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June 19, 2006

**VIA OVERNIGHT COURIER**

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

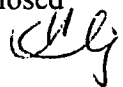
Re: Case 06-E-\_\_\_\_\_ - Petition of AES Greenidge, L.L.C.  
for an Order Providing for Lightened Regulation and Authorizing a  
PILOT Transaction

Dear Secretary Brilling:

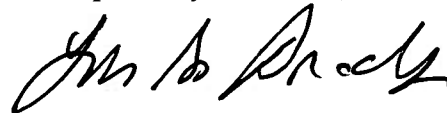
Enclosed please find for filing with the Public Service Commission ("Commission") an original and five copies of the Verified Petition of AES Greenidge, L.L.C. in the above-captioned matter.

Enclosed please also find six copies of a proposed SAPA Notice of Proposed Rulemaking.

Please advise the undersigned of any further information required by the Commission of the New York Department of Public Service to permit action on this petition.

Kindly acknowledge receipt of this filing by date-stamping as received the enclosed duplicate copy of this cover letter and returning it in the enclosed self-addressed envelope. 

Respectfully submitted,



Lisa Gayle Bradley  
Attorney for AES Greenidge, L.L.C.

cc: Leonard Van Ryn, Esq. (with enclosures)

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2006 JUN 20 PM 2:35

**STATE OF NEW YORK**  
**PUBLIC SERVICE COMMISSION**  
**PROPOSED RULE MAKING**  
**NO HEARING(S) SCHEDULED**

**Lightened Regulation of AES Greenidge, L.L.C. and Approval of PILOT Transaction between AES Greenidge, L.L.C. and Yates County Industrial Development Agency**

**I.D. No.:** PSC- \_\_\_\_ - \_\_\_\_\_ - P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition of AES Greenidge, L.L.C. for (i) lightened regulation, and (ii) approval of a payment-in-lieu-of-taxes (PILOT) transaction and related agreements between AES Greenidge, L.L.C. and Yates County Industrial Development Agency.

**Statutory authority:** Public Service Law, sections 2 and 69 or 70.

**Subject:** Lightened regulation and PILOT transaction and related agreements.

**Purposes:** To authorize lightened regulation of AES Greenidge, L.L.C. and to approve a PILOT transaction and related agreements in order to secure funding for the maintenance and operation of generating facilities.

**Substance of proposed rule:** The Commission is considering whether to approve or reject, in whole or in part, a petition filed by AES Greenidge, L.L.C. requesting (i) lightened regulation, and (ii) approval pursuant to either Section 69 or Section 70 of the Public Service Law of a PILOT transaction and related agreements between AES Greenidge, L.L.C. and Yates County Industrial Development Agency to enable the continued maintenance and operation of its generating facilities.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, New York 12223-1350 (518) 474-2500.

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, Bld. 3, Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530.

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(06-E - \_\_\_\_\_SA\_\_\_\_)

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

-----X  
**Verified Petition of AES Greenidge, L.L.C. for  
an Order Providing for Lightened Regulation  
and Authorizing a PILOT Transaction.**  
-----X

**Case 06-E-\_\_\_\_\_**

**AES GREENIDGE, L.L.C.**

**VERIFIED PETITION FOR AN ORDER PROVIDING FOR LIGHTENED  
REGULATION AND AUTHORIZING A PILOT TRANSACTION**

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*Attorneys for AES Greenidge, L.L.C.***

**Dated: June 19, 2006**

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

-----X  
**Verified Petition of AES Greenidge, L.L.C. for  
an Order Providing for Lightened Regulation  
and Authorizing a PILOT Transaction.**  
-----X

**Case 06-E-\_\_\_\_\_**

**VERIFIED PETITION FOR AN ORDER PROVIDING FOR LIGHTENED  
REGULATION AND AUTHORIZING A PILOT TRANSACTION**

**INTRODUCTION**

AES Greenidge, L.L.C. ("AES Greenidge" or "Petitioner") owns and operates the Greenidge Electric Generation Station, a 161 MW coal-fired facility located in the Town of Torrey, County of Yates, New York ("Greenidge Plant"). It consists of two operating units: Unit 3 (54 MW) and Unit 4 (107 MW).

This Verified Petition requests that the New York Public Service Commission ("Commission") issue an Order approving a lightened regulatory regime for Petitioner in its capacity as an electric corporation owner – operator of the Greenidge Plant. *See* Public Service Law ("PSL"), § 2 (13). Consistent with a lightened regulatory regime, this Verified Petition requests that the Commission also issue an Order approving a payment in lieu of taxes ("PILOT") transaction entered into between Petitioner and the Yates County Industrial Development Agency ("Agency"), a public benefit corporation organized and existing pursuant to General Municipal Law Article 18-A, Title 1. As discussed herein, approval of the PILOT transaction will result in a stable property tax environment for AES Greenidge. Under principles of lightened regulation, Petitioner believes that reviews pursuant to PSL § 69, and, if necessary, PSL § 70, may be made on the basis of the representations and information set forth in this Verified Petition. Finally, this Verified Petition seeks waivers from several Commission rules

and regulations pertaining to the filing of petitions and notices pursuant to PSL §§ 69 and 70, and other relief.

Correspondence and other communications concerning this filing should be directed to:

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*Attorneys for AES Greenidge, L.L.C.*

### **BACKGROUND**

In 1998 the Commission approved the transfer of New York State Electric & Gas Corporation's ("NYSEG") six coal-fired generating facilities to AES Corporation. *See* Case 96-E-0891 – New York State Electric & Gas Corporation – Transfer of Generation Facilities, *Order Approving Transfer of Electric Generation Facilities, Approving Contracts Upon a Condition, and Making Other Findings* (issued and effective December 3, 1998) ("Transfer Order"). One of these facilities was the Greenidge Plant.

AES Corporation is one of the largest world-wide independent power companies, with assets in excess of \$9 Billion. At the time of the Transfer Order, AES Corporation and NYSEG contemplated that the transfers of the six facilities would be to subsidiaries of AES Corporation. Three subsidiaries -- AES Eastern Energy, L.P. ("AES Eastern"), AES Creative Resources, L.P. ("ACR"), and AEE 2, L.L.C. ("AEE 2") – were created for the purpose of owning and operating the acquired generating units. In 1999 the Commission conferred lightened regulation status on all three entities. *See* Case 99-E-0148 – AES Eastern Energy, L.P. and AES Creative Resources, L.P. – Petition for a Declaratory Ruling that Light-Handed Regulation be Applied Concerning

the Petitioner's Purchase of Certain Electric Generating Assets from New York State Electric & Gas Corporation, *Declaratory Ruling on Lightened Regulation* (issued and effective March 23, 1999) and *Order Providing for Lightened Regulation*, Ordering Clause 1 (issued and effective April 23, 1999) ("Lightened Regulation Order"). Also in 1999, the Federal Energy Regulatory Commission ("FERC") approved the sale of electricity from the Greenidge Plant at market-based wholesale rates. See FERC Docket No. ER99-E-000, Re AES NY, LLC, *Order Accepting for Filing Proposed Market-Based Rates* (issued January 5, 1999).

Originally, the terms of the transfer contemplated that AES Eastern would acquire ownership of the Greenidge Plant. In order to facilitate financing, however, AES Eastern transferred as a capital contribution all rights and interests, including ownership, in the Greenidge Plant to AEE 2, its wholly-owned subsidiary.

Post-transfer, and continuing to date, ownership and operation of the Greenidge Plant has rested solely with AES Greenidge. To date, the plant operates solely as a merchant generator. To reduce market risk, it may sell its output into a combination; the markets operated by the New York Independent System Operator ("NYISO") or engage in forward power sales in the "bilateral" market or Power Purchase Agreements ("PPAs") with power marketers, municipalities and industry customers through AES Eastern and its affiliate marketing affiliate AES Odyssey, L.L.C. ("AES Odyssey"). Further, AES Odyssey is the sole marketer of the energy of the AES Eastern generating facilities in the NYISO. The other three facilities are AES Cayuga, AES Somerset, and AES Westover. The cumulative installed capacity of the AES Eastern generating stations is approximately 1,268 MW, or less than 4% of the NYISO's total installed capacity of approximately 36,527 MW.

In January 2005 the New York Department of Environmental Conservation ("DEC") commenced a New Source Review enforcement action against Petitioner. In that same month, AES Greenidge, AES Westover and affiliated ACR plants AES Hickling and AES Jennison entered into a Consent Decree, pursuant to which Petitioner agreed to curtail Greenidge Unit 3 operation commencing in 2007 and either install environmental control technology, repower, or cease operations of Greenidge Units 3 and 4 by December 23, 2009.

At the same time, AES Greenidge was facing higher property taxes because of an equalization rate problem experienced by the Town of Torrey, the local taxing jurisdiction in which the Greenidge Plant is located. The taxing jurisdictions are the Town of Torrey, the Village of Dresden, the County of Yates, and the Penn Yan Central School ("Tax Jurisdictions").

Against this background, AES Greenidge approached the Agency for tax relief. In exchange for assistance in the form of a PILOT Agreement providing for reductions in the assessment value of the Greenidge Plant, AES Greenidge agreed to make certain commitments that promote the continued operations of the Greenidge Plant.

Effective February 1, 2006, AES Greenidge and the Agency entered into a series of documents comprising the PILOT financing transaction, as described in greater detail hereafter. Under the terms of this arrangement, the Greenidge Plant is removed from the Tax Jurisdictions' assessment rolls and Petitioner is allowed to make specified payments each year in lieu of paying property taxes (*i.e.*, PILOT payments).

### **PILOT TRANSACTION**

The PILOT transaction is reflected in five separate documents: (i) a PILOT Agreement; (ii) an Underlying Lease for the Greenidge Plant land and improvements thereon, with AES

Greenidge as landlord and the Agency as tenant; (iii) a Bill of Sale transferring Greenidge Plant improvements to the Agency; (iv) a Lease Agreement for the Greenidge Plant land and all equipment and fixtures thereon, with the Agency as landlord and AES Greenidge as tenant; and (v) a PILOT Mortgage from the Agency and AES Greenidge to the County of Yates, as security for PILOT Agreement amounts. Copies of these agreements are annexed hereto respectively as Exhibit "A," Exhibit "B," Exhibit "C," Exhibit "D," and Exhibit "E." Each agreement is separately discussed hereafter.

#### **1. PILOT Agreement**

The PILOT Agreement (Exhibit "A") generally provides in Article 2 that the Greenidge Plant will be exempt from all real property taxes for a fifteen-year term from 2006 through 2020. Instead, the Tax Jurisdictions will invoice, and AES Greenidge will pay, amounts determined by applying the then current tax rates for the applicable tax years to stipulated assessment values. The PILOT Agreement essentially preserves the *status quo* in Greenidge Plant taxation over the fifteen-year term, locking in a stipulated value over that period. The PILOT Agreement includes a mechanism for any adjustments required as a result of changes in equalization rates or employment levels, as well as adjustments relative to the retirement of units or plant shutdown.

#### **2. Underlying Lease**

The Underlying Lease (Exhibit "B") sets forth the terms pursuant to which AES Greenidge will exclusively lease the Greenidge Plant land and generating facilities to the Agency. As set forth in Article III, the term of the Underlying Lease is the same as that of the PILOT Agreement; and the rent is \$1 and other acknowledged consideration.

**3. Bill of Sale**

The Bill of Sale (Exhibit "C") conveys to the Agency all of AES Greenidge's right, title, and interest in existing and future improvements to the Greenidge Plant during the term of the PILOT Agreement.

**4. Lease Agreement**

The Lease Agreement (Exhibit "D") sets forth the terms pursuant to which Petitioner will lease the Greenidge Plant back from the Agency. Pursuant to Articles IV and VI of the Lease Agreement, AES Greenidge will remain the operator of the generating unit. Pursuant to Article V, the term of the lease coincides with the duration of the PILOT Agreement, and the lease payments from AES Greenidge will be reimbursements of the Agency's administrative fees and expenses relating to the Lease Agreement. Pursuant to Article X, Section 10.2, in the event of a default the Agency has the right, *inter alia*, to take over operation of the Greenidge Plant.

**5. Mortgage**

As security for the amounts due under the PILOT Agreement, AES Greenidge and the Agency entered into a PILOT Mortgage (Exhibit "E") in favor of the County of Yates, as agent for itself and for the other Tax Jurisdictions.

**PETITION**

AES Greenidge now petitions the Commission in its capacity as an electric corporation owner - operator for the imposition of a lightened regulatory regime. *See* PSL § 2 (13). Petitioner has been proceeding in reliance on the principle that, under the regime of lightened regulation requested herein, this Verified Petition also provides a sufficient basis upon which the Commission can take prompt regulatory action to approve the proposed PILOT transaction.

As discussed hereafter, this Verified Petition specifically requests that the Commission issue an Order: (i) providing for its lightened regulation as a competitive wholesale generator operator; (ii) approving the PILOT transaction as being in the public interest pursuant to PSL § 69, or, if applicable, pursuant to PSL § 70; and (iii) granting limited waivers from various Commission rules and regulations pertaining to the filing of petitions and notices under these statutory provisions.

## **ARGUMENT**

### **I.**

#### **A LIGHTENED REGULATORY REGIME SHOULD BE EXTENDED TO AES GREENIDGE**

The Commission has issued numerous rulings that consistently apply a lightened regulatory regime to wholesale providers of electricity, including the ruling and order issued in favor of Petitioner's parent entity, AES Eastern Energy. *See* Lightened Regulation Order, *supra*.

As the Commission has observed:

the legislative purpose in enacting the Public Service Law was to ensure that the monopoly electric service providers charged only "just and reasonable rates" for electric services, and we have determined that those rates are now best achieved through market competition.

Case 98-E-1670 - Carr Street Generating Station, L.P., *Order Providing for Lightened Regulation* (issued and effective April 23, 1999). Therefore, the Commission has determined that certain PSL provisions should not generally apply to operators of wholesale generators such as AES Greenidge. *Id.*

Under a lightened regulation scheme, the Commission performs a realistic appraisal to ascertain the PSL requirements that should be imposed on wholesale electricity generators. *See*

*id.* p. 5. In previous decisions utilizing such an appraisal, when a facility meets the definition of an electric corporation under PSL §2(13) and is engaged in the manufacture of electricity under PSL §5(1)(b), the Commission has generally specified which PSL provisions are applicable, and which are inapplicable. *See, e.g.,* Lightened Regulation Order pp. 4-9.

The Commission has previously determined that most provisions in PSL Article 1 ordinarily remain applicable. PSL §§11, 19 and 24 – 26, which prevent producers of electricity from taking actions that are contrary to the public interest, have been determined to be applicable to wholesale generators like AES Greenidge. However, the Commission has determined that the PSL §18-a assessment, which is applicable only to gross retail revenues, is not applicable to a wholesaler so long as it engages in no retail sales. Because Petitioner engages in no retail sales, PSL §18-a should be determined to be inapplicable. *See* Lightened Regulation Order p. 5

Since PSL Article 2, by its own terms, applies only to the provision of service to retail residential customers, it is entirely inapplicable to wholesale generators, the Commission has determined. *See id.* Likewise, parts of PSL Article 4 are also restricted to retail service and have not been applied to wholesale generators. *Id.* The following Article 4 provisions have been recognized as inapplicable: PSL §§ 66(12) (filing of tariffs), 66(21) (storm plans), 67 (meter inspections), 72 (hearing and rate proceedings), 75 (excessive charges) and 76 (rates charged religious bodies and others). *See id.*

Other PSL Article 4 provisions are potentially applicable to wholesale generators, but have been implemented by the Commission in a fashion that limits their impact in a competitive market. Potentially applicable Article 4 provisions are PSL §§ 66(6) (annual report) and 68 (certificate of public need and necessity), as well as PSL §§ 69, 69-a and 70 (providing review of securities issuances, reorganizations and transfers of securities, works or systems). *See id.* pp. 5-

6. The Commission has previously determined that wholesale generators are allowed to fulfill their PSL § 66(6) obligation to file an annual report by duplicating the report they are required to file with the FERC. *See id.* p. 7.

As in the case of PSL Articles 2 and 4, several of the provisions in PSL Article 6 have been determined by the Commission as not applicable to whole electricity generators, while others are. Several provisions are inapplicable because they pertain to retail service: PSL §§ 112 (rate order enforcement), 113 (reparations and refunds), 114 (temporary rates), 114-a (exclusion of lobbying costs from rates), 116 (water service discontinuance), 117 (consumer deposits), 118 (payment to an authorized agent), 119-a (utility poles and conduits), and 119-c (tax reductions). Additionally, the Commission has exercised its discretion not to impose on wholesalers PSL §115, which addresses competitive bidding of utility purchases. The Commission has determined, however, that PSL §119-b, which regulates the protection of underground facilities from damage by excavators, should apply. *See id.* pp. 7-8.

The Commission has further determined that other provisions of PSL Article 6 generally need not be imposed on wholesalers, including PSL §§ 106 (loan approvals), 107 (use of utility revenues), 108 (corporate merger and dissolution), 110(3) (contracts between affiliated interests) and 110(4) (electric, gas, and water purchase contracts). While these provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates that monopoly providers charge to captive retail customers, the Commission has also recognized that their imposition could interfere with wholesale generators' plans for structuring the financing and ownership of their facilities. *See id.* pp. 8-9.

For an applicant that is affiliated with a power marketer, the Commission has generally also imposed the requirements under PSL §§ 110 (1) and (2). Potential market power issues can

arise as a result of such an affiliation, in which event the Commission has determined that PSL §110(1), on the reporting of stock ownership, and PSL §110(2), on access to books and records and the filing of reports, would apply to the generator and its marketing affiliate. *See id.* p. 5.

It is both consistent with the Lightened Regulation Order (and other long-standing Commission precedents), and warranted by the public interest in fostering competition in wholesale power markets, for the Commission to issue an Order generally providing for lightened regulation of AES Greenidge.

## II.

### THE PILOT TRANSACTION MERITS PSL § 69 APPROVAL

As the Commission has recognized, sale-leaseback (or lease-leaseback) transactions are reviewed pursuant to PSL § 69, not PSL § 70. *See, e.g.,* Case 04-E-0195 - Petition of KeySpan-Ravenswood, LLC for Approval of the Transfer of the New 250-MW Generating Facility for a Purchase Price of Approximately \$363 Million and the Subsequent Lease of Ravenswood Unit 40 Back to Ravenswood, *Order Authorizing Transaction and Providing for Other Relief* (issued and effective May 3, 2004) ("KeySpan-Ravenswood Order"). The Commission has specifically recognized that financial sale-lease back transactions with industrial development agencies are properly reviewable under PSL § 69, except to the extent such otherwise passive agencies assume future management or operational roles in the generating units and thus become subject to regulation as electric corporations. In such an event, the Commission has indicated that PSL § 70 review may be required in light of the changed status of the formerly passive agencies. *See, e.g.,* Case 99-E-1629 – Athens Generating Company, L.P. – Petition for a Declaratory Ruling that it will be Regulated Under a Lightened Regulatory Regime and for Approval to Execute a

Sale-leaseback Agreement with the Greene County Industrial Development Authority, *Order Providing for Lightened Regulation*, p. 7 (issued and effective July 12, 2000).

Assuming *arguendo* that lightened regulation of Petitioner as an electric corporation is appropriate, Petitioner submits that PSL § 69 should govern the review of the PILOT transaction, and not PSL § 70. For the indefinite future, operational control of the Greenidge Plant will remain exclusively in AES Greenidge. No transfer of operational control is occurring at this time. If and when the Agency ceases being a passive entity and were to assume an operational or management role over the Greenidge Plant, further review may be appropriate at that time under PSL § 70. Because Petitioner is a competitive wholesale provider of electricity and does not serve retail customers, the Commission has recognized that, under the lightened regulatory regime requested herein, the scrutiny applicable to monopoly utilities under PSL § 69 may be reduced. Instead, the Commission may rely on the representations made in a petition, and take prompt regulatory action. *See, e.g., KeySpan-Ravenswood Order, supra.* Under a lightened regulation regime, the Commission may thus determine that no in-depth analysis of the PILOT transaction is required and grant the appropriate PSL § 69 approval on the basis of the representations and information contained in the Verified Petition.

As discussed above, pursuant to the PILOT transaction Petitioner is strengthening its financial position as a participant in the wholesale electricity market, acting appropriately as a lightly regulated entity, and properly joining in the growth and maturation of the competitive market. Captive New York ratepayers cannot be harmed by the terms of this transaction, and, instead, will benefit, as noted above. AES Greenidge bears all financial risk associated with the transaction. As a result, the proposed transaction is for a statutory purpose and is not appear contrary to the public interest.

A stable and certain tax burden for the Greenidge Plant will contribute to its economic viability. Others will also benefit. The Tax Jurisdictions will benefit from continued operation of the Greenidge Plant, in terms of jobs and other benefits. As the Town of Torrey has recognized, the PILOT Agreement also minimizes adverse equalization rate impacts for non-plant taxpayers. New York State consumers and ratepayers will benefit because the continued operation of the Greenidge Plant will support system reliability, promote fuel diversification, and potentially lower energy prices within the New York Control Area.

For these reasons, Petitioner believes that PSL § 69 applies to the PILOT transaction; that, under principles of lightened regulation, a review pursuant to PSL § 69 may be made on the basis of the representations and information set forth in this Verified Petition; and that approval of the proposed transaction should be granted under PSL § 69 on the basis of such review. Consistent with lightened regulation, AES Greenidge further requests the flexibility to modify, without prior approval Commission approval, the identity of the financing entities, the payment and other terms, and the amount financed in the PILOT transaction so long as the assessment values called for by the PILOT Agreement are not increased.

### **III.**

#### **ASSUMING ARGUENDO THAT PSL § 69 IS INAPPLICABLE, THE PILOT TRANSACTION MERITS PSL § 70 APPROVAL**

Notwithstanding the Commission's treatment of lease- lease back transactions under PSL § 69, Petitioner recognizes that in some cases the Commission has reviewed similar transactions under PSL § 70, regardless of the passivity or not of the role played by financing agencies. *See, e.g.,* Case 01-E-1659 - Petition of PSEG Power New York, Inc. for Approval to Transfer Title of the Albany Steam Station/Bethlehem Energy Center Project to the Town of

Bethlehem Industrial Development Agency, *Order Approving Transfer of Title* (issued and effective January 31, 2002) ("PSEG Transfer Order"); Case 01-E-0476 - Petition of Dunkirk Power LLC Pursuant to Section 70 for Approval of the Transfer of a Leasehold Interest in the Dunkirk Electric Generating Facility to the Chautauqua County Industrial Development Agency, *Order Approving Transfer of Leasehold Interest* (issued and effective April 30, 2001) ("Dunkirk Transfer Order"). For the same reasons noted above in connection with PSL § 69, the Commission should decide on the basis of the representations and information set forth in this Verified Petition, and consistent with a lightened regulatory regime, that no in-depth analysis of the proposed PILOT transaction is necessary under PSL § 70 and that Commission approval should be granted. *See id.*

Approval of the PILOT transaction will allow realization of important benefits to both the Greenidge Plant and the Tax Jurisdictions. The economic viability of the Greenidge Plant will be strengthened as a result of the stabilized tax burden. The continued operation of the Greenidge Plant will assist in preserving the reliability of the electric system in New York State and potentially lower energy prices. No market power issues are raised at this time because operation of the Greenidge Plant will be unchanged. The approval of the PILOT transaction would clearly be in the public interest.

Based on the foregoing, Petitioner requests that the proposed PILOT transaction be approved under PSL § 70, if applicable, pursuant to a lightened regulatory regime and on the basis of this Verified Petition.

IV.

**WAIVERS OF SEVERAL COMMISSION RULES  
AND REGULATIONS SHOULD BE GRANTED**

In light of the reduced scrutiny applicable to lightly regulated entity filings and of the information provided in the Verified Petition, AES Greenidge requests that the filing requirements otherwise applicable in connection with the review or approval of a financing, *see* 16 N.Y.C.R.R. § 37.1, or of a transfer, *see* 16 N.Y.C.R.R. § 31.1, be waived for the limited purpose of this Verified Petition. *See, e.g.,* Case 04-E-1009 - Petition of AES Eastern Energy, L.P. for Approval of a \$75,000,000 Working Capital Facility, *Order Approving Financing* (issued and effective November 10, 2004); Case 01-F-0291 – Petition Filed by Huntley Power LLC for Approval to Lease the Huntley Electric Generating Facility in the Town of Tonawanda, Erie County, to the Erie County Industrial Development Agency, *Order Approving Transfer of Leasehold Interest* (issued and effective April 25, 2001) (“Huntley Transfer Order”). In the event further information is required by the Commission in its review of this Verified Petition, Petitioner will supplement its Verified Petition as appropriate.

V.

**ASSUMING *ARUGENDO* THAT THE COMMISSION IS REQUIRED  
TO UNDERTAKE AN ENVIRONMENTAL ASSESSMENT OF THE  
ACTIONS REQUESTED HEREIN, THE RECORD SUPPORTS THE  
ISSUANCE OF A NEGATIVE DECLARATION AND OTHER RELIEF**

Under the State Environmental Quality Review Act (“SEQRA”), Environmental Conservation Law Article VIII, and its implementing regulations, 6 N.Y.C.R.R. Part 617 and 16 N.Y.C.R.R. 7, the Commission is required to determine whether the actions it is requested to approve may have a significant impact on the environment. The Commission has determined in

prior cases that requests for a lightened regulatory regime and financing are Type II actions under the implementing regulations, and thus are not subject to review under SEQRA. *See* 6 N.Y.C.R.R. § 617.5 (c) (26) and (31); 16 N.Y.C.R.R. § 7.2 (a) and (b)(2)(v). *See also* Case 04-E-1549 *et al.*- Petition of Calpine Bethpage 3, LLC for an Order Providing for Lightened Regulation, *Declaratory Ruling Concerning Financing and Order Providing for Lightened Regulation, etc.*, p. 6 (issued and effective February 11, 2005); Case 04-E-0195, *supra*, KeySpan-Ravenswood Order. As to these requests in the Verified Petition, no further SEQRA review is required.

In the event the Commission determines that the PILOT transaction should be considered under PSL § 70, the Commission has determined in other cases that similar transfers of interests from wholesale generators to industrial development agencies, and *vice versa*, do not meet the definition of Type 1 or Type 2 actions listed in 6 N.Y.C.R.R. §§ 617.4 and 617.5 and in 6 N.Y.C.R.R. § 7.2, and are properly classified as “unlisted” actions requiring SEQRA review. *See, e.g.*, Case 01-E-1659, *supra*, PSEG Transfer Petition, pp. 6-8; Case 01-E-0476, *supra*, Dunkirk Transfer Order, pp. 8-9.

Here, as part of its PILOT transaction approval process, the Agency performed an uncoordinated environmental review under SEQRA. On January 18, 2006, the Agency reviewed the Environmental Assessment Form (EAF), Parts 1 and 2, prepared in conjunction with its consideration of Petitioner’s PILOT proposal. The Agency determined that the transaction was a Type II action that would not adversely impact the environment, and therefore adopted a negative declaration. Copies of the Agency’s SEQRA resolution and of the EAF are annexed hereto as Exhibit “F.”

Because the Agency performed an uncoordinated review, the Commission is authorized to assume lead agency status for purposes of consideration of this Petition. *See, e.g.*, Case 01-F-0291, *supra*, Huntley Transfer Petition, p.7. For the Commission's consideration, Petitioner has completed Part 1 of a short EAF, which is annexed hereto as part of Exhibit "F."

Assuming *arugendo* the applicability of PSL § 70, the proposed actions thus would be approval by the Commission under PSL § 70 of the transfer of a leasehold interest from AES Greenidge to the Agency pursuant to the Underlying Lease, the transfer back of a separate leasehold interest from the Agency to Greenidge pursuant to the Lease Agreement, and the transfer of ownership of equipment pursuant to the Bill of Sale. In this regard, Petitioner submits that reviews of the Pilot Agreement and Mortgage could be deemed Type II actions not subject to SEQRA review. To the extent, however, the Commission determines otherwise, these components of the PILOT transaction would also be discrete actions to be reviewed under SEQRA.

AES Greenidge submits that the Commission can conduct its required environmental analyses of this Verified Petition by reviewing the representations and information set forth in the Verified Petition, including the environmental assessments set forth in Exhibit "F." The Petitioner further submits that, upon such review, the Commission has a substantial basis in the record to conclude that the reviewed actions, will not, in and of themselves, lead to any physical changes in the Greenidge Plant. While the Lease Agreement (Exhibit "D") provides for future physical changes to the Greenidge Plant, further environmental review would be required at that time before construction could occur. Any environmental impacts associated with such changes could then be addressed by the cognizant governmental agency(ies).

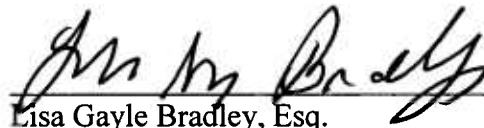
For these reasons, Petitioner respectfully requests that the Commission find that (i) no significant adverse environmental impacts are associated with the proposed actions; (ii) no public notice requesting comments is required or will be issued; (iii) Part 2 of the short EAF appearing in Exhibit "F" should be completed and the short EAF adopted as the Commission's final EAF; and (iv) a negative declaration should be issued concurrently with any Order issued in this proceeding.

### CONCLUSION

Based upon the representations and information set forth in this Verified Petition, Petitioner respectfully requests that the Commission (i) approve a lightened regulatory regime for AES Greenidge; (ii) approve the PILOT transaction under a lightened regulatory regime, whether pursuant to PSL § 69 or PSL § 70; (iii) grant the requested waivers of certain filing requirements; (iv) issue a negative SEQRA declaration, if necessary; and (v) grant the other requested relief.

Dated: June 19, 2006

Respectfully submitted,



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V E R I F I C A T I O N

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

DOUGLAS ROLL, being duly sworn, deposes and says: that he is President of AES Greenidge, L.L.C.; that he has read the foregoing Verified Petition and knows the contents thereof; and that the same is true to his own knowledge except as to any matters set forth therein to be upon information and belief, and as to those matters he believes them to be true.

  
Douglas Roll

Sworn to before me this  
16 day of June, 2006

  
Notary Public

LINDA L. SHOFF  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01-SH6055262  
QUALIFIED IN YATES COUNTY  
MY COMMISSION EXPIRES 02-20-2007





CLOSING ITEM NO.: A-6

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YATES COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

AND

AES GREENIDGE, L.L.C.

---

PAYMENT IN LIEU OF TAX AGREEMENT

---

DATED AS OF FEBRUARY 1, 2006

---

RELATING TO A PARCEL OF LAND (THE "LAND")  
LOCATED AT 590 PLANT ROAD IN THE TOWN OF  
TORREY, YATES COUNTY, NEW YORK.

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of February 1, 2006 (the "Payment in Lieu of Tax Agreement") by and between YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at One Keuka Business Park, Penn Yan, New York (the "Agency"), and AES GREENIDGE, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 590 Plant Road, Dresden, New York (the "Company");

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 113 of the Laws of 1975 of the State of New York, as amended, codified as Section 893-b of the General Municipal Law of the State of New York (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in November, 2005, AES Greenidge, L.L.C. (the "Company"), a Delaware limited liability company, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 153 acres located at 590 Plant Road in the

Town of Torrey, Yates County, New York (the "Land"), together with the existing buildings located thereon containing in the aggregate approximately 91,960 square feet of space (collectively, the "Facility"), (2) the reconstruction and renovation of the Facility, including the acquisition and installation of certain pollution control facilities, and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned and operated by the Company as a coal-fired electric generating plant and other directly and indirectly related activities; (B) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemption from certain sales taxes, deed transfer taxes, mortgage recording taxes and real property taxes (collectively with the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on December 6, 2005 (the "Public Hearing Resolution"), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project (the "Public Hearing"), to be mailed on December 16, 2005 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be published on December 14, 2005 in The Chronicle-Express, a newspaper of general circulation available to the residents of the Town of Torrey, Yates County, New York, (C) caused notice of the Public Hearing to be posted on December 9, 2005 on bulletin board located in the Torrey Town Hall located at 56 Geneva Street in the Town of Torrey, Yates County, New York, (D) conducted the Public Hearing on January 17, 2006, at 7:00 o'clock p.m., local time at the Torrey Town Hall located at 56 Geneva Street in the Town of Torrey, Yates County, New York, and (E) prepared a report of the Public Hearing (the "Report") which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on January 18, 2006 (the "SEQR Resolution"), the Agency determined that the Project constituted a "Type II action" (as such quoted term is defined under SEQRA), and accordingly that no further action need be taken under SEQRA with regard to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on January 18, 2006 (the "Inducement Resolution"), the Agency made a determination, subject to numerous conditions, to undertake the Project; and

WHEREAS, pursuant to Section 874(4) of the Act, the Executive Director of the Agency sent a letter dated December 16, 2005 (the "Pilot Deviation Letter"), to the chief executive

officers of the Town of Torrey, the Village of Dresden, Yates County and the Penn Yan Central School District, being the county and each city, town, village and school district in which the Project Facility is located (collectively, the "Affected Tax Jurisdictions") notifying said chief executive officers of the proposed deviation from the Agency's uniform tax exemption policy in connection with the Project (the "Proposed Deviation"), and the reasons therefor; and

WHEREAS, pursuant to a resolution duly adopted by the members of the Agency on January 18, 2006 (the "Pilot Deviation Resolution"), the Agency determined to deviate from the Agency's uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on February 15, 2006 (the "Approving Resolution"), the Agency determined that in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"): (A) a certain lease to Agency (the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant pursuant to which the Company will lease to the Agency the Land and all improvements now or hereafter located on the Land (collectively, the "Premises") for a lease term ending on June 30, 2021, (B) a bill of sale dated as of February 1, 2006 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, and (C) a lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; and

WHEREAS, the Agency and the Company will enter into a post closing conditions agreement dated as of February 1, 2006 (the "Post Closing Conditions Agreement") whereby the Company agrees to take certain actions to obtain various consents relating to the undertaking of the Project subsequent to the Closing Date; and

WHEREAS, if the Company intends to seek a sales and use tax exemption with respect to the Project Facility by reason of the involvement of the Agency with the Project, then simultaneously with or subsequent to the Closing, (A) the Agency will (1) execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") relating to the sales and use tax exemption which forms a part of the Financial Assistance and (2) file (with the New York State Department of Taxation and Finance) a New York State Department of Taxation and Finance Form ST-60 (the form required to be filed by the Agency pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") and (B) the Company will, in the Lease Agreement, agree to annually file (with the New York State Department of Taxation and Finance) a New York State Department of Taxation and Finance Form ST-340 (the form required to be filed by any agent of the Agency pursuant to Section 874(8) of the Act), indicating the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency (the "Annual Sales Tax Report"); and

WHEREAS, as security for amounts due under this Payment in Lieu of Tax Agreement, the Agency and the Company will enter into a mortgage dated as of February 1, 2006 (the "Pilot Mortgage") from the Agency and the Company to Yates County, as agent for itself, the Town of Torrey, the Village of Dresden and the Penn Yan Central School District (the Agency Documents, the Payment in Lieu of Tax Agreement and the Pilot Mortgage being collectively referred to as the "Basic Documents"); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; and

WHEREAS, except as otherwise provided in the Post Closing Conditions Agreement, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its Articles of Organization, Operating Agreement and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its members, the Company has duly authorized the

execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. Except as otherwise provided in Exhibit B hereto and the Post Closing Conditions Agreement, the Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Articles of Organization or Operating Agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. Except as otherwise provided in Exhibit B hereto and the Post Closing Conditions Agreement, no consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY. (A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall own the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Project Facility. (1) (a) Commencing with respect to assessment rolls prepared after the March 1, 2006 tax status date of the Village of Dresden and continuing until the earlier to occur of the tax year of each taxing entity that commences after June 30, 2021, the value of the parcel of Land located in the Village of Dresden (the "Dresden Parcel") for purposes of determining the payments in lieu of taxes due hereunder (the "Dresden Value") shall be Eighty-Four Thousand Three Hundred Dollars (\$84,300).

(b) Commencing with respect to assessment rolls prepared after the March 1, 2006 tax status date of the Town of Torrey and continuing until the earlier to occur of the tax year of each taxing entity that commences after June 30, 2021, the value of the Land and the Facility including the Dresden Parcel (the "Improvements") for purposes of determining the payments in lieu of taxes due hereunder shall be fixed each year as described in the table below (the "Total Full Value Assessment Amount"):

PILOT Year	Assessment Year	Town/County Tax Year	School Tax Year	Base Full Value Assessment Amount	Unit 3 Available Hours <sup>1</sup>	Assessment Amount Reduction for Unit 3 <sup>2</sup>	Total Full Value Assessment Amount
1	2006	2007	2006-2007	\$52,068,489	1,400	\$4,374,704	\$47,693,785
2	2007	2008	2007-2008	50,330,000	1,400	4,228,651	46,101,488
3	2008	2009	2008-2009	48,591,789	1,400	4,082,598	44,509,191
4	2009	2010	2009-2010	55,000,000	0	5,000,000	50,000,000
5	2010	2011	2010-2011	55,000,000	0	5,000,000	50,000,000
6	2011	2012	2011-2012	55,000,000	0	5,000,000	50,000,000
7	2012	2013	2012-2013	55,000,000	0	5,000,000	50,000,000
8	2013	2014	2013-2014	55,000,000	0	5,000,000	50,000,000
9	2014	2015	2014-2015	55,000,000	0	5,000,000	50,000,000
10	2015	2016	2015-2016	55,000,000	0	5,000,000	50,000,000
11	2016	2017	2016-2017	55,000,000	0	5,000,000	50,000,000
12	2017	2018	2017-2018	55,000,000	0	5,000,000	50,000,000
13	2018	2019	2018-2019	55,000,000	0	5,000,000	50,000,000
14	2019	2020	2019-2020	55,000,000	0	5,000,000	50,000,000
15	2020	2021	2020-2021	55,000,000	0	5,000,000	50,000,000

(C) Amount of Payments in Lieu of Taxes. (1) Subject to adjustments pursuant to Subsection (C)(3) of this Section 2.02, the payments in lieu of property taxes with respect to the Project Facility to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Payment in Lieu of Tax Agreement shall be computed separately for each Taxing Entity as follows:

(a) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Project Facility were owned by the Company and not the Agency by multiplying (i) the Total Full Value Assessment Amount (including the Dresden Value) by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Project Facility if the Project Facility were owned by the Company and not the Agency.

(b) In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this

<sup>1</sup> The Consent Decree requires Unit 3 to curtail production in 2007, 2008 and 2009 from 8,760 hours of potential production to 1,400 hours of potential production, an 84% decrease in operating availability. The Consent Decree further requires shut down of Unit 3 by the end of 2009.

<sup>2</sup> Unit 3 represents 10% of the full value of the Project Facility and the total Full Value Assessment Amount is adjusted for Unit 3 operating availability limitations.

Payment in Lieu of Tax Agreement with respect to the Project Facility shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity for such calendar year.

(2) Payments in lieu of property taxes shall be adjusted as follows:

(a) In the event that all or substantially all of the Project Facility is damaged, destroyed, or retired, then the payments in lieu of property taxes with respect to such property shall be reduced to the amount of property taxes which would otherwise be payable in relation to the damaged, destroyed, or retired property.

(b) The Total Full Value Assessment Amounts set forth in Subsection 2.02(B) assume that the Town of Torrey maintains an equalization rate of 100% during each year of this Payment in Lieu of Tax Agreement. In the event that the equalization rate changes, the Total Full Value Assessment Amount shall be adjusted up (in the case of an equalization rate higher than 100%) or down (in the case of an equalization rate lower than 100%) for the applicable tax year to maintain the same Total Full Value Assessment Amount (after application of the equalization rate).

(3) The parties recognize that the purpose of the Project is to create or retain permanent private sector jobs in Yates County, both in the form of direct employees at the Project Facility and outsourced employment. Accordingly, the parties have agreed that the amount of payments in lieu of taxes payable with respect to the Project Facility shall bear a direct relationship to the success or lack of success of the Project in achieving this goal. The Company agrees that the amount of payments lieu of property tax payable by the Company pursuant to this Payment in Lieu of Tax Agreement shall be adjusted as follows:

(a) The Agency and the Company agree that the base employment level (the "Base Employment Level") with respect to the Project Facility shall equal 32 FTE workers (as defined and computed in Section 2.02(C)(3)(b) below).

(b) On or before February 15 of each calendar year during the term of this Payment in Lieu of Tax Agreement, the Company shall file with the Agency an affidavit substantially in the form of Exhibit C attached hereto (the "Annual Employment Affidavit") indicating the sum of the average number of (i) full time equivalent employees (40 hours per week equaling one full time equivalent employee ("FTE") employed by the Company at the Project Facility during the last calendar year), and (ii) full time equivalent outsourced workers retained by the Company at the Project Facility during the last calendar year.

(c) If the Company fails to file the Annual Employment Affidavit with the Agency on or before February 15 of a calendar year, then the Agency shall be

entitled to assume that the Company employed 16 FTE employees and outsourced workers during such period.

(d) Notwithstanding anything herein to the contrary, in the event that the Annual Employment Affidavit filed by the Company with the Agency indicates that the Company employed less than 80% of the Base Employment Level during such period, the Total Full Value Assessment Amount of the Improvement shall be adjusted for the purpose of computing the amount of payments in lieu of taxes for the next tax year as provided in the following table:

Level Number	Employment Level	Adjustment to Assessed Value
1.	If the FTE level of employment and outsourced employment is equal to at least 80% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount is equal to the amount described in Section 2.02(B)(1)(b) of this Payment in Lieu of Tax Agreement
2.	If the FTE level of employment and outsourced employment is below 80% but equal to or above 70% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount described in Section 2.02(B)(1)(b) of this Payment in Lieu of Tax Agreement is increased by an amount equal to \$1 million
3.	If the FTE level of employment and outsourced employment is below 70% but equal to or above 60% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount described in Section 2.02(B)(1)(b) of this Payment in Lieu of Tax Agreement is increased by an amount equal to \$2 million
4.	If the FTE level of employment and outsourced employment is below 60% but equal to or above 50% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount described in Section 2.02(B)(1)(b) of the PILOT Agreement is increased by an amount equal to \$3 million
5.	If the FTE level of employment and outsourced employment is below 50% but equal to or above 40% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount described in Section 2.02(B)(1)(b) of this Payment in Lieu of Tax Agreement is increased by an amount equal to \$4 million
6.	If the FTE level of employment and outsourced employment is below 40% but equal to or above 30% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount described in Section 2.02(B)(1)(b) of this Payment in Lieu of Tax Agreement is increased by an amount equal to \$5 million

(e) Notwithstanding anything herein to the contrary, in the event that the Annual Employment Affidavit filed by the Company with the Agency with respect to a particular calendar year indicates that the Company increased the

number of FTE employees and outsourced workers by at least ten percent (10%) over the immediately prior calendar year, the Company will be entitled to move up at least one level in the table contained in Section 2.02(C)(3)(d) above.

(f) The Company agrees to file a copy of the Annual Employment Affidavit with the Town at the same time it files such form with the Agency.

(D) Additional Amounts in Lieu of Taxes. Improvements to the Project Facility (including structural additions and additional buildings) that do not increase the Project Facility's rated capacity of 158 megawatts shall not increase the amount of payments in lieu of property tax payable hereunder; provided, however, if the improvements are owned by or leased to a third party unrelated to the Company, the unrelated third party will pay 100% of normal taxes on such improvements. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land that do increase the Project Facility's rated capacity or constitute a re-powering of Unit 3 or are owned by or leased to a third party unrelated to the Company (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees that such Additional Facilities are not covered by this Payment in Lieu of Tax Agreement and would require either an amendment hereof based upon a fact-specific analysis of the circumstances or a separate payment in lieu of tax agreement to cover the Additional Facilities.

(E) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(F) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(G) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03 CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to

pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have

been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

## ARTICLE III

### LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or Yates County, New York, and neither the State of New York nor Yates County, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the

Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV

### EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEYS' FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) June 30, 2021 or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Articles VII, X or XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of

such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

AES Greenidge, L.L.C.  
590 Plant Road  
Dresden, New York 14441  
Attention: Plant Manager

WITH A COPY TO:

Peter H. Swartz, Esq.  
Hiscock & Barclay, LLP  
300 South State Street  
Syracuse, New York 13221-4878

IF TO THE AGENCY:

Yates County Industrial Development Agency  
One Keuka Business Park  
Penn Yan, New York 14527  
Attention: Chairman

WITH A COPY TO:

Philip L. Bailey, Esq.  
118 Main Street, P.O. Box 397  
Penn Yan, New York 14527

AND

A. Joseph Scott, Esq.  
Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.


SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 5.10. DEFINED TERMS. Capitalized terms used herein and not otherwise defined herein shall have the same meanings assigned to such terms in the Lease Agreement.

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:   
(Vice) Chairman

AES GREENIDGE, L.L.C.

BY: \_\_\_\_\_  
Authorized Officer

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

AES GREENIDGE, L.L.C.

BY: Douglas J. Roll  
Authorized Officer

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

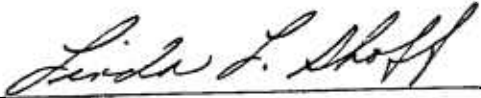
On the 15<sup>th</sup> day of February, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared JERRY NISSEN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument 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

**A. JOSEPH SCOTT III**  
Notary Public, State of New York  
Qualified in Albany County  
Commission Expires Dec. 31, 2006

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

On the 22 day of February, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared Douglas J. Hill, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

LINDA L. SHOFF  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01-SH6055262  
QUALIFIED IN YATES COUNTY  
MY COMMISSION EXPIRES 02-20-2007

EXHIBIT A  
DESCRIPTION OF THE LAND

-SEE ATTACHED-

#### Schedule 4.10 Description of Real Property

Greenidge Station - Property Situated in the (i) Town of Terry, Yates County, and (ii) Town of Ramapo, Seneca County, New York

##### Schedule of Property Description

All those certain plots, pieces, or parcels of land, with the buildings and improvements thereon, situate, being, and being in the Town of Terry, Yates County, New York, and the Town of Ramapo, Seneca County, New York, and more particularly described in Appendices A-1 through A-11, both inclusive, attached hereto.

Subject to and/or excepting all Permitted Encumbrances as defined in the Asset Purchase Agreement between the Seller and the Buyer dated \_\_\_\_\_, 1998, and all covenants, restrictions, conditions, reservations, exceptions, easements, and other matters of record.

Together with the easements, rights, and interests described in Appendix D, attached hereto.

##### Schedule of Exclusions

Excepting and reserving such real property and appurtenances described in Appendices B and C, attached hereto. Also excepting and excluding all rights and easements held by NYSEG relating to the transmission and distribution of electric energy and/or natural or recombinant gas, and for communication and/or drainage purposes, now existing on the property, whether or not of record.

NOTE 1: "NYSEG" refers to New York State Electric & Gas Corporation.

NOTE 2: All easement instruments referenced in the Appendices attached hereto were recorded in the County Clerk's Office for the county in which the property interest is located.

APPENDIX A-1

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: On the north by the land formerly comprising the Crooked Lake Canal, and now as understood to be owned by the New York Central Railroad Company; on the east by Seneca Lake; on the south by the lands formerly owned by John Thomas, now Ross Rosen, and the New York Central Railroad Company, Pennsylvania Division; and on the west by the highway leading south from Dresden, commonly known as the Lake Road; being the farm formerly known as the Luther Harris Farm.

Excepting, however, from the above described premises the mill property situate south of the outlet formerly owned by Edward R. Taylor, and later by Taylor Chemical Company.

Also excepting premises conveyed by John T. Knox, as referes, to Syracuse, Geneva and Corning Railroad Company, by deed dated the 15th day of March, 1878, and recorded in Yates County Clerk's Office in Liber 57 of Deeds at page 445.

Also excepting three and one-half acres conveyed by William M. Patterson and wife to Thomas F. Wells, August 14, 1891, and recorded in Yates County Clerk's office December 1, 1897 in Liber 85 of Deeds at page 444.

Also excepting 13/100 of an acre conveyed to the New York Central and Hudson River R. R. Co. by deed date June 2, 1902, and recorded in Yates County Clerk's Office August 13, 1902, in Liber 81 of Deeds at page 592.

Also excepting the right to use water from the dam now or formerly situate on the outlet above the premises hereby conveyed, and west of highway referred to above, such right having been heretofore conveyed by Anna M. Bradley to the First National Bank of Wallisboro by deed dated July 17, 1911 and recorded in Yates County Clerk's office, August 19, 1911 in Liber 104 of Deeds at page 662.

Also excepting premises conveyed by Horatio Hazen to William Berry, by deed dated March 29, 1849 and recorded in Yates County Clerk's office, March 30, 1854 in Liber 29 of Deeds at page 482.

Also excepting premises situate on the east side of highway leading south from the Village of Dresden, described as follows: Beginning at a point in the center of Keuka (formerly Crooked) Lake Outlet and the highway leading south from Dresden; thence easterly along the center of the Keuka (formerly Crooked) Lake Outlet to a small tree marked 1947 standing on an island in the center of Keuka (formerly Crooked) Lake Outlet; thence southerly by a line drawn so as to strike the northeast corner of the property formerly owned by Ezra Boughten, now owned by New York Central Electric Corporation and more fully described by deed dated May 12, 1924 and recorded May 13, 1924 in Yates County Clerk's office in Liber 115 of Deeds at page 505, thence west ten degrees north (N 10° E) two chains and eighty links (one hundred eighty-four and eight-tenths feet) to the highway leading south from Dresden; then north along said highway to the place of beginning, containing 1.8 acres more or less.

Being and hereby conveying the same premises conveyed by A. Carroll Turner and others to Associated Real Properties, Inc., by deed dated March 14, 1930 and recorded in Yates County Clerk's office, March 14, 1930 in Liber 121 of Deeds at page 514, with the exception of the premises set forth above by deed from Horatio Hazen to William Berry and premises described in the exception last above noted.

CAMBRIDGE  
6.19, 6.31

APPENDIX B

EXCEPTING FROM THE ABOVE PREMISES property appropriated by the State of New York designated as Parcels No. 155 and 156 on Map No. 180, Notice of Appropriation filed in the Office of the Department of Public Works on October 2, 1959, in the Office of the Department of State on October 13, 1959, and in the Yates County Clerk's Office on July 29, 1960.

FURTHER EXCEPTING FROM THE ABOVE PREMISES property appropriated by the People of the State of New York designated as Parcel Nos. 179, 180, 181 and 182 on Map No. 116 R-2, Notice of Appropriation filed in the office of the Department of State on August 22, 1960 and in the Yates County Clerk's office on October 3, 1960.

APPENDIX C

RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's 34.5-kV electric substation and 115-kV electric substation more particularly described below; the appurtenances covered by this reservation shall include, without limitation, the 34.5-kV electrical disconnect switches E1-74 and E54-74 and the 115-kV electrical disconnect switches B3-76, B3-77, B4-76, and B4-77:

ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 115 kV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 39°39'31" W., a distance of 1016.10 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 26°38'09" E., a distance of 783.33 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE continuing through lands of New York State Electric & Gas Corporation the following six (6) courses:

1. S. 60°20'00" W., a distance of 267.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 29°52'26" W., a distance of 373.22 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 60°02'40" E., a distance of 393.46 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 29°57'17" E., a distance of 160.90 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
5. S. 60°10'23" W., a distance of 126.45 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
6. S. 29°52'32" E., a distance of 213.95 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 2.760 acres.

ALSO, ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 34.5 kV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 01°02'08" E., a distance of 1017.81 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 47°24'51" E., a distance of 1382.86 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S. 71°13'31" W., parallel to and 3.0 feet from a building face and through drill holes set in a curb at 4.00 feet and 170.90 feet, a total distance of 174.90 feet;
2. N. 16°41'20" W., parallel with and 4.00 feet west of a curb marked with drill holes, a distance of 68.94 feet;
3. N. 71°18'09" E., parallel with and 4.0 feet north of a curb marked with drill holes, a distance of 172.38 feet;
4. S. 18°36'44" E., parallel with and 4.0 feet east of a curb marked with drill holes, a distance of 68.68 feet to the POINT OR PLACE OF BEGINNING comprising an area of 0.274 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's existing substation (known as the "Dresden" electric substation) lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates and State of New York, bounded and described as follows:

BEGINNING at a concrete monument found along the northerly boundary of New York State Route 14 and west of Swarthout Road;

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 19°33'22" E. a distance of 478.43 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 04°29'52" E., a distance of 314.34 feet from the centerline intersection of Lampman Road and the railroad tracks now or formerly of Consolidated Rail Corporation, said point is also N. 75°22'00" W., a distance of 2318.73 feet from a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of land of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE continuing through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. E. 74°31'24" W., a distance of 109.78 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 15°35'15" W., a distance of 125.21 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 74°45'47" E., a distance of 110.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 15°22'51" E., a distance of 124.75 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 0.316 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor (i) ownership of the following relay switchboard panels (together with (a) the wires and cables that connect the switches that are part of such panels with the devices and substation equipment controlled by such switches and (b) the wires and cables that supply AC/DC power to such panels) now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such panels, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such panels, wires and cables: panels 5, 6, 7, 8, 21, 22, 23, 81, 82; the "RTU" panel; the "Metering Equipment" panel; and the "Diff. Matching Cts" panel; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such relay switchboard panels, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace (i) new relay switchboard panels required due to expansion or replacement of the 115-kV and/or 34.5-kV electric system located in the substations referred to herein; and (ii) the wires and cables that connect switches that are part of such new relay switchboard panels with the devices and substation equipment controlled by such switches; provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, more specific locations for such new relay switchboard, together with their associated wires and cables, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) the right to operate certain AC/DC low voltage circuit breakers located on AC/DC Power Distribution Panelboards of the Grantee that are situated in the electric generating station now located on the premises, which circuit breakers are components of the system that permits the energization and de-energization of equipment and facilities located on the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (ii) such easements and rights-of-way as are necessary to permit the Grantor to obtain access to such circuit breakers in order to operate the same; provided, however, that in exercising such right to operate such circuit breakers, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such circuit breakers, AC/DC Power Distribution Panelboards and substations, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the following meters (together with the wires and cables that connect such meters with the data sources that they monitor) now located in

the control room (also known as the "old control room") situated off of the generator/turbine floor is the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such meters, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such meters, wires and cables; (1) meter number 0985-1067 located on relay switchboard panel 12 for Greenidge SST unit # 3 (high side of SST # 3); (2) meter number 0985-1066 located on relay switchboard panel 13 for Greenidge SST unit # 4 (load side of SST # 4); and (3) meter number 7155 located on relay switchboard panel 11 for Greenidge SST unit # 4 (load side SST # 4); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such meters, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the communications wires and cables that extend from (a) the demarcation point between such wires and cables and those of the telephone service provider for the premises to (b) the Grantor's SCADA RTU, (ii) ownership of the communications wires and cables that extend from (a) such demarcation point to (b) the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (iii) such easements and rights-of-way as are necessary (a) to permit such wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such wires and cables; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights of way as are necessary to permit the following communication wires and cables to be installed on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace such communication wires and cables: a future cable to be installed running from the demarcation point of the telephone company across the premises to the 115-kV electric substation and 34.5-kV electric substation. Provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such easements and rights-of-way shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary (i) (a) to permit the Grantor's 115-kV electrical disconnect switches B3-76 and B3-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B3-75 (which structure and switch are described in Appendix D hereto) and (b)

to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B3-76 and B3-77; and (ii) (a) to permit the Grantor's 115-kV electrical disconnect switches B4-76 and B4-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B4-75 (which structure and switch are described in Appendix B hereto) and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B4-76 and B4-77; provided, however, that in exercising such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the 115-kV group-operated electrical disconnect switches B3-75 and B4-75 and their associated structures. If necessary or desirable, the location and identity of such structures, such electrical disconnect switches and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric transmission poles, towers and structures (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, towers, structures, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, towers, structures, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, towers, structures, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric distribution poles (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's underground gas pipelines (together with their associated underground and surface facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such pipelines and facilities to remain in their present locations on the premises and (b) to permit the Grantor to

construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such pipelines and facilities; provided, however, that in exercising such ownership and such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such pipelines and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor hereunder (i) ownership of any grounding wire situated (a) around the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and (b) between and/or connecting the 34.5-kV and 115-kV substations referred to herein, and (ii) such easements and rights-of-way as are necessary to permit any such grounding wire to remain in its present location on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace any such grounding wire. Further Grantor reserves an easement permitting Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace new grounding wire along the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and between such substations, as and to extent deemed necessary or desirable by the Grantor; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such grounding wire, and such easements and rights-of-way, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor an easement and right-of-way across the premises conveyed hereby for personnel, vehicles and equipment for any and all purposes necessary or convenient to the conduct of the Grantor's business, including, without limitation, (i) the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of the Grantor's aforesaid substations; the testing for, response to, and remediation of, any environmental conditions with respect to such substations; and the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of (a) such relay switchboard panels and their associated wires and cables, (b) such meters and their associated wires and cables, (c) the Grantor's aforesaid communications towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (d) the Grantor's aforesaid electrical disconnect switches, (e) such electric transmission poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (f) such electric distribution poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (g) such gas pipelines and facilities, (h) such grounding wire and (ii) the operation of such AC/DC low voltage circuit breakers; provided, however, that in exercising such easement and right-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. The Grantor's easement and right-of-way with respect to the Grantor's "Dresden" substation shall include, without limitation, the present driveway associated therewith. If necessary or desirable, the location of such driveway, and the remainder of such easement and right-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTEE'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., (ii) the High Voltage Proximity Act, New York Labor Law § 202-h and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

APPENDIX D

(i) OWNERSHIP of the following components of the Grantor's relay switchboard panel 82 (which panel is described in Appendix C hereto) that are used in the protection and control of circuit breakers 81-72 and 824-72, which panel 82 is now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such components to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such components: two ASEA RABERS with Auxiliary CTS SLCK12, six General Electric IAC538011As, one General Electric IAC53803A and one General Electric IAC53803A (each together with its associated control switches, test switches, light bulbs and other appurtenances); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's relay switchboard panels located on the premises. If necessary or desirable, the identity and location of such components and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(ii) OWNERSHIP of the following electrical facilities now located on the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation (which substation premises are described in Appendix C hereto) and (iii) such easements and rights-of-way as are necessary (a) to permit such electrical facilities to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such electrical facilities: (1) the 115-kV circuit breaker 83-72 together with its associated equipment and connections to the 115-kV electrical disconnect switches 83-75 and 83-76, foundation, grounding, conduit and control cables; (2) the 115-kV group-operated electrical disconnect switch 83-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (3) the 115-kV circuit breaker 84-72 together with its associated equipment and connections to the 115-kV electrical disconnect switches 84-75 and 84-76, foundation, grounding, conduit and control cables; (4) the 115-kV group-operated electrical disconnect switch 84-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (5) service station bank # 1 located within the Grantor's 34.5-kV electric substation (which substation is described in Appendix C hereto), which bank consists of (A) one 3-phase, 34.5-2.4 kV, 3750/5000 kVA transformer together with its associated bus and connections, surge arresters, foundation, grounding, conduit and control cable and (B) one 600:5 MR current transformer together with its associated electrical disconnect switch; (6) the 34.5-kV circuit breaker 81-72 together with its associated equipment and connections to the electrical disconnect switches 81-74 and 81-75, foundation, grounding, conduit and control cables; (7) the 34.5-kV electrical disconnect switch 81-75; (8) service station bank # 2E, which bank consists of one 3-phase, 34.5-2.4 kV, 10/12.5 MVA transformer together with its associated bus and connections, 2.4-kV power cable, surge arresters, foundation, grounding, conduit and control cable; (9) the 34.5-kV circuit breaker 824-72 together with its associated equipment and connections to the electrical disconnect switches 824-74 and 824-75, foundation, grounding, conduit and control cables; (10) the 34.5-kV electrical disconnect switch 824-75; (11) the 34.5-kV buswork, surge arresters and conduit and cable.

UNDER AND SUBJECT to two indentures of lease made March 18, 1936 between Associated Real Properties, Inc., and respectively by Harry K. Meaker of the Village of Dresden, Yates County, State of New York and Finger Lakes Canning Company, Inc., a corporation organized and existing by and under the laws of the State of New York, having its principal office in the Village of Penn Yan, Yates County, State of New York.

Being the same premises conveyed by Associated Real Properties, Inc. to New York State Electric & Gas Corporation by a deed dated February 4, 1937 and recorded in the Yates County Clerk's Office on February 23, 1937 in Liber 143 of Deeds at Page 224.

Also excepting premises conveyed by New York State Electric & Gas Corporation to Harry Meaker by a deed dated July 28, 1938 and recorded in the Yates County Clerk's Office on August 5, 1938 in Liber 144 of Deeds at Page 570; from which conveyance New York State Electric & Gas Corporation specifically reserved all water and riparian rights connected with the property so conveyed.

Also excepting governmental rights in navigable streams, being Keoka Lake Outlet and Seneca Lake, and the land in the bed and under the waters thereof.

SUBJECT to an Agreement dated December 14, 1942, made between New York State Electric & Gas Corporation and the United States of America granting an easement and right of way to United States of America for the installation and maintenance of its cable and equipment upon and across the lands of the New York State Electric & Gas Corporation between the west shore line and the east shore line of Seneca Lake including any lands or interest New York State Electric & Gas Corporation may have under the waters of Seneca Lake.

SUBJECT to an easement and right of way dated September 27, 1993 granted by New York State Electric & Gas Corporation to Ferro Corporation to construct, reconstruct, operate, inspect, maintain, repair, remove and/or replace an underground water pipeline and appurtenances upon, over, under and through a portion of the above premises, along with ingress and egress over the above premises for these purposes.

TOGETHER WITH all rights available under an agreement dated May 26, 1991 whereby The People of the State of New York grant to New York State Electric & Gas Corporation an easement, thirty (30) feet in width, for the operation and maintenance of electric submarine cables on such portion of the above premises under the waters of Seneca Lake situated in the Town of Torrey, County of Yates and Town of Romulus, County of Seneca, and the State of New York; this agreement is scheduled to expire on or about October 15, 2004.

It is the intention of the Deed to which this Appendix is attached to convey to NGE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

GREEDER  
F. Smith  
6.6

APPENDIX A-2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Torrey, Yates County, New York, being the same premises conveyed by William M. Birkett and Clara Birkett, his wife; Clarence T. Birkett and Laura R. Birkett, his wife, to Florence M. Smith by deed dated July 15, 1891 and recorded in the Yates County Clerk's Office September 3, 1891 in Liber 79 of Deeds at page 75, and being also the same premises described in an instrument dated October 30, 1911, executed between Florence M. Smith and George E. Smith and recorded in the Yates County Clerk's Office July 7, 1923 in Liber 114 of Deeds at page 648.

Hereby conveying premises consisting of approximately eight (8) acres of land, bounded on the north by a public highway, being the highway leading from Dresden to Watkins, formerly known as the Lake Road, and the highway leading to Mirrods, on the east by the said highway leading from Dresden to Watkins, formerly known as the Lake Road; on the south by lands of New York Central Railroad Company; and on the west by lands formerly of Harry M. Simmons, consisting of 8.29 acres of land, and being the second parcel described in the deed from Roy Swarthout to New York Central Electric Corporation dated September 30th, 1936 and duly recorded in the Yates County Clerk's Office October 2nd, 1936 in Liber 141 of Deeds at page 602; the premises hereby conveyed consisting of about eight (8) acres of land, and being the home premises now occupied and owned by said Florence M. Smith; and the first party represents and warrants that she is now in the possession of the said premises, and that the same is free of all liens and encumbrances and taxes.

Being the same premises conveyed by Florence M. Smith to New York State Electric & Gas Corporation by a deed dated February 10, 1937 and recorded in the Yates County Clerk's Office on February 10, 1937 in Liber 143 of Deeds at Page 209.

It is the intention of the Deed to which this Appendix is attached to convey to NYS Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter: EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

located between the circuit breaker ES4-72 and the station service bank # 4E; (12) the circuit breaker ES4-72 together with its associated equipment and connections to: (i) the station service bank # 4E, (ii) the tie bus #6, and (iii) the emergency tie bus # 4, foundation, grounding, conduit and control cable; and (13) the # 1 and # 2 "House Service and Lighting" transformers located within the Grantor's 34.5-kV electric substation (which substation is described in Appendix C hereto) together with their associated foundation, grounding, conduit and control cable; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the identity and location of such electrical facilities and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(iii) AN EASEMENT and right-of-way across the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation (which substation premises are described in Appendix C hereto) for personnel, vehicles and equipment to the extent necessary to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace the Grantee's electrical facilities described in the immediately preceding paragraph; provided, however, that in exercising such easement and right-of-way the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the location of such easement and right-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTOR'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; (ii) the High Voltage Proximity Act, New York Labor Law § 202-a and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

GREENWICH  
H. Swarthout  
C.C.

APPENDIX A-3

All that Tract or Parcel of Land, situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: Commencing at a stake in the center of the new road leading south to the town of Milo by James M. Clark's land; thence at right angles with the center of said road North 65 degrees west seven chains and sixty links; thence North along the North bounds of land sold by S. Buckley on the 24th of February, 1847, to the North-west corner thereof; thence westerly along said Buckley's North line 19 chains and 24 links to the new Pre-emption line; thence North along said line 3 chains and 75 links to the outlet of Crooked (Keuka) Lake; thence Northeasterly along said outlet 45 chains 36 links to the center of the Milo road in the front of the Custom Mill; thence South 70° East, 66 links to the center of the highway; thence South 70 1/2° West 2 chains and 62 links; thence South 25° West, 15 chains and 2 links to the place of beginning; containing 41 3/4 acres of land, be the same more or less. Reserving the right of overflowing the said premises for any uses or purposes of a mill-pond adjacent thereto, subject to the conditions, exceptions and reservations in the patent contained, of which this parcel of land is a part, as the said right was reserved in the conveyance of the said premises from Allie A. Embree to George Turner by deed dated March 23, 1872, and recorded in Yates County Clerk's Office in Liber 54 of Deeds at page 110, and said premises being the same premises conveyed by the said deed.

ALSO All that other Tract or Parcel of land, situate in the town of Torrey, County of Yates and State of New York, bounded as follows: Beginning in the center of the road, leading from Dresden to Kinross, and on the North side of the Syracuse, Geneva & Corning R.R., thence along the center of the road North 26° East 6 chains and 87 links; thence North 81 degrees and 15' East 2 chains and 62 links, and thence North 80 degrees East, 1 chain and 2 links to a stake; thence South 23 degrees and 30' East, 15 chains and 12 links to a stake on the North side of the railroad aforesaid; thence westerly along the railroad to the place of beginning, containing eight acres of land and 29/100 of an acre of land, be the same more or less, as surveyed July 31, 1880, by L. Ogden. Being the same premises conveyed to George Turner by Henry Birkett by deed dated Sept. 15, 1880, and recorded in said Clerk's Office Jan. 15, 1881, in Liber 62 of Deeds at page 261.

Excepting and reserving from the premises hereby conveyed all that portion of said premises conveyed by George Turner and wife to Adell Lampson by deed June 25, 1889, recorded in said Clerk's Office in Liber 75 of Deeds at page 499, containing one acre of land more or less.

Also excepting and reserving therefrom those portions of said premises conveyed by George Turner and wife to Syracuse, Geneva & Corning R. R. Company by two deeds, one recorded in said Clerk's office in Liber 59 of Deeds at page 257, and one recorded in said Clerk's Office in Liber 68 of Deeds at page 38.

Also excepting therefrom all that portion of said premises conveyed by Ella J. Benedict to the N. Y. Central & Hudson River R. R. Company by deed recorded in said Clerk's Office in Liber 91 of deeds at page 544.

Also excepting that portion conveyed by Minnie A. Travis to New York Central & Hudson River R.R. Co. by deed recorded in said office in Liber 91 of deeds at page 545.

Being a portion of the premises conveyed by Roy Swarthout to New York Central Electric Corporation by a deed dated September 30, 1936 and recorded in the Yates County Clerk's Office on October 7, 1936 in Liber 141 of Deeds at Page 502.

It is the intention of the Deed to which this Appendix is attached to convey to NGX Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

## EXHIBIT B

### POST CLOSING CONDITIONS

The Agency and the Company agree and acknowledge that the Company must take certain actions subsequent to the Closing Date to obtain various consents necessary to undertake the Project. The consents that must be obtained by the Company are described in the Post Closing Conditions Agreement. The Company has, pursuant to the Post Closing Conditions Agreement, agreed to obtain such consents.

EXHIBIT C

ANNUAL EMPLOYMENT AFFIDAVIT

STATE OF NEW YORK                    )  
  )Ss:  
COUNTY OF YATES                    )

I, the undersigned, an Authorized Officer of AES Greenidge, L.L.C. (the "Company"), do hereby depose and state as follows:

1. On March 1, 2006 (the "Closing"), Yates County Industrial Development Agency (the "Agency") and the Company entered into a payment in lieu of tax agreement dated as of February 1, 2006 (the "Payment in Lieu of Tax Agreement") in connection with the following project (the "Project") undertaken by the Agency for the benefit of the Company: (A) (1) the acquisition of an interest in a parcel of land containing approximately 153 acres located at 590 Plant Road in the Town of Torrey, Yates County, New York (the "Land"), together with the existing buildings located thereon containing in the aggregate approximately 91,960 square feet of space (collectively, the "Facility"), (2) the reconstruction and renovation of the Facility, including the acquisition and installation of certain pollution control facilities, and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned and operated by the Company as a coal-fired electric generating plant and other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company, pursuant to the terms of a lease agreement dated as of February 1, 2006 (the "Lease Agreement") by and between the Agency and the Company.

2. Pursuant to Section 2.02(C)(3)(b) of the Payment in Lieu of Tax Agreement, on or before February 15 of each calendar year during the term of the Payment in Lieu of Tax Agreement, the Company is required to file with the Agency this affidavit (the "Annual Employment Affidavit") indicating the sum of the average number of (a) full time equivalent employees (40 hours per week equaling one full time equivalent employee ("FTE") employed by the Company at the Project Facility during the last calendar year), and (b) full time equivalent outsourced workers retained by the Company at the Project Facility during the last calendar year.

3. For calendar year 2\_\_\_\_, the Company employed \_\_\_\_ FTE's and \_\_\_\_ full time equivalent outsourced workers.

4. Upon written request of the Agency, the Company will provide documentation indicating the number of FTE's and full time equivalent outsourced workers during said calendar year.

5. This Annual Employment Affidavit was filed with the Agency on February \_\_\_\_, 20\_\_\_\_.

A copy of this affidavit is being delivered to the Town of Torrey at the same time it is being delivered to the Agency.

IN WITNESS WHEREOF, the undersigned has set forth their hand as of the \_\_\_\_ day of February, 20\_\_.

AES GREENIDGE, L.L.C.

BY: \_\_\_\_\_  
Authorized Officer

Sworn to before me this \_\_\_\_ day  
of February, 20\_\_.

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





CLOSING ITEM NO.: A-1

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AES GREENIDGE, L.L.C.,  
AS LANDLORD

AND

YATES COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY,  
AS TENANT

---

LEASE TO AGENCY

---

DATED AS OF FEBRUARY 1, 2006

---

RELATING TO A LEASEHOLD INTEREST IN A CERTAIN  
PARCEL OF LAND LEASED BY THE LANDLORD TO THE  
TENANT AND LOCATED AT 590 PLANT ROAD IN THE  
TOWN OF TORREY, YATES COUNTY, NEW YORK.

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and is for convenience of reference only.)

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## LEASE TO AGENCY

THIS LEASE TO AGENCY dated as of February 1, 2006 (the "Underlying Lease") by and between AES GREENIDGE, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 590 Plant Road, Dresden, New York (the "Company"), as landlord, and YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at One Keuka Business Park, Penn Yan, New York (the "Agency"), as tenant;

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 113 of the Laws of 1975 of the State of New York, as amended, codified as Section 893-b of the General Municipal Law of the State of New York (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in November, 2005, AES Greenidge, L.L.C. (the "Company"), a Delaware limited liability company, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 153 acres located at 590 Plant Road in the Town of Torrey, Yates County, New York (the "Land"), together with the existing buildings

located thereon containing in the aggregate approximately 91,960 square feet of space (collectively, the "Facility"), (2) the reconstruction and renovation of the Facility, including the acquisition and installation of certain pollution control facilities, and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned and operated by the Company as a coal-fired electric generating plant and other directly and indirectly related activities; (B) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemption from certain sales taxes, deed transfer taxes, mortgage recording taxes and real property taxes (collectively with the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on December 6, 2005 (the "Public Hearing Resolution"), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project (the "Public Hearing"), to be mailed on December 16, 2005 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be published on December 14, 2005 in The Chronicle-Express, a newspaper of general circulation available to the residents of the Town of Torrey, Yates County, New York, (C) caused notice of the Public Hearing to be posted on December 9, 2005 on bulletin board located in the Torrey Town Hall located at 56 Geneva Street in the Town of Torrey, Yates County, New York, (D) conducted the Public Hearing on January 17, 2006, at 7:00 o'clock p.m., local time at the Torrey Town Hall located at 56 Geneva Street in the Town of Torrey, Yates County, New York, and (E) prepared a report of the Public Hearing (the "Report") which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on January 18, 2006 (the "SEQR Resolution"), the Agency determined that the Project constituted a "Type II action" (as such quoted term is defined under SEQRA), and accordingly that no further action need be taken under SEQRA with regard to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on January 18, 2006 (the "Inducement Resolution"), the Agency made a determination, subject to numerous conditions, to undertake the Project; and

WHEREAS, pursuant to Section 874(4) of the Act, the Executive Director of the Agency sent a letter dated December 16, 2005 (the "Pilot Deviation Letter"), to the chief executive officers of the Town of Torrey, the Village of Dresden, Yates County and the Penn Yan Central

School District, being the county and each city, town, village and school district in which the Project Facility is located (collectively, the "Affected Tax Jurisdictions") notifying said chief executive officers of the proposed deviation from the Agency's uniform tax exemption policy in connection with the Project (the "Proposed Deviation"), and the reasons therefor; and

WHEREAS, pursuant to a resolution duly adopted by the members of the Agency on January 18, 2006 (the "Pilot Deviation Resolution"), the Agency determined to deviate from the Agency's uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on February 15, 2006 (the "Approving Resolution"), the Agency determined that in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"): (A) a certain lease to Agency (the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant pursuant to which the Company will lease to the Agency the Land and all improvements now or hereafter located on the Land (collectively, the "Premises") for a lease term ending on June 30, 2021, (B) a bill of sale dated as of February 1, 2006 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, and (C) a lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; and

WHEREAS, if the Company intends to seek a sales and use tax exemption with respect to the Project Facility by reason of the involvement of the Agency with the Project, then simultaneously with or subsequent to the Closing, (A) the Agency will (1) execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") relating to the sales and use tax exemption which forms a part of the Financial Assistance and (2) file (with the New York State Department of Taxation and Finance) a New York State Department of Taxation and Finance Form ST-60 (the form required to be filed by the Agency pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") and (B) the Company will, in the Lease Agreement, agree to annually file (with the New York State Department of Taxation and Finance) a New York State Department of Taxation and Finance Form ST-340 (the form required to be filed by any agent of the Agency pursuant to Section 874(8) of the Act), indicating the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency (the "Annual Sales Tax Report"); and

WHEREAS, simultaneously with the Closing, (A) the Company and the Agency will execute and deliver a payment in lieu of tax agreement dated as of February 1, 2006 (the "Payment in Lieu of Tax Agreement") by and between the Company and the Agency, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility to the Affected Tax Jurisdictions and (B) the Agency will file with the appropriate assessor or assessors having jurisdiction over the Project Facility (each, an "Assessor") and mail to the chief executive officer of each Affected Tax Jurisdiction a copy of a

New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (a "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement; and

WHEREAS, as security for amounts due under the Payment in Lieu of Tax Agreement, the Agency and the Company will enter into a mortgage dated as of February 1, 2006 (the "Pilot Mortgage") from the Agency and the Company to Yates County, as agent for itself, the Town of Torrey, the Village of Dresden and the Penn Yan Central School District (the Agency Documents, the Payment in Lieu of Tax Agreement and the Pilot Mortgage being collectively referred to as the "Basic Documents"); and

WHEREAS, the Agency and the Company will enter into a post closing conditions agreement dated as of February 1, 2006 (the "Post Closing Conditions Agreement") whereby the Company agrees to take certain actions to obtain various consents relating to the undertaking of the Project subsequent to the Closing Date; and

WHEREAS, the Company desires to convey the leasehold interest created pursuant to this Underlying Lease to the Agency on the terms and conditions set forth in this Underlying Lease; and

WHEREAS, pursuant to the Lease Agreement, the Company and the Agency stated that it is the intention of the Company and the Agency that the Company's leasehold interest in the Project Facility created by the Lease Agreement shall not merge with the Company's fee interest in the premises leased hereby; and

WHEREAS, all things necessary to constitute this Underlying Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been or will be done and performed, and the creation, execution and delivery of this Underlying Lease have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS TO WIT:

## ARTICLE I

### DEFINITIONS

SECTION 1.1. DEFINITIONS. The following words and terms used in this Underlying Lease shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

"Act" means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 113 of the Laws of 1975 of the State, codified as Section 893-b of the General Municipal Law of the State, as amended from time to time.

"Affected Tax Jurisdiction" shall have the meaning assigned to such term in Section 854(16) of the Act, which defines such term, in the context of the Project, to mean any village, town, city, county, and school district in which the Project Facility is located.

"Affected Tax Jurisdictions" means all Affected Tax Jurisdictions in which the Project Facility is located.

"Agency" means (A) Yates County Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which Yates County Industrial Development Agency or its successors or assigns may be a party.

"Annual Sales Tax Report" means a New York State Department of Taxation and Finance Form ST-340 (Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)), indicating the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency pursuant to Section 4.1(E) of the Lease Agreement.

"Applicable Laws" means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Agency were the owner of the Project Facility and as if the Company and not the Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

"Approving Resolution" means the resolution duly adopted by the Agency on February 15, 2006, authorizing and directing the undertaking and completion of the Project and the execution and delivery of the Basic Documents to which the Agency is a party.

"Authorized Representative" means (A) with respect to the Agency, its Chairman or Vice-Chairman, or such other Person or Persons at the time designated to act on behalf of the Agency by written certificate furnished to the Company containing the specimen signature of each such Person and signed on behalf of the Agency by its Chairman, Vice Chairman or such other person as may be authorized by resolution of the Agency to act on behalf of the Agency, and (B) with respect to the Company, its chief executive officer or chief financial officer, or such other Person or Persons at the time designated to act on behalf of the Company by written certificate furnished to the Agency containing the specimen signature of each such Person and signed on behalf of the Company by its chief executive officer or chief financial officer, or such other person as may be authorized by the members of the Company to act on behalf of the Company.

"Bankruptcy Code" means the United States Bankruptcy Code, constituting Title 11 of the United States Code, as amended from time to time, and any successor statute.

"Basic Documents" means the Conveyance Documents, the Lease Agreement, the Payment in Lieu of Tax Agreement, the Pilot Mortgage, the Post Closing Conditions Agreement and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

"Bill of Sale to Agency" means the bill of sale dated as of February 1, 2006 and delivered on the Closing Date from the Company to the Agency conveying all of the Company's interest in the Equipment to the Agency.

"Bill of Sale to Company" means the bill of sale from the Agency to the Company conveying all of the Agency's interest in the Equipment to the Company, substantially in the form attached as Exhibit D to the Lease Agreement.

"Business Day" means any day of the year other than (A) a Saturday or Sunday, (B) a day on which the New York Stock Exchange is closed or (C) a day on which commercial banks in New York, New York are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

"Closing" means the closing at which the initial Basic Documents are executed and delivered by the Company and the Agency.

"Closing Date" means the date of the Closing.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

"Company" means AES Greenidge, L.L.C., a limited liability company duly organized and existing under the laws of the State of Delaware, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of the Lease Agreement.

"Completion Date" means the earlier to occur of (A) the date of substantial completion of the Project, as evidenced in the manner provided in Section 4.2 of the Lease Agreement, or (B) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

"Condemnation" means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

"Conveyance Documents" means, collectively, the Underlying Lease and the Bill of Sale to Agency.

"Default Interest Rate" means a per annum rate of interest equal to twelve percent (12%) per annum, or the maximum annual rate of interest permitted by law, whichever is less.

"Environmental Laws" mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, written and published policies, guidelines, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

"Equipment" means all equipment, fixtures, machines, building materials and items of personal property and all appurtenances intended to be acquired in connection with the completion of the Project prior to the Completion Date with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of the Lease Agreement, and such substitutions and replacements therefor as may be made from time to time pursuant to the Lease Agreement, including without limitation, all the Property described in Exhibit B attached to the Lease Agreement.

"Event of Default" means, with respect to any particular Basic Document, any event specified as an Event of Default pursuant to the provisions thereof.

"Facility" means all buildings (or portions thereof), improvements, structures and other related facilities, and improvements thereto, (A) located on the Land, (B) financed with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of the Lease Agreement, and (C) not constituting a part of the Equipment, all as they may exist from time to time.

"Financial Assistance" shall have the meaning assigned to such term in the fifth recital clause to the Lease Agreement.

"Governmental Authority" means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

"Gross Proceeds" means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance or Condemnation award.

"Hazardous Materials" means all hazardous materials including, without limitation, any flammable explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as set forth in or regulated under or defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), Articles 15 or 27 of the State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation.

"Immediate Notice" means same-day notice by telephone, telecopy or telex, followed by prompt written confirmation sent by overnight delivery.

"Indebtedness" means (1) the monetary obligations of the Company to the Agency and its members, officers, agents, servants and employees under the Lease Agreement and the other Basic Documents, (2) the monetary obligations of the Company to the Affected Tax Jurisdictions under the Payment in Lieu of Tax Agreement and the other Basic Documents, and (3) all interest accrued and accruing on any of the foregoing.

"Independent Counsel" means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and not a full-time employee of the Company or the Agency.

"Independent Engineer" means an engineer or architect or firm of engineers or architects duly admitted to practice engineering or architecture in the state and not a full-time employee of the Company or the Agency.

"Land" means an approximately 153 acre parcel of land located at 590 Plant Road in the Town of Torrey, Yates County, New York, as more particularly described in Exhibit A attached to the Lease Agreement.

"Lease Agreement" means the lease agreement dated as of February 1, 2006 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

"Lien" means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, security agreement, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Company. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics', materialmen's, warehousemen's and carriers' liens and other similar encumbrances affecting real property. For purposes of the Basic Documents, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

"Net Proceeds" means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys' fees and expenses) incurred in obtaining such Gross Proceeds.

"Payment in Lieu of Tax Agreement" means the payment in lieu of tax agreement dated as of February 1, 2006 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such payment in lieu of tax agreement may be amended or supplemented from time to time.

"Permitted Encumbrances" means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens, to the extent permitted by Section 8.8 of the Lease Agreement, (C) Liens for taxes, assessments and utility charges (1) to the extent permitted by Section 6.2(B) of the Lease Agreement or (2) at the time not delinquent, (D) any Lien on the Project Facility, (E) any Lien on the Project Facility obtained through any Basic Document, (F) the Conveyance Documents and (G) any Lien requested by the Company in writing and consented to by the Agency, which consent of the Agency shall not be unreasonably withheld or delayed.

"Person" means an individual, partnership, corporation, trust, unincorporated organization or Governmental Authority.

"Pilot Mortgage" means the pilot mortgage dated as of February 1, 2006 from the Agency and the Company to Yates County, as agent for itself, the Town of Torrey, the Village of Dresden and the Penn Yan Central School District, to secure amounts due and owing and unpaid under the payment in lieu of tax agreement, as said pilot mortgage may be amended or supplemented from time to time.

"Plans and Specifications" means the description of the Project appearing in the fifth recital clause to the Lease Agreement.

"Post Closing Conditions Agreement" means the post closing conditions agreement dated as of February 1, 2006 by and between the Agency and the Company, pursuant to which the Company agrees to take certain actions to obtain various consents relating to the undertaking of the Project subsequent to the Closing Date, as said post closing conditions agreement may be amended or supplemented from time to time.

"Premises" means the property leased to the Agency pursuant to the Underlying Lease.

"Project" means shall have the meaning set forth in the fifth recital clause to the Lease Agreement.

"Project Facility" means, collectively, the Land, the Facility and the Equipment.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Real Property Tax Exemption Form" means a New York State Board of Real Property Services Form RP-412-a (Industrial Development Agencies - Application for Real Property Tax Exemption) relating to the Project Facility.

"Required Approvals" means issuance of a permanent and unconditional certificate (or certificates) of occupancy for the completed Project Facility by the Company and all other permits, licenses and approvals necessary to allow the Project Facility to be used for its intended purpose.

"Requirement" or "Local Requirement" means any law, ordinance, order, rule or regulation of a Governmental Authority.

"Sales Tax Exemption Letter" shall have the meaning assigned to such term in Section 8.12 of the Lease Agreement.

"SEQRA" means Article 8 of the Environmental Conservation Law of the State, Chapter 43-B of the Consolidated Laws of New York, as amended, and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State, being 6NYCRR Part 617, as amended, and any local regulations thereunder adopted pursuant thereto.

"State" means the State of New York.

"Term" means the term of the Underlying Lease.

"Termination of Lease Agreement" means a termination of lease agreement by and between the Company, as tenant, and the Agency, as landlord, intended to evidence the termination of the lease agreement, substantially in the form attached as Exhibit E to the Lease Agreement.

"Termination of Underlying Lease" means the termination of the Underlying Lease from the Agency to the Company, evidencing termination of the Underlying Lease, substantially in the form attached as Exhibit C to the Lease Agreement, which termination is intended, upon certain terminations of the Lease Agreement, to terminate the leasehold interest of the Agency created pursuant to the Underlying Lease.

"Thirty-Day Sales Tax Report" means a New York State Department of Taxation and Finance Form ST-60 (IDA Appointment of Project Operator or Agent) notifying the New York State Department of Taxation and Finance that the Agency has appointed the Company to act as agent of the Agency pursuant to Section 4.1(E) of the Lease Agreement.

"Unassigned Rights" means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.2, 3.3, 4.1(B), 4.1(D), 4.1(E)(2), 4.1(F), 4.1(G), 5.2(A), 5.3(B), 5.4(B), 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 9.1, 9.3, 11.1, 12.4, 12.8 and 12.10 of the Lease Agreement, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents (other than the Company) and employees of the Agency for their own account pursuant to Sections 2.2(G), 3.3, 4.1, 5.3(B), 5.3(C), 6.4(B), 8.2, 10.2 and 10.4 of the Lease Agreement, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.6 of the Lease Agreement and the Payment in Lieu of Tax Agreement, and (D) the right to enforce the foregoing pursuant to Article X of the Lease Agreement.

"Underlying Lease" means the lease to agency dated as of February 1, 2006 and delivered on the Closing Date by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company has conveyed a leasehold interest in the Premises to the Agency, as said lease to agency may be amended or supplemented from time to time.

SECTION 1.2. INTERPRETATION. In this Underlying Lease, unless the context otherwise requires:

(A) The terms "hereby", "hereof", "herein", "hereunder", and any similar terms as used in this Underlying Lease, refer to this Underlying Lease, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Underlying Lease.

(B) Words of masculine gender shall mean and include correlative words of feminine and neuter genders.

(C) Words importing the singular number shall mean and include the plural number, and vice versa.

(D) Any headings preceding the text of the several Articles and Sections of this Underlying Lease, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Underlying Lease nor affect its meaning, construction or effect.

(E) Any certificates, letters or opinions required to be given pursuant to this Underlying Lease shall mean a signed document attesting to or acknowledging the

circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Underlying Lease.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE AGENCY. The Agency makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Agency has been duly established under the provisions of the Act and has the power to enter into this Underlying Lease and to carry out its obligations hereunder.

(B) Neither the execution and delivery of this Underlying Lease nor the consummation of the transactions contemplated hereby will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, or will constitute a default by the Agency under any of the foregoing.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is qualified and authorized to do business in the State and in all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into this Underlying Lease and carry out its obligations hereunder and has been duly authorized to execute this Underlying Lease. This Underlying Lease and the transactions contemplated hereby have been duly authorized by all necessary action on the part of the members of the Company.

(B) Except as otherwise provided in Exhibit B hereto and the Post Closing Conditions Agreement, neither the execution and delivery of this Underlying Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Underlying Lease will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Articles of Organization or Operating Agreement of the Company or any order, judgment, agreement or instrument to which the Company is a party or by which the Company is bound, or constitute a default under any of the foregoing, or (2) result in the creation or imposition of any Lien of any nature upon any Property of the Company other than pursuant to the Basic Documents, or (3) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) to the best of the Company's knowledge, require consent (which has not been heretofore received) under, conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

## ARTICLE III

### LEASE PROVISIONS

SECTION 3.1. LEASE. (A) The Company hereby demises and leases to the Agency, and the Agency hereby hires and leases from the Company, a leasehold interest in the Land, as said Land being more particularly described on Exhibit A attached hereto, together with the improvements now and hereafter located thereon, including any portion of the Facility located or to be located on the Land (the Land and all such improvements being sometimes collectively referred to as the "Premises") for the term set forth in Section 3.2 hereof. The Premises are intended to include (1) all buildings and improvements located on the Land, (2) any strips or gores of land adjoining the Land, (3) any land lying in the bed of any street or avenue abutting the Land, to the centerline thereof, and (4) a non-exclusive right to use any easements or other rights in adjoining property inuring to the Company by reason of the Company's ownership of a fee interest in the Land.

(B) It is the intention of the Company and the Agency that the Agency shall hold a leasehold interest in the entire Premises. Accordingly, leasehold title to the Facility and any other improvements hereinafter constructed by the Agency and/or the Company on the Land shall vest in the Agency or its successors and assigns as and when the same are constructed thereon.

SECTION 3.2. TERM. (A) The term of this Underlying Lease (the "Term") shall commence as of the dated date hereof and shall expire on the earlier to occur of (1) June 30, 2021 or (2) so long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof or by the Company pursuant to Article XI thereof, the termination of the term of the Lease Agreement.

(B) So long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof or by the Company pursuant to Article XI thereof, upon any termination of this Underlying Lease, the Company shall prepare and the Agency will execute and deliver to the Company such instruments as the Company shall deem appropriate to evidence the release and discharge of this Underlying Lease.

SECTION 3.3. RENT. The rent payable by the Agency under this Underlying Lease shall be one dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged by the Company.

SECTION 3.4. USE; LEASE AGREEMENT; NON-MERGER. (A) So long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder have been terminated by the Agency pursuant to Article X thereof or by the Company pursuant to Article XI thereof, the Agency shall (1) hold and use the Premises only for lease to the Company under the Lease Agreement and (2) shall not sell or assign its rights hereunder nor the leasehold estate hereby created, except as provided in the Lease Agreement.

(B) Contemporaneously with the execution and delivery of this Underlying Lease, the Agency is entering into the Lease Agreement, pursuant to which the Company as agent of the Agency agrees to undertake and complete the Project and the Agency agrees, upon completion of the Project, to lease the Project Facility to the Company. Pursuant to the Lease Agreement, the Company, as tenant of the Project Facility under the Lease Agreement, is required to perform all of the Agency's obligations under this Underlying Lease. Accordingly, and notwithstanding anything to the contrary contained in this Underlying Lease, the Company shall not be entitled to declare a default hereunder or exercise any rights or remedies hereunder if any asserted default by the Agency hereunder relates to a failure by the Company, as tenant of the Project Facility under the Lease Agreement, to perform its corresponding obligations under the Lease Agreement.

(C) Notwithstanding the lease of the Project Facility by the Agency to the Company pursuant to the Lease Agreement, during the Term of this Underlying Lease, there shall be no merger of this Underlying Lease nor of the leasehold estate created by this Underlying Lease with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Underlying Lease or the leasehold estate created by this Underlying Lease or any interest in this Underlying Lease or in any such leasehold estate and (2) the fee estate or any other interest in the Premises or any part thereof or any interest in such fee estate or any other interest in the Premises, and no such merger shall occur unless and until all corporations, firms and other entities, including any mortgagee having any interest in (x) this Underlying Lease or the leasehold estate created by this Underlying Lease and (y) the fee estate or such other interest in the Premises or any part thereof or any interest in such fee estate or such other interest in the Premises, shall join in a written instrument effecting such merger and shall duly record the same.

(D) Upon any termination of the Lease Agreement or the Company's rights of possession as lessee thereunder pursuant to Article X thereof or by the Company pursuant to Article XI thereof, the Agency may use the Premises for any lawful purpose, may sell or assign its rights hereunder or the leasehold estate hereby created to any Person or Persons without the consent of the Company, and may enter upon the Premises for purpose of taking possession thereof.

SECTION 3.5. ADDITIONS, ALTERATIONS AND IMPROVEMENTS. Subject to the provisions of the Lease Agreement, the Company, as agent of the Agency pursuant to the Lease Agreement, shall have the right, from time to time, to make such changes, additions, improvements and alterations, demolition or new construction, structural or otherwise, to the Premises as the Company shall deem necessary or desirable. Title to improvements now located or hereafter constructed upon the Premises, and any modifications, additions, restrictions, repairs and replacements, thereof, shall be in the Agency during the term of this Underlying Lease, except as otherwise provided in the Lease Agreement.

SECTION 3.6. ASSIGNMENT. (A) Except as otherwise provided in the Basic Documents, so long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof or by the Company pursuant to Article XI thereof, neither the Agency nor the Company shall assign or transfer this

Underlying Lease, nor sublease the whole or any part of the Property leased hereby, except that the Agency may lease the leasehold interest created hereunder to the Company pursuant to the Lease Agreement. The Agency may enter into the Lease Agreement on the terms provided therein.

(B) Upon the occurrence and continuance of an Event of Default under the Lease Agreement, the Agency shall have the unrestricted right to assign and sublet, from time to time, all or any part of this Underlying Lease and the leasehold estate hereby created, to any one or more Persons. Upon such assignment, the assignee shall thereupon be subrogated to all the rights of the former lessee under this Underlying Lease, whereupon (1) the former lessee shall have no further rights or obligations hereunder and (2) such assignee shall forthwith be obligated to assume and perform each and all of the former lessee's obligations and covenants hereunder.

SECTION 3.7. POSSESSION; QUIET ENJOYMENT. (A) Pursuant to the terms of the Lease Agreement, except as otherwise provided therein after the occurrence of an Event of Default thereunder, the Company has the exclusive right to possess and make improvements to the Premises leased hereby.

(B) The Agency, upon paying the rent and observing and keeping all covenants, warranties, agreements and conditions of this Underlying Lease on the Agency's part to be kept, shall quietly have, hold and enjoy the Premises during the Term of this Underlying Lease.

SECTION 3.8. LIENS. Except as otherwise provided in the Basic Documents, so long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof or by the Company pursuant to Article XI thereof, the Agency shall not, directly, or indirectly, create or permit to be created, any mortgage, lien, encumbrance or other charge upon, or pledge of, the Premises or the Agency's interest therein (except for Permitted Encumbrances) without the Company's prior written consent.

SECTION 3.9 TAXES. (A) It is recognized that, under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision. Pursuant to the Lease Agreement, the Company has agreed to pay all taxes levied against the Project Facility.

(B) Pursuant to the Lease Agreement and the Payment in Lieu of Tax Agreement, the Agency has agreed to apply for the tax exemptions respecting the Premises to which the Agency may be entitled pursuant to the Act, upon the condition that the Company make certain payments in lieu of taxes respecting the Premises, as more fully set forth in the Lease Agreement and the Payment in Lieu of Tax Agreement. The Agency agrees to use its best efforts to apply for any tax exemptions to which the Agency may be entitled with respect to the Premises.

(C) In the event that (1) title to the Agency's interest in the Premises shall be conveyed to the Company, (2) on the date on which the Company obtains title to the Agency's interest in the Premises, the Premises shall be assessed as exempt upon the assessment roll of any one or more of any taxing entities by reason of the involvement of the Agency with the Premises,

and (3) the fact of obtaining title to the Agency's interest in the Premises shall not immediately obligate the Company to make pro rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), the Company shall be obligated to make payments in lieu of taxes to the respective receivers of taxes in amounts equal to those amounts which would be due from the Company as real property taxes with respect to the Premises if the Premises were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various taxing entities having jurisdiction over the Premises as the legal owner of record of the Agency's interest in the Premises.

SECTION 3.10. MAINTENANCE. Pursuant to the Lease Agreement, during the term of this Underlying Lease, the Company has agreed, at the Company's sole cost and expense, to keep and maintain or cause to be kept and maintained the Premises and all improvements now or hereafter located thereon in good order and condition and make or cause to be made all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. The Agency will have no responsibility with respect to the foregoing.

SECTION 3.11. CONDEMNATION. Subject to the provisions of the Lease Agreement and the other Basic Documents, in the event of a total, substantial or partial taking by eminent domain or for any public or quasi public use under any statute (or voluntary transfer or conveyance to the condemning agency under threat of condemnation), the Agency shall be entitled to its costs and expenses incurred with respect to the Premises (including any unpaid amounts due pursuant to the Basic Documents and the costs of participating in such condemnation proceeding or transfer), and thereafter the Agency shall not participate further in any condemnation award.

## ARTICLE IV

### EVENTS OF DEFAULT, REMEDIES AND TERMINATION

SECTION 4.1 DEFAULT. (A) Any one or more of the following events shall constitute an "Event of Default" under this Underlying Lease:

(1) The failure of the Agency (or the Company on behalf of the Agency) to pay the rent due pursuant to this Underlying Lease within fifteen (15) days after written notice to the Agency specifying the nature of such default; or

(2) The failure of the Agency (or the Company on behalf of the Agency) to observe and perform any covenant, condition or agreement on its part to be performed (other than as referred to in paragraph (1) above) and continuance of such failure for a period of thirty (30) days after notice to the Agency specifying the nature of such default; provided that if by reason of the nature of such default the same cannot be remedied within thirty (30) days, failure of the Agency (or the Company on behalf of the Agency), to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(B) Notwithstanding the provisions of Section 4.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Underlying Lease and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Underlying Lease of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an event of default under this Section. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public, enemies, orders of any kind of government authority or any civil or military authority, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

SECTION 4.2 REMEDIES ON DEFAULT. Whenever any Event of Default described in Section 4.1(A)(2) hereof shall have occurred, the Agency may, at its option, terminate this Underlying Lease upon not less than 5 days written notice to the Company. If such notice is so given by the Agency this Underlying Lease shall automatically terminate upon the date set forth in the notice without the necessity of any further actions or the filing or recording of any documents or instruments. Nevertheless, the Agency may, but need not, record a Notice of the

Cancellation of this Underlying Lease in the Yates County Clerk's Office without the signature of the Company to confirm the termination of this Underlying Lease. Nothing contained in this Underlying Lease shall be deemed to limit, amend or modify the remedies available to the Agency pursuant to the Lease Agreement or the other Basic Documents.

SECTION 4.3. REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Underlying Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article IV, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 4.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event either party should default under any of the provisions of this Underlying Lease and the other party should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the defaulting party herein contained, the defaulting party shall, on demand therefor, pay to the other party the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

SECTION 4.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 4.6. EARLY TERMINATION OF THE LEASE AGREEMENT. The Lease Agreement may be terminated pursuant to Section 11.1 through 11.3 of the Lease Agreement.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.1. SURRENDER. (A) The Agency shall, on the last day of the Term of this Underlying Lease or on the last day of any earlier termination of the Term of this Underlying Lease, surrender and deliver the Premises and all buildings, improvements, alterations, equipment and fixtures located thereon to the possession and use of the Company without delay and in good order, condition and repair, except for reasonable wear and tear.

(B) On the last day of the Term of this Underlying Lease or on the last day of any earlier termination of the Term of this Underlying Lease, title to all buildings, improvements, alterations, equipment located on the Premises shall automatically, and without the need of any further or additional instrument, vest in the Company. Notwithstanding the foregoing, upon the written request of the Company, the Agency, within 60 days, shall execute and deliver to the Company the Termination of Underlying Lease to be recorded to confirm this vesting of title.

SECTION 5.2. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by an affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

#### IF TO THE COMPANY:

AES Greenidge, L.L.C.  
590 Plant Road  
Dresden, New York 14441  
Attention: Plant Manager

#### WITH A COPY TO:

Peter H. Swartz, Esq.  
Hiscock & Barclay, LLP  
300 South State Street  
Syracuse, New York 13221-4878

IF TO THE AGENCY:

Yates County Industrial Development Agency  
One Keuka Business Park  
Penn Yan, New York 14527  
Attention: Chairman

WITH A COPY TO:

Philip L. Bailey, Esq.  
118 Main Street, P.O. Box 397  
Penn Yan, New York 14527

AND

A. Joseph Scott, Esq.  
Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207

(C) The Agency or the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications to the Agency or the Company, as the case may be, shall be sent.

SECTION 5.3. APPLICABLE LAW. This Underlying Lease shall be governed exclusively by the applicable laws of the State.

SECTION 5.4. BINDING EFFECT. This Underlying Lease shall inure to the benefit of, and shall be binding upon the Agency and the Company and their respective successors and assigns; provided, that, except as provided elsewhere herein or in the other Basic Documents, the interest of the Agency in this Underlying Lease may not be assigned, sublet or otherwise transferred without the prior written consent of the Company.

SECTION 5.5. SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining provisions hereof and shall in no way affect the validity of the other provisions of this Underlying Lease.

SECTION 5.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Underlying Lease may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 5.7. EXECUTION OF COUNTERPARTS. This Underlying Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.8. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Underlying Lease have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Underlying Lease.

SECTION 5.9. NO RECOURSE; SPECIAL OBLIGATION. (A) The obligations and agreements of the Agency contained herein and in the other Basic Documents shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and in the other Basic Documents shall not constitute or give rise to an obligation of the State of New York or Yates County, New York, and neither the State of New York nor Yates County, New York shall be liable hereon or thereon and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility.

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or under the other Basic Documents shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten [10] days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

SECTION 5.10. RECORDING. The Agency and the Company agree that this Underlying Lease (or a memorandum thereof) shall be recorded by the Agency in the appropriate office of the County Clerk of Yates County, New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Underlying Lease to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first above written.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:  \_\_\_\_\_

~~Authorized Officer~~ Chairman

AES GREENIDGE, L.L.C.

BY: \_\_\_\_\_

Authorized Officer

IN WITNESS WHEREOF, the Agency and the Company have caused this Underlying Lease to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first above written.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Authorized Officer

AES GREENIDGE, L.L.C.

BY: Douglas Roll  
Authorized Officer

STATE OF NEW YORK

)

) ss.:

COUNTY OF YATES

)

On the 15<sup>th</sup> day of February, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared JERRY NISSEN, 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

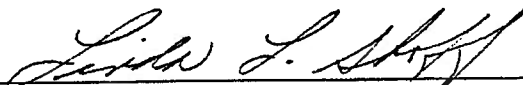
**A. JOSEPH SCOTT III**  
Notary Public, State of New York  
Qualified in Albany County  
Commission Expires Dec. 31, 2006

STATE OF NEW YORK )

) ss.:

COUNTY OF ONONDAGA )

On the 22 day of February, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared Douglas J. Roll, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

LINDA L. SHOFF  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01-SI-605562  
QUALIFIED IN YATES COUNTY  
MY COMMISSION EXPIRES 02-20-2007

EXHIBIT A  
DESCRIPTION OF THE LAND

-SEE ATTACHED-

#### Schedule 4.10 Description of Real Property

Greentidge Station - Property Situated in the (i) Town of Tarry, Yates County, and (ii) Town of Remond, Seneca County, New York

##### Schedule of Property Description

All those certain plots, pieces, or parcels of land, with the buildings and improvements thereon, situate, lying, and being in the Town of Tarry, Yates County, New York, and the Town of Remond, Seneca County, New York, and more particularly described in Appendices A-1 through A-11, both inclusive, attached hereto.

Subject to and/or excepting all Permitted Encumbrances as defined in the Asset Purchase Agreement between the Seller and the Buyer dated \_\_\_\_\_, 1998, and all covenants, restrictions, conditions, reservations, exceptions, easements, and other matters of record.

Together with the easements, rights, and interests described in Appendix D, attached hereto.

##### Schedule of Exclusions

Excepting and reserving such real property and appurtenances described in Appendices B and C, attached hereto. Also excepting and excluding all rights and easements held by NYSEG relating to the transmission and distribution of electric energy and/or natural or manufactured gas, and for communication and/or drainage purposes, now existing on the property, whether or not of record.

**NOTE 1:** "NYSEG" refers to New York State Electric & Gas Corporation.

**NOTE 2:** All recorded encumbrances referenced in the Appendices attached hereto were reported to the County Clerk's Office for the records in which the property interest is located.

APPENDIX A-1

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: On the north by the land formerly comprising the Crooked Lake Canal, and now as understood to be owned by the New York Central Railroad Company; on the east by Seneca Lake; on the south by the lands formerly owned by John Thomas, now Ross Munson, and the New York Central Railroad Company, Pennsylvania Division; and on the west by the highway leading south from Dresden, commonly known as the Lake Road; being the farm formerly known as the Luther Harris Farm.

Excepting, however, from the above described premises the mill property situate south of the outlet formerly owned by Edward R. Taylor, and later by Taylor Chemical Company.

Also excepting premises conveyed by John T. Knox, as referee, to Syracuse, Geneva and Corning Railroad Company, by deed dated the 15th day of March, 1878, and recorded in Yates County Clerk's Office in Liber 57 of Deeds at page 445.

Also excepting three and one-half acres conveyed by William M. Patterson and wife to Thomas F. Wells, August 14, 1891, and recorded in Yates County Clerk's Office December 1, 1897 in Liber 85 of Deeds at page 444.

Also excepting 13/100 of an acre conveyed to the New York Central and Hudson River R. R. Co. by deed date June 2, 1902, and recorded in Yates County Clerk's Office August 13, 1902, in Liber 91 of Deeds at page 592.

Also excepting the right to use water from the dam now or formerly situate on the outlet above the premises hereby conveyed, and west of highway referred to above, such right having been heretofore conveyed by Anna M. Bradley to the First National Bank of Wallisboro by deed dated July 17, 1911 and recorded in Yates County Clerk's Office, August 19, 1911 in Liber 104 of Deeds at page 662.

Also excepting premises conveyed by Horatio Hazen to William Berry, by deed dated March 29, 1849 and recorded in Yates County Clerk's Office, March 30, 1854 in Liber 29 of Deeds at page 482.

Also excepting premises situate on the east side of highway leading south from the Village of Dresden, described as follows: Beginning at a point in the center of Keuka (formerly Crooked) Lake Outlet and the highway leading south from Dresden; thence easterly along the center of the Keuka (formerly Crooked) Lake Outlet to a small tree marked 1847 standing on an island in the center of Keuka (formerly Crooked) Lake Outlet; thence southerly by a line drawn so as to strike the northeast corner of the property formerly owned by Ezra Boughten, now owned by New York Central Electric Corporation and more fully described by deed dated May 12, 1924 and recorded May 13, 1924 in Yates County Clerk's Office in Liber 115 of Deeds at page 505, thence west ten degrees north (N 10° N) two chains and eighty links (one hundred eighty-four and eight-tenths feet) to the highway leading south from Dresden; then north along said highway to the place of beginning, containing 1.8 acres more or less.

Being and hereby conveying the same premises conveyed by A. Carroll Turner and others to Associated Real Properties, Inc., by deed dated March 14, 1930 and recorded in Yates County Clerk's Office, March 14, 1930 in Liber 121 of Deeds at page 514, with the exception of the premises set forth above by deed from Horatio Hazen to William Berry and premises described in the exception last above noted.

GREENIDGE  
6.19, 6.31

APPENDIX B

EXCEPTING FROM THE ABOVE PREMISES property appropriated by the State of New York designated as Parcels No. 155 and 156 on Map No. 180, Notice of Appropriation filed in the Office of the Department of Public Works on October 2, 1959, in the Office of the Department of State on October 13, 1959, and in the Yates County Clerk's Office on July 29, 1960.

FURTHER EXCEPTING FROM THE ABOVE PREMISES property appropriated by the People of the State of New York designated as Parcel Nos. 179, 180, 181 and 182 on Map No. 116 R-2, Notice of Appropriation filed in the office of the Department of State on August 22, 1960 and in the Yates County Clerk's office on October 9, 1960.

APPENDIX C

RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's 34.5-kV electric substation and 115-kV electric substation more particularly described below; the appurtenances covered by this reservation shall include, without limitation, the 34.5-kV electrical disconnect switches E1-74 and E54-74 and the 115-kV electrical disconnect switches B3-76, B3-77, B4-76, and B4-77:

ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 115 kV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 39°39'31" W., a distance of 1016.10 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 26°38'09" E., a distance of 783.53 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE continuing through lands of New York State Electric & Gas Corporation the following six (6) courses:

1. S. 60°20'00" W., a distance of 267.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 29°52'26" W., a distance of 373.22 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 60°02'40" E., a distance of 393.46 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 29°57'17" E., a distance of 160.90 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
5. S. 60°10'23" W., a distance of 126.45 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
6. S. 29°52'32" E., a distance of 213.95 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 2.760 acres.

ALSO, ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 34.5 kV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 01°02'08" E., a distance of 1017.81 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 47°24'51" E., a distance of 1382.86 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S. 71°13'51" W., parallel to and 3.0 feet from a building face and through drill holes set in a curb at 4.00 feet and 170.90 feet, a total distance of 174.90 feet;
2. N. 16°41'20" W., parallel with and 4.00 feet west of a curb marked with drill holes, a distance of 68.94 feet;
3. N. 71°18'09" E., parallel with and 4.0 feet north of a curb marked with drill holes, a distance of 172.58 feet;
4. S. 18°36'44" E., parallel with and 4.0 feet east of a curb marked with drill holes, a distance of 68.68 feet to the POINT OR PLACE OF BEGINNING comprising an area of 0.274 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's existing substation (known as the "Dresden" electric substation) lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates and State of New York, bounded and described as follows:

BEGINNING at a concrete monument found along the northerly boundary of New York State Route 14 and west of Swarthout Road:

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 19°33'22" E. a distance of 478.43 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 04°29'52" E., a distance of 314.34 feet from the centerline intersection of Laxman Road and the railroad tracks now or formerly of Consolidated Rail Corporation, said point is also N. 75°22'00" W., a distance of 2318.73 feet from a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of land of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE continuing through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S. 74°31'24" W., a distance of 109.78 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 15°35'15" W., a distance of 125.21 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 74°45'47" E., a distance of 110.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 15°22'51" E., a distance of 124.75 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 0.316 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor (i) ownership of the following relay switchboard panels (together with (a) the wires and cables that connect the switches that are part of such panels with the devices and substation equipment controlled by such switches and (b) the wires and cables that supply AC/DC power to such panels) now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such panels, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such panels, wires and cables: panels 5, 6, 7, 8, 21, 22, 23, 51, 52; the "RTU" panel; the "Metering Equipment" panel; and the "Diff. Matching Cts" panel; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such relay switchboard panels, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace (i) new relay switchboard panels required due to expansion or replacement of the 115-kV and/or 34.5-kV electric system located in the substations referred to herein; and (ii) the wires and cables that connect switches that are part of such new relay switchboard panels with the devices and substation equipment controlled by such switches; provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, more specific locations for such new relay switchboard, together with their associated wires and cables, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) the right to operate certain AC/DC low voltage circuit breakers located on AC/DC Power Distribution Panelboards of the Grantee that are situated in the electric generating station now located on the premises, which circuit breakers are components of the system that permits the energization and de-energization of equipment and facilities located on the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (ii) such easements and rights-of-way as are necessary to permit the Grantor to obtain access to such circuit breakers in order to operate the same; provided, however, that in exercising such right to operate such circuit breakers, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such circuit breakers, AC/DC Power Distribution Panelboards and substations, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the following meters (together with the wires and cables that connect such meters with the data sources that they monitor) now located in

the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such meters, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such meters, wires and cables; (1) meter number 0985-1067 located on relay switchboard panel 12 for Greenidge SST unit # 3 (high side of SST # 3); (2) meter number 0985-1066 located on relay switchboard panel 13 for Greenidge SST unit # 4 (load side of SST # 4); and (3) meter number 7155 located on relay switchboard panel 11 for Greenidge ESS unit # 4 (load side ESS # 4); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such meters, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the communications wires and cables that extend from (a) the demarcation point between such wires and cables and those of the telephone service provider for the premises to (b) the Grantor's SCADA RTU, (ii) ownership of the communications wires and cables that extend from (a) such demarcation point to (b) the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (iii) such easements and rights-of-way as are necessary (a) to permit such wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such wires and cables; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights of way as are necessary to permit the following communication wires and cables to be installed on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace such communication wires and cables: a future cable to be installed running from the demarcation point of the telephone company across the premises to the 115-kV electric substation and 34.5-kV electric substation. Provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such easements and rights-of-way shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary (i) (a) to permit the Grantor's 115-kV electrical disconnect switches B3-76 and B3-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B3-75 (which structure and switch are described in Appendix D hereto) and (b)

to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B3-76 and B3-77; and (ii) (a) to permit the Grantor's 115-kv electrical disconnect switches B4-76 and B4-77 to remain in their present locations on the structure associated with the 115-kv group-operated electrical disconnect switch B4-75 (which structure and switch are described in Appendix D hereto) and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B4-76 and B4-77; provided, however, that in exercising such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the 115-kv group-operated electrical disconnect switches B3-75 and B4-75 and their associated structures. If necessary or desirable, the location and identity of such structures, such electrical disconnect switches and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric transmission poles, towers and structures (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, towers, structures, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, towers, structures, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, towers, structures, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric distribution poles (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's underground gas pipelines (together with their associated underground and surface facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such pipelines and facilities to remain in their present locations on the premises and (b) to permit the Grantor to

construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such pipelines and facilities; provided, however, that in exercising such ownership and such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such pipelines and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor hereunder (i) ownership of any grounding wire situated (a) around the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and (b) between and/or connecting the 34.5-kV and 115-kV substations referred to herein, and (ii) such easements and rights-of-way as are necessary to permit any such grounding wire to remain in its present location on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace any such grounding wire. Further Grantor reserves an easement permitting Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace new grounding wire along the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and between such substations, as and to extent deemed necessary or desirable by the Grantor; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such grounding wire, and such easements and rights-of-way, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor an easement and right-of-way across the premises conveyed hereby for personnel, vehicles and equipment for any and all purposes necessary or convenient to the conduct of the Grantor's business, including, without limitation, (i) the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of the Grantor's aforesaid substations; the testing for, response to, and remediation of, any environmental conditions with respect to such substations; and the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of (a) such relay switchboard panels and their associated wires and cables, (b) such meters and their associated wires and cables, (c) the Grantor's aforesaid communications towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (d) the Grantor's aforesaid electrical disconnect switches, (e) such electric transmission poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (f) such electric distribution poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (g) such gas pipelines and facilities, (h) such grounding wire and (ii) the operation of such AC/DC low voltage circuit breakers; provided, however, that in exercising such easement and right-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. The Grantor's easement and right-of-way with respect to the Grantor's "Dresden" substation shall include, without limitation, the present driveway associated therewith. If necessary or desirable, the location of such driveway, and the remainder of such easement and right-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTEE'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., (ii) the High Voltage Proximity Act, New York Labor Law § 202-h and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

APPENDIX D

(i) OWNERSHIP of the following components of the Grantor's relay switchboard panel 82 (which panel is described in Appendix C hereto) that are used in the protection and control of circuit breakers 81-72 and 83-72, which panel 82 is now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such components to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such components: two ASGA RARSES with Auxiliary CTS SLCE12, six General Electric IAC53A803A, one General Electric IAC53A803A and one General Electric IAC53A803A (each together with its associated control switches, test switches, light bulbs and other appurtenances); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's relay switchboard panels located on the premises. If necessary or desirable, the identity and location of such components and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(ii) OWNERSHIP of the following electrical facilities now located on the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation (which substation premises are described in Appendix C hereto) and (iii) such easements and rights-of-way as are necessary (a) to permit such electrical facilities to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such electrical facilities: (1) the 115-kV circuit breaker 83-72 together with its associated equipment and connections to the 115-kV electrical disconnect switch 83-75 and 83-76, foundation, grounding, conduit and control cable; (2) the 115-kV group-operated electrical disconnect switch 83-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (3) the 115-kV circuit breaker 84-72 together with its associated equipment and connections to the 115-kV electrical disconnect switches 84-75 and 84-76, foundation, grounding, conduit and control cable; (4) the 115-kV group-operated electrical disconnect switch 84-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (5) service station bank # 1 located within the Grantor's 34.5-kV electric substation (which substation is described in Appendix C hereto), which bank consists of (A) one 3-phase, 34.5-2.4 kV, 3750/5000 kVA transformer together with its associated bus and connections, surge arresters, foundation, grounding, conduit and control cable and (B) one 600.5 MVA current transformer together with its associated electrical disconnect switch; (6) the 34.5-kV circuit breaker 81-72 together with its associated equipment and connections to the electrical disconnect switches 81-74 and 81-75, foundation, grounding, conduit and control cable; (7) the 34.5-kV electrical disconnect switch 81-75; (8) service station bank # 2, which bank consists of one 3-phase, 34.5-2.4 kV, 10/12.5 MVA transformer together with its associated bus and connections, 2.4-kV power cable, surge arresters, foundation, grounding, conduit and control cable; (9) the 34.5-kV circuit breaker 83-72 together with its associated equipment and connections to the electrical disconnect switches 83-74 and 83-75, foundation, grounding, conduit and control cable; (10) the 34.5-kV electrical disconnect switch 83-75; (11) the 34.5-kV buswork, surge arresters and conduit and cable

UNDER AND SUBJECT to two indentures of lease made March 18, 1936 between Associated Real Properties, Inc., and respectively by Harry A. Meaker of the Village of Dresden, Yates County, State of New York and Finger Lakes Canning Company, Inc., a corporation organized and existing by and under the laws of the State of New York, having its principal office in the Village of Penn Yan, Yates County, State of New York.

Being the same premises conveyed by Associated Real Properties, Inc. to New York State Electric & Gas Corporation by a deed dated February 4, 1937 and recorded in the Yates County Clerk's Office on February 23, 1937 in Liber 143 of Deeds at Page 224.

Also excepting premises conveyed by New York State Electric & Gas Corporation to Harry Meaker by a deed dated July 28, 1938 and recorded in the Yates County Clerk's Office on August 5, 1938 in Liber 144 of Deeds at Page 570; from which conveyance New York State Electric & Gas Corporation specifically reserved all water and riparian rights connected with the property so conveyed.

Also excepting governmental rights in navigable streams, being Seneca Lake Outlet and Seneca Lake, and the land in the bed and under the waters thereof.

SUBJECT to an Agreement dated December 14, 1942, made between New York State Electric & Gas Corporation and the United States of America granting an easement and right of way to United States of America for the installation and maintenance of its cable and equipment upon and across the lands of the New York State Electric & Gas Corporation between the west shore line and the east shore line of Seneca Lake including any lands or interest New York State Electric & Gas Corporation may have under the waters of Seneca Lake.

SUBJECT to an easement and right of way dated September 27, 1993 granted by New York State Electric & Gas Corporation to Ferro Corporation to construct, reconstruct, operate, inspect, maintain, repair, remove and/or replace an underground water pipeline and appurtenances upon, over, under and through a portion of the above premises, along with ingress and egress over the above premises for these purposes.

TOGETHER WITH all rights available under an agreement dated May 26, 1991 whereby the People of the State of New York grant to New York State Electric & Gas Corporation an easement, thirty (30) feet in width, for the operation and maintenance of electric submarine cables on such portion of the above premises under the waters of Seneca Lake situated in the Town of Torrey, County of Yates and Town of Romulus, County of Seneca, and the State of New York; this agreement is scheduled to expire on or about October 15, 2004.

It is the intention of the Deed to which this Appendix is attached to convey to NYS Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

GREENIBOX  
F. Smith  
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APPENDIX A-2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Torrey, Yates County, New York, being the same premises conveyed by William M. Birkett and Clara Birkett, his wife; Clarence T. Birkett and Laura R. Birkett, his wife, to Florence M. Smith by deed dated July 15, 1891 and recorded in the Yates County Clerk's Office September 3, 1891 in Liber 79 of Deeds at page 75, and being also the same premises described in an instrument dated October 30, 1911, executed between Florence M. Smith and George E. Smith and recorded in the Yates County Clerk's Office July 7, 1923 in Liber 114 of Deeds at page 648.

Hereby conveying premises consisting of approximately eight (8) acres of land, bounded on the north by a public highway, being the highway leading from Dresden to Watkins, formerly known as the Lake Road, and the highway leading to Hiram; on the east by the said highway leading from Dresden to Watkins, formerly known as the Lake Road; on the south by lands of New York Central Railroad Company; and on the west by lands formerly of Harry H. Simmons, consisting of 8.29 acres of land, and being the second parcel described in the deed from Roy Swarthout to New York Central Electric Corporation dated September 30th, 1936 and duly recorded in the Yates County Clerk's Office October 2nd, 1936 in Liber 141 of Deeds at page 602; the premises hereby conveyed consisting of about eight (8) acres of land, and being the home premises now occupied and owned by said Florence M. Smith; and the first party represents and warrants that she is now in the possession of the said premises, and that the same is free of all liens and encumbrances and taxes.

Being the same premises conveyed by Florence M. Smith to New York State Electric & Gas Corporation by a deed dated February 10, 1937 and recorded in the Yates County Clerk's Office on February 10, 1937 in Liber 143 of Deeds at Page 209.

It is the intention of the Deed to which this Appendix is attached to convey to NGE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

located between the circuit breaker ES4-72 and the station service bank # 4E; (12) the circuit breaker ES4-72 together with its associated equipment and connections to: (i) the station service bank # 4E, (ii) the tie bus #6, and (iii) the emergency tie bus # 4, foundation, grounding, conduit and control cable; and (13) the # 1 and # 2 "House Service and Lighting" transformers located within the Grantor's 34.5-kV electric substation (which substation is described in Appendix C hereto) together with their associated foundation, grounding, conduit and control cable; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the identity and location of such electrical facilities and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(iii) AN EASEMENT and right-of-way across the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-KV electric substation (which substation premises are described in Appendix C hereto) for personnel, vehicles and equipment to the extent necessary to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace the Grantee's electrical facilities described in the immediately preceding paragraph; provided, however, that in exercising such easement and right-of-way the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the location of such easement and right-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTOR'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., (ii) the High Voltage Proximity Act, New York Labor Law § 202-a and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

APPENDIX A-3

All That Tract or Parcel of Land, situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: Commencing at a stake in the center of the new road leading South to the Town of Milo by James M. Clark's land; thence at right angles with the center of said road North 65 degrees west seven chains and sixty links; thence North along the North bounds of land sold by S. Buckley on the 24th of February, 1847, to the North-west corner thereof; thence Westerly along said Buckley's North line 19 chains and 24 links to the new Pre-emption line; thence North along said line 3 chains and 75 links to the outlet of Crooked (Kauka) Lake; thence Northeasterly along said outlet 45 chains 34 links to the center of the Milo road in the front of the Custom Mill; thence South 70° East, 66 links to the center of the highway; thence South 78 1/2° West 8 chains and 62 links; thence South 25° East, 15 chains and 2 links to the place of beginning; containing 41 3/4 acres of land, be the same more or less. Reserving the right of overflowing the said premises for any uses or purposes of a mill-pond adjacent thereto, subject to the conditions, exceptions and reservations in the patent contained, of which this parcel of land is a part, as the said right was reserved in the conveyance of the said premises from Allie A. Embree to George Turner by deed dated March 23, 1872, and recorded in Yates County Clerk's Office in Liber 54 of Deeds at page 110, and said premises being the same premises conveyed by the said deed.

ALSO All that other Tract or Parcel of land, situate in the Town of Torrey, County of Yates and State of New York, bounded as follows: Beginning in the center of the road, leading from Dresden to Kimrods, and on the North side of the Syracuse, Geneva & Corning R.R., thence along the center of the road North 25° East 6 chains and 97 links; thence North 81 degrees and 15' East 2 chains and 62 links, and thence North 80 degrees East, 1 chain and 2 links to a stake; thence South 23 degrees and 30' East, 15 chains and 12 links to a stake on the North side of the railroad aforesaid; thence Westerly along the railroad to the place of beginning, containing eight acres of land and 29/100 of an acre of land, be the same more or less, as surveyed July 31, 1880, by L. Ogden. Being the same premises conveyed to George Turner by Henry Birkett by deed dated Sept. 15, 1880, and recorded in said Clerk's Office Jan. 15, 1881, in Liber 62 of Deeds at page 261.

Excepting and reserving from the premises hereby conveyed all that portion of said premises conveyed by George Turner and wife to Adell Langman by deed June 25, 1889, recorded in said Clerk's Office in Liber 73 of Deeds at page 499, containing one acre of land more or less.

Also excepting and reserving therefrom those portions of said premises conveyed by George Turner and wife to Syracuse, Geneva & Corning R. R. Company by two deeds, one recorded in said Clerk's office in Liber 59 of Deeds at page 257, and one recorded in said Clerk's office in Liber 68 of Deeds at page 38.

Also excepting therefrom all that portion of said premises conveyed by Ella J. Benedict to the N. Y. Central & Hudson River R. R. Company by deed recorded in said Clerk's Office in Liber 91 of deeds at page 544.

Also excepting that portion conveyed by Minnie A. Travis to New York Central & Hudson River R.R. Co. by deed recorded in said office in Liber 91 of deeds at page 545.

Being a portion of the premises conveyed by Roy Swarthout to New York Central Electric Corporation by a deed dated September 30, 1936 and recorded in the Yates County Clerk's Office on October 2, 1936 in Liber 141 of Deeds at Page 602.

It is the intention of the Deed to which this Appendix is attached to convey to NGE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

## EXHIBIT B

### POST CLOSING CONDITIONS

The Agency and the Company agree and acknowledge that the Company must take certain actions subsequent to the Closing Date to obtain various consents necessary to undertake the Project. The consents that must be obtained by the Company are described in the Post Closing Conditions Agreement. The Company has, pursuant to the Post Closing Conditions Agreement, agreed to obtain such consents.





CLOSING ITEM NO.: A-3

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AES GREENIDGE, L.L.C.,  
AS GRANTOR

TO

YATES COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY,  
AS GRANTEE

---

BILL OF SALE TO AGENCY

---

DATED AS OF FEBRUARY 1, 2006

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RELATING TO CERTAIN EQUIPMENT TO BE ACQUIRED  
AND USED IN CONNECTION WITH A CERTAIN PARCEL  
OF LAND (THE "LAND") LEASED BY THE GRANTOR TO  
THE GRANTEE AND LOCATED AT 590 PLANT ROAD IN  
THE TOWN OF TORREY, YATES COUNTY, NEW YORK.

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## BILL OF SALE

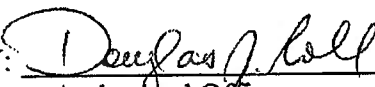
AES Greenidge, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 590 Plant Road, Dresden, New York (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at One Keuka Business Park, Penn Yan, New York (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all right, title and interest of the Grantor in and to the materials, machinery, equipment, fixtures or furnishings which are described in Exhibit B attached hereto (the "Equipment"), whether now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on or used in connection with a parcel of land (the "Land") located at 590 Plant Road in the Town of Torrey, Yates County, New York, which Land is more particularly described on Exhibit A attached hereto.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever, and the said Grantor, for itself, its successors and assigns, covenants and agrees to and with the Grantee, its successors and assigns, to warrant and defend the sale of said Equipment hereby made unto the Grantee, its successors and assigns against the claims and demands of every and all persons whomsoever.

THE GRANTOR hereby warrants to the Grantee that it owns the Equipment subject to such liens and encumbrances that exist as of February 1, 2006.

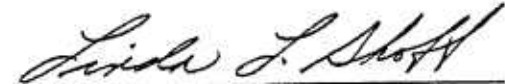
IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer and dated as of February 1, 2006.

AES GREENIDGE, L.L.C.

BY:   
Authorized Officer

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

On the 22 day of February, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared Douglas J. Roll, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

LINDA L. SHOFF  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01-SH6055262  
QUALIFIED IN YATES COUNTY  
MY COMMISSION EXPIRES 02-20-2007

EXHIBIT A  
DESCRIPTION OF THE LAND  
-SEE ATTACHED-

#### Schedule 4.10 Description of Real Property

Greenidge Station - Property Situated in the (i) Town of Tarry, Yates County, and (ii) Town of  
Remond, Seneca County, New York

##### Schedule of Property Description

All those certain plots, places, or parcels of land, with the buildings and improvements thereon, situate, lying, and being in the Town of Tarry, Yates County, New York, and the Town of Remond, Seneca County, New York, and more particularly described in Appendices A-I through A-11, both inclusive, attached hereto.

Subject to and/or excepting all Permitted Encumbrances as defined in the Asset Purchase Agreement between the Seller and the Buyer dated \_\_\_\_\_, 1978, and all covenants, restrictions, conditions, reservations, exceptions, easements, and other matters of record.

Together with the easements, rights, and interests described in Appendix D, attached hereto.

##### Schedule of Exclusions

Excepting and reserving such real property and appurtenances described in Appendices B and C, attached hereto. Also excepting and excluding all rights and easements held by NYSEG relating to the transmission and distribution of electric energy and/or natural or manufactured gas, and for communication and/or drainage purposes, now existing on the property, whether or not of record.

NOTE 1: "NYSEG" refers to New York State Electric & Gas Corporation.

NOTE 2: All recorded encumbrances referenced in the Appendices attached hereto were recorded in the County Clerk's Office for the county in which the property located is located.

APPENDIX A-1

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: On the north by the land formerly comprising the Crooked Lake Canal, and now as understood to be owned by the New York Central Railroad Company; on the east by Seneca Lake; on the south by the lands formerly owned by John Thomas, now Ross Munson, and the New York Central Railroad Company, Pennsylvania Division; and on the west by the highway leading south from Dresden, commonly known as the Lake Road; being the farm formerly known as the Luther Harris Farm.

Excepting, however, from the above described premises the mill property situate south of the outlet formerly owned by Edward R. Taylor, and later by Taylor Chemical Company.

Also excepting premises conveyed by John T. Knox, as referee, to Syracuse, Geneva and Corning Railroad Company, by deed dated the 16th day of March, 1878, and recorded in Yates County Clerk's Office in Liber 57 of Deeds at page 445.

Also excepting three and one-half acres conveyed by William M. Patterson and wife to Thomas F. Wells, August 14, 1891, and recorded in Yates County Clerk's office December 1, 1897 in Liber 85 of Deeds at page 444.

Also excepting 13/100 of an acre conveyed to the New York Central and Hudson River R. R. Co. by deed date June 2, 1902, and recorded in Yates County Clerk's Office August 13, 1902, in Liber 91 of Deeds at page 592.

Also excepting the right to use water from the dam now or formerly situate on the outlet above the premises hereby conveyed, and west of highway referred to above, such right having been heretofore conveyed by Anna M. Bradley to the First National Bank of Wellsboro by deed dated July 17, 1911 and recorded in Yates County Clerk's office, August 19, 1911 in Liber 104 of Deeds at page 662.

Also excepting premises conveyed by Noratio Hazen to William Barry, by deed dated March 29, 1849 and recorded in Yates County Clerk's office, March 30, 1854 in Liber 29 of Deeds at page 482.

Also excepting premises situate on the east side of highway leading south from the Village of Dresden, described as follows: Beginning at a point in the center of Keuka (formerly Crooked) Lake Outlet and the highway leading south from Dresden; thence easterly along the center of the Keuka (formerly Crooked) Lake Outlet to a small tree marked 1847 standing on an island in the center of Keuka (formerly Crooked) Lake Outlet; thence southerly by a line drawn so as to strike the northeast corner of the property formerly owned by Ezra Boughton, now owned by New York Central Electric Corporation and more fully described by deed dated May 12, 1924 and recorded May 13, 1924 in Yates County Clerk's office in Liber 115 of Deeds at page 505, thence west ten degrees north (N 10° N) two chains and eighty links (one hundred eighty-four and eight-tenths feet) to the highway leading south from Dresden; then north along said highway to the place of beginning, containing 1.8 acres more or less.

Being and hereby conveying the same premises conveyed by A. Carroll Turner and others to Associated Real Properties, Inc., by deed dated March 14, 1930 and recorded in Yates County Clerk's office, March 14, 1930 in Liber 121 of Deeds at page 514, with the exception of the premises set forth above by deed from Noratio Hazen to William Barry and premises described in the exception last above noted.

GREENWICH  
6.15, 6.31

APPENDIX B

EXCEPTING FROM THE ABOVE PREMISES property appropriated by the State of New York designated as Parcels No. 155 and 156 on Map No. 180, Notice of Appropriation filed in the Office of the Department of Public Works on October 2, 1959, in the Office of the Department of State on October 13, 1959, and in the Yates County Clerk's Office on July 29, 1960.

FURTHER EXCEPTING FROM THE ABOVE PREMISES property appropriated by the People of the State of New York designated as Parcel Nos. 179, 180, 181 and 182 on Map No. 116 R-2, Notice of Appropriation filed in the office of the Department of State on August 22, 1980 and in the Yates County Clerk's office on October 9, 1980.

APPENDIX C

RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's 34.5-kV electric substation and 115-kV electric substation more particularly described below; the appurtenances covered by this reservation shall include, without limitation, the 34.5-kV electrical disconnect switches E1-74 and E54-74 and the 115-kV electrical disconnect switches B3-76, B3-77, B4-76, and B4-77:

ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 115 kV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 39°39'31" W., a distance of 1016.10 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 26°38'09" E., a distance of 783.53 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE continuing through lands of New York State Electric & Gas Corporation the following six (6) courses:

1. S. 60°20'00" W., a distance of 267.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 29°52'26" W., a distance of 373.22 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 60°02'40" E., a distance of 393.46 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 29°57'17" E., a distance of 160.90 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
5. S. 60°10'23" W., a distance of 126.45 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
6. S. 29°52'32" E., a distance of 213.95 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 2.760 acres.

ALSO, ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 34.5 kV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 01°02'00" E., a distance of 1017.81 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 47°24'51" E., a distance of 1382.86 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S. 71°13'51" W., parallel to and 3.0 feet from a building face and through drill holes set in a curb at 4.00 feet and 170.90 feet, a total distance of 174.90 feet;
2. N. 16°41'20" W., parallel with and 4.00 feet west of a curb marked with drill holes, a distance of 68.94 feet;
3. N. 71°18'09" E., parallel with and 4.0 feet north of a curb marked with drill holes, a distance of 172.58 feet;
4. S. 18°36'44" E., parallel with and 4.0 feet east of a curb marked with drill holes, a distance of 68.68 feet to the POINT OR PLACE OF BEGINNING comprising an area of 0.274 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's existing substation (known as the "Dresden" electric substation) lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates and State of New York, bounded and described as follows:

BEGINNING at a concrete monument found along the northerly boundary of New York State Route 14 and west of Swarthout Road:

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 19°33'22" E. a distance of 478.43 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 04°29'52" E., a distance of 314.34 feet from the centerline intersection of Lanyon Road and the railroad tracks now or formerly of Consolidated Rail Corporation, said point is also N. 75°22'00" W., a distance of 2318.73 feet from a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of land of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE continuing through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S. 74°31'24" W., a distance of 109.78 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 15°35'15" W., a distance of 125.21 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 74°45'47" E., a distance of 110.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 15°22'31" E., a distance of 124.75 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 0.316 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor (i) ownership of the following relay switchboard panels (together with (a) the wires and cables that connect the switches that are part of such panels with the devices and substation equipment controlled by such switches and (b) the wires and cables that supply AC/DC power to such panels) now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such panels, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such panels, wires and cables: panels 5, 6, 7, 8, 21, 22, 23, 81, 82; the "RTU" panel; the "Metering Equipment" panel; and the "Diff. Matching Ctr" panel; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such relay switchboard panels, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace (i) new relay switchboard panels required due to expansion or replacement of the 115-kV and/or 34.5-kV electric system located in the substations referred to herein; and (ii) the wires and cables that connect switches that are part of such new relay switchboard panels with the devices and substation equipment controlled by such switches; provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, more specific locations for such new relay switchboard, together with their associated wires and cables, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) the right to operate certain AC/DC low voltage circuit breakers located on AC/DC Power Distribution Panelboards of the Grantee that are situated in the electric generating station now located on the premises, which circuit breakers are components of the system that permits the energization and de-energization of equipment and facilities located on the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (ii) such easements and rights-of-way as are necessary to permit the Grantor to obtain access to such circuit breakers in order to operate the same; provided, however, that in exercising such right to operate such circuit breakers, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such circuit breakers, AC/DC Power Distribution Panelboards and substations, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the following meters (together with the wires and cables that connect such meters with the data sources that they monitor) now located in

the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such meters, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such meters, wires and cables; (1) meter number 0985-1067 located on relay switchboard panel 12 for Greenidge SST unit # 3 (high side of SST # 3); (2) meter number 0985-1066 located on relay switchboard panel 13 for Greenidge SST unit # 4 (load side of SST # 4); and (3) meter number 7155 located on relay switchboard panel 11 for Greenidge ESS unit # 4 (load side ESS # 4); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such meters, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the communications wires and cables that extend from (a) the demarcation point between such wires and cables and those of the telephone service provider for the premises to (b) the Grantor's SCADA RTU, (ii) ownership of the communications wires and cables that extend from (a) such demarcation point to (b) the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (iii) such easements and rights-of-way as are necessary (a) to permit such wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such wires and cables; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights of way as are necessary to permit the following communication wires and cables to be installed on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace such communication wires and cables: a future cable to be installed running from the demarcation point of the telephone company across the premises to the 115-kV electric substation and 34.5-kV electric substation. Provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such easements and rights-of-way shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary (i) (a) to permit the Grantor's 115-kV electrical disconnect switches B3-76 and B3-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B3-75 (which structure and switch are described in Appendix D hereto) and (b)

to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B3-76 and B3-77; and (ii) (a) to permit the Grantor's 115-kV electrical disconnect switches B4-76 and B4-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B4-75 (which structure and switch are described in Appendix D hereto) and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B4-76 and B4-77; provided, however, that in exercising such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the 115-kV group-operated electrical disconnect switches B3-75 and B4-75 and their associated structures. If necessary or desirable, the location and identity of such structures, such electrical disconnect switches and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric transmission poles, towers and structures (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, towers, structures, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, towers, structures, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, towers, structures, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric distribution poles (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's underground gas pipelines (together with their associated underground and surface facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such pipelines and facilities to remain in their present locations on the premises and (b) to permit the Grantor to

construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such pipelines and facilities; provided, however, that in exercising such ownership and such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such pipelines and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor hereunder (i) ownership of any grounding wire situated (a) around the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and (b) between and/or connecting the 34.5-kV and 115-kV substations referred to herein, and (ii) such easements and rights-of-way as are necessary to permit any such grounding wire to remain in its present location on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace any such grounding wire. Further Grantor reserves an easement permitting Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace new grounding wire along the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and between such substations, as and to extent deemed necessary or desirable by the Grantor; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such grounding wire, and such easements and rights-of-way, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor an easement and right-of-way across the premises conveyed hereby for personnel, vehicles and equipment for any and all purposes necessary or convenient to the conduct of the Grantor's business, including, without limitation, (1) the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of the Grantor's aforesaid substations; the testing for, response to, and remediation of, any environmental conditions with respect to such substations; and the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of (a) such relay switchboard panels and their associated wires and cables, (b) such meters and their associated wires and cables, (c) the Grantor's aforesaid communications wires and cables, (d) the Grantor's aforesaid electrical disconnect switches, (e) such electric transmission poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (f) such electric distribution poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (g) such gas pipelines and facilities, (h) such grounding wire and (ii) the operation of such AC/DC low voltage circuit breakers; provided, however, that in exercising such easement and right-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. The Grantor's easement and right-of-way with respect to the Grantor's "Dresden" substation shall include, without limitation, the present driveway associated therewith. If necessary or desirable, the location of such driveway, and the remainder of such easement and right-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTEE'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., (ii) the High Voltage Proximity Act, New York Labor Law § 202-b and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

APPENDIX D

(i) OWNERSHIP of the following components of the Generator's relay switchboard panel 82 (which panel is described in Appendix C hereto) that are used in the protection and control of circuit breakers 81-72 and 84-72, which panel 82 is now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such components to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such components: two ASEA RADEX with Auxiliary CTs SLCK12, six General Electric IAC538803A, one General Electric IAC538803A and one General Electric IAC538803A (each together with its associated control switches, test switches, light bulbs and other appurtenances); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's relay switchboard panels located on the premises. If necessary or desirable, the identity and location of such components and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(ii) OWNERSHIP of the following electrical facilities now located on the premises of the Grantor's aforesaid 34.5-KV electric substation and 115-KV electric substation (which substation premises are described in Appendix C hereto) and (iii) such easements and rights-of-way as are necessary (a) to permit such electrical facilities to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such electrical facilities: (1) the 115-KV circuit breaker 83-72 together with its associated equipment and connections to the 115-KV electrical disconnect switch 83-75 and 83-76, foundation, grounding, conduit and control cable; (2) the 115-KV group-operated electrical disconnect switch 83-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (3) the 115-KV circuit breaker 84-72 together with its associated equipment and connections to the 115-KV electrical disconnect switch 84-75 and 84-76, foundation, grounding, conduit and control cable; (4) the 115-KV group-operated electrical disconnect switch 84-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (5) service station bank # 1 located within the Grantor's 34.5-KV electric substation (which substation is described in Appendix C hereto), which bank consists of (A) one 3-phase, 34.5-2.4 KV, 3750/3000 KVA transformer together with its associated bus and connections, surge arresters, foundation, grounding, conduit and control cable and (B) one 600:5 MR current transformer together with its associated electrical disconnect switch; (6) the 34.5-KV circuit breaker 81-72 together with its associated equipment and connections to the electrical disconnect switches 81-74 and 81-75, foundation, grounding, conduit and control cable; (7) the 34.5-KV electrical disconnect switch 81-75; (8) service station bank # 2, which bank consists of one 3-phase, 34.5-2.4 KV, 10/12.5 MVA transformer together with its associated bus and connections, 2.4-KV power cable, surge arresters, foundation, grounding, conduit and control cable; (9) the 34.5-KV circuit breaker 84-72 together with its associated equipment and connections to the electrical disconnect switches 84-74 and 84-75, foundation, grounding, conduit and control cable; (10) the 34.5-KV electrical disconnect switch 84-75; (11) the 34.5-KV buswork, surge arresters and conduit and cable

UNDER AND SUBJECT to two indentures of lease made March 18, 1936 between Associated Real Properties, Inc., and respectively by Harry K. Meeker of the Village of Dresden, Yates County, State of New York and Finger Lakes Canning Company, Inc., a corporation organized and existing by and under the laws of the State of New York, having its principal office in the Village of Penn Yan, Yates County, State of New York.

Being the same premises conveyed by Associated Real Properties, Inc. to New York State Electric & Gas Corporation by a deed dated February 4, 1937 and recorded in the Yates County Clerk's Office on February 23, 1937 in Liber 143 of Deeds at Page 224.

Also excepting premises conveyed by New York State Electric & Gas Corporation to Harry Meeker by a deed dated July 28, 1938 and recorded in the Yates County Clerk's Office on August 5, 1938 in Liber 144 of Deeds at Page 570; from which conveyance New York State Electric & Gas Corporation specifically reserved all water and riparian rights connected with the property so conveyed.

Also excepting governmental rights in navigable streams, being Keuka Lake Outlet and Seneca Lake, and the land in the bed and under the waters thereof.

SUBJECT to an Agreement dated December 14, 1942, made between New York State Electric & Gas Corporation and the United States of America granting an easement and right of way to United States of America for the installation and maintenance of its cable and equipment upon and across the lands of the New York State Electric & Gas Corporation between the west shore line and the east shore line of Seneca Lake including any lands or interest New York State Electric & Gas Corporation may have under the waters of Seneca Lake.

SUBJECT to an easement and right of way dated September 27, 1993 granted by New York State Electric & Gas Corporation to Ferro Corporation to construct, reconstruct, operate, inspect, maintain, repair, remove and/or replace an underground water pipeline and appurtenances upon, over, under and through a portion of the above premises, along with ingress and egress over the above premises for these purposes.

TOGETHER WITH all rights available under an agreement dated May 26, 1991 whereby The People of the State of New York grant to New York State Electric & Gas Corporation an easement, thirty (30) feet in width, for the operation and maintenance of electric submarine cables on such portion of the above premises under the waters of Seneca Lake situated in the Town of Torrey, County of Yates and Town of Romulus, County of Seneca, and the State of New York; this agreement is scheduled to expire on or about October 15, 2004.

It is the intention of the Deed to which this Appendix is attached to convey to NGS Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

GREENIBER  
F. Smith  
5.6

APPENDIX A-2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Torrey, Yates County, New York, being the same premises conveyed by William M. Birkett and Clara Birkett, his wife; Clarence T. Birkett and Laura R. Birkett, his wife, to Florence M. Smith by deed dated July 15, 1891 and recorded in the Yates County Clerk's Office September 3, 1891 in Liber 79 of Deeds at page 75, and being also the same premises described in an instrument dated October 30, 1911, executed between Florence M. Smith and George E. Smith and recorded in the Yates County Clerk's Office July 7, 1923 in Liber 114 of Deeds at page 648.

Hereby conveying premises consisting of approximately eight (8) acres of land, bounded on the north by a public highway, being the highway leading from Dresden to Watkins, formerly known as the Lake Road, and the highway leading to Minors; on the east by the said highway leading from Dresden to Watkins, formerly known as the Lake Road; on the south by lands of New York Central Railroad Company; and on the west by lands formerly of Harry M. Simmons, consisting of 8.29 acres of land, and being the second parcel described in the deed from Roy Swarthout to New York Central Electric Corporation dated September 30th, 1936 and duly recorded in the Yates County Clerk's Office October 2nd, 1936 in Liber 141 of Deeds at page 602; the premises hereby conveyed consisting of about eight (8) acres of land, and being the home premises now occupied and owned by said Florence M. Smith; and the first party represents and warrants that she is now in the possession of the said premises, and that the same is free of all liens and encumbrances and taxes.

Being the same premises conveyed by Florence M. Smith to New York State Electric & Gas Corporation by a deed dated February 10, 1937 and recorded in the Yates County Clerk's Office on February 10, 1937 in Liber 143 of Deeds at Page 209.

It is the intention of the Deed to which this Appendix is attached to convey to NGE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

located between the circuit breaker ES4-72 and the station service bank # 4E; (12) the circuit breaker ES4-72 together with its associated equipment and connections to: (i) the station service bank # 4E, (ii) the tie bus #6, and (iii) the emergency tie bus # 4, foundation, grounding, conduit and control cable; and (13) the # 1 and # 2 "House Service and Lighting" transformers located within the Grantor's 34.5-kV electric substation (which substation is described in Appendix C hereto) together with their associated foundation, grounding, conduit and control cable; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the identity and location of such electrical facilities and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(iii) AN EASEMENT and right-of-way across the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation (which substation premises are described in Appendix C hereto) for personnel, vehicles and equipment to the extent necessary to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace the Grantee's electrical facilities described in the immediately preceding paragraph; provided, however, that in exercising such easement and right-of-way the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the location of such easement and right-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTOR'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; (ii) the High Voltage Proximity Act, New York Labor Law § 202-n and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

GREENWICH  
N. Swarthout  
6.9

APPENDIX A-3

All That Tract or Parcel of Land, situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: Commencing at a stake in the center of the new road leading South to the Town of Milo by James M. Clark's land; thence at right angles with the center of said road North 65 degrees west seven chains and sixty links; thence North along the North bounds of land sold by S. Buckley on the 24th of February, 1847, to the North-west corner thereof; thence Westerly along said Buckley's North line 19 chains and 24 links to the new Pre-emption line; thence North along said line 3 chains and 75 links to the outlet of Crooked (Keuka) Lake; thence Northeasterly along said outlet 45 chains 38 links to the center of the Milo road in the front of the Custom Mill; thence South 70° East, 66 links to the center of the highway; thence South 78 1/2° West 8 chains and 62 links; thence South 25° West, 15 chains and 2 links to the place of beginning; containing 61 3/4 acres of land, be the same more or less. Reserving the right of overflowing the said premises for any uses or purposes of a mill-pond adjacent thereto, subject to the conditions, exceptions and reservations in the patent contained, of which this parcel of land is a part, as the said right was reserved in the conveyance of the said premises from Allie A. Embree to George Turner by deed dated March 23, 1872, and recorded in Yates County Clerk's Office in Liber 54 of Deeds at page 110, and said premises being the same premises conveyed by the said deed.

ALSO All that other Tract or Parcel of land, situate in the Town of Torrey, County of Yates and State of New York, bounded as follows: Beginning in the center of the road, leading from Dresden to Elmrods, and on the North side of the Syracuse, Geneva & Corning R.R., thence along the center of the road North 26° East 6 chains and 97 links; thence North 81 degrees and 15' East 2 chains and 62 links, and thence North 80 degrees East, 1 chain and 2 links to a stake; thence South 23 degrees and 30' East, 15 chains and 12 links to a stake on the North side of the railroad aforesaid; thence Westerly along the railroad to the place of beginning, containing eight acres of land and 29/100 of an acre of land, be the same more or less, as surveyed July 31, 1880, by L. Ogden. Being the same premises conveyed to George Turner by Henry Birkett by deed dated Sept. 15, 1880, and recorded in said Clerk's Office Jan. 15, 1881, in Liber 62 of Deeds at page 261.

Excepting and reserving from the premises hereby conveyed all that portion of said premises conveyed by George Turner and wife to Adell Lampman by deed June 25, 1889, recorded in said Clerk's Office in Liber 73 of Deeds at page 499, containing one acre of land more or less.

Also excepting and reserving therefrom those portions of said premises conveyed by George Turner and wife to Syracuse, Geneva & Corning R. R. Company by two deeds, one recorded in said Clerk's Office in Liber 59 of Deeds at page 257, and one recorded in said Clerk's Office in Liber 68 of Deeds at page 38.

Also excepting therefrom all that portion of said premises conveyed by Ella J. Benedict to the N. Y. Central & Hudson River R. R. Company by deed recorded in said Clerk's Office in Liber 91 of deeds at page 544.

Also excepting that portion conveyed by Minnie A. Trawis to New York Central & Hudson River R.R. Co. by deed recorded in said office in Liber 91 of deeds at page 545.

Being a portion of the premises conveyed by Roy Swarthout to New York Central Electric Corporation by a deed dated September 30, 1936 and recorded in the Yates County Clerk's Office on October 2, 1936 in Liber 141 of Deeds at Page 502.

It is the intention of the Deed to which this Appendix is attached to convey to NGE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed prior to the Completion Date (as defined in the hereinafter defined Lease Agreement) in connection with the acquisition, construction and installation of the AES Greenidge, L.L.C. Project (the "Project") of Yates County Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by AES Greenidge, L.L.C. (the "Company") as agent of the Agency pursuant to a lease agreement dated as of February 1, 2006 (the "Lease Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, security system, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery;

(2) The following items of specific machinery:

- a. A single-bed selective Catalytic reduction (SCR) and applicable sub-systems and all parts needed to complete installation;
- b. Low-NOx combustion technology (Burners) and applicable sub-systems and all parts needed to complete installation;
- c. A circulating dry scrubber (CDS) with carbon injection and applicable sub-systems and all parts needed to complete installation;
- d. A bag house and applicable sub-systems and all parts needed to complete installation.

(3) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.



RECYCLED



EA 912

FIBERKRAFT, INC., BEDFORD, NH 800-258-1063

CLOSING ITEM NO.: A-4

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YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

AES GREENIDGE, L.L.C.

---

LEASE AGREEMENT

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DATED AS OF FEBRUARY 1, 2006

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RELATING TO A PARCEL OF LAND (THE "LAND")  
LOCATED AT 590 PLANT ROAD IN THE TOWN OF  
TORREY, YATES COUNTY, NEW YORK.

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THIS LEASE AGREEMENT CONSTITUTES A  
SECURITY AGREEMENT UNDER THE UNIFORM  
COMMERCIAL CODE OF THE STATE OF NEW YORK.

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## LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of February 1, 2006 (the "Lease Agreement") by and between YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at One Keuka Business Park, Penn Yan, New York (the "Agency"), and AES GREENIDGE, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 590 Plant Road, Dresden, New York (the "Company");

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 113 of the Laws of 1975 of the State of New York, as amended, codified as Section 893-b of the General Municipal Law of the State of New York (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in November, 2005, AES Greenidge, L.L.C. (the "Company"), a Delaware limited liability company, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 153 acres located at 590 Plant Road in the Town of Torrey, Yates County, New York (the "Land"), together with the existing buildings

located thereon containing in the aggregate approximately 91,960 square feet of space (collectively, the "Facility"), (2) the reconstruction and renovation of the Facility, including the acquisition and installation of certain pollution control facilities, and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned and operated by the Company as a coal-fired electric generating plant and other directly and indirectly related activities; (B) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemption from certain sales taxes, deed transfer taxes, mortgage recording taxes and real property taxes (collectively with the "Financial Assistance"); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on December 6, 2005 (the "Public Hearing Resolution"), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project (the "Public Hearing"), to be mailed on December 16, 2005 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be published on December 14, 2005 in The Chronicle-Express, a newspaper of general circulation available to the residents of the Town of Torrey, Yates County, New York, (C) caused notice of the Public Hearing to be posted on December 9, 2005 on bulletin board located in the Torrey Town Hall located at 56 Geneva Street in the Town of Torrey, Yates County, New York, (D) conducted the Public Hearing on January 17, 2006, at 7:00 o'clock p.m., local time at the Torrey Town Hall located at 56 Geneva Street in the Town of Torrey, Yates County, New York, and (E) prepared a report of the Public Hearing (the "Report") which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on January 18, 2006 (the "SEQR Resolution"), the Agency determined that the Project constituted a "Type II action" (as such quoted term is defined under SEQRA), and accordingly that no further action need be taken under SEQRA with regard to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on January 18, 2006 (the "Inducement Resolution"), the Agency made a determination, subject to numerous conditions, to undertake the Project; and

WHEREAS, pursuant to Section 874(4) of the Act, the Executive Director of the Agency sent a letter dated December 16, 2005 (the "Pilot Deviation Letter"), to the chief executive officers of the Town of Torrey, the Village of Dresden, Yates County and the Penn Yan Central

School District, being the county and each city, town, village and school district in which the Project Facility is located (collectively, the "Affected Tax Jurisdictions") notifying said chief executive officers of the proposed deviation from the Agency's uniform tax exemption policy in connection with the Project (the "Proposed Deviation"), and the reasons therefor; and

WHEREAS, pursuant to a resolution duly adopted by the members of the Agency on January 18, 2006 (the "Pilot Deviation Resolution"), the Agency determined to deviate from the Agency's uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on February 15, 2006 (the "Approving Resolution"), the Agency determined that in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"): (A) a certain lease to Agency (the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant pursuant to which the Company will lease to the Agency the Land and all improvements now or hereafter located on the Land (collectively, the "Premises") for a lease term ending on June 30, 2021, (B) a bill of sale dated as of February 1, 2006 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, and (C) a lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; and

WHEREAS, if the Company intends to seek a sales and use tax exemption with respect to the Project Facility by reason of the involvement of the Agency with the Project, then simultaneously with or subsequent to the Closing, (A) the Agency will (1) execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") relating to the sales and use tax exemption which forms a part of the Financial Assistance and (2) file (with the New York State Department of Taxation and Finance) a New York State Department of Taxation and Finance Form ST-60 (the form required to be filed by the Agency pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") and (B) the Company will, in the Lease Agreement, agree to annually file (with the New York State Department of Taxation and Finance) a New York State Department of Taxation and Finance Form ST-340 (the form required to be filed by any agent of the Agency pursuant to Section 874(8) of the Act), indicating the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency (the "Annual Sales Tax Report"); and

WHEREAS, simultaneously with the Closing, (A) the Company and the Agency will execute and deliver a payment in lieu of tax agreement dated as of February 1, 2006 (the "Payment in Lieu of Tax Agreement") by and between the Company and the Agency, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility to the Affected Tax Jurisdictions and (B) the Agency will file with the appropriate assessor or assessors having jurisdiction over the Project Facility (each, an "Assessor") and mail to the chief executive officer of each Affected Tax Jurisdiction a copy of a

New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (a "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement; and

WHEREAS, as security for amounts due under the Payment in Lieu of Tax Agreement, the Agency and the Company will enter into a mortgage dated as of February 1, 2006 (the "Pilot Mortgage") from the Agency and the Company to Yates County, as agent for itself, the Town of Torrey, the Village of Dresden and the Penn Yan Central School District (the Agency Documents, the Payment in Lieu of Tax Agreement and the Pilot Mortgage being collectively referred to as the "Basic Documents"); and

WHEREAS, the Agency and the Company will enter into a post closing conditions agreement dated as of February 1, 2006 (the "Post Closing Conditions Agreement") whereby the Company agrees to take certain actions to obtain various consents relating to the undertaking of the Project subsequent to the Closing Date; and

WHEREAS, the Agency proposes to undertake the Project, to appoint the Company as agent of the Agency to undertake the Project, and to lease (with obligation to purchase) the Project Facility to the Company, and the Company desires to act as agent of the Agency to undertake the acquisition, reconstruction, renovation and installation of the Project Facility and to purchase the Project Facility from the Agency, all pursuant to the terms and conditions hereinafter set forth in this Lease Agreement; and

WHEREAS, the providing of the Project Facility and the leasing of the Project Facility to the Company pursuant to this Lease Agreement is for a proper purpose, to wit, to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State, pursuant to the provisions of the Act; and

WHEREAS, all things necessary to constitute this Lease Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Lease Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

## ARTICLE I

### DEFINITIONS

SECTION 1.1. DEFINITIONS. The following words and terms used in this Lease Agreement shall have the respective meanings set forth below, unless the context or use indicates another or different meaning or intent:

"Act" means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 113 of the Laws of 1975 of the State, codified as Section 893-b of the General Municipal Law of the State, as amended from time to time.

"Affected Tax Jurisdiction" shall have the meaning assigned to such term in Section 854(16) of the Act, which defines such term, in the context of the Project, to mean any village, town, city, county, and school district in which the Project Facility is located.

"Affected Tax Jurisdictions" means all Affected Tax Jurisdictions in which the Project Facility is located.

"Agency" means (A) Yates County Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which Yates County Industrial Development Agency or its successors or assigns may be a party.

"Annual Sales Tax Report" means a New York State Department of Taxation and Finance Form ST-340 (Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)), indicating the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency pursuant to Section 4.1(E) of the Lease Agreement.

"Applicable Laws" means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Agency were the owner of the Project Facility and as if the Company and not the Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

"Approving Resolution" means the resolution duly adopted by the Agency on February 15, 2006, authorizing and directing the undertaking and completion of the Project and the execution and delivery of the Basic Documents to which the Agency is a party.

"Authorized Representative" means (A) with respect to the Agency, its Chairman or Vice-Chairman, or such other Person or Persons at the time designated to act on behalf of the Agency by written certificate furnished to the Company containing the specimen signature of each such Person and signed on behalf of the Agency by its Chairman, Vice Chairman or such other person as may be authorized by resolution of the Agency to act on behalf of the Agency, and (B) with respect to the Company, its chief executive officer or chief financial officer, or such other Person or Persons at the time designated to act on behalf of the Company by written certificate furnished to the Agency containing the specimen signature of each such Person and signed on behalf of the Company by its chief executive officer or chief financial officer, or such other person as may be authorized by the members of the Company to act on behalf of the Company.

"Bankruptcy Code" means the United States Bankruptcy Code, constituting Title 11 of the United States Code, as amended from time to time, and any successor statute.

"Basic Documents" means the Conveyance Documents, the Lease Agreement, the Payment in Lieu of Tax Agreement, the Pilot Mortgage, the Post Closing Conditions Agreement and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

"Bill of Sale to Agency" means the bill of sale dated as of February 1, 2006 and delivered on the Closing Date from the Company to the Agency conveying all of the Company's interest in the Equipment to the Agency.

"Bill of Sale to Company" means the bill of sale from the Agency to the Company conveying all of the Agency's interest in the Equipment to the Company, substantially in the form attached as Exhibit D to the Lease Agreement.

"Business Day" means any day of the year other than (A) a Saturday or Sunday, (B) a day on which the New York Stock Exchange is closed or (C) a day on which commercial banks in New York, New York are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

"Closing" means the closing at which the initial Basic Documents are executed and delivered by the Company and the Agency.

"Closing Date" means the date of the Closing.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

"Company" means AES Greenidge, L.L.C., a limited liability company duly organized and existing under the laws of the State of Delaware, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of the Lease Agreement.

"Completion Date" means the earlier to occur of (A) the date of substantial completion of the Project, as evidenced in the manner provided in Section 4.2 of the Lease Agreement, or (B) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

"Condemnation" means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

"Conveyance Documents" means, collectively, the Underlying Lease and the Bill of Sale to Agency.

"Default Interest Rate" means a per annum rate of interest equal to twelve percent (12%) per annum, or the maximum annual rate of interest permitted by law, whichever is less.

"Environmental Laws" mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, written and published policies, guidelines, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

"Equipment" means all equipment, fixtures, machines, building materials and items of personal property and all appurtenances intended to be acquired in connection with the completion of the Project prior to the Completion Date with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of the Lease Agreement, and such substitutions and replacements therefor as may be made from time to time pursuant to the Lease Agreement, including without limitation, all the Property described in Exhibit B attached to the Lease Agreement.

"Event of Default" means, with respect to any particular Basic Document, any event specified as an Event of Default pursuant to the provisions thereof.

"Facility" means all buildings (or portions thereof), improvements, structures and other related facilities, and improvements thereto, (A) located on the Land, (B) financed with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of the Lease Agreement, and (C) not constituting a part of the Equipment, all as they may exist from time to time.

"Financial Assistance" shall have the meaning assigned to such term in the fifth recital clause to the Lease Agreement.

"Governmental Authority" means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

"Gross Proceeds" means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance or Condemnation award.

"Hazardous Materials" means all hazardous materials including, without limitation, any flammable explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as set forth in or regulated under or defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), Articles 15 or 27 of the State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation.

"Immediate Notice" means same-day notice by telephone, telecopy or telex, followed by prompt written confirmation sent by overnight delivery.

"Indebtedness" means (1) the monetary obligations of the Company to the Agency and its members, officers, agents, servants and employees under the Lease Agreement and the other Basic Documents, (2) the monetary obligations of the Company to the Affected Tax Jurisdictions under the Payment in Lieu of Tax Agreement and the other Basic Documents, and (3) all interest accrued and accruing on any of the foregoing.

"Independent Counsel" means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and not a full-time employee of the Company or the Agency.

"Independent Engineer" means an engineer or architect or firm of engineers or architects duly admitted to practice engineering or architecture in the state and not a full-time employee of the Company or the Agency.

"Land" means an approximately 153 acre parcel of land located at 590 Plant Road in the Town of Torrey, Yates County, New York, as more particularly described in Exhibit A attached to the Lease Agreement.

"Lease Agreement" means the lease agreement dated as of February 1, 2006 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

"Lien" means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, security agreement, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Company. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics', materialmen's, warehousemen's and carriers' liens and other similar encumbrances affecting real property. For purposes of the Basic Documents, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

"Net Proceeds" means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys' fees and expenses) incurred in obtaining such Gross Proceeds.

"Payment in Lieu of Tax Agreement" means the payment in lieu of tax agreement dated as of February 1, 2006 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such payment in lieu of tax agreement may be amended or supplemented from time to time.

"Permitted Encumbrances" means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens, to the extent permitted by Section 8.8 of the Lease Agreement, (C) Liens for taxes, assessments and utility charges (1) to the extent permitted by Section 6.2(B) of the Lease Agreement or (2) at the time not delinquent, (D) any Lien on the Project Facility, (E) any Lien on the Project Facility obtained through any Basic Document, (F) the Conveyance Documents and (G) any Lien requested by the Company in writing and consented to by the Agency, which consent of the Agency shall not be unreasonably withheld or delayed.

"Person" means an individual, partnership, corporation, trust, unincorporated organization or Governmental Authority.

"Pilot Mortgage" means the pilot mortgage dated as of February 1, 2006 from the Agency and the Company to Yates County, as agent for itself, the Town of Torrey, the Village of Dresden and the Penn Yan Central School District, to secure amounts due and owing and unpaid under the payment in lieu of tax agreement, as said pilot mortgage may be amended or supplemented from time to time.

"Plans and Specifications" means the description of the Project appearing in the fifth recital clause to the Lease Agreement.

"Post Closing Conditions Agreement" means the post closing conditions agreement dated as of February 1, 2006 by and between the Agency and the Company, pursuant to which the Company agrees to take certain actions to obtain various consents relating to the undertaking of the Project subsequent to the Closing Date, as said post closing conditions agreement may be amended or supplemented from time to time.

"Premises" means the property leased to the Agency pursuant to the Underlying Lease.

"Project" means shall have the meaning set forth in the fifth recital clause to the Lease Agreement.

"Project Facility" means, collectively, the Land, the Facility and the Equipment.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Real Property Tax Exemption Form" means a New York State Board of Real Property Services Form RP-412-a (Industrial Development Agencies - Application for Real Property Tax Exemption) relating to the Project Facility.

"Required Approvals" means issuance of a permanent and unconditional certificate (or certificates) of occupancy for the completed Project Facility by the Company and all other permits, licenses and approvals necessary to allow the Project Facility to be used for its intended purpose.

"Requirement" or "Local Requirement" means any law, ordinance, order, rule or regulation of a Governmental Authority.

"Sales Tax Exemption Letter" shall have the meaning assigned to such term in Section 8.12 of the Lease Agreement.

"SEQRA" means Article 8 of the Environmental Conservation Law of the State, Chapter 43-B of the Consolidated Laws of New York, as amended, and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State, being 6NYCRR Part 617, as amended, and any local regulations thereunder adopted pursuant thereto.

"State" means the State of New York.

"Term" means the term of the Underlying Lease.

"Termination of Lease Agreement" means a termination of lease agreement by and between the Company, as tenant, and the Agency, as landlord, intended to evidence the termination of the lease agreement, substantially in the form attached as Exhibit E to the Lease Agreement.

"Termination of Underlying Lease" means the termination of the Underlying Lease from the Agency to the Company, evidencing termination of the Underlying Lease, substantially in the form attached as Exhibit C to the Lease Agreement, which termination is intended, upon certain terminations of the Lease Agreement, to terminate the leasehold interest of the Agency created pursuant to the Underlying Lease.

"Thirty-Day Sales Tax Report" means a New York State Department of Taxation and Finance Form ST-60 (IDA Appointment of Project Operator or Agent) notifying the New York State Department of Taxation and Finance that the Agency has appointed the Company to act as agent of the Agency pursuant to Section 4.1(E) of the Lease Agreement.

"Unassigned Rights" means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.2, 3.3, 4.1(B), 4.1(D), 4.1(E)(2), 4.1(F), 4.1(G), 5.2(A), 5.3(B), 5.4(B), 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 9.1, 9.3, 11.1, 12.4, 12.8 and 12.10 of the Lease Agreement, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents (other than the Company) and employees of the Agency for their own account pursuant to Sections 2.2(G), 3.3, 4.1, 5.3(B), 5.3(C), 6.4(B), 8.2, 10.2 and 10.4 of the Lease Agreement, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.6 of the Lease Agreement and the Payment in Lieu of Tax Agreement, and (D) the right to enforce the foregoing pursuant to Article X of the Lease Agreement.

"Underlying Lease" means the lease to agency dated as of February 1, 2006 and delivered on the Closing Date by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company has conveyed a leasehold interest in the Premises to the Agency, as said lease to agency may be amended or supplemented from time to time.

SECTION 1.2. INTERPRETATION. In this Lease Agreement, unless the context otherwise requires:

(A) the terms "hereby", "hereof", "herein", "hereunder" and any similar terms as used in this Lease Agreement, refer to this Lease Agreement, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Lease Agreement;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa;

(D) any headings preceding the texts of the several Articles and Sections of this Lease Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Lease Agreement nor affect its meaning, construction or effect; and

(E) any certificates, letters or opinions required to be given pursuant to this Lease Agreement shall mean a signed document attesting to or acknowledging the circumstances,

representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Lease Agreement.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AGENCY. The Agency makes the following representations, warranties and covenants as the basis for the undertakings on the Agency's part herein contained:

(A) The Agency is duly established under the provisions of the Act and has the power to enter into this Lease Agreement and the other Basic Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder. Based upon the representations made by the Company as to the utilization of the Project Facility, the Project will constitute a "project", as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver and perform this Lease Agreement and the other Basic Documents to which the Agency is a party.

(B) Neither the execution and delivery of this Lease Agreement or the other Basic Documents to which the Agency is a party, the consummation of the transactions contemplated hereby or thereby nor the fulfillment of or compliance with the provisions of this Lease Agreement or the other Basic Documents to which the Agency is a party will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, or will constitute a default by the Agency under any of the foregoing.

(C) Pursuant to the Basic Documents, the Agency will acquire a leasehold interest in the Premises from the Company, will cause the Project Facility to be acquired, reconstructed, renovated and installed and will lease the Project Facility to the Company pursuant to this Lease Agreement, all for the purpose of advancing the job opportunities, health, general prosperity and economic welfare of the people of the State and improving their standard of living.

(D) Except as provided in Article IX and Article X hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all Liens or encumbrances, except for the Permitted Encumbrances and as contemplated or allowed by the terms of this Lease Agreement and the other Basic Documents.

SECTION 2.2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is qualified and authorized to do business in the State of New York and all other jurisdictions in which its operations or ownership of Properties so

require, and has the power to enter into this Lease Agreement and the other Basic Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its members, the Company has been duly authorized to execute, deliver and perform this Lease Agreement and the other Basic Documents to which the Company is a party.

(B) Except as otherwise provided in Exhibit K hereto and the Post Closing Conditions Agreement, neither the execution and delivery of this Lease Agreement or the other Basic Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of this Lease Agreement or the other Basic Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Articles of Organization or Operating Agreement of the Company or any other restriction, order, judgment, agreement or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or (2) result in the creation or imposition of any Lien of any nature upon any Property of the Company under the terms of any such instrument or agreement, other than pursuant to the Basic Documents and Permitted Encumbrances, or (3) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

(C) The completion of the Project by the Agency and the sale of the Project Facility by the Agency to the Company will not result in the removal of a plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State.

(D) The Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one third of the total cost of the Project.

(E) The Project Facility is, and so long as this Lease Agreement shall remain in effect, the Project Facility will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action required by the Basic Documents or which the Agency advises the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way (1) cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act, or (2) cause the Financial Assistance to be applied in a manner contrary to that provided in the Basic Documents.

(F) The Basic Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(G) The Project Facility and the operation thereof will comply in all material respects with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith. The Company shall cause all notices required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith.

(H) The Project will not have a "significant impact on the environment" (within the meaning of such term as used in SEQRA), and the Company hereby covenants to comply with all mitigation measures, requirements and conditions, if any, enumerated in the SEQR Resolution under SEQRA (and any other environmental determinations issued under SEQRA by any other Governmental Authority) applicable to the acquisition, reconstruction, renovation and installation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project and/or the Project Facility. No material changes with respect to any aspect of the Project Facility have arisen from the date of the issuance of such SEQR Resolution which would cause the determinations contained therein to be untrue.

(I) The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that, if the Company claims any sales tax exemption by virtue of the Agency's involvement in the Project, the Company as agent of the Agency must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency.

(J) The Company acknowledges receipt of notice of Section 858-b of the Act, which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)). The Company agrees, where practicable and permitted by applicable collective bargaining agreements or other existing labor agreements, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(K) The Company agrees to comply with the terms and conditions of the Post Closing Conditions Agreement.

## ARTICLE III

### CONVEYANCE AND USE OF THE PROJECT FACILITY

SECTION 3.1. CONVEYANCE TO THE AGENCY. (A) Pursuant to the Conveyance Documents, the Company has or will convey, or will cause to be conveyed, to the Agency (1) a leasehold interest in the Land and all improvements located or to be located thereon, (2) title to the Equipment and (3) permission to enter upon the Land and the Facility for the purpose of undertaking and completing the Project. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons. The Company shall, however, be entitled to physical possession and control of the Project Facility and shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

(B) The Company hereby represents and warrants that it has good and marketable title to the portions of the Project Facility that exist on the Closing Date, free and clear from all Liens except for Permitted Encumbrances, and agrees that the Company will defend, indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto. The Company also agrees to pay all reasonable expenses incurred by the Agency in defending any action with respect to title to or a Lien affecting the Project Facility, except for Permitted Encumbrances.

SECTION 3.2. USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Basic Documents or the Act, provided such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project Facility into disrepute as a public project; provided, however, that the Project Facility will not be used (1) as facilities used or to be used primarily for sectarian instruction or as a place of religious worship or (2) primarily as in connection with any part of a program of a school or department of divinity for any religious denomination; provided, further, however, that at no time shall any such use of the Project Facility be other than as a coal-fired electric generating plant and other directly and indirectly related activities and uses related thereto, without the written consent of the Agency.

SECTION 3.3. HAZARDOUS MATERIALS (A) The Company represents, warrants and covenants that the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and no prior owner of the Project Facility or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(B) The Company shall keep or cause the Project Facility to be kept free of all Hazardous Materials. Without limiting the foregoing, the Company shall not cause or permit the Project Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Applicable Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company, or any tenant or subtenant of the Company, an unlawful release of Hazardous Materials onto the Project Facility or onto any other property.

(C) The Company shall comply with, and ensure compliance by all tenants and subtenants of the Company with, all Applicable Laws regarding Hazardous Materials whenever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants of the Company obtain and comply with, any and all approvals, registrations or permits required thereunder.

(D) The Company shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Material on, from or affecting the Project Facility (a) in accordance with all Applicable Laws, (b) to the satisfaction of the Agency, and (c) in accordance with the orders and directives of all federal, state and local governmental authorities and (2) defend, indemnify, and hold harmless the Agency and its employees, agents, officers and members from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release or threatened release of any Hazardous Materials used, transported, stored, manufactured, refined, handled, produced or disposed of on or in the Project Facility which are on, from or affecting soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or any government order relating to such Hazardous Materials, and/or (d) any violations of Applicable Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. Costs under this subsection (D) will be repaid immediately with interest at the Default Interest Rate or the maximum permitted by law, whichever is less.

(E) In the event that insurance shall become available at a reasonable cost to cover the Company's obligations under this Section 3.3, then, at the option of the Agency, the Company shall obtain adequate coverage.

SECTION 3.4. NON-MERGER. During the term of this Lease Agreement, there shall be no merger of this Lease Agreement nor of the leasehold estate created by this Lease Agreement with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Lease Agreement or the leasehold estate created by this Lease Agreement or any interest in this Lease Agreement or in any such leasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all

corporations, firms and other entities, including any mortgagee having any interest in (x) this Lease Agreement or the leasehold estate created by this Lease Agreement and (y) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

SECTION 3.5. COMPLIANCE WITH UNDERLYING LEASE. (A) Notwithstanding the granting of the leasehold interest created by the Underlying Lease in the Premises to the Agency pursuant to the Underlying Lease, the Company agrees, in consideration of the undertakings of the Agency set forth herein, that the Company will be and remain solely liable under the Underlying Lease for the performance of all covenants, agreements, obligations and duties of the Agency as tenant under the Underlying Lease, including but not limited to the making of all rental and other payments thereunder, and the Company will perform all of the covenants, agreements and obligations of the Agency as tenant under the Underlying Lease, at no expense to the Agency, in consideration of the execution and delivery by the Agency of the Basic Documents.

(B) The Company shall, on behalf of the Agency, (1) pay all rents, additional rents and other sums required to be paid by the Agency as tenant under and pursuant to the provisions of the Underlying Lease and (2) diligently perform and observe all of the terms, covenants and conditions of the Underlying Lease on the part of the Agency, as tenant thereunder, to be performed and observed, unless such performance or observance shall be waived or not required in writing by the landlord under the Underlying Lease, to the end that all things shall be done which are necessary to keep unimpaired the rights of the Agency, as tenant, under the Underlying Lease.

## ARTICLE IV

### UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1. ACQUISITION, RECONSTRUCTION, RENOVATION AND INSTALLATION OF THE PROJECT FACILITY. (A) The Company shall, on behalf of the Agency, promptly acquire, reconstruct, renovate and install the Project Facility, or cause the acquisition, reconstruction, renovation and installation of the Project Facility, all in accordance with the Plans and Specifications.

(B) No material change in the Plans and Specifications shall be made unless the Agency shall have consented thereto in writing (which consent of the Agency shall not be unreasonably withheld or delayed).

(C) Title to all materials, equipment, machinery and other items of Property now owned or hereafter acquired by the Company and which are intended to be a part of the Project Facility shall vest in the Agency immediately upon execution of the Bill of Sale to Agency. Title to all materials, equipment, machinery and other items of Property acquired by the Company subsequent to the Closing Date and intended to be incorporated or installed in and to become part of the Project Facility shall vest in the Agency immediately upon deposit on the Land or incorporation or installation in the Project Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest title to the above in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(D) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1; provided, however, that the liability of the Agency thereunder shall be limited to the moneys of the Company available therefor and advanced by the Company for such purpose pursuant to Section 4.1(H) of this Lease Agreement.

(E) The Agency hereby appoints the Company as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Basic Documents, and the Company hereby accepts such appointment: (1) to acquire, reconstruct, renovate and install the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the acquisition, reconstruction, renovation and installation of the Project Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to this Lease Agreement, (3) to pay all fees, costs and expenses incurred in the acquisition, reconstruction, renovation and installation of the Project Facility from funds made available therefor in accordance with this Lease Agreement, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order,

receipt or writing in connection with the acquisition, reconstruction, renovation and installation of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same.

(F) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project Facility, and the Company will defend, indemnify and save the Agency and its officers, members, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(G) To the extent required by Applicable Law, the Company, as agent of the Agency, will cause (1) compliance with the requirements of Article 8 of the New York Labor Law, and (2) any contractor, subcontractor and other person involved in the acquisition, reconstruction, renovation and installation of the Project Facility to comply with Article 8 of the New York Labor Law. The covenant in this subsection is not intended as a representation that Article 8 of the New York Labor Law applies to the Project.

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such sums as may be required in connection therewith. Title to portions of the Project Facility acquired, reconstructed, renovated and installed at the Company's cost shall immediately upon such acquisition, reconstruction, renovation or installation vest in the Agency. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's title to such portions of the Project Facility.

(I) No payment by the Company pursuant to this Section 4.1 shall entitle the Company to any reimbursement for any such expenditure from the Agency or to any diminution or abatement of any amounts payable by the Company under this Lease Agreement.

**SECTION 4.2. COMPLETION OF THE PROJECT FACILITY.** The Company will proceed with due diligence to commence and complete the acquisition, reconstruction, renovation and installation of the Project Facility. Completion of the same shall be evidenced by a certificate signed by an Authorized Representative of the Company delivered to the Agency stating (A) the date of such completion, (B) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid, (C) that the acquisition, reconstruction, renovation and installation of the Project Facility has been completed, with the exception of ordinary punchlist items and work awaiting seasonal opportunity, (D) that the Company or the Agency has good and valid title to all Property constituting a portion of the Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (E) that the Project Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate may state (1) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being, (2) that it is given only for the purposes of this Section 4.2, and (3) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by a certificate of occupancy, or a letter from the local

Governmental Authority stating that no certificate of occupancy is required, and any and all permissions, licenses or consents required of Governmental Authorities for the occupancy, operation and use of the Project Facility for its intended purposes.

SECTION 4.3. REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES. In the event of a breach, default or event of default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition, reconstruction, renovation and installation of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the prior written consent of the Agency, in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event the Agency hereby agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Company shall advise the Agency of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility, and thereafter be paid to the Company for its own use. The Company shall advise the Agency of any actions or proceedings taken hereunder.

## ARTICLE V

### DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE

SECTION 5.1. LEASE OF THE PROJECT FACILITY. In consideration of the Company's covenant herein to make rental payments hereunder, and in consideration of the other covenants of the Company contained herein, including the covenant to make additional and other payments required hereby, the Agency hereby agrees to lease to the Company, and the Company hereby agrees to rent from the Agency, the Agency's interest in the Project Facility, subject only to Permitted Encumbrances. The obligation of the Agency under this Section 5.1 to lease the Project Facility to the Company shall be subject to there being no Event of Default existing hereunder, or any other event which would, but for the passage of time, be such an Event of Default.

SECTION 5.2. DURATION OF THE LEASE TERM; QUIET ENJOYMENT. (A) The Agency shall deliver to the Company possession of the Project Facility, and the leasehold estate created hereby shall commence, on the Closing Date, and the Company shall accept possession of the Project Facility on the Closing Date.

(B) (1) Except as otherwise provided in Article X hereof, the leasehold estate created hereby shall terminate on the earlier to occur of (1) June 30, 2021 or (2) the date that this Lease Agreement shall terminate pursuant to Article X or Article XI hereof.

(2) The Agency and the Company acknowledge and agree that pursuant to the Post Closing Conditions Agreement, the Company is obligated to obtain various consents relating to the undertaking of the Project subsequent to the Closing Date. In the event that the Company fails to obtain such consents in accordance with the terms contained in the Post Closing Conditions Agreement, the Company agrees to provide for the termination of this Lease Agreement by complying with the provisions contained in Article XI hereof. The Agency agrees to cooperate with the Company in connection with the termination of the Lease Agreement pursuant to this Section 5.2(B)(2).

(C) The Agency shall take no action, other than pursuant to Article X of this Lease Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Facility during the term of this Lease Agreement and will, at the request of the Company and at the Company's expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project Facility.

SECTION 5.3. RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE. (A) The Company shall pay basic rental payments for the Project Facility as follows: On the date of execution and delivery of this Lease Agreement, the Company shall pay, as the basic lease payments due hereunder, (1) a single lump sum basic rental payment in an amount equal to \$67,500, equal to the Agency's initial administrative fee relating to the Project; plus (2) an

additional lump sum basic rental payment in an amount equal to the fees and expenses of special counsel to the Agency relating to the Project.

(B) Within seven (7) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable expenses of the Agency and the officers, members, agents and employees thereof incurred by reason of the Agency's ownership, leasing or sale of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease Agreement or any of the other Basic Documents, and any other fee or expense of the Agency with respect to the Project Facility, the leasing or sale of the Project Facility to the Company, or any of the other Basic Documents, the payment of which is not otherwise provided for under this Lease Agreement.

(C) The Company agrees to make the above-mentioned payments, without any further notice, by check or wire transfer, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.3 within ten (10) days of the date such payment is due, the Company shall pay the same, together with interest thereon at the Default Interest Rate or the maximum rate permitted by law, whichever is less, from the date on which such payment was due until the date on which such payment is made.

SECTION 5.4. NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER. (A) The obligations of the Company to make the payments required by this Lease Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any right of set-off, recoupment, counterclaim or abatement that the Company may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Lease Agreement, or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the acquisition, reconstruction, renovation or installation of the Project Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease Agreement.

(B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement, and, in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 12.10 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Company for the

collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company) or employees of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease Agreement, the relationship of the Agency and the Company hereunder or the Company's use and occupancy of or purchase of or title to the Project Facility, or any other liability of the Agency to the Company.

**SECTION 5.5. GRANT OF SECURITY INTEREST.** The Company hereby grants the Agency a security interest in all of the right, title and interest of the Company in the Project Facility and in all additions and accessions thereto, all replacements and substitutions therefor and all proceeds thereof, and all books, records and accounts of the Company pertaining to the Project Facility, and all proceeds thereof, as security for payment of the rental payments and all other payments and obligations of the Company hereunder (without right of acceleration). The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute and deliver and file any instruments necessary or convenient to perfect and continue the security interest granted herein.

## ARTICLE VI

### MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

#### SECTION 6.1. MAINTENANCE OF AND MODIFICATIONS TO THE PROJECT FACILITY.

(A) During the term of this Lease Agreement, the Company shall (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), and (3) operate the Project Facility in a sound and economic manner.

(B) The Company shall not make any structural additions, modifications or improvements to the Project Facility or any part thereof unless:

(1) the Company shall (a) give or cause to be given all notices and comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on such addition, modification or improvement to the Project Facility, or a part thereof, (b) defend and save the Agency and its officers, members, agents (other than the Company) and employees harmless from all fines and penalties due to failure to comply therewith, (c) promptly procure all permits and licenses necessary for the prosecution of any work described in this Section 6.1(B), and (d) make all payments in lieu of taxes required by Section 6.6 hereof and the Payment in Lieu of Tax Agreement, including those required by Section 2.03(D) thereof;

(2) the addition, modification or improvement to the Project Facility shall not constitute a default under any of the Basic Documents; and

(3) the Company shall furnish to the Agency, at least thirty (30) days prior to commencing such addition, modification or improvement to the Project Facility detailed plans and specifications therefor; provided, further, however, that such plans need not be furnished to the Agency for nonstructural additions, modifications or improvements to the Project Facility which do not exceed, at any one time, \$250,000 in value.

SECTION 6.2. TAXES, ASSESSMENTS AND UTILITY CHARGES. (A) The Company shall pay or cause to be paid, as the same respectively become due (without right of acceleration), (1) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility, (2) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, (3) all assessments and charges of any kind whatsoever lawfully made against the Project Facility by any Governmental Authority for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during the term of this Lease Agreement and (4) all payments in lieu of taxes with respect to the Project Facility payable pursuant to the Payment in Lieu of Tax Agreement and Section 6.6 hereof.

(B) Notwithstanding the provisions of subsection (A) of this Section 6.2, the Company may in good faith actively contest any such taxes, assessments and other charges, provided that the Company (1) first shall have notified the Agency in writing of such contest and (2) is not in default under any of the Basic Documents. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

SECTION 6.3. INSURANCE REQUIRED. During the term of this Lease Agreement, the Company shall maintain insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) (1) During and prior to completion of the Project Facility, builder's risk (or equivalent coverage) insurance upon any work done or material furnished in connection with the acquisition, reconstruction, renovation and installation of the Project Facility, issued to the Company and the Agency, as insureds, as their interests may appear, and (2) at such time that builder's risk insurance is no longer available by virtue of completion of the acquisition, reconstruction, renovation and installation of the Project Facility, insurance protecting the interests of the Company and the Agency, as insureds, as their interests may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount acceptable to the Company and the Agency.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility or who are responsible for the acquisition, reconstruction, renovation or installation of the Project Facility.

(C) Insurance protecting the Company and the Agency, as additional insureds, against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Lease Agreement) and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$500,000 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate umbrella liability policy protecting the Company and the Agency with a limit of not less than \$5,000,000.

(D) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE COMPANY'S BUSINESS OR INTEREST.

SECTION 6.4. ADDITIONAL PROVISIONS RESPECTING INSURANCE. (A) All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and satisfactory and having a Best rating satisfactory to the Agency. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall name the Company and the Agency as insureds, as their interests may appear, and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4 hereof. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease Agreement.

(B) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company. If at any time the Agency is not in receipt of written evidence that all insurance required hereunder is in force and effect, the Agency shall have the right without notice to the Company to take such action as the Agency deems necessary to protect its interest in the Project Facility, including, without limitation, the obtaining of such insurance coverage as the Agency in its sole discretion deems appropriate, and all expenses incurred by the Agency in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by the Company to the Agency upon demand, together with interest thereon at the Default Interest Rate.

SECTION 6.5. APPLICATION OF NET PROCEEDS OF INSURANCE. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 hereof shall be applied as follows: (A) the Net Proceeds of the insurance required by Section 6.3(A) hereof shall be applied as provided in Section 7.1 hereof, and (B) the Net Proceeds of the insurance required by Section 6.3(B) and 6.3(C) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

SECTION 6.6. PAYMENTS IN LIEU OF REAL PROPERTY TAXES. (A) It is recognized that under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any of the Property acquired by it or under its jurisdiction, control or supervision or upon its activities. It is not the intention, however, of the parties hereto that the Project Facility be treated as exempt from real property taxation. Accordingly, the parties hereto acknowledge that the Payment in Lieu of Tax Agreement is expected to be executed with respect to the Project Facility, and that a Real Property Tax Exemption Form will be filed by the Agency with respect to the Project Facility once the Payment in Lieu of Tax Agreement is executed by the Agency and the Company. Once the Payment in Lieu of Tax Agreement is executed by the Agency and

the Company, and thereafter until the expiration date of the Payment in Lieu of Tax Agreement or until termination pursuant to Article XI hereof, the Agency and the Company hereby agree that the Company (or any subsequent user of the Project Facility pursuant to this Lease Agreement) shall be required to make or cause to be made payments in lieu of real estate taxes in the amounts and in the manner set forth in the Payment in Lieu of Tax Agreement.

(B) In the event that (1) the Project Facility would be subject to real property taxation if owned by the Company but shall be deemed exempt from real property taxation due to the involvement of the Agency therewith, and (2) the Payment in Lieu of Tax Agreement shall not have been entered into by the Agency and the Company, or if entered into the Payment in Lieu of Tax Agreement shall for any reason no longer be in effect, the Agency and the Company hereby agree that the Company, or any subsequent user of the Project Facility pursuant to this Lease Agreement, shall in such event be required to make or cause to be made payments in lieu of real property taxes to the school district or school districts, city, town, county, village and other political units wherein the Project Facility is located having taxing powers (such political units are hereinafter collectively referred to as the "Affected Tax Jurisdictions") in such amounts as would result from real property taxes being levied on the Project Facility by the Affected Tax Jurisdictions if the Project Facility were privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, but with appropriate reductions similar to the tax exemptions and credits, if any, which would be afforded to the Company if it were the owner of the Project Facility. It is agreed that the Agency, in cooperation with the Company, (a) shall cause the Project Facility to be valued for purposes of determining the amounts due hereunder as if owned by the Company as aforesaid by the appropriate officer or officers of any of the Affected Tax Jurisdictions as may from time to time be charged with responsibility for making such valuations, (b) shall cause to be appropriately applied to the valuation or valuations so determined the respective real property tax rate or rates of the Affected Tax Jurisdictions that would be applicable to the Project Facility if so privately owned, (c) shall cause the appropriate officer or officers of the Affected Tax Jurisdictions charged with the duty of levying and collecting such real property taxes to submit to the Company, when the respective levies are made for purposes of such real property taxes upon Property privately owned as aforesaid, statements specifying the amounts and due dates of such real property taxes which the Affected Tax Jurisdictions would receive if such Property were so privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, and (d) shall file with the appropriate officer or officers any accounts or tax returns furnished to the Agency by the Company for the purpose of such filing.

(C) The Company shall pay or cause to be paid to the Affected Tax Jurisdictions when due all such payments in lieu of real property taxes with respect to the Project Facility required by Section 6.6(B) of this Lease Agreement to be paid to the Affected Tax Jurisdictions, subject in each case to the Company's right to (1) obtain exemptions and credits, if any, which would be afforded to a private owner of the Project Facility, including any available exemption under Section 485-b of the New York Real Property Tax Law with respect to the Project Facility, (2) contest valuations of the Project Facility made for the purpose of determining such payments therefrom, and (3) seek to obtain a refund of any such payments made.

(D) Pursuant to Section 874(5) of the Act, if the Company shall fail to make or cause to be made any payments in lieu of real property taxes required under this Section 6.6, the amount or amounts so in default shall continue as an obligation of the Company until fully paid, and the Company hereby agrees to pay or cause to be paid the same, together with a late payment penalty equal to five percent (5%) of the amount due. If the Company shall fail to make any payment required by this Section 6.6 when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) the Default Interest Rate, or (b) the same rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.

## ARTICLE VII

### DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1. DAMAGE OR DESTRUCTION. (A) If the Project Facility shall be damaged or destroyed, in whole or in part:

(1) the Agency shall have no obligation to replace, repair, rebuild or restore the Project Facility;

(2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement or under any other Basic Document (whether or not the Project Facility is replaced, repaired, rebuilt or restored);

(3) the Company shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (B) of this Section 7.1,

(a) the Company shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and

(b) (i) the Agency shall make available to the Company (from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Project Facility and shall permit such Net Proceeds to be deposited into such accounts to facilitate such replacement, repair, rebuilding or restoration of the Project Facility as are contemplated under such financing documents to which the Company is a party on the date hereof, and in the event that the funds from the Net Proceeds of any insurance settlement provided by the Agency to the Company are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (ii) any balance of such funds from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, remaining on deposit with the Agency after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Company for its own purposes.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to purchase the Project Facility. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) the amount necessary to prepay the Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to prepay the Indebtedness in full, the Company shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount necessary to prepay the Indebtedness in full.

(C) If all Indebtedness has been paid in full, all such Net Proceeds (or the balance thereof) shall be paid to the Company for its purposes.

(D) Unless an Event of Default under any of the Basic Documents shall have occurred and be continuing, the Company may adjust all claims under any policies of insurance required by Section 6.3(A) hereof.

SECTION 7.2. CONDEMNATION. (A) To the knowledge of the Company, no condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(B) If title to, or the use of, all or any part of the Project Facility shall be taken by Condemnation:

- (1) the Agency shall have no obligation to restore the Project Facility;
- (2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement or under any other Basic Document (whether or not the Project Facility is restored);
- (3) the Company shall promptly give notice thereof to the Agency; and
- (4) except as otherwise provided in subsection (C) of this Section 7.2,
  - (a) the Company shall promptly restore the Project Facility (excluding any part of the Land or the Facility taken by Condemnation) as a complete architectural unit of substantially the same usefulness, design and construction as existed immediately prior to such Condemnation, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project" as

such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and

(b) (i) the Agency shall make available to the Company (from the Net Proceeds of any Condemnation award relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Project Facility and shall permit such Net Proceeds to be deposited into such accounts to facilitate such replacement, repair, rebuilding or restoration of the Project Facility as are contemplated under such financing documents to which the Company is a party on the date hereof, and in the event that the funds from the Net Proceeds of any Condemnation award on deposit with the Agency provided by the Agency to the Company are not sufficient to pay in full the costs of such restoration, the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (ii) any balance of such funds from the Net Proceeds of any Condemnation award, if any, remaining on deposit with the Agency after payment of all of the costs of such restoration shall be paid to the Company for its own purposes.

(C) Notwithstanding anything to the contrary contained in subsection (B) of this Section 7.2, the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (B) of this Section 7.2, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to purchase the Project Facility. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to prepay all of the Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to prepay the Indebtedness in full, the Company shall pay to the Agency the difference between such amounts and the Net Proceeds of such Condemnation awards so that the Indebtedness shall be prepaid in full.

(D) If all of the Indebtedness has been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(E) Unless an Event of Default under any of the Basic Documents shall have occurred and be continuing, the Company shall have sole control of any Condemnation proceeding with respect to the Project Facility or any part thereof and may negotiate the settlement of any such proceeding. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(F) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any such Condemnation proceeding. In no event shall the Agency voluntarily settle, or consent to the settlement of, any such Condemnation proceeding without the written consent of the Company.

SECTION 7.3. ADDITIONS TO THE PROJECT FACILITY. All replacements, repairs, rebuilding or restoration made pursuant to Sections 7.1 or 7.2, whether or not requiring the expenditure of the Company's own money, shall automatically become part of the Project Facility as if the same were specifically described herein.

## ARTICLE VIII

### SPECIAL COVENANTS

SECTION 8.1. NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT TITLE TO THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 8.2. HOLD HARMLESS PROVISIONS. (A) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, reconstructing, renovating, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Lease Agreement or any of the other Basic Documents or the enforcement of or defense of validity of any provision of any of the Basic Documents, (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) hereof, and (4) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(B) In the event of any claim against the Agency or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(C) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3(C) of this Lease Agreement, its liabilities assumed pursuant to this Section 8.2.

(D) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

**SECTION 8.3. RIGHT OF ACCESS TO THE PROJECT FACILITY.** The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times to enter upon and to examine and inspect the Project Facility. The Company further agrees that the Agency shall have such rights of access to the Project Facility as may be reasonably necessary to cause the proper maintenance of the Project Facility in the event of failure by the Company to perform its obligations hereunder.

**SECTION 8.4. COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS; CONDITIONS UNDER WHICH EXCEPTIONS ARE PERMITTED.** The Company agrees that, during the term of this Lease Agreement, it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, without notice to the Agency and obtaining the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed; provided, however, that, if no Event of Default specified in Section 10.1 hereof shall have occurred and be continuing, the Company may consolidate with or merge into another domestic entity organized and existing under the laws of one of the states of the United States, or permit one or more such domestic entities to consolidate with or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve, provided that (A) the Agency has received notice of such action, (B) the Agency gives its written consent to the proposed transaction, which consent shall not be unreasonably withheld or delayed, (C) the surviving, resulting or transferee entity assumes in writing all of the obligations of and restrictions on the Company under this Lease Agreement and the other Basic Documents, and (D) as of the date of such transaction, the Agency shall be furnished with (1) an opinion of counsel to the Company as to compliance with item (C) of this Section 8.4 and (2) a certificate, dated the effective date of such transaction,

signed by an Authorized Representative of the Company and an authorized officer of the surviving, resulting or transferee entity or the transferee of its assets, as the case may be, to the effect that immediately after the consummation of the transaction and after giving effect thereto, no Event of Default exists under this Lease Agreement and no event exists which, with notice or lapse of time or both, would become such an Event of Default.

**SECTION 8.5. AGREEMENT TO PROVIDE INFORMATION.** The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

**SECTION 8.6. BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.** (A) The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.

(B) As soon as possible after the end of each fiscal year of the Company, but in any event within thirty (30) days after such date, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company stating that no Event of Default hereunder has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto.

**SECTION 8.7. COMPLIANCE WITH APPLICABLE LAWS.** (A) The Company agrees, for the benefit of the Agency, that it will, during the term of this Lease Agreement, promptly comply with all Applicable Laws.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Company may in good faith actively contest the validity or the applicability of any Applicable Law, provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) is not in default under any of the Basic Documents, (3) shall have set aside adequate reserves for any such requirement, and (4) demonstrates to the reasonable satisfaction of the Agency that noncompliance with such Applicable Law will not subject the Project Facility or any part thereof to loss or forfeiture. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Agency or any of its members, officers, agents (other than the Company), servants or employees may be liable for prosecution for failure to comply therewith, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

**SECTION 8.8. DISCHARGE OF LIENS AND ENCUMBRANCES.** The Company hereby agrees not to create or suffer to be created any Lien on any Properties of the Agency (other than the Project Facility) or on any funds of the Agency applicable to the Project Facility.

SECTION 8.9. PERFORMANCE OF THE COMPANY'S OBLIGATIONS. Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, without notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Agency, and paying all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Agency in connection therewith; and the Company shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon at the Default Interest Rate.

SECTION 8.10. DEPRECIATION DEDUCTIONS AND TAX CREDITS. The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

SECTION 8.11. EMPLOYMENT OPPORTUNITIES. (A) The Company shall insure that all employees and applicants for employment opportunities created as a result of the completion of the Project are afforded equal employment opportunities without discrimination.

(B) Pursuant to Section 858-b of the Act, except as otherwise provided by collective bargaining contracts or agreements where applicable, the Company agrees (1) to list all new employment opportunities created as a result of the Project with the New York State Department of Labor, Community Services Division ("NYSDOL") and with the administrative entity (collectively with NYSDOL, the "JTPA Referral Entities") of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)) and (2), where practicable, to first consider for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

(C) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, prior to the effective date of this Lease Agreement, an employment plan, in substantially the form attached hereto as Exhibit F.

(D) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, on an annual basis, reports regarding the number of people employed at the Project Facility and certain other matters, the initial said annual employment report to be in substantially the form annexed hereto as Exhibit G

SECTION 8.12. SALES AND USE TAX EXEMPTION. (A) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales taxes and use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of New York sales or use taxes. Any exemption from the payment of New York sales or use taxes resulting from the involvement of the Agency with the Project shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of New York sales or use tax. It is the intention of the parties hereto that the Company will receive a sales tax exemption with respect to the Project, said sales tax exemption letter to be issued on the date of the execution of this Lease Agreement and in a form similar to the form attached hereto as Exhibit H.

(B) Pursuant to Section 874(9) of the Act, if the Company claims any sales tax exemption by virtue of the Agency's involvement in the Project, the Agency must file, within thirty days of any appointment of the Company as agent of the Agency for purposes of claiming any sales tax or use tax exemption, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), a statement identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. A current sample form of such Thirty-Day Sales Tax Report is attached hereto as Exhibit I. If the Company desires to claim any sales tax exemption by virtue of the Agency's involvement in the Project, the Company shall notify the Agency in writing of such desire, and shall furnish to the Agency a completed Thirty Day Sales Tax Report relating to such request. If the Agency determines to grant such request by the Company, the Company agrees to assist the Agency in filing such Thirty-Day Sales Tax Report.

(C) Pursuant to Section 874(8) of the Act, if the Company claims any sales tax exemption by virtue of the Agency's involvement in the Project, the Company agrees to annually file and cause any sublessee or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the Company and all contractors, subcontractors, consultants and other agents of the Company under the authority granted to the Company pursuant to Section 4.1(E) of this Lease Agreement. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this subsection (C), the Company shall immediately cease to be the agent of the Agency in connection with the Project. A current sample form of

such Annual Sales Tax Report required to be completed by the Company pursuant to this Lease Agreement is attached hereto as Exhibit J. For future filings of the Annual Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Annual Sales Tax Report.

(C) The Company agrees to furnish to the Agency a copy of each such Annual Sales Tax Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act.

(D) Pursuant to Section 874(9) of the Act, the Company agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), a statement identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. A current sample form of such Thirty-Day Sales Tax Report required to be completed by the Company pursuant to this Lease Agreement is attached hereto as Exhibit J. For future filings of the Thirty-Day Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Thirty-Day Sales Tax Report.

**SECTION 8.13. IDENTIFICATION OF THE EQUIPMENT.** All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

## ARTICLE IX

### ASSIGNMENTS; MERGER OF THE AGENCY

SECTION 9.1. ASSIGNMENT OF THE LEASE AGREEMENT. Except as otherwise provided in Section 8.4 hereof, this Lease Agreement may not be assigned by the Company, in whole or in part, without the prior written consent of the Agency.

SECTION 9.2. MERGER OF THE AGENCY. (A) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other public benefit corporation of the State or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Lease Agreement and the other Basic Documents to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests under this Lease Agreement shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company may reasonably request.

SECTION 9.3. SALE OR LEASE OF THE PROJECT FACILITY. (A) The Company may not sell, lease, transfer, convey or otherwise dispose of the Project Facility or any part thereof without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed.

(B) Notwithstanding anything to the contrary contained in this Lease Agreement, in any instance after the Completion Date where the Company reasonably determines that any portion of the Project Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such portion of the Project Facility and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency [provided that such removal will not materially impair the value of the Project Facility as collateral and provided the same is forthwith replaced with similar items]. At the request of the Company, the Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Property free from the Liens of the Basic Documents. The Company shall pay all costs and expenses (including counsel fees) incurred in transferring title to and releasing from the Liens of the Basic Documents any item of Property removed pursuant to this Section 9.3.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1. EVENTS OF DEFAULT DEFINED. (A) The following shall be "Events of Default" under this Lease Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

(1) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.3 or Section 6.6 hereof, and the continuance thereof for a period of ten (10) days after written notice thereof is given by the Agency to the Company.

(2) A default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Company in this Lease Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.

(3) The occurrence of an "Event of Default" under any other Basic Document.

(4) Any representation or warranty made by the Company herein or in any other Basic Document proves to have been false at the time it was made.

(5) The Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.

(6) The Company shall conceal, remove or permit to be concealed or removed any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof.

(7) (a) The filing by the Company (as debtor) of a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy statute, (b) the failure by the Company within sixty (60) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder, (c) the commencement of a case under the Bankruptcy Code against the Company as the debtor or commencement under any other federal or state bankruptcy statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of sixty (60) days, (d) the entry of an order for

relief by a court of competent jurisdiction under the Bankruptcy Code or any other federal or state bankruptcy statute with respect to the debts of the Company, or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within sixty (60) days of such appointment.

(8) The removal of the Project Facility, or any portion thereof, outside Yates County, New York, without the prior written consent of the Agency, other than in connection with a removal under Section 9.3(B) hereof.

(B) Notwithstanding the provisions of Section 10.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Agency within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Sections 4.1(H), 5.3, 6.2 and 6.6 hereof, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 3.3 and 8.2 hereof and to comply with the provisions of Sections 2.2(G), 6.6, 8.2, 8.4, 8.5 and 8.7(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Agency and the Company, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

SECTION 10.2. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts

payable pursuant to Section 5.3 hereof, and (b) all other payments due to the date of default under this Lease Agreement or any of the other Basic Documents; or

(2) re-enter and take possession of the Project Facility, enforce or terminate this Lease Agreement, sell the Project Facility, subject to Permitted Encumbrances, at public or private sale, as a whole or piecemeal, for such consideration as may be deemed appropriate in the circumstances, and hold the Company liable for the amount, if any, by which the aggregate unpaid amounts due hereunder exceed the Net Proceeds received upon such sale, or manage and operate the Project Facility, collect all or any rents accruing therefrom, let or relet the Project Facility or any part thereof for the Agency's own account or the account of the Company, holding the Company liable for payments due up to the effective date of such leasing and for the difference in the rent and other amounts paid by the lessee pursuant to such lease and the rental payments and other amounts payable by the Company hereunder, cancel or modify leases, evict tenants, bring or defend any suits in connection with the possession of the Project Facility in its own name or in the Company's name, make repairs as the Agency deems appropriate, and perform such other acts in connection with the management and operation of the Project Facility as the Agency, in its discretion, may deem proper; or

(3) terminate this Lease Agreement and convey to the Company all the Agency's right, title and interest in and to the Project Facility (The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the recording by the Agency of the Termination of Underlying Lease and the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or

(4) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement.

(B) No action taken pursuant to this Section 10.2 (including repossession of the Project Facility) shall relieve the Company from its obligations to make all payments required by this Lease Agreement and the other Basic Documents.

**SECTION 10.3. REMEDIES CUMULATIVE.** No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or any other Basic Document or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 10.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

SECTION 10.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE XI

### OPTIONS AND OBLIGATION TO PURCHASE

SECTION 11.1. EARLY TERMINATION OF THE LEASE AGREEMENT. The Company shall have the option to terminate this Lease Agreement prior to the termination date specified in Section 5.2 hereof by filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1.

SECTION 11.2. OBLIGATION TO SELL AND PURCHASE THE PROJECT FACILITY. Contemporaneously with the termination of this Lease Agreement in accordance with Section 5.2 or Section 11.1 hereof, the Agency shall sell and the Company shall purchase all the Agency's right, title and interest in and to the Project Facility for a purchase price equal to the sum of One Dollar (\$1.00), plus payment of all sums due and payable to the Agency or any other Person pursuant to this Lease Agreement and the other Basic Documents. The obligation of the Agency under this Section 11.2 to convey the Project Facility to the Company will be subject to there being no Event of Default existing hereunder or under the Payment in Lieu of Tax Agreement or under any other Basic Document, or any other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default.

SECTION 11.3. CONVEYANCE ON PURCHASE OF THE PROJECT FACILITY. (A) At the closing of any purchase of the Project Facility pursuant to Section 11.2 hereof, the Agency shall, upon the satisfaction of the conditions set forth in Section 11.1 and Section 11.2 hereof, as appropriate, deliver to the Company all necessary documents (1) to convey to the Company all the Agency's right, title and interest in and to the Property being purchased, as such property then exists, subject only to the following: (a) any Liens or title defects to which title to such Property was subject when conveyed to the Agency, (b) any Liens created at the request of the Company or to the creation of which the Company consented, (c) any Permitted Encumbrances, and (d) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default; and (2) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance settlements or Condemnation awards with respect to the Project Facility (but not including amounts relating to the Unassigned Rights).

(B) The termination of the Agency's leasehold interest in the Project Facility created pursuant to the Underlying Lease shall be effected by the execution and delivery by the Agency to the Company of the Termination of Underlying Lease (an unexecuted copy of which is attached hereto as Exhibit C and by this reference made a part hereof). The sale and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency to the Company of the Bill of Sale to Company (an unexecuted copy of which is attached hereto as Exhibit D and by this reference made a part hereof). The termination of this Lease Agreement shall be effected by the execution and delivery of the Company and the Agency of the Termination of Lease Agreement (an unexecuted copy of which

is attached hereto as Exhibit E and by this reference made a part hereof). The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such transfers of title.

(C) The Company agrees to prepare the Termination of Underlying Lease and/or the Bill of Sale to Company and/or the Termination of Lease Agreement and all schedules thereto, together with all equalization and assessment forms and other necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that the Project Facility or any portion thereof is to be conveyed to the Company.

(D) The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from the transfers contemplated by this Section 11.3.

(E) This Lease Agreement shall survive the transfer of the Project Facility to the Company pursuant to this Section 11.3 and shall remain in full force and effect until all of the Indebtedness to the effective date of such transfer shall have been paid in full, and thereafter the obligations of the Company shall survive as set forth in Section 12.8 hereof.

(F) Upon the payment in full of all Indebtedness under or secured by this Lease Agreement, and notwithstanding the survival of certain obligations of the Company as described in Section 12.8 hereof, the Agency shall upon the request of the Company execute and deliver to the Company such documents as the Company may reasonably request, in recordable form if so requested, to evidence the termination and release of all Liens granted to the Agency hereunder.

ARTICLE XII  
MISCELLANEOUS

SECTION 12.1. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

AES Greenidge, L.L.C.  
590 Plant Road  
Dresden, New York 14441  
Attention: Plant Manager

WITH A COPY TO:

Peter H. Swartz, Esq.  
Hiscock & Barclay, LLP  
300 South State Street  
Syracuse, New York 13221-4878

IF TO THE AGENCY:

Yates County Industrial Development Agency  
One Keuka Business Park  
Penn Yan, New York 14527  
Attention: Chairman

WITH A COPY TO:

Philip L. Bailey, Esq.  
118 Main Street, P.O. Box 397  
Penn Yan, New York 14527

AND

A. Joseph Scott, Esq.  
Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207

(C) The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 12.2. BINDING EFFECT. This Lease Agreement shall inure to the benefit of the Agency and the Company and shall be binding upon the Agency, the Company and, as permitted by this Lease Agreement, their respective successors and assigns.

SECTION 12.3. SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Lease Agreement.

SECTION 12.4. AMENDMENT. This Lease Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 12.5. EXECUTION OF COUNTERPARTS. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 12.6. APPLICABLE LAW. This Lease Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State.

SECTION 12.7. RECORDING AND FILING. The Underlying Lease (or a memorandum thereof), this Lease Agreement (or a memorandum hereof) and the Pilot Mortgage, and financing statements relating to the security interests created and/or assigned thereby, shall be recorded or filed, as the case may be, by the Agency (but at the sole cost and expense of the Company) in the office of the County Clerk of Yates County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

SECTION 12.8. SURVIVAL OF OBLIGATIONS. (A) The obligations of the Company to make the payments required by Section 5.3 and Section 6.6, (and with respect to the payments required under Section 6.6 hereof through the effective date of any termination by the Agency pursuant to Article X or by the Company pursuant to Article XI hereof) hereof and to provide the indemnity required by Section 3.3 and Section 8.2 hereof, shall survive the termination of this Lease

Agreement, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Company with respect to the Unassigned Rights shall survive the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents or employees, relating thereto.

SECTION 12.9. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

SECTION 12.10. NO RECOURSE; SPECIAL OBLIGATION. (A) The obligations and agreements of the Agency contained herein and in the other Basic Documents and any other instrument or document executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company), servant or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company), servants and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or Yates County, New York, and neither the State of New York nor Yates County, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request

and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their respective duly authorized officers and have caused this Lease Agreement to be dated as of the day and year first above written.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: 

(Vice) Chairman

AES GREENIDGE, L.L.C.

BY: \_\_\_\_\_

Authorized Officer

IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their respective duly authorized officers and have caused this Lease Agreement to be dated as of the day and year first above written.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY


BY: \_\_\_\_\_  
(Vice) Chairman

AES GREENIDGE, L.L.C.

BY: Douglas J. Roll  
Authorized Officer

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

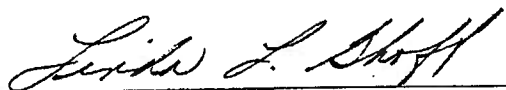
On the 15<sup>th</sup> day of February, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared JERRY NISSEN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument 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

A. JOSEPH SCOTT III  
Notary Public, State of New York  
Qualified in Albany County  
Commission Expires Dec. 31, 2006

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

On the 22 day of February, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared Douglas J. Hall, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

LINDA L. SHOFF  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01-SH5065262  
QUALIFIED IN YATES COUNTY  
MY COMMISSION EXPIRES 02-20-2007

EXHIBIT A  
DESCRIPTION OF THE LAND  
-SEE ATTACHED-

#### **Schedule 4.10 Description of Real Property**

**Greenidge Station - Property Situated in the (i) Town of Tarry, Yates County, and (ii) Town of Remond, Seneca County, New York**

##### **Schedule of Property Descriptions**

All those certain plots, pieces, or parcels of land, with the buildings and improvements thereon, situate, lying, and being in the Town of Tarry, Yates County, New York, and the Town of Remond, Seneca County, New York, and more particularly described in Appendices A-1 through A-11, both inclusive, attached hereto.

Subject to and/or excepting all Permitted Encumbrances as defined in the Asset Purchase Agreement between the Seller and the Buyer dated \_\_\_\_\_, 1991, and all covenants, restrictions, conditions, reservations, exceptions, easements, and other matters of record.

Together with the easements, rights, and interests described in Appendix D, attached hereto.

##### **Schedule of Exceptions**

Excepting and reserving such real property and appurtenances described in Appendices B and C, attached hereto. Also excepting and excluding all rights and easements held by NYSEG relating to the transmission and distribution of electric energy and/or natural or manufactured gas, and for communication and/or drainage purposes, now existing on the property, whether or not of record.

**NOTE 1:** "NYSEG" refers to New York State Electric & Gas Corporation.

**NOTE 2:** All recorded instruments referenced in the Appendixes attached hereto were recorded in the County Clerk's Office for the county in which the property located is located.

APPENDIX A-1

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: On the north by the land formerly comprising the Crooked Lake Canal, and now as understood to be owned by the New York Central Railroad Company; on the east by Seneca Lake; on the south by the lands formerly owned by John Thomas, now Ross Huxon, and the New York Central Railroad Company, Pennsylvania Division; and on the west by the highway leading south from Dresden, commonly known as the Lake Road; being the farm formerly known as the Luther Harris Farm.

Excepting, however, from the above described premises the mill property situate south of the outlet formerly owned by Edward R. Taylor, and later by Taylor Chemical Company.

Also excepting premises conveyed by John T. Knox, as referee, to Syracuse, Geneva and Corning Railroad Company, by deed dated the 16th day of March, 1878, and recorded in Yates County Clerk's Office in Liber 57 of Deeds at page 445.

Also excepting three and one-half acres conveyed by William M. Patterson and wife to Thomas F. Wells, August 14, 1891, and recorded in Yates County Clerk's Office December 1, 1897 in Liber 85 of Deeds at page 444.

Also excepting 13/100 of an acre conveyed to the New York Central and Hudson River R. R. Co. by deed date June 2, 1902, and recorded in Yates County Clerk's Office August 13, 1902, in Liber 91 of Deeds at page 592.

Also excepting the right to use water from the dam now or formerly situate on the outlet above the premises hereby conveyed, and west of highway referred to above, such right having been heretofore conveyed by Anna M. Bradley to the First National Bank of Wellsboro by deed dated July 17, 1911 and recorded in Yates County Clerk's Office, August 19, 1911 in Liber 104 of Deeds at page 662.

Also excepting premises conveyed by Horatio Hazen to William Barry, by deed dated March 29, 1849 and recorded in Yates County Clerk's Office, March 30, 1854 in Liber 29 of Deeds at page 482.

Also excepting premises situate on the east side of highway leading south from the Village of Dresden, described as follows: Beginning at a point in the center of Keuka (formerly Crooked) Lake Outlet and the highway leading south from Dresden; thence easterly along the center of the Keuka (formerly Crooked) Lake Outlet to a small tree marked 1847 standing on an island in the center of Keuka (formerly Crooked) Lake Outlet; thence southerly by a line drawn so as to strike the northeast corner of the property formerly owned by Ezra Boughten, now owned by New York Central Electric Corporation and more fully described by deed dated May 12, 1924 and recorded May 13, 1924 in Yates County Clerk's Office in Liber 115 of Deeds at page 505, thence west ten degrees north (N 10° W) two chains and eighty links (one hundred eighty-four and eight-tenths feet) to the highway leading south from Dresden; then north along said highway to the place of beginning, containing 1.8 acres more or less.

Being and hereby conveying the same premises conveyed by A. Carroll Turner and others to Associated Real Properties, Inc., by deed dated March 14, 1930 and recorded in Yates County Clerk's Office, March 14, 1930 in Liber 121 of Deeds at page 514, with the exception of the premises set forth above by deed from Horatio Hazen to William Barry and premises described in the exception last above noted.

GREENWICH  
6.19, 6.31

APPENDIX B

EXCEPTING FROM THE ABOVE PREMISES property appropriated by the State of New York designated as Parcels No. 155 and 156 on Map No. 180, Notice of Appropriation filed in the Office of the Department of Public Works on October 2, 1959, in the Office of the Department of State on October 13, 1959, and in the Yates County Clerk's Office on July 29, 1960.

FURTHER EXCEPTING FROM THE ABOVE PREMISES property appropriated by the People of the State of New York designated as Parcel Nos. 179, 180, 181 and 182 on Map No. 116 R-2, Notice of Appropriation filed in the office of the Department of State on August 22, 1960 and in the Yates County Clerk's office on October 9, 1960.

Greenidge Station  
Yates County

APPENDIX C

RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's 34.5-KV electric substation and 115-KV electric substation more particularly described below; the appurtenances covered by this reservation shall include, without limitation, the 34.5-KV electrical disconnect switches E1-74 and E54-74 and the 115-KV electrical disconnect switches B3-76, B3-77, B4-76, and B4-77:

ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 115 KV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Parro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 39°39'31" W., a distance of 1016.10 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 26°38'09" E., a distance of 783.53 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE continuing through lands of New York State Electric & Gas Corporation the following six (6) courses:

1. S. 60°20'00" W., a distance of 267.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. W. 29°52'26" W., a distance of 373.22 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 60°02'40" E., a distance of 393.46 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 29°57'17" E., a distance of 160.90 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
5. S. 60°10'23" W., a distance of 126.45 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
6. S. 29°52'32" E., a distance of 213.95 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 2.760 acres.

ALSO, ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 34.5 KV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Parro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 01°02'08" E., a distance of 1017.81 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 47°24'51" E., a distance of 1382.86 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S. 71°13'51" W., parallel to and 3.0 feet from a building face and through drill holes set in a curb at 4.00 feet and 170.90 feet, a total distance of 174.90 feet;
2. N. 16°41'20" W., parallel with and 4.00 feet west of a curb marked with drill holes, a distance of 68.94 feet;
3. N. 71°18'09" E., parallel with and 4.0 feet north of a curb marked with drill holes, a distance of 172.58 feet;
4. S. 18°36'44" E., parallel with and 4.0 feet east of a curb marked with drill holes, a distance of 68.68 feet to the POINT OR PLACE OF BEGINNING comprising an area of 0.274 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's existing substation (known as the "Dresden" electric substation) lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates and State of New York, bounded and described as follows:

BEGINNING at a concrete monument found along the northerly boundary of New York State Route 14 and west of Swarthout Road:

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 19°33'22" E. a distance of 478.43 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 04°29'52" E., a distance of 314.34 feet from the centerline intersection of Lanesman Road and the railroad tracks now or formerly of Consolidated Rail Corporation, said point is also N. 75°22'00" W., a distance of 2318.73 feet from a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of land of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE continuing through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S. 74°31'24" W., a distance of 189.78 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 15°35'15" W., a distance of 125.21 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 74°45'47" E., a distance of 110.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 15°22'51" E., a distance of 124.75 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 0.316 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor (i) ownership of the following relay switchboard panels (together with (a) the wires and cables that connect the switches that are part of such panels with the devices and substation equipment controlled by such switches and (b) the wires and cables that supply AC/DC power to such panels) now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such panels, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such panels, wires and cables: panels 3, 6, 7, 8, 21, 22, 23, 81, 82; the "RTU" panel; the "Metering Equipment" panel; and the "Diff. Matching Cts" panel; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such relay switchboard panels, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace (i) new relay switchboard panels required due to expansion or replacement of the 115-kV and/or 34.5-kV electric system located in the substations referred to herein; and (ii) the wires and cables that connect switches that are part of such new relay switchboard panels with the devices and substation equipment controlled by such switches; provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, more specific locations for such new relay switchboard, together with their associated wires and cables, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) the right to operate certain AC/DC low voltage circuit breakers located on AC/DC Power Distribution Panelboards of the Grantee that are situated in the electric generating station now located on the premises, which circuit breakers are components of the system that permits the energization and de-energization of equipment and facilities located on the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (ii) such easements and rights-of-way as are necessary to permit the Grantor to obtain access to such circuit breakers in order to operate the same; provided, however, that in exercising such right to operate such circuit breakers, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such circuit breakers, AC/DC Power Distribution Panelboards and substations, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the following meters (together with the wires and cables that connect such meters with the data sources that they monitor) now located in

the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such meters, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such meters, wires and cables; (1) meter number 0985-1067 located on relay switchboard panel 12 for Greenidge SST unit # 3 (high side of SST # 3); (2) meter number 0985-1066 located on relay switchboard panel 13 for Greenidge SST unit # 4 (load side of SST # 4); and (3) meter number 7155 located on relay switchboard panel 11 for Greenidge ESS unit # 4 (load side ESS # 4); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such meters, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the communications wires and cables that extend from (a) the demarcation point between such wires and cables and those of the telephone service provider for the premises to (b) the Grantor's SCADA RTU, (ii) ownership of the communications wires and cables that extend from (a) such demarcation point to (b) the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (iii) such easements and rights-of-way as are necessary (a) to permit such wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such wires and cables; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights of way as are necessary to permit the following communication wires and cables to be installed on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace such communication wires and cables: a future cable to be installed running from the demarcation point of the telephone company across the premises to the 115-kV electric substation and 34.5-kV electric substation. Provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such easements and rights-of-way shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary (i) (a) to permit the Grantor's 115-kV electrical disconnect switches B3-76 and B3-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B3-75 (which structure and switch are described in Appendix D hereto) and (b)

to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B3-76 and B3-77; and (ii) (a) to permit the Grantor's 115-kV electrical disconnect switches B4-76 and B4-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B4-75 (which structure and switch are described in Appendix D hereto) and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B4-76 and B4-77; provided, however, that in exercising such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the 115-kV group-operated electrical disconnect switches B3-75 and B4-75 and their associated structures. If necessary or desirable, the location and identity of such structures, such electrical disconnect switches and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric transmission poles, towers and structures (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, towers, structures, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, towers, structures, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, towers, structures, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric distribution poles (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's underground gas pipelines (together with their associated underground and surface facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such pipelines and facilities to remain in their present locations on the premises and (b) to permit the Grantor to

construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such pipelines and facilities; provided, however, that in exercising such ownership and such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such pipelines and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor hereunder (i) ownership of any grounding wire situated (a) around the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and (b) between and/or connecting the 34.5-kV and 115-kV substations referred to herein, and (ii) such easements and rights-of-way as are necessary to permit any such grounding wire to remain in its present location on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace any such grounding wire. Further Grantor reserves an easement permitting Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace new grounding wire along the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and between such substations, as and to extent deemed necessary or desirable by the Grantor; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such grounding wire, and such easements and rights-of-way, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor an easement and right-of-way across the premises conveyed hereby for personnel, vehicles and equipment for any and all purposes necessary or convenient to the conduct of the Grantor's business, including, without limitation, (i) the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of the Grantor's aforesaid substations; the testing for, response to, and remediation of, any environmental conditions with respect to such substations; and the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of (a) such relay switchboard panels and their associated wires and cables, (b) such meters and their associated wires and cables, (c) the Grantor's aforesaid communications wires and cables, (d) the Grantor's aforesaid electrical disconnect switches, (e) such electric transmission poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (f) such electric distribution poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (g) such gas pipelines and facilities, (h) such grounding wire and (ii) the operation of such AC/DC low voltage circuit breakers; provided, however, that in exercising such easement and right-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. The Grantor's easement and right-of-way with respect to the Grantor's "Dresden" substation shall include, without limitation, the present driveway associated therewith. If necessary or desirable, the location of such driveway, and the remainder of such easement and right-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTEE'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., (ii) the High Voltage Proximity Act, New York Labor Law § 202-b and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

APPENDIX D

(i) OWNERSHIP of the following components of the Grantor's relay switchboard panel B2 (which panel is described in Appendix C hereto) that are used in the protection and control of circuit breakers B1-72 and B24-72, which panel B2 is now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such components to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such components: two ASEA RADSES with Auxiliary CTs SLCE12, six General Electric IAC53B811Aa, one General Electric IAC53B803A and one General Electric IAC53B803A (each together with its associated control switches, test switches, light bulbs and other appurtenances); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's relay switchboard panels located on the premises. If necessary or desirable, the identity and location of such components and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(ii) OWNERSHIP of the following electrical facilities now located on the premises of the Grantor's aforesaid 34.5-KV electric substation and 115-KV electric substation (which substation premises are described in Appendix C hereto) and (ii) such easements and rights-of-way as are necessary (a) to permit such electrical facilities to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such electrical facilities: (1) the 115-KV circuit breaker B3-72 together with its associated equipment and connections to the 115-kv electrical disconnect switches B3-75 and B3-76, foundation, grounding, conduit and control cables; (2) the 115-kv group-operated electrical disconnect switch B3-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (3) the 115-KV circuit breaker B4-72 together with its associated equipment and connections to the 115-KV electrical disconnect switches B4-75 and B4-76, foundation, grounding, conduit and control cable; (4) the 115-kv group-operated electrical disconnect switch B4-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (5) service station bank # 1 located within the Grantor's 34.5-KV electric substation (which substation is described in Appendix C hereto), which bank consists of (A) one 3-phase, 34.5-2.4 kV, 3750/5000 kVA transformer together with its associated bus and connections, surge arresters, foundation, grounding, conduit and control cable and (B) one 600:5 MR current transformer together with its associated electrical disconnect switch; (6) the 34.5-KV circuit breaker B1-72 together with its associated equipment and connections to the electrical disconnect switches B1-74 and B1-75, foundation, grounding, conduit and control cable; (7) the 34.5-kv electrical disconnect switch B1-75; (8) service station bank # 2, which bank consists of one 3-phase, 34.5-2.4 kV, 10/12.5 MVA transformer together with its associated bus and connections, 2.4-kV power cable, surge arresters, foundation, grounding, conduit and control cable; (9) the 34.5-KV circuit breaker B24-72 together with its associated equipment and connections to the electrical disconnect switches B24-74 and B24-75, foundation, grounding, conduit and control cable; (10) the 34.5-KV electrical disconnect switch B24-75; (11) the 34.5-KV buswork, surge arresters and conduit and cable.

UNDER AND SUBJECT to two indentures of lease made March 18, 1936 between Associated Real Properties, Inc., and respectively by Harry R. Meaker of the Village of Dresden, Yates County, State of New York and Finger Lakes Canning Company, Inc., a corporation organized and existing by and under the laws of the State of New York, having its principal office in the Village of Penn Yan, Yates County, State of New York.

Being the same premises conveyed by Associated Real Properties, Inc. to New York State Electric & Gas Corporation by a deed dated February 4, 1937 and recorded in the Yates County Clerk's Office on February 23, 1937 in Liber 143 of Deeds at Page 224.

Also excepting premises conveyed by New York State Electric & Gas Corporation to Harry Meaker by a deed dated July 28, 1938 and recorded in the Yates County Clerk's Office on August 5, 1938 in Liber 144 of Deeds at Page 570; from which conveyance New York State Electric & Gas Corporation specifically reserved all water and riparian rights connected with the property so conveyed.

Also excepting governmental rights in navigable streams, being Keoka Lake Outlet and Seneca Lake, and the land in the bed and under the waters thereof.

SUBJECT to an Agreement dated December 14, 1942, made between New York State Electric & Gas Corporation and the United States of America granting an easement and right of way to United States of America for the installation and maintenance of its cable and equipment upon and across the lands of the New York State Electric & Gas Corporation between the west shore line and the east shore line of Seneca Lake including any lands or interest New York State Electric & Gas Corporation may have under the waters of Seneca Lake.

SUBJECT to an easement and right of way dated September 27, 1993 granted by New York State Electric & Gas Corporation to Ferro Corporation to construct, reconstruct, operate, inspect, maintain, repair, remove and/or replace an underground water pipeline and appurtenances upon, over, under and through a portion of the above premises, along with ingress and egress over the above premises for these purposes.

TOGETHER WITH all rights available under an agreement dated May 26, 1991 whereby the People of the State of New York grant to New York State Electric & Gas Corporation an easement, thirty (30) feet in width, for the operation and maintenance of electric submarine cables on such portion of the above premises under the waters of Seneca Lake situated in the Town of Torrey, County of Yates and Town of Romulus, County of Seneca, and the State of New York; this agreement is scheduled to expire on or about October 15, 2004.

It is the intention of the Deed to which this Appendix is attached to convey to NGE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter: EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

GREENIDGE  
F. Smith  
6.6

APPENDIX A-2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Torrey, Yates County, New York, being the same premises conveyed by William M. Birkett and Clara Birkett, his wife; Clarence T. Birkett and Laura R. Birkett, his wife, to Florence M. Smith by deed dated July 15, 1891 and recorded in the Yates County Clerk's Office September 3, 1891 in Liber 79 of Deeds at page 75, and being also the same premises described in an instrument dated October 30, 1911, executed between Florence M. Smith and George E. Smith and recorded in the Yates County Clerk's Office July 7, 1923 in Liber 114 of Deeds at page 648.

Hereby conveying premises consisting of approximately eight (8) acres of land, bounded on the north by a public highway, being the highway leading from Dresden to Watkins, formerly known as the Lake Road, and the highway leading to Minards; on the east by the said highway leading from Dresden to Watkins, formerly known as the Lake Road; on the south by lands of New York Central Railroad Company; and on the west by lands formerly of Harry H. Simmons, consisting of 8.29 acres of land, and being the second parcel described in the deed from Roy Swarthout to New York Central Electric Corporation dated September 30th, 1936 and duly recorded in the Yates County Clerk's Office October 2nd, 1936 in Liber 141 of Deeds at page 602; the premises hereby conveyed consisting of about eight (8) acres of land, and being the home premises now occupied and owned by said Florence M. Smith; and the first party represents and warrants that she is now in the possession of the said premises, and that the same is free of all liens and encumbrances and taxes.

Being the same premises conveyed by Florence M. Smith to New York State Electric & Gas Corporation by a deed dated February 10, 1937 and recorded in the Yates County Clerk's Office on February 10, 1937 in Liber 143 of Deeds at Page 209.

It is the intention of the Deed to which this Appendix is attached to convey to NYS Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter: EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

located between the circuit breaker ES4-72 and the station service bank # 4E; (12) the circuit breaker ES4-72 together with its associated equipment and connections to: (i) the station service bank # 4E, (ii) the tie bus #6, and (iii) the emergency tie bus # 4, foundation, grounding, conduit and control cable; and (13) the # 1 and # 2 "House Service and Lighting" transformers located within the Grantor's 34.5-kV electric substation (which substation is described in Appendix C hereto) together with their associated foundation, grounding, conduit and control cable; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the identity and location of such electrical facilities and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(111) AN EASEMENT and right-of-way across the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation (which substation premises are described in Appendix C hereto) for personnel, vehicles and equipment to the extent necessary to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace the Grantee's electrical facilities described in the immediately preceding paragraph; provided, however, that in exercising such easement and right-of-way the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the location of such easement and right-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTOR'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., (ii) the High Voltage Proximity Act, New York Labor Law § 202-a and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

APPENDIX A-3

All That Tract or Parcel of Land, situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: Commencing at a stake in the center of the new road leading South to the Town of Milo by James M. Clark's land; thence at right angles with the center of said road North 65 degrees west seven chains and sixty links; thence North along the North bounds of land sold by S. Buckley on the 24th of February, 1847, to the North-west corner thereof; thence Westerly along said Buckley's North line 19 chains and 24 links to the new Pre-emption line; thence North along said line 3 chains and 75 links to the outlet of Crooked (Kewka) Lake; thence Northeasterly along said outlet 45 chains 38 links to the center of the Milo road in the front of the Custom Mill; thence South 70° East, 66 links to the center of the highway; thence South 78 1/2° West 8 chains and 62 links; thence South 25° West, 15 chains and 2 links to the place of beginning; containing 41 3/4 acres of land, be the same more or less. Reserving the right of overflowing the said premises for any uses or purposes of a mill-pond adjacent thereto, subject to the conditions, exceptions and reservations in the patent contained, of which this parcel of land is a part, as the said right was reserved in the conveyance of the said premises from Allie A. Embree to George Turner by deed dated March 23, 1872, and recorded in Yates County Clerk's Office in Liber 34 of Deeds at page 110, and said premises being the same premises conveyed by the said deed.

ALSO All that other Tract or Parcel of land, situate in the Town of Torrey, County of Yates and State of New York, bounded as follows: Beginning in the center of the road, leading from Dresden to Elmrods, and on the North side of the Syracuse, Geneva & Corning R.R., thence along the center of the road North 26° East 6 chains and 97 links; thence North 81 degrees and 15' East 2 chains and 62 links, and thence North 80 degrees East, 1 chain and 2 links to a stake; thence South 23 degrees and 30' East, 15 chains and 12 links to a stake on the North side of the railroad aforesaid; thence Westerly along the railroad to the place of beginning, containing eight acres of land and 29/100 of an acre of land, be the same more or less, as surveyed July 31, 1880, by L. Ogden. Being the same premises conveyed to George Turner by Henry Birkett by deed dated Sept. 15, 1880, and recorded in said Clerk's Office Jan. 15, 1881, in Liber 62 of Deeds at page 261.

Excepting and reserving from the premises hereby conveyed all that portion of said premises conveyed by George Turner and wife to Adell Lampson by deed June 25, 1889, recorded in said Clerk's Office in Liber 73 of Deeds at page 499, containing one acre of land more or less.

Also excepting and reserving therefrom those portions of said premises conveyed by George Turner and wife to Syracuse, Geneva & Corning R. R. Company by two deeds, one recorded in said Clerk's office in Liber 59 of Deeds at page 257, and one recorded in said Clerk's Office in Liber 68 of Deeds at page 38.

Also excepting therefrom all that portion of said premises conveyed by Ella J. Benedict to the N. Y. Central & Hudson River R. R. Company by deed recorded in said Clerk's Office in Liber 91 of deeds at page 544.

Also excepting that portion conveyed by Minnie A. Travis to New York Central & Hudson River R.R. Co. by deed recorded in said office in Liber 91 of deeds at page 545.

Being a portion of the premises conveyed by Roy Swarthout to New York Central Electric Corporation by a deed dated September 30, 1936 and recorded in the Yates County Clerk's Office on October 2, 1936 in Liber 141 of Deeds at Page 502.

It is the intention of the Deed to which this Appendix is attached to convey to NGE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed prior to the Completion Date (as defined in the hereinafter defined Lease Agreement) in connection with the acquisition, construction and installation of the AES Greenidge, L.L.C. Project (the "Project") of Yates County Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by AES Greenidge, L.L.C. (the "Company") as agent of the Agency pursuant to a lease agreement dated as of February 1, 2006 (the "Lease Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, security system, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery;

(2) The following items of specific machinery:

- a. A single-bed selective Catalytic reduction (SCR) and applicable sub-systems and all parts needed to complete installation;
- b. Low-NOx combustion technology (Burners) and applicable sub-systems and all parts needed to complete installation;
- c. A circulating dry scrubber (CDS) with carbon injection and applicable sub-systems and all parts needed to complete installation;
- d. A bag house and applicable sub-systems and all parts needed to complete installation.

(3) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

## EXHIBIT C

### FORM OF TERMINATION OF UNDERLYING LEASE

THIS TERMINATION OF UNDERLYING LEASE (the "Termination of Underlying Lease") dated as of \_\_\_\_\_, \_\_\_\_\_, by and between YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized under the laws of the State of New York having an office for the transaction of business located at One Keuka Business Park, Penn Yan, New York (the "Agency"), and AES GREENIDGE, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 590 Plant Road, Dresden, New York (the "Company").

#### WITNESSETH:

WHEREAS, the Company and the Agency entered into a certain lease to agency dated as of February 1, 2006 (the "Underlying Lease") pursuant to which the Agency was granted a leasehold interest in the parcel of the land more particularly described in Exhibit A attached thereto (the "Land") and in and to all those buildings, improvements, structures and other related facilities affixed or attached to the Land now or in the future; and

WHEREAS, pursuant to Section 11.3 of a lease agreement dated as of February 1, 2006 (the "Lease Agreement") between the Company and the Agency, the Company and the Agency further agreed that the Underlying Lease would be terminated upon the satisfaction of the conditions set forth in Section 11.1 and Section 11.2 of the Lease Agreement, as appropriate; and

WHEREAS, the conditions set forth in Section 11.1 and Section 11.2 of the Lease Agreement, as appropriate, have been satisfied on or before the date hereof.

NOW, THEREFORE, it is hereby agreed that the Underlying Lease is terminated as of the dated date hereof.

The Company hereby agrees to indemnify the Agency as to any claims that have arisen heretofore or shall arise hereafter under the Underlying Lease and this Termination of Underlying Lease.

IN WITNESS WHEREOF, the Agency and the Company, for the purposes above set forth, have caused this Termination of Underlying Lease to be executed and delivered by their duly authorized officers, all as of the day and year first above written.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

AES GREENIDGE, L.L.C.

BY: \_\_\_\_\_  
Authorized Officer

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

On the \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

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

On the \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

EXHIBIT A  
DESCRIPTION OF THE LAND  
-SEE ATTACHED-

**Schedule 4.10 Description of Real Property**

**Greenidge Station - Property Situated in the (i) Town of Tarry, Yates County, and (ii) Town of Romulus, Seneca County, New York**

**Schedule of Property Encumbrances**

All those certain plots, pieces, or parcels of land, with the buildings and improvements thereon, situate, lying, and being in the Town of Tarry, Yates County, New York, and the Town of Romulus, Seneca County, New York, and more particularly described in Appendices A-1 through A-11, both inclusive, attached hereto.

Subject to and/or excepting all Permitted Encumbrances as defined in the Asset Purchase Agreement between the Seller and the Buyer dated \_\_\_\_\_, 1994, and all covenants, restrictions, conditions, reservations, exceptions, easements, and other matters of record.

Together with the easements, rights, and interests described in Appendix D, attached hereto.

**Schedule of Exceptions**

Excepting and reserving such real property and appurtenances described in Appendices B and C, attached hereto. Also excepting and excluding all rights and easements held by NYSEG relating to the transmission and distribution of electric energy and/or natural or manufactured gas, and for communication and/or drainage purposes, now existing on the property, whether or not of record.

**NOTE 1:** "NYSEG" refers to New York State Electric & Gas Corporation.

**NOTE 2:** All encumbrances referenced in the Appendices attached hereto were recorded in the County Clerk's Office for the counties in which the property interest is located.

APPENDIX A-1

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: On the north by the land formerly comprising the Crooked Lake Canal, and now as understood to be owned by the New York Central Railroad Company; on the east by Seneca Lake; on the south by the lands formerly owned by John Thomas, now Ross Benson, and the New York Central Railroad Company, Pennsylvania Division; and on the west by the highway leading south from Dresden, commonly known as the Lake Road; being the farm formerly known as the Luther Harris Farm.

Excepting, however, from the above described premises the mill property situate south of the outlet formerly owned by Edward R. Taylor, and later by Taylor Chemical Company.

Also excepting premises conveyed by John T. Knox, as referee, to Syracuse, Geneva and Corning Railroad Company, by deed dated the 16th day of March, 1878, and recorded in Yates County Clerk's Office in Liber 57 of Deeds at page 445.

Also excepting three and one-half acres conveyed by William M. Patteson and wife to Thomas F. Wells, August 14, 1891, and recorded in Yates County Clerk's Office December 1, 1897 in Liber 85 of Deeds at page 444.

Also excepting 13/100 of an acre conveyed to the New York Central and Hudson River R. R. Co. by deed date June 2, 1902, and recorded in Yates County Clerk's Office August 13, 1902, in Liber 81 of Deeds at page 392.

Also excepting the right to use water from the dam now or formerly situate on the outlet above the premises hereby conveyed, and west of highway referred to above, such right having been heretofore conveyed by Anna M. Bradley to the First National Bank of Wallingboro by deed dated July 17, 1911 and recorded in Yates County Clerk's Office, August 19, 1911 in Liber 104 of Deeds at page 662.

Also excepting premises conveyed by Horatio Hazen to William Berry, by deed dated March 29, 1849 and recorded in Yates County Clerk's Office, March 30, 1854 in Liber 29 of Deeds at page 482.

Also excepting premises situate on the east side of highway leading south from the Village of Dresden, described as follows: Beginning at a point in the center of Keuka (formerly Crooked) Lake Outlet and the highway leading south from Dresden; thence easterly along the center of the Keuka (formerly Crooked) Lake Outlet to a small tree marked 1847 standing on an island in the center of Keuka (formerly Crooked) Lake Outlet; thence southerly by a line drawn so as to strike the northeast corner of the property formerly owned by Ezra Boughten, now owned by New York Central Electric Corporation and more fully described by deed dated May 12, 1924 and recorded May 13, 1924 in Yates County Clerk's Office in Liber 115 of Deeds at page 505, thence west ten degrees north (N 10° N) two chains and eighty links (one hundred eighty-four and eight-tenths feet) to the highway leading south from Dresden; then north along said highway to the place of beginning, containing 1.8 acres more or less.

Being and hereby conveying the same premises conveyed by A. Carroll Turner and others to Associated Real Properties, Inc., by deed dated March 14, 1930 and recorded in Yates County Clerk's Office, March 14, 1930 in Liber 121 of Deeds at page 514, with the exception of the premises set forth above by deed from Horatio Hazen to William Berry and premises described in the exception last above noted.

CHEMUNGE  
6.19, 6.31

APPENDIX B

EXCEPTING FROM THE ABOVE PREMISES property appropriated by the State of New York designated as Parcels No. 155 and 156 on Map No. 100, Notice of Appropriation filed in the Office of the Department of Public Works on October 2, 1959, in the Office of the Department of State on October 13, 1959, and in the Yates County Clerk's Office on July 29, 1960.

FURTHER EXCEPTING FROM THE ABOVE PREMISES property appropriated by the People of the State of New York designated as Parcel Nos. 179, 180, 181 and 182 on Map No. 116 R-2, Notice of Appropriation filed in the Office of the Department of State on August 22, 1980 and in the Yates County Clerk's Office on October 9, 1980.

APPENDIX C

RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's 34.5-kV electric substation and 115-kV electric substation more particularly described below; the appurtenances covered by this reservation shall include, without limitation, the 34.5-kV electrical disconnect switches E1-74 and E54-74 and the 115-kV electrical disconnect switches B3-76, B3-77, B4-76, and B4-77:

ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 115 KV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 39°39'31" W., a distance of 1016.10 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 26°38'09" E., a distance of 783.53 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE continuing through lands of New York State Electric & Gas Corporation the following six (6) courses:

1. S. 60°20'00" W., a distance of 267.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 29°52'26" W., a distance of 373.22 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 60°02'40" E., a distance of 393.46 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 29°57'17" E., a distance of 160.90 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
5. S. 60°10'23" W., a distance of 126.45 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
6. S. 29°52'32" E., a distance of 213.95 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 2.760 acres.

ALSO, ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 34.5 KV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 01°02'08" E., a distance of 1017.81 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 47°24'51" E., a distance of 1382.86 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S. 71°13'51" W., parallel to and 3.0 feet from a building face and through drill holes set in a curb at 4.00 feet and 170.90 feet, a total distance of 174.90 feet;
2. N. 16°41'20" W., parallel with and 4.00 feet west of a curb marked with drill holes, a distance of 68.94 feet;
3. N. 71°18'09" E., parallel with and 4.0 feet north of a curb marked with drill holes, a distance of 172.58 feet;
4. S. 18°36'44" E., parallel with and 4.0 feet east of a curb marked with drill holes, a distance of 68.68 feet to the POINT OR PLACE OF BEGINNING comprising an area of 0.274 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's existing substation (known as the "Dresden" electric substation) lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates and State of New York, bounded and described as follows:

BEGINNING at a concrete monument found along the northerly boundary of New York State Route 14 and west of Swarthout Road:

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 19°33'22" E. a distance of 478.43 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 04°29'52" E., a distance of 314.34 feet from the centerline intersection of Lempman Road and the railroad tracks now or formerly of Consolidated Rail Corporation, said point is also N. 75°22'00" W., a distance of 2318.73 feet from a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of land of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE continuing through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S. 74°31'24" W., a distance of 109.78 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 15°35'15" W., a distance of 125.21 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 74°45'47" E., a distance of 110.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 15°22'51" E., a distance of 124.75 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 0.316 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor (i) ownership of the following relay switchboard panels (together with (a) the wires and cables that connect the switches that are part of such panels with the devices and substation equipment controlled by such switches and (b) the wires and cables that supply AC/DC power to such panels) now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such panels, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such panels, wires and cables: panels 5, 6, 7, 8, 21, 22, 23, 81, 82; the "RTU" panel; the "Metering Equipment" panel; and the "Diff. Matching CTs" panel; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such relay switchboard panels, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace (i) new relay switchboard panels required due to expansion or replacement of the 115-kV and/or 34.5-kV electric system located in the substations referred to herein; and (ii) the wires and cables that connect switches that are part of such new relay switchboard panels with the devices and substation equipment controlled by such switches; provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, more specific locations for such new relay switchboard, together with their associated wires and cables, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) the right to operate certain AC/DC low voltage circuit breakers located on AC/DC Power Distribution Panelboards of the Grantee that are situated in the electric generating station now located on the premises, which circuit breakers are components of the system that permits the energization and de-energization of equipment and facilities located on the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (ii) such easements and rights-of-way as are necessary to permit the Grantor to obtain access to such circuit breakers in order to operate the same; provided, however, that in exercising such right to operate such circuit breakers, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such circuit breakers, AC/DC Power Distribution Panelboards and substations, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the following meters (together with the wires and cables that connect such meters with the data sources that they monitor) now located in

the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such meters, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such meters, wires and cables; (1) meter number 0985-1067 located on relay switchboard panel 12 for Greenidge SST unit # 3 (high side of SST # 3); (2) meter number 0965-1066 located on relay switchboard panel 13 for Greenidge SST unit # 4 (load side of SST # 4); and (3) meter number 7153 located on relay switchboard panel 11 for Greenidge SST unit # 4 (load side SST # 4); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such meters, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the communications wires and cables that extend from (a) the demarcation point between such wires and cables and those of the telephone service provider for the premises to (b) the Grantor's SCADA RTU, (ii) ownership of the communications wires and cables that extend from (a) such demarcation point to (b) the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (iii) such easements and rights-of-way as are necessary (a) to permit such wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such wires and cables; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights of way as are necessary to permit the following communication wires and cables to be installed on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace such communication wires and cables: a future cable to be installed running from the demarcation point of the telephone company across the premises to the 115-kV electric substation and 34.5-kV electric substation. Provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such easements and rights-of-way shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary (i) (a) to permit the Grantor's 115-kV electrical disconnect switches B3-76 and B3-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B3-73 (which structure and switch are described in Appendix D hereto) and (b)

to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B3-76 and B3-77; and (ii) (a) to permit the Grantor's 115-kV electrical disconnect switches B4-76 and B4-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B4-75 (which structure and switch are described in Appendix D hereto) and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B4-76 and B4-77; provided, however, that in exercising such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the 115-kV group-operated electrical disconnect switches B3-75 and B4-75 and their associated structures. If necessary or desirable, the location and identity of such structures, such electrical disconnect switches and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric transmission poles, towers and structures (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, towers, structures, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, towers, structures, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, towers, structures, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric distribution poles (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's underground gas pipelines (together with their associated underground and surface facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such pipelines and facilities to remain in their present locations on the premises and (b) to permit the Grantor to

construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such pipelines and facilities; provided, however, that in exercising such ownership and such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such pipelines and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor hereunder (i) ownership of any grounding wire situated (a) around the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and (b) between and/or connecting the 34.5-kV and 115-kV substations referred to herein, and (ii) such easements and rights-of-way as are necessary to permit any such grounding wire to remain in its present location on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace any such grounding wire. Further Grantor reserves an easement permitting Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace new grounding wire along the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and between such substations, as and to extent deemed necessary or desirable by the Grantor; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such grounding wire, and such easements and rights-of-way, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor an easement and right-of-way across the premises conveyed hereby for personnel, vehicles and equipment for any and all purposes necessary or convenient to the conduct of the Grantor's business, including, without limitation, (i) the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of the Grantor's aforesaid substations; the testing for, response to, and remediation of, any environmental conditions with respect to such substations; and the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of (a) such relay switchboard panels and their associated wires and cables, (b) such meters and their associated wires and cables, (c) the Grantor's aforesaid communications wires and cables, (d) the Grantor's aforesaid electrical disconnect switches, (e) such electric transmission poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (f) such electric distribution poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (g) such gas pipelines and facilities, (h) such grounding wire and (ii) the operation of such AC/DC low voltage circuit breakers; provided, however, that in exercising such easement and right-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. The Grantor's easement and right-of-way with respect to the Grantor's "Dresden" substation shall include, without limitation, the present driveway associated therewith. If necessary or desirable, the location of such driveway, and the remainder of such easement and right-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTZEE'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., (ii) the High Voltage Proximity Act, New York Labor Law § 202-b and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

APPENDIX D

(i) OWNERSHIP of the following components of the Generator's relay switchboard panel 82 (which panel is described in Appendix C hereto) that are used in the protection and control of circuit breakers 81-72 and 824-72, which panel 82 is now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station of the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such components to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such components: two ASEA RADESS with Auxiliary CTs SLCE12, six General Electric IAC53B811As, one General Electric IAC53A803A and one General Electric IAC53A803A (each together with its associated control switches, test switches, light bulbs and other appurtenances); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's relay switchboard panels located on the premises. If necessary or desirable, the identity and location of such components and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(ii) OWNERSHIP of the following electrical facilities now located on the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation (which substation premises are described in Appendix C hereto) and (iii) such easements and rights-of-way as are necessary (a) to permit such electrical facilities to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such electrical facilities: (1) the 115-kV circuit breaker 83-72 together with its associated equipment and connections to the 115-kV electrical disconnect switches 83-75 and 83-76, foundation, grounding, conduit and control cables; (2) the 115-kV group-operated electrical disconnect switch 83-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (3) the 115-kV circuit breaker 84-72 together with its associated equipment and connections to the 115-kV electrical disconnect switches 84-75 and 84-76, foundation, grounding, conduit and control cables; (4) the 115-kV group-operated electrical disconnect switch 84-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (5) service station bank # 1 located within the Grantor's 34.5-kV electric substation (which substation is described in Appendix C hereto), which bank consists of (A) one 3-phase, 34.5-2.4 kV, 3750/5000 kVA transformer together with its associated bus and connections, surge arresters, foundation, grounding, conduit and control cable and (B) one 600:5 MA current transformer together with its associated electrical disconnect switch; (6) the 34.5-kV circuit breaker 81-72 together with its associated equipment and connections to the electrical disconnect switches 81-74 and 81-75, foundation, grounding, conduit and control cables; (7) the 34.5-kV electrical disconnect switch 81-75; (8) service station bank # 2, which bank consists of one 3-phase, 34.5-2.4 kV, 10/12.5 MVA transformer together with its associated bus and connections, 2.4-kV power cable, surge arresters, foundation, grounding, conduit and control cable; (9) the 34.5-kV circuit breaker 824-72 together with its associated equipment and connections to the electrical disconnect switches 824-74 and 824-75, foundation, grounding, conduit and control cable; (10) the 34.5-kV electrical disconnect switch 824-75; (11) the 34.5-kV buswork, surge arresters and conduit and cable.

UNDER AND SUBJECT to two indentures of lease made March 18, 1936 between Associated Real Properties, Inc., and respectively by Harry N. Meaker of the Village of Dresden, Yates County, State of New York and Finger Lakes Canning Company, Inc., a corporation organized and existing by and under the laws of the State of New York, having its principal office in the Village of Penn Yan, Yates County, State of New York.

Being the same premises conveyed by Associated Real Properties, Inc. to New York State Electric & Gas Corporation by a deed dated February 4, 1937 and recorded in the Yates County Clerk's Office on February 23, 1937 in Liber 143 of Deeds at Page 224.

Also excepting premises conveyed by New York State Electric & Gas Corporation to Harry Meaker by a deed dated July 28, 1938 and recorded in the Yates County Clerk's Office on August 5, 1938 in Liber 144 of Deeds at Page 570; from which conveyance New York State Electric & Gas Corporation specifically reserved all water and riparian rights connected with the property so conveyed.

Also excepting governmental rights in navigable streams, being Keoka Lake Outlet and Seneca Lake, and the land in the bed and under the waters thereof.

SUBJECT to an Agreement dated December 14, 1942, made between New York State Electric & Gas Corporation and the United States of America granting an easement and right of way to United States of America for the installation and maintenance of its cable and equipment upon and across the lands of the New York State Electric & Gas Corporation between the west shore line and the east shore line of Seneca Lake including any lands or interest New York State Electric & Gas Corporation may have under the waters of Seneca Lake.

SUBJECT to an easement and right of way dated September 27, 1993 granted by New York State Electric & Gas Corporation to Ferro Corporation to construct, reconstruct, operate, inspect, maintain, repair, remove and/or replace an underground water pipeline and appurtenances upon, over, under and through a portion of the above premises, along with ingress and egress over the above premises for these purposes.

TOGETHER WITH all rights available under an agreement dated May 26, 1991 whereby the People of the State of New York grant to New York State Electric & Gas Corporation an easement, thirty (30) feet in width, for the operation and maintenance of electric submarine cables on such portion of the above premises under the waters of Seneca Lake situated in the Town of Torrey, County of Yates and Town of Romulus, County of Seneca, and the State of New York; this agreement is scheduled to expire on or about October 15, 2004.

It is the intention of the Deed to which this Appendix is attached to convey to NGE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation/ SUBJECT, HOWEVER, as provided aforesaid and hereafter: EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

GREENIDGE  
F. Smith  
6.6

APPENDIX A-2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Torrey, Yates County, New York, being the same premises conveyed by William M. Birkett and Clara Birkett, his wife; Clarence F. Birkett and Laura R. Birkett, his wife, to Florence M. Smith by deed dated July 15, 1891 and recorded in the Yates County Clerk's Office September 3, 1891 in Liber 79 of Deeds at page 75, and being also the same premises described in an instrument dated October 30, 1911, executed between Florence M. Smith and George E. Smith and recorded in the Yates County Clerk's Office July 7, 1923 in Liber 114 of Deeds at page 648.

Hereby conveying premises consisting of approximately eight (8) acres of land, bounded on the north by a public highway, being the highway leading from Dresden to Watkins, formerly known as the Lake Road, and the highway leading to Hinrods; on the east by the said highway leading from Dresden to Watkins, formerly known as the Lake Road; on the south by lands of New York Central Railroad Company; and on the west by lands formerly of Harry H. Simmons, consisting of 8.29 acres of land, and being the second parcel described in the deed from Roy Swarthout to New York Central Electric Corporation dated September 30th, 1936 and duly recorded in the Yates County Clerk's Office October 2nd, 1936 in Liber 141 of Deeds at page 602; the premises hereby conveyed consisting of about eight (8) acres of land, and being the home premises now occupied and owned by said Florence M. Smith; and the first party represents and warrants that she is now in the possession of the said premises, and that the same is free of all liens and encumbrances and taxes.

Being the same premises conveyed by Florence M. Smith to New York State Electric & Gas Corporation by a deed dated February 10, 1937 and recorded in the Yates County Clerk's Office on February 10, 1937 in Liber 143 of Deeds at Page 209.

It is the intention of the Deed to which this Appendix is attached to convey to NSE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter: EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

located between the circuit breaker ES4-72 and the station service bank # 4E; (12) the circuit breaker ES4-72 together with its associated equipment and connections to: (i) the station service bank # 4E, (ii) the tie bus #6, and (iii) the emergency tie bus # 4, foundation, grounding, conduit and control cable; and (13) the # 1 and # 2 "House Service and Lighting" transformers located within the Grantor's 34.5-kV electric substation (which substation is described in Appendix C hereto) together with their associated foundation, grounding, conduit and control cable; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the identity and location of such electrical facilities and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(iii) AN EASEMENT and right-of-way across the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation (which substation premises are described in Appendix C hereto) for personnel, vehicles and equipment to the extent necessary to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace the Grantee's electrical facilities described in the immediately preceding paragraph; provided, however, that in exercising such easement and right-of-way the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the location of such easement and right-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTOR'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., (ii) the High Voltage Proximity Act, New York Labor Law § 202-h and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

GREENWICH  
R. Barthout  
C.S.

APPENDIX A-3

All that Tract or Parcel of Land, situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: Commencing at a stake in the center of the new road leading South to the Town of Milo by James M. Clark's land; thence at right angles with the center of said road North 65 degrees west seven chains and sixty links; thence North along the North bounds of land sold by S. Buckley on the 24th of February, 1847, to the North-west corner thereof; thence Westerly along said Buckley's North line 19 chains and 24 links to the new Pre-emption line; thence North along said line 3 chains and 75 links to the outlet of Crooked (Keuka) Lake; thence Northeasterly along said outlet 45 chains 38 links to the center of the Milo road in the front of the Custom Mill; thence South 70° East, 66 links to the center of the highway; thence South 78 1/2° West 8 chains and 62 links; thence South 25° West, 15 chains and 2 links to the place of beginning; containing 41 3/4 acres of land, be the same more or less. Reserving the right of overflowing the said premises for any uses or purposes of a mill-pond adjacent thereto, subject to the conditions, exceptions and reservations in the patent contained, of which this parcel of land is a part, as the said right was reserved in the conveyance of the said premises from Allie A. Embree to George Turner by deed dated March 23, 1872, and recorded in Yates County Clerk's Office in Liber 54 of Deeds at page 110, and said premises being the same premises conveyed by the said deed.

ALSO All that other Tract or Parcel of land, situate in the Town of Torrey, County of Yates and State of New York, bounded as follows: Beginning in the center of the road, leading from Dresden to Elmrods, and on the North side of the Syracuse, Geneva & Corning R.R., thence along the center of the road North 26° East 6 chains and 97 links; thence North 81 degrees and 15' East 2 chains and 62 links, and thence North 80 degrees East, 1 chain and 2 links to a stake; thence South 23 degrees and 30' East, 15 chains and 12 links to a stake on the North side of the railroad aforesaid; thence Westerly along the railroad to the place of beginning, containing eight acres of land and 29/100 of an acre of land, be the same more or less, as surveyed July 31, 1880, by L. Ogden. Being the same premises conveyed to George Turner by Henry Birkett by deed dated Sept. 15, 1880, and recorded in said Clerk's Office Jan. 15, 1881, in Liber 62 of Deeds at page 261.

Excepting and reserving from the premises hereby conveyed all that portion of said premises conveyed by George Turner and wife to Adell Lampman by deed June 25, 1883, recorded in said Clerk's Office in Liber 73 of Deeds at page 499, containing one acre of land more or less.

Also excepting and reserving therefrom those portions of said premises conveyed by George Turner and wife to Syracuse, Geneva & Corning R. R. Company by two deeds, one recorded in said Clerk's office in Liber 59 of Deeds at page 257, and one recorded in said Clerk's Office in Liber 68 of Deeds at page 38.

Also excepting therefrom all that portion of said premises conveyed by Ella J. Benedict to the N. Y. Central & Hudson River R. R. Company by deed recorded in said Clerk's Office in Liber 91 of deeds at page 544.

Also excepting that portion conveyed by Minnie A. Travis to New York Central & Hudson River R.R. Co. by deed recorded in said office in Liber 91 of deeds at page 545.

Being a portion of the premises conveyed by Roy Swarthout to New York Central Electric Corporation by a deed dated September 30, 1936 and recorded in the Yates County Clerk's Office on October 2, 1936 in Liber 141 of Deeds at Page 602.

It is the intantion of the Deed to which this Appendix is attached to convey to NCE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

EXHIBIT D

FORM OF BILL OF SALE TO COMPANY

YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at One Keuka Business Park, Penn Yan, New York (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from AES GREENIDGE, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 590 Plant Road, Dresden, New York (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings which are described in Exhibit B attached hereto (the "Equipment") now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on a parcel of land (the "Land") located at 590 Plant Road in the Town of Torrey, Yates County, New York, which Land is more particularly described on Exhibit A attached hereto.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer described below and dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

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

On the \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

EXHIBIT A  
DESCRIPTION OF THE LAND  
-SEE ATTACHED-

#### **Schedule 4.10 Description of Real Property**

**Grid/Edge Station - Property Situated in the (i) Town of Tarry, Yates County, and (ii) Town of Remond, Seneca County, New York**

##### **Schedule of Property Exclusions**

All those certain plots, pieces, or parcels of land, with the buildings and improvements thereon, situate, lying, and being in the Town of Tarry, Yates County, New York, and the Town of Remond, Seneca County, New York, and more particularly described in Appendices A-1 through A-11, both inclusive, attached hereto.

Subject to and/or excepting all Permitted Encroachments as defined in the Asset Purchase Agreement between the Seller and the Buyer dated \_\_\_\_\_, 1998, and all covenants, restrictions, conditions, reservations, exceptions, easements, and other matters of record.

Together with the easements, rights, and interests described in Appendix D, attached hereto.

##### **Schedule of Exemptions**

Excepting and reserving such real property and appurtenances described in Appendices B and C, attached hereto. Also excepting and excluding all rights and easements held by NYSEG relating to the transmission and distribution of electric energy and/or natural or manufactured gas, and for communication and/or drainage purposes, now existing on the property, whether or not of record.

**NOTE 1:** "NYSEG" refers to New York State Electric & Gas Corporation.

**NOTE 2:** All recorded instruments referenced in the Appendixes attached hereto were recorded in the County Clerk's Office for the county in which the property herein is located.

APPENDIX A-1

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: On the north by the land formerly comprising the Crooked Lake Canal, and now as understood to be owned by the New York Central Railroad Company; on the east by Seneca Lake; on the south by the lands formerly owned by John Thomas, now Ross Hudson, and the New York Central Railroad Company, Pennsylvania Division; and on the west by the highway leading south from Dresden, commonly known as the Lake Road; being the farm formerly known as the Luther Harris Farm.

Excepting, however, from the above described premises the mill property situate south of the outlet formerly owned by Edward R. Taylor, and later by Taylor Chemical Company.

Also excepting premises conveyed by John T. Knox, as referee, to Syracuse, Geneva and Corning Railroad Company, by deed dated the 15th day of March, 1878, and recorded in Yates County Clerk's Office in Liber 57 of Deeds at page 445.

Also excepting three and one-half acres conveyed by William M. Patterson and wife to Thomas F. Wells, August 14, 1891, and recorded in Yates County Clerk's Office December 1, 1897 in Liber 85 of Deeds at page 444.

Also excepting 13/100 of an acre conveyed to the New York Central and Hudson River R. R. Co. by deed date June 2, 1902, and recorded in Yates County Clerk's Office August 13, 1902, in Liber 91 of Deeds at page 592.

Also excepting the right to use water from the dam now or formerly situate on the outlet above the premises hereby conveyed, and west of highway referred to above, such right having been heretofore conveyed by Anna M. Bradley to the First National Bank of Wallingboro by deed dated July 17, 1911 and recorded in Yates County Clerk's Office, August 19, 1911 in Liber 104 of Deeds at page 662.

Also excepting premises conveyed by Horatio Hazen to William Berry, by deed dated March 29, 1849 and recorded in Yates County Clerk's Office, March 30, 1854 in Liber 29 of Deeds at page 482.

Also excepting premises situate on the east side of highway leading south from the Village of Dresden, described as follows: Beginning at a point in the center of Keuka (formerly Crooked) Lake Outlet and the highway leading south from Dresden; thence easterly along the center of the Keuka (formerly Crooked) Lake Outlet to a small tree marked 1847 standing on an island in the center of Keuka (formerly Crooked) Lake Outlet; thence southerly by a line drawn so as to strike the northeast corner of the property formerly owned by Ezra Boughten, now owned by New York Central Electric Corporation and more fully described by deed dated May 12, 1924 and recorded May 13, 1924 in Yates County Clerk's Office in Liber 115 of Deeds at page 505, thence west ten degrees north (N 10° N) two chains and eighty links (one hundred eighty-four and eight-tenths feet) to the highway leading south from Dresden; then north along said highway to the place of beginning, containing 1.8 acres more or less.

Being and hereby conveying the same premises conveyed by A. Carroll Turner and others to Associated Real Properties, Inc., by deed dated March 14, 1930 and recorded in Yates County Clerk's Office, March 14, 1930 in Liber 121 of Deeds at page 514, with the exception of the premises set forth above by deed from Horatio Hazen to William Berry and premises described in the exception last above noted.

GRANDINER  
6.19, 6.31

APPENDIX B

EXCEPTING FROM THE ABOVE PREMISES property appropriated by the State of New York designated as Parcels No. 155 and 156 on Map No. 180, Notice of Appropriation filed in the Office of the Department of Public Works on October 2, 1959, in the Office of the Department of State on October 13, 1959, and in the Yates County Clerk's Office on July 29, 1960.

FURTHER EXCEPTING FROM THE ABOVE PREMISES property appropriated by the People of the State of New York designated as Parcel Nos. 179, 180, 181 and 182 on Map No. 116 R-2, Notice of Appropriation filed in the office of the Department of State on August 22, 1980 and in the Yates County Clerk's office on October 9, 1980.

APPENDIX C

RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's 34.5-kV electric substation and 115-kV electric substation more particularly described below; the appurtenances covered by this reservation shall include, without limitation, the 34.5-kV electrical disconnect switches E1-74 and E54-74 and the 115-kV electrical disconnect switches B3-76, B3-77, B4-76, and B4-77:

ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 115 kV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 39°39'31" W., a distance of 1016.10 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 26°38'09" E., a distance of 783.53 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE continuing through lands of New York State Electric & Gas Corporation the following six (6) courses:

1. S. 60°20'00" W., a distance of 267.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 29°52'26" W., a distance of 373.22 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 60°02'40" E., a distance of 393.46 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 29°57'17" E., a distance of 160.90 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
5. S. 60°10'23" W., a distance of 126.45 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
6. S. 29°52'32" E., a distance of 213.95 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 2.760 acres.

ALSO, ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 34.5 kV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 01°02'06" E., a distance of 1017.81 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 47°24'51" E., a distance of 1382.86 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S.  $71^{\circ}13'51''$  W., parallel to and 3.0 feet from a building face and through drill holes set in a curb at 4.00 feet and 170.90 feet, a total distance of 174.90 feet;
2. N.  $16^{\circ}41'20''$  W., parallel with and 4.00 feet west of a curb marked with drill holes, a distance of 68.94 feet;
3. N.  $71^{\circ}18'09''$  E., parallel with and 4.0 feet north of a curb marked with drill holes, a distance of 172.58 feet;
4. S.  $18^{\circ}36'44''$  E., parallel with and 4.0 feet east of a curb marked with drill holes, a distance of 68.68 feet to the POINT OR PLACE OF BEGINNING comprising an area of 0.274 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's existing substation (known as the "Dresden" electric substation) lying within the lands of New York State Electric & Gas Corporation in the Town of Tarry, County of Yates and State of New York, bounded and described as follows:

BEGINNING at a concrete monument found along the northerly boundary of New York State Route 14 and west of Swarthout Road:

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N.  $19^{\circ}33'22''$  E. a distance of 478.43 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N.  $04^{\circ}29'52''$  E., a distance of 314.34 feet from the centerline intersection of Lempman Road and the railroad tracks now or formerly of Consolidated Rail Corporation, said point is also N.  $75^{\circ}22'00''$  W., a distance of 2318.73 feet from a  $3/4$ " iron pin found along a railroad right-of-way on the southerly boundary of land of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Ferro Corporation" (Liber 390, Page 943);

THENCE continuing through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S.  $74^{\circ}31'24''$  W., a distance of 109.78 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N.  $15^{\circ}35'15''$  W., a distance of 125.21 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N.  $74^{\circ}45'47''$  E., a distance of 110.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S.  $15^{\circ}22'51''$  E., a distance of 124.75 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 0.316 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor (i) ownership of the following relay switchboard panels (together with (a) the wires and cables that connect the switches that are part of such panels with the devices and substation equipment controlled by such switches and (b) the wires and cables that supply AC/DC power to such panels) now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such panels, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such panels, wires and cables: panels 5, 6, 7, 8, 21, 22, 23, 81, 82; the "RTU" panel; the "Metering Equipment" panel; and the "Diff. Matching CTS" panel; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such relay switchboard panels, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace (i) new relay switchboard panels required due to expansion or replacement of the 115-kV and/or 34.5-kV electric system located in the substations referred to herein; and (ii) the wires and cables that connect switches that are part of such new relay switchboard panels with the devices and substation equipment controlled by such switches; provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, more specific locations for such new relay switchboard, together with their associated wires and cables, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) the right to operate certain AC/DC low voltage circuit breakers located on AC/DC Power Distribution Panelboards of the Grantee that are situated in the electric generating station now located on the premises, which circuit breakers are components of the system that permits the energization and de-energization of equipment and facilities located on the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (ii) such easements and rights-of-way as are necessary to permit the Grantor to obtain access to such circuit breakers in order to operate the same; provided, however, that in exercising such right to operate such circuit breakers, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such circuit breakers, AC/DC Power Distribution Panelboards and substations, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the following meters (together with the wires and cables that connect such meters with the data sources that they monitor) now located in

the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such meters, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such meters, wires and cables; (1) meter number 0985-1067 located on relay switchboard panel 12 for Greenidge SST unit # 3 (high side of SST # 3); (2) meter number 0985-1066 located on relay switchboard panel 13 for Greenidge SST unit # 4 (load side of SST # 4); and (3) meter number 7155 located on relay switchboard panel 11 for Greenidge ESS unit # 4 (load side ESS # 4); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such meters, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the communications wires and cables that extend from (a) the demarcation point between such wires and cables and those of the telephone service provider for the premises to (b) the Grantor's SCADA RTU, (ii) ownership of the communications wires and cables that extend from (a) such demarcation point to (b) the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (iii) such easements and rights-of-way as are necessary (a) to permit such wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such wires and cables; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights of way as are necessary to permit the following communication wires and cables to be installed on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace such communication wires and cables: a future cable to be installed running from the demarcation point of the telephone company across the premises to the 115-kV electric substation and 34.5-kV electric substation. Provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such easements and rights-of-way shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary (i) (a) to permit the Grantor's 115-kV electrical disconnect switches B3-76 and B3-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B3-75 (which structure and switch are described in Appendix D hereto) and (b)

to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B3-76 and B3-77; and (ii) (a) to permit the Grantor's 115-kV electrical disconnect switches B4-76 and B4-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B4-75 (which structure and switch are described in Appendix D hereto) and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B4-76 and B4-77; provided, however, that in exercising such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the 115-kV group-operated electrical disconnect switches B3-75 and B4-75 and their associated structures. If necessary or desirable, the location and identity of such structures, such electrical disconnect switches and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric transmission poles, towers and structures (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, towers, structures, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, towers, structures, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, towers, structures, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric distribution poles (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's underground gas pipelines (together with their associated underground and surface facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such pipelines and facilities to remain in their present locations on the premises and (b) to permit the Grantor to

construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such pipelines and facilities; provided, however, that in exercising such ownership and such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such pipelines and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor hereunder (i) ownership of any grounding wire situated (a) around the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and (b) between and/or connecting the 34.5-kV and 115-kV substations referred to herein, and (ii) such easements and rights-of-way as are necessary to permit any such grounding wire to remain in its present location on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace any such grounding wire. Further Grantor reserves an easement permitting Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace new grounding wire along the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and between such substations, as and to extent deemed necessary or desirable by the Grantor; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such grounding wire, and such easements and rights-of-way, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor an easement and right-of-way across the premises conveyed hereby for personnel, vehicles and equipment for any and all purposes necessary or convenient to the conduct of the Grantor's business, including, without limitation, (i) the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of the Grantor's aforesaid substations; the testing for, response to, and remediation of, any environmental conditions with respect to such substations; and the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of (a) such relay switchboard panels and their associated wires and cables, (b) such meters and their associated wires and cables, (c) the Grantor's aforesaid communications towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (f) such electric distribution poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (g) such gas pipelines and facilities, (h) such grounding wire and (ii) the operation of such AC/DC low voltage circuit breakers; provided, however, that in exercising such easement and right-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. The Grantor's easement and right-of-way with respect to the Grantor's "Dresden" substation shall include, without limitation, the present driveway associated therewith. If necessary or desirable, the location of such driveway, and the remainder of such easement and right-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTEE'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., (ii) the High Voltage Proximity Act, New York Labor Law § 202-b and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

APPENDIX B

(i) OWNERSHIP of the following components of the Generator's relay switchboard panel 82 (which panel is described in Appendix C hereto) that are used in the protection and control of circuit breakers 81-72 and 83-72, which panel 82 is now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such components to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such components: two ASEA RASSES with Auxiliary Cts. SLC12, six General Electric IAC53803A, one General Electric IAC53803A and one General Electric IAC53803A (each together with its associated control switches, test switches, light bulbs and other appurtenances); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's relay switchboard panels located on the premises. If necessary or desirable, the identity and location of such components and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(ii) OWNERSHIP of the following electrical facilities now located on the premises of the Grantor's aforesaid 34.5-KV electric substation and 115-KV electric substation (which substation premises are described in Appendix C hereto) and (iii) such easements and rights-of-way as are necessary (a) to permit such electrical facilities to remain in their present locations on the premises and (b) to permit the Grantee to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such electrical facilities: (1) the 115-KV circuit breaker 83-72 together with its associated equipment and connections to the 115-KV electrical disconnect switch 83-75 and 83-76, foundation, grounding, conduit and control cables; (2) the 115-KV group-operated electrical disconnect switch 83-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (3) the 115-KV circuit breaker 84-72 together with its associated equipment and connections to the 115-KV electrical disconnect switches 84-75 and 84-76, foundation, grounding, conduit and control cables; (4) the 115-KV group-operated electrical disconnect switch 84-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (5) service station bank # 1 located within the Grantor's 34.5-KV electric substation (which substation is described in Appendix C hereto), which bank consists of (A) one 3-phase, 34.5-2.4 KV, 3750/5000 KVA transformer together with its associated bus and connections, surge arresters, foundation, grounding, conduit and control cable and (B) one 600:5 MR current transformer together with its associated electrical disconnect switch; (6) the 34.5-KV circuit breaker 81-72 together with its associated equipment and connections to the electrical disconnect switches 81-74 and 81-75, foundation, grounding, conduit and control cable; (7) the 34.5-KV electrical disconnect switch 81-75; (8) service station bank # 2, which bank consists of one 3-phase, 34.5-2.4 KV, 10/12.5 KVA transformer together with its associated bus and connections, 2.4-KV power cable, surge arresters, foundation, grounding, conduit and control cable; (9) the 34.5-KV circuit breaker 85-72 together with its associated equipment and connections to the electrical disconnect switches 85-74 and 85-75, foundation, grounding, conduit and control cable; (10) the 34.5-KV electrical disconnect switch 85-75; (11) the 34.5-KV buswork, surge arresters and conduit and cable

UNDER AND SUBJECT to two indentures of lease made March 18, 1936 between Associated Real Properties, Inc., and respectively by Harry M. Meaker of the Village of Dresden, Yates County, State of New York and Finger Lakes Canning Company, Inc., a corporation organized and existing by and under the laws of the State of New York, having its principal office in the Village of Penn Yan, Yates County, State of New York.

Being the same premises conveyed by Associated Real Properties, Inc. to New York State Electric & Gas Corporation by a deed dated February 4, 1937 and recorded in the Yates County Clerk's Office on February 23, 1937 in Liber 143 of Deeds at Page 224.

Also excepting premises conveyed by New York State Electric & Gas Corporation to Harry Meaker by a deed dated July 28, 1938 and recorded in the Yates County Clerk's Office on August 5, 1938 in Liber 144 of Deeds at Page 570; from which conveyance New York State Electric & Gas Corporation specifically reserved all water and riparian rights connected with the property so conveyed.

Also excepting governmental rights in navigable streams, being Keuka Lake Outlet and Seneca Lake, and the land in the bed and under the waters thereof.

SUBJECT to an Agreement dated December 14, 1942, made between New York State Electric & Gas Corporation and the United States of America granting an easement and right of way to United States of America for the installation and maintenance of its cable and equipment upon and across the lands of the New York State Electric & Gas Corporation between the west shore line and the east shore line of Seneca Lake including any lands or interest New York State Electric & Gas Corporation may have under the waters of Seneca Lake.

SUBJECT to an easement and right of way dated September 27, 1993 granted by New York State Electric & Gas Corporation to Ferro Corporation to construct, reconstruct, operate, inspect, maintain, repair, remove and/or replace an underground water pipeline and appurtenances upon, over, under and through a portion of the above premises, along with ingress and egress over the above premises for these purposes.

TOGETHER WITH all rights available under an agreement dated May 26, 1991 whereby The People of the State of New York grant to New York State Electric & Gas Corporation an easement, thirty (30) feet in width, for the operation and maintenance of electric submarine cables on such portion of the above premises under the waters of Seneca Lake situated in the Town of Torrey, County of Yates and Town of Romulus, County of Seneca, and the State of New York; this agreement is scheduled to expire on or about October 15, 2004.

It is the intention of the Deed to which this Appendix is attached to convey to NGE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

GREENIDGE  
F. Smith  
6.6

APPENDIX A-2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Torrey, Yates County, New York, being the same premises conveyed by William M. Birkett and Clara Birkett, his wife; Clarence T. Birkett and Laura R. Birkett, his wife, to Florence M. Smith by deed dated July 15, 1891 and recorded in the Yates County Clerk's Office September 3, 1891 in Liber 79 of Deeds at page 75, and being also the same premises described in an instrument dated October 30, 1911, executed between Florence M. Smith and George E. Smith and recorded in the Yates County Clerk's Office July 7, 1923 in Liber 114 of Deeds at page 648.

Hereby conveying premises consisting of approximately eight (8) acres of land, bounded on the north by a public highway, being the highway leading from Dresden to Watkins, formerly known as the Lake Road, and the highway leading to Hiram; on the east by the said highway leading from Dresden to Watkins, formerly known as the Lake Road; on the south by lands of New York Central Railroad Company; and on the west by lands formerly of Harry H. Simmons, consisting of 8.29 acres of land, and being the second parcel described in the deed from Roy Swarthout to New York Central Electric Corporation dated September 30th, 1936 and duly recorded in the Yates County Clerk's Office October 2nd, 1936 in Liber 141 of Deeds at page 602; the premises hereby conveyed consisting of about eight (8) acres of land, and being the home premises now occupied and owned by said Florence M. Smith; and the first party represents and warrants that she is now in the possession of the said premises, and that the same is free of all liens and encumbrances and taxes.

Being the same premises conveyed by Florence M. Smith to New York State Electric & Gas Corporation by a deed dated February 10, 1937 and recorded in the Yates County Clerk's Office on February 10, 1937 in Liber 143 of Deeds at Page 209.

It is the intention of the Deed to which this Appendix is attached to convey to NYS Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

located between the circuit breaker ES4-72 and the station service bank # 4E; (12) the circuit breaker ES4-72 together with its associated equipment and connections to: (i) the station service bank # 4E, (ii) the tie bus #6, and (iii) the emergency tie bus # 4, foundation, grounding, conduit and control cable; and (13) the # 1 and # 2 "House Service and Lighting" transformers located within the Grantor's 34.5-kV electric substation (which substation is described in Appendix C hereto) together with their associated foundation, grounding, conduit and control cable; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the identity and location of such electrical facilities and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(iii) AN EASEMENT and right-of-way across the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation (which substation premises are described in Appendix C hereto) for personnel, vehicles and equipment to the extent necessary to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace the Grantee's electrical facilities described in the immediately preceding paragraph; provided, however, that in exercising such easement and right-of-way the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the location of such easement and right-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTOR'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; (ii) the High Voltage Proximity Act, New York Labor Law § 202-n and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

APPENDIX A-3

All That Tract or Parcel of Land, situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: Commencing at a stake in the center of the new road leading South to the Town of Milo by James M. Clark's land; thence at right angles with the center of said road North 65 degrees West seven chains and sixty links; thence North along the North bounds of land sold by S. Buckley on the 24th of February, 1847, to the North-west corner thereof; thence Westerly along said Buckley's North line 19 chains and 24 links to the new Pre-emption line; thence North along said line 3 chains and 75 links to the outlet of Crooked (Kauka) Lake; thence Northeasterly along said outlet 45 chains 38 links to the center of the Mile road in the front of the Custom Mill; thence South 70° East, 66 links to the center of the highway; thence South 78 1/2° West 8 chains and 62 links; thence South 25° West, 15 chains and 2 links to the place of beginning; containing 41 3/4 acres of land, be the same more or less. Reserving the right of overflowing the said premises for any uses or purposes of a mill-pond adjacent thereto, subject to the conditions, exceptions and reservations in the patent contained, of which this parcel of land is a part, as the said right was reserved in the conveyance of the said premises from Allie A. Embree to George Turner by deed dated March 23, 1872, and recorded in Yates County Clerk's Office in Liber 54 of Deeds at page 110, and said premises being the same premises conveyed by the said deed.

ALSO All that other Tract or Parcel of land, situate in the Town of Torrey, County of Yates and State of New York, bounded as follows: Beginning in the center of the road, leading from Dresden to Elmrods, and on the North side of the Syracuse, Geneva & Corning R.R., thence along the center of the road North 26° East 6 chains and 97 links; thence North 81 degrees and 15' East 2 chains and 62 links, and thence North 80 degrees East, 1 chain and 2 links to a stake; thence South 23 degrees and 30' East, 15 chains and 12 links to a stake on the North side of the railroad aforesaid; thence Westerly along the railroad to the place of beginning, containing eight acres of land and 29/100 of an acre of land, be the same more or less, as surveyed July 31, 1880, by L. Ogden. Being the same premises conveyed to George Turner by Henry Birkett by deed dated Sept. 15, 1880, and recorded in said Clerk's Office Jan. 15, 1881, in Liber 62 of Deeds at page 261.

Excepting and reserving from the premises hereby conveyed all that portion of said premises conveyed by George Turner and wife to Adell Lampson by deed June 25, 1889, recorded in said Clerk's Office in Liber 73 of Deeds at page 499, containing one acre of land more or less.

Also excepting and reserving therefrom those portions of said premises conveyed by George Turner and wife to Syracuse, Geneva & Corning R. R. Company by two deeds, one recorded in said Clerk's office in Liber 59 of Deeds at page 257, and one recorded in said Clerk's Office in Liber 68 of Deeds at page 38.

Also excepting therefrom all that portion of said premises conveyed by Ella J. Benedict to the N. Y. Central & Hudson River R. R. Company by deed recorded in said Clerk's Office in Liber 91 of Deeds at page 544.

Also excepting that portion conveyed by Minnie A. Travis to New York Central & Hudson River R.R. Co. by deed recorded in said office in Liber 91 of deeds at page 545.

Being a portion of the premises conveyed by Roy Swarthout to New York Central Electric Corporation by a deed dated September 30, 1936 and recorded in the Yates County Clerk's Office on October 2, 1936 in Liber 141 of Deeds at Page 602.

It is the intention of the Deed to which this Appendix is attached to convey to NGE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed prior to the Completion Date (as defined in the hereinafter defined Lease Agreement) in connection with the acquisition, construction and installation of the AES Greenidge, L.L.C. Project (the "Project") of Yates County Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by AES Greenidge, L.L.C. (the "Company") as agent of the Agency pursuant to a lease agreement dated as of February 1, 2006 (the "Lease Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, security system, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery;

(2) The following items of specific machinery:

- a. A single-bed selective Catalytic reduction (SCR) and applicable sub-systems and all parts needed to complete installation;
- b. Low-NOx combustion technology (Burners) and applicable sub-systems and all parts needed to complete installation;
- c. A circulating dry scrubber (CDS) with carbon injection and applicable sub-systems and all parts needed to complete installation;
- d. A bag house and applicable sub-systems and all parts needed to complete installation.

(3) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

EXHIBIT E

FORM OF TERMINATION OF LEASE AGREEMENT

THIS TERMINATION OF LEASE AGREEMENT (the "Termination of Lease Agreement") dated as of \_\_\_\_\_, \_\_\_\_\_, by and between YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized under the laws of the State of New York having an office for the transaction of business located at One Keuka Business Park, Penn Yan, New York (the "Agency"), and AES GREENIDGE, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 590 Plant Road, Dresden, New York (the "Company").

WITNESSETH:

WHEREAS, the Agency, as landlord, and the Company, as tenant, entered into a lease agreement dated as of February 1, 2006 (the "Lease Agreement") pursuant to which, among other things, the Agency leased the Project Facility (as defined in the Lease Agreement) to the Company; and

WHEREAS, pursuant to the Lease Agreement, the Company and the Agency agreed that the Lease Agreement would terminate on the earlier to occur of (1) June 30, 2021 or (2) the date of the Lease Agreement shall be terminated pursuant to Article X or Article XI of the Lease Agreement; and

WHEREAS, the Company and the Agency now desires to evidence the termination of the Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Lease Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 12.8 of the Lease Agreement, certain obligations of the Company shall survive the termination of the Lease Agreement, and the execution of this termination of lease agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions of Section 12.8 of the Lease Agreement.

IN WITNESS WHEREOF, the Company and the Agency have signed this termination of lease agreement and caused to be dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

AES GREENIDGE, L.L.C.

BY: \_\_\_\_\_  
Authorized Officer

STATE OF NEW YORK

)

) ss.:

COUNTY OF

)

On the \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

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

On the \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

EXHIBIT F

INITIAL EMPLOYMENT PLAN

COMPANY  
NAME:

ADDRESS:

TYPE OF  
BUSINESS:

CONTACT  
PERSON:

TELEPHONE  
NUMBER:

Please complete the following chart describing your projected employment plan following receipt of financial assistance (the "Financial Assistance") from Yates County Industrial Development Agency (the "Agency"):

Current and Planning Full Time Occupations in Company	Current Number Full Time Jobs Per Occupation	Estimated Hiring Dates	Will any special recruitment or training be required? Yes/No.	Estimated Number of Full Time Jobs After Completion of the <u>Project</u> 1      2      3 year   year   year
---	--	---------------------------	--	---

Are the employees of your firm currently covered by a collective bargaining agreement?  
Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, Name and Local

In the event that the Company receives any Financial Assistance from the Agency, we agree to schedule a meeting with \_\_\_\_\_ (insert name of Local New York State Job Service Superintendent) and \_\_\_\_\_ (insert name of representative of the Agency's area under the Federal Job Training Partnership Act) prior to the hiring of any employees for the purpose of supplying such information as may be requested in connection with this Employment Plan and to notify the regional office of the Department of Economic Development, in advance, of the time and place of such meeting.

Prepared by:

Title:

Signature:

Date:

# EXHIBIT G

## CURRENT FORM OF ANNUAL EMPLOYMENT REPORT

### EMPLOYMENT PLAN STATUS REPORT

(To Be Filed by February 1 of each calendar year)

COMPANY NAME:

ADDRESS:

TYPE OF BUSINESS:

CONTACT PERSON:

TELEPHONE NUMBER:

<u>Occupation</u>	<u>Number of New Jobs</u>	<u>Number Listed<sup>1</sup></u>	<u>Number Filled</u>	
			<u>Job Service Division Applicants</u>	<u>Job Training Partnership Act eligible persons</u>

Prepared by:

Title:

Signature:

<sup>1</sup> With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

EXHIBIT H

FORM OF SALES TAX EXEMPTION LETTER

YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY

One Keuka Business Park  
Penn Yan, New York 14527

February \_\_, 2006

To Whom It May Concern:

Re: New York State Sales or Use Tax Exemption  
Yates County Industrial Development Agency  
AES Greenidge, L.L.C. Project

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987 (the "Policy Statement"), you have requested a letter from Yates County Industrial Development Agency (the "Agency"), a public benefit corporation created pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 113 of the 1975 Laws of New York, as amended, constituting Section 893-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), containing the information required by the Policy Statement regarding the sales tax exemption with respect to the captioned project (the "Project") located at 590 Plant Road in the Town of Torrey, Yates County, New York (the "Project Site").

AES Greenidge, L.L.C. (the "Company") has applied to and been approved for financial assistance from the Agency in the matter of completion of the Project on the Project Site. The Project includes the following: (A)(1) the acquisition of an interest in a parcel of land containing approximately 153 acres located at 590 Plant Road in the Town of Torrey, Yates County, New York (the "Land"), together with the existing buildings located thereon containing in the aggregate approximately 91,960 square feet of space (collectively, the "Facility"), (2) the reconstruction and renovation of the Facility, including the acquisition and installation of certain pollution control facilities, and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned and operated by the Company as a coal-fired electric generating plant and other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes, real property transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of February 1, 2006 (the "Lease Agreement") by and between the Agency and the Company. Please be advised that on or about

February \_\_, 2006, the Agency executed and delivered the Lease Agreement, pursuant to which the Agency appointed the Company as agent of the Agency to acquire, reconstruct, renovate and install the Project Facility.

It is our opinion that the Company may make project purchases of materials to be incorporated in the Project and machinery and equipment constituting a part of the Project, and purchases or rentals of supplies, tools, equipment, or services necessary to acquire or install the Project and, with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York, if the following procedures are observed:

1. Purchases must be billed or invoiced by the vendor to the Company as agent for the Agency (e.g., "COMPANY as agent for Yates County Industrial Development Agency") and identify the date of delivery and indicate the place of delivery.

2. Payment must be made by the Company, acting as agent, directly to the vendor from a special project fund of the payor.

3. Deliveries must be made to the Project Site, or under certain circumstances (such as where the materials require additional fabrication before installation on the Project Site or for storage to protect materials from theft or vandalism prior to installation at the Project Site) deliveries may be made to a site other than the Project Site, providing the ultimate delivery of the materials is made to the Project Site. Where delivery is made to a site other than the Project Site, the purchases must be billed or invoiced by the vendor to the Company as agent of the Agency, identify the date and place of delivery, the Agency's full name and address and the Project Site where the materials will ultimately be delivered for installation.

Pursuant to Section 874(8) of the Act, the Company, as agent of the Agency, must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency. The penalty for failure to file such a statement under Section 874(8) of the Act shall be the removal of authority to act as an agent for the Agency.

This letter shall serve as proof of the existence of an agency contract between the Agency and the Company for the **SOLE EXPRESS PURPOSE OF SECURING EXEMPTION FROM NEW YORK STATE SALES TAXES FOR THE PROJECT ONLY. NO OTHER PRINCIPAL/AGENT RELATIONSHIP BETWEEN THE AGENCY AND THE COMPANY IS INTENDED OR MAY BE IMPLIED OR INFERRED BY THIS LETTER.**

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency nor the Company as its agent, is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

Under the Policy Statement, a copy of this letter received by any vendor or seller to the Company as agent for the Agency, may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York State Tax Law Section 1132(c)(2), thereby relieving such vendor or seller from the obligation to collect sales and use tax on purchases or rentals of such materials, supplies, tools, equipment, or services by the Agency through its agent, the Company.

THIS LETTER SHALL BE IN EFFECT UNTIL \_\_\_\_\_.

In the event you have any questions with respect to the above, please do not hesitate to call Steve E. Isaacs, Executive Director of the Agency, at 315-536-7328.

Very truly yours,

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
(Vice) Chairman

EXHIBIT I  
FORM OF THIRTY-DAY SALES TAX REPORT

**IDA Appointment of Project Operator or Agent  
For Sales Tax Purposes****ST-60**  
(7/02)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA		IDA project number (use OSC numbering system for projects after 1998)	
Street address		Telephone number ( )	
City	State	ZIP code	
Name of IDA project operator or agent	Check box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or social security number	
Street address		Telephone Number ( )	Primary operator or agent? <input type="checkbox"/> Yes <input type="checkbox"/> No
City	State	Zip code	
Name of Project	Purpose of project (see instructions)		
Street address of project site			
City	State	Zip Code	
Description of goods and services intended to be exempted from sales and use taxes			
mm dd yyyy		mm dd yyyy	
Date project operator or agent appointed		Date project operator or agent status ends	
Estimated value of goods and services to be exempted from sales and use taxes as a result of the project's designation as an IDA project:			
Print name of officer or employee signing on behalf of the IDA		Print Title	
Signature	Date	Telephone Number ( )	

**Instructions****Filing Requirements**

An IDA must file this form within 30 days of the date the IDA designates a project operator of appoints a person as agent of the IDA, for purposes of extending a sales and compensating use tax exemption.

The IDA must file a separate form for each project operator or agent appointed, whether directly or indirectly, and regardless of whether it is the primary operator or agent. If the IDA authorizes an operator or agent to appoint other agents, the operator or agent making such an appointment within 30 days of the new agent's appointment. The IDA need not file this agents of the IDA. The IDA need not file this form if there are no sales or use tax exemption benefits authorized for a project as a result of the project's designation as an IDA project.

**Purpose of project**

For Purpose of project, enter one of the following:

- |                                   |                   |
|-----------------------------------|-------------------|
| - Services                        | - Construction    |
| - Agriculture, forestry, fishing  | - Wholesale trade |
| - Finance, insurance, real estate | - Retail trade    |
| - Transportation, communication   | - Manufacturing   |
| electric, gas, sanitary services  | - Other (specify) |

**Mailing instructions**

Mail completed form to: NYS Tax Department, IDA Unit, Building 4  
Room 738, W A Harriman Campus, Albany NY 12227

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 217, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(a)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany, NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

**Need help?**

Telephone assistance is available from 8 a.m. to 5:55 p.m. (eastern time), Monday through Friday.

Business tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Fax-on-demands forms: 1 800 748-3676

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8 a.m. to 5:55 p.m., eastern time).



Internet access: [www.tax.state.ny.us](http://www.tax.state.ny.us)



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.



If you need to write, address your letter to: NYS Tax Department, TaxPayer Contact Center, W A Harriman Campus, Albany NY 12227.

EXHIBIT J  
FORM OF ANNUAL SALES TAX REPORT

**Annual Report Of Sales And Use Tax Exemptions  
Claimed By Agent/Project Operator Of  
Industrial Development Agency/Authority (IDA)  
For Period Ending December 31, 20\_\_\_\_**

**ST-340**  
(8/95)

**Project Information**

Name of IDA agent/project operator		Federal employer identification number (EIN)	
Street Address		Telephone Number	
City	State	Zip code	
Name of IDA agent/project operator's authorized representative; if any		Title	
Street Address		Telephone number	
City	State	Zip code	
Name of IDA			
Street Address			
City	State	Zip code	
Name of project		Project Number	
Street address of project site			
City	State	Zip code	

1. Project purpose    ☐ Services                      ☐ Construction                      ☐ Agriculture, forestry, fishing
- ☐ Wholesale trade                      ☐ Retail trade                      ☐ Finance, insurance or real estate
- ☐ Transportation, communication, electric, gas or sanitary services
- ☐ Manufacturing                      ☐ Other (specify) \_\_\_\_\_
2. Date Project began: \_\_\_\_\_
3. Beginning date of construction or installation (actual or expected): \_\_\_\_\_
4. Completion date of construction phase of project (actual or expected): \_\_\_\_\_
5. Completion date of project (actual or expected) \_\_\_\_\_
6. Duration of project (years/months; actual or expected): \_\_\_\_\_

Total sales and use tax exemptions .....	<b>7</b>	\$	
Print name of officer, employer or authorized representative signing for the IDA agent/project operator		Title of person signing	
Signature		Date	

**Failure to file a complete report annually may result in the removal of authority to act as an IDA agent/project operator.**

Mail completed report to: **NYS TAX DEPARTMENT, IDA UNIT, BLDG. 9 RM 215, W A HARRIMAN CAMPUS, ALBANY, NY 12227.**

## INSTRUCTIONS

ST-340 (8/95) (back)

### General Information

The General Municipal Law (GML) and the Public Authorities Law require agents or project operators (also known as project occupants) of an Industrial Development Agency or Authority (i.e., an IDA) to file an annual report with the New York State Department of Taxation and Finance. The agent/project operators required to file this report are those persons the IDA appoints to act for and represent the IDA with regard to the project, and the industrial, manufacturing, commercial or other enterprise the IDA appoints to use, occupy to operate the project undertaken by the IDA. It does not include persons who are mere tenants of the IDA agent/operator, nor does it include officers or employees of an IDA in their capacity as such officers or employees.

The reporting requirement applies to IDA projects commenced on or after July 21, 1993. The initial report that must be filed is for the period October 19, 1993, through December 31, 1994, and is due by September 30, 1995. Because September 30, 1995 is a Saturday, this initial report is actually due by October 2, 1995. Subsequent reports must be filed on a calendar-year basis and are due by the last day of February of the following year.

The report must show the total value of all state and local sales and compensating use taxes exempted during the reporting period as a result of the project's designation as an IDA project. The IDA agent or project manager must include in its report the value of the exemptions if obtained, as well as the value of the sales and use tax exemptions obtained by its contractors, subcontractors, consultants and other agents. You are not required to report separately the value of the sales and use tax exemptions obtained by contractors, subcontractors, consultants, etc., individually. However, since you must include the value of the exemptions they have obtained by reason of the IDA project's exempt status in the total amount you report on line 7, you should keep documentation of the amounts they provide to you for your use in completing this report, or in the event you are asked to produce this information.

Do not include in this report the amount of any sales and use tax exemptions arising out of other provisions of the Tax Law (e.g., manufacturer's production equipment exemption, research and development exemption, etc.)

### Instructions

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

#### Name of IDA agent/project operator

Enter the name, address, federal employer identification number (EIN), and telephone number of the IDA agent/project operator.

#### Name of IDA agent/project operator's authorized representative

Enter the name, address, title and telephone number of the individual (e.g. attorney or accountant) authorized by the IDA agent/project operator to submit this report.

#### Name of IDA

Enter the name and address of the IDA.

Note If more than one IDA is involved in a particular project, the IDA agent or project operator must file a separate report for the tax exemptions attributable to each IDA.

#### Name of Project

Enter the name of the project, the address of the project site, and the number assigned to the project (if applicable). A separate report must be filed by the IDA agent or project operator for each project, even if authorized by the same IDA.

### Line Instructions

**Line 1 - Project purpose** - Check the box that identifies the purpose of the project. If you check *Other*, please be specific in identifying its purpose.

**Line 2** - Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond (issuance). Include month, day and year.

**Line 3** - Enter the date on which you, or your general contractor or subcontractor, actually began or expect to begin construction or

installation on the project. If the project does not involve any construction, enter: **Does not apply.**

**Line 4** - Enter the date the construction phase of the project was completed. If it has not been completed by the end of the reporting period, enter the date you expect to complete this phase of the project.

**Line 5** - Enter the date on which installation, lease, or rental of property (e.g., machinery, computers, etc.) on the project ended. If the project was not completed by the end of the reporting period, enter the date the project is expected to be completed.

**Line 6** - Enter the total number of years and months from the project's inception to its completion or expected completion.

**Line 7** - Enter the total amount of New York State and local sales and compensating use taxes exempted during the reporting period (if non, enter "0") as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property

or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent or project operator, the general contractor for the project and any subcontractors, consultants or other agents.

#### Signature area

Enter the name and title of the person signing on behalf of the IDA agent/project operator (e.g., the IDA agent/project operator's officer, employee or other authorized representative). The report must be signed by the IDA agent/project operator's officer, or employee or authorized representative. Enter the date signed.

Mail completed report to: **NYS Tax Department, IDA Unit, Bldg. 9 Rm. 215, W A Harriman Campus, Albany NY 12227**

### Privacy Notation

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions and forms, is found in Articles 8, 15, 18-A, 28 and 28-A of the Tax Law and 42 USC 405(c)(2)(C)(i).

The Tax Department will use this information primarily to determine and administer the insurance awards and sales tax liabilities under the Tax Law, and for any other purpose authorized by law. Failure to provide the required information may result in civil or criminal penalties, or both, under the Tax Law.

This information will be maintained by the Director of the Data Management Services Bureau, NYS Tax Department, Building 8 Room 905, W A Harriman Campus, Albany NY 12227; telephone (from New York State only) 1 800 CALL TAX (1 800 225-5829); from areas outside New York State call (518) 438-8581.

### Need Help?

**For forms or publications**, call toll free (from New York State only) 1 800 462 8100. From areas outside New York State, call (518) 438-1073.

**For information, forms or publications**, call the Business Tax Information Center at 1800 972 1233. The call is toll free from anywhere in the U.S. (including Alaska and Hawaii) and Canada. For information, you can also call toll free (from New York State only) 1 800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 438-8581.

**Telephone assistance is available from 8:30 a.m. to 4:25 p.m. Monday through Friday.**

**Persons with Disabilities** - In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call the information and assistance numbers listed above.

**Holine for the Hearing and Speech Impaired** - If you have a hearing or speech impairment and have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling 1 800 634 2110 toll free from anywhere in the U.S. (including Alaska and Hawaii) and Canada. Hours of operation are from 8:30 a.m. to 4:15 p.m. Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

**If you need to write**, address your letter to: NYS Tax Department Taxpayer Assistance Bureau, W A Harriman Campus, Albany, NY 12227.

## EXHIBIT K

### POST CLOSING CONDITIONS

The Agency and the Company agree and acknowledge that the Company must take certain actions subsequent to the Closing Date to obtain various consents necessary to undertake the Project. The consents that must be obtained by the Company are described in the Post Closing Conditions Agreement. The Company has, pursuant to the Post Closing Conditions Agreement, agreed to obtain such consents.



RECYCLED



EA 912

FIBERKRAFT, INC., BEDFORD, NH 800-258-1063

CLOSING ITEM NO.: A-7

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YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
AND  
AES GREENIDGE, L.L.C.  
as Mortgagor

TO

YATES COUNTY, AS AGENT FOR ITSELF AND  
THE TOWN OF TORREY, THE VILLAGE OF DRESDEN  
AND THE PENN YAN CENTRAL SCHOOL DISTRICT,  
as Mortgagee

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PILOT MORTGAGE

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DATED AS OF FEBRUARY 1, 2006

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RELATING TO THE AES GREENIDGE, L.L.C. PROJECT  
LOCATED AT 590 PLANT ROAD IN THE THE TOWN OF  
TORREY, YATES COUNTY, NEW YORK.

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(This Table of Contents is not part of the Pilot Mortgage  
and is for convenience of reference only.)

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## PILOT MORTGAGE

THIS PILOT MORTGAGE made as of the first day of February, 2006 (the "Pilot Mortgage") from YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at One Keuka Business Park, Penn Yan, New York (the "Agency") and AES GREENIDGE, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware, having an office for the transaction of business located at 590 Plant Road, Dresden, New York (the "Company") (the Company and the Agency being sometimes hereinafter collectively called the "Mortgagor") to YATES COUNTY, a municipal corporation of the State of New York having an office for the transaction of business located at the 415 Liberty Street, Penn Yan, New York (the "County"), as agent for itself and the Town of Torrey, the Village of Dresden and the Penn Yan Central School District (collectively with the County, the "Taxing Entities"), as mortgagee (the "Mortgagee");

### WITNESSETH:

That to secure the obligation of the Company to make all payments required of the Company under that certain payment in lieu of tax agreement dated as of February 1, 2006 (the "Payment in Lieu of Tax Agreement") between the Agency and the Company (as such payments are described on Schedule A attached hereto, but in no event to exceed the amount due and owing at any one time outstanding, plus interest thereon pursuant to the Payment in Lieu of Tax Agreement (the "Indebtedness")), the Mortgagor hereby mortgages to the Mortgagee the following (hereinafter collectively referred to as the "Mortgaged Premises"):

ALL right, title and interest of the Mortgagor in that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Torrey, County of Yates and State of New York, as more particularly described on Exhibit A attached hereto;

TOGETHER with all right, title and interest of the Mortgagor in and to the land lying in the streets and road in front of and adjoining said premises; and

TOGETHER with all fixtures, chattels and articles of personal property now or hereafter attached to or used in connection with said premises, including but not limited to furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, plants and shrubbery and all other equipment and machinery, appliances, fittings and fixtures of every kind in or used in the operations of the building standing on said premises, together with any and all replacements thereof and additions thereto;

BEING THE SAME PREMISES (1) conveyed by the Company to the Agency pursuant to a lease to Agency dated as of February 1, 2006 (the "Underlying Lease") by and between the Company and the Agency dated as of February 1, 2006 and (2) leased by the Agency to the

Company pursuant to the terms of a certain lease agreement dated as of February 1, 2006 (the "Lease Agreement");

AND the Mortgagor covenants with the Mortgagee as follows:

Section 1. The Company will timely perform all of its obligations under the Payment in Lieu of Tax Agreement and will timely pay all amounts due thereunder.

Section 2. If any action or proceeding be commenced (except an action to foreclose this Pilot Mortgage or to collect the debt secured thereby), to which action or proceeding the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Pilot Mortgage, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this Pilot Mortgage (including reasonable counsel fees) shall be paid by the Company, together with interest thereon at the rate of twelve percent (12%) per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right, title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this Pilot Mortgage, and shall be deemed to be secured by this Pilot Mortgage. In any action or proceeding to foreclose this Pilot Mortgage, the provisions of law respecting the recovering of costs, disbursements and allowance shall prevail unaffected by this covenant.

Section 3. All rights and remedies of the Mortgagee pursuant to this Pilot Mortgage or otherwise shall be cumulative, and no such right or remedy shall be exclusive of any other such right or remedy. No single or partial exercise by the Mortgagee of any right or remedy pursuant to this Pilot Mortgage or otherwise shall preclude any other or further exercise thereof, or any exercise of any other such right or remedy, by the Mortgagee. Without limiting the generality of the preceding two sentences, the Mortgagee may resort for the payment of the Indebtedness to any of its security therefor, in such order and manner as it may see fit. No course of dealing or other conduct heretofore pursued, accepted or acquiesced in, no course of performance or other conduct hereafter pursued, accepted or acquiesced in, no oral or written agreement or representation heretofore made, and no oral agreement or representation hereafter made, by the Mortgagee, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall operate as a waiver of any right or remedy of the Mortgagee pursuant to this Pilot Mortgage or otherwise. No delay by the Mortgagee in exercising any such right or remedy, whether or not relied or acted upon, shall operate as a waiver thereof or any other such right or remedy. No notice or demand of any kind, and no attempted but unsuccessful notice or demand of any kind, by the Mortgagee prior to exercising any such right or remedy on any one occasion, whether or not relied or acted upon, shall operate as a waiver of any right of the Mortgagee to exercise the same or any other such right or remedy on such or any future occasion without any notice or demand of any kind. No waiver by the Mortgagee of any such right or remedy shall be effective unless made in a writing duly executed by the Mortgagee and specifically referring to such waiver. No waiver by the Mortgagee on any one occasion of any such right or remedy shall operate as a waiver thereof or of any other such right or remedy on any future occasion.

Section 4. Mortgagee's enforcement of the rights of the Mortgagee under this Pilot Mortgage shall be expressly subject to the limitation that no such rights may be exercised until the Company shall be in default in the making of any payment under the Payment in Lieu of Tax

Agreement to the Agency or to a Taxing Entity for a period of two (2) months from the date on which such payment is due and written notice of such default from the Mortgagee shall have been given at least thirty (30) but not more than sixty (60) days prior to the exercise of such rights by any Mortgagee who has a lien relating to the specific portion of the Mortgaged Premises against which enforcement is sought who has notified the Mortgagor hereunder of its address to which any such notice shall be sent.

Section 5. (A) All notices, certificates and other communication hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by telecopy or other electronic means of communication, followed by prompt written confirmation thereof, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communication hereunder shall be delivered are as follows:

IF TO THE COMPANY:

AES Greenidge, L.L.C.  
590 Plant Road  
Dresden, New York 14441  
Attention: Plant Manager

WITH A COPY TO:

Peter H. Swartz, Esq.  
Hiscock & Barclay, LLP  
300 South State Street  
Syracuse, New York 13221-4878

IF TO THE AGENCY:

Yates County Industrial Development Agency  
One Keuka Business Park  
Penn Yan, New York 14527  
Attention: Chairman

WITH A COPY TO:

Philip L. Bailey, Esq.  
118 Main Street, P.O. Box 397  
Penn Yan, New York 14527

AND

A. Joseph Scott, Esq.  
Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207

IF TO THE MORTGAGEE:

Yates County  
County Building  
417 Liberty Street  
Penn Yan, New York 14527

Town of Torrey  
Box 280  
Dresden, New York 14441

Village of Dresden  
P.O. Box 156  
Dresden, New York 14441

Penn Yan Central School District  
One School Drive  
Penn Yan, New York 14527

(C) If a notice, certificate or other communication given hereunder will affect a Mortgagee, a duplicate copy of such notice, certificate and other communication shall be given to each Mortgagee affected thereby.

(D) Any person entitled to notice hereunder may, by notice given hereunder, designate any different address to which subsequent notices, certificates and other communications shall be given.

Section 6. This Pilot Mortgage may not be changed or terminated orally. The covenants contained in this Pilot Mortgage shall run with the land and bind the Mortgagor, the heirs, personal representatives, successors and assigns of the Mortgagor and all subsequent owners, encumbrances, tenants and subtenants of the premises, and shall inure to the benefit of the Mortgagee, the personal representatives, successors and assigns of the Mortgagee and all subsequent holders of this Pilot Mortgage. The word "Mortgagor" shall be construed as if it read "Mortgagors" and the word "Mortgagee" shall be construed as if it read "Mortgagees" whenever the sense of this Pilot Mortgage so requires.

Section 7. Capitalized terms used in this Pilot Mortgage and not otherwise defined herein shall have the meanings ascribed to such terms in the Payment in Lieu of Tax Agreement, unless the context otherwise requires.

Section 8. In any action to foreclose this Pilot Mortgage, the Mortgagee shall be entitled to the appointment of a receiver.

Section 9. The Company represents and warrants that it has good and marketable title to the portions of the Project Facility that exist on the Closing Date, free and clear from all Liens, except Permitted Encumbrances, and agrees that it will defend, indemnify and hold the Agency harmless from any expenses or liability due to any defect in title thereto.

Section 10. In the case of a foreclosure sale, the Mortgaged Premises may be sold in one parcel.

Section 11. This Pilot Mortgage may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Agency and unless such amendment, change, modification, alteration or termination is in a writing intended for such purpose and executed and delivered by the Mortgagee.

Section 12. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Pilot Mortgage shall for any reason be finally held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal, or unenforceable shall be deemed separate, distinct and independent, and the remainder of this Pilot Mortgage shall be and remain in full force and effect and shall not be invalidated or rendered illegal or enforceable or otherwise affected by any such holding or adjudication.

Section 13. This Pilot Mortgage shall be governed by and construed in accordance with the laws of the State of New York, exclusive of New York's conflict of laws, rules and public policies. This Pilot Mortgage constitutes the final expression of the agreement between the Mortgagor and the Mortgagee with respect to its subject matter, and all prior and contemporaneous discussions, negotiations, drafts and agreements are hereby merged into and superseded by this Pilot Mortgage. Notwithstanding the foregoing, it is expressly agreed that the Payment in Lieu of Tax Agreement and each of the Company's obligations thereunder shall survive the execution, delivery and recording of this Pilot Mortgage.

Section 14. If any action or proceeding be commenced by or on behalf of any of the Mortgagee to foreclose this Pilot Mortgage, the Company agrees to pay to the Mortgagee(s) its reasonable attorneys' fees and other expenses incurred in connection with such action or proceeding, and such amounts shall be a lien on the Mortgaged Premises prior to any right or title to, or interest in, or claim upon the Mortgaged Premises attaching or accruing subsequent to the lien of this Pilot Mortgage.

Section 15. The exercise by the Mortgagee(s) of any of their rights, remedies or options hereunder, as well as any neglect or election not to exercise the same, shall not preclude the Mortgagee(s) from thereafter exercising the same or exercising any other rights, remedies or options which it or they may have under this Pilot Mortgage.

Section 16. The rights of the Mortgagees under this Pilot Mortgage are independent of and cumulative to their respective rights with respect to the collection of special assessments and special ad valorem levies, if any, lawfully assessed against the Mortgaged Premises or any part thereof.

Section 17. (A) All obligations, covenants and agreements of the Agency contained in this Pilot Mortgage shall be deemed to be the obligations, covenants and agreements of the Agency and not of any member, officer, director, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Pilot Mortgage, or otherwise based upon or in respect of this Pilot Mortgage, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, director, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Pilot Mortgage on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Pilot Mortgage, it being expressly understood that this Pilot Mortgage is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, director, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Pilot Mortgage under or by reason of the obligations, covenants or agreements contained in this Pilot Mortgage or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, director, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Pilot Mortgage or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Pilot Mortgage by the Agency.

(B) The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or Yates County, New York, and neither the State of New York nor Yates County, New York shall be liable thereon, and further such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).


(C) Notwithstanding any provision of this Pilot Mortgage to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

Section 18. This Pilot Mortgage, and financing statements or continuation statements relating to the security interests created and/or assigned hereby, shall be recorded or filed, as the

case may be, by the Agency in the office of the County Clerk of Yates County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

IN WITNESS WHEREOF, this Pilot Mortgage has been duly executed by the Mortgagor.

YATES COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

BY:   
(Vice) Chairman

AES GREENIDGE, L.L.C.

BY: \_\_\_\_\_  
Authorized Officer

IN WITNESS WHEREOF, this Pilot Mortgage has been duly executed by the Mortgagor.

YATES COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

AES GREENIDGE, L.L.C.

BY: Douglas J. Relf  
Authorized Officer

STATE OF NEW YORK

COUNTY OF YATES

)  
) ss.:  
)

On the 15<sup>th</sup> day of February, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared JERRY NISSEN, 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

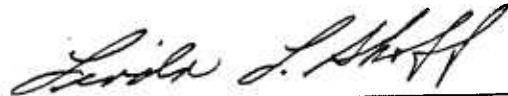
**A. JOSEPH SCOTT III**  
Notary Public, State of New York  
Qualified in Albany County  
Commission Expires Dec. 31, 2006

STATE OF NEW YORK )

) ss.:

COUNTY OF ONONDAGA )

On the 22 day of February, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared Douglas J. Bell, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

LINDA L. SHOFF  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01-SH6055262  
QUALIFIED IN YATES COUNTY  
MY COMMISSION EXPIRES 02-20-2007

EXHIBIT A  
DESCRIPTION OF THE LAND  
-SEE ATTACHED-

**Schedule 4.10 Description of Real Property**

**Greenidge Station - Property Situated in the (i) Town of Tarry, Yates County, and (ii) Town of Randolph, Seneca County, New York.**

**Schedule of Property Description**

All those certain plots, pieces, or parcels of land, with the buildings and improvements thereon, situate, lying, and being in the Town of Tarry, Yates County, New York, and the Town of Randolph, Seneca County, New York, and more particularly described in Appendices A-I through A-11, each inclusive, attached hereto.

Subject to and/or excepting all Permitted Encumbrances as defined in the Asset Purchase Agreement between the Seller and the Buyer dated \_\_\_\_\_, 1998, and all covenants, restrictions, conditions, reservations, exceptions, easements, and other matters of record.

Together with the easements, rights, and interests described in Appendix D, attached hereto.

**Schedule of Exceptions**

Excepting and reserving such real property and appurtenances described in Appendices B and C, attached hereto. Also excepting and reserving all rights and easements held by NYSEG relating to the transmission and distribution of electric energy and/or natural or manufactured gas, and for communication and/or drainage purposes, now existing on the property, whether or not of record.

**NOTE 1: "NYSEG" refers to New York State Electric & Gas Corporation.**

**NOTE 2: All easement instruments referenced in the Appendices attached hereto were recorded in the County Clerk's Office for the counties in which the property interest is located.**

APPENDIX A-1

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: On the north by the land formerly comprising the Crooked Lake Canal, and now as understood to be owned by the New York Central Railroad Company; on the east by Seneca Lake; on the south by the lands formerly owned by John Thomas, now Ross Henson, and the New York Central Railroad Company, Pennsylvania Division; and on the west by the highway leading south from Dresden, commonly known as the Lake Road; being the farm formerly known as the Luther Harris Farm.

Excepting, however, from the above described premises the mill property situate south of the outlet formerly owned by Edward R. Taylor, and later by Taylor Chemical Company.

Also excepting premises conveyed by John T. Knox, as referee, to Syracuse, Geneva and Corning Railroad Company, by deed dated the 15th day of March, 1878, and recorded in Yates County Clerk's Office in Liber 57 of Deeds at page 445.

Also excepting three and one-half acres conveyed by William M. Patterson and wife to Thomas F. Wells, August 14, 1891, and recorded in Yates County Clerk's Office December 1, 1897 in Liber 85 of Deeds at page 444.

Also excepting 13/100 of an acre conveyed to the New York Central and Hudson River R. R. Co. by deed date June 2, 1902, and recorded in Yates County Clerk's Office August 13, 1902, in Liber 91 of Deeds at page 592.

Also excepting the right to use water from the dam now or formerly situate on the outlet above the premises hereby conveyed, and west of highway referred to above, such right having been heretofore conveyed by Anna M. Bradley to the First National Bank of Wallingboro by deed dated July 17, 1911 and recorded in Yates County Clerk's Office, August 19, 1911 in Liber 104 of Deeds at page 662.

Also excepting premises conveyed by Horatio Hazen to William Berry, by deed dated March 29, 1849 and recorded in Yates County Clerk's Office, March 30, 1854 in Liber 29 of Deeds at page 482.

Also excepting premises situate on the east side of highway leading south from the Village of Dresden, described as follows: Beginning at a point in the center of Keuka (formerly Crooked) Lake Outlet and the highway leading south from Dresden; thence easterly along the center of the Keuka (formerly Crooked) Lake Outlet to a small tree marked 1847 standing on an island in the center of Keuka (formerly Crooked) Lake Outlet; thence southerly by a line drawn so as to strike the northeast corner of the property formerly owned by Ezra Boughton, now owned by New York Central Electric Corporation and more fully described by deed dated May 12, 1924 and recorded May 13, 1924 in Yates County Clerk's Office in Liber 115 of Deeds at page 505, thence west ten degrees north (N 10° W) two chains and eighty links (one hundred eighty-four and eight-tenths feet) to the highway leading south from Dresden; then north along said highway to the place of beginning, containing 1.6 acres more or less.

Being and hereby conveying the same premises conveyed by A. Carroll Turner and others to Associated Real Properties, Inc., by deed dated March 14, 1930 and recorded in Yates County Clerk's Office, March 14, 1930 in Liber 121 of Deeds at page 514, with the exception of the premises set forth above by deed from Horatio Hazen to William Berry and premises described in the exception last above noted.

GREENWICH  
6.19, 6.31

APPENDIX B

EXCEPTING FROM THE ABOVE PREMISES property appropriated by the State of New York designated as Parcels No. 155 and 156 on Map No. 180, Notice of Appropriation filed in the Office of the Department of Public Works on October 2, 1959, in the Office of the Department of State on October 13, 1959, and in the Yates County Clerk's Office on July 28, 1960.

FURTHER EXCEPTING FROM THE ABOVE PREMISES property appropriated by the People of the State of New York designated as Parcel Nos. 179, 180, 181 and 182 on Map No. 116 R-2, Notice of Appropriation filed in the office of the Department of State on August 22, 1980 and in the Yates County Clerk's office on October 9, 1980.

APPENDIX C

RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's 34.5-KV electric substation and 115-KV electric substation more particularly described below; the appurtenances covered by this reservation shall include, without limitation, the 34.5-KV electrical disconnect switches E1-74 and E54-74 and the 115-KV electrical disconnect switches B3-76, B3-77, B4-76, and B4-77:

ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 115 KV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Parro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 39°39'31" W., a distance of 1016.10 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 26°38'09" E., a distance of 783.53 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE continuing through lands of New York State Electric & Gas Corporation the following six (6) courses:

1. S. 60°20'00" W., a distance of 267.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 28°52'26" W., a distance of 373.22 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 60°02'40" E., a distance of 393.46 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 29°57'17" E., a distance of 160.90 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
5. S. 60°10'23" W., a distance of 126.45 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
6. S. 29°52'32" E., a distance of 213.95 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 2.760 acres.

ALSO, ALL THAT TRACT OR PARCEL OF LAND occupied by an existing 34.5 KV electric substation lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates, and State of New York, bounded and described as follows:

BEGINNING at a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of lands of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Parro Corporation" (Liber 390, Page 943);

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 01°02'08" E., a distance of 1017.81 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 47°24'51" E., a distance of 1382.86 feet from the centerline intersection of Lake Road and the railroad tracks now or formerly of New York Central Railroad;

THENCE through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. S. 71°13'51" W., parallel to and 3.0 feet from a building face and through drill holes set in a curb at 4.00 feet and 170.90 feet, a total distance of 174.90 feet;
2. N. 16°41'20" W., parallel with and 4.00 feet west of a curb marked with drill holes, a distance of 68.94 feet;
3. N. 71°18'09" E., parallel with and 4.0 feet north of a curb marked with drill holes, a distance of 172.98 feet;
4. S. 18°36'44" E., parallel with and 4.0 feet east of a curb marked with drill holes, a distance of 68.68 feet to the POINT OR PLACE OF BEGINNING comprising an area of 0.274 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor ownership of that portion of the premises now occupied by the Grantor's existing substation (known as the "Dresden" electric substation) lying within the lands of New York State Electric & Gas Corporation in the Town of Torrey, County of Yates and State of New York, bounded and described as follows:

BEGINNING at a concrete monument found along the northerly boundary of New York State Route 14 and west of Swarthout Road;

THENCE leaving said beginning point and running through the lands of New York State Electric & Gas Corporation N. 19°33'22" E. a distance of 478.43 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS", THE TRUE POINT OF BEGINNING which point is N. 04°29'52" E., a distance of 314.34 feet from the centerline intersection of Lapsman Road and the railroad tracks now or formerly of Consolidated Rail Corporation, said point is also N. 75°22'00" W., a distance of 2318.73 feet from a 3/4" iron pin found along a railroad right-of-way on the southerly boundary of land of New York State Electric & Gas Corporation and the northwesterly corner of lands of "Perce Corporation" (Liber 390, Page 943);

THENCE continuing through lands of New York State Electric & Gas Corporation the following four (4) courses:

1. E. 74°31'24" W., a distance of 109.78 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
2. N. 15°35'15" W., a distance of 123.21 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
3. N. 74°45'47" E., a distance of 110.24 feet to an iron pin set with a survey cap stamped "WEILER ASSOC. SURVEYS";
4. S. 15°22'51" E., a distance of 124.75 feet to the POINT OR PLACE OF BEGINNING, comprising an area of 0.316 acres.

All bearings are referenced to New York State Electric & Gas Plant datum.

ALSO RESERVING to the Grantor (i) ownership of the following relay switchboard panels (together with (a) the wires and cables that connect the switches that are part of such panels with the devices and substation equipment controlled by such switches and (b) the wires and cables that supply AC/DC power to such panels) now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such panels, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such panels, wires and cables; panels 5, 6, 7, 8, 21, 22, 23, 31, 32; the "RTU" panel; the "Metering Equipment" panel; and the "Diff. Matching CTR" panel; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such relay switchboard panels, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace (i) new relay switchboard panels required due to expansion or replacement of the 115-kV and/or 34.5-kV electric system located in the substations referred to herein; and (ii) the wires and cables that connect switches that are part of such new relay switchboard panels with the devices and substation equipment controlled by such switches; provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, more specific locations for such new relay switchboard, together with their associated wires and cables, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) the right to operate certain AC/DC low voltage circuit breakers located on AC/DC Power Distribution Panelboards of the Grantee that are situated in the electric generating station now located on the premises, which circuit breakers are components of the system that permits the energization and de-energization of equipment and facilities located on the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (ii) such easements and rights-of-way as are necessary to permit the Grantor to obtain access to such circuit breakers in order to operate the same; provided, however, that in exercising such right to operate such circuit breakers, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such circuit breakers, AC/DC Power Distribution Panelboards and substations, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the following meters (together with the wires and cables that connect such meters with the data sources that they monitor) now located in

the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such meters, wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such meters, wires and cables; (1) meter number 0985-1067 located on relay switchboard panel 12 for Greenidge SST unit # 3 (high side of SST # 3); (2) meter number 0985-1066 located on relay switchboard panel 13 for Greenidge SST unit # 4 (load side of SST # 4); and (3) meter number 7155 located on relay switchboard panel 11 for Greenidge SST unit # 4 (load side SST # 4); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such meters, wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the communications wires and cables that extend from (a) the demarcation point between such wires and cables and those of the telephone service provider for the premises to (b) the Grantor's SCADA RTU, (ii) ownership of the communications wires and cables that extend from (a) such demarcation point to (b) the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation and (iii) such easements and rights-of-way as are necessary (a) to permit such wires and cables to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such wires and cables; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the identity and location of such wires and cables, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights of way as are necessary to permit the following communication wires and cables to be installed on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace such communication wires and cables: a future cable to be installed running from the demarcation point of the telephone company across the premises to the 115-kV electric substation and 34.5-kV electric substation. Provided, however, that in exercising such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such easements and rights-of-way shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor such easements and rights-of-way as are necessary (i) (a) to permit the Grantor's 115-kV electrical disconnect switches B3-76 and B3-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B3-75 (which structure and switch are described in Appendix D hereto) and (b)

to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B3-76 and B3-77; and (ii) (a) to permit the Grantor's 115-kV electrical disconnect switches B4-76 and B4-77 to remain in their present locations on the structure associated with the 115-kV group-operated electrical disconnect switch B4-75 (which structure and switch are described in Appendix D hereto) and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace said electrical disconnect switches B4-76 and B4-77; provided, however, that in exercising such easements and rights-of-way the Grantor shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the 115-kV group-operated electrical disconnect switches B3-75 and B4-75 and their associated structures. If necessary or desirable, the location and identity of such structures, such electrical disconnect switches and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric transmission poles, towers and structures (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, towers, structures, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, towers, structures, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, towers, structures, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's electric distribution poles (together with their associated overhead and underground wires, fixtures, appurtenances and communications facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such poles, wires, fixtures, appurtenances and facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such poles, wires, fixtures, appurtenances and facilities; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such poles, wires, fixtures, appurtenances and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor (i) ownership of the Grantor's underground gas pipelines (together with their associated underground and surface facilities) now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such pipelines and facilities to remain in their present locations on the premises and (b) to permit the Grantor to

construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such pipelines and facilities; provided, however, that in exercising such ownership and such easements and rights-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. If necessary or desirable, the location and identity of such pipelines and facilities, and such easements and rights-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor hereunder (i) ownership of any grounding wire situated (a) around the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and (b) between and/or connecting the 34.5-kV and 115-kV substations referred to herein, and (ii) such easements and rights-of-way as are necessary to permit any such grounding wire to remain in its present location on the premises, and to permit Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace any such grounding wire. Further Grantor reserves an easement permitting Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair, and replace any grounding wire along the outside perimeter of the fence line(s) of the 34.5-kV and 115-kV substations referred to herein, and between such substations, as and to extent deemed necessary or desirable by the Grantor; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electrical generating station located on the premises. If necessary or desirable, the identity and location of such grounding wire, and such easements and rights-of-way, shall be fixed by a correction deed or other instrument in recordable form executed by the parties hereto.

ALSO RESERVING to the Grantor an easement and right-of-way across the premises conveyed hereby for personnel, vehicles and equipment for any and all purposes necessary or convenient to the conduct of the Grantor's business, including, without limitation, (i) the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of the Grantor's aforesaid substations; the testing for, response to, and remediation of, any environmental conditions with respect to such substations; and the construction, reconstruction, inspection, operation, maintenance, modification, removal, repair and replacement of (a) such relay switchboard panels and their associated wires and cables, (b) such meters and their associated wires and cables, (c) the Grantor's aforesaid communications wires and cables, (d) the Grantor's aforesaid electrical disconnect switches, (e) such electric transmission poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (f) such electric distribution poles, towers, structures, wires, fixtures and appurtenances and their associated communications facilities, (g) such gas pipelines and facilities, (h) such grounding wire and (ii) the operation of such AC/DC low voltage circuit breakers; provided, however, that in exercising such easement and right-of-way the Grantor shall comply with the Grantee's reasonable rules and regulations pertaining to security and safety matters with respect to the electric generating station located on the premises. The Grantor's easement and right-of-way with respect to the Grantor's "Dresden" substation shall include, without limitation, the present driveway associated therewith. If necessary or desirable, the location of such driveway, and the remainder of such easement and right-of-way, shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTEE'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., (ii) the High Voltage Proximity Act, New York Labor Law § 202-b and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

APPENDIX D

(i) OWNERSHIP of the following components of the Grantor's relay switchboard panel 82 (which panel is described in Appendix C hereto) that are used in the protection and control of circuit breakers 81-72 and ES4-72, which panel 82 is now located in the control room (also known as the "old control room") situated off of the generator/turbine floor in the electric generating station now located on the premises and (ii) such easements and rights-of-way as are necessary (a) to permit such components to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such components: two ASEA RADESS with Auxiliary CTS SLCK12, six General Electric IAC53803A, one General Electric IAC53803A and one General Electric IAC53803A (each together with its associated control switches, test switches, light bulbs and other appurtenances); provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantor shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's relay switchboard panels located on the premises. If necessary or desirable, the identity and location of such components and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(ii) OWNERSHIP of the following electrical facilities now located on the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation (which substation premises are described in Appendix C hereto) and (iii) such easements and rights-of-way as are necessary (a) to permit such electrical facilities to remain in their present locations on the premises and (b) to permit the Grantor to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace such electrical facilities: (1) the 115-kV circuit breaker 83-72 together with its associated equipment and connections to the 115-kV electrical disconnect switches 83-75 and 83-76, foundation, grounding, conduit and control cables; (2) the 115-kV group-operated electrical disconnect switch 83-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (3) the 115-kV circuit breaker 84-72 together with its associated equipment and connections to the 115-kV electrical disconnect switches 84-75 and 84-76, foundation, grounding, conduit and control cable; (4) the 115-kV group-operated electrical disconnect switch 84-75 together with its associated structure, overhead line termination, surge arresters, foundations and grounding; (5) service station bank # 1 located within the Grantor's 34.5-kV electric substation (which substation is described in Appendix C hereto), which bank consists of (A) one 3-phase, 34.5-2.4 kV, 3750/5000 kVA transformer together with its associated bus and connections, surge arresters, foundation, grounding, conduit and control cable and (B) one 600:5 MR current transformer together with its associated electrical disconnect switch; (6) the 34.5-kV circuit breaker 81-72 together with its associated equipment and connections to the electrical disconnect switches 81-74 and 81-75, foundation, grounding, conduit and control cable; (7) the 34.5-kV electrical disconnect switch 81-75; (8) service station bank # 2, which bank consists of one 3-phase, 34.5-2.4 kV, 10/12.5 kVA transformer together with its associated bus and connections, 2.4-kV power cable, surge arresters, foundation, grounding, conduit and control cable; (9) the 34.5-kV circuit breaker ES4-72 together with its associated equipment and connections to the electrical disconnect switches ES4-74 and ES4-75, foundation, grounding, conduit and control cable; (10) the 34.5-kV electrical disconnect switch ES4-75; (11) the 34.5-kV buswork, surge arresters and conduit and cable

UNDER AND SUBJECT to two indentures of lease made March 18, 1936 between Associated Real Properties, Inc., and respectively by Harry H. Meaker of the Village of Dresden, Yates County, State of New York and Finger Lakes Canning Company, Inc., a corporation organized and existing by and under the laws of the State of New York, having its principal office in the Village of Penn Yan, Yates County, State of New York.

Being the same premises conveyed by Associated Real Properties, Inc. to New York State Electric & Gas Corporation by a deed dated February 4, 1937 and recorded in the Yates County Clerk's Office on February 23, 1937 in Liber 143 of Deeds at Page 224.

Also excepting premises conveyed by New York State Electric & Gas Corporation to Harry Meaker by a deed dated July 28, 1938 and recorded in the Yates County Clerk's Office on August 5, 1938 in Liber 144 of Deeds at Page 570; from which conveyance New York State Electric & Gas Corporation specifically reserved all water and riparian rights connected with the property so conveyed.

Also excepting governmental rights in navigable streams, being Seneca Lake Outlet and Seneca Lake, and the land in the bed and under the waters thereof.

SUBJECT to an Agreement dated December 14, 1942, made between New York State Electric & Gas Corporation and the United States of America granting an easement and right of way to United States of America for the installation and maintenance of its cable and equipment upon and across the lands of the New York State Electric & Gas Corporation between the west shore line and the east shore line of Seneca Lake including any lands or interest New York State Electric & Gas Corporation may have under the waters of Seneca Lake.

SUBJECT to an easement and right of way dated September 27, 1933 granted by New York State Electric & Gas Corporation to Ferro Corporation to construct, reconstruct, operate, inspect, maintain, repair, remove and/or replace an underground water pipeline and appurtenances upon, over, under and through a portion of the above premises, along with ingress and egress over the above premises for these purposes.

TOGETHER WITH all rights available under an agreement dated May 26, 1991 whereby the People of the State of New York grant to New York State Electric & Gas Corporation an easement, thirty (30) feet in width, for the operation and maintenance of electric submarine cables on such portion of the above premises under the waters of Seneca Lake situated in the Town of Torrey, County of Yates and Town of Romulus, County of Seneca, and the State of New York; this agreement is scheduled to expire on or about October 15, 2004.

It is the intention of the Deed to which this Appendix is attached to convey to NYS Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

GREENIDGE  
F. Smith  
6.6

APPENDIX A-2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Torrey, Yates County, New York, being the same premises conveyed by William M. Birkett and Clara Birkett, his wife; Clarence T. Birkett and Laura R. Birkett, his wife, to Florence M. Smith by deed dated July 15, 1891 and recorded in the Yates County Clerk's Office September 3, 1891 in Liber 79 of Deeds at page 75, and being also the same premises described in an instrument dated October 30, 1911, executed between Florence M. Smith and George E. Smith and recorded in the Yates County Clerk's Office July 7, 1923 in Liber 114 of Deeds at page 648.

Hereby conveying premises consisting of approximately eight (8) acres of land, bounded on the north by a public highway, being the highway leading from Dresden to Watkins, formerly known as the Lake Road, and the highway leading to Minards; on the east by the said highway leading from Dresden to Watkins, formerly known as the Lake Road; on the south by lands of New York Central Railroad Company; and on the west by lands formerly of Harry M. Simmons, consisting of 8.29 acres of land, and being the second parcel described in the deed from Roy Swarthout to New York Central Electric Corporation dated September 30th, 1936 and duly recorded in the Yates County Clerk's Office October 2nd, 1936 in Liber 141 of Deeds at page 602; the premises hereby conveyed consisting of about eight (8) acres of land, and being the home premises now occupied and owned by said Florence M. Smith; and the first party represents and warrants that she is now in the possession of the said premises, and that the same is free of all liens and encumbrances and taxes.

Being the same premises conveyed by Florence M. Smith to New York State Electric & Gas Corporation by a deed dated February 10, 1937 and recorded in the Yates County Clerk's Office on February 10, 1937 in Liber 143 of Deeds at Page 209.

It is the intention of the Deed to which this Appendix is attached to convey to NYS Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

located between the circuit breaker ES4-72 and the station service bank # 4E; (12) the circuit breaker ES4-72 together with its associated equipment and connections to: (i) the station service bank # 4E, (ii) the tie bus #6, and (iii) the emergency tie bus # 4, foundation, grounding, conduit and control cable; and (13) the # 1 and # 2 "House Service and Lighting" transformers located within the Grantor's 34.5-kV electric substation (which substation is described in Appendix C hereto) together with their associated foundation, grounding, conduit and control cable; provided, however, that in exercising such ownership, and such easements and rights-of-way, the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the identity and location of such electrical facilities and such easements and rights-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

(iii) AN EASEMENT and right-of-way across the premises of the Grantor's aforesaid 34.5-kV electric substation and 115-kV electric substation (which substation premises are described in Appendix C hereto) for personnel, vehicles and equipment to the extent necessary to construct, reconstruct, inspect, operate, maintain, modify, remove, repair and replace the Grantee's electrical facilities described in the immediately preceding paragraph; provided, however, that in exercising such easement and right-of-way the Grantee shall comply with the Grantor's reasonable rules and regulations pertaining to security and safety matters with respect to the Grantor's substation premises. If necessary or desirable, the location of such easement and right-of-way shall be fixed with greater specificity by a correction deed or other instrument in recordable form executed by the parties hereto.

THE GRANTOR'S reasonable rules and regulations pertaining to safety matters shall be deemed to include, without limitation, the following: (i) the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., (ii) the High Voltage Proximity Act, New York Labor Law § 202-b and (iii) the National Electrical Safety Code (ANSI C2), as each may be amended or superseded from time to time.

GREENWICH  
2. Shorthout  
6.5

APPENDIX A-3

All that Tract or Parcel of Land, situate in the Town of Torrey, County of Yates and State of New York, bounded and described as follows: Commencing at a stake in the center of the new road leading South to the Town of Milo by James M. Clark's land; thence at right angles with the center of said road North 65 degrees west seven chains and sixty links; thence North along the North bounds of land sold by S. Buckley on the 24th of February, 1847, to the North-west corner thereof; thence Westerly along said Buckley's North line 19 chains and 24 links to the new Pre-emption line; thence North along said line 3 chains and 75 links to the outlet of Crooked (Kauka) Lake; thence Northeasterly along said outlet 45 chains 38 links to the center of the Milo road in the front of the Custom Mill; thence South 70° East, 66 links to the center of the highway; thence South 78 1/2° West 8 chains and 62 links; thence South 25° West, 15 chains and 2 links to the place of beginning; containing 41 3/4 acres of land, be the same more or less. Reserving the right of overflowing the said premises for any uses or purposes of a mill-pond adjacent thereto, subject to the conditions, exceptions and reservations in the patent contained, of which this parcel of land is a part, as the said right was reserved in the conveyance of the said premises from Allie A. Endree to George Turner by deed dated March 23, 1872, and recorded in Yates County Clerk's Office in Liber 34 of Deeds at page 110, and said premises being the same premises conveyed by the said deed.

ALSO All that other Tract or Parcel of land, situate in the Town of Torrey, County of Yates and State of New York, bounded as follows: Beginning in the center of the road, leading from Dresden to Elmira, and on the North side of the Syracuse, Geneva & Corning R.R., thence along the center of the road North 26° East 6 chains and 97 links; thence North 81 degrees and 15' East 2 chains and 62 links, and thence North 80 degrees East, 1 chain and 2 links to a stake; thence South 23 degrees and 30' East, 15 chains and 12 links to a stake on the North side of the railroad aforesaid; thence Westerly along the railroad to the place of beginning, containing eight acres of land and 29/100 of an acre of land, be the same more or less, as surveyed July 31, 1880, by L. Ogden. Being the same premises conveyed to George Turner by Henry Birkett by deed dated Sept. 15, 1880, and recorded in said Clerk's Office Jan. 15, 1881, in Liber 62 of Deeds at page 261.

Excepting and reserving from the premises hereby conveyed all that portion of said premises conveyed by George Turner and wife to Adell Lampman by deed June 25, 1889, recorded in said Clerk's Office in Liber 73 of Deeds at page 499, containing one acre of land more or less.

Also excepting and reserving therefrom those portions of said premises conveyed by George Turner and wife to Syracuse, Geneva & Corning R. R. Company by two deeds, one recorded in said Clerk's office in Liber 38 of Deeds at page 257, and one recorded in said Clerk's Office in Liber 68 of Deeds at page 38.

Also excepting therefrom all that portion of said premises conveyed by Ella J. Benedict to the N. Y. Central & Hudson River R. R. Company by deed recorded in said Clerk's Office in Liber 91 of deeds at page 344.

Also excepting that portion conveyed by Minnie A. Travis to New York Central & Hudson River R.R. Co. by deed recorded in said office in Liber 91 of deeds at page 345.

Being a portion of the premises conveyed by Roy Swarthout to New York Central Electric Corporation by a deed dated September 30, 1936 and recorded in the Yates County Clerk's Office on October 2, 1936 in Liber 141 of Deeds at Page 602.

It is the intention of the Deed to which this Appendix is attached to convey to NCE Generation, Inc. all of the real property of New York State Electric & Gas Corporation at the said location as and to the extent conveyed by said deed to New York State Electric & Gas Corporation; SUBJECT, HOWEVER, as provided aforesaid and hereafter; EXCEPTING, HOWEVER, such property as described aforesaid and hereafter.

## SCHEDULE A

### AMOUNTS OF PAYMENTS IN LIEU OF TAXES

PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of the Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Project Facility. (1) (a) Commencing with respect to assessment rolls prepared after the March 1, 2006 tax status date of the Village of Dresden and continuing until the earlier to occur of the tax year of each taxing entity that commences after June 30, 2021, the value of the parcel of Land located in the Village of Dresden (the "Dresden Parcel") for purposes of determining the payments in lieu of taxes due hereunder (the "Dresden Value") shall be Eighty-Four Thousand Three Hundred Dollars (\$84,300).

(b) Commencing with respect to assessment rolls prepared after the March 1, 2006 tax status date of the Town of Torrey and continuing until the earlier to occur of the tax year of each taxing entity that commences after June 30, 2021, the value of the Land and the Facility including the Dresden Parcel (the "Improvements") for purposes of determining the payments in lieu of taxes due hereunder shall be fixed each year as described in the table below (the "Total Full Value Assessment Amount"):

<u>PILOT Year</u>	<u>Assessment Year</u>	<u>Town/County Tax Year</u>	<u>School Tax Year</u>	<u>Base Full Value Assessment Amount</u>	<u>Unit 3 Available Hours<sup>1</sup></u>	<u>Assessment Amount Reduction for Unit 3<sup>2</sup></u>	<u>Total Full Value Assessment Amount</u>
1	2006	2007	2006- 2007	\$52,068,489	1,400	\$4,374,704	\$47,693,785
2	2007	2008	2007- 2008	50,330,000	1,400	4,228,651	46,101,488
3	2008	2009	2008- 2009	48,591,789	1,400	4,082,598	44,509,191
4	2009	2010	2009- 2010	55,000,000	0	5,000,000	50,000,000
5	2010	2011	2010- 2011	55,000,000	0	5,000,000	50,000,000
6	2011	2012	2011- 2012	55,000,000	0	5,000,000	50,000,000
7	2012	2013	2012- 2013	55,000,000	0	5,000,000	50,000,000
8	2013	2014	2013- 2014	55,000,000	0	5,000,000	50,000,000
9	2014	2015	2014- 2015	55,000,000	0	5,000,000	50,000,000
10	2015	2016	2015- 2016	55,000,000	0	5,000,000	50,000,000
11	2016	2017	2016- 2017	55,000,000	0	5,000,000	50,000,000
12	2017	2018	2017- 2018	55,000,000	0	5,000,000	50,000,000
13	2018	2019	2018- 2019	55,000,000	0	5,000,000	50,000,000
14	2019	2020	2019- 2020	55,000,000	0	5,000,000	50,000,000
15	2020	2021	2020- 2021	55,000,000	0	5,000,000	50,000,000

<sup>1</sup> The Consent Decree requires Unit 3 to curtail production in 2007, 2008 and 2009 from 8,760 hours of potential production to 1,400 hours of potential production, an 84% decrease in operating availability. The Consent Decree further requires shut down of Unit 3 by the end of 2009.

<sup>2</sup> Unit 3 represents 10% of the full value of the Project Facility and the total Full Value Assessment Amount is adjusted for Unit 3 operating availability limitations.

SCH A-2

(C) Amount of Payments in Lieu of Taxes. (1) Subject to adjustments pursuant to Subsection (C)(3) of Section 2.02 of the Payment in Lieu of Tax Agreement, the payments in lieu of property taxes with respect to the Project Facility to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of the Payment in Lieu of Tax Agreement shall be computed separately for each Taxing Entity as follows:

(a) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Project Facility were owned by the Company and not the Agency by multiplying (i) the Total Full Value Assessment Amount (including the Dresden Value) by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Project Facility if the Project Facility were owned by the Company and not the Agency.

(b) In each tax year during the term of the Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to the Payment in Lieu of Tax Agreement with respect to the Project Facility shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity for such calendar year.

(2) Payments in lieu of property taxes shall be adjusted as follows:

(a) In the event that all or substantially all of the Project Facility is damaged, destroyed, or retired, then the payments in lieu of property taxes with respect to such property shall be reduced to the amount of property taxes which would otherwise be payable in relation to the damaged, destroyed, or retired property.

(b) The Total Full Value Assessment Amounts set forth in Subsection 2.02(B) of the Payment in Lieu of Tax Agreement assume that the Town of Torrey maintains an equalization rate of 100% during each year of the Payment in Lieu of Tax Agreement. In the event that the equalization rate changes, the Total Full Value Assessment Amount shall be adjusted up (in the case of an equalization rate higher than 100%) or down (in the case of an equalization rate lower than 100%) for the applicable tax year to maintain the same Total Full Value Assessment Amount (after application of the equalization rate).

(3) The parties recognize that the purpose of the Project is to create or retain permanent private sector jobs in Yates County, both in the form of direct employees at the Project Facility and outsourced employment. Accordingly, the parties have agreed that the amount of payments in lieu of taxes payable with respect to the Project Facility

shall bear a direct relationship to the success or lack of success of the Project in achieving this goal. The Company agrees that the amount of payments lieu of property tax payable by the Company pursuant to the Payment in Lieu of Tax Agreement shall be adjusted as follows:

(a) The Agency and the Company agree that the base employment level (the "Base Employment Level") with respect to the Project Facility shall equal 32 FTE workers (as defined and computed in Section (C)(3)(b) below).

(b) On or before February 15 of each calendar year during the term of the Payment in Lieu of Tax Agreement, the Company shall file with the Agency an affidavit substantially in the form of Exhibit C attached hereto (the "Annual Employment Affidavit") indicating the sum of the average number of (i) full time equivalent employees (40 hours per week equaling one full time equivalent employee ("FTE") employed by the Company at the Project Facility during the last calendar year), and (ii) full time equivalent outsourced workers retained by the Company at the Project Facility during the last calendar year.

(c) If the Company fails to file the Annual Employment Affidavit with the Agency on or before February 15 of a calendar year, then the Agency shall be entitled to assume that the Company employed 16 FTE employees and outsourced workers during such period.

(d) Notwithstanding anything herein to the contrary, in the event that the Annual Employment Affidavit filed by the Company with the Agency indicates that the Company employed less than 80% of the Base Employment Level during such period, the Total Full Value Assessment Amount of the Improvement shall be adjusted for the purpose of computing the amount of payments in lieu of taxes for the next tax year as provided in the following table:

Level Number	Employment Level	Adjustment to Assessed Value
1.	If the FTE level of employment and outsourced employment is equal to at least 80% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount is equal to the amount described in Section 2.02(B)(1)(b) of the Payment in Lieu of Tax Agreement

2.	If the FTE level of employment and outsourced employment is below 80% but equal to or above 70% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount described in Section 2.02(B)(1)(b) of the Payment in Lieu of Tax Agreement is increased by an amount equal to \$1 million
3.	If the FTE level of employment and outsourced employment is below 70% but equal to or above 60% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount described in Section 2.02(B)(1)(b) of the Payment in Lieu of Tax Agreement is increased by an amount equal to \$2 million
4.	If the FTE level of employment and outsourced employment is below 60% but equal to or above 50% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount described in Section 2.02(B)(1)(b) of the PILOT Agreement is increased by an amount equal to \$3 million
5.	If the FTE level of employment and outsourced employment is below 50% but equal to or above 40% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount described in Section 2.02(B)(1)(b) of the Payment in Lieu of Tax Agreement is increased by an amount equal to \$4 million
6.	If the FTE level of employment and outsourced employment is below 40% but equal to or above 30% of the Base Employment Level	The Assessed Value of the Total Full Value Assessment Amount described in Section 2.02(B)(1)(b) of the Payment in Lieu of Tax Agreement is increased by an amount equal to \$5 million

(e) Notwithstanding anything herein to the contrary, in the event that the Annual Employment Affidavit filed by the Company with the Agency with respect to a particular calendar year indicates that the Company increased the number of FTE employees and outsourced workers by at least ten percent (10%) over the immediately prior calendar year, the Company will be entitled to move up at least one level in the table contained in Section (C)(3)(d) above.

(f) The Company agrees to file a copy of the Annual Employment Affidavit with the Town at the same time it files such form with the Agency.

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(D) Additional Amounts in Lieu of Taxes. Improvements to the Project Facility (including structural additions and additional buildings) that do not increase the Project Facility's rated capacity of 158 megawatts shall not increase the amount of payments in lieu of property tax payable hereunder; provided, however, if the improvements are owned by or leased to a third party unrelated to the Company, the unrelated third party will pay 100% of normal taxes on such improvements. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land that do increase the Project Facility's rated capacity or constitute a re-powering of Unit 3 or are owned by or leased to a third party unrelated to the Company (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees that such Additional Facilities are not covered by the Payment in Lieu of Tax Agreement and would require either an amendment hereof based upon a fact-specific analysis of the circumstances or a separate payment in lieu of tax agreement to cover the Additional Facilities.

(E) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of the Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(F) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(G) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.



RECYCLED



FIBERKRAFT, INC., BEDFORD, NH 800-258-1063

EA 912

## Appendix C

## State Environmental Quality Review

**SHORT ENVIRONMENTAL ASSESSMENT FORM**

For UNLISTED ACTIONS Only

**PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)**

1. APPLICANT/SPONSOR AES Greenidge, L.L.C.	2. PROJECT NAME PILOT Transaction with the Yates County IDa
3. PROJECT LOCATION: Municipality <u>Town of Torrey</u> County <u>County of Yates</u>	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) <u>590 Plant Road, Dresden</u>	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: <u>PILOT Transaction with Yates County Industrial Development Agency requiring PSC review pursuant to PSL Section 70</u>	
7. AMOUNT OF LAND AFFECTED: Initially _____ acres    Ultimately _____ acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open.Space <input type="checkbox"/> Other Describe:	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals: <u>To the extent relevant and responsive, previously provided by Yates County IDA in January and February 2006. See attached SEQRA resolution, EAF and attached approved PILOT documents</u>	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals:	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>Douglas J. Riv</u> Date: <u>6/8/06</u> Signature: <u>[Signature]</u>	

**If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment**

**PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)**

**A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.47** If yes, coordinate the review process and use the FULL EAF.

☐ Yes ☐ No

**B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.67** If No, a negative declaration may be superseded by another involved agency.

☐ Yes ☐ No

**C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)**

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:

**D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?**

☐ Yes ☐ No If Yes, explain briefly:

**E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?**

☐ Yes ☐ No If Yes, explain briefly:

**PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)**

**INSTRUCTIONS:** For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

☐ Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

☐ Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination.

\_\_\_\_\_  
Name of Lead Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name of Responsible Officer in Lead Agency

\_\_\_\_\_  
Title of Responsible Officer

\_\_\_\_\_  
Signature of Responsible Officer in Lead Agency

\_\_\_\_\_  
Signature of Preparer (if different from responsible officer)

**SEQR RESOLUTION  
AES GREENIDGE, L.L.C.**

A special meeting of the Yates County Industrial Development Agency (the "Agency") met in special session at the offices of the Agency located at One Keuka Business Park in Penn Yan, Yates County, New York on Wednesday, January 18, 2006, at 8:00 o'clock a.m., local time.

The meeting was called to order by the (Vice) Chairman and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Jeff Gifford	Vice Chairman
Dave Reeve	Treasurer
Susan Andersen	Secretary
Jerry Hiller	Assistant Secretary/Treasurer
Taylor Fitch	Member
Tim Trombley	Member

**ABSENT:**

Jerry Nissen	Chairman
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**THE FOLLOWING PERSONS WERE ALSO PRESENT:**

Steven E. Isaacs	Executive Director
Doreen J. Jensen	Administrative Assistant
A. Joseph Scott, III	Agency Bond Counsel

The following resolution was offered by Jerry Hiller, seconded by Taylor Fitch, to wit:

Resolution No. \_\_\_\_\_

**RESOLUTION DETERMINING THAT ACTION TO UNDERTAKE A CERTAIN INDUSTRIAL PROJECT FOR AES GREENIDGE, L.L.C. IS A "TYPE II ACTION" AND NO FURTHER ACTION IS REQUIRED UNDER SEQRA.**

WHEREAS, Yates County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 113 of the 1975 Laws of New York, as amended, constituting Section 893-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job

opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, AES Greenidge, L.L.C. (the "Company") has presented an application (the "Application"), including a cost benefit analysis, to the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 153 acres located at 590 Plant Road in the Town of Torrey, Yates County, New York (the "Land"), together with the existing buildings located thereon containing in the aggregate approximately 91,960 square feet of space (collectively, the "Facility"), (2) the reconstruction and renovation of the Facility, including the acquisition and installation of certain pollution control facilities, and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned and operated by the Company as a coal-fired electric generating plant and other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "DEC Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA") the Agency desires to determine whether the Project may have a "significant effect on the environment" and therefore require the preparation of an environmental impact statement; and

WHEREAS, to aid the Agency in determining whether the Project may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an environmental assessment form (the "EAF") with respect to the Project, a copy of which EAF was presented to and reviewed by the Agency at this meeting and a copy of which is on file at the office of the Agency; and

WHEREAS, pursuant to SEQRA, the Agency has examined the EAF in order to make an initial determination as to the potential environmental significance of the Project; and

WHEREAS, the Agency has been informed that the Project Facility is subject to a New York State Department of Environmental Conservation Consent Decree issued in January of 2005 (the "Consent Decree") which requires the shut-down of the Project Facility in 2009 unless an environmental control project is undertaken which meets the requirements of the Consent Decree or the Project Facility re-powers with different generating technology; and

WHEREAS, as the Project is subject to the Consent Decree, the Project appears to constitute a "Type II Action" (as said quoted term is defined in the Regulations), and therefore no environmental impact statement or any other determination or procedure under the Regulations is necessary;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon an examination of the Application, the EAF, the Consent Decree and representations by the Company, the Agency makes the following findings with respect to the Project:

(A) The Project (the "Project") consists of the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 153 acres located at 590 Plant Road in the Town of Torrey, Yates County, New York (the "Land"), together with the existing buildings located thereon containing in the aggregate approximately 91,960 square feet of space (collectively, the "Facility"), (2) the reconstruction and renovation of the Facility, including the acquisition and installation of certain pollution control facilities, and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned and operated by the Company as a coal-fired electric generating plant and other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

(B) Pursuant to Section 617.5(c)(29) of the Regulations, the Project is being undertaken in accordance with the provisions of the Consent Decree, and therefore, the Project is subject to civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion.

Section 2. Based upon the foregoing, the Agency makes the following findings and determinations with respect to the Project:

(A) The Project constitutes a "Type II Action" (as said quoted term is defined in the Regulations); and

(B) Therefore, the Agency hereby determines that no environmental impact statement or any other determination or procedure is required under the Regulations.

Section 3. The Chairman, Vice Chairman and/or the Executive Director of the Agency is hereby directed to file a copy of this Resolution with respect to the Project in the office of the Agency.

Section 4. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Jerry Nissen	VOTING	<u>Absent</u>
Jeff Gifford	VOTING	<u>Yes</u>
Dave Reeve	VOTING	<u>Yes</u>
Susan Andersen	VOTING	<u>Yes</u>
Jerry Hiller	VOTING	<u>Yes</u>
Taylor Fitch	VOTING	<u>Yes</u>
Tim Trombley	VOTING	<u>Yes</u>

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned (Assistant) Secretary of Yates County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the resolution contained therein, held on January 18, 2006, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and of such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respect duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present through said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 15<sup>th</sup> day of February, 2006.

*Susan K. Andersen*  
(Assistant) Secretary

(SEAL)

YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY

ENVIRONMENTAL ASSESSMENT FORM

IMPORTANT NOTICE: The answers to the questions contained in this environmental assessment form are necessary to aid Yates County Industrial Development Agency in making the environmental decisions required in connection with your proposed project. Accordingly, all questions should be answered accurately and completely by an officer or employee of your firm who is thoroughly familiar with the proposed project, the site of the proposed project and all information available locally concerning said project and said site. This environmental assessment form is subject to acceptance by the Agency.

TO: YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
One Keuka Business Park  
Penn Yan, New York 14527  
Attention: Executive Director

This Environmental Assessment Form by applicant respectfully states:

APPLICANT: *ABS Greenidge LLC*  
APPLICANT'S STREET ADDRESS: *540 Plant Rd*  
CITY: *Dresden* STATE: *NY* PHONE NO.: *315 536 2359*

NAME OF PERSON(S) AUTHORIZED TO SPEAK FOR APPLICANT WITH RESPECT TO THIS ENVIRONMENTAL ASSESSMENT FORM: *Douglas Rou*

IF APPLICANT IS REPRESENTED BY AN ATTORNEY, COMPLETE THE FOLLOWING:

NAME OF FIRM: *Hiscock + Barclay*  
NAME OF ATTORNEY: *Peter H. Sweetz, Esq*  
ATTORNEY'S STREET ADDRESS: *300 South State Street*  
CITY:            STATE:            PHONE NO.:  
*Syracuse NY*                      *315, 425, 2792*

NOTE: PLEASE READ THE INSTRUCTIONS ON PAGE 2 BEFORE FILLING OUT THIS ENVIRONMENTAL ASSESSMENT FORM.

### INSTRUCTIONS

1. The Agency will not consider an environmental assessment form complete unless, in the judgement of the Agency, said environmental assessment form contains sufficient information upon which to base a decision as to whether the action which is the subject of this environmental assessment form (the "Action") may or will not have a significant effect upon the environment.
2. Fill in all blanks, using "none" or "not applicable" or "N/A" where the question is not appropriate to the project which is the subject of this environmental assessment form (the "Project").
3. If an estimate is given as the answer to a question, put "(est)" after the figure or answer which is estimated.
4. If more space is needed to answer any specific question, attach a separate sheet.
5. This environmental assessment form is designed to assist in determining whether the proposed Action may have a significant effect on the environment. Please complete the entire environmental assessment form. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review.
6. It is expected that completion of this environmental assessment form will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.
7. When completed, return two (2) copies of this environmental assessment form to the Agency at the address indicated on the first page of this environmental assessment form.
8. Please note that Article 6 of the Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the applicant feels that there are elements of the Project which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the applicant's competitive position, the applicant may identify such elements in writing and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law.

1.	Project Number	
2.	Date environmental assessment form ("EAF") received by Agency.	, 20
3.	Date referred to Attorney for review.	, 20
4.	Date copy of EAF mailed to members.	, 20
5.	Date notice of Agency meeting on EAF posted.	, 20
6.	Date notice of Agency meeting on EAF mailed.	, 20
7.	Date of Agency meeting to determine significance.	, 20
8.	Date Notice of Significance (or Non-Significance) mailed.	, 20

## PROJECT INFORMATION

A. Identity of the Project:

1. Name of Project: Multi Pollutant Control Project
2. Location of the Project:
  - a. Street address: 540 Plant Rd
  - b. City of
  - c. Town of Tovvey
  - d. Village of Dresden
  - e. County of Yates
3. Identity of Owner (if different than the Applicant):
  - a. Name of Owner: AES Greenidge LLC
  - b. Street Address of Owner: 540 Plant Rd
  - c. City: Dresden State: NY Phone Number: 315 536 2359
  - d. Name of Person authorized to speak for owner with respect to this environmental assessment form: Douglas Rou
4. Description of the Project: (Please provide a brief narrative description of the Project or the Action).  
Pollution control project

B. Description of the Project Site: (Physical setting of overall project, both developed and undeveloped areas)

1. Present land use (indicate each applicable use): Urban ☐, Industrial ☒, Commercial ☐, Suburban ☐, Rural ☐, Forest ☐, Agriculture ☐, Other:
2. Total acreage of project area: 3 acres.

<u>Approximate Acreage</u>	<u>Presently</u>	<u>After Completion</u>
Meadow or Brushland (Non-agricultural)	<input type="radio"/> acres	<input type="radio"/> acres
Forested	<input type="radio"/> acres	<input type="radio"/> acres
Agricultural (Includes orchards, cropland, pasture, etc.)	<input type="radio"/> acres	<input type="radio"/> acres
Wetland (Freshwater or tidal as per Articles 24, 25 of ECL)	<input type="radio"/> acres	<input type="radio"/> acres
Water Surface Area	<input type="radio"/> acres	<input type="radio"/> acres
Unvegetated (rock, earth or fill)	<input type="radio"/> acres	<input type="radio"/> acres
Roads, buildings and other paved surfaces	<u>3</u> acres	<u>3</u> acres

Other (indicate type)

0 acres

0 acres

3. What is predominant soil type(s) on the Project site?

a. Soil drainage: Well drained: 100 % of site  
Moderately well drained: % of site  
Poorly drained: % of site

b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? 0 acres (See 1 NYCRR 370).

4. a. Are there bedrock outcroppings on project site? Yes ☒; No ☐.

b. What is depth to bedrock? 3.0 (in feet).

5. Approximate percentage of proposed project site with slopes:

a. 0-10%: 100 %  
b. 10-15%: %  
c. 15% or greater: %

6. Is the Project contiguous to, or does it contain, a building, site or district listed on the National Register of Historic Places? Yes ☐; No ☒.

7. Is the Project substantially contiguous to a site listed on the Register of National Natural Landmarks? Yes ☐; No ☒.

8. What is the depth to the water table? 5.20 (in feet).

9. Is the site of the Project located over a primary, principal or sole source aquifer? Yes ☐; No ☒.

10. Do hunting, fishing or shell fishing opportunities presently exist in the area of the Project? Yes ☐; No ☒.

11. Does the site of the Project contain any species of plant or animal life that is identified as threatened or endangered? Yes ☐; No ☒. According to US Dept of Interior - Fish & Wildlife Service

If yes, identify each species

12. Are there any unique or unusual land forms on the site of the Project? (i.e. cliffs, dunes, other geological formations) Yes ☐; No ☒. If yes, describe:

13. Is the site of the Project presently used by the community or neighborhood as an open space or recreation area? Yes ☐; No ☒. If yes, describe:

14. Does the site of the Project offer or include scenic views or vistas known to be important to the community? Yes ☐; No ☒. If yes, describe:

15. Are there any streams within or contiguous to the site of the Project? Yes ☐; No ☒. If yes, please indicate the name of such stream and the name of the river to which such stream is tributary:

16. Are there any lakes, ponds, or wetlands areas within or contiguous to the site of the Project? Yes ☐; No ☒. If yes, please indicate:

a. Name: NA

b. Size (in acres): NA

17. Is the site of the Project served by existing public utilities? Yes ☐; No ☒.

a. If yes, does sufficient capacity exist to allow connection? Yes ☐; No ☐.

b. If yes, will improvements be necessary to allow connection? Yes ☐; No ☐.

18. Is the site of the Project located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes ☐; No ☒. If yes, identify:

19. Is the site of the Project located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL and 6 NYCRR Part 617? Yes ☐; No ☒. If yes, describe:

20. Has the site of the Project ever been used for the disposal of solid or hazardous wastes? Yes ☐; No ☒. If yes, describe:

C. Project Description:

1. Physical dimensions and scale of the Project (fill in dimensions as appropriate):

a. Total contiguous acreage owned by project sponsor: 3 acres.

b. Project acreage developed: 3 acres initially; 3 acres ultimately.

c. Project acreage to remain undeveloped: 0 acres.

d. Length of project, in miles: NA (if appropriate).

e. If project is an expansion, indicate percent of expansion proposed: NA %.

f. Number of off-street parking spaces existing: NA ; proposed

g. Maximum vehicular trips generated per hour: NA (upon completion of project).

h. If residential: Number and type of housing units:

	<u>One Family</u>	<u>Two Family</u>	<u>Multiple Family</u>	<u>Condominium</u>
Initial	<u>NA</u>			
Ultimate	<u>NA</u>			

i. Dimensions (in feet) of largest proposed structure: 145' height; 60' width; 100' length.

j. Linear feet of frontage along a public thoroughfare that the Project will occupy is? NA ft.

2. How much natural material (i.e. rock, earth, etc.) will be removed from the site of the Project? tons; 0 cubic yards.

3. Will disturbed areas be reclaimed? Yes ☐; No ☐; ☒ N/A

a. If yes, for what intended purpose is the site of the Project being reclaimed?

- b. Will topsoil be stockpiled for reclamation? Yes ☐; No ☐.
- c. Will upper subsoil be stockpiled for reclamation? Yes ☐; No ☐.
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from the site of the Project?  
acres. 0
5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by the Project? Yes ☐; No ☒.
6. If single phase project: Anticipated period of construction: months (including demolition).
7. If multi-phased project: Oct 2006 - mid Nov 2006
- a. Total number of phases anticipated:
- b. Anticipated date of commencement of phase one: month year (including demolition).
- c. Approximate completion date of final phase: month year.
- d. Is phase one financially dependent on subsequent phases? Yes ☐; No ☐.
8. Will blasting occur during construction? Yes ☐; No ☒.
9. Number of jobs generated: during construction: 120 ; after the Project is complete: 0
10. Number of jobs eliminated by the Project: 0
11. Will the Project require relocation of any projects or facilities? Yes ; No ☒. If yes, explain:
12. Is surface liquid waste disposal involved? Yes ☐; No ☒.
- a. If yes, indicate type of waste (sewage, industrial, etc.) and amount:
- b. Name of water body into which effluent will be discharged:
13. Will the Project involve the disposal of subsurface liquid waste? Yes ☐; No ☒. If yes, indicate type of waste (sewage, industrial, etc.) and amount:
14. Will surface area of an existing lake, pond, stream, bay or other body of water be increased or decreased by the Project? Yes ☐; No ☒. If yes, explain:
15. Is the Project or any portion of the Project located in the 100-year flood plain? Yes ☐; No ☒. If yes, describe:
16. Will the Project generate solid waste? Yes ☒; No ☐. 30,000 T/yr add flyash
- a. If yes, what is the amount per month? 2500 tons.
- b. If yes, will an existing solid waste facility be used? Yes ☒; No ☐. If yes, give name: ; location: Lockwood, Swanton Rd

- d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? Yes ☐; No ☒. If yes, explain:
17. Will the Project involve the disposal of solid waste? Yes ☒; No ☐.
- a. If yes, what is anticipated rate of disposal? 2500 tons/month.
- b. If yes, what is the anticipated life of the proposed disposal site identified in question 16 above: 35 years. (2040)
- c. Will any wastes not go into a sewage disposal system or into a sanitary landfill? Yes ☐; No ☒. If yes, explain:
18. Will the Project use herbicides or pesticides? Yes ☐; No ☒. If yes, explain:
19. Will the Project routinely produce odors (more than one hour per day)? Yes ☐; No ☒. If yes, explain:
20. Will the Project produce operating noise exceeding the local ambient noise levels? Yes ☐; No ☒. If yes, explain:
21. Will the Project result in an increase in energy use? Yes ☒; No ☐. If yes, indicate type(s): Electric
22. If water supply for the Project is from wells, indicate pumping capacity: NA gallons/minute.
23. Total anticipated water use of the Project per day: 34000 gallons/day. 93 gal/min check
24. Does the Project involve local, state or federal funding? Yes ☒; No ☐. If yes, explain: DOE co-funding

D. Zoning and Planning Information:

1. Does proposed action involve a planning or zoning decision? Yes ☐; No ☐. If yes, indicate decision required: ☐ zoning amendment; ☐ zoning variance; ☐ special use permit; ☐ subdivision; ☒ site plan; ☐ new/revision of master plan; ☐ resource management plan; other: ?
2. What is the present zoning classification(s) of the site of the Project? Industrial
3. What is the maximum potential development of the site of the Project if developed as permitted by the present zoning? Industrial
4. What is the proposed zoning of the site of the Project? Industrial
5. What is the maximum potential development of the site of the Project if developed as permitted by the proposed zoning? Industrial
6. Is the proposed action consistent with the recommended uses in adopted local land use plans? Yes ☒; No ☐. If no, explain:
7. What are the predominant land use(s) and zoning classification(s) within a 1/4 mile radius of the proposed action? Industrial, residential, agricultural
8. Is the proposed action compatible with adjoining/surrounding land uses within a 1/4 mile? Yes ☒; No ☐. If no, explain:

9. If the proposed action is the subdivision of land, how many lots are proposed? NA. What is the minimum lot size proposed? NA.
10. Will the proposed action require any authorization(s) for the formation of sewer or water districts? Yes ☐; No ☒. If yes, explain: .
11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)? Yes ☐; No ☒. If yes, is existing capacity sufficient to handle projected demand? Yes ☐; No ☐.
12. Will the proposed action result in the generation of traffic significantly above present levels? Yes ☒; No ☐. If yes, is the existing road network adequate to handle the additional traffic? Yes ☒; No ☐.

**PART 2. OTHER INVOLVED AGENCIES**

**GENERAL INFORMATION:** Please indicate in the space below all other local agencies, boards, authorities, districts, commissions or governing bodies (including any city, county and other political subdivision of the State of New York and all state departments, agencies, boards, public benefit corporations, public authorities or commissions) involved in approving or funding or directly undertaking action with respect to the Project. For example, do you need a municipal building permit to undertake the Project? Do you need a zoning approval to undertake the Project? If so, you would list the appropriate municipal building department or planning or zoning commission which would give said approvals. Since only those agencies notified of an environmental determination are bound thereby, it is to the applicant's advantage to ascertain, exercising all due diligence, all other agencies involved with the Project.

1. Federal action required:

- a. Is any federal permit required in connection with the Project? Yes ☐; No ☐.
- b. Does the Project involve any federal funding? Yes ☒; No ☐.
- c. Does the Project involve any district action by any federal agency? Yes ☐; No ☐.
- d. If the answer to any of the foregoing is yes, please describe briefly: *DOE co-funding*

2. State or local action required:

- a. Is any state or local permit required in connection with the Project? Yes ☒; No ☐.
- b. Does the Project involve any state or local funding? Yes ☐; No ☒.
- c. Does the Project involve any district action by any state or local agency? Yes ☐; No ☐.
- e. If the answer to any of the foregoing is yes, please describe briefly: *building permit*

3. List of governmental action required:

	<u>Action Required</u>		<u>Submittal Date</u>	<u>Approval Date</u>
	<u>(Yes, No)</u>	<u>If yes, Type</u>		
City, Town, Village Board				
City, Town, Village Planning Board	17			
City, Town, Zoning Board	7			
City, County Health Department				
Other local agencies		<i>Bldg Permit</i>		

Other regional agencies

State Agencies

Federal Agencies

ONE CHECKLIST

GENERAL INFORMATION: The following items describe various actions which may be involved with a project. Please indicate which items describe action which may be undertaken with respect to the Project for which you are seeking assistance from the Agency by writing the word "Yes" in the blank provided preceding each item which describes action which may be taken with respect to the Project. Note that most capital projects consist of a set of activities or steps (i.e. planning, design, contracting, construction and operation). For purposes of answering this part, answer YES if the listed activity will probably occur with respect to the Project, even if such activity will be undertaken by someone else other than the Agency. ANSWER ALL QUESTIONS.

A. Will the Project involve action which takes place wholly or partially within or substantially contiguous to any of the following:

- ☐ (1) Publicly owned or operated parkland, recreation area or designated open space, including any site on the Register of National Natural Landmarks (see 36CFR part 62, 1986).
- ☐ (2) Any critical environmental area designated by any local or state agency pursuant to 6NYCRR 17.4(h).
- ☐ (3) Any building, structure, facility, site or district listed on the National Register of Historic Places (see 36CFR part 62, 1986) or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in said National Register, or that is listed on the State Register of Historic Places.
- ☒ (4) An agricultural district certified pursuant to Article 25 of the Agricultural and Markets Law of the State of New York.

B. Does the Project include any of the following types of actions?

- ☒ (1) Adoption by a municipality of a land use plan or the initial adoption of comprehensive zoning regulations.
- ☐ (2) Adoption by any agency of a comprehensive resource management plan.
- ☐ (3) Adoption of changes in the allowable uses within any zoning district.
- ☐ (4) The granting of a zoning change.
- ☐ (5) Acquisition, sale, lease, annexation or other transfer of one hundred (100) or more contiguous acres of land by a state or local government or agency thereof.
- ☒ (6) Any structure exceeding one hundred (100) feet above original ground level.

C. Does the Project or Action meet or exceed any of the following thresholds:

- ☐ (1) A project or action which involves the physical alteration of ten (10) acres.
- ☐ (2) A project or action which would use ground or surface water in excess of two million (2,000,000)

gallons per day.

- ☐ (3) Parking for one thousand (1,000) vehicles.
- ☐ (4) A facility with more than one hundred thousand (100,000) square feet of gross floor area.

D. Does the Project involve the expansion of existing non-residential facilities by more than fifty (50) percent of any of the following thresholds:

- ☐ (1) A project or action which involves the physical alteration of ten (10) acres.
- ☐ (2) A project or action which would use ground or surface water in excess of two million (2,000,000) gallons per day.
- ☐ (3) Parking for one thousand (1,000) vehicles.
- ☐ (4) A facility with more than one hundred thousand (100,000) square feet of gross floor area.

E. Does the Project involve the construction of new residential facilities which meet or exceed any of the following thresholds:

- ☐ (1) Ten (10) units in a municipality which has not adopted zoning or subdivision regulations.
- ☐ (2) Fifty (50) units not to be connected (at commencement of habitation) to existing community or public water and sewerage systems, including sewage treatment works.
- ☐ (3) Two hundred fifty (250) units to be connected (at commencement of habitation) to existing community or public water and sewerage systems, including sewage treatment works.

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#### PART 4. ACTION CHECKLIST

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GENERAL INFORMATION: Please indicate whether any of the following impacts may be reasonably expected to result from the Project. Please indicate which items describe action which may be undertaken with respect to the Project for which you are seeking assistance from the Agency by writing the word "Yes" in the blank provided preceding each item which describes action which may be taken with respect to the project and by writing the word "No" in the blank provided preceding each item which does not describe action which may be taken with respect to the Project.

1. Will the Project result in a significant adverse change in the existing:

☒ (a) air quality.

☒ (b) ground or surface water quality or quantity.

☒ (c) traffic or noise levels.

If so, please explain very briefly:

2. Will the Project create a substantial increase in:

☒ (a) solid waste production.

☒ (b) potential for drainage problems.

☒ (c) potential for erosion problems.

☒ (d) potential for flooding problems.

☒ (e) potential for leaching problems.

If so, please explain very briefly:

3. Will the Project result in:

☒ (a) the removal or destruction of large quantities of vegetation or fauna.

☒ (b) substantial interference with the movement of any resident or migratory fish or wildlife species.

☒ (c) impacts on a significant habitat area.

☒ (d) substantial adverse effects on a threatened or endangered species of animal or plant or the habitat of such a species.

☒ (e) other significant adverse effects to natural resources.

If so, please explain very briefly:

4. Will the Project encourage or attract a large number of people to a place or places for more than a few days compared to the number of people who would come to such place

if the Project was not in existence? Yes ☐; No ☒

If so, please explain very briefly:

5. Will the Project create a material conflict with a community's existing plans or goals as officially approved or adopted? Yes ☐; No ☒

If so, please explain very briefly:

6. Will the Project impair the character or quality of important historical, archaeological, architectural or aesthetic resources? Yes ☐; No ☒

If so, please explain very briefly:

7. Will the Project result in a major change in either the quantity or type of energy currently used? Yes ☐; No ☒

If so, please explain very briefly:

8. Will the Project create or produce anything which is or can be a hazard to human health or safety? Yes ☐; No ☒

If so, please explain very briefly:

9. Will the Project result in a change in the use, or intensity of use, of land (including agricultural, open space or recreational resources), or in their capacity to support existing uses? Yes ☐; No ☒

If so, please explain very briefly:

10. Will the Project create a material demand for other governmental actions or projects which will result in one of the above consequences? Yes ☐; No ☒

If so, please explain very briefly:

11. Will the Project result in changes in two or more elements of the environment, such as those listed above, no one of which has a significant effect on the environment, but when considered together result in a substantial adverse impact on the environment? Yes ☐; No ☒

If so, please explain very briefly:

## PART 5. PROJECT IMPACTS AND THEIR MAGNITUDE

**GENERAL INFORMATION:** In completing this part, the reviewer should be guided by the question: Have my responses and determinations been reasonable? The reviewer is not expected to be an expert environmental analyst.

1. Identifying that an effect will be potentially large (column 2) does not mean that it is also necessarily significant. Any large effect must be evaluated in PART 6 to determine significance. By identifying an effect in column 2 simply asks that it be looked at further.
2. The Examples provided are to assist the reviewer by showing types of effects and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site, other examples and/or lower thresholds may be more appropriate for a Potential Large Impact rating.
3. The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
4. The number of examples per question does not indicate the importance of each question.
5. In identifying impacts, consider long-term, short-term and cumulative effects.
6. Answer each of the 19 questions in this part. Answer Yes if there will be any effect.
7. Maybe answers should be considered as Yes answers.
8. If answering Yes to a question, then check the appropriate box (column 1 or 2) to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
9. If reviewer has doubt about the size of the impact, consider the impact as potentially large and proceed to PART 6.
10. If a potentially large impact or effect can be reduced by change(s) in the project to a small to moderate magnitude, place a Yes in column 3. A No response indicates that such a reduction is not possible. This must be explained in PART 6.

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
<p><b>IMPACT ON LAND</b></p> <p>1. Will the Project result in a physical change to the site of the Project?            Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Examples that would apply to column 2</p> <p>* Any construction on slopes of 15% or greater (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

* Construction on land where the depth to the water table is less than 3 feet.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction of paved parking area for 1,000 or more vehicles.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction that will continue for more than 1 year or involve more than one phase or stage.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e. rock or soil) per year.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction or expansion of a sanitary landfill.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
2. Will there be an effect to any unique or unusual land forms found on the site? (i.e. cliffs, dunes, geological formations, etc.) Yes <input type="checkbox"/> ; No <input checked="" type="checkbox"/>			
* Specific land forms:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IMPACT ON WATER</b>			
3. Will the Project affect any water body designated as protected (Under Articles 15, 24, 25 or the Environmental Conservation Law, ECL)? Yes <input type="checkbox"/> ; No <input checked="" type="checkbox"/>			
Examples that would apply to column 2			
* Developable area of site contains a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Dredging more than 100 cubic yards of material from channel of a protected stream.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Extension of utility distribution facilities through a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

* Construction in a designated freshwater or tidal wetland.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
4. Will the Project affect any non-protected existing or new body of water? Yes <input type="checkbox"/> ; No <input checked="" type="checkbox"/> .			
Examples that would apply to column 2			
* A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction of a body of water that exceeds 10 acres of surface area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
5. Will the Project affect surface or groundwater quality or quantity? Yes <input type="checkbox"/> ; No <input checked="" type="checkbox"/> .			
Examples that would apply to column 2			
* Project will require a discharge permit.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project requires use of a source of water that does not have approval to serve the Project.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project requires water supply from wells with greater than 45 gallons per minute pumping capacity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction or operation causing any contamination of a public water supply system.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will adversely affect groundwater.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project would use water in excess of 20,000 gallons per day.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

* Project will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will require the storage of petroleum or chemical products greater than 1,100 gallons.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will allow residential uses in areas without water and/or sewer services.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
6. Will Project alter drainage flow, patterns or surface water runoff? Yes <input type="checkbox"/> ; No <input checked="" type="checkbox"/> .			
Examples that would apply to column 2			
* Project would change flood water flows	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project may cause substantial erosion.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project is incompatible with existing drainage patterns.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will allow development in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
IMPACT ON AIR			
7. Will project affect air quality? Yes <input type="checkbox"/> ; No <input checked="" type="checkbox"/> .			
Examples that would apply to column 2			
* Project will induce 1,000 or more vehicle trips in any given hours.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will result in the incineration of more than 1 ton of refuse per hour.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hr.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

<p>* Project will allow an increase in the amount of land committed to industrial use.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>* Project will allow an increase in the density of industrial development within existing industrial areas.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>* Other impacts:</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p><b>IMPACT ON PLANTS AND ANIMALS</b></p>			
<p>8. Will the Project affect any threatened or endangered species? Yes <input type="checkbox"/>; No <input checked="" type="checkbox"/>.</p>			
<p>Examples that would apply to column 2</p>			
<p>* Reduction in one or more species listed on the New York or Federal list, using the site, over or near site or found on the site.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>* Removal of any portion of a critical or significant wildlife habitat.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>* Application of pesticide or herbicide more than twice a year other than for agricultural purposes.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>* Other impacts:</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>9. Will the project substantially affect non-threatened or non-endangered species? Yes <input type="checkbox"/>; No <input checked="" type="checkbox"/>.</p>			
<p>Examples that would apply to column 2</p>			
<p>* Project would substantially interfere with any resident or migratory fish, shellfish or wildlife species.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p>* Project requires the removal of more than 10 acres of mature forest (over 100 years in age) or other locally important vegetation.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p><b>IMPACT ON AGRICULTURAL LAND RESOURCES</b></p>			
<p>10. Will the Project affect agricultural land resources? Yes <input type="checkbox"/>; No <input checked="" type="checkbox"/>.</p>			
<p>Examples that would apply to column 2</p>			

* Project would sever, cross or limit access to agricultural land (includes cropland, hayfields, pastures, vineyard, orchard, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction activity would excavate or compact the soil profile of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p align="center"><b>IMPACT ON AESTHETIC RESOURCES</b></p> <p>11. Will the Project affect aesthetic resources? Yes <input type="checkbox"/>; No <input checked="" type="checkbox"/>.</p> <p>Examples that would apply to column 2</p>			
* Proposed land uses, or project components, obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Proposed land uses, or project components, visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project components that will result in the elimination or significant screening of scenic views or vistas known to be important to the area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES			
12. Will the Project impact any site or structure of historic, pre-historic or paleontological importance? Yes <input type="checkbox"/> ; No <input checked="" type="checkbox"/>			
Examples that would apply to column 2			
* Project occurring wholly or partially within or contiguous to any facility or site listed on the State or National Register of historic places.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Any impact to an archaeological site or fossil bed located within the Project site.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other Impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
IMPACT ON OPEN SPACE AND RECREATION			
13. Will the Project affect the quantity or quality of existing or future open spaces or recreational opportunities? Yes <input type="checkbox"/> ; No <input checked="" type="checkbox"/>			
Examples that would apply to column 2			
* The permanent foreclosure of a future recreational opportunity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* A major reduction of an open space important to the community.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
IMPACT ON TRANSPORTATION			
14. Will there be an effect to existing transportation systems? Yes <input type="checkbox"/> ; No <input checked="" type="checkbox"/>			
Examples that would apply to column 2			
* Alteration of present patterns of movement of people and/or goods.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

* Project will result in major traffic problems.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IMPACT ON ENERGY</b>			
15. Will the Project affect the community's sources of fuel or energy supply? Yes <input type="checkbox"/> ; No <input checked="" type="checkbox"/> .			
Examples that would apply to column 2			
* Project will cause a greater than 5% increase in the use of any form of energy in the municipality.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>NOISE AND ODOR IMPACTS</b>			
16. Will there be objectionable odors, noise or vibration as a result of the Project? Yes <input type="checkbox"/> ; No <input checked="" type="checkbox"/> .			
Examples that would apply to column 2			
* Blasting within 1,500 feet of a hospital, school or other sensitive facility.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Odors will occur routinely (more than one hour per day).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will produce operating noise exceeding the local ambient noise levels for noise outside of structures.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will remove natural barriers that would act as a noise screen.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

### IMPACT ON PUBLIC HEALTH

17. Will the Project affect public health and safety?  
Yes ☐: No ☒

Examples that would apply to column 2

\* Project may cause a risk of explosion or release of hazardous substances (i.e. oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission.

☐
☐

☐ YES ☐ NO

\* Project may result in the burial of "hazardous wastes" (i.e. toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)

☐
☐

☐ YES ☐ NO

\* Storage facilities for one million or more gallons of liquefied natural gas or other flammable liquids.

☐
☐

☐ YES ☐ NO

\* Project may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste.

☐
☐

☐ YES ☐ NO

\* Other impacts:

☐
☐

☐ YES ☐ NO

### IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD

18. Will the Project affect the character of the existing community?  
Yes ☒: No ☐

Examples that would apply to column 2

\* The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.

☐
☐

☐ YES ☐ NO

\* The municipal budgets for capital expenditures or operating services will increase by more than 5% per year as a result of this project.

☐
☐

☐ YES ☐ NO

\* Project will conflict with officially adopted plans or goals.

☐
☐

☐ YES ☐ NO

\* Project will cause a change in the density of land use.

☐
☐

☐ YES ☐ NO

* Project will replace or eliminate existing facilities, structures or areas of historic importance to the community.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Development will create a demand for additional community services (e.g. schools, police, fire, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will set an important precedent for future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will create or eliminate employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
19. Is there, or is there likely to be, public controversy concerning the Project? Yes <input checked="" type="checkbox"/> ; No <input type="checkbox"/> .			
Examples that would apply to column 2			
* Either government or citizens of adjacent communities have expressed opposition or rejected the Project or have not been contacted.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Objections to the Project from within the community.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

## PART 6. DISCUSSION OF ENVIRONMENTAL IMPACTS

GENERAL INFORMATION: If there are or may be any environmental impacts associated with this proposed Project, please discuss such impacts and the measures which may be taken to mitigate or avoid any adverse impacts associated with this Project. ALL IMPACTS OR EFFECTS IDENTIFIED AS POTENTIALLY LARGE IN COLUMN 2 OF PART 5 OF THIS ENVIRONMENTAL ASSESSMENT FORM MUST BE DESCRIBED IN THIS PART, EVEN IF THE IMPACT(S) MAY BE MITIGATED. Please answer the following questions briefly but fully. Use additional paper if needed.

1. Describe the Project and its environmental setting:

pollution control project to control emissions of SO<sub>x</sub>, NO<sub>x</sub>, <sup>HF, HCl</sup> ~~CO<sub>2</sub>~~, Hg, ~~particulate~~  
at existing coal-powered electric generating facility

2. Describe the environmental impact of the Project, including short term and long term effects:

Project will reduce pollution to environment.

3. Describe any adverse environmental effects which cannot be avoided should the project be implemented:

additional solid waste to landfill (fly ash)

additional ammonia to air

4. With respect to any potentially large impacts identified in Column 2 of Part 5, please indicate whether it is reasonable to conclude that these impacts are important, taking into consideration the following, (a) the probability of the impact occurring; (b) the duration of the impact; (c) the irreversibility of the impact, including permanently lost resources of value; (d) whether the impact can or will be controlled; (e) the regional consequences of the impact; (f) the potential divergence of the impact from local needs and goals; and (g) whether known objections to the Project apply to this impact:

NA

5. Describe alternatives, if any, to the Project: *project is state of the art*
6. Describe any irreversible and irretrievable commitments of resources which would be included should the Project be implemented:
7. Describe the mitigation measures, if any, proposed to minimize the potential environmental impact of the Project: *project is pollution control with positive impact*
8. Describe the growth inducing aspects of the Project:  
*life extension of plant, job retention*
9. Describe the effects of the Project on the use and conservation of energy resources:
10. List any studies, reports or other information upon which the answers to the above questions are based:  
*us Dept of Energy*

*AES Greenidge, LLC*  
(Applicant) *Douglas J. Roll, President.*

By: *Douglas J. Roll*

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NOTE: APPLICANT MUST COMPLETE THE APPROPRIATE VERIFICATION APPEARING ON PAGES 23 THROUGH 25 HEREOF BEFORE A NOTARY PUBLIC

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