities | | |
| NYISO reconciliation (Note A) | 92,504 | - |
| World Trade Center casualty loss (Note P) | 81,483 | - |
| Gain on divestiture (Note I) | 52,784 | 50,000 |
| Deposit from sale of First Avenue properties | 50,000 | 50,000 |
| Accrued electric rate reduction (Note A) | 38,018 | 38,018 |
| DC service incentive | 28,455 | 18,169 |
| NYPA revenue increase | 9,169 | 35,021 |
| Other | 127,140 | 201,841 |
| TOTAL REGULATORY LIABILITIES | 479,553 | 393,049 |
| TOTAL DEFERRED CREDITS AND REGULATORY LIABILITIES | 2,614,116 | 2,652,554 |
| TOTAL | $14,518,818 | $14,547,941 |

The accompanying notes are an integral part of these financial statements.

# Consolidated Edison Company of New York, Inc.

## CONSOLIDATED BALANCE SHEET

| | As at December 31, 2001 | As at December 31, 2000 |
|---|---|---|
| | (Thousands of Dollars) | |
| ASSETS | | |
| UTILITY PLANT, AT ORIGINAL COST (NOTE A) | | |
| Electric | $10,441,779 | $11,135,764 |
| Gas | 2,113,664 | 2,020,395 |
| Steam | 758,600 | 740,189 |
| General | 1,241,746 | 1,282,254 |
| TOTAL | 14,555,789 | 15,178,602 |
| Less: Accumulated depreciation | 4,083,760 | 4,819,626 |
| NET | 10,472,029 | 10,358,976 |
| Construction work in progress | 626,835 | 476,379 |
| Nuclear fuel assemblies and components, less accumulated amortization | - | 107,641 |
| NET UTILITY PLANT | 11,098,864 | 10,942,996 |
| NON-UTILITY PLANT | | |
| Non-utility property | 29,408 | 4,087 |
| NET PLANT | 11,128,272 | 10,947,083 |
| CURRENT ASSETS | | |
| Cash and temporary cash investments (Note A) | 264,776 | 70,273 |
| Accounts receivable - customer, less allowance for uncollectible accounts of $29,400 and $25,800 in 2001 and 2000, respectively | 527,635 | 743,883 |
| Other receivables | 91,814 | 155,656 |
| Fuel, at average cost | 16,719 | 28,455 |
| Gas in storage, at average cost | 85,534 | 64,144 |
| Materials and supplies, at average cost | 82,301 | 118,344 |
| Prepayments | 58,628 | 131,141 |
| Other current assets | 33,247 | 50,977 |
| TOTAL CURRENT ASSETS | 1,160,654 | 1,362,873 |
| INVESTMENTS | | |
| Nuclear decommissioning trust funds | - | 328,969 |
| Other | 4,950 | 15,068 |
| TOTAL INVESTMENTS (NOTE A) | 4,950 | 344,037 |
| DEFERRED CHARGES, REGULATORY ASSETS AND NONCURRENT ASSETS | | |
| Accrued pension credits | 697,807 | 366,743 |
| Regulatory assets | | |
| Future federal income tax (Note A) | 624,625 | 642,868 |
| Sale of nuclear generating unit (Note I) | 170,241 | - |
| Recoverable energy costs (Note A) | 121,748 | 274,288 |
| Real estate sale costs - First Avenue properties | 105,407 | 103,009 |
| Workers' compensation (Note F) | 60,466 | 32,000 |
| Divestiture - capacity replacement reconciliation (Note I) | 58,850 | 73,850 |
| Accrued unbilled gas revenue (Note A) | 43,594 | 43,594 |
| Deferred special retirement program costs (Note D) | 42,197 | 46,743 |
| World Trade Center restoration costs (Note P) | 32,933 | - |
| Other | 117,584 | 152,482 |
| TOTAL REGULATORY ASSETS | 1,377,645 | 1,368,834 |
| Other deferred charges and noncurrent assets | 149,490 | 158,371 |
| TOTAL DEFERRED CHARGES, REGULATORY ASSETS AND NONCURRENT ASSETS | 2,224,942 | 1,893,948 |
| TOTAL | $14,518,818 | $14,547,941 |

The accompanying notes are an integral part of these financial statements.

## Consolidated Edison Company of New York, Inc.

# CONSOLIDATED STATEMENT OF RETAINED EARNINGS

| | As at December 31, 2001 | December 31, 2000 | December 31, 1999 |
|---|---|---|---|
| | (Thousands of Dollars) | | |
| BALANCE, JANUARY 1 | $3,995,825 | $3,887,993 | $4,517,529 |
| Net income for the year | 663,061 | 583,715 | 711,843 |
| TOTAL | 4,658,886 | 4,471,708 | 5,229,372 |
| DIVIDENDS DECLARED ON CAPITAL STOCK | | | |
| Cumulative Preferred, at required annual rates | 13,593 | 13,593 | 13,593 |
| Common | 459,718 | 462,290 | 1,327,786 |
| TOTAL DIVIDENDS DECLARED | 473,311 | 475,883 | 1,341,379 |
| BALANCE, DECEMBER 31 | $4,185,575 | $3,995,825 | $3,887,993 |

## Consolidated Edison Company of New York, Inc.

# CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

| For the Year Ended December 31 | 2001 | 2000 | 1999 |
|---|---|---|---|
| | | (Thousands of Dollars) | |
| NET INCOME FOR COMMON STOCK | $649,468 | $570,122 | $698,250 |
| OTHER COMPREHENSIVE INCOME/(LOSS), NET OF TAXES | | | |
| Minimum pension liability adjustments, net of $1,402 and $363 taxes in 2001 and 2000, respectively | (1,844) | (673) | - |
| Unrealized (losses)/gains on derivatives qualified as hedges, net of $3,559 taxes | (4,938) | - | - |
| Reclassification adjustment for gains/(losses) included in net income, net of $2,087 taxes | 2,983 | - | - |
| TOTAL OTHER COMPREHENSIVE INCOME/(LOSS), NET OF TAXES | (3,799) | (673) | - |
| COMPREHENSIVE INCOME | $645,669 | $569,449 | $698,250 |

## Consolidated Edison Company of New York, Inc.

# CONSOLIDATED STATEMENT OF CAPITALIZATION

| *Long-term debt (Note B)* *Maturity* | *Interest Rate* | *Series* | *At December 31* *2001* | *2000* |
|---|---|---|---|---|
| | | | *(Thousands of Dollars)* | |
| DEBENTURES: | | | | |
| 2001 | 6½ | 1993B | $ - | $ 150,000 |
| 2001 | 3.25 | 1996B | - | 150,000 |
| 2002 | 6⅝ | 1993C | 150,000 | 150,000 |
| 2002 | 4.72* | 1997A | 150,000 | 150,000 |
| 2003 | 6⅜ | 1993D | 150,000 | 150,000 |
| 2004 | 7⅝ | 1992B | 150,000 | 150,000 |
| 2005 | 6⅝ | 1995A | 100,000 | 100,000 |
| 2005 | 6⅝ | 2000C | 350,000 | 350,000 |
| 2007 | 6.45 | 1997B | 330,000 | 330,000 |
| 2008 | 6¼ | 1998A | 180,000 | 180,000 |
| 2008 | 6.15 | 1998C | 100,000 | 100,000 |
| 2009 | 7.15 | 1999B | 200,000 | 200,000 |
| 2010 | 8⅛ | 2000A | 325,000 | 325,000 |
| 2010 | 7½ | 2000B | 300,000 | 300,000 |
| 2023 | 7½ | 1993G | 380,000 | 380,000 |
| 2026 | 7¾ | 1996A | 100,000 | 100,000 |
| 2028 | 7.1 | 1998D | 105,000 | 105,000 |
| 2028 | 6.9 | 1998D | 75,000 | 75,000 |
| 2029 | 7⅛ | 1994A | 150,000 | 150,000 |
| 2039 | 7.35 | 1999A | 275,000 | 275,000 |
| 2041 | 7½ | 2001A | 400,000 | - |
| TOTAL DEBENTURES | | | 3,970,000 | 3,870,000 |
| TAX-EXEMPT DEBT - NOTES ISSUED TO NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FOR FACILITIES REVENUE BONDS: | | | | |
| 2020 | 5¼ | 1993B | 127,715 | 127,715 |
| 2020 | 6.10 | 1995A | 128,285 | 128,285 |
| 2022 | 5⅜ | 1993C | 19,760 | 19,760 |
| 2026 | 7½ | 1991A | - | 128,150 |
| 2027 | 6¾ | 1992A | - | 100,000 |
| 2027 | 6⅜ | 1992B | - | 100,000 |
| 2028 | 6.00 | 1993A | 101,000 | 101,000 |
| 2029 | 7⅛ | 1994A | 100,000 | 100,000 |
| 2034 | 2.74* | 1999A | 292,700 | 292,700 |
| 2036 | 1.95* | 2001A | 224,600 | - |
| 2036 | 1.81* | 2001B | 98,000 | - |
| TOTAL TAX-EXEMPT DEBT | | | 1,092,060 | 1,097,610 |
| SUBORDINATED DEFERRABLE INTEREST DEBENTURES: | | | | |
| 2031 | 7¾ | 1996A | 275,000 | 275,000 |
| UNAMORTIZED DEBT DISCOUNT | | | (25,308) | (27,502) |
| TOTAL | | | 5,311,752 | 5,215,108 |
| LESS: LONG-TERM DEBT DUE WITHIN ONE YEAR | | | 300,000 | 300,000 |
| TOTAL LONG-TERM DEBT | | | 5,011,752 | 4,915,108 |
| TOTAL CAPITALIZATION | | | $ 9,927,170 | $ 9,644,305 |

* Rates reset weekly, quarterly or by auction held every 35 days; December 31, 2001 rate shown.

# APPENDIX B

Appendix B

**Proposed Sale to Luyster Creek LLC**
**Summary of Book Cost, Estimated Accrued Depreciation and Net Book Cost**
**For Common Plant Listed Below**
**at December 31, 2001**

| Account PSC | Account Con Ed | Description | At December 31, 2001 Book Cost | Estimated Accrued Depreciation | Net Book Cost | C.W.I.P. |
|---|---|---|---|---|---|---|
| | | Common Plant in Service | | | | |
| | | Land and Land Rights | | | | |
| | | General Plant Buildings -Location 242 | | | | |
| 389 | 9810 | Land and Land Rights | $ 222,591.93 | $ - | $ 222,591.93 | $ - |

**Consolidated Edison Company of New York, Inc.**
**Sale of Property to Luyster Creek LLC**
**As of December 31, 2002**



| | | Amount |
|---|---|---|
| Purchase Price (20,681 acres @ [redacted] | | $ [redacted] |
| Excluding Unpatented Upland (3,201 acres @ [redacted] | | [redacted] |
| Total Purchase Price Excl. Unpatented Upland | | $ [redacted] |
| Less Related Costs: | | |
| Book Value of Land | | 222,592 |
| Other Costs: | | |
| Selling Costs | $ 250,000 | |
| Relocation Costs | 175,000 | |
| Acquisition of Unpatented Land Under Water | 75,000 | |
| Miscellaneous | 160,000 | |
| Subtotal Other Costs | | 660,000 |
| Transfer Taxes @ 3.025% | | [redacted] |
| Gross Receipts Tax @ 4.573% | | [redacted] |
| State Income Tax @ 9.03% | | [redacted] |
| Subtotal - Costs | | [redacted] |
| Gain before FIT | | [redacted] |
| Federal Income Tax @ 35% | | [redacted] |
| Net Gain on Sale After FIT | | $ [redacted] |

Disposition of Net Gain to Customers:

| | | |
|---|---|---|
| Electric @ | 83% | $ [redacted] |
| Gas @ | 17% | $ [redacted] |

**Consolidated Edison Company of New York, Inc.**
**Proposed Journal Entries - Sale to Luyster Creek LLC**

| | | Debit | Credit |
|---|---|---|---|
| 1 | Accounts Receivable | [redacted] | |
| | Other Deferred Credits - Gain on Sale | | [redacted] |
| | Cash | [redacted] | |
| | Accounts Receivable | | [redacted] |
| | To record the sale, receipt of cash and defer the income effect. | | |
| 2 | Accumulated Provision for Depreciation | $222,592 | |
| | Plant in Service | | $222,592 |
| | Other Deferred Credits - Gain on Sale | $222,592 | |
| | Accumulated Provision for Depreciation | | $222,592 |
| | To retire plant in service and defer the income effect. | | |
| 3 | Other Deferred Debits | $410,000 | |
| | Cash | | $410,000 |
| | Other Deferred Credits - Gain on Sale | $410,000 | |
| | Other Deferred Debits | | $410,000 |
| | To record the payment of site preparation, relocation, and other expenses and defer the income effect. | | |
| 4 | Other Deferred Debits | $250,000 | |
| | Cash | | $250,000 |
| | Other Deferred Credits - Gain on Sale | $250,000 | |
| | Other Deferred Debits | | $250,000 |
| | To record the payment of selling expenses and defer the income effect. | | |
| 5 | Other Deferred Debits | [redacted] | |
| | Cash | | [redacted] |
| | Other Deferred Credits - Gain on Sale | [redacted] | |
| | Other Deferred Debits | | [redacted] |
| | To record the payment of Transfer Taxes and defer the income effect. | | |
| 6 | Other Deferred Credits - Gain on Sale | [redacted] | |
| | Taxes Accrued | | [redacted] |
| | To record Gross Receipts Taxes. | | |
| 7 | Other Deferred Credits - Gain on Sale | [redacted] | |
| | Taxes Accrued | | [redacted] |
| | To record New York State Income Tax | | |
| 8 | Other Deferred Credits - Gain on Sale | [redacted] | |
| | Federal Income Tax Payable | | [redacted] |
| | To record the payment of Federal income tax and defer the income effect. | | |

HELEN MARSHALL
PRESIDENT

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CITY OF NEW YORK
OFFICE OF THE
PRESIDENT OF THE BOROUGH OF QUEENS
120-55 QUEENS BOULEVARD
KEW GARDENS, NEW YORK 11424-1015

February 19, 2002

Honorable Janet H. Deixler
Secretary, New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12223

Dear Secretary Deixler:

I am writing in reference to the forthcoming sale of Con Edison property in Astoria, Queens to the National Envelope Company. I am asking for the support and approval of the New York State Department of Public Service in this important transaction.

The Office of the Queens Borough President has been working diligently to see that this project comes to fruition. The relocation of the National Envelope Company to this site is crucial if we are to retain the more than 400 manufacturing jobs it provides. National Envelope Company launched an exhaustive site selection process that culminated, through the efforts of this office, in locating the Astoria site in 1997. Since that time, our office actively encouraged negotiations between both parties. In fact, the contract between Con Edison and the National Envelope Company was finally signed in this office on December 20, 2001 and witnessed by former Borough President Claire Shulman.

Keeping the National Envelope Company in New York City, and more specifically in Queens County was a priority for the former Borough President. Please note that it is also one of the most important economic development priorities of my administration as well.

I look forward to your positive response.

Sincerely,

HELEN MARSHALL
President
Borough of Queens

cc: Candida L. Canizio
Nathan Moser
Joel Moser