
COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY
as sublessor

AND

CASSADAGA WIND LLC
as sublessee

AGENCY LEASE AGREEMENT

DATED AS OF DECEMBER 1, 2018

ADDRESS: Approximately 40,000 acres
located in the Towns of Charlotte,
Cherry Creek, Arkwright and Stockton
COUNTY: Chautauqua
STATE: New York

Prepared By:

Phillips Lytle LLP
201 West Third Street, Suite 205
Jamestown, New York 14701
Attention: Matthew R. Mazgaj, Esq.

Schedules

- SCHEDULE A - Fee Parcels
- SCHEDULE B - Leasehold Parcels
- SCHEDULE C - Easement Parcels
- SCHEDULE D - Future Fee Parcels
- SCHEDULE E - Future Leasehold Parcels
- SCHEDULE F - Future Easement Parcels

Exhibits

- EXHIBIT A - Description of the Equipment
- EXHIBIT B - Form of Termination of Company Lease
- EXHIBIT C - Form of ALA Supplement
- EXHIBIT D - Form of Bill of Sale to Company
- EXHIBIT E - Form of Sales Tax Agency Agreement
- EXHIBIT F - Form of Termination of Agency Lease Agreement
- EXHIBIT G - Forms of Annual Employment Reports
- EXHIBIT H - Copy of PILOT Agreement
- EXHIBIT I - Invoice Rider
- EXHIBIT J - Form of Sales Tax Sub-Agency Agreement
- EXHIBIT K - Form of Irrevocable Standby Letter of Credit

AGENCY LEASE AGREEMENT

THIS AGENCY LEASE AGREEMENT dated as of December 1, 2018 (this "Lease") by and between the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 201 West Third Street, Suite 115, Jamestown, New York 14701 (the "Agency"), and Cassadaga Wind LLC, a limited liability company organized under the laws of the State of Delaware, and qualified to do business in the State of New York as a foreign limited liability company, having an address at 1251 Waterfront Place, Third Floor, Pittsburgh, Pennsylvania 15220 (the "Company").

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to promote, develop, encourage and assist in the acquiring, renovating, construction, reconstruction, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, including industrial pollution control facilities, and to thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, in accordance with the provisions of the Enabling Act, the Agency was established pursuant to Chapter 71 of the 1972 Laws of the State of New York, as amended, constituting Section 895-h of the New York General Municipal Law (said Chapter and the Enabling Act, each as amended from time to time, collectively, the "Act"), for the benefit of the County of Chautauqua and its inhabitants; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, renovate, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, renovate, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, the Company submitted an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in approximately 40,000 acres of land by the Applicant, located in the towns of Charlotte, Cherry Creek, Arkwright, and Stockton (together, the "Towns"), County of Chautauqua, New York (collectively, the "Land"), (2) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment, including approximately fifty-eight (58) wind turbine generators (as reduced to forty-eight (48) as permitted by the State) with a maximum capacity of 126 megawatts ("MW") (the "Equipment"), (3) the acquisition, construction, installation, and equipping on the Land of: (i) an operations and maintenance building, (ii) a system of buried and overhead electrical collection lines, (iii) approximately 5.5

miles of 115 kV transmission line, (iv) meteorological towers, and (v) an interconnection substation facility and collection substation facility on the Land, and a system of gravel access roads, parking, landscaping and related improvements to the Land (collectively, the "Improvements"), all of the foregoing for use by the Applicant as a wind-powered electric generating facility (collectively, the "Project Facility"); (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 or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (but not including special assessments and ad valorem levies) (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility by the Applicant to the Agency and the sublease of the Project Facility by the Agency to the Applicant; and

WHEREAS, members of the Agency met on January 24, 2017 at a regular meeting of the Agency and passed a Resolution Taking Preliminary Action Toward the Acquisition and Straight Leasing of a Certain Project for Cassadaga Wind LLC and Authorizing the Execution of a Preliminary Agreement with the Applicant with Respect to Such Transaction (the "Preliminary Resolution"), authorizing the Agency to conduct preliminary actions toward the acquisition and straight leasing of the Project and also authorizing the execution and delivery of a preliminary agreement (the "Preliminary Agreement") with the Company with respect to the Project; and

WHEREAS, the Agency and Company entered into the Preliminary Agreement effective January 24, 2017; and

WHEREAS, the Administrative Director of the Agency, (A) caused notice of public hearings of the Agency pursuant to Section 859-a of the Act (the "Public Hearing(s)") to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on March 10, 2017 to the chief executive officer of the County of Chautauqua, New York (the "County") and of each other affected taxing entity within which the Project Facility is or is to be located; (B) caused notice of the Public Hearings to be published on March 10, 2017 in the *Observer*, a newspaper of general circulation available to residents of the Town of Cherry Creek, Town of Charlotte, Town of Arkwright, Town of Stockton and the County; (C) conducted a Public Hearing on March 22, 2017 at 11:00 a.m. at the VFW Post 2522, 7117 North Main Street, Cherry Creek, County of Chautauqua, New York; (D) conducted a Public Hearing on March 22, 2017 at 1:30 p.m. at the Town of Charlotte Town Hall, 8 Lester Street, Sinclairville, County of Chautauqua, New York; (E) conducted a Public Hearing on March 23, 2017 at 11:00 a.m. at the Stockton Volunteer Fire Company Fire Hall, 7243 Route 380, Stockton, County of Chautauqua, New York; (F) conducted a Public Hearing on March 23, 2017 at 1:30 p.m. at the Town of Arkwright Town Hall, 9543 Center Road, Fredonia, County of Chautauqua New York; and (G) prepared reports of each of the Public Hearings and collected written correspondence related from the Public (collectively, the "Report") which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, in response to the Project's proposed deviation from the Agency's Uniform Tax Exemption Policy and guidelines (the "UTEP"), (A) the Administrative Director of the Agency caused notice of a meeting of the Agency (the "IDA Meeting") with respect to the proposed deviation from the Agency's UTEP to be mailed on January 9, 2017 to the chief

executive officer of each Taxing Entity; (B) Members of the Agency held the IDA Meeting on January 23, 2018, (C) Members of the Agency reviewed and responded to any comments or correspondence received from the Taxing Entities at or before the IDA Meeting regarding the proposed deviation from the Agency's UTEP, and (C) Members of the Agency passed a resolution at the IDA Meeting approving such proposed deviation; and

WHEREAS, the New York State Board on Electric Generation Siting and the Environment, through the Article X process, analyzed the Application of Cassadaga Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project (CASE 14-F-0490) and issued an order granting the Company a Certificate of Environmental Compatibility and Public Need, with Conditions on January 17, 2018; 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"), the appropriate personnel of the Agency reviewed the materials submitted by the Applicant and made any necessary comments to members of the Agency, and by resolution of the members of the Agency adopted on January 23, 2018, the Agency determined that the Project is a Type II Action because it is an "action requiring a certificate of environmental compatibility and public need under article VII, VIII or X of the Public Service Law and the consideration of, granting or denial of any such certificate . . ." and does not meet or exceed any threshold for a Type I action, and that no further action is required; and

WHEREAS, by resolution adopted by the members of the Agency on January 23, 2018 (the "Authorizing Resolution"), the Agency, following a review of the Report, determined to proceed with the Project, to grant the Financial Assistance (as hereinafter defined) and to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by this Lease and the other Transaction Documents (as hereinafter defined); and

WHEREAS, the Agency proposes to appoint the Company as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Project Facility and to sublease the Project Facility to the Company, and the Company desires to act as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Project Facility and to sublease the Project Facility from the Agency, all pursuant to the terms and conditions hereinafter set forth in this Lease and in the other Transaction Documents; and

WHEREAS, the acquisition of an interest in the Project Facility, the straight lease of the Project Facility and the granting of the Financial Assistance by the Agency to the Company are for proper purposes, including, without limitation, the advancement of the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State of New York and the prevention of unemployment and economic deterioration pursuant to the provisions of the Act; and

WHEREAS, the members of the Agency have determined that (i) the granting of the Financial Assistance by the Agency to the Company is necessary to induce the Company to

proceed with the Project, and (ii) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Company; and

WHEREAS, immediately prior to the execution and delivery of this Lease, the Company will execute and deliver or cause to be executed and delivered to the Agency (A) a certain company lease agreement of even date herewith (the "Company Lease") between the Company and the Agency, which conveys to the Agency a leasehold interest in and to the Premises (as hereinafter defined), and (B) a bill of sale dated the Closing Date (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in and to the Equipment; and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement of even date herewith between the Company and the Agency (the "PILOT Agreement"), the Company has agreed to make certain payments in lieu of real property taxes with respect to the Premises according to the deviation from the Agency's UTEP as approved by the Agency's Members, and the Agency has agreed to file certain paperwork for real property tax abatement on behalf of the Company with respect to the Project; and

WHEREAS, in the event that the Company finances a portion of the costs of the Project, a bank, trust company or other financial institution (the "Bank"), may make loans to the Company in the aggregate principal amount of up to \$240,000,000 (the "Bank Loan"), which Bank Loan would be evidenced by one (1) or more promissory notes and/or loan agreements (together with all modifications, renewals and replacements therefore, collectively, the "Bank Note") made by the Company to the Bank in the aggregate principal amount of the Bank Loan; and

WHEREAS, in order to secure the obligations of the Company to the Bank under the Bank Note, the Company may execute and deliver one (1) or more mortgages in favor of the Bank in the maximum aggregate principal amount of the Bank Loan (collectively, the "Bank Mortgage"), which Bank Mortgage the Agency may execute for the sole purpose of subjecting to the lien thereof its interest in the Premises, and pursuant to which Bank Mortgage the Company and the Agency would grant to the Bank a mortgage lien on the Premises.

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

ARTICLE I DEFINITIONS

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

"Act" shall have the meaning assigned to such term in the recitals to this Lease.

"Administrative Fee" shall have the meaning assigned to such term in Section 5.3 of this Lease.

“Affiliate” of a Person shall mean a Person who directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, such Person. The term “control” means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least fifty-one percent (51%) of the voting stock or other equity interest of such Person.

“Agency” means (A) the County of Chautauqua 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 the County of Chautauqua Industrial Development Agency, or its successors or assigns, may be a party.

“Anti-Terrorism Laws” means any applicable laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, applicable laws comprising or implementing the Bank Secrecy Act, and applicable laws administered by the United States Treasury Department’s Office of Foreign Asset Control (as any of the foregoing may from time to time be amended, renewed, extended, or replaced).

“Applicable Law” or “Applicable Laws” means, individually or collectively as the context may require, all current and future statutes, codes, laws, acts, ordinances, treaties, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, determinations and requirements, 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 the foregoing to be determined both as if the Agency were the owner of an interest in the Project Facility and as if the Company and not the Agency were the owner of an interest in the Project Facility), including but not limited to (1) applicable health, building, zoning, use, rent, accessibility, 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, (3) judgments, decrees, orders or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority, and (4) applicable covenants and restrictions relating in any way to the Project Facility.

“Application” shall have the meaning assigned to such term in the recitals to this Lease.

“Authorizing Resolution” shall have the meaning assigned to such term in the recitals to this Lease.

“Authorized Representative” means the Person or Persons at the time designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or the Company, as the case may be, containing the specimen signature of each such Person and signed on behalf of (A) the Agency by its Chairman, Vice-Chairman, Secretary, Executive Director, Chief Financial Officer or such other Person as may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Company by its President or any Vice President, if a corporation, or a member or a manager, if a limited

liability company, or a general partner, if a partnership, or such other Person as may be authorized in writing by the members of such limited liability company or by the board of directors of such corporation or by the general partner of such partnership, to act on behalf of the Company, as the case may be.

“Bank” shall have the meaning assigned to such term in the recitals to this Lease, together with such entity’s successors and/or assigns, provided that the Agency is given notice of any such succession or assignment in accordance with Section 12.1 of this Lease.

“Bank Loan” shall have the meaning assigned to such term in the recitals to this Lease.

“Bank Mortgage” shall have the meaning assigned to such term in the recitals to this Lease.

“Bank Note” shall have the meaning assigned to such term in the recitals to this Lease.

“Bill of Sale to Agency” shall have the meaning assigned to such term in the recitals to this Lease.

“Bill of Sale to Company” means the bill of sale from the Agency to the Company, pursuant to which the Agency conveys to the Company all of the Agency’s interest in the Equipment, substantially in the form attached as Exhibit D to this Lease.

“Building” means, collectively, the forty eight (48) wind turbines to be erected by the Company on the Land, together with the associated collection lines (below grade and overhead), access roads, meteorological towers, an operation and maintenance building, a collection substation, an 115 kV electrical transmission line and substation.

“Business Day” means a day on which banks located in the County 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 this Lease and the other Transaction Documents are executed and delivered by the Company, the Agency and the other parties thereto.

“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.

“Collateral” shall have the meaning assigned to such term in Section 5.5 of this Lease.

“Commissioner” means the Commissioner of Taxation and Finance of the State of New York.

“Company” means Cassadaga Wind LLC, and its successors and assigns, to the extent permitted pursuant to this Lease.

“Company Lease” shall have the meaning assigned to such term in the recitals to this Lease.

“Completion Date” means such date as shall be certified by the Company to the Agency (and accepted by the Agency in its reasonable discretion) as the date of completion of the Project pursuant to Section 4.2 of this Lease, or such earlier date as the Company shall notify the Agency as being the date of completion of the Project (subject to acceptance thereof by the Agency in its reasonable discretion).

“Compliance Report” shall have the meaning assigned to such term in Section 8.11(J)(3) of this Lease.

“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.

“County” means the County of Chautauqua, New York.

“Default Interest Rate” means a rate of interest equal to eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is less.

“Easement Parcels” means the easement rights held by the Company in certain parcels of land located in the Towns of Cherry Creek, Charlotte, Stockton or Arkwright, Chautauqua County, New York, pursuant to the agreements referenced on Schedule C attached hereto.

“Environmental Indemnification” shall have the meaning assigned to such term in Section 3.3 of this Lease.

“Environmental Law” or “Environmental Laws” shall have the meaning assigned to such term in Section 3.3 of this Lease.

“Equipment” shall have the meaning assigned to such term in the recitals to this Lease and shall include all those materials, machinery, equipment, fixtures and furnishings intended to be acquired with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of this Lease, and such substitutions and replacements therefor as may be made from time to time pursuant to this Lease, including without limitation, all the Property described in Exhibit A attached to this Lease. “Equipment” shall not include: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or similar agency for use on public highways or streets.

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

“Fee Parcels” means the fee simple interests held by the Company in certain parcels of land located in the Towns of Cherry Creek, Charlotte, Stockton or Arkwright, Chautauqua County, New York, described on Schedule A attached hereto.

“Financial Assistance” means (A) an exemption from all New York State and local sales and use taxes for purchases and rental of qualifying personal property necessary for the completion of the Project and having a value not exceeding the Maximum Sales Tax Benefit (as hereinafter defined), (B) an exemption from mortgage recording tax with respect to the recording of the Bank Mortgage and having a value not exceeding the Maximum Mortgage Recording Tax Benefit, and (C) an exemption from real property taxes pursuant to the PILOT Agreement, which the Agency has estimated to have a value of \$58,505,000.

“Future Easement Parcels” means the easement rights that may be obtained by the Company in certain parcels of land located in the Towns of Cherry Creek, Charlotte, Stockton or Arkwright, Chautauqua County, New York, pursuant to the agreements referenced on Schedule F attached hereto.

“Future Fee Parcels” means the fee simple interests that may be obtained by the Company in certain parcels of land located in the Towns of Cherry Creek, Charlotte, Stockton or Arkwright, Chautauqua County, New York, described on Schedule D attached hereto.

“Future Leasehold Parcels” means the leasehold interests that may be obtained by the Company in certain parcels of land located in the Towns of Cherry Creek, Charlotte, Stockton or Arkwright, Chautauqua County, New York, pursuant to the agreements referenced on Schedule E attached hereto.

“Governmental Authority” means the United States of America, the State, any other state, the County, any political subdivision of any of the foregoing, and any court, tribunal, arbitrator, mediator, agency, department, commission, board, bureau, authority 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.

“Guarantor” or “Guarantors” means, individually or collectively, as the context may require, Irus Wind Development LLC, a Delaware limited liability company.

“Guaranty” means the Guaranty of even date herewith from the Guarantors to the Agency.

“Hazardous Materials” means all hazardous materials including, without limitation, any explosives, radioactive materials, radon, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, lead based paints, petroleum, petroleum products, methane, hazardous materials, hazardous chemicals, hazardous wastes, extremely hazardous wastes, restricted hazardous wastes, hazardous or toxic substances, toxic pollutants, hazardous air pollutants, pollutants, contaminants, toxic chemicals, toxics, pesticides or related materials as set forth 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.), the Clean Water Act, as amended (33 U.S.C.

Section 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.) the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), Articles 15 or 27 of the New York 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 of any Governmental Authority having jurisdiction.

“Host Community Agreements” means agreements entered into by the Company with each of the Towns wherein the Company agrees to certain terms and to make certain payments, as provided to and approved by the Agency.

“IDA Meeting” shall have the meaning assigned to such term in the recitals to this Lease.

“Indebtedness” means (1) the monetary obligations of the Company to the Agency or to any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, under this Lease or any of the other Transaction Documents, and (2) all interest accrued on any of the foregoing.

“Land” shall have the meaning set forth in the recitals to this Lease.

“Leasehold Parcels” means the leasehold interests held by the Company in certain parcels of land located in the Towns of Charlotte, Cherry Creek, Arkwright and Stockton, Chautauqua County, New York, pursuant to the agreements referenced on Schedule B attached hereto.

“Letter of Credit” means a clean irrevocable evergreen letter of credit from a Bank (approved by the Agency in its own discretion) on behalf of the Company, substantially in the form attached hereto as Exhibit K and otherwise in form and substance reasonably satisfactory to the Agency, the purpose of which is to provide security to the Agency for the Company’s payments required by the terms of the PILOT Agreement.

“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, 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, landlord’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes of the Transaction Documents, a Person shall also be deemed to be the owner of any Property that 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.

“Maximum Mortgage Recording Tax Benefit” means \$2,400,000.

“Maximum Sales Tax Benefit” means \$17,900,000

“Minimum Employment Requirement” shall have the meaning assigned to such term in Section 2.2 of this Lease.

“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) incurred in obtaining such Gross Proceeds.

“Permitted Encumbrances” means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and are identified on Schedule B to the Title Policy or such other encumbrance that does not have a material impact the operation of the Project, (B) Liens for taxes, assessments and utility charges, to the extent permitted by this Lease, (C) any Lien or encumbrance on the Project Facility obtained through any Transaction Document, (D) the Bank Mortgage, and (E) any Lien or encumbrance requested by the Company in writing and consented to by the Agency, which consent may be granted or denied in the Agency’s sole and absolute discretion.

“Person” means an individual, partnership, limited liability company, corporation, trust, unincorporated organization or Governmental Authority.

“PILOT Agreement” shall have the meaning assigned to such term in the recitals to this Lease.

“Plans and Specifications” means the plans and specifications for the construction, installation and equipping of the Project Facility contemplated by Section 4.1 of this Lease prepared by the Company’s consultants and reviewed by the Agency (solely for purposes of the granting of the Financial Assistance) and all applicable Governmental Authorities, as the same may be amended, modified, supplemented, restated or replaced from time to time in accordance with the terms hereof and subject to the review and approval of the Agency (solely for purposes of determining compliance with this Lease).

“Premises” means the Land, together with the Building, and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land; provided, however, that nothing in this definition shall constitute the Agency’s consent to the construction of any new building or structure thereon or the construction of an addition to any existing building or structure thereon, other than the construction, installation and equipping of the improvements depicted in the Plans and Specifications.

“Prohibited Person” means (i) any Person (A) that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency, unless such default or breach has been waived in writing by the Agency, as the case may be, and (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an

organized crime figure, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

“Project” means that project being undertaken by the Agency consisting of (A) the acquisition of a leasehold interest in the Premises, (B) the construction of the Building and related improvements on the Land, (C) the acquisition and installation of the Equipment, (D) the granting of the Financial Assistance, and (E) the subleasing of the Project Facility by the Agency to the Company, all as more particularly described in the recitals to this Lease.

“Project Facility” shall have the meaning assigned to such term in the recitals to this Lease.

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

“Public Hearing” shall have the meaning assigned to such term in the recitals to this Lease.

“Quarterly Sales Tax Report” shall have the meaning assigned to such term in Section 8.11(C) of this Lease.

“Real Property Tax Exemption Form” shall have the meaning assigned to such term in Section 6.5(A) of this Lease.

“Recapture Event” shall have the meaning assigned to such term in Section 11.4 of this Lease.

“Recapture of Benefits” shall have the meaning assigned to such term in Section 11.4 of this Lease.

“RECs” means the renewable energy credits, green tags and other environmental attributes produced by the Project Facility.

“Report” shall have the meaning assigned to such term in the recitals to this Lease.

“Restricted Party” means any individual or entity: (a) listed in the Annex to the Executive Order No. 13224 or is otherwise subject to the provisions of such Executive Order; (b) listed on the “Specially Designated Nationals and Blocked Persons” list maintained by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury, as updated or amended from time to time, or any similar list issued by OFAC; or (c) whose property has been blocked, or is subject to seizure, forfeiture or confiscation, by any order relating to terrorism or money laundering issued by the President, Attorney General, Secretary of State, Secretary of Defense, Secretary of the Treasury or any other U.S. State or Federal governmental official or entity.

“Sales Tax Agency Agreement” shall have the meaning assigned to such term in Section 8.11(B) of this Lease.

“Scheduled Completion Date” shall have the meaning assigned to such term in Section 4.2(A) of this Lease.

“SEQRA” shall have the meaning assigned to such term in the recitals to this Lease.

“Special Counsel” means the law firm of Phillips Lytle LLP, Jamestown, New York, or such other attorney or firm of attorneys located in the State whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and who are acceptable to the Agency.

“State” means the State of New York.

“State Sales and Use Taxes” means sales and compensating use taxes and fees imposed by Article 28 or Article 28-A of the New York State Tax Law, but excluding such taxes imposed in a city by Section 1107 or Section 1108 of such Article 28.

“Stated Expiration Date” shall have the meaning assigned to such term in Section 5.2(B) of this Lease.

“Sub-Agent Agency Agreement” shall have the meaning assigned to such term in Section 8.11(H) of this Lease.

“Sublease Agreement” or “Sublease Agreements” means any lease, sublease, sub-sublease or other occupancy agreement with respect to the Project Facility, or any part thereof, permitted or approved pursuant to Section 9.3 of this Lease, other than this Lease and the Company Lease.

“Sublessee” or “Sublessees” means each tenant, lessee, sublessee, sub-sublessee or other occupant under a Sublease Agreement.

“Taxing Entities” shall have the meaning assigned to such term in Section 6.5(B) of this Lease.

“Termination of Company Lease” means the termination of company lease from the Agency to the Company, pursuant to which the Agency terminates the Company Lease, substantially in the form attached as Exhibit B to this Lease.

“Termination of Lease” means the termination of this Agency Lease Agreement between the Company and the Agency, pursuant to which the Agency and the Company terminate this Lease, substantially in the form attached as Exhibit F to this Lease.

“Title Policy” shall have the meaning assigned to such term in Section 3.5 of this Lease.

“Towns” shall have the meaning assigned to such term in the recitals of this Lease.

“Transaction Documents” means the Company Lease, the Bill of Sale to Agency, the PILOT Agreement, this Lease, the Sales Tax Agency Agreement, any Sub-Agent Agency Agreement and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith, and any other instrument, agreement, certificate or document supplemental thereto.

“UCC” shall have the meaning assigned to such term in Section 5.3 of this Lease.

“Unassigned Rights” means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.1, 3.2, 3.3, 4.1(B), 4.1(D), 4.1(E), 4.1(F), 4.1(G), 5.2 (A), 5.3, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.12, 8.13, 8.14, 9.1, 9.3, 11.2, 11.4, 12.4, 12.7, 12.9 and 12.19 of this Lease, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents, servants and employees, past, present and future, of the Agency for their own account pursuant to Sections 2.2(F), 3.1, 3.3, 4.1, 5.2, 5.3, 6.3, 8.1, 8.9, 8.11, 9.1, 9.3, 10.2, 10.4, 11.2 and 11.4 of this Lease, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.5 of this Lease and as Recapture of Benefits pursuant to Section 11.4 of this Lease, (D) the right of the Agency in its own behalf to enforce the obligation of the Company to undertake and complete the Project and to confirm the qualification of the Project as a “project” under the Act, and (E) the right to enforce the foregoing pursuant to the PILOT Agreement and Section 5.5 and Article X of this Lease.

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

(A) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms as used in this Lease, refer to this Lease, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the Closing Date;

(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) words importing persons shall include firms, associations, partnerships, trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons;

(E) any certificates, letters or opinions required to be given pursuant to this 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 Lease; and

(F) references to documents, instruments or agreements shall mean such documents, instruments and agreements as they may be amended, modified, renewed, replaced or restated from time to time in accordance with the terms hereof.

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 its part herein contained:

(A) The Agency is duly established under the provisions of the Act and has the power to enter into this Lease and the other Transaction Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder. Based upon the representations of the Company, 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 and the other Transaction Documents to which the Agency is a party.

(B) Neither the execution and delivery of this Lease or the other Transaction 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 or the other Transaction 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, nor will constitute a default by the Agency under any of the foregoing.

(C) Except as provided in Articles IX, X and XI 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 created by the Agency, except as contemplated or permitted by the terms of this Lease and the other Transaction 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 under the laws of the State of Delaware, qualified to do business in the State of New York as a foreign limited liability company, and qualified and authorized to do business as a foreign limited liability company in all other jurisdictions in which its operations or ownership of its Properties so require, and has the power to enter into this Lease and the other Transaction Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its managers, the Company has been duly authorized to execute, deliver and perform this Lease and the other Transaction Documents to which the Company is a party. No other consent, approval or action by the managers of the Company or any other consent or approval (governmental or otherwise) or the taking of any other action is required as a condition to the validity or enforceability of this Lease or any of the other Transaction Documents.

(B) Neither the execution and delivery of this Lease or any of the other Transaction 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 or the other Transaction 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 Company's articles of organization or operating agreement or any other company restriction, order, judgment, agreement, document 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 result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any of the foregoing, other than Permitted Encumbrances, (2) conflict with or result in a violation of Applicable Laws, (3) require consent or approval (which has not been heretofore received and provided to the Agency) under any company 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 or approval (which has not been heretofore obtained and provided to the Agency) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any Governmental Authority having jurisdiction over the Company or any of the Property of the Company.

(C) The completion of the Project Facility by the Company as agent of the Agency, the sublease thereof by the Agency to the Company and the operation thereof by the Company will not result in the removal of a facility or plant of the Company or any Sublessee of the Project Facility, or any part thereof, from one area of the State to another area of the State (other than relocations within the County) or in the abandonment of one or more plants or facilities of the Company or any Sublessee of the Project Facility, or any part thereof, located in the State (other than within the County); provided, however, that nothing in this Section shall constitute an authorization by the Agency for the Company to lease, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof without the prior written consent of the Agency, except as set forth in Section 9.3 of this Lease. Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Company.

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

(E) The Project constitutes a commercial facility and will advance the Agency's purposes by promoting employment opportunities and preventing economic deterioration in the County. The Project Facility is, and so long as this Lease 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), or allow any action to be taken or not taken, which action, inaction or omission would in any way cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act.

(F) The Project Facility and the operation thereof will comply with all Applicable Laws, and the Company will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply with all

Applicable Laws. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project or the operation of the Project Facility, and the Company will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future harmless, from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply therewith; provided that such claims, liabilities, damages, fees, expenses, fines and penalties of the Agency are not incurred or do not result solely from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants 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), attorneys, servants or employees, and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(G) The New York State Board on Electric Generation Siting and the Environment analyzed the Company's application for a Certificate of Environmental Compatibility and Public Need and issued an order granting the Company a Certificate of Environmental Compatibility and Public Need, with Conditions on January 17, 2018, a copy of which was provided to the Agency. The Company hereby covenants to comply with all mitigating measures, requirements and conditions enumerated in such order and in the Agency SEQRA Resolution applicable to the acquisition, construction, installation, equipping and operation of the Project Facility contemplated by Section 4.1 of this Lease and in any other approvals issued by any other Governmental Authority with respect to the Project Facility. No material changes with respect to any aspect of the Project Facility have arisen from the date of such order or from the date of the adoption of such Agency SEQRA Resolution which would cause the determinations contained therein to be untrue.

(H) The owner, occupant or operator receiving Financial Assistance hereby certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

(I) The Project is in substantial compliance with all provisions of the Act, including, but not limited to, the provisions of Section 859-a and 862(1) thereof.

(J) There are no actions, suits, investigations or proceedings of or before any Governmental Authority, pending or threatened against the Company or any of its Property which (i) either in any case or in the aggregate, if adversely determined, would materially, adversely affect the business, operations or condition, financial or otherwise, of the Company, or (ii) question the validity of any of the Transaction Documents or any action to be taken in connection with the transactions contemplated thereby.

(K) The Company is not in default with respect to any order, writ, injunction or decree of any Governmental Authority, or in violation of any law, statute or regulation, domestic or foreign, to which the Company or any of its Property is subject.

(L) The subleasing of the Project Facility by the Agency to the Company and the granting of the Financial Assistance have induced the Company to proceed with the Project

in the County. The granting of the Financial Assistance by the Agency with respect to the Project Facility, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the County and the State and improve their prosperity and standard of living, and will prevent unemployment and economic deterioration and thereby serve the public purposes of the Act.

(M) The Company shall utilize at least seventy-five full-time construction workers during the construction-phase of the Project, and thereafter, the Company shall employ at least seven (7) full-time employees in the County at the Project Facility after Project completion (collectively, the "Minimum Employment Requirement").

(N) The funds available to the Company are sufficient to pay all costs in connection with the acquisition, construction, installation and equipping of the Project Facility.

(O) The Company is not a Prohibited Person, no Guarantor is a Prohibited Person, no Affiliate of the Company or any Guarantor is a Prohibited Person and no member, manager, director or shareholder of the Company is a Prohibited Person.

(P) Neither this Lease, any other Transaction Document, the Company's Application nor any other document, certificate, agreement or instrument furnished to the Agency by or on behalf of the Company or any Guarantor contains any untrue statement of a material fact or fails to state a material fact necessary to make the statements contained herein and therein not misleading.

(Q) No funds of the Agency shall be used in connection with the transactions contemplated by this Lease for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(R) The Company is, and shall at all times during the term of this Lease, continue to be owned solely by Irus Wind Development LLC.

(S) The Project Facility is located entirely within the boundaries of the County.

(T) The total cost of the Project is at least \$226,193,540 but may be as high as \$344,389,061.

(U) As of the closing, certain third parties have interests in portions of the Land by fee ownership, but no third party has an interest in the Land or any Leasehold Parcel or any occupancy or possession of any portion of the Project Facility that will affect the Company's ability to complete and operate the Project thereon.

(V) The Company has not conveyed, assigned, transferred, mortgaged, hypothecated, pledged or granted a security interest in its interest in the Project Facility pursuant to a mortgage, security agreement, pledge or other agreement that prohibits the Company from

executing and delivering the Company Lease, this Lease or any other Transaction Document. The Company covenants and agrees that it shall not enter into a mortgage, security agreement, pledge or other agreement pursuant to which the existence of the Company Lease, this Lease or any other Transaction Document would constitute a default or an event of default.

(W) Neither the Company, nor any Guarantor nor any Affiliate of the Company or any Guarantor has employed or retained any appointed or elected governmental official to solicit or secure the Agency's undertaking of the Project or its agreement to enter into this Lease or any other Transaction Document upon an agreement of understanding for a commission or percentage, brokerage or contingent fee.

(X) 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. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers.

(Y) The recording of the Bank Mortgage shall not result in the claiming of an exemption from mortgage recording tax in excess of the Maximum Mortgage Recording Tax Benefit.

ARTICLE III CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1 CONVEYANCE TO THE AGENCY. (A) Pursuant to the Company Lease, the Company has conveyed or will convey to the Agency a leasehold interest in and to the Premises for the purpose of undertaking and completing the Project. The Company hereby represents and warrants that it has good and valid interests in all of the Premises, including fee title to portions of the Land (if applicable) and a leasehold interest in the Leasehold Parcels, and will pursue good title to the Future Easement Parcels, the Future Leasehold Parcels, and the Future Fee Parcels, if any, for the duration of the term of each such easement and leasehold interest, free and clear of all Liens, except for Permitted Encumbrances, and agrees to defend (with counsel selected by the Agency), indemnify and hold the Agency harmless from any liability due to any defect in title thereto each free and clear from all Liens except for Permitted Encumbrances.

(B) The Company and the Agency acknowledge that the Project Facility and the leasehold interest therein conveyed to the Agency from the Company and subleased by the Agency back to the Company are not "property" as defined in Title 5-A of the Public Authorities Law of the State because such property and the interests therein are security for the Company's obligations to the Agency under this Lease and the other Transaction Documents, including, without limitation, (i) the Company's obligation to acquire, construct, install, equip and maintain the Project Facility on behalf of the Agency, and (ii) the performance by the Company to the Agency of the Company's other obligations under this Lease and the other Transaction Documents.

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 Transaction Documents, provided such use causes the Project Facility to qualify or to continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project into disrepute as a public project; provided, further, however, that at no time shall any such use be other than by the Company as a wind turbine electric power generating facility, together with uses incidental thereto, except with the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion. The Company shall not occupy, use or operate the Project Facility, or any part thereof, or permit or suffer the Project Facility, or any part thereof, to be occupied, used or operated (1) for any unlawful purpose, or (2) in violation of any certificate of occupancy affecting the Project Facility, or (3) for any use that constitutes a nuisance, public or private, or (4) for any use that makes void or voidable any insurance then in force with respect thereto, or (5) by any tenant, subtenant, user or occupant whose use, occupancy or operation of the Project Facility would be in violation of Applicable Laws. All permits and licenses necessary for the operation of the Project Facility as contemplated by this Section 3.2 shall be procured promptly by the Company. Any provision of this Lease to the contrary notwithstanding, the Company shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

Nothing in this Section shall constitute an authorization by the Agency for the Company to lease, license, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof, except in accordance with Section 9.3 of this Lease.

SECTION 3.3 HAZARDOUS MATERIALS.

(A) The Company represents, warrants and covenants that, (i) the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner that 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 (each, an "Environmental Law" and, collectively, the "Environmental Laws"), (ii) the environmental and ecological condition of the Project Facility is not in violation of any Applicable Law, including, without limitation, any Environmental Law, (iii) the Company has all Environmental Permits required to construct and operate the Project Facility and is in compliance with their requirements, (iv) the Premises is not listed in CERCLIS, the NPL or any similar state or local listing nor is it included in an area included in such a list, and the Company has no knowledge that such a listing is pending or contemplated, (v) no event has occurred which, with the passage of time or the giving of notice or both, would constitute a violation of any Environmental Law, (vi) to the best of the Company's knowledge, there are not now, nor have there ever been, underground storage tanks on or under the Premises, (vii) there are no actions, suits, claims or proceedings seeking money damages, injunctive relief, remedial action or any other remedy pending or, to the Company's knowledge, threatened relating to a violation of Environmental Law or the disposal, discharge or release of Hazardous Materials, and (viii) to the best of the Company's knowledge, no prior owner of the Project Facility or any tenant, subtenant, operator, occupant, prior tenant, prior subtenant, prior operator or prior occupant, has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Environmental Law.

(B) The Company shall keep and shall cause the Project Facility to be kept free of Hazardous Materials except in compliance with Environmental Laws. 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 Environmental 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 Sublessee of the Project Facility, or any part thereof, an unlawful release of Hazardous Materials onto, under or from the Project Facility or onto any other property. The Company shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or its members, managers, shareholders, directors, officers, agents, servants, employees or representatives, a release of Hazardous Materials on, under or from the Project Facility, except in compliance with all Environmental Laws.

(C) The Company shall comply with and cause all Sublessees of the Project Facility, or any part thereof, to comply with, all Environmental Laws whenever and by whomever triggered, and shall obtain and comply with, and shall cause all such Sublessees to obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company agrees to provide the Agency with copies of any notifications given by the Company to any Governmental Authorities or received by the Company from any Governmental Authorities with respect to the environmental or ecological condition of the Project Facility. The Company hereby agrees that at all times during which it owns, leases or operates the Project Facility, and whether or not this Lease or any other Transaction Document is in effect, to comply with, and ensure compliance by all tenants, subtenants, users and occupants of the Project Facility with, the provisions of the "Environmental Indemnification" given by the Company and the Guarantor to the Agency on the date hereof with regard to the Project.

(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 Materials on, from or affecting the Project Facility (a) in accordance with all Environmental Laws, (b) to the satisfaction of the Agency, and (c) in accordance with the orders and directives of all Governmental Authorities, and (2) defend (with counsel selected by the Agency), indemnify, and hold harmless the Agency and its employees, agents, officers, attorneys, servants and members, past, present and future, 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 on, from, under or affecting the Project Facility, (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 Environmental Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, consultant fees, costs of remediation, investigation and laboratory fees, court costs, reasonable attorney fees and litigation expenses. Costs under this subsection (D) will be repaid immediately upon demand with interest at the Default Interest Rate commencing five (5) days after such demand.

(E) In the event this Lease is terminated, the Company shall deliver the Project Facility to the Agency free of any and all Hazardous Materials (except Hazardous

Materials the presence of which do not violate any Environmental Laws), so that the condition of the Project Facility shall conform with all Environmental Laws affecting the Project Facility.

(F) The Company agrees that the Agency and its officers, agents, employees, members, servants or representatives, may at any reasonable time, and at the Company's expense inspect the Company's books and records and inspect and conduct any tests on the Project Facility, including taking soil samples, in order to determine that the Company is in compliance with all Environmental Laws.

(G) In the event that insurance is or 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, there shall be no merger of this Lease or the Company Lease nor of the leasehold estate created by the Company Lease or the subleasehold estate created by this Lease with the Company's fee estate or leasehold estate in the Premises (as applicable) 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 or the Company Lease or the subleasehold estate created by this Lease or the leasehold estate created by the Company Lease or any interest in this Lease or the Company Lease or in any such leasehold or subleasehold estate and (2) the fee estate in the Premises or the Company's leasehold estate in the Leasehold Parcels (as applicable) or any part thereof or any interest in such fee estate or Company leasehold 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 or the Company Lease or the subleasehold estate created by this Lease or the leasehold estate created by the Company Lease and (y) the fee estate in the Premises, the leasehold interest in the Leasehold Parcels or any part thereof or any interest in such fee estate or leasehold estate, shall join in a written instrument effecting such merger and shall duly record the same.

SECTION 3.5 RESERVED [title insurance].

ARTICLE IV
UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1 ACQUISITION, CONSTRUCTION, INSTALLATION AND
EQUIPPING OF THE PROJECT FACILITY.

(A) The Company shall, on behalf of the Agency, promptly acquire, construct, install and equip the Project Facility, or cause the acquisition, construction, installation and equipping of the Project Facility, all in accordance with the Plans and Specifications, in a first-class, workmanlike manner using high grade materials, free of material defects in materials and workmanship. Notwithstanding the foregoing, the Company shall not, at any time during the term of this Lease, construct any new structure on the Land (other than the Building) or construct an addition to or otherwise materially alter the Building depicted in the Plans and Specifications or otherwise construct any additional improvements on the Land without the prior written consent of the Agency.

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

(C) Title to all materials, equipment, machinery and other items of Property presently incorporated or installed in and which are 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 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 Premises 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.

(E) The Agency hereby appoints the Company, and the Company hereby accepts such appointment, as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Transaction Documents: (1) to acquire, construct, install and equip 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 required or proper, all for the acquisition, construction, installation and equipping 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 Section 4.1(H) of this Lease, (3) to pay all fees, costs and expenses incurred in the acquisition, construction, installation and equipping of the Project Facility from

funds made available therefor in accordance with this Lease, 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, writing or instruction in connection with the acquisition, construction, installation and equipping 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 and 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 (with counsel selected by the Agency), indemnify and save the Agency and its officers, members, agents, attorneys, servants and employees, past, present and future, harmless from all fees, expenses, 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) The Company shall not take any action, or neglect to take any action, including, without limitation, the employment of any contractor, if such action or inaction would result in jurisdictional disputes or strikes or labor disharmony in connection with 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. A leasehold interest in portions of the Project Facility acquired, constructed and installed at the Company's cost shall immediately upon such acquisition, construction or installation vest in the Agency, subject to Permitted Encumbrances. 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 interest in and 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.

(J) The Company covenants and agrees to make a total investment in the Project Facility as of the Scheduled Completion Date in an amount not less than \$203,574,186 (which represents the product of (1) 0.90 and (2) the sum of \$226,193,540 being the total project costs as stated in the Application. The Company shall provide written documentation of such investment, in form and substance satisfactory to the Agency, no later than March 1st of the calendar year following the Scheduled Completion Date.

(K) The Company shall furnish to the Agency all information and/or documentation requested by the Agency pursuant to this Section 4.1 and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section 4.1.

SECTION 4.2 COMPLETION OF THE PROJECT FACILITY; FEES.

(A) The Company will proceed with due diligence to commence construction, installation and equipping of the Project Facility in accordance with Section 4.1 of this Lease within one (1) year after the Closing Date and shall proceed with due diligence to complete the

construction, installation and equipping of the Project Facility on or before December 31, 2020 (the "Scheduled Completion Date") and shall commence its operations in the Project Facility on or before the Scheduled Completion Date and thereafter continuously operate its business at the Project Facility. The Company covenants to diligently prosecute its application for any required building permits for the Project Facility. Completion of the construction, installation and equipping of the Project Facility 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, construction, installation and equipping of the Project Facility have been completed in a good and workmanlike manner, (d) that the Company and the Agency have good and valid interests in and 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. Such certificate shall be accompanied by a permanent certificate of occupancy for the Building 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.

(B) The Company shall pay within the time periods required by applicable Governmental Authorities, all construction related and other fees for the Project, including, without limitation, building permit fees, plumbing fixture permit fees, recreation fees, site planning fees, municipal consultant review fees, special use fees, variance fees, sewer hookup fees, water service installation fees and fire line fees, if any.

SECTION 4.3 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES. In the event of a default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition, construction, installation and equipping 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, which consent shall not be unreasonably withheld, 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 then to pay all reasonable costs and expenses incurred by the Agency in connection therewith, and thereafter be paid to the Company for its own use.

SECTION 4.4 PURPOSE OF THE PROJECT.

It is understood and agreed by the Agency and the Company that the purposes of the granting of the Financial Assistance are to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project Facility to advance the job opportunities, health, general prosperity and economic welfare of the people of the County and the State, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration, and to otherwise accomplish the purposes of the Act.

ARTICLE V
DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS
AND OTHER AMOUNTS PAYABLE

SECTION 5.1 SUBLEASE OF THE PROJECT FACILITY AND FUTURE PARCELS FROM THE AGENCY TO THE COMPANY. 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 demise and sublease to the Company, and the Company hereby agrees to rent and sublease from the Agency, a subleasehold interest in the following, subject only to the Permitted Encumbrances: (1) the Project Facility; and (2) a leasehold interest in each Future Fee Parcel, Future Leasehold Parcel, and Future Easement Parcel described on an ALA Supplement executed by the Company and the Agency pursuant to this Agency Lease. The form of the ALA Supplement is attached hereto as Exhibit C.

(B) The Fee Parcels, Leasehold Parcels, and the Easement Parcels which are subject to this Agency Lease as of the Closing Date are set forth on Schedules A (Fee Parcels), B (Leasehold Parcels), and C (Easement Parcels) attached hereto, respectively.

(C) The Company and the Agency understand and recognize that a leasehold interest in the Future Fee Parcels, the Future Leasehold Parcels, and the Future Easement Parcels will be conveyed by the Company to the Agency subsequent to the Closing Date. Such parcels are set forth on Schedules D (Future Fee Parcels), E (Future Leasehold Parcels), and F (Future Easement Parcels) attached hereto, respectively, as such schedules may be amended or modified from time to time. The Company expects to acquire the Future Fee Parcels, the Future Leasehold Parcels, and the Future Easement Parcels after the date hereof and desires to subject such parcels to this Agency Lease. The Company will, and will be permitted by the Agency to, subject such Future Fee Parcels, Future Leasehold Parcels, and Future Easement Parcels to this Agency Lease by executing and delivering an ALA Supplement with respect thereto, as contemplated under Section 5.1(A) hereof. Notwithstanding the foregoing and anything to the contrary contained herein, the Agency shall not be required to enter into an ALA Supplement for such Future Fee Parcels, Future Leasehold Parcels, and Future Easement Parcels unless (a) such ALA Supplement has been presented to the Agency for signature, as contemplated under Section 5.1(A) hereof, on or before December 1, 2019, and (b) the Agency has been presented with all documents relating to such Future Fee Parcels, Future Leasehold Parcels, and Future Easement Parcels which are required under the Company Lease, (c) the Company and the Agency have complied with SEQRA and any other applicable law, and (d) an Event of Default hereunder shall not exist and be continuing at that time.

(D) This Agency Lease and any amendments hereto for future parcels, or a memorandum thereof, shall be recorded by the Agency in the Office of the Clerk of the County of Chautauqua, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

SECTION 5.2 DURATION OF THE LEASE TERM; QUIET ENJOYMENT.

(A) The Agency shall deliver to the Company possession of the Project Facility, subject to the provisions of this Lease, and the subleasehold estate created hereby shall commence, on the Closing Date, and the Company shall accept possession of the Project Facility on the Closing Date.

(B) Provided that all amounts, costs and expenses payable by the Company to the Agency under this Lease and all other Transaction Documents are paid in full, the subleasehold estate created hereby shall terminate on the earlier to occur of (1) December 31, 2039, or (2) the date that this Lease shall terminate pursuant to Article X or Article XI hereof.

(C) The Agency shall take no action, other than pursuant to Article X or Article XI of this Lease, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Facility during the term of this Lease 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 on the date of execution and delivery of this Lease, as the basic sublease payments due hereunder: (1) the sum of \$1.00, (2) all fees and expenses of counsel to the Agency and Special Counsel to date with respect to the Project, and (3) all other actual costs and expenses incurred by the Agency in connection with the transactions contemplated by this Lease and the other Transaction Documents.

(B) The Company agrees to pay to the Agency a non-refundable agency fee in the total amount of one million, five-hundred thousand dollars (\$1,500,000) ("Agency Fee"), which Agency Fee shall be due in the following installments:

First, \$100,000 paid before December 31, 2017, which the parties acknowledge has been paid. This payment shall be deemed fully earned and shall be nonrefundable upon Company's payment of same to the Agency (the "First Agency Fee Payment").

Second, \$100,000 payable upon the Closing. This payment shall be deemed fully earned and shall be nonrefundable upon execution of the Agency Lease Agreement (the "Second Agency Fee Payment").

Thereafter:

\$250,000 payable thirty (30) days after the commencement of construction, which shall be defined as the day the Applicant pours the foundation for the first turbine as part of the Project.

\$250,000 payable on the first anniversary of commencement of construction

\$200,000 payable on the second anniversary of commencement of construction

\$200,000 payable on the third anniversary of commencement of construction

\$200,000 payable on the fourth anniversary of commencement of construction

\$200,000 payable on the fifth anniversary of commencement of construction

(C) At the Closing, the Company agrees to pay to the Agency the following fees: (1) the Second Agency Fee Payment, and (2) the Agency's Special Counsel fee as billed prior to the Closing (collectively, the "Administrative Fee"). The Administrative Fee is due and payable by the Company to the Agency on the Closing Date. The Administrative Fee is non-refundable and is deemed earned in full upon the execution and delivery of this Lease. In the event that the Project Facility is not constructed, any portion of the Agency Fee not yet due and payable will not be owed to the Agency. At any supplemental closings, the Company agrees to pay any additional attorneys' fees of the Agency submitted at or prior to the Supplemental closing.

(D) Within ten (10) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable costs and expenses of the Agency and the officers, members, agents, attorneys, servants and employees thereof, past, present and future, incurred by reason of the Agency's ownership, leasing, subleasing or sale of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease or any of the other Transaction Documents, and any other reasonable fee or expense of the Agency with respect to the Project Facility, the leasing, subleasing or sale of the Project Facility to the Company, the sub-subleasing of portions of the Project Facility to the Sublessees, the payment of which is not otherwise provided for under this Lease.

(E) The Company agrees to make the above-mentioned payments in immediately available funds, without any further notice or demand, by wire transfer or other form of payment satisfactory to the Agency, 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, from the date on which such payment was due until the date on which such payment is received by the Agency.

SECTION 5.4 NATURE OF OBLIGATIONS OF THE COMPANY
HEREUNDER.

(A) The obligations of the Company to make the payments required by this Lease 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 setoff, 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, or terminate this Lease (except as set forth in Section 11.1 hereof), for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, 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 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.

(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 expressly contained in this Lease, 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 12.9 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), servants or employees, past, present and future, 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, the relationship of the Agency and the Company hereunder or the Company's use and occupancy to the Project Facility, or any other liability of the Agency to the Company.

SECTION 5.5 SECURITY INTEREST. Letter of Credit

(1) As security for the obligation of the Company to make all payments required of the Company under the PILOT Agreement, the Company shall deliver to the Agency a Letter of Credit with an aggregate stated amount ("Maximum Stated Amount") of: (i) for the first five-year period following initial provision of the Letter of Credit, \$545,550, and (ii) for each succeeding five-year period thereafter during the term of this Agency Lease, an amount equal to the PILOT Payment due for the first year of each such five-year period plus the maximum potential annual escalation of that amount over that period. The Agency shall release the Letter of Credit and return the Letter of Credit to the Company no later than thirty (30) days following the termination or expiration of the term of this Agency Lease.

(2) The Company shall first provide to the Agency the Letter of Credit on or before January 31, 2020, and maintain the Letter of Credit in accordance with the terms of this Section at all times during the term of this Agency Lease.

(3) Requirements. The Letter of Credit shall meet the following requirements:

- (a) be an irrevocable standby letter of credit;
- (b) be issued by a Bank approved by the Agency in its sole discretion; provided that, if the financial institution issuing the Letter of Credit ceases to be a Bank, then the Company shall deliver a substitute Letter of Credit issued by a different Bank approved by the Agency in its sole discretion or otherwise furnish additional security acceptable to the Agency within ten (10) days of the date that such financial institution ceased to be a Bank;
- (c) be payable immediately, conditioned only on presentment by the Agency to the issuer of the Letter of Credit of a sight draft drawn on the Letter of Credit in Chautauqua or Erie County, New York or by facsimile;
- (d) be “evergreen” (i.e., will automatically renew for successive one-year periods, unless the issuer gives the Agency at least thirty (30) days’ notice of any non-renewal);
- (e) allow for multiple and partial draws; and
- (f) name the Agency as beneficiary for the benefit of the Taxing Entities.

(4) Right to Draw.

- (a) If the Company has failed to pay when due any amount due and payable by the Company pursuant to the PILOT Agreement and such failure continues for a period of ten (10) days, then, provided that the Agency has provided the Company (in a manner consistent with the PILOT Agreement) an invoice or other supporting documentation for the amount due and payable, the Agency shall have the right to draw on the Letter of Credit as and when provided by this Section, in part or in whole, up to the unpaid amount. If the Agency makes such a draw on the Letter of Credit, the Agency shall use and apply the proceeds to satisfy the payment obligation due under the PILOT Agreement that the Company has failed to pay and the Company shall, within ten (10) days, reinstate the Letter of Credit to the full amount as required herein.

- (b) The Agency shall have the right to draw on the Letter of Credit, without prior notice to the Company, if:
 - i. for any reason the Company fails to deliver to the Agency a new or replacement Letter of Credit, on the same terms, by not later than thirty (30) days before the applicable expiration date of the Letter of Credit; or
 - ii. the financial institution issuing the Letter of Credit fails to be a "Bank" as defined herein; or gives notice of non-renewal of the Letter of Credit and the Company fails to provide a substitute Letter of Credit in accordance with the terms hereof.
- (c) If the Agency makes such a draw on the Letter of Credit in accordance with Section 5.5(A)(4) hereof, the Agency shall be entitled to draw on the full face amount of the Letter of Credit and shall retain such amount as cash security to secure the payment obligations under the PILOT Agreement, without payment of interest to the Company. If the Company subsequently replaces the Letter of Credit in accordance with the terms of this Agency Lease, any such cash security then held by the Agency shall be returned to the Company.

(5) Draws on the Letter of Credit. Draws on the Letter of Credit shall not be conditioned on prior resort to the Company or any other security of the Company. For all draws conditioned on prior notice from the Agency to the Company, no such notice shall be required if it would preclude draw before the expiration date of the Letter of Credit. The Agency shall use and apply draws on the Letter of Credit (or cash security held from draws on the Letter of Credit) toward satisfying the relevant obligations of the Company under the PILOT Agreement. Subject to the Agency's rights under Section 5.5(A)(4) hereof, if the Agency receives proceeds of a draw in excess of the relevant obligation, the Agency shall promptly refund the excess (together with any interest which has accrued thereon) to the Company after all relevant obligations are satisfied in full.

(6) Remedy for Improper Presentment or Payment of Sight Draft. The Company's sole remedy in connection with the improper presentment or payment of sight drafts drawn under the Letter of Credit shall be to obtain from the Agency a refund of the proceeds which are misapplied, provided that at the time of such refund the Company reinstates the Letter of Credit to the amount (if any) then required under applicable provisions of this Agency Lease. The Company acknowledges that the presentment of sight drafts drawn upon the Letter of Credit could not under any circumstances cause the Company injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, as aforesaid the Company covenants (i) not to request or instruct the issuer of any Letter of Credit to refrain from paying any sight draft drawn under the Letter of Credit and (ii) not to commence or pursue any legal proceeding seeking any remedy other than a refund of the misapplied letter of credit proceeds and reimbursement of costs, as described in this

Section 5.5(A)(6), and the Company irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any Letter of Credit.

(7) **Costs and Expenses.** Subject to Section 5.5(A)(6), the Company shall obtain and furnish the Letter of Credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with the Agency's presentment of sight drafts and drawing against the Letter of Credit or replacements thereof.

(8) **Assignments.** If the Company makes a permitted assignment of its rights and interests under this Agency Lease or the other Transaction Documents, then the Company shall cooperate so that concurrently with, and as a condition to, the effectiveness of such assignment, either a replacement Letter of Credit for, or appropriate amendments to, the outstanding Letter of Credit shall be delivered to the assignee naming the assignee, as applicant, and the Agency, as beneficiary, at no cost to the Agency. Such assignee may, at its election, provide an alternate form of the Letter of Credit to the form set forth in Exhibit K; provided, however, such letter of credit must be in form and substance reasonably acceptable to the Agency and consistent with the terms of this Section.

(9) **Substitution.** The Company may, at its election, provide an alternate form of the Letter of Credit to the form set forth in Exhibit K; provided, however, such letter of credit must be in form and substance reasonably acceptable to the Agency and consistent with the terms of this Section.

(10) **Alternate Security.** In lieu of providing a Letter of Credit and in full satisfaction of its obligations under this Section, the Company shall have the option of securing its obligations under the PILOT Agreement in the form of an escrow deposit of cash invested in a local Bank, in an amount equal to the Maximum Stated Amount and with the Agency named as beneficiary of such escrow deposit account.

(B) Personal Property

(1) This Lease shall constitute a "security agreement", as such term is defined in the Uniform Commercial Code adopted in the State, as the same may from time to time be in effect (the "UCC"). The Company hereby grants the Agency a first-priority security interest in all of the right, title and interest of the Company in the materials, machinery, equipment, trade fixtures, fixtures, furniture, furnishings and other tangible personal property acquired by or on behalf of the Company using the Sales Tax Agency Agreement and/or any Sub-Agent Agency Agreement, and in all additions and accessions thereto, all replacements and substitutions therefor, all books, records and accounts of the Company pertaining to the Project Facility, and all proceeds and products thereof (collectively, the "Collateral"), as security for payment of the rental payments and all other payments and obligations of the Company hereunder and under the PILOT Agreement, and the Agency is authorized to file financing statements with respect to such Collateral without the Company executing the same. If an Event of Default shall occur under this Lease or any other Transaction Document, the Agency shall have, in addition to any and all other rights and remedies set forth in this Lease, and may exercise without

demand, any and all rights and remedies granted to a secured party under the UCC, including, but not limited to, the right to take possession of the Equipment and any fixtures or other personal property that constitute part of the Collateral, and the right to advertise and sell the same, or any part thereof, pursuant to and in accordance with the UCC. The Company agrees that any notice of public or private sale with respect to such Collateral, or any part thereof, shall constitute reasonable notice if it is sent to the Company not less than ten (10) days prior to the date of any such sale. The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute, deliver and/or file any instruments or statements necessary or convenient to perfect and continue the security interest granted herein.

(C) SUBLEASE.

(1) Generally: The Company covenants and agrees to enforce the Lease Agreements in accordance with their respective terms as is commercially reasonable for the benefit of the Agency.

(2) Security: In order to further secure the payment and performance of the obligations of the Company under this Lease and the other Transaction Documents, the Company does hereby collaterally assign, transfer and set over to the Agency all of the Company's right, title and interest in and to the Sublease Agreements, including all sublease rentals, revenues and receipts therefrom, and the right to enforce all of the Company's rights and remedies thereunder.

(3) In the exercise of the powers herein granted, no liability shall be asserted or enforced against the Agency, all such liability being hereby expressly waived and released by the Company. The Agency shall not be obligated to perform or discharge any obligation, duty or liability under any Sublease Agreement, or under or by reason of this assignment.

ARTICLE VI
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1 MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY.

(A) 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) occupy, use and operate the Project Facility, and shall cause the Project Facility to be used and operated in the manner for which it was intended and contemplated by this Lease, (3) make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), (4) operate the Project Facility in a sound and economical manner, (5) not abandon the Project Facility, (6) perform or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency under and pursuant to the Bank Mortgage, and (7) not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project Facility, or any part thereof, or the interest of the Agency or the Company in the Project

Facility, the Company Lease or this Lease, except for Permitted Encumbrances. The Agency shall have no obligation to replace, maintain or effect replacements, renewals or repairs of the Project Facility, or to furnish any utilities or services for the Project Facility and the Company hereby agrees to assume full responsibility therefor.

(B) Upon prior written notice to the Agency, the Company may make alterations, modifications or improvements to the Project Facility, or any part thereof, provided:

(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 modification or improvement to the Project Facility, or any part thereof, (b) indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future harmless from all fees, expenses, 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) not be in monetary default under this Lease or under any of the other Transaction Documents beyond applicable notice and cure periods;

(2) such alterations, modifications and improvements are effected with due diligence, in a good and workmanlike manner and in compliance with all Applicable Laws;

(3) the Company shall promptly and fully pay for such alterations, modifications and improvements in accordance with the terms of the applicable contract(s) therefor;

(4) the alteration, modification or improvement to the Project Facility shall not constitute or cause a default under any of the Transaction Documents;

(5) the Company shall furnish to the Agency, at least thirty (30) days prior to commencing such alteration, 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 (a) nonstructural modifications or improvements to the Project Facility which do not exceed, at any one time, \$50,000.00 in value, and (b) non-structural modifications or improvements, without limitation as to amount, performed in connection with customary and reasonable initial tenant improvements;

(6) as a result of such alterations, modifications or improvements, neither the usefulness, structural integrity nor operating efficiency of the Project Facility would be materially impaired in the reasonable judgment of the Agency;

(7) if the cost of such alterations, modifications or improvements is estimated to exceed \$500,000 such alterations, modifications or improvements shall be conducted only after the Company shall have furnished to the Agency a labor and materials payment bond, or other security, naming the Agency as dual obligee and otherwise in form and substance satisfactory to the Agency; provided, however, that such bond or other security

need not be furnished to the Agency in connection with the initial construction, installation and equipping of the Project Facility;

(8) the Agency receives reasonably satisfactory evidence that such alterations, modifications and improvements do not change the nature of the Project Facility such that it would not comply with the terms of this Lease or such that it would not constitute a "project" (as such quoted term is defined in the Act);

(9) if such alterations, modifications or improvements involve an addition to the Project Facility or would otherwise result, but for the Agency's interest in the Project Facility, in an increase in the assessed value of the Premises, then the Agency may require an increase in the Administrative Fee and/or the sums payable under the PILOT Agreement, if any, before such alterations, modifications or improvements proposed can be undertaken or completed;

(10) no such alterations, modifications or improvements shall be entitled to any "financial assistance" (as such quoted term is defined in the Act) from the Agency unless agreed to in writing by the Agency; and

(11) an Event of Default shall not have occurred and be continuing under this Lease or any other Transaction Document.

All such alterations, modifications and improvements shall constitute a part of the Project Facility and the Company shall deliver or cause to be delivered to the Agency appropriate documents to convey title to or a leasehold interest in such property, as the case may be, to the Agency, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances, and to subject such property to this Lease.

The provisions of this Subsection (B) shall not apply to the initial construction, installation and equipping of the Project Facility pursuant to the Plans and Specifications.

(C) 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 operation of the Project Facility, and the Company will defend (with counsel selected by the Agency), indemnify and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and penalties due to failure to comply therewith.

(D) Any provision of this Lease to the contrary notwithstanding, the Company shall not construct any new building or structure on the Land (other than the Building) or any addition to any existing building on the Land, without the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion.

SECTION 6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES.

(A) The Company shall pay as the same respectively become due: (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 (other than those taxes for which

payments in lieu thereof are being paid pursuant to the PILOT Agreement), (2) all utility and other charges, including "service charges" and deposits, incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, and (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.

(B) If the Company fails to pay any tax, assessment or charge required to be paid pursuant to this Section 6.2, the Agency may pay or cause to be paid such taxes, assessments or charges. The Company shall reimburse the Agency for any amount paid under this Section 6.1, together with interest thereon from the date of payment at the Default Interest Rate.

(C) Notwithstanding the provisions of this Section 6.2, the Company may withhold any such payment and the Company may in good faith actively contest the amount, validity or the applicability of any payment referred to in such subsection (A), provided that (1) the Company shall have first notified the Agency in writing of such contest, (2) no Event of Default shall have occurred and be continuing under any of the Transaction Documents beyond applicable notice and cure periods, (3) the overall operating efficiency of the Project for the purposes for which it is intended is not materially impaired, (4) neither the Project Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings, (5) the Company shall have set aside on its books adequate reserves with respect thereto, and (6) the Company diligently prosecutes such contest to completion. 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, the Company shall maintain insurance with respect to the Project Facility against such risks and liabilities and for such amounts as are, in the Agency's reasonable judgment, 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:

(1) Insurance protecting the interests of the Company, as insured and the Agency, as loss payee, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils embraced by a so-called "Special Form" policy of property insurance, in amounts sufficient to prevent the Company and the Agency from becoming a co-insurer under such policy and not less than 100% of the replacement cost of the Project Facility, without deduction for depreciation, and coverage against acts of terrorism if that coverage is commercially reasonably available and affordable. Additionally, during any period in which construction work or alterations are being performed at the Project Facility, the Company shall maintain "Special Form" property insurance in the form of a "Builder's Risk" completed value non-reporting policy in an amount satisfactory to the Agency and which shall contain a provision granting the insured permission to complete and/or occupy

(2) 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, construction, installation and equipping of the Project Facility.

(3) Commercial general liability insurance protecting the Company, as insured and the Agency, as an additional insured, 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 8.1 of this Lease), or 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 \$1,000,000.00 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000.00 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, as insured and the Agency, as an additional insured, with a limit of not less than \$9,000,000.00, as said amounts may be adjusted by the Agency from time to time in its sole and absolute discretion.

(4) During any period of construction, renovation, improvement or reconstruction, to the extent not covered by the general liability insurance set forth in Subsection (C) above, Owners & Contractors Liability insurance for the benefit of the Company and the Agency in a minimum amount of \$2,000,000.00 aggregate coverage for personal injury and property damage.

(5) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus, insuring risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar enterprises.

(6) A policy or policies of flood insurance in an amount not less than the maximum amount of flood insurance available with respect to the Project Facility under the Flood Disaster Protection Act of 1973, as amended. The requirements of this Subsection (F) shall be waived upon presentation of evidence satisfactory to the Agency that no portion of the Project Facility is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

(7) Such other insurance in such amounts and against such insurable hazards and risks as the Agency may require in its reasonable discretion, provided that the other wind projects obtained Financing Assistance from the Agency are required to obtain the same levels of insurance.

(B) Additional Provisions Regarding Insurance. 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 an A.M. 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 and shall provide that such insurance shall be without any right of contribution from any other insurance carried by the Agency. All policies evidencing such insurance shall name the Company, as named insured, and the Agency as an additional insured, with respect to liability policies, and name the Agency as loss payee with respect to casualty policies, 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 hereof. At least fifteen (15) 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.

(1) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate.

(2) In the event of construction, reconstruction, improvement or renovation of any part of the Project Facility, the Company shall require its contractors and subcontractors, if any, to name the Agency as an additional insured on liability policies carried by such contractors or subcontractors with respect to their operations at the Premises or with respect to the Project.

(3) Each of the policies evidencing the insurance required by this Section 6.3 of this Lease shall provide that: (i) there shall be no recourse against the Agency for the payment of premiums or commissions or, if such policies provide for the payment thereof, additional premiums or assessments; (ii) in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, any such action or inaction; (iii) if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or if there shall occur any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration, reduction or change; and (iv) the insurers waive subrogation thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or other deduction, in respect of any liability

of any Person insured under such policy. Any such insurance policies may be furnished under a so-called "master" or "blanket" policy covering locations other than the Project Facility; provided, however, that if casualty coverage for the Project Facility is provided under a master or blanket policy, such policy must contain an agreed amount endorsement evidencing that such coverage is in an amount sufficient to insure the full replacement cost of the Project Facility.

(C) 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 IN THE PROJECT FACILITY.

(D) Any provision of this Lease to the contrary notwithstanding, at any time during the term of this Lease that any portion of the Bank Loan is outstanding and the Bank Mortgage remains a Lien on the Project Facility, the Agency agrees that (i) the Bank shall be the loss payee with respect to the Net Proceeds of the insurance required by Sections 6.3 hereof, and (ii) the provisions of Sections 6.4 hereof shall be superseded and replaced by the applicable provisions of the Bank Mortgage.

SECTION 6.4 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, subject to Section 6.5 of this Lease, (A) the Net Proceeds of the insurance required by Sections 6.3(A)(2) and 6.3(A)(7) hereof shall be applied as provided in Section 7.1 hereof, and (B) the Net Proceeds of the insurance required by Sections 6.3(A)(3-6) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

SECTION 6.5 PAYMENTS IN LIEU OF TAXES.

(A) It is recognized that, under the provisions of the Act, the Agency is not required to pay certain taxes or assessments upon the Property acquired by it or under its jurisdiction, control or supervision or upon its activities as more particularly set forth in Section 874 of the Act. It is the intention of the parties hereto that the Project Facility be treated as exempt from real property taxation to the extent set forth in the PILOT Agreement, a copy of which is attached hereto as Exhibit H. Accordingly, the parties hereto acknowledge that the Agency shall file New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility. The Company hereby consents to any enforcement action provided to the Taxing Entities pursuant to law in the event that the Company should fail to pay any taxes not exempted as aforesaid and shall not object to any such enforcement action on the grounds that a leasehold interest in the Project Facility is held by the Agency or that the Project Facility is under the Agency's jurisdiction, control or supervision or subject to its activities.

(B) The Agency and the Company hereby agree that the Company shall be required to make or cause to be made payments in lieu of taxes to the school districts, cities, towns, county, villages and other political unit(s) wherein the Project Facility is located having

taxing powers (such political units are hereinafter collectively referred to as the "Taxing Entities"), in such amounts and at such times as are required by the PILOT Agreement.

(C) Within thirty (30) days after receipt of written request therefore, the Company shall deliver to the Agency official receipts of the Taxing Entities or other proof reasonably satisfactory to the Agency evidencing payment of any amount that the Company is required to pay under the PILOT Agreement.

ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1 DAMAGE OR DESTRUCTION.

(A) If the Project Facility becomes damaged or destroyed, in whole or in part at any time during the duration of this Lease:

(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 or the PILOT Agreement (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 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) (1) the Agency shall make available to the Company (solely 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, in the event that the funds from the Net Proceeds of any insurance settlement provided by the Agency to the Company, if any, 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 (2) any balance of such funds from the Net Proceeds of any insurance settlement, 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 terminate this Lease. In such event, subject to the provisions of Section 6.4 of this Lease, the Net Proceeds collected by the Agency under any and all policies of insurance covering the damage to or destruction of the Project Facility, after deducting the amount necessary to repay the Indebtedness, shall be paid to the Company for its own purposes. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay 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 repay the Indebtedness in full.

(C) Unless an Event of Default under any of the Transaction Documents shall have occurred and be continuing, the Company may adjust all claims under any policies of insurance required by Section 6.3 hereof.

(D) The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any laws of like import, now or hereafter in effect.

SECTION 7.2 CONDEMNATION.

(A) To the best of the Company's knowledge, no Condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility or the Agency's or the Company's interest therein or in the Company Lease or this Lease.

(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, or any part thereof;

(2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease or the PILOT Agreement (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 7.1, (a) the Company shall promptly restore the Project Facility (excluding any part of the Project 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)(1) subject to the provisions of Section 6.4 of this Lease, the Agency shall make available to the Company (solely from the Net Proceeds of any Condemnation award, 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 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 (2) any balance of such funds from the Net Proceeds of any Condemnation award remaining on deposit with the Agency, if any, 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 Section 7.1, 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) (4) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease. In such event, subject to the provisions of Section 6.4 of this Lease, the Net Proceeds of any Condemnation award collected by the Agency, if any, after deducting the amount necessary to repay the Indebtedness, shall be paid over to the Company for its own purposes. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to repay 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 repaid in full.

(D) Unless an Event of Default under any of the Transaction 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 or any interest therein or in the Company Lease or this Lease 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 (7) days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(E) 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, which consent shall not be unreasonably withheld or delayed.

SECTION 7.3 ADDITIONS TO THE PROJECT FACILITY. All replacements, repairs, rebuilding or restoration made pursuant to Section 7.1, 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 and shall be subject to this Lease.

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 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.

HOLD HARMLESS PROVISIONS.

(1) The Company hereby releases the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, from, agrees that the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, shall not be liable for and agrees to indemnify, defend (with counsel selected by the Agency) and hold the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising directly or indirectly 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 or 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, improving, equipping, installing, owning, leasing, subleasing, sub-subleasing or selling the Project Facility or arising from or incurred based on the Agency's involvement in the Project Facility, including, without limiting the generality of the foregoing, (i) all liabilities or claims arising as a result of the Agency's obligations under this Lease or any of the other Transaction Documents or the enforcement of or defense of validity of any provision of any of the Transaction Documents, and (ii) all liabilities or claims arising as a result of the Agency's involvement in the Project or the granting of the Financial Assistance, (3) all liabilities and expenses arising from the failure or alleged failure of the Project Facility, the Company or the Company's members, officers, agents, attorneys, servants or employees to comply with Applicable Laws, including, without limitation, any claim that the Agency aided or abetted in such failure or alleged failure to comply with Applicable Laws, (4) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) of this Lease, and (5) 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 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), attorneys, servants 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), attorneys, servants or employees and

notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(2) In the event of any claim against the Agency or its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, 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.

(3) To effectuate the provisions of this Section 8.1, the Company agrees to provide for and insure its liabilities assumed pursuant to this Section 8.1 in the liability policies required by Section 6.3 of this Lease.

(C) Notwithstanding any other provisions of this Lease, the obligations of the Company pursuant to this Section 8.1 shall remain in full force and effect after the termination or expiration of this Lease 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 members, agents (other than the Company), attorneys, servants or employees, past, present or future, relating thereto.

SECTION 8.2 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 and upon reasonable notice to enter upon and to examine and inspect the Project Facility; provided, however, that no such notice shall be required in the event of an emergency or if an Event of Default has occurred and is continuing under this Lease. The Company further agrees that the Agency shall have such rights of access to the Project Facility (subject to the provisions of the immediately preceding sentence of this Section) 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, but the exercise of such right shall in no event be construed to mean that the Agency has assumed any obligation hereunder to perform such maintenance.

SECTION 8.3 COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS. The Company agrees that, during the term of this Lease, it (A) will maintain its Limited Liability Company existence as in effect on the Closing Date, (B) will continue to be qualified to do business in New York State as a foreign LLC; (C) will not dissolve or otherwise dispose of all or substantially all of its assets, and (D) will not consolidate with or merge into another Limited Liability Company or other Person, or permit one or more Limited Liability Companies or other Persons to consolidate with or merge into it, without giving prior written notice to the Agency and obtaining the consent of the Agency. The Company agrees that it will not change its name or its state of organization without giving prior written notice to the

Agency and obtaining the consent of the Agency, which consent shall not be unreasonably withheld or delayed.

SECTION 8.4 AGREEMENT TO PROVIDE INFORMATION. The Company agrees, whenever reasonably requested by the Agency, to promptly provide and certify or cause to be provided and certified such information concerning the Project Facility, the Company, the Guarantors and/or the Company's or any of the Guarantors' finances, operations and affairs 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 Applicable Laws or other governmental regulation or to ensure compliance with the provisions of this Lease and the other Transaction Documents.

SECTION 8.5 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) Within thirty (30) days after the end of each fiscal year of the Company, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company stating that no Event of Default hereunder or under any other Transaction Document 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. The Company represents to the Agency that the Company's fiscal year ends on December 31st.

SECTION 8.6 COMPLIANCE WITH APPLICABLE LAWS.

(A) The Company agrees, for the benefit of the Agency, that it will, during the term of this Lease, promptly comply with all Applicable Laws.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.6, 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) no Event of Default shall have occurred and be continuing under any of the Transaction Documents beyond any applicable notice or cure period, (3) shall have set aside adequate reserves for any such requirement, (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, (5) demonstrates to the reasonable satisfaction of the Agency that such contest shall not result in the Company or the Agency being in any danger of any civil or criminal liability for failure to comply therewith, and (6) diligently prosecutes such contest to completion. 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 8.6, if the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, 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 8.7 DISCHARGE OF LIENS AND ENCUMBRANCES.

(A) The Company hereby agrees not to create or suffer to be created any Lien on any Properties of the Agency or on any funds of the Agency applicable to or deriving from the Project Facility.

(B) If any Lien (other than a Permitted Encumbrance) is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim, whether or not valid, is made against the Project Facility or any part thereof or the interest therein of the Company or the Agency or against any funds of the Agency applicable to or deriving from the Project Facility, the Company, immediately upon receiving notice of the filing, assertion, entry or issuance thereof, shall give written notice thereof to the Agency and take all action (including, without limitation, the payment of money and/or securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and remove or nullify the basis therefor. Nothing herein shall be construed as constituting the consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Project Facility.

SECTION 8.8 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 shall not be obligated to, 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 8.9 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.

(B) The parties agree that as between them the Company shall be entitled to all RECs and other benefits, attributes and proceeds of operation of the Project Facility, subject to the restrictions herein.

SECTION 8.10 EMPLOYMENT OPPORTUNITIES.

(A) The Company shall ensure that all employees and applicants for employment with regard to the Project, including, without limitation, the employees of and

applicants for employment with the Company, or any of its Affiliates, 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, 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 (the "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) (including any successor statute thereto, including without limitation, the Workforce Investment Act of 1998 (P.L. No. 105-270), collectively, the "JTPA") in which the Project Facility is located, and (2) where practicable, to first consider and to cause to be first considered 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, an employment plan, in form and substance satisfactory to the Agency.

(D) The Company agrees to file with the Agency, on a calendar year basis not later than February 11 of each year during the term of this Lease, measured as of December 31st of the immediately preceding calendar year, reports (i) enumerating the full-time equivalent jobs retained and the full time equivalent jobs created as a result of the granting of the Financial Assistance, by category, including full-time equivalent independent contractors and employees of independent contractors that work at the Project Facility, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were set forth in the Application are then still accurate or, if not then still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Said annual reports shall be in substantially the form promulgated from time to time by the Agency. The current forms of reports are annexed hereto as Exhibit G. The Company shall provide such annual reports (and supporting documentation) and shall cause its Affiliates, tenants, occupants, operators, contractors and agents to provide such reports (and supporting documentation) with respect to their respective employees, if any, at the Project Facility. The Agency shall have the right, at the Company's expense, to audit, confirm and/or require additional information with regard thereto and the Company agrees to cooperate with the Agency in connection therewith.

(E) The Company shall maintain the Minimum Employment Requirement.

(F) Subject to (i) collective bargaining contracts or agreements and other existing contracts or agreements to which the Company is a party or by which the Company is bound and (ii) compliance with Applicable Laws, the Company agrees to list or cause to be listed all new employment opportunities created as a result of the Project on the County Jobs website or other website designated by the Agency from time to time, provided that such listing shall be at no cost to the Company.

(G) Subject to (i) collective bargaining contracts or agreements and other existing contracts or agreements to which the Company is a party or by which the Company is bound and (ii) compliance with Applicable Laws, the Company agrees that to the greatest extent possible all employment opportunities should be provided to residents of the County first.

SECTION 8.11 SALES AND USE TAX EXEMPTION.

(A) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales 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. Any exemption from the payment of New York sales and use taxes resulting from Agency involvement in the Project shall be limited to purchases of services and the purchase or lease of tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency, in connection with the completion of the acquisition, construction, installation and equipping of the Project Facility (but not the operation thereof). No operating expenses (including, without limitation, costs of utilities, cleaning services or supplies) of the Project Facility and no other purchases or leases of services or property shall be subject to an exemption from the payment of New York sales or use taxes. The Agency makes no representations or warranties that any property or service is exempt from the payment of New York sales or use taxes.

(B) On the Closing Date, the Agency and the Company shall execute and deliver a sales and use tax agency agreement in the form attached hereto as Exhibit E (the "Sales Tax Agency Agreement"). The granting of the sales and use tax exemption herein is subject to the following additional terms and conditions:

(1) The Sales Tax Agency Agreement shall be dated the Closing Date and shall be effective for a term commencing on its date and expiring upon the earliest to occur of: (a) the termination of this Lease; (b) December 31, 2020; or (c) the termination of the Sales Tax Agency Agreement pursuant to the terms hereof and thereof;

(2) Anything in this Lease or the Sales Tax Agency Agreement to the contrary notwithstanding, the sales and use tax exemption to be provided pursuant to the Sales Tax Agency Agreement (a) shall not be available for any date subsequent to which the Sales Tax Agency Agreement shall have been suspended as provided in this Lease; (b) shall not be available for or with respect to any tangible personal property having a useful life of less than one year; and (c) shall not be available after the Company (or the contractors or subcontractors engaged by the Company and approved by the Agency as its agents) shall have made purchases under the Sales Tax Agency Agreement resulting in sales and use tax exemptions in the aggregate amount of the Maximum Sales Tax Benefit;

(C) The Company agrees to furnish to the Agency within fifteen (15) days after the end of each calendar quarter, a sales and use tax exemption report (the "Quarterly Sales Tax Report"), in form and substance satisfactory to the Agency in its reasonable judgment, with respect to the use of the Sales Tax Agency Agreement by the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) under the authority granted to the Company pursuant to Section 4.1(E) of this Lease during the preceding

calendar quarter. Each said Quarterly Sales Tax Report shall be certified by an Authorized Representative of the Company and shall: (1) identify the contracts and specific property exempted from sales taxes and/or use taxes during such period; (2) indicate the parties to said contract; (3) indicate the maximum amount payable under said contract and indicate what portion of said amount would normally be subject to sales and use taxes imposed in the State; (4) indicate the amount of sales tax benefit expected to be received with respect to said contract; and (5) indicate the cumulative sales tax benefit claimed by the Company (and its contractors and subcontractors approved by the Agency as its agents) with respect to the Project for the calendar year.

(D) Pursuant to Section 874(8) of the Act, the Company agrees to file annually (through the year after the Sales Tax Agency Agreement expires or is earlier terminated), with the New York State Department of Taxation and Finance (the "Department"), no later than January 15th of each year, 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 the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) under the authority granted to the Company pursuant to Section 4.1(E) of this Lease during the preceding calendar year. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be the termination of the authority granted herein for the Company to act as agent of the Agency and the Company (and its contractors and subcontractors) shall immediately cease to be the agent of the Agency in connection with the Project.

(E) The Company agrees to furnish to the Agency, simultaneously with its delivery of such report to the Department, as required by Section 8.11(D), a copy of each such Annual Sales Tax Report submitted to the Department by the Company pursuant to Section 874(8) of the Act.

(F) The Company acknowledges that, pursuant to Section 874(9) of the Act, the Agency shall file within thirty (30) days of the Closing Date with the Department 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"), statements identifying the Company and its contractors and subcontractors approved by the Agency as agents of the Agency, setting forth the taxpayer identification numbers of such Persons, 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. The Company agrees to timely provide the foregoing information to the Agency and to otherwise cooperate with the Agency in connection with the preparation and filing of the Thirty-Day Sales Tax Report.

(G) With respect to any period in which the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) receives a sales tax exemption benefit under the authority granted to the Company pursuant to Section 4.1(E) of this Lease, the Company agrees to furnish to the Agency, on request, an opinion of a certified public accountant to the effect that such accountant has audited the claiming of such exemption from sales and use taxes by the Company (and the contractors and subcontractors

engaged by the Company and approved by the Agency as its agents) for the preceding calendar year, and has reviewed the terms and provisions of the Sales Tax Agency Agreement and of this Section 8.11, and has further audited the Quarterly Sales Tax Reports for the preceding calendar year, and that such Quarterly Sales Tax Reports were properly prepared and accurately reflect the matters certified therein.

(H) The Company covenants and agrees that it shall include or cause to be included the following language in and as a part of each contract, agreement, lease, invoice, bill or purchase order entered into by the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent), as agent of the Agency, in connection with the acquisition, construction, installation and equipping of the Project Facility:

“This [contract, agreement, lease, invoice, bill or purchase order] is being entered into by [] (the “Agent”), as approved agent for and on behalf of the County of Chautauqua Industrial Development Agency (the “Agency”) in connection with a certain project (the “Project”) of the Agency for Cassadaga Wind LLC (the “Company”) consisting in part of the acquisition, construction, installation and equipping of a wind-powered electric generating facility located in the towns of Arkwright, Stockton, Cherry Creek and Charlotte (the “Premises”) and the acquisition of certain capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the Project which are the subject of this [contract, agreement, lease, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Chautauqua if effected in accordance with the terms and conditions set forth in the attached Sales Tax Agency Agreement of the Agency, and the Agent hereby represents that this [contract, agreement, lease, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Agency Agreement. This [contract, agreement, lease, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, lease, invoice, bill or purchase order], the [vendor, lessor, licensor, contractor or subcontractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

If the Company fails to include, incorporate by reference or otherwise cause the contract, agreement, lease, invoice, bill or purchase order to be subject to the above provision, then such contract, agreement, lease, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits that may be conferred by the

Agency, neither the Company nor any contractor or subcontractor engaged by the Company and approved by the Agency as its agent shall claim any sales or use tax benefits or exemptions with respect thereto, and the Company shall return or cause to be returned to the Agency any such benefits or exemptions so taken, together with interest thereon at the Default Interest Rate, from the date of such taking. For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described herein, an "Invoice Rider" (a copy of which is attached hereto as Exhibit I) can be substituted to satisfy the requirements of this section.

The appointment by the Company of a contractor or subcontractor as an agent of the Agency pursuant to this Section 8.11 shall be subject to the prior written approval of the Agency, which approval shall not be unreasonably withheld, and such appointment shall be subject to all of the provisions of this Section 8.11. Any such appointment approved by the Agency shall not be valid unless and until the contractor or subcontractor executes and delivers an agency agreement in the form required by the Agency attached as Exhibit J (each, a "Sub-Agent Agency Agreement").

(I) The Company agrees to provide a completed Form ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate*, to each vendor, lessor, licensor, contractor or subcontractor from which the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent) purchases and/or leases goods or services or with which the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent) enters into an improvement or installation contract relating to the acquisition, construction, installation and equipping of the Project Facility. The Company acknowledges that, pursuant to Section 875 of the Act, the Certificate must be provided to the vendor, lessor, licensor, contractor or subcontractor in order for the contract, agreement, lease, invoice, bill or purchase order to be exempt from the imposition of sales and/or use taxes pursuant to the authority granted under Section 4.1(E) of this Lease. The Company agrees to provide the Agency a copy of each such Form ST-123 within five (5) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

(J) (1) Without limitation of any of the Agency's other rights under this Lease, in the event that the Company (or any contractor or subcontractor engaged by the Company and approved by the Agency as its agent) shall utilize the sales or use tax exemption provided pursuant to Section 4.1(E) of this Lease (i) in a manner that is not authorized or for which the Company (or any contractor or subcontractor engaged by the Company and approved by the Agency as its agent) is not entitled to claim an exemption, (ii) to claim exemptions in excess of the Maximum Sales Tax Benefit, (iii) to purchase or lease goods or services that are not authorized under this Lease, or (iv) in a manner that violates the provisions of this Section 8.11 or any other provision of this Lease or any provision of the Sales Tax Agency Agreement or Sub-Agent Agency Agreement, then the Company shall promptly deliver notice of same to the Agency, and the Company shall promptly pay or cause to be paid to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the Default Interest Rate from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was used by the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent). If the Company fails to promptly pay such return of sales or use tax exemptions when

due, the Agency shall have the right, without limitation of any of its other rights under this Lease, to take any action or commence any proceeding at law or in equity which may appear necessary or desirable to the Agency to recover any such amounts and the Agency shall have the right to join the Commissioner as a party in any such action or proceeding. The Company shall cooperate with the Agency in all such actions and proceedings to recover such amounts. The Company acknowledges and agrees that its failure to pay over any such amounts to the Agency shall also be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company under Article 28 or Article 28-A of the New York State Tax Law, together with any applicable penalties and interest due on such amounts.

(2) The Company acknowledges and agrees that, in the event the Agency recovers, receives or otherwise obtains any amount of State Sales and Use Tax from the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent) pursuant to the foregoing subsection, the Agency shall have the right to remit same to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amounts, and the Company agrees to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, against any liability incurred as a result of remitting such amounts to the Commissioner.

(3) Pursuant to Section 875 of the Act, the Agency shall prepare and file an annual compliance report (each, a "Compliance Report") detailing provisions of this Lease and, if applicable, its activities and efforts to recover, receive or otherwise obtain State Sales and Use Taxes pursuant to the terms of this Lease, together with such other information as the Commissioner and/or the Commissioner of Economic Development may require, which Compliance Report will be filed with the Commissioner, the Director of the Division of the Budget, the Commissioner of Economic Development, the State Comptroller and the applicable City, Village, Town or Hamlet Council. The Company acknowledges the provisions of Section 875 of the Act, agrees to timely provide any information required by the Agency in connection with such Compliance Report and agrees to cooperate with the Agency in connection with the preparation and filing of such Compliance Report.

SECTION 8.12 IDENTIFICATION OF THE EQUIPMENT. All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

SECTION 8.13 RESERVED.

SECTION 8.14 ANTI-TERRORISM LAWS.

(A) General. Neither the Company nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions

set forth in any Anti-Terrorism Law.

(B) Executive Order No. 13224. Neither the Company, nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, nor their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by the Transaction Documents, is any of the following (each a “Blocked Person”):

- (1) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;
- (2) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;
- (3) a Person or entity with which any lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;
- (4) a Person or entity that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224;
- (5) a Person or entity that is named as a “specially designated national” on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list, or
- (6) a Person or entity who is affiliated or associated with a person or entity listed above.

(C) Blocked Person or Transactions. Neither the Company, nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, nor to the Company’s knowledge any of its agents acting in any capacity in connection with the transactions contemplated by the Transactions Documents (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

(D) Trading with the Enemy. The Company is not engaged, nor does it intend to engage, in any business or activity prohibited by the Trading with the Enemy Act.

(E) OFAC and Patriot Act. The Company represents, warrants, covenants and agrees as follows: (i) the Company, its directors, officers, members, shareholders and Affiliates are in compliance with all Anti-Terrorism Laws; (ii) the Company shall immediately notify the Agency if it obtains knowledge that it or any of its Affiliates has become or been listed as a Restricted Party or has been charged with or has engaged in any violation of any Anti-Terrorism Law; (iii) the Company shall not to receive any funds from a Restricted Party and, in any case, exclude any funds derived from any Restricted Party or from any person or entity involved in the

violation of any Anti-Terrorism Law from being used to pay the Indebtedness or any part thereof; (iv) the Company shall not to transfer or permit the transfer of any legal or beneficial ownership interest of any kind in the Company to a Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; (v) the Company shall not to acquire, directly or indirectly, ownership interest of any kind in any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law, (vi) the Company shall not to form any partnership or joint venture or conduct any business with any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law, (vii) the Company shall not to act, directly or indirectly, as the agent or representative of any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; and (viii) the Company shall indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency from and against any costs incurred by the Agency, and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, as a result of any violation of an Anti-Terrorism Law by the Company or any of its directors, officers, members, shareholders or Affiliates.

ARTICLE IX ASSIGNMENTS; LEASING; MERGER OF THE AGENCY

SECTION 9.1 ASSIGNMENT OF THIS LEASE.

This Lease may not be sold, assigned or otherwise transferred by the Company, in whole or in part, without the prior written consent of the Agency, which consent may not be unreasonably withheld; except that, Company may assign the Lease to an Affiliate of Company without prior written consent. All events of assignment shall be subject to and conditioned upon the payment of the then-standard fees of the Agency and the satisfaction of all requirements of the Act. Any such sale, assignment or transfer made by the Company without the prior written consent of the Agency as aforesaid shall be null and void. Any such sale, assignment or transfer consented to by the Agency shall be made pursuant to documentation satisfactory to the Agency. The Company shall pay all reasonable and customary fees and expenses incurred by the Agency in connection with such sale, assignment or transfer.

SECTION 9.2 MERGER OF THE AGENCY.

(A) Nothing contained in this Lease 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 any political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder and under the other Transaction Documents; 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 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 shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall endeavor to 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 shall not lease, sublease, sub-sublease, license or otherwise permit others to use or occupy the Project Facility or any portion thereof without the prior written consent of the Agency, which consent may not be unreasonably withheld; provided, however, in each case (1) the Company shall remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Lease, and (2) any approved Sublease Agreement will not diminish or impair the obligation of the Company to carry the insurance required under Article VI hereof, and that such insurance coverage shall in no manner be limited by such Sublease Agreement

(B) Reserved.

(C) Subject to Subsection (D) of this Lease, the Company shall not sell, transfer, convey or otherwise dispose of its interest in the Project Facility or any portion thereof without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's sole and absolute discretion.

(D) Notwithstanding anything to the contrary contained in this Section 9.3, in any instance where the Company 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 but, upon reasonable prior notice to 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 items of similar quality and value as the items replaced as of the date of original installation of the replaced items. At the request of the Company, the Agency shall execute and deliver to the Company all instruments reasonably necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Property free from the Liens of the Transaction Documents. The Company shall pay all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred in transferring title to and releasing from the Liens of the Transaction 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, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(1) A default by the Company in the due and punctual payment of any amount due under this Lease or under any other Transaction Document, 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 covenant, condition or agreement on the part of the Company in this Lease (other than as set forth in subsection (1) above or in any other subsection of this Section 10.1(A)) and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, or, if such covenant, condition or agreement 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 cure to completion with due diligence.

(3) The occurrence of an "Event of Default" under any other Transaction Document.

(4) 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.

(5) 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 ten (10) days from the date thereof.

(6) (a) The filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy or insolvency statute; (b) the failure by the Company within thirty (30) 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 Title 11 of the United States Code against the Company as the debtor or commencement under any other federal or state bankruptcy or insolvency statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of thirty (30) days; (d) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States 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, liquidator 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 thirty (30) days of such appointment.

(7) If any interest in the Company shall be sold, assigned, transferred, conveyed, mortgaged, pledged, hypothecated or alienated, or if any member or

shareholder of the Company enters into an agreement or contract to do so, without the prior written consent of the Agency.

(8) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance and the failure of the Company to remove such Lien, whether by the payment of money, the securing of a bond or otherwise, within fifteen (15) days after the Company receives notice or becomes aware of such imposition.

(9) The removal of the Project Facility, or any portion thereof, outside the County, without the prior written consent of the Agency, other than in connection with a removal permitted under Section 9.3(D) of this Lease.

(10) If any certificate, statement, representation, warranty or financial statement made to the Agency by or on behalf of the Company or any Guarantor shall prove to have been false, misleading or incorrect in any material respect at the time as of which the facts therein set forth were made, or to have omitted any material liability or claim against the Company or any Guarantor, as the case may be.

(11) If the environmental or ecological condition of the Project Facility is in violation of any Environmental Law or any permit, license or approval related thereto or if the Project Facility, or any part thereof, contains any Hazardous Materials (except Hazardous Materials which do not violate Environmental Laws), and the Company is unable to comply with such Environmental Laws within twenty (20) days of the notification or discovery of such violation or complete all appropriate and lawful remedial containment and clean-up action within twenty (20) days of the notification or discovery of the existence of such Hazardous Materials.

(12) Any loss or impairment of the Agency's interest in and to the Project Facility, or any part thereof.

(13) The Company, any Guarantor or any Affiliate of any of the foregoing or any director, member, manager, officer or shareholder of the Company shall become a Prohibited Person.

(14) Any assignment of this Lease or the Company Lease, in whole or in part, or any letting or sub-subletting of the Project Facility, or any portion thereof, in violation of the terms of this Lease.

(15) An Event of Default shall occur under the Company Lease or under any other Permitted Encumbrance.

(16) If any of the events enumerated in clauses (4) through (6) of this Section 10.1(A) shall happen to any Guarantor.

(17) The Company or any Guarantor defaults under or attempts to withdraw, renege, cancel or disclaim liability under any guaranty or indemnity made by such party in favor of the Agency, including, without limitation, the Environmental Indemnification or the Guaranty.

(18) If the Company fails to maintain the Minimum Employment Requirement at any time during the term of this Lease.

(19) Failure by the Company at any time to keep in full force and effect the insurance policies and coverages required by Section 6.3 of this Lease.

(20) Any loss or impairment of the Company's interest in and to the Project Facility, or any part thereof.

(21) An event of default under any of the Host Community Agreements.

(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 and if such party shall give notice and full particulars of such force majeure event or cause in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this 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 to perform. 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 under this Lease, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 2.2(F), 3.1, 3.3, 4.1(E), 6.1, 8.1 and 12.9(C) hereof and to comply with the provisions of Sections 2.2(F), 6.3, 8.2, 8.4, 8.5 and 8.6(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, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, restraint of government and people, civil disturbances, breakage or accident to transmission pipes or canals, and failure of utilities.

SECTION 10.2 REMEDIES ON DEFAULT.

(A) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent not prohibited 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 under this Lease or any of the other Transaction Documents, including, without limitation, any resulting Recapture of Benefits under Section 11.4 of this Lease; or

(2) re-enter and take possession of the Project Facility, enforce or terminate this Lease, sell or assign the Agency's interest in the Project Facility, subject to Permitted Encumbrances, at public or private sale, as a whole or piecemeal, in whole or in part, for such consideration as may be deemed appropriate in the circumstances by the Agency, 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 sublessee 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, operation or disposition of the Project Facility, or any portion thereof, as the Agency, in its discretion, may deem proper; or

(3) terminate this Lease and/or terminate the Company Lease and/or 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 execution by the Agency of the Termination of Lease and/or the Termination of Company Lease and/or the delivery of the Bill of Sale to Company, as applicable. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such termination and conveyance. The Company hereby waives delivery and acceptance of such termination and Bill of Sale to Company as a condition to their validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording or filing of such documents; or

(4) bring an action for damages, injunction or specific performance; or

(5) suspend the right of the Company (and its contractors and subcontractors approved by the Agency as its agents) to act as agent for the Agency in connection with the Project, including, without limitation, as its agent for the purpose of the sales and use tax exemption afforded to the Company pursuant to this Lease; or

(6) require the Company to make payments in lieu of real property taxes under the PILOT Agreement in amounts equal to the amounts the Company would otherwise be required to pay if the Company were the owner of the Project Facility (and the Agency did not hold an interest therein); or

(7) 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.

(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 and the other Transaction 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 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 or any other Transaction Document and the Agency should retain 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 such fees and expenses (including, without limitation, attorneys' fees and 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 TO TERMINATE

SECTION 11.1 EARLY TERMINATION OF THE LEASE. The Company shall have the option to terminate this Lease at any time 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 and setting forth the effective date of such termination, which effective date shall not be less than thirty (30) days after the delivery of the certificate to the Agency. The exercise of the option to terminate pursuant to this Section 11.1 shall constitute a "Recapture Event" (as such term is defined in Section 11.4 hereof). The Company shall not, at any time, assign or transfer its option to terminate this Lease and purchase the Agency's interest in the Project Facility as contained in this Section 11.1 separate and apart from a permitted assignment of this Lease pursuant to Section 9.1 of this Lease without the prior written consent of the Agency.

SECTION 11.2 OBLIGATIONS UPON TERMINATION OF THE LEASE.

(A) Contemporaneously with the termination of this Lease in accordance with Section 5.2 or Section 11.1 hereof, the Company shall pay all sums required to be paid to the Agency or any other Person pursuant to this Lease and the other Transaction Documents (including any applicable Recapture of Benefits). The obligation of the Agency under this Section 11.2 to convey its interest in the Project Facility to the Company will be subject to there being Event of Default existing hereunder or under any other Transaction Document, and there being no other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default.

(B) The termination of this Lease and the conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the execution and delivery by the Agency of (1) the Termination of Company Lease (an unexecuted copy of which is attached hereto as Exhibit B), (2) the Bill of Sale to Company (an unexecuted copy of which is attached hereto as Exhibit D) and (3) the Termination of Lease (an unexecuted copy of which is attached hereto as Exhibit F). The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such termination, including, without limitation, all of the Agency's reasonable costs and expenses in connection therewith (including reasonable attorneys' fees and expenses).

(C) The Company agrees to prepare the Termination of Company Lease, the Bill of Sale to Company and/or the Termination of Lease, and all schedules thereto, together with all equalization and assessment forms and other necessary documentation, and to forward same to the Agency at least fifteen (15) days prior to the date that this Lease is to be terminated and the Agency's interest in the Project Facility or any portion thereof is to be conveyed to the Company. The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing, delivering and/or recording such documents and to take such other and further action as shall be necessary to terminate the Agency's interest in the Project Facility.

(D) This Lease shall survive the transfer of the Project Facility to the Company pursuant to this Section 11.2 and shall remain in full force and effect until ninety-one (91) days after all of the Indebtedness shall have been paid in full, and thereafter the obligations of the Company shall survive as set forth in Section 12.7 hereof.

(E) Upon the payment in full of all Indebtedness, and notwithstanding the survival of certain obligations of the Company as described in Section 12.7 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.

SECTION 11.3 RESERVED.

SECTION 11.4 RECAPTURE OF AGENCY BENEFITS.

(A) It is understood and agreed by the parties to this Lease that the Agency is entering into this Lease in order to provide the Financial Assistance to the Company for the

Project and to accomplish the purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event (as hereinafter defined), then the Agency at its option may pursue a return of public benefits conferred by the Agency (as defined in this section 11.4) or waive such a return of public benefits in its sole and complete discretion. Should the Agency elect to pursue a return of public benefits conferred by the Agency following a Recapture Event, the amount of such benefits to be recaptured shall be as follows (such amount, the "Recapture of Benefits"):

- (1) one hundred per cent (100%) of the Benefits (as defined below) if the Recapture Event occurs on or before the eighth (8th) anniversary of the Closing Date;
- (2) eighty per cent (80%) of the Benefits if the Recapture Event occurs after the eighth (8th) anniversary of the Closing Date but on or before the tenth (10th) anniversary of the Closing Date;
- (3) sixty per cent (60%) of the Benefits if the Recapture Event occurs after the tenth (10th) anniversary of the Closing Date but on or before the twelfth (12th) anniversary of the Closing Date;
- (4) forty per cent (40%) of the Benefits if the Recapture Event occurs after the twelfth (12th) anniversary of the Closing Date but on or before the fourteenth (14th) anniversary of the Closing Date;
- (5) twenty per cent (20%) of the Benefits if the Recapture Event occurs after the fourteenth (14th) anniversary of the Closing Date but on or before the sixteenth (16th) anniversary of the Closing Date;
- (6) ten per cent (10%) of the Benefits if the Recapture Event occurs after the sixteenth (16th) anniversary of the Closing Date but on or before the twentieth (20th) anniversary of the Closing Date; or
- (7) zero per cent (0%) of the Benefits thereafter.

(B) The term "Benefits" in this Section 11.4, shall mean the Agency's calculation of, collectively:

- (1) all real estate tax benefits which have accrued to the benefit of the Company during such time as the Agency held an interest in the Project Facility by reason of such interest, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under the PILOT Agreement (through the date that the Project Facility is returned to the tax rolls as taxable property) from those payments which the Company would have been required to pay through such date had the Company been the owner of the Project Facility and the Agency not been involved in the Project and based on the records of the Tax Assessor, and treating any negative result as \$0; and
- (2) all miscellaneous benefits derived from the Agency's participation in the transactions contemplated by this Lease, including, but not limited to, any exemption from real property transfer taxes, any exemption from mortgage recording taxes, and/or

any sales and use taxes; provided, however, that the recapture of the value of any exemption from sales and/or use taxes shall be in the full amount of any exemption taken and shall not be subject to the scheduled percentage reduction set forth in Subsection (A) above.

(C) For the purposes of this Section 11.4 the term "Recapture Event" shall mean the occurrence of any of the following events:

- (1) The Company shall have liquidated its operations and/or assets; or
- (2) The Company shall have ceased all or substantially all of its operations at the Project Facility (whether by closure or by relocation to another facility either within or outside of the County); or
- (3) The Company shall have transferred all or substantially all of its employees engaged in the construction, maintenance or operation of the Project Facility to a location outside of the County; or
- (4) The occurrence and continuance of an Event of Default under this Lease or any other Transaction Document; or
- (5) The Company shall have effected a substantial change in the scope and nature of the operations of the Company at the Project Facility without the prior written consent of the Agency; or
- (6) The Company shall have sold, leased, subleased, sub-subleased, assigned, transferred or otherwise disposed of all or any part of its interest in the Project Facility in violation of this Lease; or
- (7) The Company fails to maintain the Minimum Employment Requirement at any time during the term of this Lease; or
- (8) The Company elects to voluntarily terminate this Lease as provided in Section 11.1 hereof; or
- (9) The Application, or documentation in support of the Application, contained a false or misleading statement as to any fact in the Application or omitted any information which, if included, would have rendered any information in the Application or supporting documentation false or misleading in any material respect, and such false or misleading statement or omission was made knowingly by the Company.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a Condemnation by governmental authority of all or substantially all of the Project Facility or any interest therein, or (ii) the inability at law of the Company to rebuild, repair, restore or replace the Project Facility after the occurrence of a casualty to substantially its condition prior to such casualty, which inability shall have arisen in good faith through no fault on the part of the Company.

(D) The Company covenants and agrees to furnish the Agency with written notification upon the occurrence of any Recapture Event, which notification shall set forth the terms of such Recapture Event.

(E) In the event any payment owing by the Company under this Section 11.4 shall not be paid on demand by the Company, such payment shall bear interest from the date of such demand at the Default Interest Rate until the Company shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

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 on the earlier of (1) three (3) Business Days after being sent to the applicable address stated below by registered or certified mail, return receipt requested, or two (2) Business Days after being sent by nationally recognized overnight courier service, or (2) the date on which 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:

To the Agency: County of Chautauqua Industrial Development Agency
201 West Third Street, Suite 115
Jamestown, NY 14701
Attention: Administrative Director

With a Copy to: Phillips Lytle LLP
201 West Third Street, Suite 205
Jamestown, NY 14701
Attention: Matthew R. Mazgaj, Esq.

To the Company: Cassadaga Wind LLC
1251 Waterfront Place, Third Floor
Pittsburgh, PA 15222
Attention: Real Estate Manager

With a Copy to: Young Sommer LLC
Executive Woods
Five Palisades Drive
Albany, NY 12205
Attention: Robert Panasci, Esq.

(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 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, their respective successors and assigns, but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency.

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 held void, voidable, invalid or unenforceable by a court of competent jurisdiction, 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.

SECTION 12.4 AMENDMENT. This Lease 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 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 shall be governed by and construed in accordance with the applicable laws of the State, as in effect from time to time, without regard to its principles of conflicts of law.

SECTION 12.7 SURVIVAL OF OBLIGATIONS.

(A) The obligations of the Company to make the payments required by Sections 2.2(F), 3.1, 3.3, 4.1, 5.3, 5.4, 6.5, 8.2, 8.9, 8.11, 9.1, 9.3, 10.2, 10.4, 11.2 and 11.4 hereof and to provide the indemnity required by Sections 2.2(F), 3.1, 3.3, 4.1(E), 6.3, 8.2 and 12.9(C) hereof shall survive the termination of this Lease, 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 to the Agency with respect to the Unassigned Rights shall survive the termination or expiration of this Lease until the expiration of the period stated in the applicable statute of limitation 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 (other than the Company), attorneys, servants or employees, past, present or future, related thereto.

SECTION 12.8 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this 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 Lease.

SECTION 12.9 NO RECOURSE; SPECIAL OBLIGATION.

(A) The obligations and agreements of the Agency contained herein and in the other Transaction Documents and any other instrument or document executed in connection therewith or herewith, 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, past, present and future, 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 or the County and neither the State nor the County 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 Agency's interest in 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) business 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) business days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten (10) business 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 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), servants or employees, past, present or future, shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, 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), servants and employees, past, present and future, against all liability expected to be incurred as a result of compliance with such request.

SECTION 12.10 NET LEASE. The obligation of the Company to make the payments specified in this Lease shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to the Agency, the payments set forth herein.

SECTION 12.11 WAIVER OF JURY TRIAL. THE COMPANY AND THE AGENCY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE, ANY OTHER TRANSACTION DOCUMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THIS LEASE.

SECTION 12.12 PRIOR AGREEMENTS. This Lease and the other Transaction Documents shall completely and fully supersede all other prior understandings or agreements, written or oral, between the Company and the Agency relating to the Project.

SECTION 12.13 SERVICE OF PROCESS.

(A) The Company represents that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as this Lease shall be in effect. If for any reason the Company should cease to be so subject to service of process in the State of New York, the Company hereby designates and appoints, without power of revocation, CORPORATION SERVICE COMPANY, 80 STATE STREET, ALBANY, NEW YORK, 12207-2543, and successor(s) as its agent for service of process, and if such agent shall cease to act or otherwise cease to be subject to service of process in the State of New York, the Secretary of State of the State of New York, as the agents of the Company upon whom may be served all process, pleadings, notices or other papers which may be served upon the Company as a result of any of its obligations under this Lease; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to the Company's obligations hereunder.

(B) The Company irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Lease or the other Transaction Documents may be brought in the courts of record of the State of New York in the County of Chautauqua or the courts of the United States, Western District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as this Lease is in effect, the Company's agents designated above shall accept and acknowledge in the Company's behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Company agrees and consents that any such service of process upon such agents and written notice of such service to the Company in the manner set forth in Section 12.1 hereof shall be taken and held to be valid personal service upon the Company whether or not the Company shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same

force and validity as if service were made upon the Company according to the laws governing the validity and requirements of such service in the State of New York, and waives all claim of error by reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Company or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Company.

SECTION 12.14 THIRD PARTY BENEFICIARIES. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

SECTION 12.15 NON-DISCRIMINATION.

(A) At all times during the term of this Lease, the Company shall not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation, national origin, marital status, military status, disability, familial status or other characteristic or criteria protected by Applicable Law. The Company shall use reasonable efforts to ensure that employees and applicants for employment with any tenant, subtenant, occupant or user of the Project Facility, or any part thereof, or any contractor or subcontractor with respect to the Project Facility, are treated without regard to their race, color, ethnicity, religion, creed, age, gender, sexual orientation, national origin, marital status, military status, disability, familial status or other characteristic or criteria protected by Applicable Law. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

SECTION 12.16 DATE OF LEASE. The date of this Lease shall be for reference purposes only and shall not be construed to imply that this Lease was executed on the date first above written. This Lease was executed and delivered on [____], 2018.

SECTION 12.17 RECORDING AND FILING. This Lease or a memorandum hereof shall be recorded by the Company in the appropriate office of the Clerk of the County, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

SECTION 12.18 SUBORDINATION. This Lease and all of the Transaction Documents, except for the PILOT Agreement, the Agency's rights under Section 11.4 of this Lease and the Agency's rights with respect to the Unassigned Rights under this Lease, shall be subject and subordinate to the lien and the terms and conditions of the Bank Mortgage, including all amounts advanced thereunder and all renewals, modifications and replacements thereof. The Bank Mortgage (including all amounts advanced thereunder and all renewals, modifications and replacements thereof) shall be subject and subordinate to the PILOT Agreement, the Agency's rights under Section 11.4 of this Lease and the Agency's rights with respect to the Unassigned Rights under this Lease.

SECTION 12.19 SPECIAL BANK PROVISIONS. (A) The Company hereby directs the Agency to give and the Agency hereby agrees to give the Bank notice, in the manner

set forth in Section 12.1 of this Lease, of any default by the Company under this Lease (including, without limitation, any Recapture Event) or under the PILOT Agreement which the Agency is required to give to the Company pursuant to the terms of this Lease or the PILOT Agreement, and the Bank shall have the right (but not the obligation) to cure such default within the time period, if any, provided for such cure to be carried out by the Company pursuant to the terms of this Lease or the PILOT Agreement, as the case may be. The Agency shall accept such cure by the Bank as if such cure were performed by the Company. The Company acknowledges and agrees that the Agency may accept such cure by the Bank and waives any claims it may have against the Agency based upon, arising from or in connection with this Subsection (A).

(B) The Agency and the Company agree that the Bank may exercise the Company's option to terminate this Lease in accordance with Section 11.1 of this Lease, whether in the name of the Company or the Bank, subject to compliance with the provisions of Article XI of this Lease. If the Bank shall exercise such option to terminate in accordance with the terms of Article XI of this Lease, the Agency agrees to perform its obligations under such Article XI at the direction and for the benefit of the Bank. The Company waives any claims it may have against the Agency based upon, arising from or in connection with Article XI of this Lease.

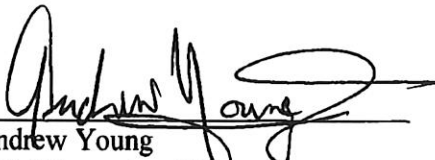
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IN WITNESS WHEREOF, the Agency and the Company have caused this Lease to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT AGENCY

By: 
Mark Geise
Administrative Director/CEO

CASSADAGA WIND LLC

By: 
Name: Andrew Young
Title: Chief Executive Officer

By: 
Name: Richard Casey
Title: General Counsel & Secretary

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

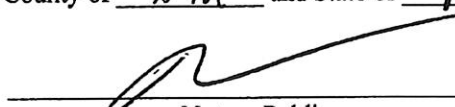
On the 20th day of December, 2018, before me, the undersigned, a notary public in and for said state, personally appeared Mark Geise, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

STATE OF NY)
) ss.:
COUNTY OF Albany)

CRYSTAL L. ALMETER, #01AL5088075
Notary Public, State of New York
Qualified in Cattaraugus County
My Commission Expires November 10, 2021

On the 22 day of December, 2018, before me, the undersigned, a notary public in and for said state, personally appeared Andrew Young, 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 in the Town of Albany, County of Albany and State of NY.


Notary Public

STATE OF NY)
) ss.:
COUNTY OF Albany)

ROBERT A. PANASCI
Notary Public, State of New York
Qualified in Albany County
No. 02PA6071041
Commission Expires March 11, 2021

On the 6 day of December, 2018 before me, the undersigned, a notary public in and for said state, personally appeared Richard Casey 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 in the Town of Albany, County of Albany and State of NY.


Notary Public

ROBERT A. PANASCI
Notary Public, State of New York
Qualified in Albany County
No. 02PA6071041
Commission Expires March 11, 2021

Schedule A
FEE PARCELS

Schedule B

LEASEHOLD PARCELS

Schedule C

EASEMENT PARCELS

Schedule D

FUTURE FEE PARCELS

Schedule E

FUTURE LEASEHOLD PARCELS

PART I. Interests to be Perfected Under Recorded Grant Instruments

Future Leasehold Parcel (Emke)

TRACT 14 (PART) – EMKE (Parcel I – 254.00-1-1; Parcel II – 254.00-1-31)

PARCEL I (Section 254.00 Block 1 Lot 1)

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, situate in the Town of Cherry Creek, County of Chautauqua and State of New York, being part of Lot No. 34 in Township 4, Range 10 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the northwest corner of Lot No. 34;

RUNNING THENCE South on west line of said Lot, 14 chains and 28 links;

THENCE East parallel to the north line of said lot, 36 chains;

THENCE South to lands of J. Madison, 24 chains;

THENCE East on the line of lands owned by J. Madison & O.R. Mallory to the east line of said Lot 35, 25 chains and 36 links;

THENCE North on the east line of said lot to the northeast corner of said lot, 38 chains and 78 links;

THENCE West on the north line of said lot, 61 chains and 36 links to the place of BEGINNING.

Containing 149 and 12/100ths acres of land, be the same more or less.

ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Cherry Creek, County of Chautauqua and State of New York, known as part of Lot No. 34 in Township 4, Range 10 of the Holland Land Company's Survey, bounded as follows:

COMMENCING at a point on the west bounds of said lot and at the southwest corner of land owned (heretofore) by Franklin Hooker;

THENCE Easterly bounding on said Hooker land, 35 chains and 90 links to land formerly articulated to Ezra Northrup;

THENCE Southerly bounding on said Northrups, 13 chains and 93 links;

THENCE Westerly parallel to the first mentioned boundary, 15 chains and 78 links;

THENCE South 4 chains and 97 links;

THENCE westerly parallel to the above mentioned boundary 20 chains; 12 links to the west bounds of said lot;

THENCE Northerly along said west bounds 18 chains and 90 links to the place of BEGINNING.

Containing 60 acres be the same more or less.

ALSO ALL THAT OTHER PIECE OF LAND, situate in the Town of Cherry Creek, County of Chautauqua and State of New York and known as the middle part of Lot No. 34 in Township 4, Range 10 of the Holland Land Company's Survey and bounded as follows:

BEGINNING at the southeast corner of land owned by Charles & John Samuelson;

THENCE southerly 9 chains and 96 links;

THENCE West parallel with Samuelson south line 11 chains;

THENCE North parallel with east line 4 chains 97 links;

THENCE West 4 chains and 81 links parallel with Samuelson south line;

THENE North 4 chains and 97 links;

THENCE East 15 chains and 78 links to the place of BEGINNING.

Thirteen acres and 3 chains and 25 links as the old deed reads, more or less.

PARCEL II (Section 254.00 Block 1 Lot 31)

ALL THAT TRACT OR PARCEL OF LAND generally described on the Tax Maps of the County of Chautauqua as being Section 254.00; Block 0001, Lot 031.000.0000, formerly known as 063089-11-1-28.1, Lot Size 88.00 acres, more or less, in the Town/Village/City of: Cherry Creek, County of Chautauqua, State of New York.

ALL THAT TRACT OR PARCEL OF LAND generally described on the Tax Maps of the County of Chautauqua as being Section 254.00; Block 0001, Lot 032.000.0000, formerly known as 063089-11-1-28.2, Lot Size 2.00 acres, more or less, in the Town/Village/City of: Cherry Creek, County of Chautauqua, State of New York.

Future Easement Parcel (Higgs) (Collection and Access Easement)

TRACT 26 – HIGGS (217.00-1-28.3 (part))

ALL THAT REMAINING TRACT OF LAND situate in the Town of Charlotte, County of Chautauqua, State of New York, being part of Lot 44 in the Fourth Township of the Holland Land Company's Survey conveyed by Elsie M. Rose to Allan W. Higgs and Beverly A. Higgs by deed dated August 4, 1987 and recorded August 6, 1987 in Chautauqua County Clerk's Office in Liber 2131 of Deeds at Page 133.

FURTHER DESCRIBED AS FOLLOWS:

BEGINNING at a point being center of Hall Road and Southeast corner of lands conveyed by Allan W. Higgs and Beverly A. Higgs to David A. Higgs by deed dated 4-1-03 and recorded in Chautauqua County Clerk's Office in Liber of Deeds 02516 at Page 0176, continuing in a

westerly direction along boundary of David A. Higgs 710 feet, intersecting with lands of Allan W. and

Beverly A. Higgs having been surveyed by Michael Rodgers Assoc. on December 23, 1987, continuing in same westerly direction 1950 feet along the Higgs boundary to an iron stake;

THENCE in a southerly direction 457.56 feet to an iron stake;

THENCE in an easterly direction 2199 feet to a point of intersection with lands conveyed by Allan W. and Beverly A. Higgs to Jeffrey J. Higgs by deed dated 5-2-05 and recorded in Chautauqua Co. Clerk's Office in Liber 02571 at Page 0506;

THENCE northerly 208 feet to a point;

THENCE easterly 416 feet to a point, being center of Hall Road;

THENCE northerly to point of BEGINNING.

Future Easement Parcel (Isula) (Collection Easement)

TRACT 28 (PART) – ISULA (236.00-2-33 and 236.00-2-34)

ALL that tract or parcel of land, situate in the Town of Cherry Creek, County of Chautauqua and State of New York, being part of Lots 43 and 44, Town 4, Range 10 of the Holland Land Company's survey, further described as follows:

BEGINNING in the centerline of Thornton Road (66 feet wide) as now laid out and occupied (also known as County Road 85 and as County Road 62) at the intersection thereof with the East line of Lot 44, said point of beginning also being the northeasterly corner of lands conveyed by Ramseyer to Mount by deed recorded in Liber 2295 of Deeds at Page 75 in the Office of the Chautauqua County Clerk;

RUNNING THENCE South 77 degrees 10 minutes West (record bearing) a distance of 750.52 feet along said centerline of Thornton Road to the northwesterly corner of lands conveyed by Mount to Caskey by deed dated July 31, 1991;

THENCE South 0 degrees 14 minutes 54 seconds East a distance of 328.56 feet along the easterly line of said Caskey lands to an iron pin at the southeasterly corner thereof, and passing through an existing iron pin located 31.59 feet southerly along the last described course from said centerline of Thornton Road;

THENCE South 89 degrees 46 minutes West a distance of 628.8 feet along said southerly line of Mount lands to a point in said centerline of Thornton Road, and passing through an iron pin located 33 feet southeasterly by radial measurement from said centerline of Thornton Road;

THENCE South 38 degrees 11 minutes West a distance of 316.8 feet along said centerline of Thornton Road to a point of curve therein;

THENCE Southwesterly along said centerline of Thornton Road an arc distance of 633.5 feet along a regular curve to the left having a radius of 1116.3 feet to a point of tangent therein;

THENCE South 5 degrees 31 minutes West a distance of 269 feet along said centerline of Thornton Road to a point of curve therein;

THENCE Southeasterly along said centerline of Thornton Road an arc distance of 279.5 feet following a regular curve to the left a radius of 347.7 feet to a point of reverse curve therein;

THENCE Southeasterly and southwesterly along said centerline of Thornton Road an arc distance of 322.3 feet following a regular curve to the right having a radius of 383.5 feet to a point of tangent therein;

THENCE South 7 degrees 37 minutes West a distance of 139.9 feet along said centerline of Thornton Road to a point of curve therein;

THENCE Southwesterly along said centerline of Thornton Road an arc distance of 182.5 feet along a regular curve to the right having a radius of 367.6 feet to the intersection thereof with the southerly line of lands conveyed by Carlson and Becker to Nelson by deed dated October 20, 1977;

THENCE South 89 degrees 45 minutes East, a distance of 1738.7 feet along said southerly line of Nelson lands to an existing iron pin at the southeasterly corner thereof, said last mentioned iron pin also being located in the east line of Lot 43, and said last described course passing through an existing iron pin located 357.8 feet easterly along the last described course from said centerline of Thornton Road;

THENCE Northerly a distance of 2468.5 feet along said east line of Lot 43 and also said east line of Lot 44 to the point or place of BEGINNING, and containing 83.3 acres of land more or less.

EXCEPTING therefrom premises recorded in the Chautauqua County Clerk's Office in [Liber ____ of Deeds at Page ____] and Liber 2372 of Deeds at Page 664.

Future Leasehold Parcel (Kalodimos)

TRACT 32 – KALODIMOS (200.00-2-26, 200.00-2-27, & 200.00-2-29)

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Charlotte, County of Chautauqua and State of New York, being parts of Lots numbered 30 and 31, Township 4, Range 11 of the Holland Land Company's survey, being bounded and described as follows:

COMMENCING at the southwest corner of said Lot 31, which point is also the center line of North Hill Road (49.5 feet wide), RUNNING THENCE:

1. North 00° 07' 45'' West and along the West line of Lot 31 and center line of North Hill Road a distance of 1,029.93 feet to a point on the South boundary of lands conveyed to James Clark by Liber 2287 of Deeds at Page 841;
2. RUNNING THENCE North 89° 39' 05'' East and along said South boundary of James Clark a distance of 1,708.25 feet to a point which is the southeast corner of said lands conveyed to James Clark;
3. RUNNING THENCE North 00° 08' 20'' West and along said East boundary of lands conveyed to James Clark a distance of 1,019.23 feet to a point;

4. RUNNING THENCE North 89° degrees 40' 42'' East a distance of 2,290.21 feet to a point on the East boundary of said Lot 31;
5. RUNNING THENCE South 00° 07' 06'' East and along the said East boundary of Lot 31 a distance of 2,073.19 feet more or less to the southeast corner of Lot 31;
6. RUNNING THENCE North 89° 59' 19'' West and along said South boundary of Lot 31 a distance of 532.62 feet to the northwest corner of certain lands conveyed to Thompson by deed recorded in Liber 222 of Deeds at Page 352;
7. RUNNING THENCE South 00° 01' 24'' West and along the West boundary of said lands conveyed to Thompson a distance of 1,639.04 feet to a point;
8. RUNNING THENCE South 89° 25' 24'' West a distance of 3,186.15 feet to a point which is 269.61 feet East of the West boundary of said Lot No. 30;
9. RUNNING THENCE North 00° 18' 30'' West a distance of 595.32 feet to a point;
10. RUNNING THENCE South 89° 25' 24'' West a distance of 269.61 feet to the West boundary of said Lot No. 30;
11. RUNNING THENCE North 00° 18' 30'' West and along said West boundary of Lot 30 a distance of 1,079.21 feet to the point or place of BEGINNING.

Future Easement Parcel (Morley) (Transmission Easement)

TRACT 40 (PART) – MORLEY (234.00-1-37) (Transmission Easement)

PARCEL II

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Charlotte, County of Chautauqua and State of New York, being part of Lot 43, in Town 4, on Range 11 and bounded by beginning on the south line of the Lot in the center of the road leading past the place once owned by Luther Lewis. Thence N. 4° 50' E. in the center of the road 447 feet to an angle in the road, thence N. 17° E. in the center of the road 1069 feet to the north line of the 8 acre parcel deed by Geo. L. Bargar to F.W. Tarbox. Thence West parallel with the south line of the Lot 1548.34 feet to the other lands of Frank and Hilda L. Morley. Thence S. 1° 35' W. parallel with the east line of the Lot 1476.44 feet to a stake in the south line of the Lot. Thence N. 89° 50' E. on the Lot line 1101.35 feet to the place of beginning. Containing 43.29 acres more or less.

Future Leasehold Parcel (Reynolds, T+J)

TRACT 46 (PART) – REYNOLDS, T+J (203.00-1-11.1 (part))

ALL THAT TRACT OR PARCEL OF LAND situated in the Town of Cherry Creek, in the County of Chautauqua and State of New York, described as follows:

BEGINNING at the northeast corner of the said Lot #55;

THENCE South along the East boundary of the said lot 70.53 chains to the southeast corner thereof;

THENCE West along the South boundary of the said lot 33.88 chains to the west boundary of the land formerly of Etta E. Hooker;

THENCE North along the said west boundary and parallel to East boundary of the said Lot #55, 71.49 chains to the northerly boundary of the said Etta E. Hooker's lands;

THENCE southeasterly along said northerly boundary about 4.02 chains to a point in the center of a gore or ravine;

THENCE easterly along the center of the said ravine about 14.16 chains to a point 17.03 chains West of the East boundary of the said Lot #55;

THENCE North and parallel to the said Lot #55;

THENCE East along the said North boundary 17.03 chains to the place of beginning containing 234 acres or more.

Future Leasehold Parcel (Wagner)

TRACT 56 – WAGNER (201.00-1-28)

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Charlotte, County of Chautauqua and State of New York, known as part of Lot No. Twenty-three in the Fourth Township and Eleventh Range of Township of the Holland purchase and bounded as follows:

BEGINNING on the southwest corner of said Lot No. 23; and

RUNNING THENCE along the west line of said lot north fifty-four chains, seventy-five links to lands formerly owned by one William W. Rood;

THENCE East along the south line of said lands so deeded to said Rood nineteen chains and fifty links;

THENCE south along the west line of lands formerly deeded to Joseph Skinner thirty-seven chains twenty-nine links to a point seventeen chains, forty-six links north from the south line of said Lot No. 23;

THENCE East and parallel to the south bounds of said Lot No. 23 eight chains and twenty-five links;

THENCE Southerly twelve chains and forty links to a point twenty-seven chains and twenty-nine links from the west bounds of said Lot;

THENCE East and parallel to the south bounds of said lot at the distance of four chains and ninety-seven links to the center of the highway;

THENCE South eleven degrees thirty minutes west along the center of said highway to the south line of said lot;

THENCE along the south line of said lot west thirty-five chains forty-nine links to the place of BEGINNING containing one hundred and twenty-five and eighty-seven one hundredths acres be the same more or less.

ALSO THE TRACT OF LAND deeded by Daniel Hoisington and wife to William Scott, recorded July 21, 1858, Liber 80 Page 501 and conveyed by will dated June 12, 1861, and same recorded in Chautauqua County Clerk's Office October 9, 1866, Liber 112 of Deeds, Page 309-10, to Sarah A. Burnham and described as follows:

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, situate in the Town of Charlotte and known on the Holland Company's map as a part of Lot No. 23, in the Fourth Township and Eleventh Range and bounded as follows:

BEGINNING at a point seventeen chains and forty-six links from the south line of said Lot No. 23, nineteen chains and thirteen links from the west bounds of said Lot No. 23;

RUNNING THENCE Northerly thirty-seven chains twenty-nine links to a point nineteen chains and fifty links from the west bounds of said Lot No. 23;

THENCE Easterly and bounding on land heretofore deeded to William W. Rood, eleven chains and sixty links;

THENCE Southerly and bounding on said Rood land thirty-four chains and seventy-five links to a point within about twenty chains of the south bounds of said Lot No. 23;

THENCE Easterly and bounding on land heretofore deeded to William Rood, nine chains and nineteen links to the center of the highway;

THENCE along the center of the highway twenty degrees west four chains and seventy-five links;

THENCE farther along the highway eleven degrees thirty minutes west eleven chains and eleven links to a point within five chains from the south bounds of said Lot No. 23;

THENCE westerly by a parallel line to the south bounds of said Lot No. 23, nine chains and thirty-five links;

THENCE Northerly twelve chains and forty-nine links;

THENCE Westerly eight chains and twenty-five links to the place of BEGINNING, containing sixty acres of land be the same or less.

Future Leasehold and/or Easement Parcel (Lewis) (Transportation Easement)

TRACT 71 (PART) – LEWIS (201.00-1-3 & 201.00-1-4)

PARCEL II:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Charlotte, County of Chautauqua and State of New York, being part of Lot 24, Township 4 and Range 11 of the Holland Land Company's Survey and further bounded and described as follows:

BEGINNING at a point in the center line of Rood Road (also known as County Route 77) where said centerline intersects with the centerline of Cassadaga Road;

THENCE North 00° 00' 00'' East along the centerline of Rood Road, 564.48 feet to a point at the southeasterly corner of lands conveyed by Louise Lewis to Dennis G. Lewis by deed dated January 7, 1984 and recorded in the Chautauqua County Clerk's Office February 1, 1984 in Liber 1997 of Deeds at Page 22;

THENCE North 90° 00' 00'' West along the southerly line of said Dennis Lewis, 150.00 feet to a point;

THENCE North 00° 00' 00'' East along the Westerly line of said Dennis Lewis, 100.00 feet to an iron stake;

THENCE North 90° 00' 00'' West, 303.09 feet to an iron stake;

THENCE South 05° 11' 32'' East, 704.23 feet to an iron stake;

THENCE continuing along the same course, South 05° 11' 32'' East 33.13 feet to a point in the centerline of Cassadaga Road;

THENCE North 79° 45' 04'' East along the centerline of Cassadaga Road, 392.62 feet to the point of beginning, containing 6.4216 acres of land to be the same more or less.

Note: The exact acreage is provided for information only. Policy does not insure exact acreage

PARCEL III:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Charlotte, County of Chautauqua and State of New York, and being a part of Lot No. 24, Township 4, and Range 11 of the Holland Land Company's Survey and bounded as follows:

COMMENCING at the point in the centerline of Rood Road, which said point as measured along the centerline of said Rood Road is distant 571 feet northerly from the point where the centerline of Rood Road meets the centerline of a dirt road, which runs westerly from Rood Road to Cassadaga forming part of the southern boundary of lands now or formerly of Julia H. Lewis;

THENCE West at right angles from the centerline of Rood Road through a stake located 33 feet from the centerline of Rood Road, 150 feet to a stake;

THENCE North and at right angles from the last described line, 100 feet to a stake;

THENCE East and parallel to the first described line and through a stake located 33 feet from the centerline of Rood Road, 150 feet to the centerline of Rood Road;

THENCE South 100 feet along the center line of Rood Road to the place of BEGINNING.

PART II. Interests to be Obtained

Future Easement Parcel (State of New York)

TRACT 63 – STATE OF NEW YORK (Collection or Transmission Easement)

Parcel 218.00-2-21
Parcel 218.00-2-7
Parcel 218.00-2-8
Parcel 219.00-1-10
Parcel 219.00-1-8

Future Easement Parcel (Niagara Mohawk)

TRACT 72 – NIAGARA MOHAWK (Transmission Easement)

Parcel 233.00-1-6
Parcel 233.00-1-7

Future Easement Parcel (Aldrich)

TRACT 2 – ALDRICH (183.00-1-9.4) (Transportation Easement)

Parcel II (SECTION 183.00 BLOCK 1 LOT 9.4):

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Arkwright, County of Chautauqua and State of New York, being a part of Lot 42, Township 5 and Range 11 of the Holland Land Company's Survey and more particularly described as follows:

COMMENCING at a point on the southerly line of Lot 42 at the intersection of the centerline of Hall Road, Tarbox Road and Tackley Road;

THENCE easterly along the centerline of Tackley Road to the easterly bounds of Hall Road;

THENCE easterly continuing on the centerline of Tackley Road 460 feet to the point or place of beginning of the parcel to be conveyed, said point or place of beginning also being the southeast corner of a parcel conveyed simultaneously herewith by Austin to Aldrich;

THENCE northerly at approximately right angles to Tackley Road, along the easterly bounds of said Austin to Aldrich approximately 2444 feet to the centerline of Bard Road;

THENCE easterly along Bard Road 600 feet to a point, said point also being the northwesterly corner of a parcel conveyed or to be conveyed by Austin to Ciesielski;

THENCE southerly at approximately right angles to Bard Road, along the Ciesielski westerly boundary approximately 1350 feet to the southwest corner of Ciesielski property;

THENCE easterly approximately parallel to Bard Road, along the southerly bounds of Ciesielski 200 feet to a point;

THENCE southerly at approximately right angles 1094 feet to the centerline of Tackley Road;

THENCE westerly along the centerline of Tackley Road 800 feet to the point or place of beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Arkwright, County of Chautauqua and State of New York, and being a part of Lot 42, Township 5 and Range 11 of the Holland Land Company's Survey and more particularly described as follows:

BEGINNING at a point on the southerly line of Lot 42 at the intersection of the centerline of Hall Road, Tarbox Road and Tackley Road;

THENCE easterly along the centerline of Tackley Road to the easterly bounds of Hall Road;

THENCE easterly continuing on the centerline of Tackley Road 460 feet to a point;

THENCE northerly at approximately right angles to Tackley Road approximately 2444 feet to the South line of Bard Road;

THENCE continuing northerly to the centerline of Bard Road;

THENCE westerly along the centerline of Bard Road approximately 892 feet to the easterly bounds of Hall Road;

THENCE continuing westerly to the centerline of Hall Road;

THENCE southeasterly along the centerline of Hall Road approximately 2394 feet to the point or place of BEGINNING.

EXCEPTING and not conveying an approximately 1 acre parcel of land conveyed by ____ to Delbert Nickerson and Sylvia Nickerson by Warranty Deed dated 8/1/52 and recorded in Chautauqua County Clerk's Office in Liber 934 of Deeds at Page 514 on September 9, 1952, being Town of Arkwright tax map parcel Section 1, Block 1, Lot 16.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Arkwright, County of Chautauqua and State of New York, being a part of Lot 41 in Township 5 and Range 11 of the Holland Land Company's Survey, and more particularly described as follows:

BEGINNING on the southwest corner of Tackley Road also known as Tarbox Road and Hall Road having a frontage of approximately 350 feet along Tackley Road and a frontage on Hall Road approximately 1,085 feet containing approximately 8.7 acres.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Arkwright, County of Chautauqua and State of New York, being a part of Lot 42 in Township 5 and Range 11 of the Holland Land Company's Survey, and more particularly described as follows:

Subject to rights of others in Tarbox Road.

BEGINNING on the northwest corner of Tarbox Road and Hall Road having a frontage on Tarbox Road of approximately 1,875 feet and a frontage of approximately 920 feet as indicated on map marked Parcel "C".

AND ALSO MORE PARTICULARLY DESCRIBED AS Beginning on the northwest corner of Tarbox Road and Hall Road having a frontage of approximately 500 feet along Tarbox Road with a depth of approximately 850 feet containing approximately 7.07 acres.

AND ALSO MORE PARTICULARLY DESCRIBED AS Beginning on the North side of Tarbox Road approximately 500 feet West of Hall Road having a frontage of approximately 275 feet with a depth of approximately 850 feet containing approximately 5.37 acres.

AND ALSO MORE PARTICULARLY DESCRIBED AS Beginning on the North side of Tarbox Road approximately 775 feet West of Hall Road having a frontage of approximately 275 feet with a depth of approximately 850 feet containing approximately 5.37 acres.

AND ALSO MORE PARTICULARLY DESCRIBED AS Beginning on the North side of Tarbox Road approximately 1,050 feet West of Hall Road having a frontage of approximately 275 feet with a depth of approximately 850 feet containing approximately 5.37 acres.

AND ALSO MORE PARTICULARLY DESCRIBED AS Beginning on the North side of Tarbox Road approximately 1,325 feet West of Hall Road having a frontage of approximately 275 feet with a depth of approximately 850 feet containing approximately 5.37 acres.

AND ALSO MORE PARTICULARLY DESCRIBED AS Beginning on the North side of Tarbox Road approximately 1,600 feet West of Hall Road having a frontage of approximately 275 feet with a depth of approximately 850 feet containing approximately 5.37 acres.

Future Fee and/or Leasehold Parcel (Burkholder I)

TRACT 6(a) – BURKHOLDER I (235.00-1-50)

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Charlotte, County of Chautauqua, State of New York, briefly described as follows: Being on Lot 19 in Town 4 on Range 11, and bounded East by Lot 11, North by Lot 20, South by Lot 18 and West by a line parallel with the East line far enough distant to enclose just 50 acres.

Future Fee and/or Easement Parcel (Kelly)

TRACT 33 – KELLY (233.00-1-32 & 233.00-1-36.1)

THAT TRACT OR PARCEL OF LAND situate in the Town of Stockton, County of Chautauqua, State of New York, known as being part of Lot 3 in Town 4, Range 12 and bounded South by the Lot line 28 chains; East by the Railroad Lands 12 chains 50 links; North by a line parallel with the South line of the Lot 28 chains and West by a line parallel with the West Line of Lot, 12 chains 50 links, containing 35 acres, more or less, and more particularly described in 4 deeds recorded as follows: Liber 146, Page 135-Patterson to H. Gleason, 7A.; Liber 146 Page 414-Patterson to H. Gleason, 8A; Liber 166, page 399-Lultgen to H. Gleason, 5A, Liber 192 Page 59-Stiles & 1 to H. Gleason, 5A; Liber 294 Page 262-Moon to E. Gleason, 10A.

ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Stockton in the County of Chautauqua, State of New York, being a part of the East middle part of Lot 3 in said town bounded as follows: North by land formerly owned by E. O. Bargar, 27 chains, 32 links to lands heretofore deeded by William H. Gleason to John Edmonds;

THENCE South 16 chains, 12 links along the line of said land to lands owned by S. G. Patterson;

THENCE East along the line of lands owned by said Patterson and Ebenezer Moon, 27 chains 32 links to the Town line road;

THENCE North along said highway 16 chains 2 links to the place of beginning; containing 44 acres of land be the same more or less. Excepting and reserving 16 chains, 11 ½ links of land heretofore deeded by William H. Gleason to Dunkirk, Warren and Pittsburgh Railroad Company.

EXCEPTING those premises conveyed to Frank G. Issler and Hildegard Issler, husband and wife, by Warranty Deed dated July 23, 1960 and recorded in Liber 1152 of Deeds at Page 193 on August 1, 1960.

EXCEPTING and reserving from one of the above described pieces of land one and one fourth acres that was heretofore conveyed by Stephen D. Totman to Amanda M. Link.

EXCEPTING those premises conveyed by Patrick L. Kelly and Janet L. Kelly, husband and wife, to Brian Luce and Annita R. Luce, husband and wife, by deed dated July 15, 2003 and recorded on July 28, 2003 in Book 2524, Page 689.

EXCEPTING those premises conveyed by Patrick L. Kelly and Janet L. Kelly to Daniel M. Kelly by deed dated May 30, 2007 and recorded on July 9, 2007 in Book 2629, Page 487.

No legal descriptions are presently available for State of New York, Niagara Mohawk or Mitchell parcels. The Burkholder I and Kelly parcels are currently subject to options to purchase. The nature and extent of of any leasehold, easement or interests to be obtained are not determined.

Schedule F

FUTURE EASEMENT PARCELS

EXHIBIT A

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 in connection with the acquisition, construction, installation and equipping of the 2018 Cassadaga Wind LLC Project (the "Project") of the County of Chautauqua Industrial Development Agency (the "Agency") located on the real property described on Schedules A, B and C to this Agency Lease and any schedules attached to the ALA Supplement (the "Land"), said Project to be acquired, constructed and installed by Cassadaga Wind LLC (the "Company") as agent of the Agency pursuant to an agency lease agreement dated as of December [], 2018 (the "Agency 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, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery; and

(2) The following specific items of personal property:

- Wind turbine generators and all associated equipment and accessories including towers and rotors;
- Meteorological measurement equipment accessories including support towers and structures;
- Concrete;
- Rebar;
- Inserts for concrete;
- Anchor bolts and anchor rings;
- Grounding cables and appurtenances;
- Conduit and fittings;
- Wire and cable;
- Meters;
- Electrical termination materials, devices, and kits;
- Junction boxes, switches, fittings, transformers and general electrical materials;
- Control systems, SCADA systems, and related cabling;
- Communications circuits and related equipment (T-1, fiber optic, etc.);
- Padmount transformers;
- Grounding transformers;
- Main power transformers;

- Substation equipment, steel, bus bar, switches, breakers, metering, relaying, buildings, security devices, lighting, fencing, grounding, communications equipment, lightning protectors, secondary power feeder and related accessories and components for a full substation;
- Wire and hardware for underground power collection system;
- Wire, hardware and poles for aboveground power collection system;
- Wire/cable, hardware and poles for transmission line(s);
- Gravel and rock for roads, foundations and pads;
- Geotextile fabric for roads, foundations and pads;
- Hardware for road entrances (gates);
- Protective materials and facilities (bollards, fencing, etc.);
- Environmental protection materials (silt fence, liners, traps, hay bales, curlex, jute netting, etc.);
- Drain tile;
- Culverts and other drainage accessories for road and stream crossings;
- Road construction materials;
- Specialized rigging equipment for material movement;
- Operations and maintenance equipment dedicated to the Project (cranes, gators, snow plows, snowmobiles, etc.);
- Security equipment, facilities and devices;
- Safety equipment and devices;
- Motorized vehicles dedicated to the Project (such as trucks or snow cats) to be used in relation to construction of the Project Facility
- Tooling for maintenance crews;
- Related spare parts for all of above;
- Hand tools and equipment;
- Nuts, bolts, pipe and pipe fittings, tape, adhesives and other miscellaneous hardware;
- Operations and maintenance building materials and supplies;
- Seed, top soil, lime, fertilizer and straw;
- Miscellaneous hardware and paint;
- Diesel and gasoline fuel and lubricants;
- Office trailers, portable toilets; and
- Rental equipment (air compressors, generators, padding machines, bending machines, stump grinders, skidders, all-terrain type vehicles, sheet piling hammers, coating equipment, welders, earth-moving equipment, cranes, etc.).

(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 B

FORM OF TERMINATION OF COMPANY LEASE

WHEREAS, Cassadaga Wind LLC (the "Company"), as landlord, and the County of Chautauqua Industrial Development Agency (the "Agency"), as tenant, entered into a company lease agreement dated as of December [], 2018 (the "Company Lease Agreement") pursuant to which, among other things, the Agency leased the Project Facility (as defined in the Company Lease Agreement) from the Company; and

WHEREAS, pursuant to the Company Lease Agreement, the Company and the Agency agreed that the Company Lease Agreement would terminate on the earlier to occur of (1) the end of the tax year in which the Company makes its twentieth (20th) payment in lieu of taxes pursuant to a PILOT agreement dated as of December [], 2018 (the "PILOT Agreement") or (2) any earlier date the Company Lease Agreement would terminate pursuant to the terms thereof; and

WHEREAS, the Company and the Agency now desires to evidence the termination of the Company Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Company Lease Agreement has terminated as of the dated date hereof; provided, however, that, (i) as provided in the Company Lease Agreement, certain obligations of the Company shall survive the termination of the Company Lease Agreement, and the execution of this termination of company 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 thereof that expressly survive such termination, and (ii) in the event the Company Lease Agreement is being terminated pursuant to Article X or XI of the Lease Agreement, the Company shall pay to the Agency on the date hereof all fees and expenses of the Agency set forth in the Company Lease Agreement, in the Lease and in the other Transaction Documents.

IN WITNESS WHEREOF, the Company and the Agency have signed this termination of company lease agreement and caused same to be dated as of the __ day of _____, ____.

[_____]

By: _____
Authorized Officer

COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Authorized Officer

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

On the ___ day of _____, in the year _____, 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 signatures) 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 CHAUTAUQUA)

On the ___ day of _____, in the year _____, 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 signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Exhibit C

Form of ALA Supplement

ALA SUPPLEMENT NO. ____

THIS ALA SUPPLEMENT NO. ____ dated as of _____, 20__ (this "ALA Supplement") by and between the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 201 West Third Street, Suite 115, Jamestown, New York 14701 ("Agency") and CASSADAGA WIND LLC, a limited liability company organized under the laws of the State of Delaware, and qualified to do business in the State of New York as a foreign limited liability company, having an address at 1251 Waterfront Place, Third Floor, Pittsburgh, Pennsylvania 15220 (the "Company");

W I T N E S S E T H :

WHEREAS, the Company and the Agency have heretofore entered into that certain Agency Lease Agreement dated as of December [], 2018 (the "Agency Lease"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings specified in the Agency Lease;

WHEREAS, the Agency Lease provides for the execution and delivery by the Company and the Agency of an ALA Supplement, substantially in the form hereof, for the purpose of describing the Fee Parcels, Leasehold Parcels, and the Easement Parcels leased from the Agency to the Company pursuant to and in accordance with the terms of the Agency Lease;

NOW, THEREFORE, in consideration of the promises and other good and sufficient consideration, the Company and the Agency hereby agree as follows:

1. Pursuant to Section 5.1(a) of the Agency Lease, the Agency hereby demises and leases to the Company, and the Company hereby hires and leases from the Agency, pursuant to and in accordance with the terms and conditions of the Agency Lease, a leasehold interest in the Agency's (a) leasehold interest in the parcels of real property described in Exhibit A-1 attached hereto, (b) leasehold interest in the Company's leasehold interests in certain parcels of real property pursuant to the agreements referenced on Exhibit A-2 attached hereto, and (c) leasehold interest in the Company's easement rights in certain parcels of real property pursuant to the agreements referenced on Exhibit A-3 attached hereto, in each case, together with any and all Project-related improvements and personal property now or hereafter located thereon, or dedicated to the Project (collectively, the "Project Facility") for the term set forth in Section 5.2 of the Agency Lease.

2. This ALA Supplement shall be construed in connection with and as part of the Agency Lease, and all terms, conditions and covenants contained in the Agency Lease shall be and remain in full force and effect and are hereby incorporated herein by reference with the same force and effect as if fully set forth herein.

3. This ALA Supplement may be executed in any number of counterparts, each executed counterpart constituting an original but all together one and the same instrument.

4. This ALA Supplement is being delivered in the State of New York and shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

5. This ALA Supplement, or a memorandum thereof, shall be recorded by the Agency in the Office of the Clerk of the County of Chautauqua, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

IN WITNESS WHEREOF, the Company and the Agency have caused this ALA Supplement No. ___ to be duly executed and delivered on the day and year first above written.

**COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY**

By _____
Mark Geise
Administrative Director/CEO

CASSADAGA WIND LLC

By: _____
Name:
Title:

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

On the ___ day of _____, _____ before me, the undersigned, a notary public in and for said state, personally appeared Mark Geise, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF _____)
) SS:
COUNTY OF _____)

On the ___ day of _____, _____ 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 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

EXHIBIT D

FORM OF BILL OF SALE TO COMPANY

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 201 West Third Street, Suite 115, Jamestown, NY 14701 (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 Cassadaga Wind LLC, having an office for the transaction of business at 1251 Waterfront Place, Third Floor, Pittsburgh, PA 15222 (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, any and all of Grantor's right, title and interest, if any, in and to 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 in the Towns of Arkwright, Charlotte, Cherry Creek and Stockton, 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 the officer described below on the date indicated beneath the signature of such officer and dated as of the day of the ____ day of _____, 20__.

COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT AGENCY

BY: _____

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

On the ___ day of _____, in the year _____, 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 E
FORM OF SALES TAX AGENCY AGREEMENT

See Attached

EXHIBIT F

TERMINATION OF AGENCY LEASE AGREEMENT

WHEREAS, Cassadaga Wind LLC (the "Company"), as subtenant, and the County of Chautauqua Industrial Development Agency (the "Agency"), as sublandlord, entered into an agency lease agreement dated as of December [], 2018 (the "Agency Lease Agreement") pursuant to which, among other things, the Agency subleased the Project Facility (as defined in the Agency Lease Agreement) to the Company; and

WHEREAS, pursuant to the Lease Agreement, the Company and the Agency agreed that the Agency Lease Agreement would terminate on the earlier to occur of (1) the end of the tax year in which the Company makes its twentieth (20th) payment in lieu of taxes pursuant to a PILOT agreement dated as of December [], 2018 (the "PILOT Agreement") or (2) the date the Agency Lease Agreement would terminate pursuant to Article X or Article XI of the Agency Lease Agreement; and

WHEREAS, the Company and the Agency now desires to evidence the termination of the Agency Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Agency Lease Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 12.7 of the Agency Lease Agreement, certain obligations of the Company shall survive the termination of the Agency 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 Sections 11.4 and 12.7 of the Agency Lease Agreement.

IN WITNESS WHEREOF, the Company and the Agency have signed this termination of Agency Lease Agreement and caused same to be dated as of the __ day of _____, ____.

[_____]

By: _____
Authorized Officer

COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Authorized Officer

STATE OF)
) ss.:
COUNTY OF)

On the ___ day of _____, in the year _____, 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 signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF)
) ss.:
COUNTY OF)

On the ___ day of _____, in the year _____, 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 signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT G
FORMS OF ANNUAL
EMPLOYMENT REPORT

EMPLOYMENT PLAN STATUS REPORT

COMPANY NAME: _____

ADDRESS: _____

TYPE OF BUSINESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

<u>Occupation</u>	<u>Number of New Jobs</u>	<u>Number Listed¹</u>	<u>Number Filled</u>	
			<u>Community Services Division Applicants</u>	<u>Job Training Partnership Act eligible persons</u>

Form of then current Annual Monitoring Questionnaire to be attached

^{1/} With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

EXHIBIT H
COPY OF PILOT AGREEMENT

See Attached

EXHIBIT I

INVOICE RIDER
(Complete and Attach to Invoice)

I, _____, the
_____ of _____
certify that I am a duly appointed agent of the County of Chautauqua Industrial
Development Agency ("Agency") and that I am purchasing the tangible personal
property or services for use in the following Agency Project and that such purchases
qualify as exempt from sales and use taxes under the Agency Lease Agreement,
dated as of December [], 2018, by and between the Agency and Cassadaga Wind
LLC.

Name of the Project: Cassadaga Wind LLC.

Street address of the Project Site: Various

IDA OSC project number: _____

EXHIBIT J

SALES TAX SUB-AGENCY AGREEMENT

Effective as of [_____] , 2018

NAME OF SUBCONTRACTOR _____
ADDRESS _____
ADDRESS _____
Attn: [POINT OF CONTACT/RESPONSIBLE PARTY]__

Re: County of Chautauqua Industrial Development Agency
(Cassadaga Wind LLC Project) _____

Ladies and Gentlemen:

The County of Chautauqua Industrial Development Agency (the "Agency"), Cassadaga Wind LLC (the "Company"), [**CONTRACTOR**] (the "Contractor"), and [**SUBCONTRACTOR**] (collectively, the "Sub -Agent") agree as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or Chautauqua County sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the Agency on January 23, 2018 (the "Authorizing Resolution") and an Agency Lease Agreement, dated as of December __, 2018 (as amended, modified, supplemented or restated, the "Agency Lease Agreement"), between the Agency and the Company, the Agency has authorized the Company to act as its agent to acquire, construct, install and equip a wind-powered electric generating wind-farm facility in Chautauqua County, New York, consisting of (1) the acquisition of an interest in approximately 40,000 acres of land by the Applicant, located in the towns of Charlotte, Cherry Creek, Arkwright, and Stockton, County of Chautauqua, New York (collectively, the "Land"), (2) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment, including approximately fifty-eight (58) wind turbine generators (as reduced to forty-eight (48) as

permitted by the State) with a maximum capacity of 126 megawatts (“MW”) (the “Equipment”), (3) the acquisition, construction, installation, and equipping on the Land of: (i) an operations and maintenance building, (ii) a system of buried and overhead electrical collection lines, (iii) approximately 5.5 miles of 115 kV transmission line, (iv) meteorological towers, and (v) an interconnection substation facility and collection substation facility on the Land, and a system of gravel access roads, parking, landscaping and related improvements to the Land (collectively, the “Improvements”), all of the foregoing for use by the Applicant as a wind-powered electric generating facility (collectively, the “Project Facility”).

3. As sub-agent for the Agency, the Sub-Agent agrees that each contract, agreement, lease, invoice, bill or purchase order entered into by the Sub-Agent as sub-agent for the Agency in connection with the acquisition, construction, installation or equipping of the Project Facility shall include language in substantially the following form:

“This [contract, agreement, lease, invoice, bill or purchase order] is being entered into by [] (the “Agent”), as approved agent for and on behalf of the County of Chautauqua Industrial Development Agency (the “Agency”) in connection with a certain project (the “Project”) of the Agency for Cassadaga Wind LLC (the “Company”) consisting in part of the acquisition, construction, installation and equipping of a wind-powered electric generating facility located in the towns of Charlotte, Cherry Creek, Arkwright and Stockton, County of Chautauqua, New York (the “Premises”) and the acquisition of certain capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the Project which are the subject of this [contract, agreement, lease, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Chautauqua if effected in accordance with the terms and conditions set forth in the attached Sales Tax Agency Agreement of the Agency, and the Agent hereby represents that this [contract, agreement, lease, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Agency Agreement. This [contract, agreement, lease, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, lease, invoice, bill or purchase order], the [vendor, lessor, licensor, contractor or subcontractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

4. The acquisition of capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary

for the completion of the Project Facility (collectively, the "Property") shall be exempt from sales and use taxes levied by the State of New York and the County of Chautauqua on the condition that (i) such items of Property are separately identifiable property of the Agency, and (ii) each item of Property shall have a useful life of one year or more, and shall solely be for the use of the Company at and in the Project Facility, and for no other entity and at no other location, and shall be effected by and at the sole cost of the Company, the Contractor or the Sub-Agent. The exemption provided pursuant to Section 8.11 of the Project Agreement shall not apply to the acquisition of: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or other similar agency for use on public highways or streets.

5. The Agency shall have no liability or performance obligations under any contract, agreement, lease, invoice, bill or purchase order entered into by the Company, as agent for the Agency pursuant to Section 8.11 of the Project Agreement, or by the Sub-Agent, as sub-agent of the Agency pursuant to this Sales Tax Sub-Agency Agreement, and in the event liability should arise under any such contract, agreement, lease, invoice, bill, or purchase order, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, lease, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company, the Contractor and the Sub-Agent shall be the sole parties liable thereunder.

6. By execution of its acceptance of the terms of this Agreement, the Sub-Agent agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Agreement by the Sub-Agent is and will be strictly for the purposes above stated.

7. Until the earliest of (i) December 31, 2020 (ii) the completion of the Project as provided in the Project Agreement, (iii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Project Agreement), which shall include purchases and leases hereunder by the Sub-Agent, and (iv) the termination of the Project Agreement and/or revocation of the appointment of the Company as agent of the Agency or of the Sub-Agent as sub-agent of the Agency (the earliest to occur of the foregoing, the "Termination Date"), all vendors, lessors, licensors, contractors and subcontractors are hereby authorized to rely on a Form ST-123 (as defined in Paragraph 11 hereof) prepared by the Sub-Agent and issued to such vendor, lessor, licensor, contractor or subcontractor pursuant to Paragraph 11 hereof as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Sub-Agent, as sub-agent for the Agency, are exempt from all New York State and Chautauqua County sales and use taxes.

8. Any vendor, lessor, licensor, contractor or subcontractor that does not collect otherwise applicable sales or use tax in reliance upon this Agreement and the Form ST-123 issued by the Sub-Agent to such vendor, lessor, licensor, contractor or subcontractor, shall be deemed to have acknowledged and agreed to the provisions of Paragraph 3 hereof regardless of whether or not the provisions thereof are inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with the Sub-Agent.

9. This Agreement and the Form ST-123 issued by the Sub-Agent to a vendor, lessor, licensor, contractor or subcontractor are provided solely for the purposes described herein and therein. No other principal/agent relationship is intended or may be implied or inferred from this Agreement or the issuance of such Form ST-123.

10. The exemption from sales and use taxes provided under the Project Agreement is granted subject to the requirements of Section 875 of the General Municipal Law, which requirements are incorporated herein by reference, and the Sub-Agent agrees to such requirements as a condition precedent to receiving the exemption from sales and use taxes.

11. The Sub-Agent agrees to provide a completed Form ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate* (each, a "Form ST-123"), to each vendor, lessor, licensor, contractor or subcontractor from which the Sub-Agent purchases and/or leases Property, or with which the Sub-Agent enters into an improvement or installation contract relating to the acquisition, construction, installation and equipping of the Project Facility. All vendors, lessors, licensors, contractors and subcontractors are authorized to rely on such completed Form ST-123 as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Sub-Agent as sub-agent for the Agency pursuant to Section 8.11 of the Project Agreement, are exempt from all New York State and Chautauqua County sales and use taxes. The Sub-Agent agrees to provide the Agency a copy of each such Form ST-123 within ten (10) Business Days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

The signature of representatives of the Company, the Contractor and the Sub-Agent where indicated below will indicate that the Company, the Contractor and the Sub-Agent have accepted the terms hereof.

**COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT
AGENCY**

By: _____
Name: Mark Geise
Title: Administrative Director/CEO

ACCEPTED AND AGREED TO BY:

CASSADAGA WIND LLC

By: IRUS WIND DEVELOPMENT LLC,
a Delaware limited liability company, its sole member

By: IRUS WIND HOLDINGS LLC,
a Delaware limited liability company, its sole member

By: INNOGY RENEWABLES US LLC,
a Delaware limited liability company, its sole member

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

[NAME OF CONTRACTOR_____]

By: _____
Name:
Title:

[NAME OF SUBCONTRACTOR_____]

By: _____
Name:
Title:

Taxpayer ID Number: _____

EXHIBIT K

IRREVOCABLE STANDBY LETTER OF CREDIT
DATE:

Applicant:

Beneficiary:

County of Chautauqua Industrial Development Agency
201 West Third Street, Suite 115
Jamestown, New York 14701

Dear Sir or Madam:

By order of _____ (“Applicant”), we, [**insert name of issuing bank**] (“Issuing Bank”), have established this irrevocable Standby Letter of Credit (this “Letter of Credit”) in favor of the County of Chautauqua Industrial Development Agency (“Beneficiary”), , for an aggregate amount of up to \$ _____, (as reduced pursuant to this Letter of Credit, the “Maximum Stated Amount”) effective [**insert initial date of this Letter of Credit**] and expiring [**insert date which is 364 days after the initial date of this Letter of Credit**] as may be extended in accordance with the terms hereof (the “Expiration Date”). We are informed by the Applicant that this Letter of Credit is provided in connection with the Payment in Lieu of Taxes Agreement (the “Agreement”), dated [**insert date of agreement**], as amended from time to time, by and between Beneficiary and Applicant and is for the benefit of the County of Chautauqua, Town of _____ , _____ Central School District.

The Maximum Stated Amount at the time of any drawing hereunder shall be immediately and permanently reduced by the amount of such drawing and otherwise as set forth herein.

Funds hereunder are available to Beneficiary, providing all terms and conditions of this Letter of Credit are strictly complied against Beneficiary’s sight draft drawn on Issuing Bank in the form of **Annex A** and when accompanied by Beneficiary’s statement purportedly signed by Beneficiary and reading as follows:

Either:

“An Event of Default under Section 6(a)(1) of the Agreement with respect to Applicant’s due but unpaid PILOT Payments (as defined in the Agreement) has occurred, and the amount that Beneficiary is drawing under this Letter of Credit is due and owing by Applicant to Beneficiary as a result of such Event of Default. A copy of the unpaid PILOT Payment invoice is attached to the sight draft.”

Or

“The Letter of Credit Number _____ is set to expire on _____, 20__ (the “Expiration Date”). Beneficiary has received notice from Issuing Bank that this Letter of Credit will not be extended by Issuing Bank. Applicant is required to maintain a letter of credit securing Applicant’s obligation to make PILOT Payments (as defined in the Agreement) under Section 3(o) of the Agreement (“Payment Security”) and has failed to provide Beneficiary with alternative Payment Security at least thirty (30) calendar days prior to the Expiration Date, and as of the date of this drawing, has not provided Beneficiary with such Payment Security. As a result of the foregoing, Beneficiary is entitled to draw the Maximum Stated Amount of the Letter of Credit.”

Issuing Bank hereby undertakes to honor Beneficiary’s sight drafts drawn on Issuing Bank in accordance with this Letter of Credit by the date and time specified below, indicating the Letter of Credit number **[insert Letter of Credit number]**, if presented to Issuing Bank on a Business Day occurring on or before the applicable expiration date for an aggregate amount not to exceed the Maximum Stated Amount.

Any drawings under this Letter of Credit shall be presented to Issuing Bank at its counters by personal presentation, courier or messenger service. In addition, drawings may also be presented by fax transmission to **[Insert Issuing Bank fax number]** or such other fax number identified by Issuing Bank in a written notice to Beneficiary. To the extent a drawing is presented by fax transmission, Beneficiary must (i) provide telephone notification to Issuing Bank at **[Insert Issuing Bank telephone number]** prior to or simultaneously with the sending of such fax transmission and (ii) send the original of such drawing to Issuing Bank by overnight courier at **[Insert Issuing Bank address]**, however such original drawing documents will not be examined by us nor form part of the drawing. If a drawing is presented in compliance with the terms of this Letter of Credit to Issuing Bank at such address or fax number by 11:00 a.m., New York City Time, on any Business Day, payment will be made not later than the close of business, New York City Time, on the next Business Day and if such drawing is so presented to Issuing Bank after 11:00 a.m., New York City Time, on any Business Day, payment will be made on the second Business Day no later than the close of business, New York City Time.

If a demand for payment made hereunder does not conform to the terms and conditions of this Letter of Credit, Issuing Bank shall give Beneficiary notice in writing (or by telephone confirmed in writing) that Beneficiary’s demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that Issuing Bank will upon Beneficiary’s instructions hold any documents at Beneficiary’s written direction or return the same to Beneficiary. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, Beneficiary may correct any such non-conforming demand if, and to the extent that Beneficiary is entitled and able to do so on or before the Expiration Date, but in no event shall the Expiration Date of this Letter of Credit be extended.

Issuing Bank has no duty or right to inquire into the validity of, or the basis for, any draw.

This Letter of Credit shall permit multiple partial drawings.

As used herein, "Business Day" means any day on which (A) commercial banks are not closed, or authorized or required to close, in New York City or (B) with respect to a certain drawing request, the bank to which funds are requested to be transferred hereunder as set forth in such drawing request is not closed, or authorized or required to close, and may receive such funds by wire transfer as requested hereunder.

Should Beneficiary have occasion to communicate with Issuing Bank regarding this Letter of Credit, kindly direct the communication to the attention of **[insert Issuing Bank address/department]** mentioning the Letter of Credit number **[insert letter of credit number]**.

This Letter of Credit, together with sight drafts submitted in accordance with the terms hereof, sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, and any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document or agreement.

Except as far as otherwise expressly stated herein this Letter of Credit is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication No. 590 (the "ISP"), and as to matters not governed by the ISP, shall be construed in accordance with the laws of the state of New York without regard to principles of conflicts of law that may result in the application of the laws of another jurisdiction.

As allowed by law, any payments hereunder shall be made free and clear of, and without deduction or set off for or on account of any present or future taxes, duties, charges, fees, deduction or withholding of any nature and by whomever imposed.

The Expiration Date of this Letter of Credit will be automatically extended without amendment for a period of one (1) year from the Expiration Date, or any future Expiration Date, unless at least sixty (60) days prior to the then current Expiration Date Issuing Bank sends notice to Beneficiary by overnight courier at Beneficiary's address shown above, that Issuing Bank elects not to extend the Expiration Date of this Letter of Credit for any such additional period.

ISSUING BANK

Authorized Signature

ANNEX A

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____

Date _____

Sight Draft

Pay to the order of the County of Chautauqua Industrial Development Agency the amount of \$_____ drawn under [Name of issuing bank] Irrevocable Standby Letter of Credit Number _____ dated _____, 20___. A copy of the unpaid PILOT Payment invoice is attached hereto [For a payment default].

[INSERT BENEFICIARY PAYMENT INSTRUCTIONS]

County of Chautauqua Industrial
Development Agency

By: _____

Name: _____

Title: _____

cc: